

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

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No. 12-13210

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D.C. Docket No. 4:08-cv-00167-HL

AMERICAN FAMILY LIFE ASSURANCE  
COMPANY OF COLUMBUS,

Plaintiff-Appellant,

versus

INTERVOICE, INC.,

Defendant-Appellee.

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Appeal from the United States District Court  
for the Middle District of Georgia

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(March 27, 2014)

Before PRYOR and MARTIN, Circuit Judges, and Honeywell,\* District Judge.

PER CURIAM:

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\* Honorable Charlene Edwards Honeywell, United States District Judge for the Middle District of Florida, sitting by designation.

American Family Life Assurance Company of Columbus (Aflac) entered into an agreement with Intervoice, Inc., to purchase an interactive voice response system. In this appeal, we must determine whether Intervoice has a duty under the contract to defend and indemnify Aflac for certain patent infringement claims brought by a third party. Because we agree with the district court that no such duty exists here, we affirm.

I.

Like many companies in the 21st century that handle large volumes of phone calls from customers, Aflac operates a customer call center that uses interactive voice response (IVR) technology. Gone are the days when callers would dial 1-800-99-AFLAC and wait for extended periods to be assisted by an Aflac customer service representative. Today, Aflac's calls are answered by computers that have been programmed with IVR technology. This allows customers to report their claims, pay their bills, or retrieve their policy information from Aflac's corporate mainframe—all without the hassle of dealing with a customer service representative.

In July 2000, Aflac decided to replace its obsolete IVR system with a new and improved model. To that end, Aflac solicited proposals from companies that could provide the functions and features that Aflac was looking for in a new IVR system. Eventually, Aflac signed an agreement with Intervoice in February 2001

to purchase and install Intervoice's IVR system at Aflac's customer call center in Columbus, Georgia.

Not long after Intervoice's IVR system was up and running, a company known as Ronald A. Katz Technology Licensing LP (RAKTL) alleged that Aflac was infringing a number of its patents. Critically, RAKTL did not allege that Intervoice's IVR system alone infringed any of its patents. Instead, RAKTL's infringement claims involved the interaction between the IVR system and other components of Aflac's call center not furnished by Intervoice. These components included, among other things, Aflac's private branch exchange (which routes phone calls to the IVR), its automatic call distributor (which answers calls and keeps callers on the line), the computers which ran the IVR software, as well as Aflac's corporate mainframe which stores customer information.

After receiving RAKTL's demands, Aflac turned to Intervoice to provide a defense or indemnification under the purchase agreement. Intervoice refused, arguing that RAKTL's claims were excluded from coverage. Aflac then sued in Georgia state court, and Intervoice removed the case to federal court. Following discovery, Intervoice filed a motion for summary judgment. The district court granted the motion, finding that Aflac had no right to be indemnified under the purchase agreement. Aflac now appeals.

II.

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27<sup>th</sup> Annual Advanced Patent Law Institute session

"Patent License Issues from the In-House Perspective"