

Seventh Circuit Confirms: In-House Insurance Lawyers Are as Good as the Name-Brand Product

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In 2012, a plaintiff who challenged State Farm's practice of using in-house attorneys to defend its auto insureds against third-party claims asserted that **in-house lawyers** constitute "**a different ... product**" from the type of defense counsel that is promised in State Farm's policies. In March 2014, in *Golden v. State Farm Mut. Auto Ins. Co.*, a unanimous panel of the U.S. Court of Appeals for the Seventh Circuit decisively vindicated the work product of insurers' hardest-working employees. Cindy Golden insured her Dodge Nitro under a policy that promised to pay "attorney fees for attorneys chosen by [State Farm] to defend an insured who is sued." When she was sued regarding a 2009 collision, she was represented by a lawyer employed in State Farm's corporate law department. The attorney disclosed, in writing, that he was "a full time employee of State Farm," with a duty to disclose any potential conflict. The plaintiff accepted the representation, and State Farm paid the judgment of \$3,609 that was entered after trial. The ensuing action contended that State Farm had a duty to disclose—at the time the policy was issued—that it used in-house lawyers to defend third-party claims. It was based, in part, on assertions that insurers "historically and traditionally" hired private law firms to defend insureds, and that, given this fact, the policy's promise to pay "attorney fees" implied "the use of independent counsel." The plaintiff also asserted a claim for unjust enrichment, on the ground that in-house lawyers are "a different and cheaper product compared with" their law firm counterparts, such that plaintiff and other insureds might have purchased different policies had State Farm's practice been disclosed. The federal court rejected plaintiff's position that "accurate disclosure" required an express discussion of a policy of using in-house counsel. Furthermore, given plaintiff's failure to allege that her actual defense had been inadequate in any way, the court held, "[t]here is nothing ... to support an inference that State Farm ... delivered a product different than that promised in the policy." In other words, the court that sits in America's Second City held that *all* lawyers—both in-house and that other kind—are "attorneys"

within the meaning of the policy. Indeed, it speculated that "the public may ultimately reap the benefits of better service at lower cost through the use of house counsel."

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