

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 00-1988

Kansas Bankers Surety Company,

Appellee,

v.

First Premier Bank, N.A.;

T. Denny Sanford,

Appellants.

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No. 00-2111

Appeals from the United States
District Court for the District of
South Dakota.

[UNPUBLISHED]

Kansas Bankers Surety Company,

Appellant,

v.

First Premier Bank, N.A.;

T. Denny Sanford,

Appellees.

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Submitted: December 11, 2000

Filed: December 19, 2000

Before LOKEN, HEANEY, and FAGG, Circuit Judges.

PER CURIAM.

First Premier Bank, N.A. obtained directors and officers insurance from Kansas Bankers Surety Company. After First Premier's chief executive officer, T. Denny Sanford, was sued in South Dakota state court, Kansas Bankers brought this declaratory judgment action asserting it had no duty to defend Sanford. Kansas Bankers and First Premier filed opposing motions for summary judgment, and the district court granted Kansas Bankers's motion. Applying South Dakota law, the district court concluded Kansas Bankers had no duty to defend because the claims against Sanford in the state-court action fall outside policy coverage under the personal profit exclusion. The district court found no need to decide the issue of whether First Premier and Sanford complied with the policy's notice provisions, and declined to award attorney's fees or costs. First Premier and Sanford appeal asserting all of their claims did not fall within the personal profit exclusion, and Kansas Bankers cross-appeals on the notice issue. Having carefully considered the record, we affirm this diversity case on the basis of the district court's memorandum opinion and order. See 8th Cir. R. 47B.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.