

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

APR 18 2008

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

DONALD G. ABBEY; ABBEY LAND,  
LLC,

Plaintiffs - Appellants,

v.

THE CHUBB CORPORATION, a New  
Jersey Corporation; FEDERAL  
INSURANCE COMPANY, an Indiana  
Corporation,

Defendants - Appellees.

No. 06-36097

D.C. No. CV-05-00023-DWM

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Montana  
Donald W. Molloy, District Judge, Presiding

Argued and Submitted April 9, 2008  
Seattle, Washington

Before: REINHARDT, TASHIMA, and McKEOWN, Circuit Judges.

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

Abbey and Abbey Land, LLC challenge the district court's grant of summary judgment in favor of The Chubb Corporation and Federal Insurance Company in a coverage dispute. We affirm.

Under Montana law, it is “well-settled that an insurer’s duty to defend its insured arises when a complaint alleges facts which represent a risk covered by the terms of an insurance policy.” Farmers Union Mut. Ins. Co. v. Rumph, 170 P.3d 934, 937 (Mont. 2007) (quoting Blair v. Mid-Continent Cas. Co., 167 P.3d 888, 891 (Mont. 2007)). The insurer must defend “unless there exists an unequivocal demonstration that the claim against the insured does not fall under the policy’s coverage.” Id. (citing Farmers Union Mut. Ins. Co. v. Staples, 90 P.3d 381, 385 (Mont. 2004)). Because of the “business pursuits” and “intentional acts” exclusions in Abbey’s insurance policy, the underlying complaint failed to allege facts which represented a covered risk.

**AFFIRMED.**