

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**FILED**

FEB 20 2009

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

LIVE NATION, INC., a Delaware  
corporation,

Plaintiff - Appellant,

v.

ILLINOIS NATIONAL INSURANCE  
COMPANY, an Illinois corporation,

Defendant - Appellee.

No. 07-56658

D.C. No. CV-07-02721-FMC

MEMORANDUM\*

Appeal from the United States District Court  
for the Central District of California  
Florence-Marie Cooper, District Judge, Presiding

Submitted February 10, 2009\*\*  
Pasadena, California

Before: KLEINFELD, BEA and IKUTA, Circuit Judges.

Live Nation, Inc. appeals the district court's order granting Illinois National Insurance Company's Rule 12(b)(6) motion to dismiss Live Nation's declaratory

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

\*\* The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

judgment action. Live Nation sought a declaration that Illinois National owed it a duty to defend in twenty-two consumer class actions alleging violations of the Sherman Antitrust Act. We affirm.

Live Nation's liability policy expressly excludes "antitrust violations" and claims under the Sherman Act. The exception to this exclusion for "unfair competition alleged in conjunction with" a covered wrongful act does not encompass the consumer claims alleged here. *See Standard Fire Ins. Co. v. Peoples Church of Fresno*, 985 F.2d 446, 450 (9th Cir. 1993). The plaintiffs' unjust enrichment claims are based entirely on the alleged antitrust violations.

AFFIRMED.