

Court Finds No Coverage for False Claims Act Suit

PROPERTY & CASUALTY INSURANCE | PROPERTY AND CASUALTY INSURANCE | QUI TAM/WHISTLEBLOWER DEFENSE | JULY 11, 2019



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On June 24, the U.S. District Court for the Central District of California held that AIG Specialty Insurance Co. had no duty to reimburse \$30 million in defense and settlement expenses incurred by Office Depot in defending a False Claims Act suit.

In *Office Depot, Inc. v. AIG Specialty Insurance Co.*, Case No. 15-02416-SVW-LPRx (C.D. Cal. June 24, 2019), the court analyzed whether AIG had a duty to defend or indemnify Office Depot against a *qui tam* lawsuit alleging that the company overcharged public entities in violation of the California False Claims Act. Office Depot settled the suit in 2014 for \$77.5 million and sued AIG in 2015, claiming that AIG was obligated to reimburse Office Depot for the settlement and its defense costs under two consecutive media liability policies. Office Depot also asserted bad faith.

Upon the parties' competing motions for summary judgment, the court held that AIG had no duty to defend or indemnify Office Depot. The court noted that, for coverage to apply, the Wrongful Act must have "first occurred" during the subject policy period. Here, the complaint alleged a decade-long scheme, which began prior to both policy periods. The court noted that "the test is not whether some wrongful acts took place during the relevant policy periods, but rather whether the wrongful acts *first* took place during the policy periods." Because the wrongful act first occurred before the policy periods, the suit did not trigger the insuring agreement.

The court also found that three exclusions barred coverage. First, the court held that the contract exclusion barred coverage. In applying the exclusion, the court rejected Office Depot's argument that it could have been held liable "in the absence of the allegedly breached contract or agreement."

The court noted that the exclusion was not limited to "breach of contract" claims, and the "additional breadth excludes claims that are not strictly contractual" so long as they "arose out of" the contractual obligations. The court wrote that "none of the claims – which ultimately all related to the core allegation that Office Depot overcharged on government contracts – could have been raised absent the underlying contracts."

Second, the court held that the prior acts exclusion barred coverage because, as explained above, the Wrongful Act first occurred before the policy periods. Finally, the court held that the exclusion for claims brought by "government agencies" barred coverage for the *qui tam* lawsuit. "Office Depot's proposed interpretation of the exclusion – to read into the text a limitation that an 'agency' can only bring an administrative or regulatory claim – strains credulity and is contrary to the best available authority." This interpretation suggests that other *qui tam* suits – which are necessarily brought on behalf of government agencies – may be subject to a similarly worded government agency exclusion.

Carlton Fields lawyers Steven Brodie, Mark Neubauer, Harvey Geller, and Daniel Enriquez represented AIG.