

United Policyholders weighs in on insurance dispute between Office Depot and AIG

Northern California Record

As the 9th U.S. Circuit Court of Appeals is set to hear arguments in a coverage dispute between Office Depot and AIG, an amicus curiae brief was filed by nonprofit United Policyholders.

The dispute stems from AIG's denial of coverage to Office Depot after a series of lawsuits were filed against it alleging overcharging.

The case of Office Depot Inc. v. AIG Specialty Insurance Co., F/K/A American International Specialty Insurance Co., is on appeal from a judgment of the United States District Court for the Central District of California.

"It's important that courts don't give insurance companies free reign to interpret the policies they write and sell," Amy Bach, executive director of United Policyholders, told the Northern California Record. "This is particularly true with regard to insurers' attempts to use the intentional act exclusion to deny a defense/coverage to an insured business that has been sued and is facing significant legal expenses." United Policyholders felt the need to weigh in because of the overly broad coverage question.

"It is not clear in this case that the insured intended harm and deserves to lose the protection of the liability insurance they paid for, even though they are a large corporation," Bach said.

The original action was a whistleblower suit filed against Office Depot in 2009 on behalf of more than 1,000 California state and local government entities. The original complaint stated the company "knowingly presented and caused to be presented ... false and fraudulent claims, and knowingly failed to disclose material facts, in order to obtain payment and approval from" California public entities. The allegation was that Office Depot overcharged public entities for office supplies and stationary. The companies filed 19 lawsuits and Office Depot ended up paying out \$30 million in settlements in the whistleblower action. AIG insured Office Depot. Office Depot asked for AIG to indemnify and provide a defense for them, but AIG denied coverage.

A California federal court ruled that AIG Specialty Insurance Co. had no duty to defend or indemnify Office Depot Inc. in a whistleblower suit alleging violations of the California False Claims Act (CFCA). The court

ruled that the California Insurance Code precluded coverage of CFCA claims as a matter of law. However, Office Depot's bad-faith claim against AIG survived.

On Dec. 8, 2017, United Policyholders requested leave to file its amicus curiae brief, noting its brief "cites 22 cases that neither Office Depot nor AIG cited. This additional analysis and authority is likely to be helpful to this Court in addressing the issues raised by Office Depot's appeal."

United Policyholder's Reply to AIG's Opposition to United Policyholder's Motion for Leave to File Brief Amicus Curiae, filed December 8, 2017.