

AIG's Contradictions Help Pillsbury Win \$55M Jury Verdict

By **Jeff Sistrunk**

Law360, Los Angeles (August 13, 2015, 9:27 PM ET) -- Pillsbury Winthrop Shaw Pittman LLP marshaled evidence to show that American International Group Inc. subsidiaries flip-flopped on whether its policies provided coverage for pipe-joining company Victaulic Co. in a slew of product defect suits, helping the policyholder win \$55 million damages on its breach of contract and bad faith claims against the insurer.

The trial record and court filings show that the Pillsbury team of Joseph D. Jean, Colin T. Kemp and Jeffrey A. Kiburtz gradually whittled down the issues in Victaulic's sprawling coverage suit against the AIG insurers by winning favorable decisions on a motion for summary adjudication and in a bench trial. This allowed the trio to focus on proving to a California state jury that AIG units had breached the insurance contracts in bad faith and with malicious intent.

Those efforts paid off last week when the jury sided with Victaulic, awarding the company \$9.3 million for the insurers' breach of contract and \$46 million in punitive damages, which Pillsbury said was the largest verdict in Alameda County Superior Court in nearly a decade.

AIG spokesman Matthew Gallagher said in a statement that the insurer "respectfully but strongly disagrees with the verdict and is exploring all of its options."

"We maintain that we handled our customer's claims properly and did not engage in bad faith," Gallagher said.

Witness testimony and discovered materials revealed that AIG had, at certain times, reached conclusions on coverage internally, only to turn around and tell Victaulic something different.

In one instance, an AIG claims handler found that a claim against Victaulic constituted a covered occurrence, according to court records. When AIG wrote to the company 15 days later, though, it indicated that the insurer didn't have enough information to determine whether an occurrence had happened, records show.

"It's very powerful when you have evidence of internal conclusions being made, and what is being communicated to the policyholder is totally at odds with those conclusions," Kemp said.

Last week's verdict was the culmination of a long-running legal saga concerning general liability policies that the AIG units issued to Victaulic between 2001 and 2012. The parties disagreed about the coverage provided under the policies with respect to nine underlying product defect actions filed against Victaulic

in California, Colorado, Oregon, Massachusetts, Washington and West Virginia, according to court documents.

The insurers, The Insurance Co. of the State of Pennsylvania, National Union Fire Insurance Co. of Pittsburgh, Pa., and American Home Assurance Co. Inc., denied coverage of those claims.

AIG filed suit in Pennsylvania state court in 2012 in pursuit of a declaration that it had no duty to defend or indemnify Victaulic. But that suit was dismissed, and Victaulic filed the instant suit in California. AIG brought a second Pennsylvania suit and an arbitration demand in New York, but later dropped both.

Jean said his team crafted Victaulic's second amended complaint in the California suit in order to streamline the litigation so the company "could obtain quick and efficient relief through either summary judgment or summary adjudication on specific legal issues that would allow the court to resolve the interpretive questions."

Using that strategy, the Pillsbury team successfully narrowed the issues in the case in the lead-up to the jury trial.

In January, Alameda County Superior Court Judge Frank Roesch, ruling on Victaulic's motion for summary adjudication, held that the AIG units had a duty to defend Victaulic in three of the underlying actions, agreeing with the pipe fittings manufacturer that the term "occurrence" as it appears in the policies includes faulty workmanship or defective products resulting in third-party property damage.

The parties agreed to bifurcate the ensuing trial, with the first phase being held before Judge Roesch and the second phase before a jury. After the close of the bench trial, the judge issued a statement of decision establishing that AIG owed Victaulic a duty to defend and indemnify in each of the nine underlying suits. In addition, Judge Roesch held that the insurers had no right to reimbursement for the sums it paid to settle two of the matters, known as the MWRA and United Hospital actions.

"The parties' agreement to bifurcate the trial, and the judge's statement of decision following Phase I, made it easier for us to focus our case in Phase II, because we didn't — for example — have to prove the elements of the contract and that Victaulic gave timely notice," Jean noted.

Throughout the discovery process, during which AIG was sanctioned three times, the Pillsbury team identified discrepancies between positions expressed in internal AIG claim notes and claims adjusters' emails and those AIG set forth in letters to Victaulic and in court filings, according to Jean. Earlier this year, following the recommendation of a special master, the judge ruled that AIG had no basis to withhold many of the documents it had claimed were privileged or irrelevant.

AIG's final production contained a number of materials that were ultimately relevant to Victaulic's allegations of bad faith and malicious claims handling, according to Jean.

During the jury trial phase, Victaulic's main focus was on "AIG's overall approach to claims handling through litigation and the concerted efforts of the AIG claims handlers, lawyers and AIG executives to — in our view — take back AIG's promise to protect Victaulic and otherwise make every step toward getting coverage difficult for Victaulic," Jean said.

AIG adjuster Nancy Finberg testified that she had enough information on July 8, 2013, to determine whether the United Hospital claim constituted an occurrence, according to court records. On July 23,

2013, however, AIG sent Victaulic a coverage position letter indicating the insurer had insufficient information to determine whether there had been an occurrence, records show.

The Pillsbury team also produced evidence that AIG claims handlers were involved in the decision to handle Victaulic's claims by proactively commencing litigation and seeking out favorable jurisdictions for those suits.

"I think that was one of the more devastating things we presented in the trial," Jean said.

In one 2013 email, AIG analyst Jill Russell asked a company executive why the insurer was applying the settlement amount for the United Hospital claim to a policy's aggregate limit, when "we intend to file a [declaratory] action against the insured and intend to argue that this was a voluntary payment."

An AIG employee's notes from a month earlier stated that Finberg, another adjuster and a company attorney had determined that the "best course of action" with regards to Victaulic's settlement of the United Hospital action would be to file suit against Victaulic in the "favorable venue" of Northampton County, Pennsylvania.

"With more than 15 witnesses and hundreds of exhibits, there was overwhelming support for a cohesive story of the AIG claims handlers' complete failure to act consistent with standards and customs," Kemp said. "That, in my view, created a powerful bad faith story and supported the punitive damages award."

--Editing by Katherine Rautenberg.