

AIG Unit Must Cover AlixPartners' \$19M Costs, Judge Says

By Jeff Sistrunk

Law360, Los Angeles (March 9, 2017, 4:12 PM EST) -- A Michigan state judge has ruled that an AIG unit cannot recover \$19 million in defense and settlement costs it paid on consulting firm AlixPartners LLP's behalf in connection with a private equity firm's arbitration claim regarding the acquisition of a model railway maker, finding that AlixPartners properly reported the claim to the insurer.

In a March 3 decision, Judge Wendy Potts granted AlixPartners' motion for summary disposition on AIG unit Illinois National Insurance Co.'s suit, determining that the consulting firm notified the insurer of the underlying claim lodged by Kingsbridge Capital Management GP Ltd. within the relevant policy period.

In the underlying action, Kingsbridge accused AlixPartners of failing to properly perform due diligence with respect to the private equity firm's acquisition of German model railway manufacturer Marklin, which proceeded to underperform AlixPartners' projections.

Illinois National asserted that AlixPartners first became aware of the Kingsbridge claim when it received a letter from Marklin on March 7, 2008, requesting that the consulting firm return certain fees, but didn't notify the insurer until a subsequent policy period. But AlixPartners argued, and Judge Potts agreed, that the Marklin letter was neither a claim as defined by the Illinois National policy nor related to AlixPartners' dispute with Kingsbridge.

As such, the consulting firm properly reported the Kingsbridge claim to the insurer in August 2009 after it had received a draft arbitration complaint from Kingsbridge, the judge said.

Kingsbridge had hired AlixPartners to perform due diligence in connection with its acquisition of Marklin. The consulting firm prepared a report indicating that, by shifting production to Asia and implementing online marketing, among other things, Marklin could significantly increase its earnings before interest, tax, depreciation and amortization, or EBITDA, according to court documents.

In July 2006, AlixPartners and Marklin signed a management consulting contract, with AlixPartners agreeing to help implement the restructuring concept it crafted, court papers said.

But by 2007, Marklin's earnings were almost €6 million (\$8.3 million) lower than the projections AlixPartners had presented, and Marklin sent a letter on March 7, 2008, requesting that AlixPartners return part of its fees, according to court papers.

Due to the problems at Marklin, Kingsbridge initiated arbitration against AlixPartners in October 2011,

alleging the consulting firm committed malpractice during the due diligence process. An arbitrator found in favor of Kingsbridge, determining that Marklin's earnings and debt level were significantly lower than AlixPartners had presented in its investment advice. However, while the award was on appeal, Kingsbridge and AlixPartners reached a multimillion-dollar settlement.

Illinois National had agreed to defend AlixPartners while reserving its rights to later contest coverage. After paying \$19.1 million in defense and settlement costs on AlixPartners' behalf in the Kingsbridge action, the insurer filed suit in Michigan federal court in April 2014, seeking reimbursement. The case was later moved to state court.

AlixPartners contended that it had properly reported the Kingsbridge dispute to Illinois National under a policy spanning from March 15, 2008, through June 15, 2009, with an extended reporting period through Aug. 15, 2009. The consulting firm gave notice to the insurer in August 2009 after receiving a draft arbitration complaint from Kingsbridge a month prior, according to court documents.

Illinois National, on the other hand, argued that AlixPartners first became aware of the Kingsbridge dispute when it received Marklin's March 7, 2008, letter and, as a result, failed to properly report the claim.

Judge Potts sided with AlixPartners, saying that the consulting firm's fee dispute with Marklin and the arbitration against Kingsbridge were two different matters. Furthermore, the judge said, the Marklin letter did not fit the definition of a claim in the Illinois National policy.

"The court agrees with defendant and finds that for all of the reasons stated there is no genuine issue of material fact that the March 7, 2008 letter was not a 'claim' under the policy and was in fact separate from the Kingsbridge arbitration," Judge Potts wrote.

The judge also rejected Illinois National's bid to retroactively reform the policy. The insurer had asserted that AlixPartners wrongfully concealed the fee dispute with Marklin in its application for a policy renewal.

Judge Potts noted that none of the questions in the renewal application requested information regarding any circumstances that may have resulted in a claim against AlixPartners. Under Michigan law, a policyholder is not obligated to volunteer information about any pending or prior claims, the judge said.

"The court finds that [Illinois National] has not presented evidence that would establish, by a clear and convincing standard, that the policy should be reformed due to a mistake," Judge Potts wrote.

Representatives for AlixPartners and AIG did not immediately respond to requests for comment.

AlixPartners is represented by Finley Harckham, Steven Pudell, Nicholas Maxwell and Christina Yousef of Anderson Kill PC and by Edward Pappas and Erin Pawlowski of Dickinson Wright PLLC.

Illinois National is represented by Steven Brodie, Robert Pass and Nancy Faggianelli of Carlton Fields Jordan Burt PA and by James Brenner and Audrey Wheeler of Clark Hill PLC.

The case is Illinois National Insurance Co. v. AlixPartners LLP, case number 14-141526, in the Circuit Court for the County of Oakland, State of Michigan.

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