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Judge Rules Against AIG Units in \$100 Million Texas Fraud Coverage Dispute

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A state judge has ruled against AIG Specialty Insurance Co. and Lexington Insurance Co. in a dispute over whether they were obligated to cover the costs incurred by a policyholder in response to a fraud investigation by the Texas attorney general.

Judge Mary M. Johnston, of the Delaware Superior Court, ruled against the carriers in a lawsuit brought by Conduent State Healthcare, LLC, over whether policies covered costs related to a 2012 Texas civil investigative demand. The tower of coverage potentially available to Conduent is about \$100 million, attorneys said.

Johnston rejected AIG and Lexington's core argument the Texas investigation of an alleged unlawful act did not constitute a claim under the primary and excess professional liability insurance policies purchased by Conduent, a former Xerox Inc., subsidiary. Lexington is AIG's excess and surplus lines unit.

"The court is not persuaded that investigating an alleged unlawful act by the insured, is different from actually alleging an unlawful act," Johnston said in her ruling. "This is a distinction without a difference. The court finds that the CID (civil investigative demand) was a request for information in connection with an investigation."

"The CID is a claim for non-monetary relief that alleged a wrongful act under policy terms," Johnston said. "The duty to defend arises whenever a complaint against the insured, read as a whole and with all reasonable inference made in light most favorable to the policyholder, alleges facts that potentially fall within the scope of coverage."

Johnston ruled on the carriers' partial motion to dismiss in the litigation filed by Conduent attorneys, including Robin L. Cohen and Keith McKenna of the law firm McKool Smith, P.C.

Conduent in February agreed to a \$235.9 million settlement with Texas Attorney General Ken Paxton following allegations it wrongly processed claims for orthodontic services to Medicaid patients. Paxton's probe found that Xerox, Conduent and related companies rubber-stamped orthodontic prior authorization requests without assuring the required review by qualified clinical personnel. Xerox spun off Conduent in 2017.

Attempts to obtain comment from the carrier attorneys were unsuccessful. Cohen and McKenna declined comment.

In May, a judge ruled against a Chubb unit in a dispute over whether the carrier's excess liability insurance policy covered the defense of former officers sued by a creditors' trust (Best's News Service, May 3, 2019).

AIG Specialty Insurance Co. and Lexington Insurance Co. have a current Best's Financial Strength Rating of A (Excellent).