

## Broker Gets Win In Buccaneers Settlement Coverage Suit

By **Ben Zigterman**

*Law360 (March 20, 2023, 6:32 PM EDT)* -- An Indiana federal judge sided with an insurance broker in a suit from Axis Insurance Co., finding that the broker did not need to indemnify the insurer for a voluntary settlement with the Tampa Bay Buccaneers over a player's claims that he contracted an infection at a team facility.

Axis had accused American Specialty Insurance & Risk Services Inc. of botching the underwriting process by promising the Buccaneers an excess insurance policy that included employer's liability coverage but then issuing a policy to the NFL team, on behalf of Axis, that didn't include that protection.

The Buccaneers were sued in 2015 by former player Lawrence Tynes, who alleged that he was exposed to methicillin-resistant staphylococcus aureus at the team's facility. Axis said it was forced to help fund the team's confidential settlement with Tynes in 2017 because of American Specialty's missteps.

While Axis and American Specialty had an agreement requiring the broker to indemnify Axis for losses stemming from its errors and omissions, U.S. District Judge Damon R. Leichthy said the insurer instead told American Specialty not to get involved.

"Rather than ask American Specialty to defend even a potential claim, Axis directed American Specialty to stay out of it and did so for 18 months," Judge Leichthy wrote Friday in an opinion granting American Specialty's motion for summary judgment.

He also said Axis never gave American Specialty the opportunity to approve the settlement.

"Axis identifies no evidence in which it gave American Specialty the opportunity to defend (or asked American Specialty to approve a settlement before it concluded), or in which American Specialty thereafter denied its liability under the indemnity contract," Judge Leichthy wrote. "Both factual gaps mean that Axis proceeded at its own risk to settle voluntarily."

The insurer also hasn't shown that it would be liable to the Buccaneers for not providing excess employer's liability coverage, Judge Leichthy said.

"Everyone seems to understand that the policy never scheduled employer's liability coverage, a position that Axis could have argued in defense against the Buccaneers, or frankly one American Specialty could have argued if given the chance at a defense," Judge Leichthy wrote. "It was not inevitable that Axis would actually lose."

Lawrence P. Ingram, an attorney for American Specialty, praised the judge's decision.

"The court was well-apprised of the facts and the law," he told Law360. "We are, of course, gratified by the ruling which totally vindicates American Specialty."

Representatives of Axis did not immediately respond Monday to requests for comment.

Axis is represented by Ryan M. Hurley, Stephanie L. Gutwein, Susanne A. Johnson and Emily A. Kile-Maxwell of Faegre Drinker Biddle & Reath LLP.

American Specialty is represented by Lawrence P. Ingram, Christina L. Flatau and Hoyt L. Prindle III of Porter Wright Morris & Arthur LLP and William P. Kealey of Stuart & Branigin LLP.

The case is Axis Insurance Co. v. American Specialty Insurance & Risk Services Inc., case number 1:19-cv-00165, in the U.S. District Court for the Northern District of Indiana.

--Additional reporting by Kat Greene. Editing by Emma Brauer.