



New Jersey Joins Majority: Anti-Assignment Clause Does Not Bar Post-Loss Assignment of Claims

Publication:

Riker Danzig Insurance Alert February 3, 2017

On February 1, 2017, the New Jersey Supreme Court unanimously affirmed an appellate court's finding that "once an insured loss has occurred, an anti-assignment clause in an occurrence policy may not provide a basis for an insurer's declination of coverage based on the insured's assignment of the right to invoke policy coverage for the loss." The ruling is consistent with prior lower court decisions and the majority rule followed by other jurisdictions.

The underlying action was brought by plaintiff Givaudan Fragrances Corporation, which operated a manufacturing site in Clifton, New Jersey from the 1960's through 1990. Faced with liability for alleged environmental contamination, plaintiff sought coverage under a series of occurrence-based liability policies issued to plaintiff's parent corporation, Givaudan Corporation, during the years when the contamination allegedly occurred. The parent's corporate successor, an affiliate of plaintiff, assigned its post-loss rights to coverage for these environmental claims to plaintiff, which then sought coverage from the insurers. The insurers denied coverage based on the presence of anti-assignment clauses in all of their policies.

The Supreme Court, however, held that "once a loss occurs, an insured's claim under a policy may be assigned without the insurer's consent." It reasoned that anti-assignment clauses prevent the assignment of policies pre-loss, so as to protect the insurer from bearing unanticipated risks. Once a loss has occurred, however, there is no longer any danger that the risk to the insurer will increase. On this basis, the Court adopted the majority rule and held that a provision which prohibits the assignment of an insurance policy, or which requires the insurer's consent to assignment of same, is void as applied to an assignment of a claim made after the covered loss has occurred. The Court reasoned that, once an occurrence has transpired, the insured's claim for coverage becomes a "chose in

action” freely transferable under the law, regardless of whether the claim has been reduced to a money judgment or settlement.

This decision is noteworthy for insurers, as it confirms New Jersey’s place among the majority of jurisdictions in permitting post-loss claim assignments without insurer consent.

The decision is Givaudan Fragrances Corporation v. Aetna Casualty & Surety Co., et al., No. A-16/17/18/19/20/21/22/23/24/25-15 (076523), ___ N.J. ___ (Feb. 1, 2017) and is available for download [here](#).

If you have any questions about this decision, please contact any one of our [Insurance](#) Partners or Counsel:

Brian O'Donnell

Lance Kalik

Glenn Curving

Michael O'Mullan

Caroline Brizzolara

Anthony Zarillo, Jr.

Tracey Wishert

Michael Rossignol

Anne Mohan

Marcia Wefelmeier

Jeffrey Beyer

Lisa Jarmicki

Peter Perkowski

Maura Smith

Margriet Schaberg

Attorneys:

Brian E. O'Donnell · Lance J. Kalik · Glenn D. Curving · Michael P. O'Mullan · Caroline Brizzolara · Anthony J. Zarillo, Jr. · Tracey K. Wishert · Michael J. Rossignol · Anne M. Mohan · Marcia Miller Wefelmeier · Jeffrey M. Beyer · Lisa M. Jarmicki · Peter M. Perkowski, Jr. · Maura C. Smith · Margriet A. Schaberg

Practice:

Insurance and Reinsurance Law