POLICYHOLDERS WIN AGAIN: THE NEW JERSEY SUPREME COURT VOIDS INSURANCE POLICY ANTI-ASSIGNMENT CLAUSES IN OCCURRENCE-BASED INSURANCE POLICIES FOR POST-LOSS CLAIMS

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The New Jersey Supreme Court recently affirmed the Appellate Division's decision in Givaudan Fragrances Corp. v. Aetna Cas. & Sur. Co., finding that an anti-assignment clause in an occurrence-based insurance policy does not bar the assignment of a post-loss claim.[1] The court said, "[O]nce 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 that loss."[2] As a result, a post-loss assignee was able to access coverage under policies issued to its affiliate's predecessor.

Through a series of corporate restructurings over many years, plaintiff Givaudan Fragrances Corporation ("Fragrances") acquired the assets and liabilities of Givaduan Corporation's ("Givaduan Corp.") fragrance business, but not Givaduan's insurance coverage, which remained with Givaduan's corporate successor-in-interest and Fragrance's affiliate, Givaudan Roure Flavors Corp. ("Flavors").[3] Givaduan Corp. manufactured flavors, fragrances, and other chemicals, and purchased primary, excess, and umbrella insurance policies from the 1960s through the 1980s from the defendant insurance companies.[4]

Fragrances faced liability as a result of environmental contamination from a manufacturing site that a related corporate entity operated in Clifton, New Jersey from the 1960s through 1990.[5] Fragrances sought insurance coverage from the defendant insurers for environmental claims initiated by the New Jersey Department of Environmental Protection and the U.S. Environmental Protection Agency concerning discharges that occurred during the pertinent policy periods.[6] The defendant insurers denied coverage on the grounds that Fragrances was not the named insured on the policies.[7] Fragrances then commenced the instant declaratory judgment action against them.

Early in the litigation, although the policies contained clauses requiring the insurers' consent to an assignment, Flavors assigned to Fragrances all of its insurance rights under the policies without securing the insurers' consent.[8] Fragrances contended that under an occurrence policy, once all potential losses have occurred, the insurance company's risk is fixed and the claim may be assigned without consent.[9] Fragrances therefore asserted that its corporate reorganization should have no impact on the defendants' potential liability and that it was entitled to coverage.[10]

The defendant insurance companies essentially claimed that they insured Givaudan Corp., not Fragrances, and that any assignment to Fragrances was invalid because the defendants did not consent to it.[11] Therefore, the defendants argued that Fragrances has no right to bring an insurance contract claim against them.[12]

The insurers initially defeated the lawsuit in December 2012 after arguing that Givaudan Corp., not Fragrances, was the holder of the policies and therefore the only entity that could collect under them.[13] The Appellate Division reversed the lower court's orders, finding that Fragrances had been validly assigned the policy rights.[14] The Appellate Division explained, "[A]nti-assignment clauses aim to prevent the insurer from bearing an unanticipated risk, but once a loss has occurred there is no longer any danger that the risk will increase."[15]

The Supreme Court of New Jersey unanimously affirmed the victory for Fragrances, holding that an insurance policy clause preventing assignments to other entities does not bar coverage for a post-loss claim by an insured's corporate successor.[16] The court noted that "The majority rule in the United States is that a provision that prohibits the assignment of an insurance policy, or that requires the insurer's consent to such an assignment, is void as applied to an assignment made after a loss covered by the policy has occurred."[17] The court cited the New Jersey Law Division's decision in Flint Frozen Foods Inc. v. Firemen's Ins. Co. of Newark.[18] In that case, the trial court noted that while anti-assignment clauses aim to protect an insurer from increased and unpredictable liability, after a loss the insurer's obligation is already fixed and the claim can be transferred like a debt.[19] The court also relied on Elat Inc. v. Aetna Casualty & Surety Co., in which the Appellate Division reasoned that assigning the rights to collect under a policy only changes the identity of the entity, enforcing the insurer's obligation to cover the same risk.[20]

In following these cases, the New Jersey Supreme Court affirmed the Appellate Division's decision and found that a successor corporation's assignment of the right to coverage under commercial general liability policies for the occurrence of environmental contamination many years prior constituted a post-loss claim assignment, and thus, consent-to-assignment condition, or anti-assignment provisions, in the policies were void as applied to the assignment.[21] This policy-holder friendly decision affirms that New Jersey policyholders will not lose coverage when a company restructures, as an anti-assignment clause is not a barrier to the post-loss assignment of a claim.

NOTES:

[1] 2017 WL 429476, *3 (Feb. 1, 2017).

[2] Id.

[3] Id. at *4.

[4] Id.

[5] Id.

[6] Id.

[7] Id. at *7.

[8] Id. at *5.

[9] Id. at *7.

[10] Id.

[11] Id. at *4.

[12] Id.

[13] Id. at *6.

[14] Id.

[15] Id. (citing Givaudan Fragrances Corp. v. Aetna Cas. & Sur. Co., 442 N.J. Super. 28, 37–38 (App. Div. 2015)).

[16] Id. at *16.

[17] Id. at *16.

[18] Id. at *8–9; Flint Frozen Foods, Inc. v. Firemen's Insurance Co. of Newark, 12 N.J. Super. 396 (Law Div. 1951), rev'd on other grounds, 8 N.J. 606 (1952).

[19] Flint Frozen Foods, 12 N.J. Super. at 400–01.

[20] Elat, Inc. v. Aetna Cas. & Sur. Co., 280 N.J. Super. 62 (App. Div. 1995).

[21] Givaudan Fragrances Corp. 2017 WL 429476 at *16.

