

# ANDERSON KILL NEW JERSEY

# ALERT

## Appellate Division Confirms Policyholder's Right to Assign Policy Proceeds

By Robert D. Chesler and Janine M. Stanisz

In *Givaudan Fragrances Corporation v. Aetna Casualty & Surety Company*, No. A-2270, 2015 N.J. Super. LEXIS 131 (App. Div. Aug. 12, 2015), the New Jersey Appellate Division decisively held that a policyholder can assign the proceeds of an insurance policy, despite the no-assignment clause that all general liability policies contain. The Appellate Division put to rest in New Jersey an issue that has caused turmoil and divergent holdings within the state and nationally.<sup>1</sup>

*Givaudin* presented the Appellate Division with a complicated corporate history, as is often the case. First, in the 1990's Givaudan Corporation merged with another company and became Givaudan Roure Corporation. In 1997, separately, the Givaudan Roure Fragrance Company was formed. That same year, Givaudan Roure Corporation closed its Clifton plant and entered into a remediation agreement for the site's cleanup under the Industrial Site Recovery Act with the New Jersey Department of Environmental Protection. The agreement held both Givaudan Roure Corporation and Givaudan Roure Fragrance Corporation liable for the cleanup.

Givaudan Roure Corporation next transferred its fragrance division's assets and liabilities to Givaudan Roure Fragrance Corporation. While this transfer "did not exclude" environmental liabilities, it did not transfer the insurance policies, which were issued to Givaudan Corporation. Givaudan Roure Fragrance Corporation's name was later changed to Givaudan Fragrances Corporation ("Fragrances"), the plaintiff in the insurance coverage lawsuit. The Givaudan Roure Corporation merged into Givaudan Flavors Corporation ("Flavors") in 1998. Fragrances and Flavors are affiliated corporations.

Fragrances became liable for hazardous discharges from the Clifton plant. It claimed coverage under policies that had been issued to Givaudan Corporation from the 1960's to 1986. Fragrances was also one of 300 defendants in a suit brought to clean up the Newark Bay. Both of these were "long-tail" liabilities, under New Jersey's continuous trigger, implicate general liability policies back to the 1960's. Flavors subsequently assigned all of its insurance rights to Fragrances.

The trial court found Flavors' assignment to Fragrances invalid because of the policies' no-assignment clause, and held that Fragrances was not an "affiliate" of Givaudan Corporation, and not an insured.

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*"Appellate Division" continued from p1*

The Appellate Division reversed. It found that the no-assignment clause only applied to assignments that changed the nature of the insurance company's risk. For example, a convenience store could not transfer its status as policyholder to a gas station. However, policyholders could assign the right to receive insurance proceeds for existing claims because at that time, the policyholder's liability has become fixed. As the court held, "once a loss occurs, an insured's claim under a policy may be assigned without the insurer's consent."

Another defense by the insurance companies was that, as the result of the company's corporate changes, the insurance companies were prejudiced because they would need to provide coverage for two companies, Fragrances and Flavors, instead of just one. The court found that this was not the case, because Flavors assigned all of its rights to insurance coverage to Fragrances. In other circumstances, this remains a possible defense for insurance companies.

*Givaudan* conclusively resolves an oft-disputed issue and simplifies the manner in which companies need to trace coverage along corporate structures. *Givaudan* provides guidance to both insurance companies and policyholders, all of whom should be pleased that the Appellate Division has put this issue to rest. ▲

## ENDNOTES

<sup>1</sup> Compare *Elat, Inc. v. Aetna Cas. & Surety Co.*, 280 N.J. Super. 62 (App. Div. 1995) (Appellate Division permits assignment) with *Haskell Props., LLC v. Am. Ins. Co.*, No. BER-L-5396, 2014 N.J. Super. Unpub. Lexis 2428 (Law Div. June 6, 2015) (trial court denies policyholder's right to assign).

