$500 Million In Insurance Coverage Made Available by Court's Finding That Policies Were Freely Assignable

Publication:

Riker Danzig Environmental Update December 2015

In a precedential decision, the New Jersey Appellate Division recently held that Givaudan Fragrances Corp. can seek $500 million in insurance coverage for contamination claims under an assignment of insurance policies from an affiliated company. Givaudan Fragrances Corp. v. Aetna Cas. & Sur. Co. et al., Docket No. A-2270-12T4 (App. Div. August 12, 2015). The insurance policies were issued to a prior company, Givaudan Corporation, that in the 1990s went through a series of complex corporate reorganizations, mergers and transfers. The named insured -- Givaudan Corporation -- ultimately became Givaudan Flavors Corporation ("Flavors"), but it was an affiliated company -- Givaudan Fragrance Corporation ("Fragrances") -- that assumed the assets and liabilities of Givaudan Corporation's fragrances division. Givaudan Corporation's insurance policies, however, were not part of the assets transferred to Fragances. Nevertheless, Fragrances sought coverage under the policies for environmental claims arising from the former operation of a facility in Clifton, including for contamination claims relating to the Newark Bay Complex.

The defendant insurance carriers contended that Fragrances was not an insured under the policies and Fragrances brought a declaratory judgment action in 2009 to compel coverage. Defendants argued Fragrances was not a named insured, notwithstanding that the policies defined the named insured as "Givaudan Corporation and any subsidiary or affiliated companies which may now exist or hereafter be created" and both Flavors and Fragrances have the same parent corporation. In 2010, Flavors assigned to Fragrances all of Flavor's rights under the policies. The carriers refused to recognize the assignment based upon the assignment clause in the policies requiring the insurer's consent.

The Appellate Division reversed the trial court's grant of summary judgment to the carriers. The court found that once a loss occurs, an insured's claim under a policy may be assigned without the carrier's consent. Looking to the intent of the no-assignment clause, to protect the carrier from having to provide coverage for a different risk than what the carrier intended when issuing the policy, the court found that protection is no longer necessary once the loss occurs because the carrier's liability is fixed, regardless of the identity of the party to whom the claim is paid. Further, once the liability is fixed due to a loss, an assignment to collect a claim of money is not a transfer of the actual policy. As a result, Flavors did not need the carriers consent to assign its rights under the policies. Based upon the valid assignment, the Appellate Division reversed and remanded for further proceedings.

As a result of this decision, parties facing environmental claims should consider the availability of insurance even if the party facing the environmental claim is not the named insured. The ability to assign insurance coverage once a loss occurs may provide protection to affiliated companies or facilitate settlements of disputed claims among unrelated corporations.

Attorney:

Alexa Richman-La Londe

Practice:

Environmental Law