Client Alert

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California Supreme Court Limits Anti-Assignment Clauses in Landmark Ruling

In a landmark decision, the California Supreme Court on August 20, 2015, held that enforcing an anti-assignment clause in an insurance policy as a bar to coverage – where the assignment occurred post-loss – was contrary to California Insurance Code Section 520, which provides that consent-to-assignment clauses are invalid if invoked after a loss has happened. See *Fluor Corp. v. Superior Court (Hartford Accident & Indemnity Co.)*, Case No. S205889 (Cal. Aug. 20, 2015). The opinion overruled the California Supreme Court's prior decision in *Henkel Corp. v. Hartford Accident & Indemnity Co.*, 29 Cal. 4th 934 (2003). *Henkel* had held that corporate successors were not entitled to recovery under an insurance policy assigned without the insurer's consent, even if the assignment was post-loss and therefore imposed no additional obligations on the insurer. The California Supreme Court's overruling of *Henkel* stands to facilitate corporate transactions by making it easier for companies to rely on insurance policies issued to their corporate predecessors.

Background

In *Fluor*, a successor corporation, Fluor-2, was formed as part of a "reverse spinoff" from its predecessor, Fluor-1. In the transaction, Fluor-1 retained its coal mining and energy operations and transferred its engineering, procurement, construction and project management services to Fluor-2. Between 1971 and 1986, Hartford had provided Fluor-1 with liability insurance coverage through policies that were invoked when Fluor entities were sued for injuries arising out of asbestos-containing materials at Fluor-1 sites that had been transferred to Fluor-2. Hartford, however, refused to provide coverage to Fluor-2, contending that it had not consented to the transfer of insurance rights to the new corporation.

Fluor-2 initiated coverage litigation against Hartford. Hartford argued that the policies issued to Fluor-1 as the named insured contained consent-to-assignment provisions prohibiting any assignment of any interest under the policy without Hartford's written consent, which was never sought or obtained. Relying on *Henkel*, Hartford sought a declaration that it owed no duty to defend or indemnify Fluor-2 and that it had no duty to reimburse defense costs or indemnity payments.

Fluor-2 moved for summary adjudication, arguing that the relevant "losses" occurred 15 years before the reverse spinoff transaction and therefore the assignment was after the "loss." Fluor-2 argued that the consent-to-assignment clauses are invalid under California Insurance Code Section 520, and asserted that *Henkel* was not controlling because the California Supreme Court failed to consider Section 520.

The California Court of Appeal sided with Hartford, finding that *Henkel* could not be distinguished, and upheld *Henkel*'s ruling that consent-to-assignment clauses are generally valid and enforceable up until the time that claims had been "reduced to a sum of money due." The Court of Appeal further held that Section 520 could not operate to invalidate the consent-to-assignment clause because Section 520 was never intended to apply to liability insurance policies. The Court of Appeal noted that at the time the statute was adopted in 1872, liability insurance did not exist as a concept. Accordingly, "[i]n the absence of an express legislative directive," the Court of Appeal found itself bound by *Henkel*.

The Decision of the California Supreme Court

The California Supreme Court reversed the Court of Appeal and overruled its prior ruling in *Henkel*. The high court thoroughly reviewed the legislative history of Section 520 and decisions leading up to its enactment, and determined that the legislature did not intend to exclude liability insurance policies from the scope of Section 520. Finding that *Henkel* was contrary to Section 520, the California Supreme Court overruled *Henkel*. The Court further confirmed that Section 520's language permitting assignments of coverage "after a loss has happened" allows assignments of coverage after the damage or injurious event has occurred, as opposed to only after a loss has been reduced to a "perfected" claim or a final judgment.

Implications

The California Supreme Court's decision in *Fluor* brings the state back in line with the majority of jurisdictions that disallow insurance carriers from invoking anti-assignment clauses to escape coverage for losses occurring prior to the assignment. The court's holding, and its adoption of Insurance Code Section 520's limitations on anti-assignment clauses, is also more consistent with the economic realities of both insurance and corporate transactions. The California Supreme Court's highly anticipated decision, and its overruling of *Henkel*, stand to facilitate corporate transactions governed by California law by bolstering corporate policyholders' ability to assign their rights to insurance coverage to their corporate successors.

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