Supreme Court overrules Henkel decision on validity of consent-to-assignment clauses

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Fluor Corporation v. Superior Court
(Aug. 20, 2015, S205889)

In *Fluor Corporation v. Superior Court*, the Supreme Court overruled its own 12-year-old, 6-1 decision in *Henkel Corp. v. Hartford Accident & Indemnity Co.* (2003) 29 Cal.4th 934.

In *Henkel*, the Supreme Court held that a consent-to-assignment clause in a third-party liability insurance policy was enforceable and precluded the insured's transfer of the right to invoke coverage without the insurer's consent even after the coverage-triggering event — a third party's exposure to asbestos resulting in personal injury — had already occurred.

In *Fluor*, the Court held that Insurance Code section 520, a statute not considered in *Henkel*, requires a different conclusion about when an insurance carrier can object to an insured's transfer or assignment of insurance coverage for potential liability claims by third parties arising out of injuries sustained before the transfer or assignment occurred. The insured in *Fluor* had assigned its third-party liability insurance policies to a new corporate entity bearing the same name. Relying on *Henkel*, the insurer sought to enforce the consent-to-assignment clause in the policies. Both the trial court and the Court of Appeal concluded *Henkel* required that result.

Reversing the Court of Appeal, the Supreme Court's unanimous opinion held that Insurance Code section 520 "bars an insurer from refusing to honor an insured's assignment of policy coverage regarding injuries that predate the assignment." In disapproving *Henkel*, the Supreme Court observed that "it is better that wisdom, or at least controlling authority, come to our attention late, rather than not at all."

[Disclosure: Horvitz & Levy represents the real party in interest, Hartford Accident & Indemnity Company.]

More Information

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