



California Insurance Law Alert

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## **California Supreme Court Rules that Insurers Must Honor Post-Loss Assignment of Rights Under Liability Policies**

In an opinion that will likely have a major impact on mergers and acquisitions, the California Supreme Court ruled that an insurance carrier may not use a "consent-to-assign" clause to deny coverage for injuries or damage that occurred before the insured assigned its rights to coverage under a liability policy. *Fluor Corp. v. Superior Court*, \_\_\_ Cal. 4th \_\_\_ (Aug. 20, 2015).

In reaching this decision, the Court overruled *Henkel Corp. v. Hartford Acc. & Indem. Co.*, 29 Cal. 4th 934 (2003), which held that consent-to-assign clauses were enforceable and that a successor company does not necessarily receive a predecessor company's rights under liability insurance, even if the successor company assumes liabilities that would otherwise be covered by the predecessor's insurance. In overruling *Henkel*, the Court found that section 520 rendered the consent-to-assign clause invalid as applied to post-loss assignments.

*Fluor Corp.* is an important decision because insurers have historically relied on *Henkel* to deny coverage for liability claims simply because the company that purchased the policy was acquired by another company. The Court recognized that *Henkel* created an unfair windfall for insurers that issued liability policies to acquired companies: Since a "new business entity typically will assume both the assets and the liability of the prior business entity, the new business entity will understandably expect to obtain the rights" to coverage for claims covered by the prior entity's policies. The Court explained that its latest ruling "prevents an insurer from engaging in unfair or oppressive conduct - namely, precluding assignment of an insured's right to invoke coverage under a policy attributable to past time periods for which the insured had paid premiums."

Moving ahead, *Fluor Corp.* should make it easier for companies to secure liability coverage under policies that were issued to previously acquired companies for claims involving long-tail environmental pollution, construction defects, asbestos exposure, or other claims alleging continuous and progressive damage that extends over many years.

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