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Givaudan Can Seek \$500M In Coverage For Pollution Claims

By **Jeff Sistrunk**

Law360, Los Angeles (August 12, 2015, 6:13 PM EDT) -- Givaudan Fragrances Corp. can seek more than \$500 million in coverage from a slew of insurers for pollution claims brought by environmental regulators and private companies after a New Jersey appeals court ruled Wednesday that the fragrance maker received a valid assignment of rights under the insurance policies from an affiliate.

A panel of the state Appellate Division reversed a lower court's December 2012 orders granting the insurers' motion for summary judgment and dismissing Givaudan Fragrances' complaint. According to the panel, the company's internal corporate restructuring had no effect on the insurers' obligation to pay under their policies.

"[T]he assignment of the rights to the policies specified in the assigning document could not have increased the risk to any defendant insurer because all losses occurred before the assignment," Judge Amy O' Connor wrote for the panel.

The insurers, including Travelers Casualty & Surety Co., Allstate Insurance Co., Continental Casualty Co. and a host of others, issued the primary, umbrella and excess policies at issue between the 1960s and 1980s to an entity that came to be known as Givaudan Corp.

In 1987, the New Jersey Department of Environmental Protection found that Givaudan's manufacturing activities had contaminated the soil and groundwater at a site in Clifton, New Jersey, with hazardous materials. Givaudan and the agency entered into several consent orders calling for the company to remediate the damage caused by the contamination. Those orders were binding on Givaudan and any successors and affiliates, according to court documents.

A series of complex corporate mergers, transactions and transfers in the 1990s ultimately led to the creation of Givaudan Fragrances and another entity known as Givaudan Flavors Corp., which was the undisputed successor-by-merger to the original Givaudan, court papers said. Those two companies are owned by a common parent, Givaudan Flavors & Fragrances Inc.

The U.S. Environmental Protection Agency in August 2004 notified Givaudan Fragrances that it was potentially liable under the Comprehensive Environmental Response, Compensation and Liability Act for hazardous discharges from the Clifton site. The NJDEP subsequently filed suit against Givaudan Fragrances for damage allegedly stemming from those discharges.

In a separate action, the New Jersey environmental regulator also targeted several companies that had operated sites within a contaminated area known as the Newark Bay Complex. In February 2009, two of the defendants in that case filed contribution claims against 300 entities, including Givaudan Fragrances.

Givaudan Fragrances sought coverage under the insurers' policies. When the insurance companies asserted that the fragrance maker was not an insured, it filed the instant suit seeking a declaration that the insurers are obligated to defend and indemnify it in the contribution action and related EPA and NJDEP matters.

In March 2010, Givaudan Flavors assigned to Givaudan Fragrances all of its insurance rights under the policies. But the insurers refused to recognize the assignment, pointing out that the policies prohibited assignments without their consent. Givaudan Fragrances countered that the assignment was valid and binding on the insurers.

The trial court granted the insurers' motion for summary judgment in December 2012, while denying Givaudan Fragrances' motion for partial summary judgment.

According to the lower court, the assignment was invalid because there was assignment of more than "a single claim and single insurance rights." The court further determined that Givaudan Fragrances was not an affiliate of the original Givaudan.

The appellate panel found that the trial court erred in granting the insurers summary judgment, pointing out that a policyholder can assign insurance rights after a loss has already occurred. Any loss that occurred during the relevant policy periods clearly happened long before the 2010 assignment, and therefore the insurers' consent was not required, the panel said.

An "insurer's risk is not increased merely because there has been a change in the identity of the party to whom a claim is to be paid," according to the opinion.

"Defendants' obligation to provide coverage to the party deemed to be an insured under the policies arose at the time of the loss," Judge Connor wrote. "Although the precise amount of defendants' liability may not be known, defendants' obligation to insure the risk in accordance with their respective policies was not altered by the assignment."

Robin L. Cohen of Kasowitz Benson Torres & Friedman LLP, who argued the case for Givaudan, said in a statement that "I am very appreciative of the erudite and well-reasoned decision" of the appeals court.

Attorneys who argued for the insurers either declined comment or did not immediately respond to requests for comment.

Judges Amy O' Connor, Jose Fuentes and Victor Ashrafi sat on the appellate panel.

Givaudan is represented by Robin L. Cohen and Kenneth H. Frenchman of Kasowitz Benson Torres & Friedman LLP and by Robert B. Woodruff of the Law Office of Robert B. Woodruff PC.

Travelers Casualty & Surety Co. is represented by Daren S. McNally, Barbara M. Almeida and Meghan C. Goodwin of Clyde & Co. US LLP. Continental Casualty Co. is represented by Patrick F. Hofer of Troutman Sanders LLP and Suzanne C. Midlige and Christopher S. Franges of Coughlin Duffy LLP. Allstate Insurance Co. is represented by Tanya M. Mascarich and Stefano V. Calogero of Windels Marx Lane & Mittendorf LLP. American Home Assurance Co. and National Union Fire Insurance Co. of Pittsburgh are represented by Gregory S. Thomas of LeClairRyan. Ace Property & Casualty Co., Century Indemnity Co. and TIG Insurance Co. are represented by Martin F. Siegal and Seth G. Park of Siegal & Park. Everest Reinsurance Co. is represented by John S. Favate of Hardin Kundla McKeon & Poletto. Federal Insurance Co. is represented by Brian R. Ade of Rivkin Radler LLP. Hartford Accident & Indemnity Co. is represented by Dennis P. Monaghan of Graham Curtin PA. Munich is represented by William E. McGrath Jr. of Smith Stratton Wise Heher & Brennan LLP. National Surety Corp. is represented by Jeffrey N. German.

The case is Givaudan Fragrances Corp. v. Aetna Casualty & Surety Co. et al., case number A-2270-12T4, in the Superior Court of New Jersey, Appellate Division.

--Editing by Chris Yates.