

## South Carolina Court Of Appeals Rules That Successor Company Is Not Entitled To Coverage Under Predecessor's Policies

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The South Carolina Court of Appeals ruled that a successor company was not entitled to insurance coverage under policies issued to its predecessor company because the insurer had not consented to the assignment of policy benefits. *PCS Nitrogen, Inc. v. Cont'l Cas. Co.*, 2019 WL 6884913 (S.C. Ct. App. Dec. 18, 2019).

From 1966 to 1972, Columbia Nitrogen Corporation ("Old CNC") operated fertilizer plants in Charleston. During that time frame, Old CNC was insured under policies issued by Continental. In 1986, Old CNC entered into an acquisition agreement, which sold most of its assets to CNC Corp. ("New CNC"). In addition to the assets, New CNC assumed some of Old CNC's liabilities related to the "acquired business." The agreement also included a document titled "Assignment of Insurance Benefits," which stated that Old CNC "has agreed to sell, convey, transfer, and assign . . . all of [its] rights, proceeds and other benefits to and under all of [its] policies." New CNC later changed its name and entered into merger agreements with several other companies, ultimately becoming part of PCS Nitrogen. In 2013, PCS Nitrogen was found liable for environmental remediation as a corporate successor to Old CNC. PCS Nitrogen sought coverage under Old CNC's policies, which Continental denied. A South Carolina trial court granted the insurer's summary judgment motion, and the appellate court affirmed.

The appellate court ruled that the policies were not assigned to New CNC because Old CNC did not obtain the consent from the insurers required by the policies and South Carolina law. The court further held that the assignment was invalid as a post-loss assignment because there were no vested claims from prior actions against Old CNC at the time of assignment. The policies specified that coverage was not available "until the amount of the insured's obligation to pay shall have been finally determined by judgment . . . or by written agreement." Under this language, and because no actions had been filed against Old CNC prior to the asset sale, the court held that no losses had occurred and no vested claims existed. The court explained that although the operative occurrences (*i.e.*, contamination) may have occurred during the policy period, the insured loss (*i.e.*, the insured's obligation to pay a sum of money) did not occur prior to the assignment.

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