

## New York Court Rules That Insurance Policies Were Properly Assigned To Successor Company

06.30.21



(Article from *Insurance Law Alert*, June 2021)

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A New York trial court ruled that an assignment of insurance policies to a successor company was valid notwithstanding an anti-assignment clause because the liabilities at issue occurred prior to the assignment. *Certain Underwriters at Lloyd's London v. AT&T, Corp.*, 2021 WL 2003166 (N.Y. Sup. Ct. May 19, 2021).

In 1996, AT&T executed a Separation and Distribution Agreement (“SDA”) that divided the company into three separate businesses, one of which is currently known as Nokia. When Nokia was sued in asbestos-related lawsuits allegedly arising out of the operations of AT&T, Nokia sought coverage under policies issued to AT&T prior to the transaction. Nokia argued that it was assigned the right to coverage under those policies in the SDA. The court agreed and granted Nokia’s summary judgment motion.

The SDA assigned AT&T’s “assets” to Nokia, defined to include “all rights under insurance policies and all rights in the nature of insurance, indemnification or contribution.” The court ruled that this provision evidenced the parties’ intention to give Nokia the right to avail itself of coverage under the policies for liabilities assumed from AT&T as part of the transaction.

The court rejected the insurers’ contention that an anti-assignment clause in the policies precluded assignment of the policies without the insurers’ consent. Although New York follows the majority rule that an anti-assignment provision is not valid as to transfers that are made after the insured-against loss occurs, the insurers argued that the assignment was nonetheless invalid because Nokia had not demonstrated that any covered losses occurred prior to the SDA’s assignment of insurance rights. Rejecting this argument, the court emphasized that any loss for which Nokia would seek coverage necessarily preceded the assignment because the policies only covered “occurrences” during the policy periods, and all policies expired prior to the SDA.

The court acknowledged that in some instances, an anti-assignment clause may bar pre-assignment claims, but concluded that such circumstances were not presented here. In particular, the court rejected the insurers’ assertion that a post-loss assignment would “unduly increase the risk borne by the insurer[s]” because the insurers would be responsible for the defense costs of both AT&T and Nokia. The court stated that “[t]he prospect of incurring additional defense costs . . . is not the kind of increase[d] risk that compels enforcement of an otherwise ineffective anti-assignment clause.”

## Authors and Contacts

**Bryce Friedman**

Partner

[bfriedman@stblaw.com](mailto:bfriedman@stblaw.com)

+1-212-455-2235

**Joshua Polster**

Partner

[joshua.polster@stblaw.com](mailto:joshua.polster@stblaw.com)

+1-212-455-2266

