

## Reversing Lower Court, Wisconsin Supreme Court Rules That Assignment Was Valid, Notwithstanding Lack Of Insurer Consent (Insurance Law Alert)

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The Supreme Court of Wisconsin ruled that an assignment of insurance benefits was valid, notwithstanding the lack of insurer consent, because the losses at issue had already occurred. *Pepsi-Cola Metropolitan Bottling Co., Inc. v. Employers Ins. Co. of Wausau*, 2022 WL 2542321 (Wisc. July 8, 2022).

Wausau issued primary and umbrella policies to “Old Waukesha” in the 1960s. Thereafter, over the course of the next few decades, Old Waukesha participated in a series of assignments and transfers, after which Pneumo Abex became the successor in interest to Old Waukesha and Pepsi was the “net of insurance” indemnitor of Pneumo Abex for numerous asbestos suits. When Pepsi sought coverage from Wausau, the insurer refused to defend on the basis that the assignment of policies without its consent was invalid. A lower court agreed and granted Wausau’s summary judgment motion.

The Supreme Court of Wisconsin reversed, holding that under long-standing state law, an anti-assignment provision is not enforceable where the assignment occurs after a “loss” has occurred under an occurrence-based policy. The court found that exposure to asbestos was the operative occurrence and since it took place during the relevant policy periods, the “loss” had already occurred before the assignments took place. In so ruling, the court emphasized that a “loss” is the actual “occurrence” in this context, rejecting Wausau’s assertion that an assignment is not “post-loss” unless the loss has actually been reported and the insurer acknowledges liability.

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