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Oregon Supreme Court Enforces Insurance Anti-Assignment Clause Affecting both Plaintiffs and Defendants

By Frank Langfitt

The Oregon Supreme Court, on November 16, 2006, issued a decision that will affect parties' ability to settle insured claims. In *Holloway v. Republic Indemnity Company of America*, the court held that the anti-assignment clause in a liability insurance policy barred assignment by the insured of both pre-loss and post-loss rights and duties.

Insurance policies typically provide that the insured cannot assign its rights under the policy without the insurer's consent. The issue in *Holloway* was whether a post-judgment assignment of rights as part of a settlement was barred by the anti-assignment clause. The court held that the assignment was, in fact, invalid under the terms of the policy.

The facts in *Holloway* reflect a common type of settlement in cases where an insurer declines coverage. In that case a party made a claim against the insured, and the insurance company refused to defend the insured under the terms of the policy. As part of a subsequent settlement, the insured agreed to allow the claimant to enter a judgment against it, and agreed to assign to the claimant its rights to any claim the insured might have against the insurer for breach of the insurance contract or for indemnity (payment of the claim). The claimant then filed suit to recover against the insurer, but the Supreme Court held that the assignment to the claimant was invalid as contrary to the anti-assignment clause of the insurance policy.

States have split on how to interpret anti-assignment clauses. Courts in many states hold that, while such clauses bar a pre-loss assignment, they do not prevent a post-loss assignment. The reasoning is that a pre-loss assignment could unfairly increase the insurer's risk of loss by a new insured, while a post-loss assignment does not increase the insurer's risk. Oregon has

joined the states holding that an anti-assignment clause bars an assignment no matter when it occurs.

The result in Holloway is important to insured parties and to those seeking to recover damages from an insured party as they seek to negotiate settlements.

Significantly, though, the Supreme Court in Holloway did not consider the effect of ORS 31.825, which permits the post-judgment assignment of any cause of action an insured has against its insurer as a result of the judgment. The court noted that the plaintiff did not identify any statute that would invalidate the anti-assignment provision of the policy.

This decision is also important whether you are an insured defendant, or a company acquiring a party, because assigned rights under an insurance policy may not really be an asset, or, on the other hand, the assignment may not be protection for a claim or judgment once thought to be settled.