

February 2, 2017

Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
1220 Senate Street  
Columbia, SC 29201

**RECEIVED**  
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**SC Court of Appeals**

Re: PCS Nitrogen, Inc., Appellant v. Continental Casualty Company, et al., Respondents  
Appellate Case No. 2016-001140  
HSB File No. 35894-2

Dear Ms. Kitchings:

This firm represents PCS Nitrogen, Inc. ("PCS") in the above-referenced appeal. Pursuant to Rule 208(b)(7) of the South Carolina Rules of Appellate Practice, we request the Court's attention to yesterday's decision of the New Jersey Supreme Court in *Givaudan Fragrances Corporation v. Aetna Casualty & Surety Company, et al.*, (2017 N.J. Lexis 121); No. A-16/17/28/19/20/21/22/23/24/25 (2/1/17).

Appellant submits this decision because it addresses the precise issues and arguments raised by the parties on appeal in the above-captioned matter. Specifically, the *Givaudan* case addresses whether an assignment of insurance coverage rights for environmental liabilities was barred by anti-assignment clauses contained in the subject insurance policies, where the environmental damage took place during the relevant coverage periods and the assignments of coverage rights took place after all coverage periods ended, but before a claim was reduced for judgment. The key holdings of the decision relevant to this appeal are as follows:

1. An anti-assignment clause is not a barrier to the post-loss assignment of a claim. *Givaudan*, Slip Opinion at 32.
2. The relevant "loss" for purposes of determining whether an assignment occurred "post-loss" was the happening of the covered occurrence, not the entry of judgment against the insured. *Givaudan*, Slip Op. at 34-35.
3. A broad assignment of all coverage rights after a policy period ended is necessarily treated as a "claim assignment" rather than a policy transfer because at this time the assignment is necessarily "post-loss" and, as such, an anti-assignment clause would not bar such a transfer. *Givaudan*, Slip. Op. at 35-36.

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4. The duty to defend is freely assignable, just as the duty to indemnify is. *Givaudan*, Slip Op. at 39.

PCS is available and willing to provide further briefing on this issue if it would be of assistance to the Court. Thank you for your attention to this matter.

Very truly yours,



Wm. Howell Morrison

WHM/kmg  
cc: Attorneys of Record (by U.S. Mail)