

# Appellate Court Rules Coverage Policy Consent Requirement Unambiguous

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The United States Court of Appeals for the Sixth Circuit recently overturned an \$8.6 judgment awarded to Stryker Corporation (Stryker) by a federal district court in Michigan against its excess insurance carrier TIG Insurance (TIG).

*In Stryker Corp v Natl Union Fire Ins Co of Pittsburgh, PA*, --- F.3d ---, 2016 WL 6818853 (CA 6 November 18, 2016), an excess insurance coverage claim arose after Stryker settled numerous product liability actions against it and sought coverage of those amounts from its carrier TIG. However, TIG refused payment, arguing that the settlements were entered into without TIG's consent, which the insurance contract language required.

Stryker argued that the consent requirement presented a latent ambiguity because, at the time of the settlements, TIG's layer had not yet been impacted. Stryker cited testimony of TIG representatives for the proposition that until underlying insurance was exhausted, TIG's consent was not required.

The district court agreed with Stryker, but the appellate court reversed, finding that the consent requirement was unambiguous and must be enforced. The appellate court extended Michigan law, requiring enforcement of unambiguous contract language to the context of an alleged latent ambiguity, stressing that unless there is a way to read the actual contract language in a way that affords coverage, coverage cannot exist.

The Sixth Circuit also rejected Stryker's argument that TIG had waived the consent requirement and that TIG's consent could be implied under the unique circumstances of the case.

APPELLATE COURT RULES COVERAGE POLICY CONSENT REQUIREMENT UNAMBIGUOUS Cont.

This unanimous appellate court opinion was issued for publication and should provide helpful guidance to courts facing challenges to consent requirements on grounds of inequity or unique circumstances. Plunkett Cooney attorneys Jeffrey C. Gerish and Mary Massaron represented TIG in the successful appeal.