LEGAL UPDATES

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# No Implied Novation by Silence, Says Massachusetts District Court

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## Professional

MICHAEL K. ROBLES
WASHINGTON:
202.378.2300
MICHAEL.ROBLES@
HUSCHBLACKWELL.COM

In *Sparta Insurance Company v. Pennsylvania General Insurance Company*, Civ. No. 21-11205-FDS (D. Mass. Sept. 30, 2025), the United States District Court for the District of Massachusetts held that the obligations of Pennsylvania General Insurance Company (PGIC) were not extinguished by implied novation, finding that the silence or inaction of the party to whom the obligation was owed (Sparta Insurance Company) was insufficient to establish the required consent for novation.

Specifically, in 2005, OneBeacon Insurance Group LLC (OneBeacon) restructured its subsidiaries, including American Employers' Insurance Company (AEIC), PGIC, and OneBeacon Insurance Company (OBIC). As part of the overall transaction, AEIC and PGIC signed a Transfer and Assumption Agreement in which PGIC took on nearly all of AEIC's assets and liabilities, including responsibility for certain legacy insurance claims.

In 2007, Sparta Insurance Holdings bought AEIC from PGIC. As part of the sale, the parties signed a Stock Purchase Agreement that confirmed PGIC would continue to cover AEIC's legacy liabilities and would reimburse Sparta for any losses. These obligations were also guaranteed by OBIC.

In 2012, OneBeacon sold PGIC to North American Casualty Co. At that time, OBIC and PGIC signed a new Transfer and Assumption Agreement that transferred all of PGIC's liabilities to OBIC. Sparta was not involved in this 2012 agreement and was not notified about it. However, PGIC claimed that, after learning in 2013 that PGIC's liabilities had been transferred to OBIC, Sparta did nothing to object or assert its rights against PGIC for nearly eight years. During this period, Sparta continued to submit claims related to the legacy AEIC policies to OBIC (and its successor Bedivere Insurance Company) for handling and payment, rather than to PGIC.

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In 2021, Bedivere went into liquidation. Sparta then sought claim reimbursement from PGIC under the earlier indemnity agreements. PGIC refused, arguing its obligations had ended with the 2012 transfer. Specifically, PGIC argued that Sparta's silence, lack of objection, and consistent practice of dealing only with OBIC (and not PGIC) showed that Sparta had accepted OBIC as the new party responsible for the liabilities—effectively releasing PGIC from its obligations. In PGIC's view, this course of conduct amounted to Sparta's implied assent to a novation.

Sparta then commenced litigation, seeking declaratory relief and damages exceeding $75 million for unpaid claims and administrative expenses.

The trial court rejected PGIC's argument that it no longer had any indemnification obligation to Sparta. On the central issue of novation, the court rejected PGIC's argument that Sparta's conduct amounted to an implied novation, holding that PGIC's obligations under the 2005 and 2007 agreements remained enforceable. Specifically, the court explained that, to establish a novation under Massachusetts law, the party asserting novation (here, PGIC) bears the burden of showing four elements: (1) an existing valid contract; (2) agreement of all parties to a new contract; (3) extinguishment of the old contract; and (4) a valid new contract. Crucially, the intent to extinguish the original obligation must be "clear and definite," and this intent must be expressed by all parties—including the party to whom the obligation is owed. Novation may be implied from conduct, but only if that conduct unmistakably shows such assent.

PGIC argued that Sparta's actions after learning of the 2012 transfer—namely, its failure to object, investigate, or communicate with PGIC, and its continued submission of claims to OBIC—demonstrated Sparta's implied assent to release PGIC and accept OBIC as the new obligor.

The court found that none of Sparta's alleged conduct amounted to the "clear and definite" assent required for novation. The court emphasized that mere acquiescence or inaction is not enough; there was no change in conduct by Sparta after the 2012 transfer that could be interpreted as assent to a novation. The only communication Sparta received about the 2012 transfer was a brief, non-specific email from OBIG's counsel, which did not clearly state that Sparta's rights would change or that PGIC would be released from its obligations. The court also found that industry practice could not substitute for actual agreement by Sparta, and that Sparta received no benefit or consideration in exchange for releasing PGIC.

The court concluded that, under basic contract principles, it was not Sparta's burden to object or remind PGIC of its obligations, nor did Sparta's silence or continued dealings with OBIC constitute a release of PGIC. PGIC failed to present any evidence of a "clear and definite" intent by Sparta to extinguish PGIC's obligations. Therefore, the court found that there was no implied novation and PGIC remained liable under the original agreements.

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While the court granted summary judgment for Sparta on its declaratory relief claims, the court denied summary judgment as to damages. The court found factual disputes over Sparta's compliance with contractual notice provisions and whether its claimed damages were adequately supported and properly attributable to the assumed liabilities. As a result, the case will proceed to trial on these remaining factual issues.

**What this means to you**

This decision is a reminder that a novation generally cannot be achieved by silence, acquiescence, or industry custom; instead, clear, affirmative assent from all affected parties is typically required.

**Contact us**

If you have questions regarding the court's decision, please contact Michael Robles, Brian O'Sullivan, or your Husch Blackwell attorney.

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