

Indiana Court of Appeals adopts site-specific approach to choice of law disputes

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Jeffrey C. Gerish
(248) 901-4031
jgerish@plunkettcooney.com

On Dec. 3, the Indiana Court of Appeals issued a significant decision that dramatically changes Indiana law on choice of law in the context of insurance coverage disputes.

The decision, *National Union Fire Insurance Company of Pittsburgh, Pa, et al v Standard Fusee Corporation*, involves an environmental coverage dispute between Standard Fusee and numerous primary and excess carriers. The trial court applied Indiana substantive law to hold that the insurers owed a duty to defend as a matter of law. On interlocutory appeal from that decision, the Indiana Court of Appeals reversed in part and affirmed in part.

Of particular importance, the *Standard Fusee* decision adopts, for the first time in Indiana, a "site-specific" approach for determining which state's law applies in a coverage dispute involving risks in multiple states. Prior to the *Standard Fusee* decision, Indiana had followed the uniform-contract-interpretation approach, under which the law of a single forum governs the interpretation of coverage under a casualty-insurance policy for multi-state claims arising in multiple jurisdictions.

In *Standard Fusee*, the appellate court concluded that the better approach is to recognize a rebuttable presumption in favor of applying the law of the state where a risk is located, even if that means a court is to apply the laws of several different states in the same coverage dispute.

Applying this new principle to the facts before it, the appellate court reversed the trial court's conclusion that Indiana law should apply to disputes arising out of sites in both Indiana and California. The court held that litigation over the California site should be resolved under California law.

The appellate court also held that the trial court correctly applied Indiana law regarding the Indiana site. Specifically, the court affirmed the trial court's holding that the pollution exclusion did not preclude a defense obligation as to the Indiana site. The court also held that the underlying environmental matter involved a "suit," and held that the insured provided sufficient evidence of notice of the claims to the insurers to avoid summary judgment on a late-notice basis.

INDIANA COURT OF APPEALS ADOPTS SITE-SPECIFIC APPROACH TO CHOICE OF LAW DISPUTES Cont.

Both sides are entitled to pursue discretionary appeals to the Indiana Supreme Court.

As it stands, the *Standard Fusee* decision should have a positive impact for insurers in future cases, particularly where policyholders attempt to import coverage disputes involving sites outside Indiana into Indiana courts. Under *Standard Fusee*'s site-specific approach, the law of the state in which sites are located should apply in such instances.

Plunkett Cooney partners Charles W. Browning and Ellen Jannette represented Chubb Custom Insurance Company and Travelers Indemnity Company of Illinois in the trial court matter. Partner Jeffrey C. Gerish drafted the appellate papers and argued the appeal on behalf of all carriers.

Should you have any questions about *Standard Fusee*, or questions concerning choice of law in coverage disputes, please feel free to contact any member of Plunkett Cooney's Insurance Practice Group. To review a practice group directory, [click here](#) or call Insurance Practice Group Leaders Kenneth C. Newa at (313) 983-4848 or Charles W. Browning at (248) 594-6247.