

Delaware Supreme Court Choice of Law Ruling Vacates a \$13.7 Million Verdict Against Travelers

By: Gregory Capps and Zachery Roth
Insurance Coverage and Bad Faith Alert
7.17.18

On July 16, 2018, the Delaware Supreme Court held in *Travelers Indemnity Company v. CNH Industrial America, LLC*, No. 420, 2017 (Del. Jul. 16, 2018), that a court's choice of law inquiry in an insurance coverage dispute should focus on the contacts most relevant to the insurance contract rather than the location of the underlying claims. In *Travelers*, CNH Industrial America, LLC (CNH), sought coverage for asbestos liabilities associated with J.I. Case, Inc., a subsidiary it had acquired, under policies issued to J.I. Case and its former parent company, Tenneco, Inc. The issue before the Delaware Supreme Court was whether the anti-assignment clause in three Travelers policies issued to Tenneco, Inc. precluded the assignment of the policies to CNH. The validity of the assignment turned on which state's law governed the dispute. (Under Wisconsin law, the parties agreed that the assignment was valid, while under Texas law, the parties agreed the assignment was invalid.)

J.I. Case is a Wisconsin corporation with its principal place of business in Wisconsin. Tenneco is a Texas corporation with its principal place of business in Texas. The policies in question were part of an insurance program that covered Tenneco and its wholly-owned subsidiaries across the country. Insurance broker, Marsh & McLennan, negotiated the policies with Tenneco in Texas, and the policies were purchased by, delivered to and managed by Tenneco in Texas.

In a motion for summary judgment on the choice of law issue filed in the lower court, Travelers argued that Texas law should apply because the policies were negotiated, paid for and managed by Tenneco in Texas. In response, CNH argued that Wisconsin law should apply because the events giving rise to the underlying asbestos suits occurred in Wisconsin, where J.I. Case had its manufacturing operation. Applying the Second Restatement "most significant relationship test," the court found in favor of CNH, maintaining that the most important factor was the location of the insured risk, J.I. Case's principal place of business. The lower court reasoned that although Tenneco contracted for, negotiated and purchased the subject policies in Texas, the relevant party is actually J.I. Case, the insured who possessed the indemnification rights that CNH now seeks to enforce. Because J.I. Case's principal place of business was the "situs which link[ed] all the parties together," the court maintained, Wisconsin had the most significant relationship to the parties and the subject matter.

The Delaware Supreme Court reversed the lower court's decision, relying heavily on its recent ruling in *Certain Underwriters at Lloyd's v. Chemtura Corporation*, 160 A.3d 457 (Del. 2017), in which it held that, when determining which state's law applies to an insurance program covering risks across a number of jurisdictions, the focus of the court's inquiry should be on the contracts themselves, and the reasonable expectations of the parties at the time of contracting. The court rejected J.I. Case's argument that the analysis should focus on J.I. Case's location, concluding that the "location of the insured risk" holds little weight in the context of a comprehensive, nationwide insurance program. Turning to the contacts relevant to the insurance contract, the court further held that Texas law governed the dispute because the policies were negotiated in Texas, premiums were paid in Texas and Tenneco's insurance program was managed in Texas. The court reasoned that the application of Texas law comports with the reasonable expectations of the parties, who would undoubtedly favor certainty, predictability and uniformity over the inconsistent, arbitrary application of the contract's terms that would result from applying the law of the location of the insured risk. Having decided that Texas law applies, the court then concluded that the assignment of the Travelers policies to CNH was invalid and the Travelers policies, thus, do not provide coverage for CNH's claims and reversed the lower court's verdict against Travelers to the tune of \$13.7 million.

If you have questions or would like more information, please contact Gregory Capps (cappsg@whiteandwilliams.com; 215.864.7182) or Zachery Roth (rothz@whiteandwilliams.com; 215.864.6274).

This correspondence should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only and you are urged to consult a lawyer concerning your own situation and legal questions.