



COUGHLIN DUFFY LLP

CASE ALERT, NO. 3

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THIRD CIRCUIT TO ADDRESS CHOICE-OF-LAW IN COVERAGE DISPUTE FOR SETTLEMENT OF PRODUCTS CLAIMS

On March 29, 2006, the United States District Court for the District of New Jersey certified its choice of law ruling in an insurance coverage case for appeal to the Third Circuit Court of Appeals. In Joan Maertin, et. al. v. Armstrong World Industries Inc. et. al., the District Court held that under New Jersey choice-of-law principles, New Jersey law should apply to determine the allocation of insurance coverage among insurers for a settlement of two toxic tort suits involving workplace exposure to PCB's in Burlington County, New Jersey. Liberty Mutual Insurance Company ("Liberty Mutual"), one of the insurers of defendant Armstrong World Industries, Inc. ("Armstrong"), argued that because the insurance contract with Armstrong was entered into in Pennsylvania, the insurance coverage issues should be governed by Pennsylvania law (several of Armstrong's other insurers argued for application of New Jersey law).

In certifying the choice-of-law issue as a controlling question of law for appeal, the District Court elaborated on its holding that New Jersey substantive law should apply. The Court had applied New Jersey law regarding choice-of-law, which it described as a "flexible approach focused on determining which state has the most meaningful connections with and interest in the transaction and the parties." In reviewing the various factors relevant to this approach the Court placed particular significance on New Jersey's interest in applying its laws to coverage disputes involving underlying tort actions governed by New Jersey law. The Court also considered other factors supporting the application of New Jersey law over Pennsylvania law, including that most of the underlying plaintiffs were New Jersey residents, that none of the insurers were Pennsylvania companies,

and that the harms giving rise to the underlying litigation occurred in New Jersey. Moreover, the Court concluded that New Jersey's continuous trigger model for allocation "is more capable of effectively addressing those interests than the theory of joint and several liability utilized under Pennsylvania law." It therefore held that these factors and policy considerations outweighed any expectation that Pennsylvania law would apply or Pennsylvania's interest in applying Pennsylvania law.

Liberty Mutual's argument that Pennsylvania law should apply was based on the Third Circuit's decision in NL Industries, Inc. v. Commercial Union Insurance Company, 65 F.3d 314 (3d Cir. 1995), which held that outside the environmental pollution context, the law of the place of contracting should apply to resolve insurance coverage disputes unless another state has a dominant significant relationship to the matter such that its law should apply. The appeal in Maertin therefore gives the Third Circuit an opportunity to revisit this analysis and expound on the circumstances under which the interests of a state that was not the place of contracting can overcome the interests of the state that was the place of contracting. Though any decision in Maertin will not be binding on the New Jersey State Courts, the New Jersey Supreme Court previously has endorsed the Third Circuit's departure in NL Industries from the choice-of-law analyses applied in New Jersey in environmental coverage cases, and so the Third Circuit's decision should help clarify the applicable law to be applied in New Jersey to coverage disputes involving tort claims.

Should you have any questions or comments, please do not hesitate to contact us.

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