Choice of Law in Coverage Disputes: What Happens When the Policy, the Loss, and the Parties Span State Lines?

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In our tightly-connected society, "choice of law" is a concept that frequently comes into play in litigation, especially when the parties involved have contacts with more than one jurisdiction. Close to home, the question can easily be illustrated by the hypothetical situation in which a Pennsylvania resident (for these purposes, Mike Johnson), an insured under a Pennsylvania homeowners policy, is sued for an altercation that took place at the Jersey Shore. The simple question of which state's law will apply—that of Pennsylvania or New Jersey—can have significant implications for both insurers and policyholders as the substantive insurance law of the two jurisdictions may diverge in key respects.

As additional flavor for the hypothetical at the center of this discussion, let us imagine further the following facts: Johnson is insured under a homeowners policy covering his Pennsylvania residence. Over Memorial Day weekend, Johnson travels to the Jersey Shore and stops by his favorite Wildwood bar. While there, Johnson finds himself involved in a disagreement with the Wildwood locals over the rights to a barstool. The argument quickly turns physical, leaving one of the local patrons seriously injured.

A lawsuit is subsequently filed against Johnson in a New Jersey court, seeking damages for the local patron's bodily injury. Johnson submits the claim to his homeowners insurer, seeking defense and indemnification under the personal liability coverage afforded by his policy. In this scenario, one of the first questions that must be answered to determine whether Johnson might be entitled to defense and indemnification from his carrier is to promptly identify which state's law would apply to any coverage dispute between Johnson and his insurer—New Jersey (where the incident occurred) or Pennsylvania (where the insurance policy was issued).

To answer that question, the two states utilize similar, but different, analytical paradigms. We will begin the discussion with the prevailing law in New Jersey, since the hypothetical lawsuit is pending there.

New Jersey courts have long rejected "the mechanical and inflexible lex loci contractus rule" in resolving conflict-of-law issues in favor of "a more flexible approach that focuses on the state that has the most significant connections with the parties and the transaction." See *Pfizer v. Employers Insurance of Wausau*, 712 A.2d 634, 637

(N.J. 1998). More simply put, New Jersey courts seek to apply the law of the state that has the greatest interest in resolving the particular issue at hand. To do so, courts are directed to refrain from employing a "bright-line rule" and, instead, must undergo a "demanding" multi-step process in order to reach a "careful site-specific determination, made upon a complete record." See *Pfizer*, 712 A.2d at 639; see *General Ceramics v. Firemen's Fund Insurance Companies*, 66 F.3d 647, 649 (3d Cir. 1995).

This process requires a court to first determine, on an issue-by-issue basis, whether there is an "actual conflict" between the laws of New Jersey and another interested state. See *Lonza v. The Hartford Accident & Indemnity*, 820 A.2d 53, 58 (N.J. Super. Ct. App. Div. 2003). If a true conflict of law exists, the court can continue on to the second prong of the analysis and "determine the interest that each state has in resolving the specific issue in dispute."

In analyzing the interests of the conflicting states, the New Jersey Supreme Court has held that, because the law of the place where the contract was entered into "generally comports with the reasonable expectations of the parties," that forum's law should be applied "unless the dominant and significant relationship of another state to the parties and the underlying issue dictates that this basic rule should yield." See *Gilbert Spruance v. Pennsylvania Manufacturers Association Insurance*, 629 A.2d 885, 888 (N.J. 1993). To make that determination, New Jersey courts must take guidance from the factors outlined in Restatement Sections 6 and 188. Ultimately, *Pfizer* narrowed that analysis to include the following four factors: "the competing interests of the relevant states, (2) the national interests of commerce among the several states, the interests of the parties, and the interests of judicial administration."

But what if the lawsuit were filed in Pennsylvania rather than New Jersey? Just as the case in New Jersey, the first step in a choice-of-law analysis in Pennsylvania is to determine whether a conflict actually exists between the laws of the competing states. See *Budtel Associates v. Continental Casualty*, 915 A.2d 640, 643 (Pa. Super. 2006) (citations omitted). If so, it must once again be determined which state has the greater interest in the application of its law.

Similar to the history of New Jersey's choice of law analysis, in *Griffith v. United Air Lines*, 203 A.2d 796 (Pa. 1964), the Supreme Court of Pennsylvania abandoned the strict lex loci delicti rule (the "place of the injury rule") in tort actions in favor of "a more flexible rule which permits analysis of the policies and interests underlying the particular issue before the court." This "hybrid approach" combined the "governmental interest analysis" with the Second Restatement of Conflict's "most significant relationship" test. See *Morton v. Gardner*, 488 F. Supp. 3d 200, 205–06 (W.D. Pa. 2020).

Weighing said interests requires a determination as to which state has the most significant contacts or relationships with the insurance contract. However, "it must be remembered that a mere counting of contacts is not what is involved. The weight of a particular state's contacts must be measured on a qualitative rather

than quantitative scale ..." See *Caputo v. Allstate Ins. Co.*, 495 A.2d 959, 961 (Pa. Super. 1985). While *Griffith* initially applied only to tort actions, subsequent Pennsylvania decisions have mandated that courts follow *Griffith* in the contract law context as well. See *Budtel Associates*, 915 A.2d 640.

In *Hammersmith v. TIG Insurance*, 480 F.3d 220, 231 (3d Cir. 2007), the Third Circuit discussed how each interested state's contacts—with the contract itself and not any underlying tort—should be evaluated by courts when determining which state's law will apply. Citing Section 193 of the Second Restatement, the court affirmed that the validity of a contract, and the rights created thereby, should be determined by the law of the state which the parties understood was to be the principal location of the insured risk during the term of the policy, unless—with respect to the particular issue—some other state has a more significant relationship to the transaction and the parties. This strong presumption in favor of applying the law of the principal location of the insured risk is reinforced by Comment b to Section 193, which explains that the location of the insured risk should be given greater weight than any other single contact.

However, *Hammersmith* also recognized that if the policy covers risks that are scattered throughout multiple states, the location of the risk has "less significance" to a choice-of-law determination. In such cases, courts must consider whether any one state has a more substantial connection to the transaction and the parties involved, being that Section 193 reflects a preference for applying a single body of law to govern an insurance contract rather than allowing the laws of multiple states to apply to different risks under the same policy.

New Jersey and Pennsylvania, thus, both employ similar (but not identical) choice-of-law analyses. In this regard, both states utilize a version of the "most significant relationship" standard in order to determine such questions. However, New Jersey's approach is much more rigid in its determinative factors, while Pennsylvania allows for a more flexible, open-ended approach.

In our hypothetical, the outcome of which state's law applies is of particular importance. For instance, the two states consider the applicability of the "intentional acts" exclusion differently. Indeed, if the insurer were to deny coverage on the basis of this provision, a Pennsylvania court may be inclined to hold that the insurer owes a duty to defend if the pleading includes alternative claims for negligence and intentional tort. On the other hand, a New Jersey court might be inclined to apply an objective test for determining intent, or to inquire into whether Johnson acted in self-defense and lacked the requisite intent. Additionally, while Pennsylvania courts are less likely to override policy language on public policy grounds, New Jersey courts appear more likely to invoke public policy to challenge overly broad exclusions that leave injured parties without recourse.

Ultimately, a choice-of-law analysis may have a substantial impact upon the question of whether an insured is entitled to defense or indemnification from their insurer. Given the considerable financial stakes associated with litigation, the issue

should be closely scrutinized in the increasingly common circumstance that the claim, parties, and policy touch multiple states.

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