

"Race To The Courthouse" Forum Shopping Strategy

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On behalf of a firm client, Barnes & Thornburg LLP attorneys Bob Devetski and John Fischer, working with local counsel, defeated Travelers' "race to the courthouse" forum shopping strategy. Travelers' strategy in the case is not an isolated incident, but seems to be a more prevalent practice of forum shopping to defeat their policyholders. In 2011, rather than responding to the policyholder's request for coverage of an environmental contamination lawsuit, Travelers filed a pre-emptive declaratory lawsuit in Iowa (whose law on the issue of insurance policy pollution exclusions Travelers believed is much more favorable to insurance companies). Travelers filed suit in Iowa a few days before the policyholder sued for coverage in Indiana, essentially winning the race to the courthouse of their choice. The Iowa trial court granted Travelers' motion for summary judgment, holding that (1) Iowa law applies to the coverage issue, and (2) under Iowa law, the policyholder was not entitled to any coverage under their insurance policies. On behalf of the policyholder, we appealed. The Iowa Appellate court, earlier this year, reversed the trial court and held that Indiana law applies to the issue of the policyholder's coverage. On the facts presented, the Iowa appellate court engaged in a choice of law analysis, and found that the "principle location of the insured risk" was in fact, Indiana. On June 3, 2014, the Iowa Supreme Court denied Travelers' petition for further review, making the appellate court opinion the final word on this issue. This is a significant victory for Travelers' policyholder that makes available substantial liability coverage to repay liability costs, unpaid defense costs and prejudgment interest and potentially, bad faith damages (which we are seeking against Travelers for their deceitful effort to facilitate their race to Iowa). Travelers' forum shopping tactic is one we are seeing increasingly. Recently, on behalf of another Indiana client, we placed on notice a Travelers-affiliated insurance company, and without responding to the notice letter, the Travelers company filed a declaratory suit in Texas. Be wary of this tactic when placing Travelers on notice of claims. Barnes & Thornburg LLP's insurance recovery attorneys are available to assist and challenge any insurance company's forum shopping efforts and to protect policyholders from their insurer's efforts to deny them the coverage they purchased.

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