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Make Sure You Know Which State's Law Applies To Your Coverage Claim

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It is a situation we have seen time and again, including in several recent matters: a policyholder headquartered in State A is sued by a claimant alleging injury at a location the policyholder owns in State B. In the same circumstances and under the same policy language, the law of State A would require the carrier to cover the suit but the law of State B would not. This drastic difference in outcome is common due to the sometimes vast differences in coverage law from state to state.

The threshold question of which state's law applies often makes all the difference between coverage and no coverage. So, if the policyholder wants the law of State A to apply, should it sue its carrier in State A? Not necessarily.

The substantive law of State A does not automatically apply to a suit filed in State A, because State B also has some connection to the coverage dispute. Just as State A may reach a different result than State B on the substantive coverage question, the method State A uses to determine which state's law applies may also reach a different result than State B.

While there are many variations in approach from state to state, most states can be placed in one of two general camps. One camp gives great weight to where the policyholder's overall business operations are centered and where the policy was issued, regardless of where the particular claim arose. This is sometimes called the "uniform contract interpretation" approach. The other

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camp considers the location where the particular claim arose to be the most important factor. This is sometimes called the “law-of-the-site” approach. The question of where a policyholder should file a coverage suit depends not on which state’s substantive law favors its position, but rather on which state’s choice-of-law approach would result in application of the favorable substantive law. Thus:

- If State A is a law-of-the-site state, it will choose to apply the law of State B, leading to no coverage. The policyholder should not file suit in State A.
- If State A is a uniform contract interpretation state, it will choose to apply the law of State A, leading to coverage. The policyholder should file suit in State A.
- If State B is a law-of-the-site state, it will choose to apply the law of State B, leading to no coverage. The policyholder should not file suit in State B.
- If State B is a uniform contract interpretation state, it will choose to apply the law of State A, leading to coverage. The policyholder should file suit in State B.

Many policyholders are not fully aware of the complexity of how to determine what state’s law applies to a coverage dispute. But they can be sure that their carriers are well aware. Thus, a situation where the policyholder is based in one state, but the claim arises in another, should be a red flag for policyholders. If those states’ laws differ on coverage, a carrier may not even send the policyholder a denial letter. Instead, the carrier may shop around to file suit in a state that would apply the law of State B, defeating coverage.

An alert policyholder that has identified this choice-of-law concern may decide to proactively assert its rights against the carrier in the forum of its choice, to prevent the carrier from usurping that choice. Even if the carrier beats the policyholder to the courthouse, however, all is not lost. The policyholder may still be able to convince the court that the law of State A applies. The policyholder also may choose to file its own suit in its own choice of forum, and ask the court in the other forum to dismiss the carrier’s suit.

In closing, it is critical for the policyholder to conduct an early, sophisticated analysis not only of the differences in the coverage laws of the relevant states, but also of the differences in how each state’s courts decide which state’s substantive law applies. The outcome of this analysis may make all the difference in obtaining coverage for the claim.