

Chris Yetka Publishes Article On Insurance Coverage For Punitive Damages In “The Brief”

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[PPBloginsurancepolicyimage](#)If your company is concerned about whether punitive damages are insurable, or whether your “punitive wrap” insurance policy will cover a claim for punitive damages, Chris Yetka, Barnes & Thornburg partner, just examined these questions in a bar journal article. A Minnesota company policyholder, with manufacturing facilities in Iowa, is sued in Iowa for injuries caused in that state. The claim includes punitive damages, which are awarded. The company has insurance coverage for punitive damages, “to the fullest extent allowed by law.” Citing Minnesota law (where as a matter of public policy punitive damages cannot be covered by insurance where they are assessed directly against the wrongdoer), the insurance carrier denies coverage. Iowa law, however, allows coverage for punitive damages. Because most of the company’s facilities are in located in Iowa, including the facility where the plaintiff was injured, the company believes it should be covered. What is the company to do? If they bring a coverage action in Minnesota, the court will apply the five-factor “Leflar Test” to determine which states’ law applies. If they bring the action in Iowa, the Iowa courts apply the “most significant relationship” test articulated in the Restatement (Second) of Conflict of Laws. The decision on venue will likely determine which state’s law applies, and consequently whether the punitive damages will be covered by the insurance policy. In the context of punitive damages, choice of law and choice of venue can be outcome-determinative. Chris Yetka addresses these issues, along with surveying the various states’ laws on punitive damages, in “Insurance Coverage for Punitive Damages” published in the current issue of *The Brief*, (Fall 2014, Vol. 44. No. 1) at 19, published by the Tort Trial & Insurance Practice Section of the American Bar Association.

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