

Under Choice of Law Analysis, Law of State Where Contract Was Negotiated and Premiums Paid Applies

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A federal district court in Pennsylvania, applying Pennsylvania's choice of laws rules, has held that Maryland law would govern the determination of how defense and indemnity costs should be allocated among several insurers because the insurance contract was negotiated, signed and performed in Maryland. *Manor Care, Inc. v. Cont'l Ins. Co.*, 2003 WL 22436225 (E.D. Pa. Oct. 27, 2003).

A nursing home company purchased various professional and general liability insurance policies and was also self-insured for a period of time. The company's facilities were located in more than 30 states, with 17.6 percent of its facilities in Pennsylvania. The insurance policies at issue were negotiated and signed in Maryland, and the premiums were paid in Maryland. After the company was sued in 13 states concerning the level of care it was providing, it sought coverage from its insurers, and coverage litigation ensued.

One of the issues in the coverage dispute concerned how to allocate costs and reimbursement among multiple insurers when a claim implicates more than one insurance policy. The parties moved for summary judgment as to whether Maryland or Pennsylvania law should apply, and the court found that there was a conflict between the laws of the two states. Maryland prorates indemnity and defense duties among insurers based on "their time on the risk," accounting for any periods of self-insurance. By contrast, Pennsylvania takes a joint and several approach, allowing an insured to choose which policy will indemnify and defend it, even if an event triggers coverage under several policies.

The court held that Maryland law applied because the contract had been negotiated and signed in Maryland, and the premiums were paid in Maryland. In so holding, the court rejected the argument that Pennsylvania was the principal location of the insured risk because more of the company's facilities were located in Pennsylvania than in any other state. The court noted that most of the company's facilities were not in Pennsylvania, but instead were distributed among 30 states. The court therefore concluded that "because Maryland is the state with the most significant relationship to this dispute, and the state with the greatest governmental interest in interpreting" the relevant underlying policy, its law should apply.

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