

Texas Law Applicable to Coverage Dispute

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In an unpublished opinion, a Texas appellate court, applying Texas choice of law principles, held that Texas law applies to a coverage dispute based on "numerous Texas contacts." *Scottsdale Ins. Co., et al., v. Nat'l Emerg. Svcs., Inc.*, 2004 Tex. App. LEXIS 2307 (Tex. App. Mar. 11, 2004).

The insurer entered into negotiations to issue a policy to an Illinois corporation that had its principal place of business in California and did business in all 50 states, including Texas and Virginia. The parties became embroiled in litigation when the insurer canceled the policy after it had received the premium, but while the policy was still being underwritten. A key issue became the determination as to whether Texas or Virginia law applied.

The insurer argued that the parties had agreed to apply Virginia law because the insurance proposal identified the Virginia officer of the corporation as "the first Named Insured." The court rejected this argument, explaining that it "is far too slender a reed to support" the contention that the parties "intended" that Virginia law govern. The court reasoned that to hold that Virginia law governs, it would need to find "either an express or an implied choice of law provision," and there was none present.

The court then determined, applying Texas choice of law principles, that Texas law governs. The court noted that "the central location for the contract formation, negotiation, and cancellation was in Texas." The court also explained that the premium was paid in Texas and that most of the communications and actions concerning the policy were in Texas. Although the "first Named Insured" was located in Virginia, the corporation had offices located throughout the nation and did business in every state.

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