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Delaware Supreme Court Holds Texas Law Applies to Comprehensive Insurance Program Issued to a Texas Corporation and Its Subsidiaries

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In a case that was briefed and argued by Wiley Rein in the trial court and on appeal, along with Fox Rothschild LLP as Delaware local counsel, the Delaware Supreme Court held that Texas law applies to a comprehensive insurance program issued to a Texas corporation and its subsidiaries nationwide. *The Travelers Indemnity Company v. CNH Industrial America, LLC,* No. 420, 2017 (Del. July 16, 2018). The Court reversed a decision of the Superior Court holding that Wisconsin law applied and, as a result, that the anti-assignment provisions of the policies at issue were unenforceable. Noting that it was undisputed that the anti-assignment provisions are enforceable under Texas law, the Court reversed the nearly $14 million judgment in favor of the purported assignee of rights under the policies and directed entry of judgment for the insurer.

Between 1971 and 1986, the insurer issued a comprehensive insurance program to a Texas-based oil and gas company and a number of its subsidiaries nationwide, including a manufacturer of farm equipment located in Wisconsin. In a 1994 corporate reorganization, certain assets of the Wisconsin subsidiary were transferred to the plaintiff-appellee, another manufacturing company. In this coverage litigation, plaintiff-appellee seeks coverage under three unexhausted general liability policies issued by the insurer—two of which were issued to the Texas corporate parent and one of which was issued directly to the Wisconsin subsidiary—in connection with historic asbestos-related liabilities arising out equipment manufactured by the Wisconsin subsidiary. All three of the insurance

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policies contained a clause prohibiting an assignment without the consent of the insurer. The plaintiff-appellee asserted that it was entitled to coverage under the policies as an assignee of the Wisconsin subsidiary's rights. It was undisputed, however, that the insurer's consent to the assignment was never sought nor obtained.

The insurer moved for summary judgment in the trial court, arguing that Texas law applied to the policies because they were negotiated, paid for, and managed by the parent company in Texas. On the other hand, the purported assignee argued that Wisconsin law applied because the Wisconsin subsidiary, and not the Texas parent, faced the relevant liability exposure, and the events giving rise to the asbestos lawsuits occurred in Wisconsin where the subsidiary had its manufacturing operations. The choice of law issue was dispositive because the parties agreed that, under Texas law, there could be no valid assignment of rights under the policies without the consent of the insurer, whereas Wisconsin law permits certain post-loss assignments even without an insurer's consent.

The trial court denied the insurer's summary judgment motion, holding that Wisconsin law applies to the policies. In so holding, the court applied the *Restatement (Second) of Conflict of Laws* factors but found the most important factor was the insured subsidiary's primary place of business. The court held that, even though the Texas parent corporation contracted, negotiated, and purchased all of the policies in Texas, the relevant party in the coverage dispute was the subsidiary whose principal place of business was Wisconsin. Therefore, the trial court concluded that Wisconsin had the "most significant relationship" to the parties and the subject matter. After further proceedings, judgment was entered for the purported assignee, and the insurer appealed.

On appeal, the Delaware Supreme Court unanimously reversed the trial court's choice of law ruling. Relying heavily on its decision in *Certain Underwriters at Lloyd's, London v. Chemtura Corp.,* 160 A.3d 457 (Del. 2017), the Court held that, under the *Second Restatement* factors, Texas has the most significant relationship to the contracting parties and the dispute because the Texas-based parent company sought insurance coverage "through a corporate-wide insurance program covering operations across multiple jurisdictions" and "negotiated and secured insurance coverage, and managed its insurance program, out of its Texas offices." In so holding, the court reiterated its conclusion in *Chemtura*: "[W]hen dealing with a comprehensive insurance program, the subject matter of an insurance coverage dispute is not the conduct that gave rise to the underlying injuries, but rather the alleged breach of the insurance policies. Therefore, the relevant location is the place of contracting, not the place where the conduct causing the injuries occurred or where the underlying claims are brought." In that regard, the Delaware Supreme Court concluded that "[t]he policies, when considered as a whole, were procured, negotiated, paid for, and managed in Texas under [the corporate parent's] insurance program." The Court rejected the purported assignee's argument that, at a minimum, Wisconsin law should apply to the single policy issued directly to the Wisconsin subsidiary, concluding that the subsidiary's coverage "was part of a comprehensive company-wide insurance program managed by [the corporate parent] from its Texas headquarters."

Having concluded that interpretation of the policies was governed by Texas law, the Delaware Supreme Court reversed the judgment of the trial court and directed entry of judgment for the insurer based on the anti-assignment provisions of the policies. In so holding, the Court rejected an argument that applying Texas anti-assignment law would be contrary to Delaware public policy, concluding that there is "no established Delaware law that anti-assignment provisions in insurance contracts are against public policy."