

Upcoming New Jersey Choice of Law Decision for Long-Tail Claims

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Insurance coverage disputes frequently implicate choice of law determinations where national distribution of manufactured products results in potential claims in all 50 states and policyholders relocate their headquarters and/or operations due to corporate mergers after their policies are issued. A New Jersey Appellate Division ruling certified to the New Jersey Supreme Court presents an opportunity for New Jersey's highest court to expand or explain its choice of law guidance in the context of allocation of asbestos-related products liability across multiple policy years.

In Continental Insurance Co. v. Honeywell Int'l, Inc., 2016 N.J. Super. Unpub. LEXIS 1685 (App.Div. July 20, 2016), the Appellate Division assessed what jurisdiction's law applied in a lawsuit where an insured's predecessor was headquartered in Michigan at the time of policy issuance, but later became domiciled in New Jersey. The Court analyzed this issue with the four instructive factors contained in Pfizer, Inc. v. Emp'rs Ins. of Wausau, 154 N.J. 187, 712 A.2d 634, 1998 N.J. LEXIS 571 (N.J. June 11, 1998), but placed an especially strong emphasis on New Jersey's interests in applying its own law regarding how to allocate coverage among various insurance policies on the risk. The four Pfizer factors are:

1. The competing interests of the states;
2. The interests of commerce among the states;
3. The interests of the parties; and
4. The interests of judicial administration.

The Honeywell Court first opined that New Jersey's Carter Wallace[1] allocation method did not compromise Michigan's allocation method. Honeywell at 21-22. The Court stated that the application of Michigan law could, however, discount New Jersey's interest in assessing "whether...New Jersey's pro rata approach [could] resolve allocation issues." Id. With respect to the second Pfizer factor, the interest of commerce among the states, the Honeywell Court again deferred to New Jersey law in holding that Michigan's approach to allocation could frustrate New Jersey's commercial interests. The Court construed the fourth Pfizer factor, the interest of judicial administration, in favor of New Jersey law due to New Jersey's "special judicial framework to efficiently handle the allocation method developed in Owens-Illinois." Id. at 24.

Remarkably, the Honeywell Court afforded minimal importance to the third Pfizer factor, the interests of the parties, reasoning that the parties could not have foreseen that the insured would relocate to New Jersey; nor could they have anticipated that Michigan would adopt a straight time-on-the-risk allocation approach. Id. at 23. Further, since the insured had been operating on a nationwide basis at the time of policies' issuance, the underlying products liability claims were likely to have arisen in various states. Id. The Court acknowledged but rejected Travelers' argument that Michigan law should apply because Travelers' policy was issued there on the grounds that New Jersey no longer relies on the *lex loci contractus* (place of contracting) choice of law rule. Id.

The pending appeal of the Honeywell decision to the New Jersey Supreme Court will provide guidance to

courts and litigants in insurance coverage conflicts, specifically, what level of deference should be afforded to New Jersey's interests in applying its own substantive allocation methodology in the allocation of long-tail claims. We will report further when the Supreme Court's decision is handed down.

[1] See Carter-Wallace, Inc. v. Admiral Ins. Co., 154 N.J. 312 (1998) (Allocation should be based on the amount of insurance purchased in any given year that the alleged injury occurred)