

New York federal court reinforces importance of forum selection for insurance disputes

By Syed S. Ahmad, Esq., Geoffrey B. Fehling, Esq., and Evan J. Warshauer, Esq., Hunton Andrews Kurth LLP

OCTOBER 4, 2024

In insurance coverage disputes, the question of which state's law governs the policy often controls the availability and scope of coverage. When a policy lacks a choice-of-law or forum-selection clause, policyholders and insurers alike must strategically weigh a number of factors in determining which venue is most appropriate for bringing suit.

The importance of this initial consideration was recently reinforced in an August 2024 decision by the United States District Court for the Southern District of New York in *Continental Casualty Co. v. Lockheed Martin Corp.*

Background

The case arose out of the operation of a weapons manufacturing facility in Orlando, Florida, initially by two predecessors to Lockheed Martin Corp.

When a policy lacks a choice-of-law or forum-selection clause, policyholders and insurers alike must strategically weigh a number of factors in determining which venue is most appropriate for bringing suit.

From its Chicago headquarters, Continental Casualty Co. issued 12 primary liability insurance policies to the predecessors. The first seven primary policies were effective between 1956 to 1963, and were issued to one predecessor company, headquartered in Baltimore; the remaining five policies were effective in 1963 to 1977, and were issued to the other predecessor company, which was based in New York City.

In 1957, Lockheed's predecessors began manufacturing weapons at the Orlando, Florida, facility. The first predecessor originally owned the facility and operated it until it was taken over by the other predecessor in 1961. Lockheed took ownership of the facility in 1995. The facility utilized a number of chemicals in the weapon

manufacturing process alleged to contaminate the air, soil and groundwater of nearby properties and cause injuries to individuals working at the facility.

From 2021 to 2023, seven lawsuits were filed in the United States District Court for the Middle District of Florida by individuals alleging that they suffered bodily injury, personal injury and property damage because of the chemicals. Lockheed sought coverage for the underlying lawsuits under numerous policies issued to its predecessors.

Continental eventually disclaimed coverage, asserting that Lockheed provided late notice of claims, that several of the alleged injuries occurred outside of policy periods, and that claims were barred by the policies' pollution exclusions.

Competing coverage litigations

Continental filed a complaint against Lockheed in the United States District Court for the Southern District of New York seeking declaratory relief regarding the parties' respective rights and obligations under Lockheed's legacy liability policies.

Following Continental's filing, Lockheed filed a complaint against Continental in the United States District Court for the District of Maryland. Lockheed then moved to dismiss or transfer Continental's suit to the District of Maryland while Continental moved for a preliminary injunction to enjoin Lockheed's later-filed lawsuit.

To resolve the forum dispute, the District Court for the SDNY applied a two-step inquiry to determine whether transfer under 28 U.S.C. § 1404(a) was appropriate. First, the court considered "whether the action could have been brought in the transferee district." If so, it would then proceed to analyze "whether transfer would be an appropriate exercise of the Court's discretion," which considered the following factors:

- (1) the convenience of the witnesses;
- (2) the convenience of the parties;
- (3) the location of relevant documents and the relative ease of access to sources of proof;
- (4) the locus of operative facts;
- (5) the availability of process to compel the attendance of unwilling witnesses;
- (6) the relative means of the parties;
- (7) the forum's familiarity with the governing law;
- (8) the weight accorded the plaintiff's choice of forum; and
- (9) trial efficiency and the interests of justice.

In emphasizing that Lockheed, as the movant, bore the burden of establishing the appropriateness of transfer, the court also highlighted how Lockheed would have to overcome the presumption of the “first-filed rule.”

The court explained that because Continental and Lockheed had filed duplicative suits in two different courts with concurrent jurisdiction, Continental as the first to file was entitled to a rebuttable presumption that litigation should continue in its chosen forum in SDNY. Lockheed would only be able to prevail on its motion if it could demonstrate a “showing of balance of convenience or special circumstances giving priority to the second case.”

After finding that four of the factors were neutral, four of the factors favored transfer and one weighed slightly against transfer, the court ultimately granted Lockheed’s motion and transferred the case to Maryland.

Witnesses’ convenience. In analyzing the first and “most important factor,” the court noted that the present insurance coverage dispute was “unlikely to turn on witness testimony to the same extent as other types of lawsuits” and determined that this factor “strongly” favored transfer because there were no relevant witnesses located in New York while some were located in Maryland.

Although Lockheed’s insurance broker, Marsh, was headquartered in New York and responsible for providing notice of the Florida lawsuits, the record reflected that only a single Marsh employee — who was based in Boston — ever communicated with Continental regarding Lockheed’s claim.

Parties’ convenience. Under this factor the court examined whether transferring the litigation to Maryland would substantially inconvenience Continental, thereby serving to only shift the inconvenience onto it from Lockheed.

It concluded that this factor weighed slightly in favor of transfer because a Maryland trial venue would enable Lockheed’s headquarter-based personnel to attend trial or meet with trial counsel while Continental failed to show a difference in convenience between New York and Maryland.

Location of documents and access to sources of proof. Next, the court determined that this factor was neutral, as neither party demonstrated that burdens presented by distant documents would arise in either forum.

Locus of operative facts. In analyzing the fourth factor, the court emphasized that for disputes arising out of insurance agreements, significant locations are “where the contract was negotiated or executed, where it was to be performed, and where the alleged breach occurred.” As to the agreements at issue, the court noted

that relevant events related to their negotiation, formation and execution took place in both New York and Maryland.

However, the court concluded that this factor favored transfer because “New York’s connection to the operative facts [was] based on events particularly long ago” given that the predecessor company involved, “which was based in New York, no longer exists.” Maryland, on the other hand, is where Lockheed is headquartered and where some relevant communications related to the policies took place.

Availability of process to compel unwilling witnesses. The court determined this factor was neutral because most third-party witnesses would fall outside the respective court’s subpoena power.

Parties’ relative means. The court found this factor was neutral between two “large businesses that can afford to litigate nationwide.”

Forum’s familiarity with governing law. The court held this factor was neutral because neither party identified any legal issues impacted by differences in state law.

Plaintiff’s forum choice. While this factor typically is “entitled to considerable weight,” the court concluded that it only weighed slightly against transfer because New York was not Continental’s home district.

Trial efficiency. Under the last factor, the court rejected both Lockheed’s argument that the SDNY had a busier docket than Maryland and Continental’s argument that it would be more efficient to maintain the matter in the SDNY. Instead, the court found that this factor favored transfer based on Lockheed’s “substantial argument” that venue was lacking in the SDNY because New York lacked a connection to the operative facts. Given this “substantial” challenge to venue, the court reasoned that it would invite legal risk to proceed in the SDNY, particularly as “[n]o such cloud would exist” were the case litigated in Maryland.

After finding that four of the factors were neutral, four of the factors favored transfer and one weighed slightly against transfer, the court ultimately granted Lockheed’s motion and transferred the case to Maryland.

Takeaways

This decision emphasizes several key considerations insurers and insureds should take into account when determining the appropriate venue for litigating coverage disputes. This starts with evaluating whether venue or governing law is or should be negotiated by the parties through a specific choice-of-law, forum-selection, dispute resolution or similar provision.

Absent the policy deciding what state’s law applies to any disputes, parties should ensure that they understand the choice of law rules that may impact a court’s analysis in the potential forums. Parties should also investigate the underlying facts of any potential coverage dispute to confirm there is a sufficient connection between any potential forum and the underlying facts before filing suit.

While it is often beneficial to file first in a coverage dispute, the *Lockheed* decision reinforces that selecting a forum with a legitimate connection to the claim is more important than filing first.

About the authors



Syed S. Ahmad (L) is the head of **Hunton Andrews Kurth LLP's** insurance coverage group and represents clients in connection with insurance coverage, reinsurance matters and other business litigation. He is based in Washington, D.C., and can be reached at sahmad@HuntonAK.com. **Geoffrey B. Fehling** (C) is an insurance coverage partner in the firm's Boston office. He advises clients in high-stakes insurance coverage disputes, especially in directors and officers liability matters, and can be reached at gfehling@HuntonAK.com.

Evan J. Warshauer (R) is an associate in the firm's insurance coverage team and represents commercial policyholders in a range of matters, including property and business interruption claims, directors and officers liability and cyber insurance. He is based in Washington, D.C., and can be reached at ewarshauer@HuntonAK.com.

This article was first published on Reuters Legal News and Westlaw Today on October 4, 2024.