

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

CNH INDUSTRIAL AMERICA LLC,)	
)	
)	C.A. No. N12C-07-108 EMD CCLD
Plaintiff,)	
)	
v.)	
)	
AMERICAN CASUALTY COMPANY OF)	
READING, PENNSYLVANIA, et al.,)	
)	
Defendants.)	

ORDER

*Upon Consideration of the Motion of Granite State Insurance Company For Summary Judgment
With Regard to Choice of Law and Enforcement of the Assignment Clause in Granite State
Policies*

DENIED

DAVIS, J.

This 18th day of August, 2015, upon consideration of the Motion of Granite State Insurance Company for Summary Judgment on Choice of Law and Enforcement of the Assignment Clause in Granite State Policies (the “Motion”) filed by Granite State Insurance Company (“Granite”) on October 17, 2014; Plaintiff’s Answering Brief in Opposition to Travelers’ Motion for Partial Summary Judgment with Regard to Choice of Law (the “Answer”)¹ filed on December 10, 2014; the Court having held a hearing and heard arguments from the parties on the Motion and the Answer on May 18, 2015 (the “May 18 Hearing”), the Court finds as follows:

¹ The Answer does not specifically address Granite’s insurance policies or arguments made in the Motion. Instead, the Answer relies on its arguments regarding choice of law and assignment in opposing all of the various motions for summary judgment and joinders on choice of law and assignment.

1. The standard of review on a motion for summary judgment is well-settled. The Court's principal function when considering a motion for summary judgment is to examine the record to determine whether genuine issues of material fact exist, "but not to decide such issues."² Summary judgment will be granted if, after viewing the record in a light most favorable to a non-moving party, no genuine issues of material fact exist and the moving party is entitled to judgment as a matter of law.³ If, however, the record reveals that material facts are in dispute, or if the factual record has not been developed thoroughly enough to allow the Court to apply the law to the factual record, then summary judgment will not be granted.⁴ The moving party bears the initial burden of demonstrating that the undisputed facts support his claims or defenses.⁵ If the motion is properly supported, then the burden shifts to the non-moving party to demonstrate that there are material issues of fact for resolution by the ultimate fact-finder.⁶

2. Through the Motion and the Answer, the parties asked this Court to determine whether Texas law or Wisconsin law should govern two insurance policies (the "Insurance Policies") issued by Granite that are the subject of this civil action.

3. At the May 18 Hearing, the Court ruled from the bench on issues of choice of law as those issues related to certain insurance policies issued by the Travelers Indemnity (the "Travelers Policies").

4. As set forth more fully on the record at the May 18 Hearing, the Court determined that it would apply Wisconsin law to the issues raised with respect to the Travelers Policies.

² *Merrill v. Crothall-American Inc.*, 606 A.2d 96, 99-100 (Del. 1992) (internal citations omitted); *Oliver B. Cannon & Sons, Inc. v. Dorr-Oliver, Inc.*, 312 A.2d 322, 325 (Del. Super. 1973).

³ *Merrill*, 606 A.2d at 99-100; *Dorr-Oliver*, 312 A.2d at 325.

⁴ *Ebersole v. Lowengrub*, 180 A.2d 467, 470 (Del. 1962); see also *Cook v. City of Harrington*, 1990 WL 35244, at *3 (Del. Super. Feb. 22, 1990) (citing *Ebersole*, 180 A.2d at 467) ("Summary judgment will not be granted under any circumstances when the record indicates ... that it is desirable to inquire more thoroughly into the facts in order to clarify the application of law to the circumstances.").

⁵ *Moore v. Sizemore*, 405 A.2d 679, 680 (Del. 1979) (citing *Ebersole*, 180 A.2d at 470).

⁶ See *Brzoska v. Olson*, 668 A.2d 1355, 1364 (Del. 1995).

5. In arriving at this determination, the Court analyzed the facts presented by the parties, and then utilized and relied upon Sections 6, 188 and 193 of the Restatement (Second) of Conflict of Laws; *Liggett Group, Inc. v. Affiliated FM Ins. Co.*, 788 A.2d 134 (Del. Super. 2001); *Monsanto Co. v. Aetna Cas. & Sur. Co.*, C.A. No. 88C-JA-118, Poppiti, J. (Del. Super. Oct. 29, 1991); *E.I. du Pont de Nemours & Co. v. Admiral Ins. Co.*, C.A. No. 89C-AU-99, 1991 WL 236943 (Del. Super. Oct. 22, 1991).

6. The Court incorporates by reference its decision as set forth on the record at the May 18 Hearing.

7. Granite does not rely on any case law or legal authority separate and apart from the law cited by the proponents that argued that Texas law applied to the Travelers Policies. Granite does, however, provide additional facts in the Motion that were not asserted by the proponents that argued that Texas law applied to the Travelers Policies. Granite argues that these additional facts mean that Texas law should govern the Insurance Policies.

8. The Court does not find that these additional facts change the holding that Wisconsin law applies to the Insurance Policies. The “named assured” under the Insurance Policies is “Tenneco, Inc., et al.” “Tenneco, Inc., et al.” does not mean that the Insurance Policies were held only by Tenneco or that individual subsidiaries would not be covered by the Insurance Policies. Moreover, the Court reviewed the underlying insurance policies and those policies define the insured or assured as Tenneco, Inc. and all affiliated and subsidiary companies unless specifically included. *See, e.g.*, *Umbrella Excess Insurance Policy Issued by Eastern Insurance Company Ltd.* at 1-3. J.I. Case Company was a Wisconsin company, having its principal place of business in Wisconsin when the Insurance Policies were issued. The other, or additional, facts relied upon by Granite are similar to those relied upon by the proponents that argued that Texas

law should apply – *i.e.*, the broker was in Texas, notices of occurrence were to be sent to a contact in Texas, the representative of Granite was from Texas, etc.

9. The Court, therefore, determines and holds that its decision at the May 18 Hearing on the Travelers Policies would similarly control the Insurance Policies and that Wisconsin law should apply to the Insurance Policies.

10. In addition, for the reasons set forth by this Court at the May 18 Hearing and in its Order denying the Defendant The Travelers Indemnity Company’s Motion For Summary Judgment That There Has Been No Effective Assignment of Rights Under Any Travelers Policies to CNH Industrial America LLC (D.I. No. 888), the Court determines and holds that the Insurance Policies were effectively assigned to CNH Industrial America LLC (“CNH”) as part of the 1994 reorganization agreements.

For the foregoing reasons the Motion is **DENIED** and the Court will apply Wisconsin Law to the Insurance Policies of Granite.

IT IS SO ORDERED.

/s/ *Eric M. Davis*
Eric M. Davis, Judge