# STATE OF MICHIGAN

# COURT OF APPEALS

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FEDERAL INSURANCE COMPANY,

Plaintiff,

v

ARMADA CORPORATION and HOSKINS MANUFACTURING COMPANY,

Defendants/Cross Defendants-Appellees,

and

ROYAL INSURANCE COMPANY OF AMERICA, UNITED STATES FIRE INSURANCE COMPANY, NATIONAL UNION FIRE INSURANCE COMPANY, FIRST STATE INSURANCE COMPANY, INTERNATIONAL INSURANCE COMPANY, COMMERCE & INDUSTRY INSURANCE COMPANY, and AMERICAN & FOREIGN INSURANCE COMPANY,

Defendants/Cross Plaintiffs,

and

AMERICAN INSURANCE COMPANY,

Defendant/Cross Plaintiff-Appellant,

and

VALLEY FORGE INSURANCE COMPANY and HOME INSURANCE COMPANY,

Defendants.

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UNPUBLISHED
July 1, 2004

No. 245390
Livingston Circuit Court
LC No. 01-018840-CK

FEDERAL INSURANCE COMPANY,

Plaintiff-Appellant,

v

No. 245391
Livingston Circuit Court
LC No. 01-018840-CK

ARMADA CORPORATION and HOSKINS MANUFACTURING COMPANY,

Defendants/Cross Defendants-Appellees,

and

ROYAL INSURANCE COMPANY OF AMERICA, UNITED STATES FIRE INSURANCE COMPANY, NATIONAL UNION FIRE INSURANCE COMPANY, FIRST STATE INSURANCE COMPANY, INTERNATIONAL INSURANCE COMPANY, AMERICAN INSURANCE COMPANY, COMMERCE & INDUSTRY INSURANCE COMPANY, and AMERICAN & FOREIGN INSURANCE COMPANY,

Defendants/Cross Plaintiffs,

and

VALLEY FORGE INSURANCE COMPANY and HOME INSURANCE COMPANY,

Defendants.

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FEDERAL INSURANCE COMPANY,

Plaintiff,

v

No. 245472
Livingston Circuit Court
LC No. 01-018840-CK

ARMADA CORPORATION and HOSKINS MANUFACTURING COMPANY,

Defendants/Cross Defendants-Appellees,

and

ROYAL INSURANCE COMPANY OF AMERICA, UNITED STATES FIRE INSURANCE COMPANY, NATIONAL UNION FIRE INSURANCE COMPANY, FIRST STATE INSURANCE COMPANY, AMERICAN INSURANCE COMPANY, COMMERCE & INDUSTRY INSURANCE COMPANY, and AMERICAN & FOREIGN INSURANCE COMPANY,

Defendants/Cross Plaintiffs,

and

INTERNATIONAL INSURANCE COMPANY,

Defendant/Cross Plaintiff-Appellant,

and

VALLEY FORGE INSURANCE COMPANY and HOME INSURANCE COMPANY,

Defendants.

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Before: Cavanagh, P.J., and Murphy and Smolenski, JJ.

PER CURIAM.

These are appeals as of right from the trial court's dismissal of several declaratory judgment actions related to the availability of insurance coverage to Armada Corporation and its wholly owned subsidiary, Hoskins Manufacturing Company, on forum non conveniens grounds. We affirm.

This case arises from insurance claims filed by Armada and/or Hoskins with various insurers, including plaintiff and cross plaintiffs, following environmental contamination at and around their manufacturing plants located in Mio, Michigan and New Paris, Indiana. Hoskins had filed a complaint against some of the insurers in Indiana, related to the Indiana site only, for declaratory judgment, breach of contract, and breach of the duty of good faith and fair dealing.

Shortly thereafter, plaintiff and cross plaintiffs filed these declaratory judgment actions in Michigan seeking a declaration as to the existence and scope of their respective contractual obligations under their excess, umbrella and/or primary liability policies in light of Armada and Hoskins' failure to meet certain conditions precedent and in light of their policies' pollution exclusionary provisions. Armada and Hoskins answered the complaints and asserted affirmative defenses including that the doctrine of forum non conveniens should bar the matter in Michigan because a related legal action was already pending in Indiana. They subsequently filed a joint motion for summary disposition arguing that the court should decline jurisdiction on forum non conveniens grounds.

Plaintiff and cross plaintiffs filed motions for summary disposition on the ground that pollution exclusionary provisions contained in their insurance policies preclude any claims for coverage under such policies. The trial court agreed with Armada and Hoskins and dismissed the entire action, declining jurisdiction on the ground of forum non conveniens. Motions for reconsideration were denied. These appeals followed. While these appeals were pending, voluntary withdrawals and stipulated dismissals between the parties resulted in there being no pending claims for insurance coverage with respect to the contaminated Michigan property. Consequently, the only coverage dispute that continues to exist between the parties concerns the contaminated Indiana site, which has been pending in a court in Indiana since before these actions were filed in Michigan.

The dispositive issue on appeal is whether the trial court properly declined jurisdiction through the application of the doctrine of forum non conveniens. We conclude that it did and affirm. This Court reviews a trial court's decision granting a motion to dismiss on the basis of forum non conveniens for an abuse of discretion. *Miller v Allied Signal, Inc*, 235 Mich App 710, 713; 599 NW2d 110 (1999).

Our Supreme Court, in *Cray v General Motors Corp*, 389 Mich 382, 395; 207 NW2d 393 (1973), held that the discretionary doctrine of forum non conveniens is applicable in Michigan and permits a trial court to decline properly invoked jurisdiction. The doctrine presupposes that there are at least two potential forums, *id*.; accordingly, when its application is sought, the trial court must first determine whether there is a more appropriate forum—if there is not, the court cannot decline jurisdiction. However, if there is a more appropriate forum, the trial court still

must find that its own forum is seriously inconvenient before declining jurisdiction. *Manfredi v Johnson Controls, Inc*, 194 Mich App 519, 527; 487 NW2d 475 (1992), quoting *Robey v Ford Motor Co*, 155 Mich App 643, 645; 400 NW2d 610 (1986).

To assist in determining the balance of the parties' competing interests, the *Cray* Court suggested the following analysis:

> A balancing out and weighing of factors to be considered in rejecting or accepting jurisdiction in such cases should include:
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> 1. The private interest of the litigant.
>
> a. Availability of compulsory process for attendance of unwilling and the cost of obtaining attendance of willing witnesses;
>
> b. Ease of access to sources of proof;
>
> c. Distance from the situs of the accident or incident which gave rise to the litigation;
>
> d. Enforceability of any judgment obtained;
>
> e. Possible harassment of either party;
>
> f. Other practical problems which contribute to the ease, expense and expedition of the trial;
>
> g. Possibility of viewing the premises.
>
> 2. Matters of public interest.
>
> a. Administrative difficulties which may arise in an area which may not be present in the area of origin;
>
> b. Consideration of the state law which must govern the case;
>
> c. People who are concerned by the proceeding.
>
> 3. Reasonable promptness in raising the plea of forum non conveniens. [*Cray*, *supra* at 395-396.]

Here, the trial court held that the private interest factor did not weigh in favor of one forum over the other because of the nature of the dispute. We agree, in part. This action has become a contest about whether there is insurance coverage with regard to contaminated Indiana property. Necessary witnesses and other sources of proof would likely be in Indiana; the contaminated site is obviously located in Indiana; a legal action concerning this dispute has been pending in Indiana; the insurers are incorporated and have principal places of business in various states throughout the country and Armada and Hoskins have significant contacts with Indiana therefore an Indiana judgment would be enforceable; there are no obvious practical problems

with the case in Indiana proceeding to trial; and, it is not apparent that Indiana was chosen for harassment purposes. Therefore, it appears that the balance of private interest factors actually weighs in favor of an Indiana forum.

The trial court also held that the public interest factor weighed in favor of an Indiana forum. We agree. The only claims pending between the parties relate to insurance coverage relative to the Indiana site. Although the disputed insurance policies were issued in Michigan to Armada, a Michigan corporation, and its wholly-owned subsidiary, Hoskins, the subject matter of the policies included the then-operational Indiana manufacturing plant. Any administrative difficulties that may arise in Indiana regarding the resolution of this dispute are not obvious. Further, the people who would be most concerned by the proceedings regarding the Indiana site are Indiana residents, not Michigan residents. Additionally, we agree with the trial court's unstated but obvious conclusion that Indiana law would govern this case.

Pursuant to Restatement Conflict of Laws, 2d, § 193, p 610:[1]

> The validity of a contract of fire, surety or casualty insurance and the rights created thereby are determined by the local law of the state which the parties understood was to be the principal location of the insured risk during the term of the policy, unless with respect to the particular issue, some other state has a more significant relationship . . . to the transaction and the parties . . . .

The annotations to the Restatement are replete with citations to state and federal case law in which the courts have applied the substantive law of the state where the insured risk was located, despite the execution of insurance policies covering the property being accomplished outside the state. For example, in *Consolidated Mut Ins Co v Radio Foods Corp*, 108 NH 494; 240 A2d 47 (1968), the plaintiff insurer sought a declaratory judgment excluding it from liability under a policy predicated on the insured's alleged failure to comply with a policy provision requiring prompt notice of claims. *Id*. at 496. The insurance policy was issued in Massachusetts, to a Massachusetts' corporation, by an insurance company authorized to do business in Massachusetts. *Id*. However, as the risk was located in New Hampshire, the New Hampshire Supreme Court, giving the greatest weight to the location of the insured risk, applied the law of New Hampshire, not Massachusetts. *Id*. at 497. The court stated that "[e]ven though the policy also dealt with risks in Massachusetts, where the principal office of the insured was located, the New Hampshire risk is to be treated as though it were insured by a separate policy and the validity of and rights under the multiple risk policy as to this risk are to be governed by the laws of [New Hampshire]." *Id*.

In *CPC Int'l, Inc v Northbrook Excess & Surplus Ins Co*, 46 F3d 1211 (CA 1, 1995), a New Jersey packaging and manufacturing company that paid the cleanup costs of water

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[1] The Michigan Supreme Court has indicated its adoption of the Restatement approach with respect to conflicts of law. *Chrysler Corp v Skyline Industrial Services, Inc*, 448 Mich 113, 116-117; 528 NW2d 698 (1995) ("[T]he Court of Appeals was correct in considering the Restatement approach[.]".)

contamination at a plant in Rhode Island sued its insurer for indemnification. *Id*. at 1212. The federal appeals court held that the substantive law of Rhode Island applied, considering that the principal location of the insured risk was more important than the parties' expectations in the insurance contract.[2] *Id*. at 1216-1217.

In *MAPCO Alaska Petroleum, Inc v Central Nat'l Ins Co of Omaha*, 795 F Supp 941 (D Alaska, 1991), the federal district court determined that Alaska law would govern the issue of coverage under a standard qualified pollution exclusion clause, where Alaska had a significant interest in determining who would pay for cleanup of environmental contamination resulting from a refinery operation in Alaska, despite the fact that the refinery and insurers were foreign corporations and the insurance contract was made in either Texas or Oklahoma. *Id*. at 944. The court stated:

> Defendants argue that all parties are foreign corporations and that the place of contracting was Texas or Oklahoma. They argue that Alaska has little interest in the outcome of this transaction since it is not a matter of whether the environmental damage will be remedied, but who will pay for it. This argument is unpersuasive. Interpretation of insurance contract provisions pertaining to an insured risk located in this state are of significant importance to the State of Alaska. This is especially true when the insurance contract involves coverage for environmental damage. Alaska has a significant interest in determining who will pay for the cleanup of environmental damage since it is directly relevant to whether remediation is accomplished and to what degree. Alaska law will be applied. [*Id*.]

In *Gilbert Spruance Co v Pennsylvania Mfrs' Ass'n Ins Co*, 254 NJ Super 43; 603 A2d 61 (1992), the court determined that New Jersey law would govern the application of a standard pollution exclusion in a policy issued in Pennsylvania by a Pennsylvania insurer to a Pennsylvania corporation, which manufactured paint in Pennsylvania, but which allegedly caused hazardous wastes to be deposited in New Jersey landfills. *Id*. at 46-51.

These conclusions are consistent with the following language contained in Comment e to Restatement Conflict of Laws, 2d, § 188:

> Standing alone, the place of contracting is a relatively insignificant contact. To be sure, in the absence of an effective choice of law by the parties, issues involving the validity of a contract will, in perhaps the majority of situations, be determined in accordance with the local law of the state of contracting. In such situations, however, this state will be the state of the applicable law for reasons additional to the fact that it happens to be the place where occurred the last act necessary to give the contract binding effect. . . .

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[2] Our Supreme Court indicated in *Chrysler Corp*, n 1 *supra* at 125, quoting Comment g to Restatement, § 187, p 567, "'[f]ulfillment of the parties' expectations is not the only value in contract law; regard must also be had for state interests and for state regulation.'"

* * *

> When the contract deals with a specific physical thing, such as land or a chattel, or affords protection against a localized risk . . ., the location of the thing or of the risk is significant. . . . The state where the thing or the risk is located will have a natural interest in transactions affecting it. Also the parties will regard the location of the thing or of the risk as important. Indeed, when the thing or the risk is the principal subject of the contract, it can often be assumed that the parties, to the extent that they thought about the matter at all, would expect that the local law of the state where the thing or risk was located would be applied to determine many of the issues arising under the contract. [*Id*. at 579-581.]

In sum, we conclude that because the remaining insurance claims pertain to property and a risk located in Indiana, Indiana has a superior public interest. The private interest factor also weighs in favor of an Indiana forum. Moreover, although it is arguable whether Michigan is a seriously inconvenient forum, the necessity of the trial court to educate itself on Indiana law, the inapplicability of Michigan law, the possibility that the nature, extent, and circumstances of the contamination at the Indiana plant may need investigation and addressing in interpreting the insurance contracts, and the lack of any Michigan property subject to a claim, all provide reasons to find Michigan a seriously inconvenient forum. Minimally, there was no abuse of discretion. The trial court's opinion reflects that it was aware of the proper legal principles and the relevant case law by which the court was governed; the court did not misapprehend the law. And, the trial court's application of the law to the facts did not result in a conclusion that was palpably and grossly violative of fact and logic. See *Miller*, *supra*. Further, we decline to address the issue whether the trial court should have considered the insurers' motions for summary disposition premised on their alleged pollution exclusionary provisions because it was not properly preserved for appellate review. See *Fast Air, Inc v Knight*, 235 Mich App 541, 549; 599 NW2d 489 (1999).

Affirmed.

/s/ Mark J. Cavanagh
/s/ William B. Murphy
/s/ Michael R. Smolenski