

Conflicts of Law Coverage Update

January 2, 2018

Maryland Coverage Update

The e-POST

Conflicts of Law – Maryland

Brownlee v. Liberty Mut. Fire Ins. Co.

--- A.3d. ---, 2017 WL 6421101 (Md. Ct. App. Dec. 18, 2017)

The Maryland Court of Appeals held that Georgia law, rather than Maryland law, applied to the insurance policies at issue, which resulted in coverage being excluded by way of a pollution exclusion. Several people were exposed to lead at a property owned by the Salvation Army and brought suit against the organization for their injuries. Salvation Army's insurer denied coverage on the basis of a pollution exclusion, which provided "[t]his insurance does not apply to: ... (1) 'Bodily injury' or 'property damage' arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of pollutants: (a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to any insured. ...". The insurer argued for the application of Georgia law, because Georgia has applied the pollution exclusion at issue to exclude coverage for the ingestion of lead-based paint. The Maryland Court of Appeals determined that Georgia law applied to the dispute pursuant to *lex loci contractus*, because the contract between the parties was formed in Georgia. The appellate court also determined that Maryland law did not govern on public policy grounds because Maryland did not have a strong public policy against pollution exclusions. The appellate court further reasoned "that declaration of the State's public policy is the function of the legislative branch of the government," and deferred to the Legislature to address the issue through legislative action.

Plunkett Cooney's insurance coverage update, The e-Post, is published bi-monthly via email. To receive your copy when it is issued, simply email - subscribe@plunkettcooney.com.