

Byline

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A Long Arm And Short Leash For Coverage Territory Clauses

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When purchasing liability insurance coverage, it is naturally important to assess the scope of the coverage offered in the various proposed policy forms. In evaluating the scope of coverage, policyholders and their counsel often focus on the scope of liability policies' insuring agreements and any potentially applicable exclusions. However, this should not be the end of the analysis.

A standard provision, contained in most insurance policies, limits coverage to accidents or events that take place in the so-called coverage territory. For policies purchased in the U.S., coverage territory is often defined as the U.S., its territories and possessions, Canada and Puerto Rico. But what if a company conducts business internationally, or any component of the business is based outside the U.S.? Policyholders should be mindful of the limiting effect coverage territory provisions (and court interpretations of such provisions) can have on the available coverage in order to determine whether to negotiate an endorsement to their policies or to purchase additional coverage, when they do not, otherwise, have global insurance coverage.

The prevailing rule applied by courts is to look where the actual accident, damage or injury took place in determining whether any claims arising therefrom are within the scope of a policy's coverage. In other words, the final event in a chain of acts or omissions that culminates in the injury itself must be within a policy's coverage territory. This analysis can understandably become more difficult where the affairs of an international business involve conduct both within and outside the U.S. Often, a lawsuit will allege a combination of domestic and foreign acts or omissions was the cause of the harm. Indeed, in some cases, virtually all of the conduct allegedly resulting in harm took place within the U.S., even though the effect of this conduct was an incident that occurred in a foreign territory.

The most prominent example of this type of case may be *Chiquita Brands International v. National Union Fire Insurance Co. of Pittsburgh*, 988 N.E.2d 897 (Ohio Ct. App. 2013). In that case, the insured, Chiquita, faced numerous tort claims alleging the company's conduct effectively financed terrorist organizations in Colombia. The complaint alleged, and the trial court determined, executives at Chiquita's corporate headquarters in Cincinnati decided to finance the organizations in order to protect Chiquita's employees and property in Colombia.

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However, the court held Chiquita's insurer did not owe a duty to defend because it is the location of the injury and not some precipitating cause that determines the location of the event for insurance coverage. In other words, it did not matter that all of the relevant acts were decided in Cincinnati, by domestic employees. Only the location of the ultimate result of those activities was determinative. In that situation, the court determined there was no duty to defend because the injury took place outside the designated "coverage territory."

The so-called place-of-injury test applied in Chiquita is rooted in other cases confronting similar situations where relevant acts or omissions occur in different geographic locations from the resulting injuries. In *CACI International Inc. v. St. Paul Fire & Marine Insurance Co.*, 566 F.3d 150 (4th Cir. 2009), the policy obligated CACI's insurer to defend against suits seeking damages for a "covered injury ... that is caused by events or offenses which happen or are committed in the [coverage territory], which includes the United States and its territories as well as Canada and Puerto Rico."

CACI sought coverage for lawsuits arising from alleged prisoner abuse by CACI employees in Abu Ghraib prison in Iraq. The complaints included allegations of negligent hiring and supervision of CACI employees. CACI argued these alleged offenses took place in Virginia, California and elsewhere in the U.S., where CACI's operations were based. The court disagreed. Applying the place-of-injury test, the Fourth Circuit held the focus should be on the location of the injury and the "immediately attendant causative circumstances." As a result, CACI was not entitled to a defense because the prisoner abuses took place in Iraq and outside the coverage territory.

The same analysis has been applied where a company purchases coverage designed specifically to address its overseas operations. In that case, coverage may be unavailable if the injuries themselves occur domestically. In *ACE American Insurance Co. v. RC2 Corp.*, 600 F.3d 763 (7th Cir. 2010), a manufacturer, RC2, was sued for injuries arising from exposure to lead in toys sold in the U.S. The toys themselves had been manufactured in China. RC2 sought coverage under an international policy that provided coverage for occurrences that took place anywhere in the world, except for the U.S.

A lower federal court held coverage was available because the negligent acts in the process of the products' manufacturing that caused the harm had occurred outside the U.S. The Seventh Circuit reversed and held the occurrences took place in the U.S. because that is where the actual injuries resulted. According to the Seventh Circuit, even though the negligent acts in the process of the products' manufacturing took place in China, there was no occurrence in China because the actual injuries did not take place there. As a result, the claims against RC2 did not trigger coverage under the international policy.

While the place-of-injury test is almost universally applied, in some policies the coverage territory restriction may be subject to exceptions. In CACI, for instance, the policy at issue provided a so-called short-time exception to the requirement that an occurrence take place in the U.S. This language extended coverage for occurrences that take place outside the coverage territory that result from the activities of a person whose home is in the coverage territory, but is away from there for a short time on business. The court in CACI held this exception did not apply because "short time" was interpreted as meaning an actual brief, discrete event, not a theoretical "short time" when the actual allegations refer to a lengthy period of time stationed

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overseas. Further, the court held the exception applied to the actions of a single CACI employee while he or she was on a business trip. The allegations in this case involved a multiyear presence of operations by many CACI employees and were therefore outside the scope of the short-time exception to the coverage territory requirement.

Another variation on the coverage territory requirement provides the policy covers occurrences that take place in “all other parts of the world” so long as liability is determined in a suit on the merits in the U.S., Puerto Rico or Canada. In *Diamond State Ins. Co. v. Marin Mountain Bikes Inc.*, No. 11-5193 (N.D. Cal. Sept. 10, 2012), an occurrence in the U.K. resulting from a defective bicycle was not covered because the “suit on the merits” took place in the U.K. and not the U.S. As a result, the insurer did not have a duty to defend. Policyholders should be mindful of these and other types of exceptions to geographical limitation language in their policies.

As shown in the above cases, it is important for policyholders to review all the terms of their policies, both for evaluating coverage under existing policies when a claim is made, and, in particular, when purchasing new policies. A policyholder with international operations may want to confirm the coverage is not restricted to the U.S., or otherwise should seek to endorse the policy to add relevant exceptions to the geographic limitations.

Finally, it may also not be enough that a policyholder procures both domestic and international coverage if those coverages do not sufficiently complement each other. For instance, in *RC2*, the policyholder actually had a policy that covered operations in the U.S., even though that suit only concerned coverage under a policy covering foreign operations. However, the domestic policy contained a lead exclusion, and therefore did not cover the product liability claims at issue. Policyholders should carefully review all their coverages to ensure risks associated with the nature of their operations are fully covered, both domestically and in foreign territories.