

**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 Defendant The Travelers Indemnity Company's Motion For Summary Judgment With Regard to Choice of Law
DENIED

DAVIS, J.

This 8th day of June, 2015, upon consideration of the Defendants the Travelers Indemnity Company's Motion for Partial Summary Judgment with Regard to Choice of Law (the "Motion") filed on October 17, 2014; Munich Reinsurance America, Inc.'s Joinder in Travelers Indemnity Company's Motion for Partial Summary Judgment With Regard to Choice of Law, filed on October 17, 2014 (the "Munich Re Motion"); the Motion and Joinder of Defendants, Certain Underwriters at Lloyd's, London, in the Travelers Indemnity Company's Motion for Partial Summary Judgment with Regard to Choice of Law (the "Lloyd's Motion"), filed on October 17, 2014; the Joinder of Defendant Central National Insurance Company of Omaha in Travelers' Motion for Summary Judgment on Choice of Law (the "Central Joinder"); and Plaintiff's Answering Brief in Opposition to Travelers' Motion for Partial Summary Judgment with Regard to Choice of Law (the "Answer") filed on December 10, 2014; and Defendant The Travelers

Indemnity Company's Reply Brief in Support of Its Motion for Summary Judgment on Choice of Law (the "Reply"); the Court having held a hearing and heard arguments from the parties on the Motion, the Munich Re Motion, the Lloyd's Motion, the Central Joinder, the Answer and the Reply on May 18, 2015 (the "May 18 Hearing"), the Court finds as follows:

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."¹ 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.² 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.³ The moving party bears the initial burden of demonstrating that the undisputed facts support his claims or defenses.⁴ 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.⁵

2. Through the Motion, the Munich Re Motion, the Lloyd's Motion, the Central Joinder, the Answer and the Reply, the parties asked this Court to determine whether Texas law or Wisconsin law should govern certain insurance policies (the "Insurance Policies") issued by Travelers Indemnity Company that are the subject of this civil action.

¹ *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. Ct. 1973).

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

³ *Ebersole v. Lowengrub*, 180 A.2d 467, 470 (Del. 1962); see also *Cook v. City of Harrington*, 1990 WL 35244, at *3 (Del. Super. Ct. 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.").

⁴ *Moore v. Sizemore*, 405 A.2d 679, 680 (Del. 1979) (citing *Ebersole*, 180 A.2d at 470).

⁵ See *Brzoska v. Olson*, 668 A.2d 1355, 1364 (Del. 1995).

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

4. 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).

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

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

IT IS SO ORDERED.

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