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Valid Choice Of Law Provision Does Not Control Applicable "Bad-Faith" Law

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It is commonplace that insurers write insurance policies in multiple states that often insure businesses and operations all over the country. To provide some semblance of consistency in how their policies are interpreted, it is not uncommon for insurers to insert a choice of law provision specifying a specific state's laws to apply to similar policies used in multiple states. While most courts will enforce reasonable choice of law provisions as respects the law applicable to the policy provisions themselves, what about an insurer's claims handling responsibilities? Does a valid choice of law provision govern the law applicable to an insurer's claims handling or extra-contractual obligations? In the recent case of *Maritz Holdings v. Certain Underwriters at Lloyd's*, the US District Court for the Eastern District of Missouri provided an answer, ruling that an insured could pursue a claim against its insurer under Missouri's bad-faith law despite the fact that the insurance policy included a New York choice of law provision.

The *Maritz* case involved a dispute over insurance coverage for alleged losses arising out of cyber-security breaches experienced by Maritz, through which certain electronically stored gift card information was stolen. Underwriters issued breach-response insurance coverage to Maritz under two separate insurance policies, providing coverage for (among other things) certain fees and costs Maritz might incur in responding to such a security breach. Underwriters denied coverage on Maritz's claims, after which Maritz filed suit asserting claims for breach of contract and vexatious refusal to pay against Underwriters.

Underwriters filed a motion to dismiss the vexatious refusal count arguing that the "bad faith" claim, which was filed pursuant to a Missouri statute, was barred under the insurance agreement because of a choice of law provision in the policies. In particular, the policies contained a provision providing that "in case of any dispute arising out of this Insurance, the same shall be governed by the laws of New York." Underwriters argued that the insured's vexatious refusal to pay claim was a "dispute arising out of [the] insurance," and as such, was governed by New York law according to the choice of law provision. In contrast, Maritz argued that the "arising out of" language in the provision only applied to disputes involving interpretation of the two policies, and that the "bad faith" claim is not truly one "arising out of the insurance," but rather, one arising out of the carrier's allegedly improper conduct in responding to the claim after the insured submitted its losses to the carrier.

The Court began its analysis by rejecting the insured's argument that its vexatious refusal claim is not a "dispute arising out of [the] Insurance" policies. According to the Court, the unambiguous wording of the clause was not limited to contractual disputes, but on its face applied to "any" dispute arising out of the policies. Maritz's claim for vexatious refusal to pay was plainly one that arose out of the Insurance contracts as it was necessarily predicated on the existence of the policies and could not be brought if they were not in effect.

The Court did not end its analysis there, however. Applying Missouri choice-of-law rules, the Court recognized that while Missouri recognizes the right of the contracting parties to choose which state's laws will govern interpretation of a contract, such rules will only be applied when the chosen law is not contrary to the public policy of Missouri. In other words, "a state may not be required to enforce in its own courts the terms of an insurance policy normally subject to the law of another state where such enforcement will conflict with the public policy of the state of the forum." Accordingly, the law of the state chosen by the parties—here, New York—would only govern if its application would not be contrary to the public policy of Missouri.

According to the Court, Missouri “has a strong interest in protecting its own citizens,” as well as a “substantial interest in the business of insurance of its people [and] property.” As such, the Missouri vexatious refusal statute, relating as it does to the equitable and fair treatment of Missouri insureds, is not just a matter of Missouri substantive law, but also a declaration of state public policy. The insured, Maritz, was a Missouri-based corporation with its principal place of business in Missouri. As such, the Court reasoned there was a concrete local interest in Missouri to be protected by the application of Missouri's vexatious refusal law. Under these circumstances, the Court found that the choice-of-law provisions in the Underwriters policies would violate Missouri public policy, and therefore, could not preclude Maritz’s statutorily prescribed remedy for allegedly vexatious conduct. The Court denied Underwriters’ motion to dismiss, allowing the Missouri statutory “bad faith” claim to proceed under Missouri law.