**IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA**

SCA EFiled: Apr 14 2025
03:30PM EDT
Transaction ID 76063913

**No. 24-609**

**BOHNERT INTERNATIONAL, INC.,
NORVIN RAQUE, and
DAVID GRAESER,**

**Plaintiffs below, Petitioners,**

**v.**

**MOTORISTS MUTUAL INSURANCE COMPANY,**

**Defendant below, Respondent.**

---

**Appeal from the Intermediate Court
of Appeals of West Virginia
(Case No. 23-ICA-194)**

---

**BRIEF OF THE WEST VIRGINIA INSURANCE FEDERATION AS *AMICUS CURIAE* IN SUPPORT OF APPELLEE MOTORISTS MUTUAL INSURANCE COMPANY**

---

**Jill Cranston Rice (WV State Bar No. 7421)
Melanie Norris (WV State Bar No. 8581)
DINSMORE & SHOHL LLP
215 Don Knotts Blvd., Suite 310
Morgantown, WV 26501
Telephone: (304) 225-1430
Facsimile: (304) 296-0110**

***COUNSEL FOR AMICUS CURIAE
WEST VIRGINIA INSURANCE
FEDERATION***

## TABLE OF CONTENTS

# <u>TABLE OF AUTHORITIES</u>

## CASES



## RULES



## RESTATEMENTS



## GUIDES

## I. INTRODUCTION

The West Virginia Insurance Federation files this brief as *amicus curiae* in support of the brief filed by Appellee Motorists Mutual Insurance Company ("Motorists") because Appellant Bohnert International, Inc. ("Bohnert") attempts to expand and distort West Virginia's longstanding adherence to traditional conflict of laws principles under the doctrine of *lex loci contractus*. Having failed at both the Circuit Court level and at the Intermediate Court of Appeals ("ICA"), Petitioner Bohnert now asks this Court to undo decades of West Virginia legal precedent by interjecting the reasonable expectations doctrine and other unrelated factors into West Virginia's historical application of *lex loci contractus*. Such factors have no application in the choice of law analysis.

Petitioner Bohnert's proposed expansion of this core legal principle would upend West Virginia's established choice of law precedent, undermining the predictability, stability, and viability of West Virginia's insurance climate. Insurers rely on the predictability and stability of West Virginia's long-standing adherence to *lex loci contractus* when insurers price premiums for policies. This uncertainty necessarily will trickle down to West Virginia policyholders.

For the reasons detailed below, the Federation respectfully urges this Court to affirm the decision of the ICA.[1]

## II. STATEMENT OF INTEREST

The Federation is the state trade association for property and casualty insurance companies doing business in West Virginia. Its members insure approximately eight of every ten automobiles and homes in West Virginia. The Federation is widely regarded as the voice of West Virginia's

[1] Pursuant to Rule 30(b) of the West Virginia Rules of Appellate Procedure, the Federation provided notice of its intent to file a brief as *amicus curiae* on April 7, 2025 to counsel of record. Under Rule 30(a), counsel for Appellant and Appellee have consented to the filing of this brief. Additionally, pursuant to Rule 30(e)(5), the undersigned counsel authored this brief in its entirety. Neither party nor their respective counsel contributed to or made a monetary contribution specifically intended to fund the preparation or submission of this brief.

insurance industry and has served the property and casualty insurance industry since its formation in 1979. The Federation has a strong interest in promoting a healthy and competitive insurance market in our State to ensure that insurance is both available and affordable to West Virginia's insurance consumers.

The Federation files this brief pursuant to Rule 30 of the West Virginia Rules of Appellate Procedure in support of Motorists because the ICA's Order adhered to West Virginia's long-standing application of the traditional conflict of laws analysis, and it provides continued predictability and stability for the insurance market and, in turn, West Virginia policyholders.

## III. RELEVANT FACTS

The Federation submits this limited factual background that relates to the Federation's interest in the issue before this Court.

This case arises from a declaratory judgment action filed by Bohnert seeking a declaration that Motorists is obligated to defend and indemnify it in a lawsuit filed in Greenbrier County, West Virginia arising out of Bohnert's design, building, and installation work at a cooperage founded by WV Great Barrell Company LLC ("Barrell").

Petitioner Bohnert is a Kentucky Corporation with its principal place of business located in Louisville, Kentucky. A.R. 144. Bohnert's two officers, David Greaser and Norvin Raque, are also residents of Kentucky. A.R. 94. The Motorists Policy (the "Policy") at the center of the declaratory judgment action was issued to Bohnert in 2016 through an agency located in Kentucky. A.R. 94, 144. The Policy continued to renew for consecutive terms after its inception. The Policy includes Kentucky surcharges and endorsements. A.R. 94, 144-47. The identified risks under the Policy (i.e., premises, equipment and vehicles) are all registered and located in Kentucky. A.R. 94, 148-149. The policy references only locations and equipment located in Kentucky. *See id*. There is no mention of West Virginia anywhere in the Policy. A.R. 94.

On April 19, 2023, the Circuit Court of Greenbrier County entered summary judgment in favor of Motorists. A.R. 92-115. In doing so, it concluded that under the doctrine of *lex loci contractus*, Kentucky law applied to govern the interpretation of the Policy because Kentucky is the state where the policy was formed, and it has a more significant relationship to the insurance transaction than West Virginia. *See id*. The Circuit Court further held that, under Kentucky law, there was no coverage for the underlying lawsuit filed against Bohnert relating to its design, building, and installation work at the cooperage. *See id*.

Bohnert appealed, arguing, in relevant part, that the Circuit Court erred by applying Kentucky law to interpret the Policy because Bohnert did not reasonably expect that Kentucky law would apply, and because application of Kentucky law would violate public policy. A.R. 3-12. On September 4, 2023, the ICA affirmed the Circuit Court's Order, concluding that under the doctrine of *lex loci contractus*, Kentucky law applied and neither of the two exceptions applicable to the doctrine exist in this case. *See id*.

## IV. ARGUMENT

The Federation files this brief in support of Motorists for one primary reason: to ensure that this Court considers the implications of expanding and distorting West Virginia's decades long precedent established in the application of the doctrine of *lex loci contractus* which insurers have historically relied on to establish premiums, thus ensuring the predictability, stability, and viability of West Virginia's insurance climate.

### A. West Virginia's Traditional Conflict of Laws Analysis Must Be Applied Absent the Expansion Urged by Petitioner in Order to Maintain the Predictability, Stability, and Viability of West Virginia's Insurance Climate.

Kentucky law applies because West Virginia has followed a traditional choice of law analysis pursuant to the doctrine of *lex loci contractus* for decades. Specifically, "[t]he law of the state in which a contract is made and to be performed governs the construction of a contract when it is involved in litigation in the courts of this State." Syl. pt. 1, *Michigan National Bank v. Mattingly*, 158 W.Va. 621, 212 S.E.2d 754 (1975); see also *Gen. Elec. Co. v. Keyser*, 166 W.Va. 456, 461, 275 S.E.2d 289, 290, syl. pt. 1 (1981); *Johnson v. Neal*, 187 W. Va. 239, 242, 418 S.E. 2d 349, 352 (1992) (noting that West Virginia adheres to *lex loci contractus*)

This Court recently reiterated the proper procedure to be followed when analyzing a conflict of laws issue like the one at issue here:

> A proper analysis of the conflict of laws issue in this case begins with our holding in *Liberty Mut. Ins. Co. v. Triangle Indus.*, 182 W. Va. 580, 390 S.E.2d 562, (1990). In *Triangle Industries*, we held that "the interpretation of insurance policy coverage, rather than liability, is treated as a contract question for purposes of conflicts analysis." *Liberty Mut. Ins. Co. v. Triangle Indus.*, 182 W. Va. 580, 583, 390 S.E.2d 562, 565 (1990) (citing *Lee v. Saliga*, 179 W. Va. 762, 373 S.E.2d 345 (1988)). West Virginia observes the "normal rule of applying in contract cases the ancient doctrine of *lex loci contractus*." *Johnson v. Neal*, 187 W. Va. 239, 242, 418 S.E.2d 349, 352 (1992). "The law of the state in which a contract is made and to be performed governs the construction of a contract when it is involved in litigation in the courts of this state." Syl. Pt. 2, *Gen. Elec. Co. v. Keyser*, 166 W. Va. 456, 275 S.E.2d 289 (1981).

*State Farm Fire & Cas. Co. v. Nathaniel Realty*, 246 W. Va. 676, 680, 874 S.E.2d 788, 792 (2022).

Petitioner Bohnert does not contest, nor could it, that the Policy was issued in Kentucky to a Kentucky insured. As such, under the *lex loci contractus* doctrine, there is no dispute that Kentucky law applies. *See Lee v. Saliga*, 179 W. Va. 762, 766, 373 S.E.2d 345, 349, 1988 W. Va. LEXIS 122, *13 ("These courts have generally concluded that the state where the contract of insurance was issued and the insured resided would control the interpretation of that contract.").

There are, however, two exceptions to the doctrine: (1) unless another state has a more significant relationship to the transaction and the parties, or (2) the law of the other state is contrary to the public policy of this state. *See Liberty Mut. Ins. Co. v. Triangle Indus.*, Syl. Pt. 1,182 W. Va. 580, 585, 390 S.E.2d 562, 567 (1990).

It is these exceptions to the doctrine that Bohnert seeks to impermissibly expand by introducing new elements to West Virginia's choice of law analysis. Bohnert urges this Court to conclude that West Virginia has the "most significant relationship – based in large part – on the parties' justified expectations as well as public policy considerations." *See* Pet. Brief, p. 6. The gist of Bohnert's argument is that, since application of Kentucky law results in no coverage for the underlying claims, one of the two exceptions must apply because Bohnert reasonably expected to have coverage. An insured's reasonable expectation of coverage, however, has no place in West Virginia's historical application of our state's choice of law analysis, and this Court should reject Petitioner's argument and uphold the opinion of the ICA.

**1. Bohnert's Proposed Expansion of the Significant Relationship Test Attempts to Achieve a Results-Oriented Choice of Law Analysis That Applies the State Law Most Favorable To a Finding of Coverage.**

This Court has previously analyzed the factors to be considered in analyzing whether another state has a more significant relationship to a transaction, relying on the nonexclusive factors identified in the Restatement (Second) of Conflict of Laws:

> (a) the needs of the interstate and international systems,
> (b) the relevant policies of the forum,
> (c) the relevant policies of other interested states and the relative interests of those states in the determination of the particular issue,
> (d) the protection of justified expectations,
> (e) the basic policies underlying the particular field of law,
> (f) certainty, predictability and uniformity of result, and
> (g) ease in the determination and application of the law to be applied.

*Triangle*, 390 S.E.2d at 567 (concluding that the state in which the policy was issued had the most significant relationship wherein the policy was issued in New Jersey to cover a processing plant located in West Virginia and the damage occurred in Ohio).

Petitioner Bohnert's argument that West Virginia has the more significant relationship focuses almost exclusively on its misguided analysis of the Restatement factor regarding the "contracting parties' justified expectations". *See* Pet. Brief, p. 10.[2] Under the Restatement, the factor of "protection of justified expectations" relates to the justified expectation, if any, of Motorists or Bohnert that a particular state law would apply under the Policy. As noted in the commentary for Restatement Second:

> "*Protection of justified expectations*" . . . "Generally speaking, it would be unfair and improper to hold a person liable under the local law of one state when he had justifiably molded his conduct to conform to the requirements of another state."

Restatement 2d of Conflict of Laws, § 6 (2nd 1988), comment g.

Analyzing the "justified expectations" of the parties, it is clear that the only *justifiable* expectation is that Kentucky law would apply. It was a Kentucky policy, produced by a Kentucky agency, and issued to a Kentucky corporation. The Policy contained references to only property, equipment and vehicles located in Kentucky, and the Policy contained Kentucky surcharges and endorsements. Finally, the Policy was issued two years before Bohnert performed the work involving a West Virginia cooperage which gave rise to the underlying claims. The fact that Bohnert

---

[2] Petitioner alternatively argues that the events giving rise to the underlying lawsuit filed against Bohnert occurred in West Virginia such that it has the more significant relationship. *See* Pet. Brief, p. 14-15. However, the location in which the alleged wrongful conduct by Bohner occurred is not one of the factors set forth in the Restatement, as adopted by this Court in *Triangle*, for consideration when determining which state has the most significant relationship. Petitioner's sole authority cited in support of such argument, *Joy Techs. v. Liberty Mut. Ins. Co*., 187 W. Va. 742, 421 S.E.2d 493 (1992) is entirely distinguishable. In *Joy*, the Court used the public policy exception to apply the law of West Virginia after concluding that the insurer made certain representations to the Insurance Commissioner during hearings on the policy language.

was sued in the state of West Virginia does not reflect a "justified expectation" by either Bohnert or Motorists that West Virginia law would apply. To hold otherwise would disrupt the insurance industry's ability to rely on the laws of the state where the policy is sold, issued, and delivered, and, in many states, where the state regulator approves the policy forms. It would effectively adopt a rule that presumes an insured has a justified expectation that the law of any state where litigation is commenced against it will apply to the policy. That has never been, nor should it ever be, the standard in the State of West Virginia for choice of law analysis. *See e.g.*, *Scottsdale Ins. Co., v. Harleysville Ins. Co.*, 2013 U.S. Dist. LEXIS 180146, at *21 (N.D. W. Va. Dec. 24, 2013) (noting that to adopt a rule uniformly applying the law of the state of the insured risk to CGL policies would "defy expectations of insurers and insureds and 'undermine the predictability and uniformity of the law, which does not presume that parties to a CGL policy reasonably expect that the law of any state where litigation commences will apply to their policy.").

Bohnert purposefully conflates the "protection of justified expectations" factor under the Restatement Conflict of Laws with the "reasonable expectations doctrine" in an effort to bootstrap his prior unsuccessful argument before the lower courts that Bohnert reasonably expected coverage under the Policy for the underlying claims against it. The reasonable expectations doctrine delves into an insured's expectations concerning specific terms of a policy previously determined ambiguous by the Court. *See, e.g.*, 4 New Appleman Insurance Law Practice Guide Appendix 19 (2025) ("The objectively reasonable expectations of applicants and intended beneficiaries regarding the terms of insurance contracts will be honored even though painstaking study of the policy provisions would have negated those expectations."); *Nat'l Mut. Ins. Co. v. McMahon & Sons*, 177 W. Va. 734, 741, 356 S.E.2d 488, 495 (1987), o'ruled on other grounds *Parsons v. Halliburton Energy Servs.*, 237 W. Va. 138, 146, 785 S.E.2d 844, 852 (2016) (the *McMahon* Court holding that the reasonable expectations doctrine "is limited to those instances . . . in which the policy language is ambiguous.").

The reasonable expectations doctrine is distinct from this Court's analysis of the parties' justified expectations as to what state law would apply, and it has no place in West Virginia's traditional conflict of laws analysis. To hold otherwise would upend West Virginia's historic application of the traditional conflict of laws analysis, thereby undermining the uniformity and predictability insurers need to set premiums.

In *Triangle*, this Court emphasized the need for uniformity and predictability in an increasingly complex interstate insurance system. *See Triangle*, 390 S.E.2d at 585 ("'certainty, predictability and uniformity of result,' as well as 'ease in the determination and application of the law to be applied' is essential to the interpretation of an insurance policy when the law is not otherwise chosen by the parties.") Nowhere in West Virginia's choice of law precedent has an out-of-state insured's reasonable expectation that coverage would exist under his out-of-state policy factored into West Virginia's application of *lex loci contractus*. It would be detrimental to the insurance industry and West Virginia consumers if this Court were to expand West Virginia's conflict of laws analysis by holding otherwise.

**2. The Public Policy Exception to the Traditional Conflict of Laws Doctrine Does Not Take Into Account A Lack of Coverage or an Insured's "Reasonable Expectation" of Coverage.**

It is well established in West Virginia that the public policy exception "is necessarily a narrow one, to be invoked only in extraordinary circumstances." *Yost v. Travelers Ins. Co.*, 1999 U.S. App. LEXIS 13665, at *16 (4th Cir., June 21, 1999). "The mere fact that the substantive law of another jurisdiction differs from or is less favorable than the law of the forum state does not, by itself, demonstrate that application of the foreign law under recognized conflict of laws principles is contrary to the public policy of the forum state." *Nadler v. Liberty Mut. Fire Ins. Co.*, 188 W. Va. 329, 331, 424 S.E.2d 256, 258 (1992). Indeed, this Court has held that "a court should not refuse to apply foreign law, in otherwise proper circumstances, on public policy grounds unless the foreign law 'is contrary to pure morals or abstract justice, or unless enforcement would be of evil example and harmful to its own people.'" *Nadler*, 188 W. Va. at 329, 338, 424 S.E.2d 256,265 (1992) citing 16 Am. Jur. 2d *Conflict of Laws* § 18 (emphasis added).

Petitioner Bohnert urges this Court to apply the narrow public policy exception, arguing that "where the law of another jurisdiction is not only less favorable but would eliminate coverage that is plainly provided by the text of the Policy, and otherwise circumvents the parties' expectations, the law of the forum state must control." *See* Pet. Brief, p. 16. In other words, Bohnert contends that in analyzing the public policy exception, this Court should take into account whether application of the state law in which the policy was issued would eliminate coverage and whether the out-of-state insured reasonably expected it would have coverage. Such factors are not within the scope of the traditional conflict of laws analysis conducted by the courts of this State but are a gross expansion of decades of legal precedent concerning West Virginia's choice of law analysis.

Petitioner's brief is noticeably devoid of any legal precedent where this Court has enforced a public policy exception to *lex loci contractus* on the grounds that it would eliminate coverage that the out-of-state insured "reasonably expected" it would have. To the contrary, this Court has previously adhered to the doctrine of *lex loci contractus* and applied the law of another state even in situations where doing so eliminates or otherwise reduces available insurance coverage to the insured. *See, e.g.*, *Howe v. Howe*, 218 W. Va. 638, 625 S.E.2d 716 (2005) (applying Ohio law even though application of Ohio law precluded liability coverage that would have existed had the policy been interpreted under West Virginia law); *Nadler*, 188 W. Va. 329, at *287 (rejecting Plaintiff's argument that the public policy exception applied because application of Ohio law would offend West Virginia's public policy of full compensation for persons injured by an underinsured motorist, noting that "[i]f we allow the public policy underlying our uninsured/underinsured motorist law to control choice of law every time there is a difference between our law and the law of another jurisdiction, we will essentially abolish the conflict of laws rule set forth in *Lee v. Saliga.")*.

Under the public policy exception, there is no evidence that Kentucky law "is contrary to pure morals or abstract justice," or that its enforcement "would be of evil example and harmful to its own people." *Nadler v. Liberty Mut. Fire Ins. Co.,* 188 W. Va. 329, 338, 424 S.E.2d 256, 265 (1992). As correctly noted by the ICA, the "eliminat[ion] of coverage . . . alone is not enough to invoke the exception." And the insured's purported "reasonable expectation" of coverage has no place in the choice of law analysis. As such, Bohnert has failed to show that "extraordinary circumstances" exist in this case to invoke the public policy exception to the traditional conflict of laws analysis. As such, the established precedent of Kentucky, without further interpretation or expansion by West Virginia courts, applies to the Motorists Policy.

## V. CONCLUSION

Based on the foregoing, the West Virginia Insurance Federation respectfully requests that this Court affirm the Intermediate Court of Appeals decision issued on September 4, 2023.

**WEST VIRGINIA INSURANCE FEDERATION AS AMICUS CURIAE**

**BY DINSMORE & SHOHL LLP**

*/s/ Jill Cranston Rice*
Jill Cranston Rice (WV State Bar No. 7421)
Melanie Norris (WV State Bar No. 8581)
215 Don Knotts Blvd., Suite 310
Morgantown, WV 26501
Telephone: (304) 225-1430
Facsimile: (304) 296-6116 (facsimile)
Email: jill.rice@dinsmore.com

**CERTIFICATE OF SERVICE**

I, Jill Cranston Rice, hereby certify that on this 14th day of April, 2025, a true and accurate copy of the foregoing "Brief of the West Virginia Insurance Federation as *Amicus Curiae* in Support of Appellee Motorists Mutual Insurance Company" was filed and served using the electronic File & ServeXpress system, which will send notification to the following parties:

Lee Murray Hall
Jason D. Bowles
JENKINS FENSTERMAKER, PLLC
P.O. Box 2688
Huntington, WV 25726

J. Zak Ritchie
Isaac R. Forman
Kayla S. Reynolds
HISSAM FORMAN DONOVAN RITCHIE PLLC
P.O. Box 3983
Charleston, WV 25339

*/s/ Jill Cranston Rice*
Jill Cranston Rice (WV State Bar No. 7421)