The Lengthening Arm of the US Courts

5 October 2012

If a policy is issued in India by an Indian Insurer to an Indian policyholder, then logic would dictate that it is subject to Indian law and jurisdiction even if the policy wording does not contain an express choice of law/jurisdiction clause. However, a recent US decision illustrates the dangers inherent in an Insurer saying nothing about choice of law/jurisdiction in the policy. The judgment in question is the July 2012 US Court of Appeals for the Fourth Circuit ruling in *ESAB Group v Zurich Insurance*.

Background

In this case Zurich Ireland became the Insurer of a Norwegian Insured following the assignment to it of policies originally issued in Sweden. The policies in question granted worldwide cover. The Insured had a US subsidiary that was covered by the policies, and it notified a product liability claim that ran into millions of dollars because of judgments against it and defence costs. Zurich Ireland denied liability. Zurich Ireland and other Insurers were sued by the Insured US subsidiary in its home state, South Carolina.

Jurisdiction

Zurich Ireland challenged the jurisdiction of the South Carolina federal Court on a number of grounds, including that it had no employees, agents, offices or property in South Carolina. It also relied on the fact that the policies expressly stated that Swedish law would apply to the resolution of disputes.

The South Carolina Federal District Court ruled against Zurich Ireland, who appealed. The Appeal Court also ruled against Zurich Ireland on the issue of jurisdiction. It held if the Insured resides in the US, or if the insured event occurs in the US, the US Courts will have jurisdiction because:

- If an Insurer issues a worldwide cover that includes the US then it has "purposefully availed itself of the privilege of conducting business" in South Carolina and thereby indicated its willingness to be brought before a US Court.

- By assuming defence obligations under the policy, Zurich Ireland had also indicated that the burden of appearing in a forum such as South Carolina was "not exceedingly onerous".

Looking Ahead

The Fourth Circuit's decision is binding within the federal district courts of the Fourth Circuit (Maryland, Virginia, West Virginia, North Carolina and South Carolina) and may be considered persuasive, though not binding, in all other federal district courts. It will, therefore, be important to see whether other circuit courts across the United States adopt the Fourth Circuit's reasoning.

Nevertheless, a non-US-based Insurer offering worldwide cover to Insureds – particularly with duty to defend wording - would be well advised to revisit its wording in the light of the Fourth Circuit's opinion.

For further information on this topic please contact Tuli & Co
Tel +91 11 2464 0906, fax +91 2464 0904 or email lawyers@tuli.biz
www.tuli.biz

Article