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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: WALTER B. TOLUB PART 15

Justice

TRAVELERS CASUALTY AND SURETY COMPANY,

Plaintiff,

- v -

HONEYWELL INTERNATIONAL, INC., et al.

Defendants.

INDEX NO. 107138 /2006

AMENDED ORDER

MOTION SEQ. NO. 022, 023, 024

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	
Answering Affidavits — Exhibits	
Replying Affidavits	

Cross-Motion: ☐ Yes ☐ No

Upon the foregoing papers, motion sequence 022 is consolidated with motion sequence 023 and 024 and is decided in accordance with the following amended decision

This constitutes the decision and order of the court.

Dated: 3/19/08

WALTER B. TOLUB, *J.S.C.*

Check one: ☐ FINAL DISPOSITION ☐ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 15

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TRAVELERS CASUALTY AND SURETY COMPANY,

Plaintiff,

-against-

HONEYWELL INTERNATIONAL, INC., et al.,

Defendants.

----------X

AMENDED DECISION

Index No. 107138/06

WALTER B. TOLUB, J.

Motion Sequences 022, 023, 024 are consolidated for disposition and resolved in the following memorandum decision.

Over the last two decades, defendant Honeywell International, Inc., (Honeywell) has been sued by multiple claimants alleging, *inter alia*, bodily injury, personal injury, and/or other damage resulting from exposure to asbestos-containing products allegedly sold or distributed by one of Honeywell's predecessors, North American Refractories Company (NARCO).

By this action, plaintiff Travelers Casualty and Surety Company (Travelers), a Connecticut insurer, seeks declaratory relief regarding its insurance obligations to defendant Honeywell, a New Jersey policyholder, for the aforementioned NARCO asbestos claims. Travelers has joined as defendants, other insurers that issued policies to NARCO-related predecessors (the Insurer Defendants).[1] The policies involved in this action were issued from the

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[1] The list of defendants in this matter are extensive. They include: American Re-Insurance Company, Boston Old Colony Insurance Company, Columbia Casualty Company, Continental Casualty Company, Dairyland Insurance Company, Danielson Insurance Company f/k/a Mission Insurance Company, Employers Insurance Company of Wausau, Employers Mutual Casualty Company, Evanston Insurance Company, Everest Reinsurance Company, Federal Insurance Company, Fireman's Fund Insurance Company, First State Insurance Company, Hartford Accident and Indemnity Company, MidStates Reinsurance Corporation, Mt. McKinley Insurance Corporation, National Casualty Company, New England Insurance Company, Republic Insurance Company, Twin City Fire Insurance Company, and Zurich American Insurance

mid-1970's through the mid-1980's to two of Honeywell's predecessor corporations, Allied Corporation (Allied) and Eltra Corporation (Eltra).

By Motion Sequence 022, defendants Hartford Accident & Indemnity Company, First State Insurance Company, New England Reinsurance Corporation and Twin City Fire Insurance Company (collectively, "defendant Hartford") move for summary judgment and a declaration that New York law governs the interpretation of the Hartford policies at issue in this action. By Motion Sequence 023, defendant Honeywell moves for partial summary judgment and a declaration that New Jersey law applies to the interpretation and application of the policies at issue in this action. By Motion Sequence 024, Travelers moves for an order granting summary judgment and directing that New York law governs the interpretation of the policies at issue in this action.

FACTS

Honeywell is a Delaware corporation with its principal place of business located in Morristown, New Jersey (Aff. of Tanya Holcomb, ¶¶ 3, 6). Honeywell succeeded to the asbestos liabilities of NARCO – coverage for which is the subject of the present action – as a result of its 1999 merger with Allied. Allied acquired Eltra, into which NARCO had already been merged, in 1979 (id., ¶¶ 6-7).

Since at least 1942, Allied has had substantial operating assets in New Jersey and, at all times during its approximately 85 year history, a strong presence in New Jersey (id., ¶ 5). Honeywell's headquarters, and that of its predecessor Allied, has been located in New Jersey

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Company as successor to Zurich Insurance Company (US Branch).

since approximately 1971 (id., ¶ 3).[2] Thus, Allied's headquarters were in New Jersey throughout the relevant period, including when (1) Allied acquired Eltra/NARCO in 1979; (2) Allied merged with Honeywell in 1999; and when (3) the policies in question, including Travelers' policies, were issued (id., ¶ 6).

Honeywell's corporate headquarters, replete with 1200 employees, is located on a multi-acre campus in Morristown, New Jersey (id., ¶ 3). These headquarters serve both as Honeywell's corporate base for its worldwide operations, as well as the home for most of the corporate administrative departments of the company, including legal and risk management (id.).

Both Travelers and defendant Hartford are Connecticut insurers. Neither Travelers nor defendant Hartford have its principal place of business or headquarters in New York.

The Insurance Policies

Travelers' First Amended Complaint places two sets of policies at issue: (1) policies issued by Travelers in or prior to 1981 to Honeywell's predecessor Eltra (the Eltra Policies); and (2) policies issued during the 1979-1986 time period to Honeywell's predecessor Allied. Hartford also issued four high-layer/excess liability policies to Allied for the policy period October 1, 1983 to March 1, 1985 (the Hartford Policies, and collectively with the policies issued by Travelers to Allied, the Allied Policies). In total, there are 30 policies issued by Travelers, with a combined limit of $395 million dollars, at issue in this action (see Aff. of John T. Waldron, ¶¶ 4, 9 and Ex. E). Of these 30 policies, 26 of them are Allied Policies (4 of which were issued by Aetna, Travelers' predecessor) (id.). The 26 Allied Policies have combined total

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[2] Allied had its principal place of business in New York until 1971 (see Aff. of Helena Almeida, Ex. F).

limits of $370 million dollars (id.). Only four of the policies issued by Travelers are Eltra Policies (all of which were issued by Aetna) (id). These four Eltra Policies have combined limits of $25 million dollars (id.).

The Allied Policies were issued at a time when Allied's principal place of business, including the Risk Management Department responsible for procuring those policies, was in New Jersey (Holcomb Aff., ¶ 5). In contrast, Eltra was headquartered in New York at the time the Eltra policies were issued (id.).

Related Litigation

As mentioned previously, Honeywell has been named a party in numerous legal actions involving claims of asbestos exposure. Of particular interest to this court are the claims presently being litigated in New Jersey with respect to the liability of one of Honeywell's predecessors, Bendix Corporation (Bendix). Bendix is not a party to this action. However, the claims brought against Bendix, litigated in New Jersey since 2000 (see, Continental Insurance Company, et al. v Honeywell International, et al., No. MRS-L-1523-00, Superior Court of New Jersey, Law Division, Morris County), involve all but one of the Allied Policies at issue in the instant litigation.[3] The court further notes that in July 2006, the court in the Bendix Litigation determined that New Jersey law should apply to the allocation issues pertaining to Honeywell's asbestos claims in that case (Waldron Aff., ¶ 7, Ex. C, at 142-150).

Eight days after Travelers filed the instant action, Honeywell commenced an insurance coverage litigation in New Jersey regarding the NARCO liabilities (the New Jersey NARCO

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[3] The policies involved in this litigation and the Bendix action in New Jersey provided coverage for both the NARCO and Bendix asbestos claims (see Waldron Aff., ¶¶ 4, 7; Holcomb Aff., ¶ 8).

litigation) (Honeywell International, Inc. v Travelers Casualty and Surety Company et al., Docket No. MRS-L-1498-06, Superior Court of New Jersey, Law Division, Morris County).

DISCUSSION

The instant motions brought by Travelers, Hartford and Honeywell in this action all present the same issue: whether the court should apply New York law or New Jersey law to the interpretation and application of the insurance policies at issue in this action. The parties agree that New York and New Jersey differ significantly on the issue of the manner in which a loss is to be allocated among various applicable policies (compare Consolidated Edison Co. of New York, Inc. v Allstate Ins. Co., 98 NY2d 208 [2002] with Owens-Illinois, Inc. v United Ins. Co., 138 NJ 437 [1994]). However, while Honeywell asserts that the laws of New Jersey govern the policies at issue, both Travelers and Hartford take the position that it is New York law which should apply.

Choice-of-law questions arising in contract cases generally require what is often referred to as the "center of gravity" or "grouping of contacts" analysis prior to determining the applicability of a particular state's law.[4] The courts however, recognize an exception to this approach where the parties specifically intend for a particular state's law to apply (see Restatement (Second) of Conflicts of Law, § 187 [a court must generally give effect to the "law of the state chosen by the parties to govern their contractual rights"]). If there has been no choice of law election by the parties, the court is required to determine the applicable law (Certain Underwriters at Lloyd's, London v Foster Wheeler Corp., 36 AD3d 17, 20 [1st Dept 2006],

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[4] This analysis, is in fact, New York's approach to choice of law questions in contract cases.

appeal withdrawn, 8 NY3d 980 [2007] ("Foster Wheeler")).

With respect to the Allied Policies, both Travelers and Hartford assert that the exception set forth in §187 supports the application of New York law to the policies at issue in this case. The Allied Policies however, contain no choice of law provision or endorsement, and are completely silent on which state's law should apply. In the absence of any testimony or documents demonstrating the inclusion of an express choice of law provision within the policy, or an additional agreement between the parties expressly identifying which state's law to apply, the issue of whether New York or New Jersey law must turn on further analysis under New York's choice-of-law principles (see, Restatement (Second) of Conflicts of Law, § 187 comment a [1971]; Foster Wheeler, 26 AD3d, 17, 20).

The New York Court of Appeals has endorsed the choice-of-law principles set forth in §§ 193, 188 and 6 of the Restatement (Second) Conflict of Laws (the Second Restatement) (see Zurich Ins. Co. v Shearson Lehman Hutton, Inc., 84 NY2d 309 [1994]). Inasmuch as §193 of the Second Restatement, which has been adopted in New York, applies specifically within the context of an insurance coverage dispute, this court's analysis begins with this section.[5]

The provisions of §193 direct the application of the laws of the jurisdiction bearing the "principal location of the insured risk," "unless with respect to the particular issue, some other

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[5] Section 193 reads as follows:

The validity of a contract of fire, surety or casualty insurance and the rights created thereby are determined by the local law of the state which the parties understood was to be the principal location of the insured risk during the term of the policy, unless with respect to the particular issue, some other state has a more significant relationship under the principles stated in § 6 to the transaction and the parties, in which event the local law of the other state will be applied (Rest 2d Confl § 193).

state has a more significant relationship under the principles stated in § 6 [of the Second Restatement] to the transaction and the parties" (Zurich Ins. Co. at 318 [quoting §193]). Where the policies at issue cover risks in numerous states, however, New York law presently holds that the controlling law to be applied belongs to the jurisdiction of the policyholder's principal place of business, that location being the "principal location of the insured risk" and the place having the most significant relationship for purposes of analysis under §193 (see Foster Wheeler, 36 AD3d 17, 21-25).

The Appellate Division, First Department's Foster Wheeler decision is not only instructive for the purposes of this court's analysis, but directly on point. Foster Wheeler was a declaratory judgment action which sought apportionment of responsibility for the defense and indemnification costs of asbestos claims between plaintiff Foster Wheeler, the policyholder, and their liability insurers. Much like facts involved in this case, the policyholder in Foster Wheeler once had a principal place of business in New York before relocating to New Jersey. The policies at issue were purchased after the relocation to New Jersey, and provided by insurers located in multiple jurisdictions.

The Appellate Division in Foster Wheeler ultimately determined that New Jersey law was most applicable to the liability insurance contracts at issue. However, this conclusion was reached only after analysis under "broader" choice of law principles, which the court deemed necessary because the location-of-the-risk rule could not be "applied without modification in the event the insurance policies in question cover risks that are spread through multiple states" (Foster Wheeler, 36 AD3d 17, 21-22; Zurich Ins. Co., 84 NY2d 309, 318). This was determined especially true in situations where no particular state was understood to be "the principal location

of the insured risk" in the literal sense, for purposes of analysis under §193 (Foster Wheeler, 36 AD3d 17, 22).

The "broader" choice-of-law principles discussed and considered by the Appellate Division in Foster Wheeler are those enunciated in both §6 and 188 of the Second Restatement. Section 6 sets forth general choice-of-law principles,[6] and focuses on the "relative interests" of the alternative states (Restatement (Second) Conflict of Laws, § 6 [1971]; see also Zurich Ins. Co., 84 NY2d at 319 ["governmental interests" may be considered in contract cases]; Auten v Auten, 308 NY 155, 161 [1954] [consideration may be given in contract cases of "the place having the most interest in the problem"]; Foster Wheeler, 36 AD3d 17). Section 188, which helps to implement § 6 in contract cases, places an emphasis on the evaluation of the "contacts"

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[6] Section 6 reads as follows:

(1) A court, subject to constitutional restrictions, will follow a statutory directive of its own state on choice of law.

(2) When there is no such directive, the factors relevant to the choice of the applicable rule of law include

(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. (Rest. 2d Confl § 6).

of the parties.[7] This "grouping of contacts" approach involves looking at the domicile or place of business of the contracting parties, the location of the subject matter of the contract, and the places of performance, negotiation and contracting (see Zurich Ins. Co., 84 NY2d 309; Foster Wheeler, 36 AD3d 17).

The rationale behind the Appellate Division's decision to look at broader-choice-of-law principles in Foster Wheeler stemmed from the governmental interests implicated by an insured's claim against an insurer of risks located in multiple states. These, as defined by the Foster Wheeler court, included "(1) regulating conduct with respect to insured risks within the state's borders; (2) assuring that the state's domiciliaries are fairly treated by their insurers; (3) assuring that insurance is available to the state's domiciliaries from companies located both within and

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[7] Section 188 reads as follows:

(1) The rights and duties of the parties with respect to an issue in contract are determined by the local law of the state which, with respect to that issue, has the most significant relationship to the transaction and the parties under the principles stated in § 6.

(2) In the absence of an effective choice of law by the parties (see § 187), the contacts to be taken into account in applying the principles of § 6 to determine the law applicable to an issue include:

(a) the place of contracting,

(b) the place of negotiation of the contract,

(c) the place of performance,

(d) the location of the subject matter of the contract, and

(e) the domicil, residence, nationality, place of incorporation and place of business of the parties. These contacts are to be evaluated according to their relative importance with respect to the particular issue.

(3) If the place of negotiating the contract and the place of performance are in the same state, the local law of this state will usually be applied, except as otherwise provided in §§ 189-199 and 203. (Rest. 2d Confl.§ 188).

without the state; and (4) regulating the conduct of insurance companies doing business within the state's borders" (id. at 22 [quoting Fireman's Fund Ins. Co. v Schuster Films, Inc., 811 F Supp 978, 984 [SDNY 1993]).

The Foster Wheeler court thus concluded that, under § 193 as applied to risks located in multiple states, the law of the policyholder's domicile is controlling, stating:

> In the case of a corporate insured seeking coverage under a policy covering risks in multiple states, the foregoing interests, in aggregate, *weigh in favor of applying the law of the insured's domicile*, notwithstanding that certain other states (e.g., the states of the insurer's domicile, and where negotiation and contracting occurred) may share, to a lesser extent, in the fourth interest enumerated above [the interest in regulating the conduct of insurance companies doing business within the state's borders] ...
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> * * *
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> Additional goals of choice-of-law analysis are "certainty, predictability and uniformity of result" and "ease in the determination and application of the law to be applied." These goals, too, will be furthered by applying the law of the insured's domicile to liability insurance policies covering multistate risks. The state of the insured's domicile is a fact known to the parties at the time of contracting, and (in the absence of a contractual choice-of-law provision) application of the law of that state is most likely to conform to their expectations.
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> * * *
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> What emerges from the foregoing is that, where it is necessary to determine the law governing a liability insurance policy covering the risks in multiple states, *the state of the insured's domicile should be regarded as a proxy for the principal location of the insured risk. As such, the state of domicile is the source of applicable law.*

(Id. at 22-24 (emphasis added; citations omitted); see also Steadfast Ins. Co. v Sentinel Real Estate Corp., 283 AD2d 44, 50 [1st Dept 2001]; see also Maryland Cas. Co. v Continental Cas. Co., 332 F3d 145 [2d Cir 2003]).

The case before this court presents undisputed facts which establish that New Jersey was

the domicile and principal place of business for both Honeywell and its predecessor, Allied, during the relevant time period when the Allied Polices were issued. Given that New Jersey was Allied's principal place of business when the Allied Policies were purchased, § 193 and Foster Wheeler require the application of New Jersey law. Moreover, even in the absence of §193, application of New Jersey law is required under § 188 and § 6, inasmuch as New York courts have repeatedly given great weight, if not primacy, to the policyholder's principal place of business as compared to other contacts in insurance coverage, and have de-emphasized other contacts that do not implicate a state's interest in the matters in dispute.

As aptly discussed by the Appellate Division in Foster Wheeler:

> Even if consideration of all five Restatement factors were required, however, we still would conclude that New Jersey law should be applied. Further, we would reach the same conclusion even if, as the nonsettling insurers argue, New York constituted the place of contracting, negotiation, and the insured's performance. This is because the Restatement factors "are to be evaluated according to their relative importance with respect to the particular issue" (Restatement § 188 [2]). Stated otherwise, the choice-of-law analysis is not "a mindless scavenger hunt to see which state can be found to have more contacts, but rather . . . an effort to detect and analyze what interest the competing states have in enforcing their respective rules" (Fireman's Fund, 811 F Supp at 984). In the case of a liability insurance policy covering risks in multiple states, the state of the insured's principal place of business has a greater concern with issues of policy construction and application bearing on the amount of available coverage than do the states where contracting, negotiation, or payment of the premium happened to occur.

(Foster Wheeler, 36 AD3d 17, 27). In taking this approach, the Foster Wheeler court determined, "the conclusion is that the insured's principal place of business should be considered the 'primary factor' in the choice of law analysis" (id. at 28 [citation omitted]; accord Gulf Underwriters Ins. v Verizon Comm. Inc., 2007 WL 2175564 [Sup Ct, NY County 2007]

[applying the law of the state of the insured's principal place of business under a §188 analysis]; see also Fireman's Fund Ins. Co., 811 F Supp 978, supra; Munzer v St. Paul Fire & Marine Ins. Co., 203 AD2d 770 [3d Dept 1994]; Regional Import & Export Trucking Co. v North River Ins. Co., 149 AD2d 361 [1st Dept 1989]; Steadfast Ins. Co. v Casden Properties, Inc., 12 Misc 3d 1155(A) [Sup Ct, NY County 2006], affd 41 AD3d 120 [1st Dept 2007]).

The court further notes that despite the contentions of the defendants, the application of New Jersey law to the Allied Policies would not be inconsistent with the current litigation history of the related New Jersey actions.

In July 2006, court in the New Jersey Bendix Litigation decided that New Jersey allocation law should be applied to the Honeywell/Bendix asbestos coverage claims at issue in that case. The New Jersey Bendix Litigation involves all but one of the Allied Policies at issue here, as well as policies issued directly to Bendix (the predecessor of Allied and Honeywell). Applying New Jersey choice-of-law principles, which, like New York, incorporate §§ 193, 6 and 188 of the Second Restatement, the Bendix court concluded that New Jersey had the most substantial interest based upon the Allied and Honeywell presence in New Jersey, even though, when the Bendix policies were issued, Bendix itself had been located in Michigan (or Indiana) and the broker had been located in Michigan (or Illinois) (see Waldron Aff., ¶ 7 and Ex. C, at 142-150).

The court in the New Jersey NARCO litigation – which involves the same parties, policies and claims as the present action – has not formally made a choice-of-law determination. It would be remiss however, for this court to overlook the fact that the NARCO court has already indicated that some, if not most, of the policies involved in that action would be interpreted

under New Jersey law (Waldron Aff., ¶ 10, Ex. F, at 23-24). Moreover, in the course of determining that New Jersey was an appropriate forum for the dispute, the NARCO court concluded that New Jersey had the most significant connections to and interest in the dispute because Honeywell and its risk management division were located in New Jersey. The court also noted that New York had virtually no connection to the litigation because New York is not the principal place of business for either Travelers or Honeywell (see Waldron Aff., ¶ 10; Ex. E, at 18-19, 23-24, 62-63, 85).

In short, it would be inconsistent with the "predictability and uniformity of result" goal of New York conflict-of-laws principles for this court to determine that New York law should apply to the same policies, insurers and claims as to which the court in the New Jersey Bendix Litigation is already applying New Jersey law, and as to which the court in the New Jersey NARCO litigation will likely apply New Jersey law.

Arguments advanced by Travelers and Hartford in support of their motions and in opposition to Honeywell's motion do nothing to change this result. Most of the arguments presented focus not on §193, but on facts which, despite the absence of an explicit choice of law provision, Travelers and Hartford claim indicate an implicit agreement warranting the application of New York law. Travelers contends that the parties intended to apply New York law based on the use of New York brokers for policy procurement and the inclusion of an address at "1221 Avenue of the Americas" on some, but not all, of Allied's application for insurance and on the declaration pages of some, but not all, of the policies. Hartford's argument is largely similar, claiming that New York law was intended based on usage of a New York broker, inclusion of a New York address for Allied on the application and declarations page for each of each policy;

and the inclusion of New York related form endorsements on three of the four Hartford Policies.

These allegations however, even if assumed true, are insufficient as a matter of law to establish that the parties intended New York law to apply to the Allied Policies. As a preliminary matter, the claim that use of a New York broker to procure an insurance policy somehow establishes intent to apply New York law is completely without merit. (see, Foster Wheeler, (36 AD3d at 27-28); (American Guarantee & Co. v Hertz, 2007 WL 2175612, * 6 [Sup Ct, NY County 2007]; Fireman's Fund Ins. Co., 811 F Supp 978, 983; see also Munzer, 203 AD2d 770; Steadfast Ins. Co. v Casden Properties, Inc.,, 12 Misc 3d 1155(A)). The claim of election of New York law by virtue of inclusion of a 1221 Avenue of the Americas address on some, but not all of the policies, is equally unavailing. Neither Travelers nor Hartford cite any case law which identifies some "address" of the policyholder – as opposed to the policyholder's principal place of business or headquarters – as has having choice-of-law significance. Indeed, neither Travelers nor Hartford dispute that Allied's headquarters was in New Jersey when the Allied Policies were issued. Thus, the "address" listed in the policies does not provide a basis for seeking to have New York applied to the policies.

In any event, Honeywell presents probative evidence that Allied had no office at 1221 Avenue of the Americas at the time the application was filled out and the policies were placed. Although Allied did sublease space in that building years before, in 1981, Allied entered into an under-sublease agreement with Engelhard Mineral and Chemicals Corporation whereby Allied under-sublet its space at 1221 Avenue of the Americas to Engelhard until 1989 (Holcomb Aff. ¶ 5; Ex. B; Aff. of Beth Dreyfuss, ¶ 2; Ex. A). Thus, Allied had no office at the address that was placed on the questionnaire or on the policies during the relevant time frame (Aff. of Melissa J.

Tea, ¶ 3; Ex. A [attaching copies of relevant pages of New York phone book for 1981 through 1986 showing no Allied office located at 1221 Avenue of the Americas]; Holcomb Aff., ¶ 4 and Ex. A [attaching pages from Allied's internal pocket guides showing that Allied had an office at 1221 Avenue of the Americas in 1978 but no office there in 1981-1982 or 1984]). It is undisputed that, since well before the policies were obtained, Allied's headquarters and principal place of business has been in Morristown, New Jersey (Holcomb Aff., ¶ 3).

Honeywell also presents evidence that the "1221" address was the location of one of the brokers, Marsh & McLennan, not of Allied (Tea Aff., ¶ 4 and Ex. B). Travelers and Hartford do not cite to a single case holding that a policyholder's decision to have its broker's address placed on its policies – as opposed to the address of the insured's principal place of business – is proof of the policyholder's choice-of-law intent. To the contrary, New York courts have repeatedly emphasized that the policyholder's principal place of business is the most important, if not dispositive, choice-of-law factor, whereas the broker's location is entitled to little weight.

Although Hartford and Travelers also argue that the fact that Allied was incorporated in New York at the time the Allied Policies were issued leads to the conclusion that the parties intended New York law to apply, it is clear that "the state of the principal place of business takes precedence over the state of incorporation" when the insured's principal place of business and its state of incorporation differ (Foster Wheeler, 36 AD3d at 25; accord Gulf Underwriters, 2007 WL 2175564, supra).

Finally, Hartford points to the fact that three of the four Hartford Policies contain a New York-specific form endorsement as evidence of the parties' intent that New York law governs the policies. This argument fails for multiple reasons.

First, none of the endorsements specify which state's law should generally be applied to the interpretation of the policy. Indeed, Hartford has presented no evidence concerning how these endorsements came to be attached to the policies. Hartford does not provide any testimony or documents indicating who proposed that these endorsements be attached, or for what purpose. Moreover, it is clear that these are form endorsements – there is nothing on their face to suggest that the language was negotiated by the parties.

More importantly, multiple courts have held that endorsements of the general type upon which Hartford relies do not provide evidence of the parties' choice-of-law intent. For instance, in Fireman's Fund Insurance Co., 811 F Supp 980, supra, the policyholder argued that California law should govern because the policy at issue was "a California form of insurance policy and was obviously drafted with the intent that California law would apply" (id. at 983). The Court rejected this argument, holding that "the record developed here shows nothing probative of the parties' intent as to governing law" (id.; see also Hammersmith v TIG Ins. Co., 480 F3d 220 [3d Cir 2007] [Presence of a New York-specific endorsement and several other references to New York law in a policy did not amount to an implicit agreement between the parties that New York law should govern]; Beltway Mgt. Co. v Lexington-Landmark Ins. Co., 746 F Supp 1145, 1148 [D DC 1990] [court declined to apply New York law where policy at issue contained several New York-specific amendatory endorsements on the ground that "the contract does not explicitly designate which state's law should apply to it"]; Humbert v United Ohio Ins. Co., 154 Ohio App 3d 540 [2003] [the presence of a state-specific underinsured motorist endorsement in a commercial automobile insurance policy was not probative of the parties' intent for purposes of a choice-of-law determination under Restatement (Second) Conflicts of Law § 187]). Thus, the

mere fact that some of the policies contained a New York-related endorsement is insufficient to establish that the parties intended New York law to apply.

Accordingly, in accordance with § 193 of the Second Restatement and Foster Wheeler, this court holds that, because New Jersey is the principal place of business of Honeywell, as well as that of Allied, its predecessor, the law of New Jersey shall apply to the interpretation and application of the Allied Policies.

New York law, however, applies to the Eltra Policies. Unlike Allied, Eltra, a New York corporation, had its principal place of business in New York at all relevant times (see Aff. of Julio C. Velez, ¶ 4; Aff. of Helen Almeida, Ex. B; Honeywell's Mem. of Law, at 11 & n 12 [conceding that Eltra had its principal place of business in New York during the relevant time period). Accordingly, New York law must be applied to the Eltra Policies, as it was Eltra's principal place of business at the time the policies were issued, and is thus, under §193 and Foster Wheeler, "the principal location of the insured risk," and the place having the "most significant relationship" (Foster Wheeler, 36 AD3d at 21-25). Indeed, Honeywell concedes that the court should apply New York law to the four Eltra policies (see Honeywell's Opp to Travelers Mem., at 24).

The court has considered the remaining arguments, and finds them to be without merit. Accordingly, it is

ORDERED and DECLARED that the motion of defendants Hartford Accident & Indemnity Company, First State Insurance Company, New England Reinsurance Corporation and Twin City Fire Insurance Company for an order granting summary judgment and directing that New York law governs the interpretation of the Hartford Policies at issue in this action (Motion

Sequence No. 022) is denied; and it is further

ORDERED and DECLARED that the motion of defendant Honeywell International Inc. for an order granting partial summary judgment and directing that New Jersey law applies to the interpretation and application of the policies at issue in this action (Motion Sequence No. 023) is granted to the limited extent that this court declares that New Jersey law applies to the policies at issue in this action that were issued to Allied Corporation by both Travelers Casualty and Surety Company and Hartford, and is denied in all other respects; and it is further

ORDERED and DECLARED that the motion of plaintiff Travelers Casualty and Surety Company for an order granting summary judgment and directing that New York law governs the interpretation of the policies at issue in this action (Motion Sequence No. 024) is granted to the limited extent that this court declares that New York law applies to the four policies at issue in this action that were issued to Eltra Corporation, and is denied in all other respects.

This memorandum constitutes the decision, order, and declaration of the Court.

Dated: 3/19/08

ENTER:

Hon. Walter B. Tolub, J.S.C.