

Insurer Says Ga. Law Doesn't Apply In Employee Theft Suit

By **Josh Liberatore**

Law360 (July 27, 2022, 7:00 PM EDT) -- A Travelers unit urged a Georgia federal court to toss a residential construction company's claims for bad faith damages related to the insurer's refusal to provide coverage for an employee theft, saying Georgia law doesn't apply because the company is based in Washington, D.C.

In a **partial motion to dismiss** filed Monday, Travelers Casualty & Surety Co. of America said Tiber Capital Group LLC shouldn't be able to bring bad-faith claims under Georgia or Washington, D.C., law. Tiber, which is seeking nearly \$1 million coverage under a crime policy it had with Travelers, has said most of the renovated homes that were involved in an employee theft scheme were located in Georgia.

But Travelers said that under Georgia law, the question of which state's substantive law applies to a policy dispute turns on where the contract was signed, or "entered into."

"Plaintiff has pled no facts in the amended complaint regarding where the policy was made (i.e., entered into), and certainly has pled no facts that could support a finding that the policy was entered into in Georgia," Travelers wrote.

Travelers noted that Tiber has its headquarters in D.C. The company also admitted in its amended complaint that it renovates single-family homes throughout the United States and is seeking coverage from Travelers for some properties that weren't in Georgia, Travelers said.

Tiber also can't sue Travelers for bad-faith damages under D.C. law, the insurer said, arguing that D.C. doesn't allow policyholders to bring bad-faith claims against insurers based solely on the decision to deny coverage.

Tiber also seeks relief in the form of attorney fees under the contracts section of the Georgia Code. That claim must fail too, Travelers argued, because it's "available only if substantive Georgia law controls."

Tiber first sued Travelers in May 2022, asserting declaratory judgment, breach of contract and bad-faith claims against the insurer. The latter claim would entitle the company to an additional 50% penalty on its unpaid loss, it said.

According to Tiber's complaint, the construction company discovered in early 2021 that two of its vice presidents had been colluding with its subcontractors to steal money from the company. The subcontractors would submit invoices that were either inflated in price, duplicative of other invoices or outright fraudulent, and the Tiber executives would approve the bills, the company alleged.

The majority of the invoices were tied to properties in Georgia, Tiber alleged.

The construction company said it lost at least \$991,839 because of the scheme and sought that amount in coverage under its crime policy with Travelers. The policy ran from November 2020 to November 2021 and had a \$2 million employee theft single-loss coverage limit subject to a \$10,000 retention, Tiber said in its complaint.

The policy provided coverage for "crimes committed resulting in losses to Tiber," including thefts

committed by its employees, the construction company said.

"To date, Travelers has not provided any coverage opinion or otherwise explained its failure to provide coverage for the claim after over one year since acknowledging receipt of the claim," Tiber said in its May complaint.

After Travelers filed an initial motion to dismiss the bad-faith claim in June, Tiber amended its complaint earlier this month to include a bad-faith claim under Washington, D.C., law as well.

Representatives of Tiber and Travelers didn't immediately respond to requests for comment Wednesday.

Tiber Capital Group is represented by D. Austin Bersinger, Christopher J. Daniels and Alexis K. Daenecke of Barnes & Thornburg LLP.

Travelers is represented by P. Keith Lichtman and Zack D. Anderson of Mills Law Group.

The case is Tiber Capital Group LLC v. Travelers Casualty & Surety Co. of America, case number 2:22-cv-00095, in the U.S. District Court for the Northern District of Georgia.

--Editing by Emma Brauer.