

Policyholder Playbook Episode 29: While Renewing an Insurance Tower, Be Aware of Conflicting Forum, Law and Dispute Resolution Provisions

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Quick Overview of the Play – During renewal, consider whether to seek consistency in choice of forum, choice of law and dispute resolution provisions, to avoid a mishmash of provisions that risk necessitating litigation on multiple fronts or under multiple states’ laws.

The best policyholder advocates pay attention during renewal season. One thing they look for is consistency up the tower, and particularly with respect to choice of forum, choice of law and dispute resolution provisions. They know that, without that consistency, their insurers may argue that a coverage dispute that implicates the whole tower—a limits loss—must be resolved in multiple fora, under multiple states’ laws and/or subject to a variety of dispute resolution rules. And that’s just inefficient.

A policyholder-resort owner is dealing with that very situation in a \$55 million property damage dispute pending in Hawaii federal court. In *BRE Hotels & Resorts v. ACE American Insurance*, the policyholder acknowledges that its property insurance tower contains a “mishmash of conflicting terms concerning forum.”¹ Unsurprisingly given the “mishmash” of terms, the parties have advanced different forum arguments.² The policyholder argues Hawaii is the appropriate forum, whereas the insurers argue it is New York.³ Wouldn’t it be better to avoid all that? One strategy for doing so is to ensure consistency up the tower with respect to choice of forum—ensure each policy says, or adopts by follow form principles, the same forum language.

And don’t forget that, as discussed in [Episode 24](#), insurance policies often are negotiable. Meaning, it is possible to fix an insurance tower that is riddled with inconsistencies, and there is a clear basis for doing so—a policyholder shouldn’t be forced to resolve a claim under multiple states’ laws, in multiple fora or pursuant to multiple dispute resolution provisions. That doesn’t make any sense.

The bottom line: during renewal, consider whether to seek consistency in choice of forum, choice of law and dispute resolution provisions.

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¹ Pet.’s Memo. in Opp. to Resp.’s Mot. to Dismiss at 3, No. 24-cv-159 (July 12, 2024).

² See *id.* at 7–18.

³ See *id.*