

Most Favorable Jurisdiction

Most favorable jurisdiction means, “if a claim results in a punitive, exemplary, or multiplied damage award, the Insurer will pay such award, up to the applicable Limit of Liability, to the fullest extent permitted by law. The enforceability of the foregoing shall be governed by such applicable law in the jurisdiction which most favors coverage for punitive, exemplary and multiplied damages; provided that such jurisdiction has a substantial relationship to the Insured or the claim.”

Introduction

In many states, insurance coverage is not possible for damages that are not the direct result of a wrongful act. Punitive damages (those assessed by a court or jury) are those damages awarded in addition to actual damages because the defendant acted with recklessness, malice, or deceit. Such damages are meant to penalize the egregious actions of the defendant and act as a deterrent to others. Exemplary damages are simply another name for punitive damages. And multiplied damage awards are authorized by statute for much the same reason; they are double or treble damages, expanding the liability for actual damages.

What is the change?

If punitive and other similar damages are based on your wrongful act in the performance of professional services, the CNA policy will pay them within the normal policy limits and subject to your deductible obligation.

Now, the new policy language expands the insurer’s commitment to pay excess damage awards by creating a “most favorable jurisdiction” coverage provision.

Why did we change it?

In an egregious situation, a court may award damages that are in addition to actual damages. In the case of design firms, assessment of these punitive, exemplary, or multiplied damage awards usually happens when

the defendant acted with recklessness and violated the professional obligation of protecting public health and safety. The intent of damages is not only to penalize the wrongdoer, but also to make other design professionals aware of their higher duty beyond meeting contractual obligations. Because punitive damages are meant to deter blameworthy conduct, some states often prevent them from being covered by insurance. The argument is that if a party can be insured for its reprehensible conduct, there is no real punishment.

This enhancement increases the possibility of punitive damages coverage in the CNA policy for firms that have projects located in multiple jurisdictions. It also applies to smaller firms that may have projects in one state but, by contract, are subject to the laws of a more favorable jurisdiction.

How does it benefit my practice?

If a claim results in a punitive, exemplary, or multiplied damage award, the CNA policy will pay the award, up to the policy’s applicable limit of liability, to the fullest extent permitted by law in the jurisdiction that most favors coverage for punitive, exemplary, and multiplied damages. Of course, the jurisdiction has to have a substantial relationship to your firm or the claim for its rules to apply to the coverage. This means that you need not pay such damages with firm or personal funds.