

STATE OF MICHIGAN  
COURT OF APPEALS

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JOSIP RADELJAK, Individually, and as Personal  
Representative of the Estate of ENA BEGOVIC,  
Deceased, and as Next Friend of LANA  
RADELJAK, LEO RADELJAK and TEREZA  
BEGOVIC,

Plaintiff-Appellant,

v

DAIMLERCHRYSLER CORPORATION,

Defendant-Appellee.

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UNPUBLISHED  
December 14, 2004

No. 247781  
Wayne Circuit Court  
LC No. 02-228401-NP

Before: Cavanagh, P.J., and Jansen and Fort Hood, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order dismissing this case based on forum non conveniens. We reverse and remand.

This case stems from an automobile accident occurring on the Island of Brac in the Republic of Croatia. Plaintiff filed in Wayne County Circuit Court a products liability claim against defendant regarding the Jeep Grand Cherokee (hereinafter "the Jeep") involved in the accident. Defendant moved to dismiss arguing that Croatia was a more appropriate forum. The trial court agreed and dismissed the case.

The only issue on appeal is whether the circuit court properly dismissed this case based on forum non conveniens. This Court reviews a decision to dismiss a case based on forum non conveniens for an abuse of discretion. *Miller v Allied Signal, Inc*, 235 Mich App 710, 713; 599 NW2d 110 (1999).

The basic principle of forum non conveniens is that a court may resist impositions on its jurisdiction even if that jurisdiction is properly invoked. *Manfredi v Johnson Controls, Inc*, 194 Mich App 519, 521; 487 NW2d 475 (1992). After a party moves for dismissal based on forum non conveniens, the court must consider two things: 1) whether this forum is inconvenient; and 2) whether a more appropriate forum exists. *Id.* at 527, quoting *Robey v Ford Motor Co*, 155 Mich App 643, 645; 400 NW2d 610 (1986). If no more appropriate forum exists, the court can not resist jurisdiction. *Id.* Even if another more appropriate forum exists, the court sill may not

resist jurisdiction unless its own forum is “seriously inconvenient.” *Id.*, quoting *Robey, supra* at 645.

The Michigan Supreme Court articulated criteria to aid a trial court in determining whether to deny jurisdiction. These criteria are known as the *Cray*<sup>1</sup> factors. The trial court should weigh and balance out the following factors in making its decision:

1. The private interest of the litigant.
  - a. Availability of compulsory process for attendance of unwilling and the cost of obtaining attendance of willing witnesses;
  - b. Ease of access to sources of proof;
  - c. Distance from the situs of the accident or incident which gave rise to the litigation;
  - d. Enforceability of any judgment obtained;
  - e. Possible harassment of either party;
  - f. Other practical problems which contribute to the ease, expense and expedition of the trial;
  - g. Possibility of viewing the premises.
2. Matters of public interest.
  - a. Administrative difficulties which may arise in an area which may not be present in the area of origin;
  - b. Consideration of the state law which must govern the case;
  - c. People who are concerned by the proceeding.

3. Reasonable promptness in raising the plea of *forum non conveniens*. [*Russell v Chrysler Corp*, 443 Mich 617, 623; 505 NW2d 263 (1993) quoting *Cray v General Motors Corp*, 389 Mich 382, 395-396; 207 NW2d 393 (1973).]

A review of the trial court’s opinion and order reveals that it did not make the necessary findings to dismiss the case based on *forum non conveniens*. The trial court examined the *Cray* factors to determine if a more appropriate forum existed. But the trial court did not make a finding that Wayne County was a seriously inconvenient forum. Even if another more appropriate forum exists, the court still may not resist jurisdiction unless its own forum is

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<sup>1</sup> *Cray v General Motors Corp*, 389 Mich 382; 207 NW2d 393 (1973).

seriously inconvenient. *Manfredi, supra* at 527. Without a determination that Wayne County is a seriously inconvenient forum, the trial court could not resist jurisdiction. It therefore abused its discretion in granting the dismissal.

We will consider the *Cray* factors to determine if Croatia is a more appropriate forum and whether Wayne County is a seriously inconvenient forum.

1. Private Interests.

a. Availability of compulsory process for attendance of unwilling and the cost of obtaining attendance of willing witnesses.

The trial court stated that a Croatian court would have an easier time obtaining testimony from Croatian witnesses and in obtaining Croatian documents. This is obviously true. But this factor does not weigh as heavily for Croatia as the lower court claims. There is no dispute that documentation and witnesses will have to come from both Croatia and the United States. Plaintiff points to the fact that defendant manufactured and designed the Jeep in Michigan and that all documents pertaining to the design and manufacture are in this county rather than Croatia. Further, the main crux of plaintiff's claim is centered on the design of the Jeep. Therefore, it would be likely that the main witnesses will be testifying regarding the design of the Jeep. Reviewing the underlying issues of the case demonstrates there will be difficulties with obtaining witnesses and documents no matter which forum the case proceeds in. As such, this factor is equal.

Although the trial court pointed out that the transmission for the Jeep was designed in Japan rather than Michigan, this seems to be a red herring. First, plaintiff is not necessarily challenging the design of the transmission itself, but rather, seems to be challenging the choice of placing the transmission in the Jeep rather than another transmission. Second, no evidence exists that Croatia is better equipped to obtain information, documents and witnesses from Japan than Michigan. Therefore, this fact does not shift the consideration of this *Cray* factor.

b. Ease of access to sources of proof.

This factor is similarly situated to the first. Each forum would have equal difficulty in obtaining half of the necessary documents and witnesses. Croatia has documentation and witnesses regarding the actual accident, while Michigan has witnesses and documentation regarding design of the Jeep. This factor appears equal between the two forums. The trial court only considered the difficulties in keeping the case in Michigan and ignored the difficulties it would shift to Croatia. Given that the trial court is meant to balance these factors, this action is legally incorrect. *Russell, supra* at 623.

c. Distance from the situs of the accident or incident, which gave rise to the litigation.

At first glance, this factor would appear to automatically favor Croatia because the accident occurred there. But this Court has provided that the accident is not the only incident to consider. See *Manfredi, supra* at 525. The evaluating court must consider other incidents that give rise to the claim as well. These other incidents would include the manufacture and design of the product giving rise to the litigation. *Id.* at 525. The parties do not dispute that defendant designed and manufactured the Jeep in Michigan. Therefore, the Wayne County forum is much closer to the situs of those incidents. This factor is again equal.

d. Enforceability of any judgment obtained.

There is no indication that a judgment would not be enforceable in either forum. Defendant admits that it is subject to the jurisdiction of both venues. Plaintiff offers no reason why it could not obtain a judgment in either forum. Therefore, this factor is equal.

e. Possible harassment of either party.

Defendant argues that the possibility of harassment is great if Michigan is the forum due to the possible reluctance of Croatian witnesses to testify or cooperate. But again, this ignores the reciprocal problem in Croatia. There is nothing to indicate that Michigan and United States witnesses will be willing to travel and cooperate if the trial is moved to Croatia. In fact, there is more evidence that the Croatian witnesses would be willing to travel. Plaintiff offers statements by three individuals (the family doctor, the mechanic for the Jeep and the person conducting the investigation for the Croatian authorities) stating that they would be willing to travel and testify if the case remained in Michigan. Given that this is the only evidence offered, this factor weighs towards Michigan remaining the proper forum.

f. Other practical problems, which contribute to the ease, expense and expedition of the trial.

Defendant points to one particular issue under this section. It argues that it will be unable to implead other possible liable individuals if the case remains in Michigan. Defendant argues that this could severely damage its defense.

It seems true that defendant would be unlikely to implead third parties if Michigan remains the forum, but it is not as cut and dry as defendant argues. First, we do not know if any other possible person exists to implead. Second, we do not know what contacts this potential third party has with Michigan. Third, defendant offers no authority that impleading is even allowed in Croatia. Defendant merely leaves it to this Court to assume that Croatia allows impleading. "A party may not leave it to this Court to search for authority to sustain or reject its position." *Magee v Magee*, 218 Mich App 158, 161; 553 NW2d 363 (1996). Finally, we do not know that the potential third party will be a resident of Croatia. According to plaintiff, the Jeep was maintained and serviced in both Croatia and Italy. Further, defendant and the trial court both point to the fact that the transmission was designed in Japan. It is not clear that whom ever designed this transmission could be impleaded in Croatia. Assuming, that Croatian courts allow defendants to implead third parties, this factor favors Croatia as a forum, but only slightly.

g. Possibility of viewing the premises.

The possibility of viewing the accident site obviously favors Croatia as a forum.

## 2. Matters of Public Interest.

### a. Administrative difficulties, which may arise in an area, which may not be present in the area of origin.

Defendant points to concerns with the Wayne County docket and argues that this case would slow an already congested docket. Defendant states that the docket problem would be increased by the constant need of the parties to seek judicial guidance on the procedures needed to deal with foreign witnesses. Plaintiff argues that Wayne County's former docket problem has been eliminated. Again, defendant fails to consider potential reciprocal problems in a Croatian forum. Defendant offers no evidence to demonstrate that Wayne County's docket is more congested than the average Croatian court docket. For all this Court knows, Croatian dockets may be more glutted than Wayne County's docket. Defendant leaves it to this Court to investigate or guess at the condition of Croatian court dockets. This Court will not search for authority to make a party's argument. *Magee, supra* at 161. Also, defendant's argument regarding the problems of dealing with foreign witnesses is unpersuasive. It is undisputed that, no matter which country the case proceeds in, witnesses from the other country will have to testify. Whichever court becomes the forum for this case will have to deal with these issues and their potential complications. Therefore, this factor is again even between the two forums.

### b. Consideration of the state law, which must govern the case.

The trial court did not make a definitive finding on what state's law would apply to this case. Instead, the court stated that "Michigan law would likely not apply" and it assumed that Croatian law would therefore apply. The choice of law considerations are very important in applying the *Cray* factors. This Court has stated that a proper evaluation of the *Cray* factors cannot be accomplished without deciding which state's law applies first. *Manfredi, supra* at 525-526. The trial court did not delve into this issue but just assumed that Croatian law would apply, which was inappropriate. The trial court must first definitively evaluate and answer this question before proceeding on to balancing the *Cray* factors.

Further, it is not perfectly clear that Croatian law would apply to this case. Michigan has long abandoned the *lex loci delicti* rule. *Sutherland v Kennington Truck Servs*, 454 Mich 274, 284; 562 NW2d 466 (1997). Under the modern theory adopted by the Michigan Supreme Court, Michigan law will apply unless a rational reason to apply another state's law exists. *Id.* at 286. The Supreme Court stated:

In determining whether a rational reason to displace Michigan law exists, we undertake a two-step analysis. First, we must determine if any foreign state has an interest in having its law applied. If no state has such an interest, the presumption that Michigan law will apply cannot be overcome. If a foreign state does have an interest in having its law applied, we must then determine if Michigan's interests mandate that Michigan law be applied, despite the foreign interests. [*Id.*]

Under this standard, Michigan courts will use another state's law when the other state has a significant interest while Michigan has only a minimal interest in the matter. *Hall v GMC*, 229 Mich App 580, 585; 582 NW2d 866 (1998).

In this case, Croatia has an interest in applying its law. Begovic was a resident of Croatia as are the others represented by plaintiff. Croatia would have an interest in protecting its citizens and plaintiffs. Michigan also has an interest in the case. Defendant is located in Michigan, and there are greater connections. Defendant designed the Jeep in Michigan, defendant made the decisions regarding using the transmission in Michigan, and it manufactured the Jeep in Michigan. In addition, Michigan has just as much interest in the safe design and manufacture of goods as does Croatia. *Manfredi, supra* at 526. Given that defendant designed and manufactured the product within this state, Michigan may have a greater interest than Croatia in insuring proper design and manufacture. *Id.*

Evaluating the various interest reveals that Michigan has more than a minimal interest in the case. This is not a situation as in *Hall* or *Farrell v Ford Motor Co*, 199 Mich App 81, 94; 501 NW2d 567 (1993) where the only connection Michigan had with the case is that defendant headquartered here. Instead, many of the incidents giving rise to the injuries occurred in Michigan, such as manufacture and design of the Jeep. Michigan also has an interest in protecting its citizens from unsafe products produced in this state. *Manfredi, supra* at 526. Because Michigan has more than a minimal interest in the case, it may apply its own law. *Sutherland, supra* at 284; *Hall, supra* at 585. Given that Michigan may apply its own law, this factor favors Michigan as a forum.

c. People who are concerned by the proceeding.

Parties in both states should be concerned about the outcome of this proceeding because their citizens have an interest in safe product design and manufacture. On the one hand, Michigan residents arguably have more of an interest given that the product was designed and manufactured in Michigan. On the other hand, Croatian citizens may have more concern for this particular case given that the accident involved Croatian citizens and the fact that Begovic was a famous actor in that country. This factor weighs evenly between the forums.

3. Reasonable Promptness in Raising the Plea of *Forum Non Conveniens*.

The parties do not dispute that defendant promptly raised this issue.

4. Balancing and Weighing of the *Cray* Factors.

Considering the above discussed factors together, it is not clear that Croatia is a more appropriate forum than Michigan. Most factors under the consideration of private interest of the litigants are equal between the forums. Only factor f and g favor Croatia as the more appropriate forum. On the other hand, factor e favors Michigan as the proper forum. In considering matters of public concern, factors a and c are equal. But factor b, the state's law applied, favors Michigan. Altogether, the *Cray* factors seem to show that these two forums are equally appropriate. Given that Croatia is not a more appropriate forum, the trial court should not have resisted jurisdiction. *Manfredi, supra* at 527.

A plaintiff's selection of forum is ordinarily accorded deference. *Manfredi, supra* at 523. Unless the balance of the *Cray* factors is strongly in favor of defendant, the plaintiff's choice of forum should not be disturbed. *Anderson v Great Lakes Dredge & Dock Co*, 411 Mich 619, 628; 309 NW2d 539 (1981) (quotation omitted). In this case, the lower court gave very little deference to plaintiff's choice of forum. A review of the trial court's opinion seems to show that the court was looking for the weaknesses of Michigan as a forum without any consideration of the same weaknesses in Croatia as a forum. The *Cray* factors do not strongly favor Croatia as a forum. Therefore, the trial court abused its discretion in refusing jurisdiction. *Id.*; *Manfredi, supra* at 523.

Considering the *Cray* factors also aids in judging whether Michigan is a seriously inconvenient forum. Even if another more appropriate forum exists, the court still may not resist jurisdiction unless its own forum is seriously inconvenient. *Manfredi, supra* at 527. Given that the *Cray* factors are so evenly balanced between the two forums, Michigan is not a seriously inconvenient forum. As discussed, *supra*, numerous witnesses and documents are in this state. Also, Michigan has the potential of applying its own law. Under the circumstances, Wayne County is not a seriously inconvenient forum and the trial court erred in dismissing the case based on forum non conveniens. *Id.* It is not the function of forum non conveniens to shift inconveniences from one forum to another. Rather, it is meant to shift jurisdiction to more appropriate forums when retention of the case in the chosen forum is *seriously* inconvenient. This is not such a case.

Reversed and remanded for further proceeding consistent with this opinion. We do not retain jurisdiction.

/s/ Mark J. Cavanagh  
/s/ Kathleen Jansen  
/s/ Karen M. Fort Hood