

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

Refugio Cano Pena, Individually and as :
Representative of the Estate of Patricia :
Lopez Nares, Deceased and Next Friend of :
Adrian Cano Lopez, a Minor, and Denise :
Cano Arenas, Individually, as Next Friend :
of Nahi Adrianna Arenas, a Minor, and as :
Heir to the Estate of Patricia Lopez Nares, :
and Eric Cano, Individually and as an Heir :
to the Estate of Patricia Lopes Nares :
:
v. : C.A. No. 07C-06-059-JRJ
:
Cooper Tire & Rubber Co., Inc. :

Date Submitted: January 27, 2010

Date Decided: April 15, 2010

Upon Defendant's Motion to Apply and Determine the Law of Mexico: **DENIED**

Richard Zappa, Esquire and Timothy E. Lengkeek, Esquire, Young, Conaway, Stargatt, & Taylor, LLP, 1000 West Street, 17th Floor, P.O. Box 391, Wilmington, DE 19899, and Julian C. Gomez, Esquire, The Gomez Law Firm, PLLC, P.O. Box 2004, McAllen, Texas, 78504, Attorneys for Plaintiffs.

Somers S. Price, Jr., Esquire, Potter, Anderson & Corroon, LLP, 1313 North Market Street, 6th Floor, P.O. Box 951, Wilmington DE, 19899, and John J. Sicilano, Esquire, Shumaker, Loop & Kendrick, LLP, 1000 Jackson Street, Toledo, OH, 43604, Attorneys for Defendant.

Jurden, J.

I. INTRODUCTION

This is a product liability action arising from a motor vehicle accident involving a Ford Aerostar van equipped with a Roadmaster Custom A/S tire. Before the Court is Defendant, Cooper Tire and Rubber Company Inc.'s (hereinafter "Cooper Tire") Motion to Apply and Determine the Law of Mexico.¹ This Motion is filed pursuant to Superior Court Civil Rule 44.1.² In its Motion, Cooper Tire argues that the substantive law of Chihuahua, Mexico should govern Plaintiffs' claims.

For the reasons that follow, Cooper Tire's Motion to Apply and Determine the law of Mexico is hereby **DENIED**.

II. BACKGROUND

The Parties

Plaintiffs are residents of Chihuahua, Mexico, and are citizens of Mexico.³ Cooper Tire is a Delaware corporation with its principal place of business in

¹ This Motion was originally filed as a joint motion by Cooper Tire and Ford Motor Company (hereinafter "Ford"). However, since the time of filing, Ford has been dismissed as a party to the lawsuit. *See* Defendants' Joint Motion to Apply and Determine the Law of Mexico, Docket Item (hereinafter "D.I.") 58 and Stipulation of Dismissal, D.I. 196.

² Superior Court Civil Rule 44.1 provides: A party who intends to raise an issue concerning the law of a foreign country shall give notice in the party's pleadings or other reasonable written notice. The Court, in determining foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under the Delaware Rules of Evidence. The Court's determination shall be treated as a ruling on a question of law.

³ Def.'s Op. Br., D.I. 58 at 3, 12; Pls.' Resp. Br., D.I. 68 at 9. Plaintiff, Denise Cano Lopez, has dual citizenship in Mexico and the United States.

Ohio.⁴

The Accident

On September 1, 2006,⁵ Plaintiff, Refugio Cano Pena (hereinafter “Pena”) was driving a 1994 Ford Aerostar (hereinafter “the Vehicle”), which was equipped with a Roadmaster Custom A/S tire (hereinafter “the Tire”).⁶ Patricia Lopez Nares (hereinafter “Decedent”) was a front seat passenger, and Plaintiffs, Adrian Cano Lopez (hereinafter “Lopez”), Nahi Adrianna Arenas (hereinafter “Arenas”), and Eric Cano (hereinafter “Cano”) were passengers in the rear of the Vehicle.⁷ Pena was traveling on a highway in the state of Chihuahua, Mexico when the Tire allegedly suffered a catastrophic tread separation, causing the Vehicle to roll over. Plaintiffs, Pena, Lopez, Arenas, and Cano sustained severe injuries while Decedent suffered fatal injuries.⁸

The Tire and the Vehicle

The Tire is identified as a Roadmaster Custom A/S, DOT U9HBFJX338.⁹ The Tire was designed by Cooper Tire in Ohio and manufactured in Mississippi.¹⁰ The Vehicle is identified by its vehicle identification number,

⁴ *Id.*

⁵ Compl., D.I. 1 at 2.

⁶ *Id.*

⁷ *Id.*

⁸ Compl., D.I. 1 at 3.

⁹ Def.’s Exh. 5 at 1; Pls.’ Resp. Br. D.I. 68 at 4.

¹⁰ Def.’s Op. Br., D.I. 58 at 3; Pls.’ Resp. Br., D.I. 68 at 3-4.

1FMDA31U2RZA5551.¹¹ It is undisputed that the Vehicle was designed by Ford in Michigan and was manufactured in Missouri.¹² Ford sold the Vehicle to a Ford Dealership in Iowa.¹³ Plaintiff, Pena purchased the Vehicle in Texas.¹⁴ It is undisputed that at the time Plaintiff, Pena purchase Vehicle, the Tire was on the Vehicle.¹⁵

III. DISCUSSION

Delaware Courts apply the “most significant relationship” test of the *Restatement (Second) of Conflict of Laws*¹⁶ in order to determine choice of law.¹⁷ The most significant relationship test is a flexible one and “requires each case to be decided on its own facts.”¹⁸ “Pursuant to Section 145 of the Second Restatement, the local law of the state which ‘has the most significant relationship to the occurrence and the parties under the principles stated in § 6 [of the Restatement]’ will govern the rights of litigants in a tort suit.”¹⁹

Section 145 lists contacts which should be considered when determining the law applicable to an issue. These contacts include:

¹¹ Pls.’ Resp. Br., D.I. 68, at 3.

¹² See Def.’s App. 4. See also Def.’s Op. Br., D.I. 58 at 3; Pls.’ Resp. Br., D.I. 68, at 3-4.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Restatement (Second) of Conflict of Laws* § 145 (1971).

¹⁷ *Travelers Indem. Co. v. Lake*, 594 A.2d 38, 46-47 (Del. 1991).

¹⁸ *Id.* at 48.

¹⁹ *Id.* at 47. The principles listed in Section 6 of the *Restatement (Second) of Conflict of Laws* (1971) (hereinafter “§ 6”) are set forth in the text *infra* at pp. 5-6.

- (1) the place where the injury occurred,
- (2) the place where the conduct causing the injury occurred,
- (3) the domicil, residence, nationality, place of incorporation and place of business of the parties, and
- (4) the place where the relationship, if any, between the parties is centered.²⁰

Section 145 does not allow a court to simply add up the interests of the jurisdictions and apply the law of the jurisdiction with the most contacts.²¹ Section 145 has a qualitative element.²² “[Section 145] clearly states that the ‘contacts are to be evaluated according to their relative importance with respect to the particular issue.’”²³

In addition, each of the aforementioned contacts must be weighed in light of § 6, which requires consideration of the following:

- (1) the needs of the interstate and international systems,
- (2) the relevant policies of the forum,

²⁰ *Restatement (Second) of Conflict of Laws* § 145(2) (1971).

²¹ *Travelers*, 594 A.2d at 48 n.6.

²² *Id.*

²³ *Id.* (quoting *Restatement (Second) of Conflict of Laws* § 145 (1971)).

- (3) the relevant policies of other interested states and the relative interests of those states in the determination of the particular issue,
- (4) the protection of justified expectations,
- (5) the basic policies underlying the particular field of law,
- (6) certainty, predictability and uniformity of result, and
- (7) ease in the determination and application of the law to be applied.²⁴

Section 146 of the *Restatement (Second) Conflict of Laws*²⁵ directs the Court to apply the law of the state where the injury occurred in an action for a personal injury unless “some other state has a more significant relationship under the principles stated in § 6 to the occurrence and the parties, in which event the local law of the other state will be applied.”²⁶ A place of injury does not play an important role in the selection of the applicable law “when the place of injury can be said to be fortuitous or when for other reasons it bears little relation to the occurrence and the parties with respect to the particular issue.”²⁷

Place of Injury

“In personal injury actions, there is a rebuttable presumption in favor of the law of the state where the injury occurred, unless another state has a more

²⁴ *Travelers*, 594 A.2d at 47.

²⁵ *Restatement (Second) of Conflict of Laws* § 146 (1971).

²⁶ *Rasmussen v. Uniroyal Goodrich Tire Co.*, 1995 WL 945556, at *2 (Del. Super. Aug. 18, 1995).

²⁷ *Id.* (quoting *Restatement (Second) of Conflict of Laws* § 145, cmt. e).

significant relationship to the action.”²⁸ The place of injury is often determinative of the most significant relationship, unless the place of injury is fortuitous.²⁹

Here, the place of injury, Chihuahua, is not fortuitous because Chihuahua is also the place in which all Plaintiffs reside. However, after the application of the factors set forth in § 6, discussed *infra.*, Chihuahua is not the place with the most significant relationship in this case.

Place Where Conduct that Caused the Injury Occurred

The wrongful conduct alleged by Plaintiffs in their lawsuit occurred in the United States, however, it did not occur in one state but rather in multiple states. The Tire was designed in Ohio and manufactured in Mississippi. The Vehicle was manufactured and assembled in Missouri. The Vehicle, which included the Tire, was purchased in used condition by Plaintiff, Pena in Texas.

Domicil, Residence, Nationality, Place of Incorporation and Place of Business of the Parties

As noted above, Plaintiffs are residents of Chihuahua, Mexico and are Mexican citizens. Cooper Tire is a Delaware corporation with its principal place of business in Ohio.

The Place where the Relationship Between the Parties is Centered

²⁸ *Smith v. DaimlerChrysler Corp.*, 2002 WL 31814534, at *1 (Del.Super. Nov. 20, 2002)(citing *Travelers Indem. Co. v. Lake*, 594 A.2d 38, 47 (Del. 1991)).

²⁹ *Cervantes v. Bridgestone/Firestone North Amer. Tire Co.*, 2008 WL 3522373 (Del.Super. Aug 14, 2008) amended by 2010 WL 431788 (Del.Super. Feb. 8, 2010).

The relationship between the parties in this case is centered in the United States.

Factors - Section 6 Restatement (Second) Conflict of Laws

After weighing each of the aforementioned contacts in light of the factors set forth in § 6, the Court finds that the law of Delaware shall apply to all claims and damages³⁰ in this case.

The choice of law analysis in this case is not straightforward. Although the place of injury is not fortuitous, the factors set forth in § 6 do not support the application of Chihuahua law or Mexican federal law.³¹ Consequently, the § 6 factors weigh in favor of applying U.S. law.

There are many states -- Delaware, Mississippi, Ohio, Texas -- which have *some* connection and interest to the issues in this case.³² Although these states potentially have an interest in the application of their respective laws, and although

³⁰ Although the instant Choice of Law Motion was filed jointly by Cooper Tire and Ford, Ford separately filed a Choice of Law Motion with regard to Punitive Damages. *See* D.I. 59. However, Ford is no longer a party to this action. *See* n.1 *supra*. Therefore, the Court does not have before it, and thus cannot decide, a separate Choice of Law Motion with respect to damages in this case.

³¹ There is a dispute between the parties as to whether the law of Chihuahua or the law of the United Mexican States would apply in this case since the accident occurred on a federal highway. In this section the Court will refer to “Mexican law” which will encompass both the law of Chihuahua and the law of the United Mexican States.

³² This case differs from the case of *Ortega v. Yokohama Corp. of N. Amer.*, C.A. No. 07C-06-105 (Del.Super. Mar. 31, 2010). In *Ortega*, there was one U.S. state with an overriding interest because the subject tire was both designed and manufactured in one state. Here, the Tire was designed in one state, manufactured in another state, and sold to Plaintiff in another state.

a court is permitted to apply the doctrine of “*depeccage*,”³³ Cooper Tire seems to have taken an all or nothing approach in addressing which law should apply in this litigation.³⁴ Thus, the Court finds that the state of Delaware has a more significant relationship than Chihuahua does under the principles stated in § 6.

First, it should be noted that Delaware is not simply just the forum state. Delaware is also the place where Cooper Tire is incorporated and a state in which Cooper Tire conducts business.³⁵ Thus, Delaware would have an interest in having Cooper Tire abide by its laws. Furthermore, Cooper Tire should reasonably expect to be held accountable under the laws of the state in which it is incorporated and conducts business.

The laws of Mexico severely limit the amount of damages a plaintiff can recover in a wrongful death action, and do not provide for a survival cause of action.³⁶ The purpose of those laws would seem to be to protect resident defendants from being accountable for large monetary damages associated with such actions.³⁷ In Delaware, the policies underlying the field of torts are to deter

³³ See *Pittman v. Maldania*, 2001 WL 1221704, at *3 (Del.Super. Jul. 31, 2001)(noting that “[d]epeccage is the process of deciding choice of law on an issue by issue basis, with the result that the law of one state may be determined to apply to one issue and the law of a different state to another issue in the same case.”).

³⁴ In the briefing of its Motion, Cooper Tire takes the position that the law of Chihuahua applies to this case and the law of Delaware does not. It fails to argue and discuss in its briefs that any other U.S. state law should apply in the alternative. See Def.’s Op. Br., D.I. 58; Def.’s Reply Br., D.I. 75. See also *Lee v. Choice Hotels Int’l Inc.* 2006 WL 1148737, at *2 (Del. Super. Mar. 21, 2006)(where the parties took an “all or nothing approach” in addressing the choice of law issue).

³⁵ See Pls.’ Ex. 8.

³⁶ See Def.’s App. 8; *Cervantes*, 2010 WL 431788, at *3.

³⁷ *Id.*

tortuous conduct and compensate victims.³⁸ Cooper Tire is a United States defendant. Therefore, neither the Country of Mexico nor any Mexican State has a strong policy interest in the application of its laws because such application would not protect a resident defendant. The policies of tort law would be furthered, however, if Delaware law were applied because Plaintiffs could be more adequately compensated for any potential loss, and would not be restricted in their claims and damages as they would be under Mexican law.

In addition, although the accident occurred in Chihuahua, “a foreign plaintiff has come to the U.S. . . . in order to hold defendants accountable for alleged wrongful conduct which occurred solely in the U.S.”³⁹ “It therefore does not offend fundamental fairness to allow for the suit to proceed under United States law.”⁴⁰ Furthermore, it seems fair to hold a defendant to the laws of the state in which it is incorporated and a state in which it conducts business, rather than have it comply with the laws of a foreign country.

The application of Mexican law would also invite uncertainty in this matter. As noted *supra*,⁴¹ there is disagreement among the parties, and the parties’ respective experts, as to whether Mexican state or Mexican federal law would apply to Plaintiffs’ claims since the accident occurred on a federal highway in

³⁸ *Judge Trucking Co., Inc. v. Estate of Cooper*, 1994 WL 680029, at *5 (Del. Super. Sept. 19, 1994).

³⁹ *Cervantes*, 2010 WL 431788, at *3.

⁴⁰ *Id.*

⁴¹ *See* n.31.

Chihuahua. If the Court applied Mexican law, given that the Mexican law experts hired by the parties disagree on whether state or federal law would apply, the Court would have to hold a hearing to hear testimony from the experts and/or perhaps hire its own independent Mexican law expert to resolve this issue.⁴²

Finally, applying Delaware law over Mexican law will foster uniformity of result and ease in the determination of the law to be applied. In similar cases, the Court has previously found that U.S. law will apply over Mexican law.⁴³ Applying Delaware law to the instant case will further uniformity of result in these types of cases. Additionally, the application of Mexican law in this case would be more costly and complicated for both the parties and the Court.⁴⁴

IV. CONCLUSION

Based on the foregoing, Delaware law shall apply to the claims and damages in this case.

IT IS SO ORDERED.

Jan R. Jurden, Judge

⁴² In *Saudi Basic Indust. Corp. v. Mobil Yanbu Petrochemical Co., Inc.*, C.A. No. 00C-07-161, the Court faced a similar situation. In that case, the Saudi law experts hired by the parties offered opinions on Saudi law that the Court could not reconcile. Pursuant to the Delaware Rules of Evidence, Rule 706, the Court hired its own Saudi law expert. After reviewing all the experts' reports, the Court held an all day hearing during which all three Saudi law experts testified and were subjected to cross examination. See *Saudi Basic Indust. Corp. v. Mobil Yanbu Petrochemical Co., Inc.*, 866 A.2d 1, 30-32 (Del. 2005).

⁴³ See *Ortega v. Yokohama Corp. of N. Amer.*, C.A. No. 07C-06-105 (Del.Super. Mar. 31, 2010); *Cervantes v. Bridgestone/Firestone North Amer. Tire Co.*, 2008 WL 3522373 (Del.Super. Aug 14, 2008) amended by 2010 WL 431788 (Del.Super. Feb. 8, 2010).

⁴⁴ See *supra* p. 10. See also *Cervantes*, 2010 WL 431788, at *4.

cc: Prothonotary - Original