

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

CLEMENCE MICHAUD, individually, :
and as Personal Representative of the Estate :
of Jean Provencher, Deceased, :
and :
LYNE STRICKER-BOULANGER, :
individually, as mother and natural guardian of :
GINGER STRICKER, a minor, and as Personal :
Representative of the Estate of Walter Stricker, :
Deceased, and HANSULRICH STRICKER, SR., :
Plaintiffs, :
v. : C.A. No. 00C-06-156-SCD
FAIRCHILD AIRCRAFT INCORPORATED, :
THE B.F. GOODRICH COMPANY, and :
B.F. GOODRICH AEROSPACE COMPONENT :
OVERHAUL & REPAIR, INC., :
Defendants. :

*Defendant Fairchild Aircraft Incorporated's Motion to Apply Quebec Law to the
Compensatory Damages Issue – GRANTED*

Submitted: April 16, 2004

Decided: May 13, 2004

O R D E R

This 13th day of May, 2004, the Motion of Defendant Fairchild Aircraft Incorporated (“FAI”) to Apply Quebec Law to the Compensatory Damages Issue, the Plaintiff’s response , the arguments of counsel, and post-argument correspondence having been duly considered, IT APPEARS THAT:

1. This lawsuit arises out of the crash of an airplane that caught fire shortly after

takeoff and crashed at Mirabel International Airport near Montreal, Quebec, Canada, on June 18, 1998. Everyone on board died. The plane was en route from Montreal, Quebec, to Petersborough, Ontario, Canada. Plaintiffs allege that the accident occurred as a result of a fire in a wheel well caused by overheated brakes.¹

2. The plaintiffs are the wives and personal representatives of the estates of the deceased Captain Jean Provencher and First Officer Walter Stricker (“decedents”). Decedents were domiciled and routinely flew in Quebec. They were employees of Propair. As a result of the accident, their survivors received workers’ compensation benefits under the laws of Quebec.

3. The claims of the other individuals who died in the accident were either settled or are being litigated in Quebec. Also pending in Quebec is a lawsuit commenced by Propair seeking subrogation against other entities, including FAI.

4. It is well established that Delaware decides choice of law questions based upon the “most significant relationships test” set forth in Restatement (Second) of Conflicts of Laws. *Travelers Indem. Co. v. Lake*, 594 A.2d 38 (1991).²

¹*Michaud v. Fairchild Aircraft Inc., et. al.*, Del. Super., C.A. No. 00C-06-156, Del Pesco, J. (Nov. 16, 2001) (Mem. Op.) 2001 Del. Super. LEXIS 482.

²Restatement §6 lists the relevant factors:

- a. the needs of the interstate and international systems;
- b. the relevant policies of the forum;
- c. the relevant policies of other interested states and the relevant interests of those states in the determination of a particular issue;
- d. the protection of justified expectations;
- e. the basic policies underlying the particular field of law;
- f. certainty, uniformity, and predictability of result; and
- g. ease in the determination and application of the law to be applied.

With respect to personal injury cases, Restatement §146 provides as follows:

In an action for personal injury, the local law of the state where the injury occurred determines the rights and liabilities of the parties, unless, with respect to the particular issue, 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.

5. It appears that all the applicable considerations dictate in favor of Quebec. The site of the accident and domicile of the decedents and all of the plaintiffs is Quebec. The various claims for workers' compensation benefits on behalf of all the people killed in the crash have been paid under Quebec law. All but the two decedents in this case have settled or are having their claims adjudicated in Quebec and, though it is not conceded by FAI, it appears that Quebec law has or will govern the determination of their damages claims. While it is unclear where the conduct causing the accident occurred, it was not in Delaware. The relationship between the parties was manufacturer of an aircraft and the individuals hired to fly the aircraft within Canada. The law of Quebec has the most significant relationship with this claim.

6. Plaintiffs argue that the real issue in this motion is the defendant's desire to limit

General principles concerning choice of law in tort cases are set forth in Restatement §145:

1. The rights and liabilities of the parties with respect to an issue in tort are determined by the local law of the state which, with respect to that issue, has the most significant relationship to the occurrence and the parties under the principles stated in §6.
2. Contacts to be taken into account in applying the principles of §6 to determine the law applicable to an issue include:
 - a. the place where the injury occurred;
 - b. the place where the conduct causing the injury occurred;
 - c. the domicile, residence, nationality, place of incorporation and place of business of the parties; and
 - d. the place where the relationship, if any, between the parties is centered.

the amount of non-economic damages pursuant to a “cap” which is applied in Quebec. While it does not appear that the limitation is a true “cap,” it does appear that the amount of damages which would be recoverable in Quebec is substantially less than could be awarded in Delaware.

7. Plaintiffs rely on the case of *Yoder v. Delmarva Power and Light Co.*³ for the proposition that Delaware law should be applied. In *Yoder*, even where the Restatement analysis led the Court to conclude that Maryland had the most significant relationship to the occurrence, the court concluded that the non-economic damages should be decided pursuant to Delaware law to avoid a cap which would pertain in Maryland. *Yoder* is distinguishable because the plaintiffs had considerable Delaware connections, the defendant was a Delaware corporation, and certain corporate activities related to the accident in question were tied to Delaware. Further, the court concluded that “a cap on non-economic damages would be contrary to Delaware’s public policy . . . which favors no cap on such damages.” Here, there is nothing except the incorporation of Fairchild which implicates Delaware.

³*Yoder v. Delmarva Power and Light Co.*, No. 01C-01-023 JTV, 2003 Del. Super. LEXIS 431 (Del. Super. Dec. 31, 2003).

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Defendant Fairchild Aircraft Incorporated's Motion to Apply Quebec Law to the
Compensatory Damages Issue is GRANTED.

IT IS SO ORDERED.

Judge Susan C. Del Pesco

Original to Prothonotary
xc: Robert Jacobs, Esquire
Anthony G. Flynn, Esquire
Sheriden Black, Esquire
James F. Harker, Esquire