STATE OF MICHIGAN

COURT OF APPEALS

JORDAN CYR, JANIS AICHINGER, CAROL ALSAY, SONJA ALVAREZ, BRANDON ANDERSON, WALTER BARANOWSKI, JESSICA BERNIER, JESSIE BROWN, ALONSO CANO, DESIREE CAREY, KATHLEEN L. CARMAN, JULIE CASTAGNO, RUSSELL CHATWIN, DEBRA CHEETHAM, JESSICA EVANGELINE CHRISTIE, TARRAH CIARIMBOLI, KEE CLAAR, MAUREEN CLEMON, JAAVON COLBERT, KAYLA COLEMAN, HEIDI COLLISON, ERICA COOPER, NICHOLE CRUZ, LARRY DENNISON, TAWNY DMYTRIW, SHERYL DODD, NICOLE DORR, LESLIE DOUGLASS, BRIAN DOWNING, GABRILLE DRAYTON, SYDNEY DRENNAN, CALEB DUDA, JACKIE EASTERWOOD, PAMELA ENDERLE, JENNIFER FAIRCLOTH, TERESA GANN, MELISSA GERKIN, HEATHER GOGGINS, JENNA GRAHAM, ELIZABETH GRAY, LINDSAY GREGORY, CHRISTINA GUERRERO, FRANK GUTIERREZ, JASON HAMEL, VIRGINIA HAMM, JILLIAN HARDMAN, JOANN HEADY, ADRIENNE HERBST, CARMEN HERNANDEZ, SAMANTHA HILL, JENNIFER HOBSON, TOMEKA HURSE, SARAH JACOB, JEREMIAH JOHNSON, ROBERT KALBAUGH, OLIVIA KELLOGG, KAY KING, ROCHELLE KING, NICK LAPOINTE, KAYCEE LARSON, BETTY LEASURE, BRENDA LIMBRICK-SANDERS, JENNA LITTLE, ALMA MARTIN, RICHARD MCCARTHY, RICHARD MCGUIRE, JR., ANNA MEADER, GARY MICHAEL, AMANDA MILLER, ANGELA MILLER, JULIEANNA MORALES, LISA MURPHY, PAMELA NEARING, DAVID NEWLAND, ASHLEY NICHOLSON, PAM NORTON, SUSIE

UNPUBLISHED
December 26, 2019

OLAUGHLIN, KENDRA PEELER, MARISSA PETTIT, AMBER PHELPS, GABRIELLE POWLOSKY, JAMES PRATT, JOSOFAT RENDON, ELISE RISPOLI, AIDA RIVAS, NICHOLE ROM, MELANIE RUSSELL, JOSH SENTINELLA, JONATHAN SIVERT, MALLORY SMITH, NIKKI SMITH, BRANDI SNIDER, DEBORAH SNOW, TERESA SPURGER, JANAI STANBERRY, JENNIFER TAYLOR, JEREMY TESSIER, SARA TOBIAS, JORDAN TRUPPNER, SARAH VAN TASSEL, JOSE VAZQUEZ, LEE VINES, TRACEY VOELTNER, HANNAH WARE, THELMA WARFORD, IMEISHA WASHINGTON, JAPONICA WATERS, VIRGINIA WHEELER, ROBYN WHITE, VITINA WHITE, SUE WILSON, WILLIAM WISE, DONNA WOJCIK, VICTORIA WOODS, MANDI WRIGHT, MICHAEL YATES, CRYSTAL YODER, and SHAWN ROBERT JOLLY,

Plaintiffs-Appellees,

v

FORD MOTOR COMPANY,

Defendant-Appellant.

No. 345751
Wayne Circuit Court
LC No. 17-006058-NZ

Before: FORT HOOD, P.J., and SERVITTO and BOONSTRA, JJ.

PER CURIAM.

Ford Motor Company ("Ford") appeals by leave granted[1] the trial court's opinion and order denying Ford's motion (1) to dismiss the nonresident plaintiffs' claims under the doctrine of forum non conveniens, and (2) for summary disposition of plaintiffs' claims under the Michigan Consumer Protection Act (MCPA), MCL 445.901 *et seq*. We reverse and remand for further proceedings consistent with this opinion.

I. FACTUAL BACKGROUND

[1] *Cyr v Ford Motor Company*, unpublished order of the Court of Appeals, issued November 29, 2018 (Docket No. 345751).

This case is one of 83 consolidated cases filed in the Wayne Circuit Court involving more than 12,000 plaintiffs, all of whom opted out of a class action against Ford alleging defective transmissions in Ford's vehicles, specifically the 2011-2016 Fiesta and the 2012-2016 Focus.[2] Plaintiffs are residents of all 50 states, plus Canada and Puerto Rico. Plaintiffs' second amended complaint alleges eight essential counts: (1) breach of express warranties; (2) breach of implied warranty of merchantability; (3) revocation of acceptance; (4) violation of the Magnuson-Moss Warranty Act, 15 USC 2301 *et seq*. (MMWA); (5) violation of the MCPA; (6) unconscionability under the Michigan Uniform Commercial Code (UCC), MCL 440.1101 *et seq.*; (7) fraud, misrepresentation, fraudulent concealment; and, (8) unjust enrichment.

In February 2018, Ford filed a motion seeking summary disposition of plaintiffs' MCPA claims and dismissal of the nonresident plaintiffs' claims under the doctrine of forum non conveniens. With regard to the MCPA claims, Ford argued that the *general* conduct at issue in this case—the manufacture, sale, and warrantying of automobiles—falls under the MCPA exemption set forth by MCL 445.904(1)(a), which exempts "transaction[s] or conduct specifically authorized under laws administered by a regulatory board or officer acting under statutory authority of this state or the United States[.]" With regard to forum non conveniens, Ford argued that the factors set forth in *Cray v Gen Motors Corp*, 389 Mich 382, 395-396; 207 NW2d 393 (1973), favored resolution of the nonresident plaintiffs' claims in their home jurisdictions, not Michigan. The trial court denied the motion. Ford appeals those decisions.

II. MCPA Exemption

On appeal, Ford argues that the trial court erred by holding that it was not entitled to the statutory exemption from MCPA liability that is set forth by MCL 445.904(1). We agree.

We review de novo a trial court's decision regarding a motion for summary disposition. *Heaton v Benton Constr Co*, 286 Mich App 528, 531; 780 NW2d 618 (2009). A motion for summary disposition

> under MCR 2.116(C)(8) tests the legal sufficiency of the complaint. All well-pleaded factual allegations are accepted as true and construed in a light most favorable to the nonmovant. A motion under MCR 2.116(C)(8) may be granted only where the claims alleged are so clearly unenforceable as a matter of law that no factual development could possibly justify recovery. When deciding a motion brought under this section, a court considers only the pleadings. [*Maiden v Rozwood*, 461 Mich 109, 119-120; 597 NW2d 817 (1999) (quotation marks and citations omitted).]

"When an action is based on a written contract, it is generally necessary to attach a copy of the contract to the complaint." *Laurel Woods Apartments v Roumayah*, 274 Mich App 631,

[2] In May 2018, the trial court created a sample class of five cases, which included multiple claims for vehicles of each model and each year. The trial court "stayed the non-sample Mass Actions pending the outcome of" the claims in the sample class.

635; 734 NW2d 217 (2007). Such a written instrument need not be attached to the complaint, however, if it is "in the possession of the adverse party and the pleading so states[.]" MCR 2.113(C)(1)(b). Plaintiffs' most recent amended complaint alleges that, upon their "information and belief," Ford has access to the express warranties at issue in this case. Hence, those express warranties are properly considered to be "part of the pleading[s] for all purposes." See MCR 2.113(C)(2).

"The burden of proving an exemption from [the MCPA] is upon the person[3] claiming the exemption." MCL 445.904(4). One such exemption is provided by § 4(1) of the MCPA, MCL 445.904(1), which in relevant part provides that the "act does not apply to . . . [a] transaction or conduct specifically authorized under laws administered by a regulatory board or officer acting under statutory authority of this state or the United States." This statutory exemption from MCPA liability is a "broad" one. *Smith v Globe Life Ins Co*, 460 Mich 446, 466; 597 NW2d 28 (1999). As explained in *Smith*, 460 Mich at 465:

> [W]hen the Legislature said that transactions or conduct 'specifically authorized' by law are exempt from the MCPA, it intended to include conduct the legality of which is in dispute. . . . [T]he relevant inquiry is not whether the specific misconduct alleged by the plaintiffs is 'specifically authorized.' Rather, it is whether the general transaction is specifically authorized by law, regardless of whether the specific misconduct alleged is prohibited.

A transaction or form of conduct is "specifically authorized" for purposes of MCL 445.904(1) if it is "explicitly sanctioned" by law. *Liss v Lewiston-Richards, Inc*, 478 Mich 203, 213; 732 NW2d 514 (2007). To the extent that a statute or regulation enumerates prohibitions that apply to the given transaction or conduct, it "assume[s] the propriety of" the transaction or conduct *in general*, i.e., when it is conducted in compliance with the statutory prohibitions. *Id*. at 214 n 39. Statutory definitions can also be helpful in determining whether a general transaction or conduct is "specifically authorized" by law. *Id*. at 213-214 (holding that because "[a] residential home builder, by statutory definition, is one who engages in construction activities 'for a fixed sum, price, fee, percentage, valuable consideration, or other compensation,' " it followed that such builders were " 'specifically authorized' to contract to build homes"). If the defendant is licensed to perform the general transaction or conduct and is subject to oversight by a regulatory board or officer acting under statutory authority, it necessarily follows that the subject transaction or conduct falls under the exemption set forth by MCL 445.904(1). *Id*. at 213-215 & n 39. See also *Kraft v Detroit Entertainment, LLC*, 261 Mich App 534, 541; 683 NW2d 200 (2004) ("we conclude that the general conduct involved in this case—the operation of slot machines—is regulated and was specifically authorized by the [Michigan Gaming Control Board]").

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[3] For purposes of the MCPA, the term "person" is statutorily defined as "an individual, corporation, limited liability company, trust, partnership, incorporated or unincorporated association, or other legal entity." MCL 445.902(1)(d).

In light of our Supreme Court's interpretation of MCL 445.904(1) in *Smith* and *Liss*, we conclude that the manufacture, sale, and lease of automobiles, and the provision of express and implied warranties concerning those automobiles and their components are all conduct that is "specifically authorized" under federal and state law.[4] Like banking, insurance, gaming, and medicine, the automotive industry is a highly regulated one, both in this state and nationally. Generally, those who professionally buy, sell, broker, lease, negotiate leases for, or deal in automobiles are required to be licensed and bonded—in each county in which such business is to be conducted—under Michigan law, and the Secretary of State is statutorily empowered with regulatory and rulemaking power to "observe, enforce, and administer" such licensure requirements. MCL 257.204; MCL 257.248(5); MCL 257.248(7); *Gen Elec Credit Corp v Wolverine Ins Co*, 420 Mich 176, 187; 362 NW2d 595 (1984) (holding that the Legislature intended for MCL 257.248(7), as amended by 1980 PA 398, "to protect the general public by requiring a license and a bond for persons dealing in motor vehicles"). Additionally, the Michigan Vehicle Code, MCL 257.1 *et seq*., sets forth certain rules that apply to automotive manufacturers, see, e.g., MCL 257.665a and MCL 257.217h, and defines the term "manufacturer" as "a person, firm, corporation or association engaged in the manufacture of new motor vehicles, trailers or trailer coaches or semi-trailers, as a regular business," MCL 257.28.

On the other hand, for purposes of the so-called "lemon law," MCL 257.1401 *et seq*., which largely concerns manufacturers' express warranties on new automobiles, the term "manufacturer" is statutorily defined as "a person[5] who manufactures, assembles, or is a distributor of new motor vehicles and includes an agent of a manufacturer but does not include a new motor vehicle dealer." MCL 257.1401(1)(d); *Hines v Volkswagen of America, Inc*, 265 Mich App 432, 438-439; 695 NW2d 84 (2005). Express and implied automotive warranties are also governed, in a somewhat overlapping fashion, by the UCC and the MMWA. See generally *Grosse Pointe Law Firm, PC v Jaguar Land Rover North America, LLC*, 317 Mich App 395; 894 NW2d 700 (2016); see also *id*. at 409-415 (BECKERING, P.J., concurring in the result) (comparing "express warranties" and "implied warranties" under the UCC with "implied warranties" and "full or limited" "written warranties" under the MMWA). Moreover, the MMWA defines the term "warrantor" as "any supplier[6] or other person who gives or offers to

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[4] We note that in deciding otherwise, the trial court relied on *State Farm Mut Auto Ins Co v BMW of North America, LLC*, unpublished opinion of the United States District Court for the Eastern District of Michigan, issued August 7, 2009 (Docket No. 08-12402) ("*State Farm*"), which in turn relied on *Tornow v Stanford Bros, Inc*, unpublished opinion of the Washtenaw Circuit Court, issued April 21, 2005 (Docket No. 03-785-NZ), with the federal court mistakenly attributing *Tornow* to *this* Court. Apart from the fact that these decisions are unpublished, *Tornow* was decided before *Liss* construed MCL 445.904(1)'s use of the phrase "specifically authorized," and *State Farm* failed to recognize as much, as did the trial court in this case.

[5] " 'Person' means a natural person, a sole proprietorship, partnership, corporation, association, unit or agency of government, trust, estate, or other legal entity." MCL 257.1401(1)(i).

[6] "The term 'supplier' means any person engaged in the business of making a consumer product directly or indirectly available to consumers." 15 USC 2301(4). "In determining the meaning of any Act of Congress, unless the context indicates otherwise," the term "person . . . include[s]

give a written warranty or who is or may be obligated under an implied warranty." 15 USC 2301(5).

Finally, under 49 USC 105(d) and the Motor Vehicle Safety Act, 49 USC 30101 *et seq*., the National Highway Traffic Safety Administration (NHTSA) enjoys extensive, statutorily delegated regulatory authority over the automotive industry, thereby enforcing regulations on everything from fuel economy, *Ctr for Auto Safety v NHTSA*, 793 F2d 1322, 1338; 253 US App DC 336 (1986), to brake lights, *Michelotti v United States*, 557 Fed Appx 956, 961 (CA Fed, 2014), to safety recalls resulting from defective engine components, *Winzler v Toyota Motor Sales USA, Inc*, 681 F3d 1208, 1209 (CA 10, 2012). The Motor Vehicle Safety Act defines "dealer" as "a person selling and distributing new motor vehicles or motor vehicle equipment primarily to purchasers that in good faith purchase the vehicles or equipment other than for resale," 49 USC 30102(a)(2), defines "distributor" as "a person primarily selling and distributing motor vehicles or motor vehicle equipment for resale," 49 USC 30102(a)(4), and defines "manufacturer" as "a person . . . manufacturing or assembling motor vehicles or motor vehicle equipment," or "importing motor vehicles or motor vehicle equipment for resale," 49 USC 30102(a)(6).

Under the rule of law announced in *Liss*, the extensive regulatory and licensing framework of the automotive industry under state and federal law explicitly sanctions the manufacture, sale, and lease of automobiles, and the provision of express and implied warranties concerning those automobiles and their components. Therefore, such conduct is "specifically authorized" under state and federal law. See *Liss*, 478 Mich at 213-215 & n 39. Furthermore, as noted earlier, several of the laws governing the automotive industry in those respects are administered by a regulatory board or officer acting under federal or state statutory authority. Hence, we conclude that Ford is exempt from plaintiffs' MCPA claims under MCL 445.904(1). Accordingly, the trial court erred by denying Ford summary disposition of the MCPA claims.

III. FORUM NON CONVENIENS

Ford next argues that the trial court abused its discretion by refusing to dismiss the nonresident plaintiffs' claims under the doctrine of forum non conveniens. We agree. "We review for an abuse of discretion a trial court's decision on whether to apply the doctrine of forum non conveniens." *Ramamoorthi v Ramamoorthi*, 323 Mich App 324, 340; 918 NW2d 191 (2018).

The doctrine of forum non conveniens "is not derived from statutes; rather, it is a common-law doctrine created by courts." *Radeljak v Daimlerchrysler Corp*, 475 Mich 598, 604; 719 NW2d 40 (2006). Application of the doctrine is discretionary, and it was first recognized in this state's jurisprudence by *Cray*, 389 Mich at 395 ("[t]he principle of Forum non conveniens establishes the right of a court to resist imposition upon its jurisdiction although such jurisdiction could properly be invoked"). *Radeljak*, 475 Mich at 604. The parties' residency is a factor "that

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corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals[.]" 1 USC 1.

a court can and must consider . . . in deciding whether to decline jurisdiction," but it is not dispositive, and there is nothing to prevent a resident of this state from asserting forum non conveniens against a nonresident. *Russell v Chrysler Corp*, 443 Mich 617, 622, 624 & n 11; 505 NW2d 263 (1993) (noting that the Court's analyses in *Cray* and in one of the consolidated appeals in *Russell* would have been greatly abbreviated had the Michigan residency of the defendant automaker in those cases—General Motors—automatically disqualified it from asserting forum non conveniens against the nonresident plaintiffs). Indeed, the domicile of corporate parties may be viewed as a particularly unimportant factor in this prudential calculus. See *Radeljak*, 475 Mich at 605 n 5 ("The place of corporate domicile . . . might be entitled to little consideration under the doctrine of *forum non conveniens*, which resists formalization and looks to the realities that make for doing justice.") (quotations marks, citation, and brackets omitted; ellipsis in original). Rather, as recognized in *Russell*, 443 Mich at 622-624, "the location of the parties" is merely one factor that ought to be considered as part of the forum non conveniens inquiry, along with the following list of factors from *Cray*, 389 Mich at 395-396:

> 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. Enforcibility [sic] 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.

Although the plaintiff's choice of forum will ordinarily be granted deference, "courts are charged to consider the plaintiff's choice of forum and to weigh carefully the relative advantages and disadvantages of jurisdiction and the ease of and obstacles to a fair trial in this state."

Ramamoorthi, 323 Mich App at 340, quoting *Cray*, 389 Mich at 396. "The ultimate inquiry is where trial will best serve the convenience of the parties and the ends of justice." *Radeljak*, 475 Mich at 605 (quotation marks, citations, and brackets omitted).

As an initial consideration, a trial court may only exercise its discretion to apply forum non conveniens provided that some *other* appropriate forum exists. *Cray*, 389 Mich at 395 & n 2. "Appropriate forums are the site of the incident, a corporation's state of incorporation or principal place of business and the state of plaintiff's domicile." *Id*. at 394 n 2. In this instance, Ford seeks application of the doctrine only against the *nonresident* plaintiffs. Because their respective places of domicile provide appropriate alternate fora, forum non conveniens may properly be applied here; it would not leave the nonresident plaintiffs without recourse to *any* court.

It is a distinct question whether the doctrine's discretionary application is warranted under the circumstances at bar. In considering that issue, the trial court listed and briefly considered each of the *Cray* factors, finding that nearly all of them militated against Ford's position. With regard to several of the factors, the trial court relied on its choice-of-law conclusion that the adjudication of the nonresident plaintiffs' claims would not require the court to consider or apply foreign law. The trial court recognized that plaintiffs had "allege[d] eight counts: (1) breach of express warranties, (2) breach of [the] implied warranty of merchantability, (3) revocation of acceptance, (4) violation of the [MMWA], (5) violation of the [MCPA], (6) unconscionability under the [UCC], (7) fraud, misrepresentation, fraudulent concealment and (8) unjust enrichment." However, the trial court's analysis of the choice-of-law issue did not meaningfully differentiate between the contractual, statutory, and equitable claims, or those sounding in tort.[7]

By disregarding the fundamental nature of the claims at issue, the trial court erred. In the choice-of-law context, the nature of the claim at issue is a vital—and often dispositive—consideration. See, e.g., *Talmer Bank & Trust v Parikh*, 497 Mich 857 (2014) ("in lieu of granting leave to appeal, we VACATE that part of the Court of Appeals judgment that relies upon the choice-of-law standard for tort actions set forth in *Sutherland v Kennington Truck Serv Ltd*, 454 Mich 274; 562 NW2d 466 (1997), which does not control the instant contractual dispute"). See also Restatement of Conflict of Laws, 2d, § 7 (observing that "characterization"—i.e., "classification of a given factual situation under the appropriate legal categories and specific rules of law, and . . . definition or interpretation of the terms employed in the legal categories and rules of law"—is "an integral part of legal thinking" and carries

[7] Unjust enrichment is an equitable claim, *Landstar Express America, Inc v Nexteer Auto Corp*, 319 Mich App 192, 204; 900 NW2d 650 (2017), whereas claims for breach of an express warranty generally sound in contract law, although some *statutory* breach-of-warranty claims are hybrids of contract and tort principles, see, e.g., *Curry v Meijer, Inc*, 286 Mich App 586, 595; 780 NW2d 603 (2009). On the other hand, fraud sounds in tort, as does any claim arising out of breach of "a duty stemming from a legal obligation, other than a contractual one[.]" *In re Bradley Estate*, 494 Mich 367, 383-384; 835 NW2d 545 (2013).

particular import in the realm of choice-of-law jurisprudence). In Michigan, choice-of-law questions involving contracts are generally governed by the principles discussed in *Chrysler Corp v Skyline Indus Servs, Inc*, 448 Mich 113, 125-126; 528 NW2d 698 (1995) (*Skyline*). See, e.g., *Farm Bureau Ins Co v Abalos*, 277 Mich App 41, 45; 742 NW2d 624 (2007). Indeed, many contractual agreements proactively negate the need for a choice-of-law analysis by including forum-selection and choice-of-law provisions, which are generally enforceable in this jurisdiction. See *Hansen Family Trust v FGH Indus, LLC*, 279 Mich App 468, 476; 760 NW2d 526 (2008) ("It is undisputed that Michigan's public policy favors the enforcement of contractual forum-selection clauses and choice-of-law provisions."); cf. *Skyline*, 448 Mich at 126 (discussing exceptions to the enforceability of choice-of-law provisions). On the other hand, choice-of-law questions involving tort claims are analyzed under the approach set forth in *Sutherland*.

In support of its motion to dismiss, Ford presented an excerpt from an express warranty booklet for one of the model years at issue in this case. Ford's counsel represented that "each and every" express warranty at issue in this case included the following language taken from that booklet:

> The warranties contained in this booklet and all questions regarding their enforceability and interpretation are governed by the law of the state in which you purchased your Ford vehicle. Some states do not allow Ford to limit how long an implied warranty lasts or to exclude or limit incidental or consequential damages, so the limitation and exclusions described above may not apply to you.

Without any reference to the language of the express agreements or to the choice-of-law principles set forth in *Skyline*, the trial court held that plaintiffs' breach-of-warranty claims would be governed by Michigan law exclusively. By so holding, the trial court erred. Rather, based on the express warranty language cited by Ford, the contractual claims should be governed by the law of the states in which the subject vehicles were purchased. See *Skyline*, 448 Mich at 126 (noting that a contractual choice-of-law provision is generally enforceable unless "the chosen state has no substantial relationship to the parties or the transaction, . . . there is no reasonable basis for choosing that state's law," or "it would be contrary to a fundamental policy of a state which has a materially greater interest than the chosen state in the determination of the particular issue and . . . would be the state of the applicable law in the absence of an effective choice of law by the parties").[8]

[8] In our view, none of those exceptions to the enforceability of contractual choice-of-law provisions are at issue here. On the contrary, the jurisdictions where the nonresident plaintiffs purchased their vehicles certainly have a substantial relationship to the disputed transactions (i.e., the purchases of the vehicles in question), that relationship serves as an altogether reasonable basis for the parties to have chosen the law of those jurisdictions, and we can conceive of no "fundamental policy" of this state that would be contravened by permitting the nonresident plaintiffs' claims to be adjudicated under the law of the jurisdictions where the subject vehicles were purchased.

The trial court's error with regard to its choice-of-law analysis infected much of its discussion of the *Cray* factors, particularly its consideration of the "public interest" factors. Indeed, the trial court gave the public-interest factors short shrift, seeming to rely almost exclusively on its conclusion that Michigan law governed all of the claims in this action.

In light of the actual choice-of-law implications, the trial court's public-interest analysis was incorrect. In *Radeljak*, our Supreme Court analyzed a somewhat similar scenario. The *Radeljak* plaintiffs, "who [we]re residents and citizens of Croatia, were involved in a motor vehicle accident in Croatia." *Radeljak*, 475 Mich at 602. They subsequently filed suit against Daimlerchrysler Corporation in Wayne Circuit Court, alleging design defects in the vehicle that had been involved in the accident, which had been "designed and manufactured in Michigan," contained some parts designed and manufactured in Japan, and had been "purchased in Italy and maintained and serviced in Italy and Croatia." *Id*. at 602-603. At Daimlerchrysler's motion, the trial court dismissed the action under the doctrine of forum non conveniens. *Id*. at 603. In affirming that decision, our Supreme Court reviewed the public-interest factors as follows:

> The second broad *Cray* factor pertains to "[m]atters of public interest." Subfactor 2(a) concerns "[a]dministrative difficulties which may arise in an area which may not be present in the area of origin." As the United States Supreme Court has explained, "[a]dministrative difficulties follow for courts when litigation is piled up in congested centers instead of being handled at its origin." [*Gulf Oil Corp v Gilbert*, 330 US 501, 508; 67 S Ct 839; 91 L Ed 1055 (1947), superseded in part by statute on other grounds as recognized in *American Dredging Co v Miller*, 510 US 443, 449; 114 S Ct 981; 127 L Ed 2d 285 (1994).] If every automotive design defect case against Michigan-based automobile manufacturers must be heard in Wayne County if a foreign plaintiff so desires, there will certainly be increased congestion in an already congested local court system. It can hardly be argued that Croatia would face increased court congestion. Unlike Michigan, Croatia is not a recognized center for automotive design, engineering, and manufacturing, or to our knowledge, a center for litigation concerning automotive design defects. Therefore, subfactor 2(a) generally favors the Croatian forum over the Michigan forum.
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> Subfactor 2(b) concerns "[c]onsideration of the state law which must govern the case." If this case is tried in Wayne County, the Wayne Circuit Court will most likely have to apply Croatian law. In order to determine whose laws apply, courts look to see which jurisdiction has a greater interest in the case. *Sutherland*[, 454 Mich at 286]. Croatia appears to have a greater interest in this case than does Michigan because it involves residents and citizens of Croatia who were injured in an accident in Croatia. Therefore, Croatian law would most likely apply in this case. See *Farrell v Ford Motor Co*, 199 Mich App 81; 501 NW2d 567 (1993) (holding that North Carolina law applies in a defective automobile action involving a North Carolina resident, a North Carolina accident, and a vehicle purchased in North Carolina). As the United States Supreme Court has explained, "[t]here is an appropriateness . . . in having the trial . . . in a forum that is at home with the state law that must govern the case, rather than having a court in some other forum untangle problems in conflict of laws, and in law foreign to

> itself." *Gilbert*, *supra* at 509, 67 S Ct 839. Accordingly, "the need to apply foreign law favors dismissal." [*Piper Aircraft Co v Reyno*, 454 US 235, 260 n 29; 102 S Ct 252; 70 L Ed 2d 419 (1981).] Therefore, subfactor 2(b) favors the Croatian forum over the Michigan forum.
>
> Subfactor 2(c) concerns "[p]eople who are concerned by the proceeding." The people of Croatia obviously are concerned by this proceeding given that several Croatian citizens and residents were injured and one was killed in an accident that occurred in that country. As the United States Supreme Court has explained, "[t]here is a local interest in having localized controversies decided at home." *Gilbert*, *supra* at 509, 67 S Ct 839. The "localized controversy" involved in this case concerns whether defendant is liable for injuries suffered by Croatian citizens and residents in Croatia. Croatia obviously has a considerable "local interest" in determining the redress available to its citizens and residents who are injured in Croatia. That is, Croatia has a "local interest" in having this "localized controversy" decided by its own rules and procedures. On the other hand, there is no denying that Michigan citizens have an interest in products-liability lawsuits filed against Michigan manufacturers. On the whole, however, for the reasons we discussed concerning subfactor 2(b), we conclude that Croatia's interest is greater than Michigan's interest. Therefore, subfactor 2(c) favors a Croatian forum. [*Radeljak*, 475 Mich at 610-611 (some citations omitted; alterations to citations added, other alterations in original).]

Even more than was true in *Radeljak*, here the administrative difficulties attending the adjudication of these "mass actions" in Michigan would be pronounced. Whereas *Radeljak* involved one action and a relatively small number of parties, this case involves 83 consolidated cases and thousands of parties, with each of the roughly 12,000 plaintiffs asserting eight distinct claims. The sheer volume of individual claims would make the case difficult to manage, and the choice-of-law implications will only complicate matters. Standing alone, the breach-of-warranty claims would require the trial court to apply the contract law of dozens of other jurisdictions. That would be an exceedingly difficult task for an appellate court; it would likely prove to be an impossible one for the trial court. Moreover, we fail to see how residents of other states or other nations, who purchased vehicles in other jurisdictions, can avail themselves of statutory claims related to those purchases under Michigan law. Such novel questions of law are bound to arise in mass litigation like this when it is pursued in a single forum, but there would be no such questions if the nonresident plaintiffs sought recourse to the courts of their own respective states under local law. As a practical matter, given that plaintiffs' contractual claims are subject to the law of the jurisdiction where the subject vehicles were purchased or leased, adjudication of *all* of their claims in those fora would be far more efficient. It would be far easier for a court in each state to apply its local contract law than it would be for one court in this state to independently research and apply the law of all of the others. Also, although Michigan may have a vested interest in adjudicating the noncontractual claims against Ford in this action, it seems that the nonresident plaintiffs' home jurisdictions have at least an equal stake in adjudicating

controversies that affect their citizens' rights.[9] And as recognized in *Radeljak*, this state also has an interest in dissuading this sort of mass automotive litigation from habitually clogging our court system. Therefore, we conclude that the public-interest factors, on the whole, clearly favor resolution of the nonresident plaintiffs' claims in their home fora rather than this one.

Finally, with regard to the third *Cray* factor, the trial court concluded that Ford had unduly delayed in asserting forum non conveniens against the nonresident plaintiffs. In support, the trial court indicated that Ford had first raised the issue in its February 14, 2018 motion to dismiss the nonresident plaintiffs' claims, i.e., approximately 10 months after plaintiffs first initiated these mass actions. However, Ford first raised the issue on July 17, 2017—in its first responsive filing—in which it asserted, as an affirmative defense, that "[a]ll non-resident Plaintiffs should be dismissed under the doctrine of forum non conveniens." Because Ford raised this issue at the very outset of this litigation, and filed its motion to dismiss before answering plaintiffs' second amended complaint, the trial court was mistaken when it found that Ford had unduly delayed. See *Manfredi v Johnson Controls, Inc*, 194 Mich App 519, 526; 487 NW2d 475 (1992).

Because the trial court's ruling concerning forum non conveniens was premised on legal error, it necessarily constituted an abuse of discretion. See *Pirgu v United Servs Auto Ass'n*, 499 Mich 269, 274; 884 NW2d 257 (2016). Under other circumstances, we might be inclined to simply vacate the trial court's contested order and remand with instructions for it to reconsider this issue. We are mindful that the discretion to apply forum non conveniens is generally entrusted to "the trial judge," *Cray*, 389 Mich at 395, and only portions of the trial court's analysis of the *Cray* factors were premised on legal error. In our view, however, reversal is warranted because the public-interest factors weigh so heavily in favor of applying forum non conveniens that a decision to the contrary would necessarily yield a result outside the range of reasonable and principled outcomes. Put simply, no matter what interest the roughly 12,000 plaintiffs may have in resolving their claims in Michigan rather than their home jurisdictions, those private interests are outweighed by this state's public interest in avoiding the related administrative difficulties. Also, as a pragmatic matter, we are unpersuaded by plaintiffs' contention that forcing them to pursue this litigation in their home fora would result in undue hardship. Plaintiffs had an opportunity to resolve their claims in this action via a national class action, at minimal personal expense of time and money. They instead opted out of the class action, thereby preserving their right to pursue their *individual* claims against Ford on an *individual* basis. Plaintiffs will not now be heard to complain that it is unfair to deprive them of the opportunity to consolidate all of their individual claims in one action in this state. In litigating these claims on a less massive basis in their home fora, they will merely be faced with the same hardships that generally face litigants as a matter of course.

[9] Plaintiffs' amended complaint contains no allegation that any of the subject vehicles were purchased in states other than those in which the associated plaintiffs reside.

We reverse and remand for further proceedings. On remand, the trial court shall enter an order granting Ford summary disposition of the MCPA claims and dismissing the nonresident plaintiffs from this suit without prejudice on grounds of forum non conveniens. We do not retain jurisdiction.

/s/ Karen M. Fort Hood
/s/ Deborah A. Servitto
/s/ Mark T. Boonstra