STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: June 5, 2018)

GERARD TURCOTTE and ALICIA TURCOTTE Plaintiffs,	:	
v.	:	**C.A. No. PC-2016-3557**
3M COMPANY, ET AL. Defendants.	:	

DECISION

TAFT-CARTER, J. Before this Court for decision are several Defendants'[1] (collectively referred to as the Defendants) motions to apply foreign law: the motions of Defendants CBS

[1] Western Auto Supply Company; Georgia Pacific, LLC; Pecora Corporation; Gould Electronics, Inc.; Crane Co., Individually and as alleged successor to Jenkins Bros., Pacific Boilers, National Boiler, and Weiman Pump Manufacturing Company; ABB, Inc.; Nortek Global HVAC LLC; ECR International, Inc., as successor to The Utica Companies, Inc.; American Biltrite, Inc.; Sid Harvey Industries, Inc.; W.W. Grainger, Inc.; Mine Safety Appliance Company, LLC; Miller Electric Manufacturing Co.; Aurora Pump Company; Deere & Company; Columbia Boiler Company; PACCAR, Inc.; Conwed Corporation; Techtronic Industries North America, Inc., Individually and as Parent to Homelite; Terex Corporation; The Adams Manufacturing Company; The Falk Corporation; Siemens Industry, Inc.; Eaton Corporation, Individually and as successor-in-interest to Cutler Hammer, Inc.; A.I.I. Acquisitions, LLC; Honeywell International, Inc.; Sullair, LLC; Pfaudler, Inc.; Foster Wheeler LLC; Bechtel Corporation; Amtrol, Inc., Individually and as successor to American Tube & Controls, Inc. and Thrush Products, Inc.; ITT Corporation; Grinnell LLC; Peerless Industries, Inc.; Whirlpool Corp.; Pentair, PLC; Daikin Applied Americas, Inc.; Weil-McLain, a Division of the Marley Wylain Company; Burnham LLC; The Coleman Company Inc.; The Foxboro Company; Husqvarna U.S. Holding, Inc.; IMO Industries, Inc.; Johnson Controls, Inc.; Kohler Company; Warren Pumps, Inc.; York International Corporation; Reynolds Metals Company; Morbark, LLC; Polaris Industries; Air & Liquid Systems, as successor by merger to Buffalo Pumps Inc.; Carrier Corporation, including Bryant Heating & Cooling Systems, Inc.; Union Carbide Corporation; Arctic Cat Productions, LLC; Spirax Sarco, Inc.; Graybar Electric Company; Bayer CropScience, Inc.; Philips Electronics North America Corporation; Homasote Company; Automotive Supply Associates, f/k/a Sanel Auto Parts, Inc.; Schneider Electric USA, Inc., f/k/a Square D Company; Union Carbide Corporation; Western Auto Supply Company; Nortek Global HVAC LLC; Crane Co.; ABB, Inc.; CertainTeed Corporation; and Armstrong International, Inc.

Corporation/Westinghouse Electric Corporation (Westinghouse) and General Electric Company (GE) to apply the substantive laws of New Hampshire as to liability and Florida as to damages, the motions of the remaining Defendants to apply Florida law, as well as the motion of the Plaintiffs Gerard Turcotte and Alicia Turcotte (collectively Plaintiffs) to apply New Hampshire law. The Plaintiffs object to Defendants' motions. A hearing was held on December 13, 2017. The Court exercises jurisdiction pursuant to G.L. 1956 § 8-2-14.

I

Facts and Travel

In the instant lawsuit, the Plaintiffs allege that Gerard Turcotte (Mr. Turcotte) was exposed to asbestos-containing products predominantly through his career as an electrician and through improvements to property, including his family's motel, which caused and/or contributed to his development of mesothelioma. The majority of the alleged exposure to the toxin occurred when Mr. Turcotte worked in New Hampshire, although the additional exposure occurred when Mr. Turcotte briefly worked on projects in other states. One such additional exposure was during a three-month construction project in Florida in 1973. (Dep. of Gerard Turcotte, Vol. I at 175:4-23, Nov. 7, 2016.)

Mr. Turcotte lived in New Hampshire from his birth in 1947 until 1996, when he and his wife moved to Florida during retirement. (Dep. of Gerard Turcotte Vol. II at 129:8-23, Nov. 9, 2016.) They purchased a house in 1997 and a second house in 2000. *Id.* at 90:8-17, 129:20-130:15. During that time, Mr. Turcotte and his wife continued to own property in Shelburne, New Hampshire. *Id.* at 90:3-6. In February 2016, while living in Florida, Mr. Turcotte began to experience symptoms commonly associated with mesothelioma. Thereafter, Mr. Turcotte underwent diagnostic procedures at Fawcett Memorial Hospital in Florida and was given a

preliminary diagnosis of mesothelioma by Dr. Ronald Smith. Mr. Turcotte's medical file was sent to Dr. Jeffrey L. Myers of the University of Michigan, who issued the final diagnosis on June 22, 2016. Mr. Turcotte received initial treatment in Florida and underwent surgery at Duke University Medical Center in Durham, North Carolina. Presently, the Plaintiffs reside in Berlin, New Hampshire, and Mr. Turcotte receives immunotherapy treatment for mesothelioma at Dartmouth-Hitchcock Medical Center in New Hampshire.

In their motions, the majority of the Defendants contend that this Court should apply Florida substantive law to this claim because the law of Florida bears the most significant relationship to the parties and to the event under Rhode Island's interest-weighing approach. However, Defendants Westinghouse and GE contend that New Hampshire law should apply as to liability and Florida law as to damages in the Plaintiffs' claims against them and cite the doctrine of depecage. The Plaintiffs object to the Defendants' motions and move for an application of New Hampshire law.

II

Analysis

The Court is asked to address several issues in this case. First, this Court will resolve whether there is a true conflict between the laws of the jurisdictions involved. Second, this Court will engage in an interest-weighing approach to resolve which state's laws should apply to this matter. Finally, this Court will address the doctrine of depecage.

A

Conflict of Law

This Court turns to the two-step choice-of-law analysis, beginning with whether the laws of the two states in question are in conflict. *Turcotte v. Ford Motor Co.*, 494 F.2d 173, 177 (1st Cir. 1974); *Nat'l Refrigeration, Inc. v. Standen Contracting Co., Inc.*, 942 A.2d 968, 973-74 (R.I. 2008). Here, neither the Defendants nor the Plaintiffs argue that Rhode Island law should apply. Although Rhode Island is the forum state, Rhode Island's only interest in the matter is the "generalized interest that is constant throughout the entire United States and beyond, *viz.*, the interest in preventing asbestos-related diseases." *Kedy v. A.W. Chesterton Co.*, 946 A.2d 1171, 1188 (R.I. 2008); *Carlson v. 84 Lumber Co.*, No. PC 2009-3298, 2011 WL 1373508, *4 (R.I. Super. Apr. 7, 2011) (Gibney, P.J.). This Court therefore only considers whether New Hampshire or Florida law applies to the instant matter.

The Plaintiffs ask this Court to apply New Hampshire law, and the majority of the Defendants request the application of Florida law.[2] After reviewing the relevant laws of Florida and New Hampshire, this Court finds that true conflicts exist. *See, e.g.*, FLA. STAT. § 768.81(3) (pure comparative fault in negligence cases); N.H. REV. STAT. ANN. § 507:7-e (1997) (joint and several liability for defendants who are fifty percent at fault and several liability for those who are less than fifty percent at fault); FLA. STAT. § 95.11(3)(c) (ten-year statute of repose for improvements to real property); N.H. REV. STAT. ANN. § 508:4-b(I) (eight-year statute of repose for improvements to real property); FLA. STAT. §§ 768.76(1), 774.207(2) (setoffs are required for collateral source payments).

[2] As discussed later in Section II, C, Westinghouse and GE request this Court to apply Florida law as to damages and New Hampshire law as to liability.

B

Interest-Weighing Analysis

Having determined that there is a conflict between the applicable Florida and New Hampshire laws, this Court moves to the second step of the Rhode Island conflict-of-laws analysis: interest-weighing. Under this step of the analysis, the Court will determine which state has the more significant interest. *Woodward v. Stewart*, 104 R.I. 290, 299, 243 A.2d 917, 923 (1968). Courts are instructed to "'look at the particular . . . facts and determine therefrom the rights and liabilities of the parties in accordance with the law of the state that bears the *most significant relationship* to the event and the parties.'" *Harodite Indus., Inc. v. Warren Elec. Corp.*, 24 A.3d 514, 534 (R.I. 2011) (quoting *Cribb v. Augustyn*, 696 A.2d 285, 288 (R.I. 1997)) (ellipses and emphasis in original). In tort actions, the Court must evaluate the following four specific factors: (1) "'the place where the injury occurred'"; (2) "'the place where the conduct causing the injury occurred'"; (3) "'the domicil [*sic*], 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.'" *Id.* (quoting *Brown v. Church of the Holy Name of Jesus*, 105 R.I. 322, 326-27, 252 A.2d 176, 179 (1969)).

Additionally, policy considerations under the interest-weighing analysis must be taken into account. These considerations include: "'(1) predictability of result; (2) maintenance of interstate and international order; (3) simplification of the judicial task; (4) advancement of the forum's governmental interests; and (5) application of the better rule of law.'" *Najarian v. Nat'l Amusements, Inc.*, 768 A.2d 1253, 1255 (R.I. 2001) (quoting *Pardey v. Boulevard Billiard Club*, 518 A.2d 1349, 1351 (R.I. 1986)); *see also Brown*, 105 R.I. at 325, 252 A.2d at 178.

1

Application of Tort Specific Interest-Weighing Factors

a

Place of Injury

The Defendants contend that Mr. Turcotte's injury occurred in Florida because he was given the preliminary diagnosis of mesothelioma in that state. They also argue that Mr. Turcotte was exposed to asbestos in many different states, including Florida, New Hampshire, Vermont, and Maine. Plaintiffs contend, however, that the injuries occurred in New Hampshire because the majority of Mr. Turcotte's exposure to asbestos occurred in that state.

This Court addressed the issue of where an injury occurred in *Carlson*, an asbestos case in which the plaintiff was exposed to asbestos in Michigan, and his symptoms, diagnosis, and treatment occurred when he lived in Pennsylvania. 2011 WL 1373508, at *1, 6. The Court emphasized that "[t]he injuries in these types of cases are not based on the moment of exposure; rather, they are based on the mesothelioma, the resulting treatment, and its consequences." *Id.* at *6. The Court explained that "[i]n the context of a latently developing disease . . . the last event necessary for a claim against a tortfeasor is the recognition of that disease and the onset of symptoms, as there is 'no legally compensable injury to sue upon' until the detection of the disease" and held that the place of injury was Pennsylvania, where the plaintiff was diagnosed. *Id.* (quoting *Wyeth v. Rowatt*, 244 P.3d 765, 776 (Nev. 2010)).

Recently, this Court discussed *Carlson*'s holding in *Murray v. 3M*, No. PC-2016-0151, 2017 WL 371590, *4 (R.I. Super. June 18, 2017) (Gibney, P.J.), an asbestos matter with similar facts. Referring to the first and second factors of the interest-weighing analysis, the Court stated that "the place of injury and the place of the conduct causing the injury would be classified as the

state where the plaintiff was diagnosed and treated for his or her asbestos-related illness (due to the theory that plaintiffs are rarely aware of their injury until they have been diagnosed)." *Id.* The Court therefore found that the place of injury was Tennessee because the plaintiff was diagnosed and treated in Tennessee. *Id.*

Importantly, the instant matter is not as straightforward as in *Carlson* or *Murray*, because Mr. Turcotte's symptoms, diagnosis, and resulting treatment occurred in different states. Mr. Turcotte's first symptoms surfaced while he lived in Florida. (Mr. Turcotte's Answers to Interrogs. No. 31.) While Dr. Smith of Fawcett Memorial Hospital in Florida completed a pathology report about Mr. Turcotte's symptoms, the report repeatedly uses the words "preliminary" to discuss the diagnosis and specifically states that Dr. Smith deferred to the diagnosis of Dr. Myers of the University of Michigan Pathology Department in rendering a final diagnosis. (Pathology Report of Dr. Ronald Smith at 1, 2.) Dr. Myers of the University of Michigan then diagnosed Mr. Turcotte with mesothelioma in Michigan. (Anatomic Pathology Consultation Report of Dr. Jeffrey Myers.) Mr. Turcotte then received initial treatment in Florida, surgery at Duke University Medical Center in North Carolina, and further treatment at Dartmouth-Hitchcock Medical Center in New Hampshire. Mr. Turcotte currently undergoes treatment at that facility in New Hampshire. (Aff. of Gerard Turcotte ¶ 6.)

Further, the state in which the official diagnosis occurred in this case does not have a significant interest, and the parties do not ask this Court to apply its laws. The record shows that Mr. Turcotte's medical file was sent to Michigan for diagnosis, and there is no evidence to suggest that Mr. Turcotte himself ever went to the state for purposes of diagnosis or treatment. (*See* Pathology Report of Dr. Ronald Smith at 2.) Similarly, while Mr. Turcotte underwent

surgery to treat his mesothelioma in North Carolina, the parties do not request this Court apply North Carolina law.

Additionally, the instant matter involves a Plaintiff who lived in two different states: Florida and New Hampshire. In *Carlson*, the plaintiff lived in Pennsylvania at the time of diagnosis and during treatment, and there was no evidence presented that he maintained a residence in Michigan when he moved to Pennsylvania. Because the facts and circumstances of this matter do not align with *Carlson* and *Murray*, this Court must adapt its reasoning to the facts here. *See Murray*, 2017 WL 371590, at *4 (explaining that *Carlson*'s analysis "fits well with the unique facts and circumstances of this present case").

This Court finds that New Hampshire is the place of injury. The vast majority of Mr. Turcotte's exposure occurred in New Hampshire. Moreover, pursuant to *Carlson* and *Murray*'s discussion of this factor, the place of injury is the state in which the plaintiff was diagnosed *and treated*. Because the state in which Mr. Turcotte was diagnosed bears no substantial relationship to this matter, and the parties do not request the application of its laws, this Court looks to the state in which Mr. Turcotte was treated. While Mr. Turcotte received treatment to some extent in Florida, North Carolina, and New Hampshire, his recurring treatments took place in New Hampshire, including his current treatment. This factor, therefore, weighs in favor of applying New Hampshire law. The place of injury is but one factor in the choice-of-law analysis, however. This Court now analyzes the other factors.

b

Place Where the Conduct Causing Injury Occurred

The asbestos-containing products in question were manufactured throughout the country. However, the Defendants placed the products in the stream of commerce and/or availed

themselves to New Hampshire, the state in which the majority of Mr. Turcotte's exposure occurred. Accordingly, this Court finds that New Hampshire is the place of the conduct causing injury. *See Carlson*, 2011 WL 1373508, at *6 (finding that Michigan has a significant interest as to this factor "because of a state's interest in regulating the products that enter its borders"). While *Murray* expressed that the state in which the plaintiff was diagnosed and treated is both the place of injury and the place of the conduct causing injury, this Court reiterates that the facts of both *Murray* and *Carlson* are distinguishable from the matter at hand. *See Murray*, 2017 WL 371590, *4.

c

Domicile, Residence, Place of Incorporation, and Place of Business of the Parties

As with the place of injury factor, the matter of Mr. Turcotte's domicile and residence is more complicated than in other cases. The Defendants argue that Mr. Turcotte's domicile and residence are in Florida. The Plaintiffs contend that Mr. Turcotte resides in both New Hampshire and Florida.[3] The question comes down to whether Mr. Turcotte was domiciled in Florida and came back to New Hampshire periodically or whether he was domiciled in New Hampshire and spent time in Florida.

An individual may have more than one residence; however, he may only be a domiciliary of one state. *Domicile*, Black's Law Dictionary 484-85 (6th ed. 1990). The Court is instructed to determine domicile for the purposes of this factor on a case-by-case basis. *See DeBlois v. Clark*, 764 A.2d 727, 735 (R.I. 2001). "'To establish a domicile and become a domiciled

[3] The record is unclear as to whether the Plaintiffs assert that Mr. Turcotte is a domiciliary of New Hampshire or Florida. At the hearing on this motion, the Court asked Plaintiffs' counsel, "Does the plaintiff deny that he's a domiciliary of Florida?" to which counsel responded, "No, Your Honor. He has dual residence as far as New Hampshire and Florida." (Hr'g Tr. 10:22-25, Dec. 13, 2017.)

inhabitant there must be an actual abode in the state with the intention in good faith to live here permanently and without any present intention of changing the home in the future. Actual residence without such intention does not suffice.'" *Id.* at 734 (quoting *McCarthy v. McCarthy*, 45 R.I. 367, 369, 122 A. 529, 531 (1923)). When an individual has more than one residence, "his domicil is in the earlier dwelling place unless the second dwelling place is his principal home." Restatement (Second) *Conflict of Laws* § 20 (1971). Importantly, an individual may spend substantial periods of time and maintain a residence in another state, yet not be a domiciliary of that state. *DeBlois*, 764 A.2d at 734; *see also* Restatement (Second) *Conflict of Laws* § 18 cmt. e (1971). "One need not abandon a former domicile—to the extent that means never or rarely returning—nor must one gradually sever or break ties to the state of origin." *DeBlois*, 764 A.2d at 735.

The record shows Mr. Turcotte was a lifelong resident of New Hampshire, where he was born, raised, attended and graduated college, and employed for approximately forty-eight years. (Dep. of Gerard Turcotte Vol. II at 101:23-102:9; 129:8-9, Nov. 9, 2016.) Mr. Turcotte then moved to Florida with his wife during retirement in 1996 and resided there for approximately twenty-one years. *Id.* at 90:8-17, 101:23-102:2, 129:8-9, 129:20-130:13. Mr. Turcotte and his wife own two houses in Florida and lived in one of his homes in Florida at the time of his deposition. *Id.* at 90:8-17, 129:20-130:15. During his deposition, Mr. Turcotte was asked whether he had any plans to move from his home in Florida, and he responded, "Um, prior to what's happened here with my physical condition, I didn't plan on it. . ." *Id.* at 130:16-21. Mr. Turcotte registered two cars, renewed his license, and filed taxes in the state of Florida. (Hr'g Tr. 10:1-8, Dec. 13, 2017.) At some point after his diagnosis and deposition, Mr. Turcotte moved to

New Hampshire, where he owns a home and continues to receive treatment in that state. (Aff. of Gerard Turcotte ¶¶ 5, 6.)

The importance of Mr. Turcotte's return to his native New Hampshire following his diagnosis and his decision to receive treatment in New Hampshire is not lost on this Court, especially considering the known grave consequences of a mesothelioma diagnosis. However, at the time the Plaintiffs' Complaint was filed, Mr. Turcotte was living in Florida, the state in which he and his wife moved to for their retirement. There is no indication that Mr. Turcotte viewed his move to Florida as temporary or that he did not intend to live there permanently, and his decision to register cars, file taxes, and renew his license in Florida supports the opposite conclusion. Further, the record repeatedly shows Mr. Turcotte representing his address as in Florida. (Mr. Turcotte's Answers to Interrogs. at 2; Dep. of Gerard Turcotte Vol. I, 21:21-22, Nov. 7, 2016.) Accordingly, although Mr. Turcotte is a resident of New Hampshire and Florida, his domicile is Florida. *See DeBlois*, 764 A.2d at 736-37 (finding that the petitioners established a domicile in Florida because, among other reasons, they changed their drivers' licenses and car registrations to Florida and filed taxes in that state).

Finally, the parties acknowledge that the place of incorporation and place of business of the Defendants is unhelpful in the instant action because the principal place of business of the 120 Defendants to this action does not lie completely in one state. After considering Mr. Turcotte's residence and domicile and the place of incorporation and business of the Defendants, this Court concludes that this factor weighs in favor of applying Florida law.

d

Place Where the Relationship, if any, Between the Parties Is Centered

There is no relationship between the parties "in the ordinary sense of the word[.]" *La Plante v. Am. Honda Motor Co.*, 27 F.3d 731, 741 (1st Cir. 1994). Therefore, this factor does not assist the choice-of-law determination. *See id.* This Court now turns to the general interest-weighing factors in Rhode Island's choice-of-law analysis.

2

Application of General Interest-Weighing Factors

Under the broader policy-based interest-weighing analysis, this Court must consider five additional factors in its choice-of-law determination. *See Najarian*, 768 A.2d at 1255. When deciding which state's substantive law shall be applied, Rhode Island law requires that the Court consider the "'(1) predictability of result; (2) maintenance of interstate and international order; (3) simplification of the judicial task; (4) advancement of the forum's governmental interests; and (5) application of the better rule of law.'" *Id.* (quoting *Pardey*, 518 A.2d at 1351).

The majority of the Defendants argue that these considerations show that Florida law should apply because Mr. Turcotte has been a resident of Florida for approximately twenty-one years and has substantial connections to the state. The Plaintiffs and Defendants Westinghouse and GE agree that New Hampshire law should apply because Mr. Turcotte was exposed in New Hampshire.[4] The Plaintiffs assert that New Hampshire is a better rule of law because New Hampshire does not require setoffs for collateral source payments and has the doctrine of joint and several liability, unlike Florida. Defendants Westinghouse and GE note that New

[4] Defendants Westinghouse and GE argue specifically that New Hampshire liability law should apply. This Court addresses this argument in Section II, C.

Hampshire is a better rule of law because the New Hampshire General Assembly enacted a statute of repose for improvements to real estate.

This Court finds that in the instant case, an application of New Hampshire law satisfies the aforementioned factors. The application of New Hampshire law provides the highest predictability of results and maintains interstate order because the majority of Mr. Turcotte's exposure to asbestos-containing products occurred in that state and the alleged tortious conduct occurred in that state. During the entirety of his exposure, Mr. Turcotte was employed by New Hampshire entities, handled products that were manufactured, sold, and distributed in New Hampshire, and was a resident and domiciliary of New Hampshire. While no longer a domiciliary of New Hampshire, Mr. Turcotte is a long-time resident of New Hampshire and continues to receive treatment for mesothelioma in that state. Therefore, the parties could reasonably expect that any dispute between them would be resolved pursuant to New Hampshire law. *See Murray*, 2017 WL 371590, *5 (explaining that "potential defendants could expect that the laws of the state where a plaintiff is injured and resides would apply" and citing *Najarian*). Similarly, the parties would not reasonably expect Florida law to govern a dispute because of the limited contacts Florida had with the parties at the time of exposure.

It is clear that New Hampshire and Florida both have an interest in protecting their residents. However, New Hampshire has a greater interest in having its laws applied to this matter because of the extensive contacts New Hampshire has to this matter. The application of Florida law would critically upset interstate order and the advancement of New Hampshire's interests, whereas the application of New Hampshire law would not substantially offend Florida.

As the state with the most important contacts with this action, New Hampshire is the better rule of law. *See id.* Importantly, New Hampshire law differs from Florida law in

important ways, such as the issue of joint and several liability and the statute of repose. The application of New Hampshire law would permit the Plaintiffs to fully recover against all of the Defendants through joint and several liability and would allow certain Defendants to invoke New Hampshire's statute of repose for improvements to real property. *See* N.H. REV. STAT. ANN. §§ 507:7-e, 508:4-b(I) (1997); *See Murray*, 2017 WL 371590, at *6 (finding that Tennessee's laws are the better rule of law because Tennessee had the most significant contacts and do not bar plaintiff's recovery); *Victoria v. Smythe*, 703 A.2d 619, 621 (R.I. 1997) (finding that Florida law should apply because Rhode Island law did not allow rental car companies to be liable for injuries caused by the negligence of rental drivers). Finally, this Court notes that it is perfectly capable of applying another state's laws to this matter, and the application of New Hampshire law does not burden the judicial task more than the application of Florida law would.

Based on all the factors in Rhode Island's interest-weighing analysis, this Court finds New Hampshire has the most significant relationship to this matter.

C

Doctrine of Depecage

Finally, this Court briefly addresses the doctrine of depecage. The doctrine of depecage allows courts to resolve different issues in a single case through the application of laws of other states when the choices influencing the conflicts-of-law determination differ by issue. *La Plante*, 27 F.3d at 741; *see also* Restatement (Second) *Conflict of Laws* § 145, cmt. d (1971) ("The courts have long recognized that they are not bound to decide all issues under the local law of a single state."). "Although the Rhode Island Supreme Court has yet to pledge express allegiance to the principle of depecage, the court's decisions make it clear that Rhode Island, like most other jurisdictions, adheres to the principle in the tort context." *Putnam Res. v. Pateman,* 958

F.2d 448, 465 (1st Cir. 1992); *see Woodward*, 104 R.I. at 299, 243 A.2d at 923-24 (finding that Massachusetts law applied to some issues in the case and that other issues would be decided under Rhode Island law).

Here, Defendants Westinghouse and GE argue that this Court should apply New Hampshire law as to liability and Florida law to the rest of the case, including the issue of damages. The crux of Westinghouse and GE's argument is that the laws of different states should be used to govern the specific claims against different Defendants. Specifically, they argue that New Hampshire law should apply to Mr. Turcotte's claims against them because the alleged exposure that was attributable to Westinghouse and GE occurred in New Hampshire. In essence, Westinghouse and GE seek to separate out for review Mr. Turcotte's claims against them from the multitude of Defendants against who Plaintiffs filed suit.

Notably, this Court recently addressed this argument in *Baumgartner v. Am. Standard, Inc.*, No. PC-2013-4151, 2015 WL 4523476 (R.I. Super. July 22, 2015) (Gibney, P.J.), in which the plaintiff was exposed to asbestos-containing products in Ohio and Michigan. This Court emphasized that "'it is the *issues* presented in a case to which *depecage* applies, *not the different defendants in a case*'" and found that depecage could not be used to apply different state's laws to different defendants. *Id.* at *4 (emphasis in original) (quoting *Gregory v. Beazer E.*, 892 N.E.2d 563, 580 (Ill. App. 2008). While Westinghouse and GE attempt to distinguish *Baumgartner* by arguing that they would be prejudiced in the instant matter unless this Court uses the doctrine of depecage in this manner, this Court finds this argument unpersuasive. The doctrine of depecage is an issue focused approach that applies to different issues in a course of action and not to the different defendants. *See* Restatement (Second) *Conflict of Laws* § 145, cmt. d (1971); Black's Law Dictionary (10th ed. 2014) ("A court's application of different state

laws to different issues in a legal dispute; choice of law on an issue-by-issue basis."); *Pateman*, 958 F.2d at 465 ("In legal parlance, depecage erects the framework under which different *issues* in a single case, arising out of a common nucleus of operative facts, may be decided according to the substantive law of different states." (emphasis added)). Westinghouse and GE's arguments are premised on an incorrect application of depecage, and it is inconsequential that they may be prejudiced should this Court decline to stretch the doctrine beyond its limits.

Additionally, there is "'no precedent to support [the Defendant's] use of *depecage*, that is, on a defendant-by-defendant basis.'" *Baumgartner*, 2015 WL 4523476, at *4 (alteration and emphasis in original) (quoting *Gregory*, 892 N.E.2d at 580). As we noted in *Baumgartner*, courts have recognized that "'depecage is inappropriate in the context of multi-defendant asbestos litigation because, *inter alia*, 'applying different legal standards to each joint tortfeasor-defendant in a multi-defendant suit alleged to have caused a single injury could lead to inconsistent results.'" *Id.* (quoting *Bootenhoff v. Hormel Foods Corp.*, 2014 WL 3810383, at *4, n.8 (W.D. Okla. Aug. 1, 2014) (further quoting *Gregory*, 892 N.E.2d at 580)).

Here, this Court cannot invoke the doctrine of depecage to apply one state's laws on the issue of liability and another's on the issue of damages as to Defendants Westinghouse and GE only because the doctrine focuses on issues and not defendants. Further, this is a multi-defendant lawsuit in which all of the Defendants are joint tortfeasors accused of causing Mr. Turcotte's mesothelioma, a single injury. The issues of liability and damages pertain to the same significant contacts relating to that single injury, and therefore, this Court need not conduct a separate interest-weighing analysis for each issue. *See id.* at 5, n.7 (rejecting the idea that depecage could be used to apply different laws to the various defendants in a multidefendant asbestos suit involving a single injury (mesothelioma) and emphasizing that "the entire litigation

must be considered in assessing which forum has the more significant contacts with the litigation" (internal quotation marks and citation omitted)); *see Gregory*, 892 N.E.2d at 580 ("The instant cause does not deal with different legal issues which are easily separable, such as a case involving a tort issue and a contract issue. Rather, it deals with multiple defendants all alleged by plaintiff to have done the same thing . . .").

III

Conclusion

After careful consideration, this Court finds that New Hampshire has the most significant interest in this matter for the reasons stated herein. Accordingly, the application of New Hampshire's laws as to all issues is most appropriate given the specific facts in this case. Counsel shall submit an appropriate order for entry.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	**Gerard Turcotte and Alicia Turcotte v. 3M Company, et al.**
CASE NO:	**PC-2016-3557**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**June 5, 2017**
JUSTICE/MAGISTRATE:	**Taft-Carter, J.**
ATTORNEYS:	
For Plaintiff:	**John E. Deaton, Esq.**
For Defendant:	**Andrew R. McConville, Esq.; Jason Caron, Esq.; Brian D. Gross, Esq.; Kenneth R. Costa, Esq.; Carolyn E. Riggs, Esq.; Stephanie M. Batchelder, Esq.; Jonathan F. Tabasky, Esq.; Shannon M. O'Neil, Esq.; Nancy Kelly, Esq.; David A. Goldman, Esq.; Jennifer A. Whelan, Esq.; Michael F. McVinney, Esq.; Matthew T. Giardina, Jr., Esq.; Timothy M. Zabbo, Esq.; Stephen M. Prignano, Esq.; Robert S. Parker, Esq.; Craig Waksler, Esq.; Ryan M. Murphy, Esq.; Jeffrey M. Thomen, Esq.; James R. Oswald, Esq.; Kendra A. Bergeron, Esq.; Eric J. Robbie, Esq.; Margreta Vellucci, Esq.; Mark O. Denehy, Esq.; Lawrence G. Cetrulo, Esq.; Stephen T. Armato, Esq.; Kelly Kincaid, Esq.; Kathryn T. O'Brien, Esq.; Jennifer E. Wheelock, Esq.; Wayne E. George, Esq.; Audrey L. Bradley, Esq.; Alex A. Romano, Esq.; Theodorus Urbanski, Esq.; Mark J. Claflin, Esq.; Philip Newbury, Jr., Esq.; Alan Wong, Esq.; Anthony J. Sbarra, Esq.; John R. Felice, Esq.; Marisa K. Roman, Esq.; James A. Ruggieri, Esq.; Stephen P. Cooney, Esq.; Crystal L. Cooke, Esq.; Mitchell Edwards, Esq.; John A. Caletri, Esq.; Matthew C. Oleyer, Esq.; Monica R. Nelson, Esq.; Cullen W. Guilmartin, Esq.**