

IN THE SUPERIOR COURT FOR THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

ROSA LAURA CERVANTES, Individually and)
as Representative of the Estate of ELOY)
TUDON HERNANDEZ, Deceased and Next)
Friend of JOEL ALEJANRO TUDON)
CERVANTES, SERGIO ORLANDO TUDON)
CERVANTES AND ELOY OBED TUDON)
CERVANTES, minors)
)
Plaintiffs) C.A. No. 07C-06-249 JRJ
)
vs.) JURY TRIAL DEMANDED
)
BRIDGESTONE/FIRESTONE NORTH)
AMERICAN TIRE COMPANY, LLC;)
BRIDGESTONE/FIRESTONE, INC.;)
BRIDGESTONE/FIRESTONE RESEARCH,)
LLC; BRIDGESTONE AMERICAS HOLDING,)
INC., FIRESTONE TIRE & RUBBER)
COMPANY and FORD MOTOR COMPANY) NON-ARBITRATION CASE
)
Defendants)

Date Submitted: June 9, 2008
Date Decided: August 14, 2008
Date Cover Page Amended: February 8, 2010

MEMORANDUM OPINION

*Upon Defendants' Joint Motion to Apply and Determine the Law of Mexico: **DENIED***

Richard Zappa, Esq. and Timothy E. Lengkeek, Esq., Wilmington, Delaware, and Julian C. Gomez, Esq., McAllen, Texas, Attorneys for Plaintiffs.

Christian J. Singewald, Esq., 824 Market Street, Suite 902, P.O. Box 707, Wilmington, Delaware, 19899, Attorney for Defendant, Ford Motor Company.

Somers S. Price, Jr., Esq., 1313 North Market Street, 6th Floor, P.O. Box 951, Wilmington, Delaware, 19899, Attorney for Defendants, Bridgestone Firestone North American Tire, LLC, Bridgestone America Holding, Inc. and Bridgestone Americas Center for Research and Technology.

I. Introduction

In their Joint Motion to Apply and Determine the Law of Mexico¹, defendants Bridgestone / Firestone North American Tire, LLC (“Firestone”) and Ford Motor Company (“Ford”) seek an application of Mexican Law to a case which arises out of an automobile accident in Durango, Mexico, involving the rollover of a Ford Explorer equipped with a recalled Firestone tire. In his complaint, plaintiff asserts claims of negligent design, negligent manufacturing and failure-to-warn. Because the United States maintains the most significant relationship with this case, Defendant’s Motion to Apply and Determine the Law of Mexico is **DENIED**.

II. Background

A. The Defendants

Firestone is comprised of several companies: Bridgestone Firestone North Tire, LLC, Bridgestone Americas Holding, Inc., and Bridgestone Firestone Research, LLC d/b/a Bridgestone Americas Center for Research and Technology.² Firestone North America is a Delaware limited liability company with its principal place of business in Tennessee.³ Firestone Holding is a Nevada corporation, with its principal place of business in Tennessee.⁴ Firestone Research is a Delaware limited liability company, with its principle place of business in Ohio.⁵ Ford is a Delaware corporation, with its principle

¹ Defendants specifically ask this Court to apply the law of Durango, a state in Mexico.

² Firestone Resp. to Pls.’ 1st Interrogs. at No. 38, 29.

³ Firestone Resp. to Pls.’ 1st Interrogs. at No. 38, 29.

⁴ Firestone Resp. to Pls.’ 1st Interrogs. at No. 38, 29.

⁵ Firestone Resp. to Pls.’ 1st Interrogs. at No. 38, 29.

place of business in Michigan.⁶ Both Ford and Firestone conduct extensive business in Delaware.⁷ Neither company conducts significant business in Durango, Mexico.⁸

Ford conceived of the Explorer design at its headquarters in Michigan.⁹ Firestone designed the Radial ATX tire line in Ohio.¹⁰ Defendants and their experts conducted tests of the Explorer and the Radial ATX tire (“Recalled Tire”) in Texas, Ohio, Illinois, Arizona, Michigan, Florida and New York.¹¹ Based on the vehicle identification number on the Explorer at issue, the vehicle was manufactured, assembled and tested by Ford in Missouri.¹² The U.S. Department of Transportation Number on the Recalled Tire indicates that it was manufactured and completed by Firestone in Illinois.¹³ The Explorer left the possession of Ford in Missouri when it was sold to the Ravenel Ford Dealership in South Carolina.¹⁴ The Recalled Tire was subject to a voluntary recall in 2000 that originated in the United States, after a preliminary evaluation by the U.S. National Traffic Safety Administration, which is headquartered in Washington D.C.¹⁵ Sometime after the Explorer and Recalled Tire were sold at auction in North Carolina, they entered into the Country of Mexico through Texas.¹⁶

B. The Accident

On June 2, 2006, Eloy Tudon Hernandez was traveling south on Mexican Federal Highway 40 between the Mexican State of Coahuila de Zaragoza and the Mexican State

⁶ Ford’s Resp. to Pls.’ 1st Interrogs. At No. 33.

⁷ *E.g., Ford Motor Co. v. Dir. Of Revenue*, 2008 WL 2058522 (Del. Super, Ct. 2008).

⁸ Ford’s Resp. to Pls.’ 1st Interrogs, Firestone’s Resp. to Pls.’ 1st Interrogs.

⁹ Ford’s Ans. To Pls.’ 1st Interrogs. at No. 35.

¹⁰ DJOB at p. 4

¹¹ Firestone’s Resp. to Pls.’ 1st Req. for Admis. at No. 24, 25, 26, & 27; Firestone’s 1st Resp. to Pls.’ 1st Interrogs. at No. 57.; Ford’s Ans. to Pls.’ 1st Interrogs. at No. 61.

¹² Ford’s Ans. To Pls.’ 1st Interrogs. at No. 54.

¹³ Firestone’s Resp. to Pls.’ 1st Interrogs. at Intro.

¹⁴ Ford’s Ans. To Pls.’ 1st Interrogs. at No. 56.

¹⁵ Firestone’s Resp. to Pls.’ 1st Interrogs. at No. 65.

¹⁶ Pls.’ 2nd Am. Resp. to Ford’s 1st Prod. Req. at Bates Nos. 000363-000396.

of Durango.¹⁷ Hernandez is a Mexican Citizen who resides in the Mexican State of Coahuila de Zaragoza.¹⁸ At the time of the accident, Hernandez was driving his family's 1996 Ford Explorer, which was equipped with the Recalled Tire.¹⁹ According to the plaintiff, the Recalled Tire suffered a tread separation, which caused Hernandez to lose control of the vehicle. The Ford Explorer rolled over, killing Hernandez.²⁰

Firestone and Ford filed a joint motion on June 9, 2008 asking this Court to determine that the law of the Mexican State of Durango applies to the disposition of this case.

III. Discussion

Pursuant to *Travelers Indemnity Co. v. Lake*²¹, this Court applies the RESTATEMENT (SECOND) CONFLICT OF LAWS §145 to determine which law should apply to a case. Section 145 provides:

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 § 6.²² (Emphasis Added)

The Court examines: (1) the place where the injury occurred, (2) the place where the conduct causing the injury occurred, (3) the domicile, 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.²³

¹⁷ Pls.' 1st Supp. Resp. to Ford's 1st Prod. Req. at Bates No. 000063-000067; Pls.' 2nd Supp. Resp. to Ford's 1st Prod. Req. at bates No. 000263-000265.

¹⁸ Defendant's Opening Brief at 3.

¹⁹ *Id.*

²⁰ *Id.*

²¹ 594 A.2d 38, 43-48 (Del. 1991).

²² RESTATEMENT (SECOND) CONFLICTS OF LAWS, § 145 at p. 414 (1971).

²³ *Id.*

Each of the aforementioned factors must be weighed in light of RESTATEMENT (SECOND) CONFLICT OF LAWS § 6.²⁴ This section requires an examination of the following factors:

- (1) the need of the interstate and international systems,
- (2) the relevant policies of the forum,
- (3) the relevant policies of the 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.²⁵

Although the “place of injury” factor is often determinative of the most significant relationship, this is not the case when the injury in question is fortuitous.²⁶ When the location of the injury bears little relation to the occurrence or to the parties, that factor becomes less persuasive when selecting the applicable law.²⁷ In these rare instances, the State must apply the law in light of the §6 choice of law principles.²⁸ The proper selection of law is generally that of “the state whose interests are most deeply affected.”²⁹

A. As Between the United States of America and Mexico, the United States has a Greater Interest in Application of Its Laws.

1. Place of Injury.

The place of injury in this case is fortuitous. The place of injury is considered to be fortuitous when there is no other significant contact with the site other than the injury

²⁴ *Travelers*, 594 A.2d at 47-48.

²⁵ RESTATEMENT (SECOND) OF CONFLICT OF LAWS, § 6 at p. 10 (1971).

²⁶ RESTATEMENT (SECOND) OF CONFLICT OF LAWS, § 145, cmt. E at p. 419 (1971)

²⁷ *Rasmussen v. Uniroyal Goodrich Tire Co.*, 1995 WL 945556, Del. Super 1995 (Quillen J.), *see also Travelers*, 594 A.2d at 48.

²⁸ RESTATEMENT (SECOND) OF CONFLICT OF LAWS, § 145, cmt. d at p. 523 (1971)

²⁹ RESTATEMENT (SECOND) OF CONFLICT OF LAWS, § 6, cmt. f at p. 14 (1971)

itself.³⁰ None of the defendants in this case are residents or citizens of the United Mexican States (“Mexico”).³¹ Defendants do not conduct business in the Mexican state of Durango.³² Both Ford and Firestone are incorporated in the United States (U.S.).³³ None of the design defects and negligent acts alleged in the complaint occurred in Mexico.³⁴ Because Durango has no other contact with the claim other than the injury itself, the place of injury must be considered fortuitous.³⁵ In light of the fortuitous nature of the place of injury, this factor is accorded less weight in the Restatement § 145 analysis, making the other factors more relevant to the choice of law determination.³⁶

2. Place where Conduct Caused Injury Occurred.

None of the conduct alleged by plaintiff to have caused the injury occurred in Durango or any other Mexican state. All testing, design and manufacture of the Explorer and the Recalled Tire occurred in the U.S.³⁷ Because all the alleged wrongful conduct occurred in the U.S., the Court finds this particular factor weighs wholly in favor of application of U.S. law.

³⁰ *Thompson v. Reinco, Inc.*, 2004 WL 1426971 *1 (Del. Super. Ct. 2004)(Jurden, J.)(the place of injury was considered by the court to be fortuitous since the only connection to the site was that of a non-resident working in the state where the injury occurred.)

³¹ Firestone Resp. to Pls.’ 1st Interrogs. at No. 38, 29, Ford’s Resp. to Pls.’ 1st Interrogs. At No. 33.

³² Firestone Resp. to Pls.’ 1st Interrogs. at No. 38, 29, Ford’s Resp. to Pls.’ 1st Interrogs. At No. 33.

³³ Firestone Resp. to Pls.’ 1st Interrogs. at No. 38, 29, Ford’s Resp. to Pls.’ 1st Interrogs. At No. 33.

³⁴ Firestone Resp. to Pls.’ 1st Interrogs. at No. 38, 29, Ford’s Resp. to Pls.’ 1st Interrogs. At No. 33.

³⁵ Defendants’ reliance on *Michaud v. Stricker-Boulanger*³⁵ is misplaced. The Court in *Michaud* determined after applying the aforementioned Restatement factors that the law of Quebec had the most significant relationship to that particular claim. *Michaud* is distinguishable. The place of the injury in that case was not considered to be fortuitous. The plaintiffs in *Michaud* were domiciled in Quebec and were working within the scope of their employment at the time of the accident. The only connection Durango maintains to the incident is the fact that plaintiff happened to be traveling on a highway in Durango when the injury occurred. Because the location here was fortuitous, *Michaud* does not apply to this particular set of facts.

³⁶ See *Whitwell v. Archmere Academy, Inc.*, 463 F. Supp. 2d 482, 487 (D. Del. 2006).

³⁷ Firestone’s Resp. to Pls.’ 1st Interrogs. At Nos. 24, 25, 26 & 27.

3. The Domicile Residence, Nationality, Place of Incorporation and Place of Business.

Defendants maintain that although incorporated in the state of Delaware, Bridgestone and Firestone do not have their principle place of business in this state. It is not uncommon in the modern world for a corporation to do business nationwide or globally. Because of this fact, it would be very limiting for the Court to consider the principle place of business to be outcome determinative in the choice of law analysis. In this case, the Court would have to conduct an analysis of contacts with at least ten separate U.S. states.³⁸ This is because the Explorer and Recall Tire were designed, manufactured, tested and sold across several states. It is therefore much less cumbersome to apply Delaware law to the instant case. By incorporating in the U.S., defendants have purposely availed themselves of the benefits afforded by the laws this country, and it is foreseeable, and indeed expected, that they would be subject to the laws of this forum. This factor weighs heavily in favor of application of U.S. Law.

4. The Place where the Relationship Between the Parties is Centered.

The relationship of the parties is centered in Delaware, where the suit is filed.³⁹ The factor weighs in favor of application of U.S. law, not Mexican law.

B. The RESTATEMENT (SECOND) CONFLICT OF LAWS § 6 Policy Factors Weigh in Favor of Adjudication under United States Law.

The RESTATEMENT (SECOND) CONFLICT OF LAWS §6 analysis used by the Court in *Travelers* requires that relevant policies and fundamental fairness be taken into account in

³⁸ These states include Texas, Ohio, Illinois, Arizona, Michigan, Florida, New York, Delaware, South Carolina and Missouri. See Ford's Ans. To Pls.' 1st Interrogs.; Firestone's Resp. to Pls.' 1st Interrogs.

³⁹ Pls. Opposition to Defendant's Choice of Law Motion, at 3.

an application of §145. 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.⁴⁰ It can be inferred that the purpose of those laws is to shield resident defendants from financial accountability of large monetary damages associated with such actions.⁴¹ Because no resident defendants are implicated in this lawsuit, neither the state of Durango nor the country of Mexico has a strong policy interest in the application of its laws.⁴² Under the facts here, Delaware and the U.S., have a much stronger interest in this case. Additionally, fundamental fairness is not offended by forcing a defendant to comply with the laws of the country in which it is incorporated and in which it does extensive business.⁴³ When Bridgestone and Firestone decided to incorporate in Delaware, they did so in order to benefit from the laws of this forum.⁴⁴ In obtaining the benefits and protections afforded by these laws, defendants also accept the responsibilities imposed upon them under by these laws. Moreover, Mexican courts have determined that they are not the proper forum for suits of this kind against non-resident defendants.⁴⁵ In this case, a foreign plaintiff has come to the U.S., specifically the defendants' parent state, in order to hold defendants accountable for alleged wrongful conduct which occurred solely in the U.S. It therefore does not offend fundamental fairness to allow for the suit to proceed under United States law.

⁴⁰ DJOB at p. 21-24; Ex. 2 at Para. 18-21.

⁴¹ *Villaman v. Schee*, 1194 WL 6661, *4 (9th Cir, 1994)(recognizing that the law of the Mexican State of Sinaloa, which limits tort damages, is designed to protect Sinaloa resident defendants, not to deny plaintiffs full recovery); *Fraga v. Villasama and Co., Inc.*, 1983 U.S. DIST. LEXIS 13965, *6 (S.D. Tex. 1983) (“Mexico has no resident defendant to protect and has no interest in denying full recovery to its residents injured by non-Mexico defendants.”)

⁴² Testimony of Dep. Jose Serna De La Garzo (Jan 31, 2007)

⁴³ *See In re Air Crash Disaster at Mannheim Germany on Sept. 11,1982*, F. Supp. at 526.

⁴⁴ *See* Delaware General Corporate Law Title 8

⁴⁵ *E.g., In re Bridgestone / Firestone inc., Tires Products Liability Action*, MDL No. 1373, (S.D. In. July 16, 2007)

Essential to the § 6 analysis is an examination of the ease in determination and application of the law to be applied.⁴⁶ Defendants have conceded in their joint *forum non conveniens* brief that applying Mexican law would be “expensive and cumbersome”.⁴⁷ The Court heartily agrees. Not only would this Court be required to research the Mexican law applicable to each claim, it would also require a translator, and most likely a Durango law expert, to assist throughout the case. Because this is a products liability case, it is safe to assume that the Court will require extensive help from the translator and Mexican law expert.⁴⁸ The preparation of the jury instructions alone could conceivably take months of study, research, discussion and extensive expert testimony on Mexican law.⁴⁹ This task is made all the more difficult by the limited nature of Mexican law, which is a civil code system.⁵⁰ In stark contrast, U.S. laws are easily accessible and well established because of *stare decisis*. There is no question that application of U.S. law in this case would be far easier.

IV. Conclusion

Because the U.S. has the most significant relationship to the case,⁵¹ the Court will apply U.S. law, not Mexican law.⁵²

IT IS SO ORDERED.

Jan R. Jurden, Judge

⁴⁶ RESTATEMENT (SECOND) CONFLICT OF LAWS §6

⁴⁷ DFNC Br. At 14-16

⁴⁸ DFNC Br. At 16, 19

⁴⁹ *See Saudi Basic Industries Corp. v. Mobil Yanbu Petrochemical Co., Inc.*, 2003 WL 22016864 (Del. Super.) (where difficulty in drafting jury instructions was, “caused, in large part, by the fact that the concept of *stare decisis* has no place in Saudi law”.)

⁵⁰ Plaintiff’s Opposition to Defendant’s Choice of Law Motion at 41-43.

⁵¹ If the parties do not agree on which U.S. State law applies to the case, the Court will set a briefing schedule.

⁵² The parties have already completed briefing on this issue with respect to the punitive damages claim. The Court will decide that issue shortly in a separate order.