

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

ANDRES ARTEGA, et al.,)	
)	
Plaintiffs,)	
)	
v.)	
)	C.A. No. N12C-05-008-JRJ
BELL HELICOPTER TEXTRON, INC.)	
and BRISTOW HELICOPTERS, INC., et)	
al.,)	
)	
Defendants.)	

Submitted: March 28, 2014
Decided: June 10, 2014

OPINION

Upon Plaintiffs’ Choice of Law Motion for the Application of Texas Law to
Liability and Damages: **GRANTED**

Upon Defendant Bell Helicopter Textron, Inc.’s Motion to Determine Law
Applicable to Plaintiffs’ Remedies: **DENIED**

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JURDEN, J.

I. INTRODUCTION

This is a products liability action arising from a Bell B-212 helicopter crash. Before the Court are two motions, Plaintiffs' Motion for the application of Texas Law to Liability and Damages and Defendant Bell Helicopter Textron, Inc.'s (hereinafter "Bell") Motion to Determine Law Applicable to Plaintiffs' Remedies. Because Texas law has the most significant relationship with the issues raised in the motions, Plaintiffs' Motion is hereby **GRANTED** and Bell's Motion is hereby **DENIED**.

II. FACTUAL AND PROCEDURAL CONTEXT

A. The Plaintiffs and the Accident

On October 15, 2010, a helicopter departed from Ciudad del Carmen, in the state of Campeche, Mexico. The helicopter crashed in Las Choapas, in the state of Veracruz, Mexico, killing all seven passengers and the two pilots on board. Representatives of the pilots and five of the seven passengers (respectively, "Plaintiffs" and "Decedents") filed wrongful death actions against Bell and Bristow Helicopters, Inc. Subsequently, Plaintiffs amended their Complaints to add Bristow U.S., LLC as a Defendant. Plaintiffs have since dismissed both Bristow entities, leaving Bell as the sole Defendant.

B. Bell's Involvement

Bell is a Delaware corporation with its principal place of business in Texas. Bell designs and manufactures many of its helicopters and their component parts in Texas. Bell manufactured the B-212 helicopter that was involved in the October 15, 2012 crash. Bell manufactures a component part for the B-212 known as the Inboard Fitting Strap (“Strap”). The Strap is a key component connecting each rotor blade to the main rotor hub. The purpose of the Strap is to permit the rotor blade to twist at the pilot’s command for elevation and control. The rotor blade is secured to the Strap and main rotor hub by two fittings, the inboard strap fitting and the outboard strap fitting. When the inboard strap fitting fails in mid-flight, the centrifugal forces imparted on the rotor blade cause the rotor blade to detach and effectively be thrown from the helicopter. The helicopter cannot sustain flight with just one rotor blade. Mid-flight failure of an inboard strap fitting inevitably results in a helicopter crash.

C. The Investigation of the Crash

After the helicopter crash, *Dirección General de Aeronáutica Civil* (the Mexican Civil Aeronautics Authority, “DGAC”) conducted an investigation of the crash.¹ The DGAC investigation found no evidence to suggest that the crash was

¹ Op. Br. Plaintiffs’ Choice of Law Mtn. for the Application of Tex. Law to Liability and Damages (“Liability and Damages Op. Br.”), Trans. ID 54303942, at 4.

the result of human error.² The investigation found that the “aircraft was certified, equipped, and maintained according to current approved regulations and procedures.”³ Regarding the cause of the crash, the DGAC issued the following advisory opinion: “Collision with the ground when the blades of the principal rotor were lost during flight due to fracturing of the inboard strap fitting.”⁴

D. Procedural Posture

Plaintiffs, individually and as the personal representatives of the Decedents’ respective estates, filed seven separate actions, which have since been consolidated.⁵ In May 2012, estates were opened with the Register of Wills for New Castle County in Delaware on behalf of the seven Decedents.⁶ On September 30, 2013, Plaintiffs moved for the application of Texas law to all issues of liability and damages in the consolidated actions.⁷ Also on September 30, 2013, Bell moved for a determination of the law applicable to Plaintiffs’ remedies. Bell argues Mexican law is applicable to Plaintiffs’ remedies.

² Liability and Damages Op. Br. Ex. 4, Trans. ID 54303942, at 15.

³ *Id.* at 16.

⁴ *Id.* at 18.

⁵ Order Consolidating Actions, Trans. ID 52898353.

⁶ Op. Br. in support of Bell’s Mtn. to Determine Law Applicable to Plaintiffs’ Remedies (“Remedies Op. Br.”), Trans. ID 54308438, at 1-2.

⁷ Plaintiffs Timoteo Gonzalez, Yolanda Gonzales, Ricardo Montes, and Marisa Isabel Montes neither moved on choice of law nor opposed Bell’s motion on choice of law. Reply Br. in support of Bell’s Mtn. to Determine Law Applicable to Plaintiffs’ Remedies (“Remedies Reply Br.”), Trans. ID 54567556, at 2 n.3.

III. DISCUSSION

Pursuant to “general conflict of laws principles, the forum court will apply its own conflict of laws rules to determine the governing law in a case.”⁸ Delaware courts conduct a two-part inquiry to determine the applicable law.⁹ First, the Court determines if there is an actual conflict.¹⁰ “In determining whether there is an actual conflict, Delaware state courts . . . answer a single and simple query: does application of the competing laws yield the same result?”¹¹ In the event of an actual conflict of law, Delaware courts apply the most significant relationship test from Section 145 (“Section 145”) of the *Restatement (Second) Conflict of Laws* (“*Restatement*”).¹²

The Court looks to the motions individually. “Choice-of-law determinations must be made as to each issue when presented, not to the case as a whole.”¹³ Plaintiffs ask the Court to apply Texas law to liability and damages. Bell asks the Court to apply Mexican federal law to Plaintiffs’ remedies. The Court finds that with regard to both motions, an actual conflict exists between Texas law and Mexican law.

⁸ *Pallano v. AES Corp.*, 2011 WL 2803365, at *8 (Del. Super.).

⁹ *Laugelle v. Bell Helicopter Textron, Inc.*, 2013 WL 5460164, at *2 (Del. Super.).

¹⁰ *Id.*; see *Deuley v. DynCorp. Int’l, Inc.*, 8 A.3d 1156, 1161 (Del. 2010).

¹¹ *Laugelle*, 2013 WL 5460164, at *2.

¹² *Travelers Indem. Co. v. Lake*, 594 A.2d 38, 46-47 (Del. 1991).

¹³ *Laugelle*, 2013 WL 5460164, at *2; see RESTATEMENT (SECOND) OF CONFLICTS OF LAWS § 145(1) (1971) (“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.”).

It is undisputed that applying Texas law or Mexican law to liability, damages, and remedies will not yield the same results. Mexican law provides different recovery for passengers versus crewmembers.¹⁴ Article 62 of Mexico's Civil Aviation Law limits damages for passengers killed during a flight to three times the amount of economic damages recoverable under Article 1915 of Mexico's Federal Civil Code.¹⁵ Mexican law does not provide for a survival cause of action.¹⁶ The Texas Wrongful Death Act, however, permits recovery for survival claims.¹⁷ Bell argues that if Texas law is applied to Plaintiffs' remedies, at least two of the plaintiffs will not have a remedy because they are not wrongful death beneficiaries.¹⁸

Upon finding an actual conflict of law exists, the Court moves to the second part of the choice of law analysis. "Pursuant to Section 145 of the Second Restatement, the local law of the state which 'has the most significant relationship to the occurrence and the parties under the principles stated in § 6' will govern the rights of litigants in a tort suit."¹⁹

The Court considers the following factors listed in Section 145 when determining the law applicable to an issue:

¹⁴ Second Declaration of Alfonso J. Sepulveda Garcia ("Sepulveda Dec."), Trans. ID 54308438, ¶ 30.

¹⁵ See Sepulveda Dec., ¶ 35.

¹⁶ See, e.g., *Ortega v. Yokohama Corp. of N. Amer.*, 2010 WL 1534044, at *3 (Del. Super).

¹⁷ Tex. Civ. Prac. & Rem. Code § 71.004.

¹⁸ Feb. 10, 2014 Transcript ("Tr."), Trans. ID 55048647, 23:3-6.

¹⁹ *Travelers*, 594 A.2d at 47.

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

The Court's analysis is not to "simply add up the interests of the jurisdictions and apply the law of the jurisdiction with the most contacts."²¹ The Court evaluates these contacts "according to their relative importance with respect to the particular issue."²² The contacts listed in Section 145 must be weighed in light of the following policy considerations in Section 6 of the *Restatement* ("Section 6"):

- (1) the needs of the interstate and international systems,
- (2) the relevant policies of the forum,
- (3) the relevant policies of other interested states and the relative interests of those states in the determination of the particular issue,
- (4) the protection of justified expectations,
- (5) the basic policies underlying the particular field of law,
- (6) certainty, predictability and uniformity of result, and
- (7) ease in the determination and application of the law to be applied.²³

²⁰ RESTATEMENT (SECOND) OF CONFLICTS OF LAWS § 145(2).

²¹ *Pena v. Cooper Tire & Rubber Co., Inc.*, 2010 WL 1511709, at *2 (Del. Super.).

²² RESTATEMENT (SECOND) OF CONFLICTS OF LAWS § 145.

²³ RESTATEMENT (SECOND) OF CONFLICTS OF LAWS § 6.

Section 146 of the *Restatement* (“Section 146”)²⁴ directs the Court to apply the law of the state where the injury occurred in an action for a personal injury unless “some other state has a more significant relationship under the principles stated in § 6 to the occurrence and the parties, in which event the local law of the other state will be applied.”²⁵

A. Texas Law is Applicable to Liability and Damages

1. Restatement Section 145 Analysis

The Court evaluates the four contacts listed in Section 145 of the *Restatement* and finds that Texas has the most significant relationship with the liability and damages at issue.

i. Place of Injury

“In personal injury actions, there is a rebuttable presumption in favor of the law of the state where the injury occurred, unless another state has a more significant relationship to the action.”²⁶ A place of injury does not play an important role in the selection of the applicable law “when the place of injury can be said to be fortuitous or when for other reasons it bears little relation to the occurrence and the parties with respect to the particular issue.”²⁷

²⁴ RESTATEMENT (SECOND) OF CONFLICTS OF LAWS § 146.

²⁵ RESTATEMENT (SECOND) OF CONFLICTS OF LAWS § 146; *see Rasmussen v. Uniroyal Goodrich Tire Co.*, 1995 WL 945556, at *2 (Del. Super.).

²⁶ *Smith v. DaimlerChrysler Corp.*, 2002 WL 31814534, at *1 (Del. Super.).

²⁷ RESTATEMENT (SECOND) OF CONFLICTS OF LAWS § 145 cmt. e.

The Court finds that the place of injury in this case was fortuitous. The helicopter crashed into the Mexican state of Veracruz. The co-pilot and one passenger were from Veracruz, the five other Decedents were from various other Mexican states.²⁸ There are no other connections with Veracruz besides that it was the location of the accident. Neither party argues that Veracruz state law applies. Aviation activities in Mexican airspace are a matter of Mexican federal jurisdiction.²⁹ The Court notes that the place of injury is “regularly considered an inferior contact in comparison to the other Restatement factors.”³⁰

ii. Place Where Conduct that Caused the Injury Occurred

The Plaintiffs allege wrongful conduct on the part of Bell. Bell’s allegedly wrongful conduct occurred in Texas, where it designed, manufactured, and tested the inboard strap fitting. In *Ortega v. Yokohama Corp. of North America*, this Court found that Virginia had the most significant relationship to the occurrence where the tire at issue was designed and manufactured in Virginia.³¹

²⁸ Liability and Damages Op. Br. Ex. 5.

²⁹ Ans. Br. in Opposition to Plaintiffs’ Choice of Law Mtn. for the Application of Tex. Law to Liability and Damages (“Liability and Damages Ans. Br.”), Trans. ID 54472048, at 6; *see* Sepulveda Dec., ¶¶ 11-16, 18-20.

³⁰ *Laugelle*, 2013 WL 5460164, at *4; *see Sinnott v. Thompson*, 32 A.3d 351, 355 n.14 (Del. 2011) (collecting cases).

³¹ 2010 WL 1534044, at *3.

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

The Decedents were all Mexican citizens. The co-pilot, Eder Manuel Montes, and one passenger, Jose Luis Salas Ventura, were from the state of Veracruz.³² The pilot, Leonardo Andres Arteaga Perez, resided in the State of Jalisco.³³ Passengers Luis Alberto Hernandez Morales and Omar Alejandro Barrera Vasquez resided in the State of México.³⁴ Passengers Jonathan Gutierrez Baeza and Manuel Gonzalez Perez resided in separate boroughs of México, D.F.³⁵ The Decedents all have estates opened in Delaware.

Bell is a Delaware corporation with its principal place of business in Texas.

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

To the extent the relationship between the parties in this case can be said to have been centered anywhere, it is centered in Texas. Texas is where the inboard strap fitting was designed, manufactured, and tested. The accident helicopter was originally manufactured in Texas and exported in the 1970s. In August 2008, Bell shipped the inboard strap fitting from Texas to Louisiana, where it was installed almost a year later, in July 2009. When Bell placed the inboard strap fitting into the stream of commerce, Bell had no indication of its final destination in Mexico.

³² Liability and Damages Op. Br. Ex. 5 at 2, 4.

³³ *Id.* at 1.

³⁴ *Id.* at 3, 5.

³⁵ *Id.* at 6, 7.

Bell shipped the inboard strap fitting to Bristow U.S., LLC in Louisiana with an export certificate;³⁶ however, the parties have not established that Bell knew the part was specifically being exported to Mexico.

Mexico has contacts with the accident helicopter and inboard strap fitting, however, the qualitative element in Section 145 emphasizes evaluating the contacts “according to their relative importance with respect to the particular issue.”³⁷ The Court finds that the place where the conduct that caused the injury occurred is particularly relevant with respect to products liability under these circumstances.

2. Restatement § 6 Policy Considerations

After weighing each of the contacts from Section 145 in light of the factors in § 6 of the *Restatement*, the Court finds that Texas law shall apply to liability and damages in this case.

The Court considers the needs of the interstate and international systems. “Choice-of-law rules, among other things, should seek to further harmonious relations between states and to facilitate commercial intercourse between them.”³⁸ Mexican courts have demonstrated their unwillingness to adjudicate disputes brought by Mexican plaintiffs against non-resident defendants.³⁹ In an action stemming from this same helicopter crash, the Fourth Civil Court of the Judicial

³⁶ Tr. 21:11-20.

³⁷ *Travelers*, 594 A.2d at 48 (citing RESTATEMENT (SECOND) OF CONFLICTS OF LAWS § 145).

³⁸ RESTATEMENT (SECOND) OF CONFLICTS OF LAWS § 6 cmt. d.

³⁹ *Cervantes v. Bridgestone/Firestone N. Amer. Tire Co., LLC*, 2010 WL 431788, at *3 (Del. Super.).

District Sitting in Coatzacoalcos, State of Veracruz, Judge Coubert held that “this action is unquestionably of a personal nature, and thus should of necessity be heard by the judge of defendant’s domicile.”⁴⁰ Here, Plaintiffs allege misconduct by Bell that occurred solely in Texas. Applying Texas law in a products liability dispute in which Bell’s principal place of business is in Texas does not offend notions of fundamental fairness.⁴¹

The relative policies of the forum state can be limited here to Delaware’s rules relating to trial administration.⁴² To the extent Delaware has an interest in the adjudication of this case as Bell’s state of incorporation, the Court finds Delaware policy is aligned with that of Texas. “In Delaware, the policies underlying the field of torts are to deter tortuous conduct and compensate victims.”⁴³ In *Mitchell v. Lone Star Ammunition, Inc.*, the United States Court of Appeals for the Fifth Circuit found that Texas tort liability for defective products “serves as an incentive to encourage safer design and to induce corporations to control more carefully their manufacturing process.”⁴⁴ Texas’ interest “is particularly strong when the

⁴⁰ *Arteaga v. Bell Helicopter Textron, Inc.*, 2012 WL 5992810, at *2 (Del. Super.).

⁴¹ *Cervantes*, 2010 WL 431788, at *3.

⁴² RESTATEMENT (SECOND) OF CONFLICTS OF LAWS § 6 cmt. e (distinguishing “where the state of the forum has no interest in the case apart from the fact that it is the place of the trial of the action,” the relevant policies of the forum are those embodied in the rules for trial administration).

⁴³ *Pena*, 2010 WL 1511709, at *3.

⁴⁴ 913 F.2d 242, 250 (5th Cir. 1990).

defective product in question was manufactured and placed in the stream of commerce in the State of Texas.”⁴⁵

“In determining a question of choice of law, the forum should give consideration not only to its own relevant policies . . . but also to the relevant policies of all other interested states.”⁴⁶ “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.”⁴⁷ The Court infers that the purpose of these laws is to shield resident defendants from the potentially large financial burden associated with these causes of action.⁴⁸ The Court finds that Mexico does not have a strong policy interest in the application of Mexican law here due to Bell’s status as a non-resident defendant.

The Court considers the protection of justified expectations. Bell, as a corporation with its principal place of business in Texas, could reasonably expect to litigate disputes using Texas law.⁴⁹

The Court will be able to apply and determine Texas law with greater ease than Mexican law. Application of Texas law will foster certainty, predictability,

⁴⁵ *Id.*

⁴⁶ RESTATEMENT (SECOND) OF CONFLICTS OF LAWS § 6 cmt. f.

⁴⁷ See *Ortega*, 2010 WL 1534044, at *3; *Cervantes*, 2010 WL 431788, at *3.

⁴⁸ See *Cervantes*, 2010 WL 431788, at *3; *Villaman v. Schee*, 1994 WL 6661, at *4 (9th Cir. 1994) (recognizing that the law of the Mexican State of Sinaloa, which limits tort damages, is designed to protect resident defendants, not to deny plaintiffs of full recovery).

⁴⁹ *Cervantes*, 2010 WL 431788, at *3; see *Viking Pump, Inc. v. Century Indem. Co.*, 2 A.3d 76, 89 (Del. Ch. 2009) (finding that an insurance company headquartered in New York could reasonably expect that New York law would apply to the insurance policies at issue).

and uniformity in this case. The application of Mexican law could be more costly and complicated for both the parties and the Court due to the need for interpreters and experts on Mexican law.

3. *Martinez v. E.I. DuPont de Nemours & Co.*

Oral argument on these motions was held on February 10, 2014. On February 20, 2014, the Delaware Supreme Court issued its decision in *Martinez v. E. I. DuPont de Nemours & Co.*⁵⁰ The parties submitted supplemental briefing on the relevance of *Martinez* to the case at hand, which the Court will briefly address.

In *Martinez*, Argentine nationals claimed they were exposed to asbestos while working at textile plants in Argentina.⁵¹ When the alleged exposure occurred in the 1960s, the textile plants were owned by a great-great grand subsidiary of DuPont, headquartered in Argentina.⁵² The Supreme Court affirmed the Superior Court's dismissal on *forum non conveniens* grounds.⁵³ In *Martinez*, the Court found that a novel question of Argentine law is best determined by Argentine courts where practicable.⁵⁴

Bell relies on *Martinez* to support its argument that Mexican law should apply to liability and damages because “when a matter implicates important interests of a foreign jurisdiction . . . foreign law must apply because the lawsuit

⁵⁰ 86 A.3d 1102 (Del. 2014).

⁵¹ *Id.* at 1103.

⁵² *Id.*

⁵³ *Id.* at 1104.

⁵⁴ *Id.* at 1110.

could influence the willingness of corporations to conduct operations in that foreign jurisdiction.”⁵⁵

The Court distinguishes this case from *Martinez*. *Martinez* was affirmed based on *forum non conveniens* grounds.⁵⁶ In *Martinez*, all injury-producing conduct occurred in Argentina.⁵⁷ To determine choice of law issues in this products liability case, the Court considers the contacts listed in Section 145, including the location of where the conduct causing injury occurred. Here, the Court finds that the injury-producing conduct occurred in Texas. The Court may give weight to the Section 145 contacts “according to their relative importance with respect to the particular issue.”⁵⁸ The Court finds Texas has the most significant relationship with this case and that Texas law applies to damages and liability.

The Court finds that any policy reasons that may favor Mexican law being applied do not weigh heavily enough to alter the Court’s decision that Texas has the most significant relationship to the relevant issues.

⁵⁵ Bell Supp. Br. on Choice of Law After *Martinez v. E.I. DuPont de Nemours & Co.*, Trans. ID 55153275, at 4.

⁵⁶ *Martinez*, 86 A.3d at 1104.

⁵⁷ *Id.* at 1103.

⁵⁸ RESTATEMENT (SECOND) OF CONFLICTS OF LAWS § 145(2).

B. Texas Law is Applicable to Plaintiffs' Remedies

The Court also uses the most significant relationship test to determine the choice of law regarding Plaintiffs' remedies.⁵⁹ The Section 145 contacts are the same as described above. The contacts are to be evaluated according to their relative importance with respect to the particular issue.⁶⁰ Regarding Plaintiffs' remedies, the Court finds that the Mexican policy limiting damages is not offended in this instance where the defendant is not a resident Mexican entity.

The Court considers the relevant policies of non-forum interested states and the relative interest of those states in the determination of the particular issue.⁶¹ Notably different, Mexican law does not provide for survival actions.⁶² Texas law, under the Texas Survival Statute, provides that “[a] personal injury action survives to and in favor of the heirs, legal representatives, and estate of the injured person.”⁶³

The parties dispute whether Mariana Maranto de Montes and Neidy Hernandez de Salas will recover under Texas law due to their status as “concubines.” Mexican policy favors recovery for concubines.⁶⁴ Bell asserts that Texas law will bar recovery for Montes and Salas due to their status as

⁵⁹ *Travelers*, 594 A.2d at 47.

⁶⁰ *Id.* at 48 n.6.

⁶¹ RESTATEMENT (SECOND) OF CONFLICTS OF LAWS § 6(2)(c).

⁶² *Pena*, 2010 WL 1511709, at *3.

⁶³ TEX. CIV. PRAC. & REM. CODE § 71.021(b).

⁶⁴ *Sepulveda Dec.*, ¶ 45.

concubines.⁶⁵ Applying Texas law to Plaintiffs' remedies is not a steadfast contradiction of the Mexican policy that makes remedies available to concubines. The Court declines to decide at this time if Montes and Salas will recover under Texas law as concubines, however, Plaintiffs contend that any recovery awarded to Montes and Salas' respective Decedents' estates under their survival claims (pursuant to Texas law) will eventually flow to Montes and Salas as legal heirs.⁶⁶

The Court finds that Texas has the most significant relationship according to Section 145 and viewed in light of the Section 6 factors. Mexican policy shielding resident defendants from paying potentially large survival claims is not implicated here. Texas policy favoring compensation of victims through their heirs and estates is, at its core, aligned with Mexican policy which provides for (limited) recovery as a remedy in a wrongful death action. Also, as explained above, the Court will be able to apply and determine Texas law with greater ease than the law of Mexico. Applying Mexican law would likely be more complicated and expensive due to the need for interpreters and Mexican law experts.

IV. CONCLUSION

The Court will apply Texas law to damages and liability as well as Plaintiffs' remedies. The Court finds that actual conflicts exist between Texas law

⁶⁵ Remedies Op. Br., at 1.

⁶⁶ Plaintiffs' response to Bell's Mtn. to Determine Law Applicable to Plaintiffs' Remedies ("Remedies Ans. Br."), Trans. ID 54468403, at 6; see *Russell v. Ingersoll-Rand Co.*, 841 S.W.2d 343, 345 (Tex. 1992) (finding that any recovery obtained in a survival action "flows to those who would have received it had [the decedent] obtained it immediately prior to his death.").

and Mexican law. Texas has the most significant relationship to the relevant issues. Plaintiffs' Choice of Law Motion for the Application of Texas Law to Liability and Damages is hereby **GRANTED**. Bell's Motion to Determine Law Applicable to Plaintiffs' Remedies is hereby **DENIED**.

IT IS SO ORDERED.

/s/Jan R. Jurden

Jan R. Jurden, Judge