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

SHAWN EMMONS and)	
CYNTHIA EMMONS,)	
Plaintiffs,)	
V.)	C.A. No. N10C-09-172
TRI SUPPLY AND EQUIPMENT,)	
INC., a Delaware Corporation,)	
and JCB, INC., a Maryland)	
Corporation,)	
Defendants.)	
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Submitted: August 22, 2012 Decided: October 17, 2012

UPON DEFENDANTS' MOTIONS FOR APPLICATION OF MARYLAND LAW **DENIED**

On this 17th day of October, 2012, it appears to the Court that:

1. Defendants Tri Supply and Equipment, Inc. ("Tri Supply") and JCB, Inc. ("JCB") have filed motions with this Court seeking an Order declaring that the substantive law of the state of Maryland applies to plaintiffs' claims. Plaintiffs oppose defendants' motions and instead request a ruling that Delaware law applies. Since the Court concludes that Delaware has the most significant relationship to the occurrence and the parties, the substantive law of Delaware shall be applied to plaintiffs' claims.

- 2. Plaintiff Shawn Emmons was employed as an ironworker at Fortress Steel Service, Inc. ("Fortress Steel") in Elkton, Maryland. On October 6, 2008, he was operating a LoadAll machine, which is a rough terrain forklift, to move 4,000 pounds of rebar. While moving the rebar, the machine flipped over. Emmons jumped out of the machine while it was overturning, and he sustained serious injuries as a result.
- 3. Emmons has previously recovered workers' compensation benefits from his employer for his accident-related injuries. He now brings this suit to recover additional damages from the named defendants, Tri Supply and JCB. JCB designed and manufactured the LoadAll machine that was involved in the accident. Tri Supply purchased the machine from JCB, used it as a rental for several years, and then sold the used machine to Emmons' employer, Fortress Steel, about eight months prior to the accident. Emmons alleges in this tort action that the accident occurred as a result of a "defect malfunction and/or improper service" caused by Tri Supply or JCB.
- 4. The parties conducted discovery and defendants have moved for summary judgment. Both defendants' motions for summary judgment are based, in part, upon the application of Maryland law. The important distinction between Maryland and Delaware law for purposes of this case is that Maryland recognizes the defense of contributory negligence as a

complete bar to recovery, while Delaware allows the defense of comparative negligence to reduce a plaintiff's recovery but it will not necessarily preclude recovery altogether. Defendants claim that Emmons was contributorily negligent when he jumped out of the LoadAll while it was overturning. They submit that his negligence is a complete bar to recovery under Maryland law. Under Delaware's comparative negligence statute, a plaintiff will only be prevented from recovering if his or her negligence is found to be greater than the negligence of the defendant.

- 5. In order to determine which state's substantive law applies, Delaware courts follow the "most significant relationship" test, set forth in the Restatement (Second) of Conflict of Laws.⁴ Section 145(1) of the Restatement provides that the law of the state with the most significant relationship to the occurrence and the parties is the governing law. Section 6(2) provides the following seven factors to consider in determining which state has the most significant relationship:
 - (a) the needs of the interstate and international systems; (b) the relevant policies of the forum; (c) the relevant policies of other interested states and the relative interests of those states in the

¹See Kassama v. Magat, 767 A.2d 348, 359 (Md. Ct. Spec. App. 2001), aff'd, 792 A.2d 1102 (Md. 2002) (Maryland law recognizes defense of contributory negligence as complete bar to recovery).

² 10 Del. C. § 8132; See Hufford v. Moore, 2007 WL 4577384, at *1 (Del. Super. Nov. 8, 2007).

³ Hufford, 2007 WL 4577384, at *1.

⁴ Travelers Indem. Co. v. Lake, 594 A.2d 38, 46-48 (Del. 1991).

determination of the particular issue; (d) the protection of justified expectations; (e) the basic policies underlying the particular field of law; (f) certainty, predictability and uniformity of result; and (g) ease in the determination and application of the law to be applied.

- 6. In applying the Section 6 factors, Section 145(2) requires courts to consider the following additional four factors:
 - (a) the place where the injury occurred; (b) the place where the conduct causing the injury occurred; (c) the domicile, residence, nationality, place of incorporation and place of business of the parties; and (d) the place where the relationship, if any, between the parties is centered.

Finally, Section 146 of the Restatement establishes a preference in personal injury cases for application of the law of the state where the injury occurred unless "some other state has a more significant relationship under the principles stated in [Section 6.]"

7. Plaintiff and defendants have each listed several factors to demonstrate the relationship of the claims and the parties to either Delaware or Maryland. Defendants, for example, point out that Emmons was employed in Maryland, the accident and injury occurred in Maryland, and medical treatment was provided to him at Union Hospital in Maryland. Plaintiff counters that Emmons is a Delaware citizen, both Tri Supply and Fortress Steel are organized and incorporated under the laws of Delaware, the allegedly defective LoadAll was sold to Fortress Steel in Delaware, and

to the extent that it is claimed that the injuries resulted from either a manufacturing defect or negligent service of the machine, all of those activities occurred in Delaware.

- 8. While the defendants have identified several relevant factors demonstrating the state of Maryland's relationship to the present controversy, the Court nevertheless concludes that Delaware has a more significant relationship. In Delaware, "the interest of the forum state in applying its law and policies to those who seek relief in its courts is paramount." The Delaware Supreme Court and other jurisdictions have held that the location of the occurrence of the injury may properly be considered an inferior contact in comparison to the other Restatement factors when determining which law to apply. Other factors, such as Delaware's strong public policy against contributory negligence as a complete bar to recovery, are equally if not more important considerations in determining the applicable law.
- 9. Delaware courts also recognize the importance of applying Delaware law to the claims of its own citizens.⁸ When a Delaware resident is injured outside the borders of this state, the consequences of that injury

⁵ Sinnott v. Thompson, 32 A.3d 351, 357 (Del. 2011) (quoting Conlin v. Hutcheon, 560 F.Supp. 934, 937 (D. Colo. 1983)).

⁶ See Id. at 355-56 (collecting cases).

⁷ *Id.* at 357 (citing Del. Code. Ann. title 10, § 8132 (2011)).

⁸ State Farm Mut. Auto. Ins. Co. v. Patterson, 7 A.3d 454, 459 (Del. 2010).

are suffered in Delaware. The state where an injury occurs may have a legitimate interest in having its own substantive law apply, but that interest is outweighed by Delaware's interest in ensuring that its own citizens recover the full amount of any actual damages.⁹

10. Under the Restatement (Second) Conflict of Laws factors, although Emmons was injured while working in Maryland, that contact is secondary when compared to Delaware's relationship to the occurrence and the parties. The plaintiffs, Fortress Steel, and Tri Supply are residents of Delaware. Emmons lives with the consequences of his injury in Delaware, where he resides, and he is being treated in Delaware. Since this is a products liability action involving an allegedly defective LoadAll that was sold to Fortress Steel in Delaware, plaintiffs are contending that defendants' negligent actions occurred in Delaware. 10

11. More significantly, Delaware cases have emphasized that this state has a substantial interest in applying its law to ensure that one of its own citizens may recover the full amount of his actual damages. 11 It also has a strong policy against contributory negligence as a bar to recovery. 12 When faced with similar situations, Delaware courts addressing the Restatement

⁹ Id. (citing Kent County v. Shepherd, 713 A.2d 290, 301 (Del. 1998)).

¹⁰ Even if the LoadAll was delivered to Fortress Steel in Maryland, the Court finds the sale took place in Delaware. The sales invoice lists both seller Tri Supply and buyer Fortress Steel's addresses in Delaware.

factors have consistently held that Delaware has the most significant relationship. 13

12. In deciding that Delaware rather than New Jersey law should apply, the Delaware Supreme Court in State Farm v. Patterson, 14 for example, was persuaded by the fact that the consequences of the plaintiff's injury would be suffered in Delaware, not in New Jersey where the car accident had occurred. Even though the collision was caused by a New Jersey resident in New Jersey, Delaware was considered to have a more significant interest than New Jersey. Likewise, Emmons suffers from the effects of his injury in Delaware, which our courts clearly consider to be a substantial factor in any choice of law analysis.

13. Delaware's strong public policy interest of applying the law of comparative negligence rather than Maryland's application of contributory negligence is a paramount reason for finding that Delaware has a more significant relationship than Maryland. The Delaware Supreme Court, in Sinnott v. Thompson, 15 described the importance of Delaware's policy against contributory negligence as follows:

¹¹ *Patterson*, 7 A.3d at 459. ¹² *Sinnott*, 32 A.3d at 357.

¹³ *Id.*; *Patterson*, 7 A.3d 454.

¹⁴ 7 A.3d 454.

¹⁵ 32 A.3d 351.

Delaware law reflects a strong public policy against contributory negligence as a complete bar to recovery in negligence actions. Delaware applies the doctrine of comparative negligence and reduces a plaintiff's recovery based on the amount of negligence attributed to the plaintiff. Accordingly, Delaware courts have declined to apply the law of the state where the accident occurred when that law is clearly repugnant to the settled public policy of [Delaware] the forum. ¹⁶

14. In the Court's judgment, Delaware's significant relationships to the occurrence and to the parties, and its strong public policy favoring comparative negligence, compel the conclusion that Delaware law is applicable to this case.¹⁷ For all of the foregoing reasons, defendants Tri Supply and JCB's motions for application of Maryland law are **DENIED**.

IT IS SO ORDERED.

/s/ Peggy L. Ableman

PEGGY L. ABLEMAN, JUDGE

Original to Prothonotary

cc: Counsel via File & Serve

¹⁷ See Patterson, 7 A.3d at 459.

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¹⁶ *Id.* at 357 (internal quotations and citations omitted).