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Case Number 333,2014

IN THE

Supreme Court of the State of Delaware

BELL HELICOPTER TEXTRON, INC.
Defendant-Below, Appellant,

v.

ANDRES ARTEAGA, INDIVIDUALLY, AND AS A CO-REPRESENTATIVE OF THE ESTATE OF LEONARDO ANDRES ARTEAGA (DECEASED); and SOCORRO ARTEAGA, INDIVIDUALLY, AND AS A CO-REPRESENTATIVE OF THE ESTATE OF LEONARDO ANDRES ARTEAGA (DECEASED), *ET AL.*
Plaintiffs-Below, Appellees.

NO. 333,2014

APPEAL FROM THE SUPERIOR COURT OF NEW CASTLE COUNTY
C.A. NO. N12C-05-008 JRJ (CONSOLIDATED)

APPELLEES' CORRECTED ANSWERING BRIEF

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NATURE OF PROCEEDINGS

These consolidated products liability actions arise from the crash of a Bell B-212 helicopter in Mexico. All nine individuals aboard were fatally injured. Plaintiffs, individually and as the personal representatives of their Decedents' estates, filed seven actions against Bell Helicopter Textron, Inc., a Delaware corporation, in the Superior Court of Delaware, New Castle County. At its principal place of business in Texas, Bell designed, manufactured, and tested the inboard strap fitting, the defective component part that was the sole cause of the crash.

The Superior Court Civil Case Information Statements

Bell complains about Plaintiffs' Superior Court Civil Case Information Statements ("CISs"). "[F]or each of the suits filed on May 1, 2012 [Plaintiffs] identified two automobile rollover cases as 'related cases now pending in the Superior Court' but did not 'explain the relationship(s)' on the CIS form. (A68, A70, A72). The CIS for each of the cases filed on May 7, 2012 identified the three cases filed the week before and the two automobile cases as 'related cases' but, once again, did not 'explain the relationship(s)'on the CIS form. (A74, A76, A78, A80)." Bell's Br., p. 1.

In an obvious attempt to prejudice, Bell implies that Plaintiffs manipulated the CISs. "The outcome of the parties' competing choice of law motions below

was essentially preordained once the cases were assigned to the trial court, which has repeatedly and consistently found Mexico's legal system to be inadequate." Bells' Br., p. 9. Bell made this argument below. B31–34. But when pressed, Bell denied that Plaintiffs engaged in unprofessional conduct regarding the CISs. B34.

Indeed Plaintiffs did not. The clerk's office prefers advance notice of multiple filings and, when contacted, advised Plaintiffs' counsel to list these cases as related because they involved issues of law and fact similar to the automobile rollover cases, *i.e.,* products liability actions brought by Mexican nationals against American companies arising from incidents that occurred in Mexico. The pending rollover cases are stayed, or in the process of being stayed, until the resolution of this appeal, thereby demonstrating their commonality.

The Trial Judge's *Forum Non Conveniens* Decision

Bell also criticizes the trial judge's *forum non conveniens* opinion (A298–305), although that decision is not the subject of this appeal. Bell did not appeal the *forum non conveniens* decision because it failed to timely file its notice. B1. Thus, Bell's criticisms appear to be another attempt to prejudice.

Bell complains that the trial judge denied its *forum non conveniens* motion, holding that Mexico was not an available alternative forum and without reaching the *Cryo-Maid* factors. Bell's Br., p. 2. Bell cites *VTB Bank v. Navitron Projects Corp.,* 2014 WL 1691250 (Del. Ch. Apr. 28, 2014), arguing that the availability of

an alternative forum is not the threshold issue in *forum non conveniens* analysis.[1] Bell's Br., p. 2 n.2.

But the availability of an alternative forum has always been part of the analysis. *See Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 507 (1947) ("[*forum non conveniens*] presupposes at least two forums in which the defendant is amenable to process"). In *Martinez v. E.I. DuPont de Nemours & Co.*, 82 A.3d 1, 29 (Del. Super. 2012), the trial judge concluded that Argentina was an adequate alternative forum. The Court did not criticize or disturb that aspect of the trial judge's analysis in affirming her decision. *See Martinez v. E.I. DuPont de Nemours & Co.*, 86 A.3d 1102, 1104–11 (Del. 2014).

The Trial Judge's Choice of Law Decision

Plaintiffs moved for the application of Texas law to liability and damages (A590), while Bell moved for the application of Mexican law to remedies. A362. The parties filed their respective responses and replies. After the trial judge heard oral argument (A847–92), it allowed additional briefing regarding the Court's decision in *Martinez*. A893.

The trial judge granted Plaintiffs' motion and denied Bell's. A894–911. Bell filed its application for certification (A912–27), and this appeal followed.

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[1] Nevertheless, the Court of Chancery acknowledged that "Ukraine would likely be an adequate, alternative forum for VTB's cognizable claims." *VTB Bank*, 2014 WL 1691250, at *7 n. 68.

SUMMARY OF ARGUMENT

1. Denied. Bell did not present its international comity argument to the trial judge. "Only questions fairly presented to the trial court may be presented for review." Supr. Ct. R. 8. Alternatively, the trial judge properly applied the "most significant relationship test." The Court's choice of law precedent does not require consideration of international comity. *See Travelers Indem. Co. v. Lake*, 594 A.2d 38, 47–48 (Del. 1991) (no consideration of international comity in deciding between the law of Delaware and Quebec).

2. Denied. The Court has held that the place of the injury is an inferior contact in comparison to the other contacts in section 145 of the Restatement (Second) of Conflict of Laws ("Restatement"). *See Sinnott v. Thompson*, 32 A.3d 351, 355 (Del. 2011). Further, on more than one occasion, the Court has declined to apply the law of the state where the injury occurred notwithstanding section 146's presumption. *See, e.g., id.* at 357–58. Because the sole cause of the helicopter crash was the failure of the inboard strap fitting defectively manufactured in Texas, the trial judge properly applied the Court's precedent in concluding that the place of the injury-producing conduct was particularly relevant. *See Lake,* 594 A.2d at 48 n.6.

3. Denied. The place of the injury was fortuitous. The product at issue is the inboard strap fitting not the Bell B-212 helicopter. In August 2008, Bell sold the

inboard strap fitting to a helicopter servicing company in Louisiana. Bell had no idea that Mexico would be the ultimate destination for the part when the Louisiana company shipped the inboard strap fitting to Mexico in July 2009. Its counsel conceded this point below. "So while Bell may not have known specifically which Bell 212 this [part] was going to, it certainly wasn't going to be going anywhere in the United States because Bristow doesn't operate 212's in the United States." A867.

4. Denied. Bell misrepresents the record when it argues that "the alleged injury-causing conduct took place in multiple locations, including Mexico." Bell's Br., p. 6. The record shows that all Bell's injury-producing conduct occurred in Texas not Mexico, and there is no evidence of other tortious conduct.

5. Denied. Bell invites the Court to overturn its choice of law precedent by substituting the policy considerations articulated in *Martinez v. E.I. DuPont de Nemours & Co.,* 86 A.3d 1102 (Del. 2014) for the policy considerations enumerated in section 6 of the Restatement. *Martinez* is inapposite here because at issue in *Martinez* were "complex and unsettled issues of Argentine tort law." *Id.* at 1108. Conversely in this case, the trial judge was not asked to decide complex and unsettled issues of Mexican law. Therefore, the Court should decline Bell's invitation to overturn its choice of law precedent.

STATEMENT OF FACTS

At its principal place of business in Texas, Bell designed, manufactured, and tested the inboard strap fitting, the defective component part that was the sole cause of the helicopter crash in Mexico. A597, 623–24, 640, 644.

The inboard strap fitting is one of the key parts that connects each of the helicopter's rotor blades to the main rotor hub. A896. "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." *Id.* When this part fails in mid-flight, as it did in this incident, the centrifugal forces imparted on the rotor blade effectively throw the blade from the helicopter. *Id.* Because the helicopter cannot sustain flight with only one rotor blade, mid-flight failure of an inboard strap fitting makes a crash unavoidable. *Id.*

In August 2008, Bell shipped the inboard strap fitting to Bristow U.S., L.L.C. in Louisiana. A838. There was no indication on Bell's packing list that the inboard strap fitting's ultimate destination was Mexico. *Id.* Air Logistics, a Bristow company, did not install the part into the helicopter until July 2009. *Id.* Thus, Bell had no idea that Mexico would be the ultimate destination for the inboard strap fitting when it shipped the part in August 2008.

The Dirección General de Aeronáutica Civil ("DGAC"), the Mexican civil aeronautics authority, conducted an investigation of the crash and issued a report. A627. The DGAC investigation found no evidence to suggest that the crash was the result of human error, and also determined that the "aircraft was certified, equipped, and maintained according to current approved regulations and procedures." A641–42. Regarding the cause of the crash, the DGAC issued this 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 (part of the fastening system)." A644. As the sole contributing factor, the DGAC concluded: "Defect in the manufacturing process of components." *Id.*

Bell also investigated the crash. Bell tested the inboard strap fitting at its laboratories, where it found evidence of defects in the manufacturing process. A640. Bell determined that the fitting was not manufactured in accordance with the engineering design requirements. A672. Subsequently, Bell inspected four additional inboard strap fittings from the same manufacturing lot and discovered that two inboard strap fittings exhibited the same type of fracturing or cracking as the part involved in the Mexican crash. *Id.* Bell also found three additional inboard strap fittings with the same type of cracking in two additional manufacturing lots. A676.

ARGUMENT

I. THE "MOST SIGNIFICANT RELATIONSHIP TEST" DOES NOT INCLUDE PRINCIPLES OF INTERNATIONAL COMITY

A. Question Presented

Did the trial judge correctly apply the "most significant relationship test" to the choice of law motions without factoring international comity into its analysis when Bell failed to present this argument to the trial judge, and the Court's choice of law precedent does not require its consideration?

B. Standard of Review

The Court reviews all questions of law *de novo*. *See Lake,* 594 A.2d at 40.

C. Merits of Argument

Bell claims that it preserved error on this question at A912–27. Bell's Br., p. 9. That document is Bell's application for certification filed on **June 19, 2014.** A912. Bell's application is the only place in the record where the phrase "international principles of comity" appears. A922. Bell did not argue principles of international comity before the trial judge issued her opinion on **June 10, 2014.** "It is a basic tenet of appellate practice that an appellate court reviews only matters considered in the first instance by a trial court." *Delaware Elec. Coop. v. Duphily*, 703 A.2d 1202, 1206 (Del. 1997). Bell's international comity argument violates this fundamental rule. Because "[o]nly questions fairly presented to the trial court

may be presented for review,"[2] the Court should conclude that Bell failed to preserve error on this question and should not consider Bell's international comity argument.

Alternatively, the Court should reject this argument. Bell complains that the trial judge "has repeatedly and consistently found Mexico's legal system to be inadequate." Bell's Br., p. 9. This statement mischaracterizes the trial judge's *forum non conveniens* rulings. In this case the trial judge reasoned that "Defendants cannot argue that Mexico is an available alternative forum when they admit that, in practice, Mexican courts routinely dismiss exactly such cases as this one for lack of" jurisdiction. A304.[3]

Bell argues further that other courts have held that Mexico is an available alternative forum. Bell's Br., p. 10 n.4. Bell made this argument in its *forum non conveniens* briefing. Thus, Bell's international comity argument is a thinly disguised attack on the trial judge's *forum non conveniens* decision that Bell did not appeal. B1. Accordingly, the Court should reject Bell's attempt to collaterally attack the trial judge's *forum non conveniens* decision.

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2 Supr. Ct. R. 8.

3 *See also Pena v. Cooper Tire & Rubber Co.,* 2009 WL 847414, at *4 (Del. Super. Mar. 31, 2009) ("[T]he Court remains convinced that a Mexican court will not entertain this product liability suit because the defendants are domiciled in the U.S."); *Cervantes v. Bridgestone/Firestone N., Tire Co.,* 2009 WL 457918, at *1 (Del. Super. Jan. 29, 2009) ("This Court is satisfied that a Mexican court does not and cannot have [jurisdiction] to hear this personal injury case against the defendants, all of which are United States corporations.").

Moreover, Bell's international comity argument lacks supporting authority. Absent from its discussion are any Delaware choice of law cases. Bell's Br., pgs. 10–11. This dearth of authority is unsurprising. The Court's choice of law precedent does not require consideration of international comity. *See Lake,* 594 A.2d at 47–48 (no consideration of international comity when deciding between the law of Delaware and Quebec). The trial judge correctly applied the "most significant relationship test" as set forth in *Lake.* Opinion at 4–6, 15–16.

Bell's reliance on federal law is also unavailing. Bell's Br., pgs. 10–11. In *Navarro v. Bell Helicopter Servs., Inc.,* a helicopter owned and certified by the Mexican government crashed in Mexico, killing Mexican citizens. 2001 WL 454558, at *1, *3 n.7 (N.D. Tex. Jan. 25, 2001). Bell removed the case based on the federal common law of international comity. *Id.* at *3. The district court disagreed that this law applied, reasoning that the plaintiffs' state law products liability claims of design, manufacture, and assembly did not implicate Mexico's sovereignty. *Id.* at n.7.

The Court should therefore conclude that the trial judge did not err in applying the "most significant relationship test" without factoring international comity into her analysis.

II. THE TRIAL JUDGE CORRECTLY CONCLUDED THAT TEXAS HAS THE MOST SIGNIFICANT RELATIONSHIP TO DAMAGES AND REMEDIES

A. Question Presented

Did the trial judge properly apply the "most significant relationship test" and correctly conclude that Texas law applied to damages and remedies?

B. Standard of Review

The Court reviews all questions of law *de novo*. *See Lake*, 594 A.2d at 40.

C. Merits of Argument

1. The "Most Significant Relationship Test"

The "most significant relationship test" in the Restatement applies to the choice of law questions in these products liability actions. *See Sinnott,* 32 A.3d at 354. This test is flexible and "requires each case to be decided on its own facts." *Lake,* 594 A.2d at 48. Pursuant to Restatement section 145, "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." *Id.* at 47 (quoting Restatement (Second) of Conflict of Laws §145(1)).

Section 145 lists the following four contacts to consider when applying the relevant Restatement factors:[4] (a) the place where the injury occurred; (b) the

[4] These factors are: (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 determination of the particular issue; (d) the protection of justified expectations; (e) the basic policies underlying the particular field of law; (f)

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. Restatement (Second) of Conflict of Laws §145(2).

The Court has cautioned that "the Restatement test does not authorize a court to simply add up the interests on both sides of the equation and automatically apply the law of the jurisdiction meeting the highest number of contacts listed in Sections 145 and 6." *Lake,* 504 A.2d at 48 n.6. "Section 145 has a qualitative aspect. It clearly states that the 'contacts are to be evaluated according to their relative importance with respect to the particular issue.'" *Id.* (quoting Restatement (Second) of Conflict of Laws §145).

Pursuant to Restatement section 146, the law of the state where the injury occurred applies in a personal injury action 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." Restatement (Second) of Conflict of Laws §146. The place where the injury occurred is not an important factor "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." *Id.* at §145 cmt. e.

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certainty, predictability, and uniformity of results; and (g) ease in the determination and application of the law to be applied. Restatement (Second) of Conflict of Laws § 6(2).

2. The Trial Judge Correctly Concluded That The Place of Injury Was Fortuitous

The trial judge found that "the place of injury in this case was fortuitous." Opinion at 8. In support, she wrote:

> 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. There are no other connections with Veracruz besides that it was the location of the accident.

Id. (footnote omitted). This finding is consistent with two previous decisions by the trial judge in products liability cases brought by Mexican nationals against American companies arising from incidents that occurred in Mexico.[5]

There is additional evidence in the record to support the trial judge's finding that the place of injury was fortuitous. In August 2008, Bell shipped the inboard strap fitting to Bristow U.S., L.L.C. in Louisiana. A838. There was no indication on Bell's packing list that the part's ultimate destination was Mexico. *Id.* Air Logistics, a Bristow company, did not install the part into the helicopter until July 2009. *Id.* Thus, Bell had no idea that Mexico would be the ultimate destination of the inboard strap fitting when it shipped the part in August 2008, and more importantly, the crash could have occurred in any one of the many foreign

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5 *Ortega v. Yokohama Corp. of N. Am.*, 2010 WL 1534044, at *2 (Del. Super. Mar. 31, 2010); *Cervantes v. Bridgestone/Firestone N. Am. Tire Co.*, 2008 WL 3522373 (Del. Super. Aug. 14, 2008), *amended by* 2010 WL 431788, at *3 (Del. Super. Feb. 8, 2010).

countries where Bristow does business. *See* Bell's Br., 28 ("The part was shipped to an operator in Louisiana that operates Bell 212 helicopters throughout the world.").

Its counsel conceded this point below. "So while Bell may not have known specifically which Bell 212 this was going to, it certainly wasn't going to be going anywhere in the United States because Bristow doesn't operate 212's in the United States." A867. The trial judge acknowledged this evidence and admission, writing that "[w]hen Bell placed the inboard strap fitting into the stream of commerce, Bell had no indication of its final destination in Mexico." Opinion at 9.

In a helicopter crash case, a federal district court found that the place of injury was fortuitous because manufacturers and distributors sold defective component parts to the helicopter's owner whose business extended throughout North America, and "it was mere happenstance that [the helicopter crash] occurred in British Columbia." *In re Helicopter Crash Near Wendle Creek, British Columbia on August 8, 2002*, 485 F.Supp.2d 47, 57 (D. Conn. 2007). Similarly in this case, the defective inboard strap fitting could have been shipped to any foreign country throughout the world where Bristow serviced Bell 212 helicopters. A867; *see also* Bell's Br., p. 28 ("The part was shipped to an operator in Louisiana that operates Bell 212 helicopters throughout the world."). Therefore, the Court should conclude that the place of injury was fortuitous.

3. Mexican Law Does Not Govern Plaintiffs' Compensatory Damages and Remedies Because Bell Is Not a Mexican Business, Citizen, or Resident

Bell argues that the location of injury and the plaintiffs' domicile are determinative of the law governing damages. Bell's Br., p. 16. This is incorrect. The Court has held that the place of injury may properly be considered an inferior contact in comparison to the other section 145 contacts. *See Sinnott,* 32 A.3d at 355. Further, on more than one occasion, the Court has declined to apply the law of the state where the injury occurred notwithstanding section 146's presumption. *See, e.g., id.* at 357–58 (North Carolina auto accident); *State Farm Mut. Auto. Ins. Co. v. Patterson,* 7 A.3d 454, 458–59 (Del. 2010) (New Jersey auto accident); *Lake*, 594 A.2d at 47–48 (Quebec auto accident). [6]

Regarding a plaintiff's domicile, Bell cites *Laugelle v. Bell Helicopter Textron, Inc.,* 2013 WL 5460164 (Del. Super. Oct. 1, 2013), arguing that the law of the injured party's domicile governs damages. Bell's Br., p. 18. In that case, Bell's injury-producing conduct occurred in Texas, and the helicopter crashed in Texas waters. *Laugelle,* 2013 WL 5460164, at *4. But the plaintiffs did not move for the application of Texas law. *Id.* at *3 n.19. Thus, the issue was whether Delaware or Massachusetts governed compensatory damages. *Id.* The trial judge

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[6] The Texas Supreme Court has also declined to apply the law of the state where the injury occurred notwithstanding section 146's presumption. *See Torrington Co. v. Stutzman,* 46 S.W.3d 829, 850 (Tex. 2000) (in Bell helicopter crash case arising in North Carolina, where deceased marines were North Carolina residents whose domiciles were Nebraska and Michigan, Texas law governed compensatory damages).

observed that the plaintiffs were domiciled in Massachusetts but "[n]ot one party to this action is domiciled in Delaware." *Id.* at *4. Thus, with no option of applying Texas law, the trial judge had little choice but to rule that Massachusetts law applied to compensatory damages. *Id.*

The policies underlying Mexican damages law render *Laugelle* inapposite. "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." Restatement (Second) of Conflict of Laws §6 cmt. f. Under Delaware law, "the goal in fixing damages is just and full compensation, with the focus upon the plaintiff's injury or loss." *Jardel Co. v. Hughes,* 523 A.2d 518, 528 (Del. 1987). Similarly under Texas law, "[t]he primary objective of awarding damages in civil actions has always been to compensate the injured plaintiff, rather than to punish the defendant." *Cavnar v. Quality Control Parking, Inc.,* 696 S.W.2d 549, 552 (Tex. 1985). Conversely, Mexico's policy is to limit the liability of Mexican businesses and citizens. *Vizcarra v. Roldan*, 925 S.W.2d 89, 92 (Tex. App.—El Paso 1996, no pet.).[7] Thus, the application of Mexican law would violate "Delaware's public policy against limiting damages on the basis of

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[7] Although neither the forum state nor an interested state, California views Mexican tort law in the same light. In an en banc opinion, the California Supreme Court observed generally that "[t]he interest of a state in a tort rule limiting damages for wrongful death is to protect defendants from excessive financial burdens or exaggerated claims" and then specifically that "Mexico's interest in limiting damages is not concerned with providing compensation for decedent's beneficiaries." *Hurtado v. Superior Court*, 522 P.2d 666, 670, 671–72 (Cal. 1974) (en banc).

the law of another jurisdiction." *Barba v. Carlson*, 2014 WL 1678246, at *7 (Del. Super. Apr. 8, 2014); *see also Yoder v. Delmarva Power & Light Co.*, 2003 WL 26066796, at *5 (Del. Super. Dec. 31, 2003) (in a personal injury case brought by Maryland residents for injuries suffered in Maryland, where the injury-producing conduct occurred, declining to apply Maryland's cap on non-economic damages based on Delaware's public policy against such caps).

After concluding that "the purpose of these [Mexican damages] laws is to shield resident defendants from the potentially large financial burden associated with these [wrongful death and survival] causes of action," the trial judge found 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." Opinion at 12. The trial judge relied on one of her previous opinions, *Cervantes,* 2010 WL 431788, at *3. Opinion at 12.[8] The Court denied Bridgestone/Firestone's request for interlocutory review. *Bridgestone/Firestone N. Am. Tire, LLC v. Cervantes,* 2008 WL 4552514, at *1 (Del. Oct. 10, 2008).

The same rationale applies under Texas law.[9] In *Ford Motor Co. v.*

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8 The trial judge also relied on "*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)." Opinion at 12 n. 48.

9 The same rationale also applies under California law. *See Hurtado*, 522 P.2d at 670 ("Since it is the plaintiffs and not the defendants who are the Mexican residents in this case, Mexico has no interest in applying its limitation of damages—Mexico has no

Aguiniga, the trial judge applied Texas law to the damages of the plaintiffs, both Mexican nationals and Texas residents, in a products liability case arising from an auto accident in Mexico. 9 S.W.3d 252, 259–61 (Tex. App.—San Antonio 1999, pet. denied). On appeal, Ford complained that Mexican law should have governed damages because "the amount of damages which plaintiffs could have recovered under Mexican law would have been limited." *Id.* at 260 (noting that those same damages would not have been limited under Texas law). The court of appeals rejected this argument, observing that Ford was an American corporation, the individual defendant was an American, and neither defendant was a Mexican business, citizen, or resident. The court concluded that "there is not a Mexican defendant who would be protected by the limitations in damages under Mexican law." *Id.*; *see also Enterprise Prods. Partners, L.P. v. Mitchell,* 340 S.W.3d 476, 483 (Tex. App.—Houston [1st Dist.] 2011, pet. abated and subsequently dism'd) (op. on reh'g) (in a pipeline explosion case arising in Mississippi, where all plaintiffs were Mississippi residents, and both defendant corporations were headquartered in Texas, finding Mississippi's interest in its damages cap inapplicable and concluding Texas law governed compensatory damages).

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defendant residents to protect and has no interest in denying full recovery to its residents injured by non[-]Mexican defendants.").

4. The Trial Judge Correctly Concluded That The Restatement's Policy Considerations Weigh In Favor of Texas Law Governing Damages and Remedies

(a) The Needs of The Interstate and International Systems

Bell complains that the trial judge's decision demonstrates a lack of respect for Mexico and its interest in compensating its citizens. Bell's Br., pgs. 19–20. This argument presupposes that Mexico is an available alternative forum. Bell's own proof demonstrated that it was not. A304. Further, other courts have rejected Bell's sovereignty argument. *See, e.g., Navarro*, 2001 WL 454558, at *3 n.7 (plaintiffs' state law products liability claims did not implicate Mexico's sovereignty, even where Mexican government owned and certified helicopter that crashed in Mexico, killing Mexican citizens).

(b) The Relevant Policies of The Forum

The trial judge found that Delaware's policies of deterring tortious conduct and compensating victims aligned with Texas' policies. Opinion at 11. Bell does not challenge this finding here, but instead argues that "Delaware has no interest in the compensation of foreign plaintiffs for injuries occurring in a foreign country." Bell's Br., p. 20. This is an inaccurate statement of Delaware law. *See Ison v. E.I. DuPont de Nemours & Co.,* 729 A.2d 832, 834–35 (Del. 1999) (foreign nationals brought products liability claims for injuries that occurred in England, Wales, Scotland, and New Zealand).

Citing the Court's *Martinez* opinion, Bell argues further that "[t]here is 'no countervailing local interest' where a plaintiff is not a resident of Delaware and was not injured in Delaware." Bell's Br., p. 20. But in this case, the "countervailing local interest" is Delaware, Bell's state of incorporation.[10] Delaware has a rational connection to this case because Bell is the proper defendant unlike DuPont in *Martinez.*[11]

(c) The Relevant Policies of Other Interested States

Bell contends that Mexico's interest in compensating its citizens according to its law "overwhelmingly trumps any interest Texas may possess." Bell's Br., p. 21. But Mexico's policy is to limit the liability of Mexican businesses and citizens. *See Vizcarra*, 925 S.W.2d at 92; *see also Hurtado,* 522 P.2d at 671–72; *Villaman,* 1994 WL 6661, at *4. Further, Mexico has no interest in the application of its laws to compensatory damages because Bell is not "a Mexican defendant who would be protected by the limitations in damages under Mexican law." *Aguiniga*, 9 S.W.3d at 260; *see also Hurtado,* 522 P.2d at 670 ("Mexico has no

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10 *Cf. Martinez,* 86 A.3d at 1108-09 ("The Superior Court also properly recognized that no countervailing local interest exists in this case because the Plaintiff is not a resident of Delaware, was not injured in Delaware, and . . . the Defendant's state of incorporation has no rational connection to the cause of action.") (internal quotation marks omitted).

11 "Delaware—DuPont's State of Incorporation—has no rational connection to the cause of action in this case and is clearly being used as a subterfuge to avoid suing the decedent's actual Argentine employer, who should be named as a defendant herein." *Martinez,* 82 A.3d at 33.

defendant residents to protect and has no interest in denying full recovery to its residents injured by non[-]Mexican defendants.").

Bell also argues that under Texas law, three Plaintiffs have no remedy because Texas does not recognize concubine status. Bell's Br., pgs. 14, 21. The trial judge made no such finding. Rather she concluded:

> 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.

Opinion at 16 (footnote omitted).

Bell does not challenge this finding on appeal. Instead Bell ignores it, arguing that "Texas has no interest in depriving non-residents of remedies that they would be entitled to under the law of their domicile." Bell's Br., p. 21. Assuming *arguendo* that the concubines would not have a remedy under the Texas Wrongful Death Act (a point Plaintiffs do not concede), Mexican law could govern the discrete issue of the concubines' wrongful death remedy, while Texas law would govern all remaining issues. *See In re Air Crash Disaster Near New Orleans, La. on July 9, 1982*, 789 F.2d 1092 (5th Cir. 1986).

In *New Orleans Air Crash*, Uruguayan passengers were killed in an airplane crash in Louisiana. Their heirs brought suit in Louisiana federal court. One plaintiff sued for the deaths of his mother, sister, and aunt. *Id.* at 1094. Louisiana law allowed recovery only for the mother's and sister's deaths. But Uruguayan law provided a remedy for the aunt's death. *Id.* at 1095. A panel of the Fifth Circuit affirmed the district court's application of Louisiana law to the plaintiff's claims for his mother's and sister's deaths and Uruguayan law to his claim for his aunt's death. *Id.* The panel reasoned that "Louisiana law provided no remedy; the law of Uruguay did. Under §§175 and 178 of the *Restatement (Second) on Conflict of Laws,* the law of Uruguay was applied appropriately." *Id.* at 1097.[12]

(d) The Protection of Justified Expectations

Bell complains that "[n]o party had any expectation that injury to Mexican nationals in Mexico would be governed by Texas law." Bell's Br., p. 21. Other courts have rejected Bell's expectation argument. *See, e.g., Tokio Marine & Fire Ins. Co., Ltd. v. Bell Helicopter Textron,* 1982 WL 623495 (S.D. Tex. July 8, 1982). A Bell helicopter, owned and leased by Japanese companies, crashed in Japan, killing a Japanese citizen. *Id.* at *1. Bell argued that "plaintiff Japanese

12 A majority of the en banc Fifth Circuit concluded that "the district court correctly applied Uruguayan law in recognizing and allowing [the plaintiff's] claim for the death of his aunt." *In re Air Crash Disaster Near New Orleans, La. on July 9, 1982*, 821 F.2d 1147, 1170 (5th Cir. 1987) (en banc), *vacated on other grounds sub nom., Pan Am. World Airways, Inc. v. Lopez*, 490 U.S. 1032 (1989), *reinstated except as to damages,* 883 F.2d 17 (5th Cir. 1989).

insurance companies could not possibly have contemplated the application of Texas law to claims arising from the crash of the helicopter it insured." *Id.* at *12. The district court rejected this argument, reasoning that "Bell, a Texas company, certainly should expect that Texas product liability law would apply to claims arising out of their [sic] manufacture of aircraft in Texas." *Id. Tokio Marine* is additional authority supporting the trial judge's finding that "Bell, as a corporation with its principal place of business in Texas, could reasonably expect to litigate disputes using Texas law." Opinion at 12 (relying, in part, on *Viking Pump, Inc. v. Century Indem. Co.,* 2 A.3d 76, 89 (Del. Ch. 2009) (New York insurance company could reasonably expect New York law to govern insurance policies in dispute)).

(e) The Basic Policies Underlying The Particular Field of Law

Bell argues that "[u]nder both Mexican and Texas law, the purpose of wrongful death damage awards is to compensate the victim." Bell's Br., p. 22. But as we have seen, Mexico's underlying policy is to limit the liability of Mexican businesses and citizens. *See Vizcarra*, 925 S.W.2d at 92; *Hurtado*, 522 P.2d at 670, 671–72; *Villaman*, 1994 WL 6661, at *4.

(f) Certainty, Predictability, and Uniformity of Result

Bell contends that "[t]he choice of law ruling in these cases [sic] is directly at odds with the legal rule applied in *Laugelle*." Bell's Br., p. 22. This case presents a qualitatively different choice of law problem than *Laugelle*. The choice

is between Texas, a state whose policy is to compensate an injured plaintiff, and Mexico, a country whose "interest in limiting damages is not concerned with providing compensation for decedent's beneficiaries." *Hurtado*, 522 P.2d at 671–72. Therefore, this case merits a different result than *Laugelle.*

(g) Ease In The Determination and Application of The Law to Be Applied

The trial judge found that it will be easier to determine and apply Texas law than Mexican law, reasoning that "[t]he 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." Opinion at 13. Mexican law is written in Spanish and based on a civil code system. *See Villaman*, 1994 WL 6661, at *4 (concluding Arizona law easier to determine and apply than Mexican law because of language barrier and civil code legal system). It is beyond peradventure that the determination and application of Texas law is far easier than Mexican law. *See Martinez*, 82 A.3d at 33–34 ("While Delaware courts are frequently called upon to interpret and apply foreign laws, when those laws are in Spanish and have been enacted in the context of a civil law system originating from the Napoleonic Code, the application of foreign law imposes that much more of a hardship.").

5. Texas Law Governs Punitive Damages

Plaintiffs' First Amended Complaints include counts for punitive damages against Bell. *See, e.g.,* A241–42. Plaintiffs moved "for the application of Texas

law to all issues of liability and damages in these consolidated actions." A590. The trial judge concluded that Texas law will apply to damages. Opinion at 16.

An actual conflict exists between Texas and Mexico regarding punitive damages. Texas law allows for punitive damages. *See generally* TEX. CIV. PRAC. & REM. CODE Chapter 41. Mexico does not. *See Villaman,* 1994 WL 6661, at *3. "In air crash cases, the most important contacts to consider in the choice of law analysis on punitive damages are (1) defendant's principal place of business and (2) the place where the misconduct that is the subject of the punitive damages claim took place." *In re Cessna 208 Aircraft Prods. Liab. Litig.*, 2009 WL 274509, at *4 (D. Kan. Feb. 5, 2009).

At its principal place of business in Texas, Bell designed, manufactured, and tested the inboard strap fitting, the defective component part that was the sole cause of the crash. A597, 623–24, 640, 644. Bell cites to no evidence that any injury-producing conduct occurred in Mexico. Therefore, the Court should conclude that Texas law governs punitive damages.

III. THE TRIAL JUDGE CORRECTLY CONCLUDED THAT TEXAS HAS THE MOST SIGNIFICANT RELATIONSHIP TO LIABILITY

A. Question Presented

Did the trial judge properly apply the "most significant relationship test" and correctly conclude that Texas law applied to liability?

B. Standard of Review

The Court reviews all questions of law *de novo*. *See Lake*, 594 A.2d at 40.

C. Merits of Argument

1. Bell Offered No Evidence Of A Product Manufacturer's Liability Under Mexican Law

Bell argues that "[t]he Superior Court committed legal error by not applying Mexican federal law to liability under the circumstances." Bell's Br., p. 25. But Bell has a proof problem. Its Mexican law expert never opined on the law governing a product manufacturer's liability. A510–18. His opinion was limited to the liability of helicopter operators: "Pursuant to the first paragraph of Article 61 of the LAC [Mexico's Civil Aviation Law], private concessionaires or licensees providing transportation services in Mexico shall be liable for all injuries (including death) caused to passengers during flight. . . . In other words, Mexican law has established a no-fault system imposing liability on the operator of a flight for any injuries suffered by its passengers." A512. Thus, when Bell argues that

"the Mexican aviation statute and its liability scheme" must apply, its argument has no evidentiary support.[13] Bell's Br., p. 33.

2. The Trial Judge Correctly Concluded That The Place of Injury was Fortuitous

Plaintiffs incorporate their previous discussion of this issue, found at pages 13 through 14, as if fully set forth here.

3. Bell Offered No Evidence That Any Injury-Producing Conduct Occurred in Mexico

Bell manufactured the inboard strap fitting in Texas. This part failed because of a defect in Bell's manufacturing process. A644, 672. Bell cites to no evidence that any injury-producing conduct occurred in Mexico. Thus, Bell's argument that "the conduct at issue reasonably can be said to have taken place in multiple locations, inside and outside Texas" has no support in the record. Bell's Br., p. 30. Accordingly, the trial judge correctly concluded that the injury-producing conduct occurred in Texas. Opinion at 8, 14.

Because there is no evidence to support its position, Bell is left to argue the law. But its cases miss the mark. Most notable is *Sulak v. Am. Eurocopter Corp.*, 901 F.Supp.2d 834 (N.D. Tex. 2012), a failure to warn case. Plaintiffs have not asserted failure to warn claims against Bell (A238, 241), although Bell represents

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[13] Nor does the case law support this argument. *See Tokio Marine,* 1982 WL 623495, at * 12 (rejecting Bell's argument to apply the Japanese Civil Aviation Act in a helicopter crash that killed a Japanese citizen in Japan because "the focus of the case is the *product,* not solely the *crash* of the helicopter") (italics original).

that they have. Bell's Br., p. 29. Bell also cites *In re W.R. Grace & Co.,* 418 B.R. 511 (D. Del 2009), where the injury-producing conduct was the installation of asbestos in buildings that resulted in property damage. Bell's Br., p. 29. But in this case, it is undisputed that the inboard strap fitting was defectively manufactured in Texas (A644) not negligently installed in Mexico (A641–42).

Additionally, Bell relies on *Thompson v. Reinco Inc.,* 2004 WL 1426971 (Del. Super. June 15, 2004) and *Rasmussen v. Uniroyal Goodrich Tire Co.,* 1995 WL 945556 (Del. Super. Aug. 18, 1995) to argue that the jurisdiction where the product is sold has a greater interest than the jurisdiction where the product is manufactured. Bell's Br., p. 28. But the inboard strap fitting entered the stream of commerce in Texas not Mexico. A838. Bell acknowledges this important fact in its brief. "The part was shipped to an operator in Louisiana that operates Bell 212 helicopters throughout the world." Bell's Br., p. 28. Therefore, *Thompson* and *Rassmussen* are inapposite here.

Bell also complains that "[t]he place of manufacturing in Texas certainly is afforded some weight . . . but certainly not the dispositive significance afforded by the Superior Court." Bell's Br. p. 28. The trial judge did not characterize this factor as "dispositive." Opinion at 10. Rather she appropriately described the place where the injury-producing conduct occurred as "particularly relevant." *See Lake*, 594 A.2d at 48 n.6 (observing that section 145 has a qualitative aspect, and

factors should be evaluated as to their relative importance to a particular issue). Other courts have found this factor and Bell's manufacturing facilities in Texas as particularly relevant in their choice of law analysis and applied Texas law in Bell helicopter crash cases that arose outside of Texas.[14]

4. Delaware and Texas Have an Interest in Bell's Misconduct, While Mexico Does Not

Section 145 requires consideration of the parties' domicile, residence, nationality, place of incorporation, and place of business. Restatement (Second) Conflict of Laws § 145(2)(c). The trial judge observed that the Decedents were all Mexican citizens, and Bell is a Delaware corporation with its principal place of business in Texas. Opinion at 9.

Bell uses this section 145 factor as an opportunity to argue that "Delaware courts clearly consider the place where the injury is felt to be a substantial factor in any choice of law analysis in a tort case." Bell's Br., p. 30 (citing *Emmons v. Tri Supply & Equip. Co.,* 2012 WL 5432148 (Del. Super. Oct. 17, 2012)). But *Emmons* is inapplicable here. The trial judge ruled that Delaware law applied in that products case, even though the injury occurred in Maryland, because Delaware "has a strong policy against contributory negligence as a bar to recovery." *Id.* at *3.

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14 *See, e.g., Torrington Co.,* 46 S.W.3d at 850 (helicopter crash in North Carolina); *Guizhi v. Bell Helicopter Textron, Inc.,* 1997 WL 786494, at *2 n.2 (N.D. Tex. Dec. 16, 1997) (helicopter crash off coast of China); *Tokio Marine,* 1982 WL 623495, at *11–12 (helicopter crash in Japan); *Melton v. Borg-Warner Corp.,* 467 F.Supp. 983, 986–87 (W.D. Tex. 1979) (helicopter crash in Germany).

After the court observed that the Delaware resident suffered his injury's consequences in Delaware, it wrote that "[t]he state where an injury occurs may have a legitimate interest in having its 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." *Id.* at *2. This policy and interest are not at issue here.

But other interests are. As the state of Bell's incorporation, Delaware is an interested state that "has a legitimate interest in governing the rights of those corporations that have chosen to avail itself [sic] of the laws of the State." *Caballero v. Ford Motor Co.,* 2014 WL 2900959, at *5 (Del. Super. June 24, 2014) (citing *In re Topps Co. S'holders Litig.,* 924 A.2d 951, 958 (Del. Ch. 2007)). As the state of Bell's principal place of business, Texas "has an interest in preventing misconduct occurring in the state." *Caballero*, 2014 WL 2900959, at *5. Texas' "interest is particularly strong when the defective product in question was manufactured and placed in the stream of commerce in the State of Texas." *Mitchell v. Lone Star Ammunition, Inc.,* 913 F.2d 242, 250 (5th Cir. 1990). It is undisputed that Bell manufactured the inboard strap fitting in Texas and placed it in the stream of commerce there. Conversely, Mexico has no interest in the tortious conduct of a nonresident corporation like Bell. *See Guizhi,* 1997 WL 786494, at *2 n.2 (Texas law applied to plaintiffs' claims arising from helicopter

crash off coast of China); *Tokio Marine,* 1982 WL 623495, at *11–12 (Texas law applied to plaintiffs' claims arising from helicopter crash in Japan); *Melton,* 467 F.Supp. at 986–87 (Texas law applied to plaintiffs' claims arising from helicopter crash in Germany).

5. The Trial Judge Correctly Concluded That The Parties' Relationship Was Centered in Texas

The trial judge wrote that "[t]o the extent the relationship between the parties in this case can be said to have been centered anywhere, it is centered in Texas." Opinion at 9. Bell complains that "[t]he parties' relationship on this particular issue [liability] may reasonably be said to be centered where the aircraft was owned and operated and the helicopter accident occurred." Bell's Br., p. 31. The pertinent case law does not support this argument.

In *McLennan v. Am. Eurocopter Corp.,* 245 F.3d 403 (5th Cir. 2001), a Canadian helicopter pilot sustained injuries in a Canadian helicopter crash. The Fifth Circuit held that Texas law applied to the pilot's products liability action. *Id.* at 425–26. The court concluded, in part, that "the relationship between the parties, to the extent there was one, was centered in Texas." *Id.* at 426. The court reasoned that "[w]hile McLennan was injured in Canada, the relevant conduct that McLennan claims gave rise to his injuries, the marketing and manufacturing of the helicopter, took place in Texas, where [Eurocopter] maintained its principal place of business." *Id.; see also Superior Leasing, LLC v. Kaman Aerospace Corp.,*

2006 WL 3756950, at *10 (D. Or. Dec. 19, 2006) (in a helicopter crash case arising in Washington, relying on *McLennan* and holding that the relationship between plaintiffs and defendant was centered in Connecticut, where the helicopter was designed and manufactured, a fact "of paramount importance in this product liability case"). *McLennan* and *Superior Leasing* provide additional support for the trial judge's finding on this Restatement factor, particularly in light of her reasoning that "the place where the conduct that caused the injury occurred is particularly relevant with respect to products liability under these circumstances." Opinion at 10.

6. The Trial Judge Correctly Concluded That The Restatement's Policy Considerations Weigh In Favor Of Texas Law Governing Liability

Because Bell's discussion of the Restatement's policy considerations regarding damages and liability largely overlap, Plaintiffs incorporate their previous discussion of these issues, found at pages 19 through 24, as if fully set forth here. Plaintiffs also provide the following additional authorities and analysis.

(a) The Needs of The Interstate and International Systems

Bell argues that Delaware must respect Mexico's sovereign right to regulate its airspace, and "Mexico has the greatest interest in tort rules governing its sovereign skies." Bell's Br., pgs. 32, 34. In *Tokio Marine,* Bell argued for the application of the Japanese Civil Aviation Act, where a Japanese citizen was killed

when a Bell helicopter crashed in Japan. 1982 WL 623495, at *12. The federal district judge rejected Bell's argument, reasoning that "the focus of the case is the *product*, not solely the *crash* of the helicopter." *Id.* (italics original); *see also Navarro*, 2001 WL 454558 at *3 n.7 (plaintiffs' state law products liability claims did not implicate Mexico's sovereignty, even where Mexican government owned and certified helicopter that crashed in Mexico, killing Mexican citizens). The same reasoning applies here.

(c) The Relevant Policies of Other Interested States

Bell argues that "[a]s this Court recognized in *Martinez*,. . . when a matter implicates important interests of a foreign jurisdiction—here, the Mexican aviation statute and its liability scheme—foreign law must apply." Bell's Br., p. 33. But Bell failed to prove that Mexico's Civil Aviation Law applied to product manufacturers. A510–18.

Additionally, Bell argues that "*Martinez* reinforces the presumption under Delaware law that the law of the place of injury governs absent special circumstances . . . ." Bell's Br., p. 33. *Martinez* was not a choice of law opinion. Further, the *Martinez* plaintiffs stipulated that Argentine law applied, thereby obviating the need for the choice of law analysis necessary here. *Martinez,* 82 A.3d at 33.

(f) Certainty, Predictability, and Uniformity of Result

Bell argues that "[a]pplying the law where the injury occurred, where the consequences of the tort are felt, and where at least some of that conduct occurred fosters this important function." Bell's Br., p. 34. But as we have seen, Bell offered no evidence that any injury-producing conduct occurred in Mexico. Moreover, the application of Texas law would further certainty, predictability and uniformity because Bell helicopters, though manufactured in Texas, are operated all over the world and sometimes crash. *See Guizhi*, 1997 WL 786494, at *2 n.2 (Texas law applied to plaintiffs' claims arising from helicopter crash off coast of China); *Tokio Marine,* 1982 WL 623495, at *11–12 (Texas law applied to plaintiffs' claims arising from helicopter crash in Japan); *Melton* 467 F.Supp. at 986–87 (Texas law applied to plaintiffs' claims arising from helicopter crash in Germany). Thus, Texas law would lead to more certainty and predictability in comparison to the application of the laws of multiple jurisdictions throughout this country and the world. *See Tokio Marine*, 1982 WL 623495, at *12 (making same observation).

CONCLUSION

Based on the foregoing authority and analysis, this Court should affirm the trial judge's choice of law decision.

Respectfully submitted,

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