

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

SUSAN DURKIN LAUGELLE,)
individually and as personal)
representative of the Estate of Joseph)
Laugelle, Jr., deceased, and as Next)
Friend to Anna Grace Laugelle and)
Margaret Grace Laugelle,)
)
 Plaintiffs,)

v.)

C.A. No. 10C-12-054 PRW

BELL HELICOPTER)
TEXTRON, INC., et al.,)
)
 Defendants.)

Submitted: September 9, 2013

Decided: October 1, 2013

OPINION

*Upon Defendants' Motion to Determine Applicable Law
on the Issue of Compensatory Damages,*

GRANTED.

Gary Aber, Esquire, Law Offices of Gary Aber, Wilmington, Delaware, Arthur Alan Wolk, Esquire, *pro hac vice*, Bradley J. Stoll, Esquire (argued), *pro hac vice*, Cynthia M. Devers, Esquire, *pro hac vice*, Michael S. Miska, Esquire, *pro hac vice*, The Wolk Law Firm, Philadelphia, Pennsylvania, Attorneys for Plaintiffs.

Richard Barkasy, Esquire (argued), Schnader Harrison Segal & Lewis LLP, Wilmington, Delaware, Attorney for Defendant Rolls-Royce Corporation and Rolls-Royce North America, Inc.

Richard Galperin, Esquire and David Soldo, Esquire, Morris James LLP, Wilmington, Delaware, V.L. Woolston, Esquire, Perkins Coie LLP, Seattle, Washington, Attorneys for Honeywell International, Inc.

Wallace,

J.

I. INTRODUCTION

This wrongful death action arises out of a helicopter crash that occurred on December 11, 2008, in the Gulf of Mexico, off the coast of Sabine Pass, Texas.¹ Joseph Laugelle, Jr., the pilot of the helicopter (“Pilot”), was transporting four passengers to an off-shore oil rig when the helicopter went down about two miles offshore.²

In December 2010, Plaintiff Susan Durkin Laugelle, the Pilot’s wife, brought suit against the manufacturers of the helicopter, its engine, and its engine accessories, as well as a company that previously owned and maintained the helicopter. Mrs. Laugelle alleges, *inter alia*, that her husband died as a result of chest injuries and asphyxia due to drowning.³ She seeks damages for wrongful death on behalf of herself, as personal representative of the Pilot’s estate, and as next friend to the Laugelless’ two minor daughters. Defendants have filed a motion to determine which state’s

¹ See Complaint, ¶ 1.

² See *id.* at ¶¶ 52, 53.

³ See *id.* at ¶ 53.

law the Court should apply to the Plaintiffs' claims for compensatory damages. This is the Court's decision on that discrete issue.⁴

II. FACTUAL AND PROCEDURAL BACKGROUND

On July 3, 2013, Bell Helicopter Textron, Inc., Bell Helicopter Textron Canada Limited, Rolls-Royce Corporation, Air Logistics, LLC, Bristow Group, Inc., and Honeywell International Inc. (collectively "Defendants") jointly filed a motion to determine applicable law, in which they requested that the Court rule that Massachusetts law governs Plaintiffs' claim for compensatory damages.

Mrs. Laugelle and her two children are citizens and residents of Massachusetts.⁵ The Pilot was also a citizen and resident of Massachusetts at the time of his death,⁶ and his estate is established under Massachusetts law.⁷ While some of the Defendant companies are incorporated in

⁴ The parties have also filed multiple dispositive motions and motions in limine which will be presented to the Court at a later date.

⁵ See *id.* at ¶ 1; see also Ex. A to Defts' Mot. to Determine Applicable Law (Pltfs' Answers to Deft. Honeywell Int'l Inc.'s Interrogs., No. 14).

⁶ Complaint., at ¶ 1

⁷ See Ex. B to Defts' Mot. to Determine Applicable Law (Decree Appointment of Administrator, dated Nov. 19, 2010).

Delaware, all are headquartered elsewhere, in a variety of different states and countries.⁸

III. DISCUSSION

As the forum jurisdiction, Delaware's choice-of-laws rules are used to determine the applicable law on a particular issue in a specific case.⁹ The matter of the measure of compensatory damages is substantive, not procedural, and may, therefore, be properly subjected to a choice-of-law analysis.¹⁰

Under Delaware's choice-of-law approach, a court conducts a two-part inquiry.¹¹ As the Delaware Supreme Court recently made clear in

⁸ See Complaint, at ¶¶ 2-47.

⁹ *VantagePoint Venture Partners 1996 v. Examen, Inc.*, 871 A.2d 1108, 1116 (Del. 2005); *Travelers Indem. Co. v. Lake*, 594 A.2d 38, 43, 47-48 (Del. 1991) (Delaware courts apply Delaware's substantive legal doctrines to govern choice-of-law issues in Delaware tort cases, and ensuring each case is decided on its own facts).

¹⁰ See *Monsanto Co. v. Aetna Cas. and Sur. Co.*, 1993 WL 563245, at *9 (Del. Super. Ct. Dec. 21, 1993). While, as a general rule, procedural matters are controlled by the law of the forum state, another state's law may control with regard to the substantive matters before the Court. *Id.*

¹¹ See, e.g., *Pennsylvania Employee Benefit Trust Fund v. Zeneca, Inc.*, 710 F. Supp. 2d 458, 466-68 (D. Del. 2010) (describing Delaware's choice-of-law rules that bind the federal district court when its jurisdiction is based on diversity of citizenship); *In re PMTS Liquidating Corp.*, 452 B.R. 498, 507 (D. Del. 2011) (same in bankruptcy case).

Deuley v. DynCorp International, Inc., it must be first determined that there is an actual – rather than no or merely a ‘false’ – conflict.¹² If there is no actual conflict, “the Court should avoid the choice-of-law analysis altogether,”¹³ but if a true conflict exists, the Court then applies the “most significant relationship” test as outlined in the Restatement (Second) of Conflict of Laws.¹⁴ In determining whether there is an actual conflict, Delaware state courts (and the federal courts applying Delaware’s rules) answer a single and simple query: does application of the competing laws yield the same result?¹⁵

¹² 8 A.3d 1156, 1161 (Del. 2010).

¹³ *Id.*

¹⁴ *Travelers Indem. Co. v. Lake*, 594 A.2d 38, 47 (Del. 1991) (adopting for Delaware the “most significant relationship” test set forth in § 145 of the Restatement (Second) of Conflict of Laws). The following factors are relevant under the Restatement: (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) certainty, predictability and uniformity of result; and (g) ease in the determination and application of the law to be applied. RESTATEMENT (SECOND) OF CONFLICT OF LAWS, § 6(2).

¹⁵ *See id.* (“[T]he result would be the same under both Delaware and Dubai law. Therefore . . . there is a ‘false conflict’ . . .” (internal quotation marks omitted)); *Alvarez v. Cooper Tire & Rubber Co.*, 2013 WL 226970, at *1-2 (Del. Super. Ct. Jan. 18, 2013) (“The fact that the Ohio and Delaware standards for summary judgment are identical creates a ‘false conflict’ of law.”); *Lagrone v. American Mortell Corp.*, 2008 WL 4152677, at *5 (Del. Super. Ct. Sept. 4, 2008) (The Court “reviewed the applicable law from each of the competing jurisdictions[,] . . . concluded that the end result is the same regardless of which State’s law the Court applie[d],” and found an “instance[] of ‘false conflicts’ of laws.”). *See also*, *Pennsylvania Employee, Benefit Trust Fund*, 710 F. Supp. 2d at 466-67 (listing federal and state cases applying Delaware choice-of-law

But Plaintiffs propose an additional inquiry borrowed from elsewhere to support their assertion that a “false conflict” exists and prevents a conflict-of-laws analysis. In the Plaintiffs’ view, the Court should also determine if “only one jurisdiction’s governmental interests would be impaired by the application of another jurisdiction’s law.”¹⁶ If so, they say, then only a “false conflict” exists and the Court need go no further.¹⁷

The Court rejects Plaintiffs’ invitation to engraft this additional requirement into Delaware’s conflict-of-laws rules. Courts applying Delaware’s rules have not conducted, as Plaintiffs suggest, this separate inquiry, which can lead to a finding that an actual conflict exists only when the governmental interests of both of the competing jurisdictions would be impaired if the Court did not apply their law. And Plaintiffs have not convinced the Court that adding this complexity¹⁸ to Delaware’s rules is either warranted or even advisable.

rules and describing initial stage only as an examination of whether or not the laws of the two jurisdictions would produce identical results).

¹⁶ See *Taylor v. Mooney Aircraft Corp.*, 265 Fed. App’x 87, 91 (3d Cir. 2008) (quoting *Lacey v. Cessa Aircraft Co.*, 932 F.2d 170, 187 (3d Cir. 1991) (applying Pennsylvania’s choice-of-laws rules).

¹⁷ Pltfs’ Resp. in Opposition, July 29, 2013, at 2 [hereinafter “Pltfs’ Resp.”].

¹⁸ Under Pennsylvania’s conflict-of-laws rules, for instance, once a court determines there are relevant differences demonstrating a conflict, the court then must “examine the governmental policies underlying each law, and classify the conflict as a ‘true,’ ‘false,’ or an ‘unprovided-for’ situation.” *Taylor*, 265 Fed. App’x at 90. Thereunder, “[a] true

The two competing states' laws before the Court are those of Delaware and Massachusetts.¹⁹ Defendants, as Movants, posit the following differences between the two states' laws governing compensatory damages: (1) Massachusetts law does not allow recovery for survivors' grief, anguish, or bereavement upon a wrongful death claim; and (2) Massachusetts would calculate economic damages as the amount of the lost income that the Pilot would have contributed to the survivors if the Pilot had not died.²⁰ In Delaware, Defendants contend, a plaintiff's award may include "loss of monetary benefits, loss of parental and household services, and mental anguish."²¹

conflict exists 'when the governmental interests of *both* jurisdictions would be impaired if their law were not applied.'" *Id.* at 91 (quoting *Lacey*, 932 F.2d at 187 n.15). In California too, a court must engage an inquiry as to which jurisdiction's interests would be more greatly impacted. *See Peckenpaugh v. Cargill, Inc.*, 1986 WL 15610, at *2 (D. Del. June 30, 1986) (describing California's three-step "governmental interest analysis," the last step of which is determining which state's interest would be more impaired if its policy were subordinated to that of the other).

¹⁹ Plaintiffs, in their sur-reply and at oral argument, commented that Texas's might arguably be the most appropriate law to apply here. But they have not moved for such nor suggested in any other way that Texas law should be applied. The Court, therefore, confines its analysis to a comparison Delaware and Massachusetts law on this issue.

²⁰ *See Mitchell v. U.S.*, 141 F.3d 8, 20-21 n.6 (1st Cir. 1998); *DaSilva v. Am. Brands, Inc.*, 845 F.2d 356, 362 (1st Cir. 1988); *MacCuish v. Volkswagenwerk A.G.*, 494 N.E.2d 390, 398-99 (Mass. Ct. App. 1986); *see* Defts' Reply Brf., Aug. 16, 2013, at 1; *see also* Mass. Super. Ct. Civ. Prac. Jury Instructions § 3.6 ("You shall not award damages for grief, anguish, and bereavement.").

²¹ *Estate of Rae v. Murphy*, 956 A.2d 1266, 1272 (Del. 2008); *see* DEL. CODE ANN. tit. 10, § 3724(1-3) (2013); Del. Super. Ct. Pattern Jury Instructions Civ. § 22.8.

Applying the Delaware construct, the Court finds a true conflict exists; that is, the Court finds application of the competing laws would create distinct results.²² Considering the differences in the laws, any resulting compensatory damages award in this case would certainly differ should the Court apply Massachusetts rather than Delaware law. In turn, the Court moves to the second part of the analysis – application of the “most significant relationship” test.

Choice-of-law determinations must be made as to each issue when presented, not to the case as a whole.²³ This Court, therefore, considers the sole issue of which state, Delaware or Massachusetts, has the most significant relationship to the Plaintiffs’ claim for compensatory damages.²⁴ And the Court must consider the following contacts in applying the relevant

²² Plaintiffs, though they try to minimize these differences, appear to recognize this conflict. *See, e.g.*, Pltfs’ Resp. at 2.

²³ *See* RESTATEMENT (SECOND) OF CONFLICTS OF LAWS § 145(1) (“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 . . .”) (emphasis added); *id.* at § 145(2) (“Contacts [are] taken into account . . . to determine the law applicable *to an issue* . . .”) (emphasis added). *See also, Whitehall v. Archmere Acad., Inc., v. Patterson*, 436 F. Supp. 2d 482, 485 (D. Del. 2006) (“choice of law analysis is issue-specific”); *Naghiu v. Inter-Continental Hotels Group, Inc.*, 165 F.R.D. 413, 422 n.4 (D. Del. 1996) (same); *Pittman v. Maldania, Inc.*, 2001 WL 1221704, at *3 (Del. Super. Ct. July 31, 2001) (same).

²⁴ *State Farm Mut. Auto. Ins. Co. v. Patterson*, 7 A.3d 454, 457 (Del. 2010); *Travelers Indem. Co. v. Lake*, 594 A.2d 38, 46-47 (Del. 1991).

Restatement²⁵ factors and in determining the law applicable to this particular issue: (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.²⁶ This application of the most significant relationship test is not an exercise of “simply add[ing] up the interests on both sides of the equation and automatically apply[ing] the law of the jurisdiction meeting the highest number of contacts . . . [the test] has a qualitative aspect. The contacts are to be evaluated according to their relative importance with respect to the particular issue”:²⁷ here, to compensatory damages.

As to the first element, the Pilot’s alleged physical injury occurred off the coast of Texas, but the survivor Plaintiffs’ injuries – the loss to be compensated – occurred and will be experienced in Massachusetts, where they are domiciled. Second, the conduct causing the alleged injuries appears, at this initial stage, to have also occurred in Texas. Third, as

²⁵ See n.14, *supra*.

²⁶ RESTATEMENT (SECOND) CONFLICT OF LAW, § 145 (“These contacts are to be evaluated according to their relative importance with respect to the particular issue.”); *see id.* at § 171 (“The law selected by application of the rule of § 145 determines the measure of damages.”).

²⁷ *Travelers Indem. Co.*, 594 A.2d at 48 n.6.

previously mentioned, and as the parties represented at oral argument, Massachusetts is the Plaintiffs' domicile, was the Pilot's domicile state, and is also the location of his estate. Not one party to this action is domiciled in Delaware. And while some of the Defendants are incorporated in Delaware, none are headquartered in either Massachusetts or in Delaware. Because there is really no relationship between the current parties – as it relates to damages – the final factor is of little moment in this particular case. Again under the most significant relationship test, it is not the quantity, but the quality of contacts which is important.²⁸

Plaintiffs note that the helicopter's downing and the Pilot's passing occurred off the shore of Texas, but do not propose that Texas law should be applied. Even if they did, the location of the occurrence of the injury is regularly considered an inferior contact in comparison to the other Restatement factors.²⁹ Particularly here, considering [Document1zzB00662029155996](#) the array of jurisdictions which have some interest or tie to the parties, the occurrence, or another issue present in this

²⁸ *Thomas v. Sanford*, 2000 WL 1211136, at *1 (Del. Super. Ct. Jan. 11, 2000) (“The [most significant relationship] test does not merely measure the interest of the two sides and apply the law of the jurisdiction with the most contacts . . .”).

²⁹ *Sinnott v. Thompson*, 32 A.3d 351, 355 n.4 (Del. 2011) (collecting cases); *Emmons v. Tri Supply and Equipment, Inc.*, 2012 WL 5432148, at *2 (Del. Super. Ct. Oct. 17, 2012).

case, the place of the injury carries minimal weight. So with respect to the particular issue of compensatory damages presented here, the weight of the first and third contacts is determinative; Massachusetts, where the Pilot's loved ones experienced and still experience the economic difficulties, the pain, and the suffering his loss has visited upon them, and for which they seek some measure of recovery, holds the contacts far superior in this regard.³⁰ It is there that the Laugelle Family lives with the consequences of the Pilot's demise.

Weighing the Restatement contacts, the Court finds Massachusetts law has the most significant relationship to the particular issue of compensatory damages presented here. Put simply, as to the particular issue of any compensatory damages potentially due the Laugelle Family, Delaware has virtually no connection.

IV. CONCLUSION

³⁰ See *State Farm Mut. Auto. Ins. Co. v. Patterson*, 7 A.3d 454, 459 (Del. 2010) (finding Delaware law applied where a Delaware resident experienced pain and suffering following a New Jersey car accident in her home state of Delaware); *Emmons*, 2012 WL 5432148, at *4 (“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.”); see also, *Bryant v. Silverman*, 703 P.2d 1190, 1194 (Ariz. 1985) (“Compensation of an injured plaintiff is primarily a concern of the state in which plaintiff is domiciled.”).

For the forgoing reasons, Defendants' Motion to Determine
Massachusetts Law Applicable to the Issue of Compensatory Damages is
GRANTED.

IT IS SO ORDERED.

/s/ *Paul R. Wallace*

Paul R. Wallace, Judge

Original to Prothonotary
cc: Counsel via File & Serve