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IN THE SUPREME COURT OF THE STATE OF DELAWARE

BELL HELICOPTER TEXTRON, INC., Defendant Below, Appellant, v. ANDRES ARTEAGA, individually, and as Co-Representative of the Estate of Leonardo Andrews Arteaga (deceased); and SOCORRO ARTEAGA, individually, and as 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 Case No. N12C-05-008 JRJ (Consolidated)

APPELLANT'S REPLY BRIEF

Catherine Slavin (*pro hac vice*)
Gordon & Rees LLP
One Commerce Square
2005 Market Street, Suite 2900
Philadelphia, PA 19103
Telephone: (215) 717-4006
Facsimile: (215) 693-6650

Joseph J. Bellew (I.D. 4816)
Damien Nicholas Tancredi (I.D. 5395)
Cozen O'Connor
1201 North Market Street, Suite 1001
Wilmington, DE 19801
Telephone: (302) 295-2000
Facsimile: (302) 295-2013

Attorneys for Bell Helicopter Textron Inc., Defendant Below-Appellant

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SUMMARY OF ARGUMENT IN REPLY

1. Bell preserved its appellate arguments regarding international comity. Comity is the quintessence of choice of law, which balances the interests of competing jurisdictions. Bell raised the interests of Mexico below and, then, once the Superior Court ruled on choice of law, asked the Superior Court to certify its order for immediate review because the Superior Court did not acknowledge or consider the validity or weight of Mexico's interests.

2. Mexico is both the place where the injury occurred and the place where the injury is felt, critical factors under the Second Restatement and this Court's precedent. To support their position that Texas law was properly applied by the Superior Court, the Mexican Claimants recast Bell's arguments and ignore the unassailable reality that Mexico is the only place where injury is felt.

3. Texas has an interest in compensating its own residents. Texas does not, however, have a comparable interest in compensating non-residents. Mexico has an interest in compensating its own residents. Mexico's policy interest—as articulated by Mexico's Congreso de la Unión in legislative history—is paramount in that the place where the injury is felt is a critical and substantial factor in a choice of law analysis.

4. The Mexican Claimants argue that Texas law should govern punitive damages, despite having not moved on that point below. They also deny asserting failure to warn claims, the predicate for punitive damages liability, and punitive damages are thus not at issue given their withdrawal of failure to warn claims in the Answering Brief.

5. Bell does not concede any points made by the Mexican Claimants that are not addressed herein due to page limitations, including (a) the proffered justification for filing all seven of these helicopter cases as "related" to a rollover case involving a 2000 Ford Explorer and a rollover case involving a 1998 Ford Expedition, an explanation which is not supported by the Appendix to Appellees' Answering Brief or any record citations whatsoever; and (b) the Mexican Claimants' arguments regarding Delaware's ostensible interest in the subject matter of this litigation, notwithstanding the pendency of litigation in Mexico that was not disclosed until this summer (AR140-AR153), which presents new questions of law and fact that invites review of the validity of the Superior Court's prior *forum non conveniens* ruling.[1]

[1]All defined terms used herein have the meanings assigned to them in Appellant's "Corrected" Opening Brief, which is referenced as "the Opening Brief" and cited as "OB" herein. Appellees' Corrected Answering Brief is referenced as "the Answering Brief" and cited as "AB" herein. The Reply Appendix is cited as "AR" herein.

I. BELL'S ARGUMENTS REGARDING INTERNATIONAL COMITY WERE PRESERVED BELOW

The Mexican Claimants assert that the most significant relationship test of the Second Restatement does not include consideration of international principles of comity and suggest that Bell argued "international principles of comity" for the very first time in its application for certification to this Court. (AB at 8). Choice of law, however, requires reconciling differences in the laws of interested jurisdictions, including foreign sovereigns. Bell argued the sovereign interests of the United Mexican States below and preserved error on appeal.

A. Choice of Law is Grounded in Comity and International Comity is a Choice of Law Principle

Where a state's own interests are not affected, a state should afford deference to the policies of the jurisdictions whose policies are implicated. *Martinez v. E. I. DuPont de Nemours & Co.*, 86 A.3d 1102, 1107-09 (Del. 2014). This principle holds true regardless of whether a dispute crosses interstate or international borders. Courts regularly interpret foreign law (interstate or international) on matters of substance pertaining to a right of action in tort. When the laws and interests of multiple jurisdictions conflict, courts adjust those competing interests to preserve comity among those jurisdictions.

Reconciling the competing interests of different jurisdictions—comity—is precisely what the Second Restatement mandates. The Mexican Claimants accede as much in the Answering Brief, when they quote from comments by the drafters: "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." (AB at 16) (quoting Restatement (Second) of Conflict of Laws § 6 cmt. f). Consideration of the relevant policies of another jurisdiction, whether inside or outside the United States, recognizes the validity and effect of the legislative, judicial, or executive acts of that other jurisdiction.

International comity is a choice of law principle. Ian F. G. Baxter, *Essays on Private Law* 22 (1966). Principles of international comity are not implicated in every choice of law determination, of course, and comity does not appear to have been argued in *Travelers Indem. Co. v. Lake*, 594 A.2d 38 (Del. 1991), which resolved a conflict between the law of Delaware and the law of the Canadian province of Quebec. International comity is at issue in this appeal, however, which does not involve Delaware's interests but requires this Court to resolve a transnational dispute using either the law of another state or the law of another nation.

B. Bell Preserved Error Below

The Mexican Claimants argue that this Court should not entertain any arguments regarding international comity because "Bell did not present its international comity argument to the trial judge." (AB at 4). According to the Mexican Claimants, "Bell did not argue principles of international comity before the trial judge issued her opinion." (AB at 8).

Mexico's interests in having its federal law applied were raised in Bell's reply in support of its choice of law motion. (AR116) ("Notably, too, Mexico has expressly stated its sovereign interest in regulating all activities over Mexican airspace, including aviation. No such sovereign interest was implicated in the tire defect cases.") (internal footnote omitted). Mexico's interests in having its federal law applied likewise were raised in Bell's response to the Mexican Claimants' omnibus choice of law motion. (AR90) ("Because there is little doubt that Mexico's interests outweigh Texas' as far as damages are concerned, Plaintiffs make a different appeal: they ask the court to pass judgment on the remedies the Mexican legislature has afforded its own residents"). The very argument that the Mexican Claimants suggest was not preserved—the Superior Court's acceptance of the Mexican Claimants' invitation to pass judgment on Mexican legislative enactments—was indeed argued and preserved below.

And, moreover, to the extent Bell now argues error in the Superior Court's resolution of choice of law issues, error could not have been charged until the choice of law determination was actually made. Bell preserved its assignments of error within nine days of entry of the choice of law order, when it petitioned the Superior Court to certify the order for interlocutory appeal on various grounds, including international comity—before it sought review from this Court. Rule 8 does not compel prescience by a complaining party and Bell was not required to anticipate or pre-assign error before the Superior Court ruled.

The Superior Court did not accept Bell's identification of error, denying certification, but this Court did accept Bell's interlocutory appeal, finding the requirements for immediate review to have been satisfied. Even if this Court were to find any merit to the Mexican Claimants' "back to the future" argument—which it should not—Rule 8 provides "that when the interests of justice so require, the court may consider and determine any question not so presented." Supr. Ct. R. 8. Because comity is the essential question of choice of law, and necessarily involves international and interstate relationships beyond these cases, the interests of justice require the Court's consideration of the comity question raised herein.

II. THE PLACE WHERE THE INJURY IS FELT IS PARAMOUNT IN THESE TORT CASES

Bell argued below and in the Opening Brief that Mexican federal law should apply because (1) Mexico is the place where the injury occurred, and thus its law is presumptively applicable under sections 146 and 175 of the Second Restatement; and (2) Mexico is the place where the consequences of the alleged tort are felt, a critical consideration under Delaware conflicts jurisprudence. (OB at 5, 6, 15, 17, 18, 22; AR34, AR46-AR50, AR83-AR92). The Mexican Claimants do not dispute the salient legal rule identified by Bell in the Opening Brief, which is that the place where the injury is felt—*i.e.*, where the consequences of a tort are suffered—is a substantial factor in any choice of law analysis in a tort case. The Mexican Claimants merely attempt to distinguish the cases cited by Bell—*Laugelle v. Bell Helicopter Textron Inc.*, 2013 WL 5460164 (Del. Super. Ct. Oct. 1, 2013), *Emmons v. Tri Supply & Equip. Co.*, 2012 WL 5432148 (Del. Super. Ct. Oct. 17, 2012), and *State Farm Mut. Auto. Ins. Co. v. Patterson*, 7 A.3d 454 (Del. 2010)—and offer no contrary authority of their own. (AB at 15, 16, 30). Their attempts to distinguish these cases are unavailing, however.

The Mexican Claimants purport to distinguish *Laugelle* by making the rather remarkable argument that "with no option of applying Texas law, the

trial judge had little choice but to rule that Massachusetts law applied to compensatory damages." (AB at 16). The *Laugelle* court, however, declined to consider a belatedly (in sur-reply and oral argument) made argument that the law of Texas, where the helicopter was manufactured and where the physical injury occurred, off the coast of Texas, applied to damages. 2013 WL 5460164, at n. 19. The *Laugelle* court instead followed Delaware law and applied the law of Massachusetts to damages because Massachusetts was the place where the injury was felt. *Id.* at *4.

The Mexican Claimants argue *Emmons* only in their discussion of liability issues, suggesting that *Emmons* is inapposite because *Emmons* involved contributory negligence and that particular "policy and interest are not at issue here." (AB at 30). While the discrete tort issue in that case may not have been briefed in this one, the Mexican Claimants do not dispute that the place where the injury is felt is a substantial factor in a choice of law analysis.

The Mexican Claimants cite *Patterson* only once and only for the proposition that "the court has declined to apply the law of the state where the injury occurred notwithstanding section 146's presumption." (AB at 15). The Mexican Claimants do not dispute that "what is critical is that the

consequences of that tortfeasor's conduct are suffered in" Mexico. *Patterson*, 7 A.3d at 459.

Bell agrees that these cases diverge from *Patterson*, *Laugelle*, and *Emmons* in one important respect: In each of those cases, the injury was felt in a place other than the place where the accident occurred. In each of these seven consolidated cases, Mexico is not only the place where the injury occurred (presumptively applicable under the Second Restatement) but, more importantly, the place where the consequences are suffered (critical under *Patterson* and its progeny). It is therefore unsurprising that the Mexican Claimants have failed to rebut the Second Restatement presumption or shown why this Court should part ways with precedent.[2]

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[2] The place where the consequences of the injury are felt is critical, not only in personal injury cases, but in all tort cases. *See Am. Int'l Group, Inc. v. Greenberg*, 965 A.2d 763, 820 (Del. Ch. 2009) (discussing where a financial injury to a corporation is suffered in deciding what law to apply to professional liability tort claims); *Ubiquitel Inc. v. Sprint Corp.*, 2005 WL 3533697, at *3 (Del. Ch. Dec. 19, 2005) ("[t]he effect of the loss, which is pecuniary in its nature, will normally be felt most severely at the plaintiff's headquarters or principal place of business") (quoting Restatement (Second) of Conflict of Laws § 145 cmt. f). The Second Restatement approach focuses on the physical location where the injury is felt—here Mexico—and that is the approach the Superior Court was required to follow. *See Am. Int'l Group*, 965 A.2d at 820 ("[r]egardless of whether a reasonable mind can quibble with that approach, it is the Restatement's approach and the Restatement is what this court is bound to follow"). The Superior Court, however, rendered the Second Restatement approach meaningless by focusing its attention elsewhere, in Texas, and in viewing Mexico as having points of contacts yet no interest in this controversy.

III. TEXAS HAS NO INTEREST IN THE COMPENSATION OF MEXICAN CITIZENS

The Mexican Claimants overplay Texas's interest in this controversy by disregarding Texas's lack of interest in compensating Mexican or other non-Texas plaintiffs, as articulated by Texas courts. "Texas law ... seeks to 'protect[ ] the rights of its *citizens* to adequate compensation.'" *Vasquez v. Bridgestone/Firestone, Inc.*, 325 F.3d 665, 675 (5th Cir. 2003) (emphasis in original) (citations omitted). Texas courts repeatedly have held that Texas has no interest in applying its law to damages in personal injury or wrongful death actions by non-resident Mexican plaintiffs, and certainly no interest that overrides the public policy of a foreign sovereign. *See id.* at 675 ("Were we to apply Texas law as a means of righting any perceived inequities of Mexican law, we would be undercutting Mexico's right to create a hospitable climate for investment. Uniformity, predictability, and accommodation of the competing policies of the two nations favor applying Mexican law."); *Estate of Figueroa v. Williams*, 2010 WL 5387599, at *6-7 (S.D. Tex. Dec. 17, 2010) ("Texas has no interest in the amount of damages awarded to [Mexican] Plaintiffs."); *Hoffman-Dolunt v. Holiday Inn, Inc.*, 1997 WL 33760924, at *5 (Tex. Ct. App. Feb. 27, 1997) (Mexican law applies to wrongful death claims by Mexican citizens for death occurring in

Mexico); *Vizcarra* v. *Roldan*, 925 S.W.2d 89, 92 (Tex. Ct. App. 1996) (trial court committed reversible error in applying Texas law to a personal injury case because Mexico had a superior policy interest in its laws controlling the claims of Mexican citizens arising from accidents that occurred in Mexico).

The Mexican Claimants downplay Mexico's interest in this controversy by arguing that Mexico's policy is "to limit the liability of Mexican businesses and citizens." (AB at 16, 20, 23). This is what the Mexican Claimants argued below (AR23-AR24, AR25, AR76), this is what the Superior Court held below (Opinion at 12, 15), and this is what the Superior Court has held in the past, *e.g.*, *Cervantes v. Bridgestone/Firestore N. Am. Tire Co. LLC*, 2010 WL 431788, at *3 (Del. Super. Feb 8, 2010). Importantly, however, the cases cited by the Mexican Claimants for this proposition—*Hurtado v. Superior Court*, 522 P.2d 666 (Cal. 1974), *Villaman v. Schee*, 15 F.3d 1095, 1994 WL 6661 (9th Cir. 1994) (Table), and *Vizcarra*, 925 S.W. 2d 89 — lack any discussion of Mexican law and instead make generic pronouncements regarding wrongful death and damages that could apply to any plaintiff or any jurisdiction.

Hurtado stated that "Mexico's interest in limiting damages is not concerned with providing compensation for decedent's beneficiaries," applying an earlier California choice of law decision arising from a fatal

automobile accident in Missouri. 522 P.2d at 671-72, n.5 (citing *Reich v. Purcell*, 432 P.2d 727 (Cal. 1967)). *Villaman v. Schee* is an unpublished decision from the Ninth Circuit citing *Hurtado* for the proposition that "Mexico's limitation of tort damages ... is designed to protect its residents 'from excessive financial burdens or exaggerated claims' and for the proposition that Mexico has no interest in denying full recovery to its residents injured by non-Mexican defendants." 1994 WL 6661 at *4 (citing *Hurtado*, 522 P.2d at 670). *Vizcarra v. Roldan* did "generally agree" with the concept that "Mexico's underlying policy interest in adopting laws restricting tort recovery is to protect Mexican businesses and citizens from excessive liability claims"—albeit citing a case involving Canadian plaintiffs to agree with a concept regarding Mexican policy interests—but applied Mexican law anyway. 925 S.W.2d at 92 (citing *Baird v. Bell Helicopter Textron*, 491 F. Supp. 1129, 1141 (N.D. Tex. 1980)).

The cases cited by the Mexican Claimants make no effort to identify the policies underlying Mexico's compensation scheme. The Mexican Congreso de la Unión (Congress of the Union), however, identified those policy statements in legislative history standing for nearly forty years. The 1975 amendments to Article 1915 of the CC, decided the year after *Hurtado*, expressly state that the amendments were intended "above all for

establishing with complete justice a provision that benefits the injured party, who … lacks sufficient resources and lives by his work," to wit:

> A fairer sum must be specified for restitution, starting from the basis of the increase in the cost of living and the minimum wage. Said compensation must compensate for the damages caused to assets, independent of pain and suffering and the compensation specified in Article 1915 of the Civil Code; that is, the basic principle in terms of compensatory damage is that the compensation must be in proportion to the losses suffered by the victim, and must be sufficient to repair said losses, or at least come as close to possible in repairing said losses.[3]

The Mexican policy interest, then, is to protect injured parties and not to protect persons alleged to have injured them. Differences in remedies and damages do not mean that Mexican law is inadequate or that Delaware courts should define Mexico's legislative intent by *ipse dixit* when the underlying policy is embodied in published legislative history. Devaluing Mexico's interest in compensating its own citizens is both facile and the antithesis of comity.

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[3] The legislative history for Article 1915 of the CC, and certified English translations thereof, are contained in the Compendium of Mexican Authorities filed herewith. The "exposicion de motivos" is contained in Tab 1 and the English translation is contained in Tab 2. Bell offered uncontroverted expert evidence that the LAC applies in the passenger cases and the CC applies in the crew cases. Even though they did not dispute the applicability of the LAC through expert opinions of their own, the Mexican Claimants complain that Bell has not "proven" that the LAC applies. (AB at 33). If this Court does not accept that the LAC, allowing unlimited material (economic) damages, applies to the passenger cases, then the applicable Mexican federal law in all of the consolidated cases is the CC, which provides for liquidated material damages. The CC applies in the absence of any other body of controlling Mexican law.

The Fifth Circuit rejected similar arguments regarding the comparative adequacy of remedies under Mexican and Texas law:

> [W]e start from basic principles of comity. Mexico, as a sovereign nation, has made a deliberate choice in providing a specific remedy for this tort cause of action. In making this policy choice, the Mexican government has resolved a trade-off among the competing objectives and costs of tort law, involving interests of victims, of consumers, of manufacturers, and of various other economic and cultural values. In resolving this trade-off, the Mexican people, through their duly-elected lawmakers, have decided to limit tort damages with respect to a child's death. It would be inappropriate -- even patronizing -- for us to denounce this legitimate policy choice by holding that Mexico provides an inadequate forum for Mexican tort victims. In another forum non conveniens case, the District Court for the Southern District of New York made this same point observing (perhaps in a hyperbolic choice of words) that "to retain the litigation in this forum, as plaintiffs request, would be yet another example of imperialism, another situation in which an established sovereign inflicted its rules, its standards and values on a developing nation." In short, we see no warrant for us, a United States court, to replace the policy preference of the Mexican government with our own view of what is a good policy for the citizens of Mexico.

Gonzalez v. Chrysler Corp., 301 F.3d 377, 381-82 (5th Cir. 2002) (internal footnotes and citations omitted). Summarily dismissing the interests of Mexico, without endeavoring to ascertain what policies actually underlie Mexican law, "places courts in the awkward position of dictating foreign law in such a way as to discount it and disregard the dignity of the foreign sovereign or court in a way that misinterprets foreign law." Douglas Earl Childress III, *Comity as Conflict: Resituating International Comity as*

Conflict of Laws, 44 U.C. Davis L. Rev. 11, 70 (2010). Delaware's choice of law analysis does not ask which law the court prefers, only what law must govern to respect the most interested jurisdiction.

Mexico has made policy decisions regarding compensation of surviving family members. The available damages are both liquidated and unliquidated. Liquidated damages are adjusted for cost of living by region to ensure that persons who live in places where the cost of living is higher are adequately compensated (A515, AR42), which is by no means a cap or a limitation on damages as the Superior Court and the Mexican Claimants suggest.

Mexico likewise has made a decision that certain damages are available to a person injured by a tort but are not available where a decedent dies of his injuries. Texas law at one time provided that an action for personal injuries did not survive death. *Russell v. Ingersoll-Rand Co.*, 841 S.W.2d 343, 344 (Tex. 1992). The fact that Mexico does not allow a decedent's estate to recover damages in tort, even though Texas now allows such recovery, does not mean that Mexico has no significant or relevant interest in what it views to be full compensation for its citizens or that its compensation scheme is not full compensation for its citizens.

Differences in the remedies available or the quantum of damages recoverable do not mean that a given jurisdiction is not interested in full compensation, pursuant to its own legislative and judicial judgments, or is interested only in limiting the liability of resident defendants. The reasoning advocated in the Answering Brief suggests that, if a given jurisdiction allows greater damages than another, the latter jurisdiction has no relevant policy interest in compensation because the remedy is comparatively inadequate and a "full" recovery could only be had under another jurisdiction's law.[4]

Patterson teaches that the place where the consequences of the tort are suffered is what is critical. 7 A.3d at 459. In each and every one of the matters *sub judice*, that place is not Texas. That place can only be, and is, Mexico, where the helicopter accident occurred and where survivors live with the consequences. Mexico has the superior interest in having its law applied to liability, damages, and remedies in all of these cases.

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[4] By way of example, the damages recoverable in a Texas survival action do not include future earnings. *Yowell v. Piper Aircraft Corp.*, 703 S.W.2d 630, 632 (Tex. 1986). That is the law of Delaware, too. *Magee v. Rose*, 405 A.2d 143, 146-47 (Del. Super. 1979). Other states, such as Pennsylvania, allow recovery of a decedent's future earnings in a survival action. *Murray v. Philadelphia Transp. Co.*, 58 A.2d 323, 325 (Pa. 1948). Does the fact that Delaware's neighbor to the north allows more damages to be recovered by a decedent's estate mean that Texas's remedy—or Delaware's—is inadequate? Of course not. Rather, this is "a deliberate choice in providing a specific remedy." *Gonzalez*, 301 F.3d at 381. *Cfr. Laugelle*, 2013 WL 5460164, at *3.

IV. PUNITIVE DAMAGES ARE NOT AT ISSUE IN THIS APPEAL

The Answering Brief baldly proclaims that "Texas law governs punitive damages." (AB at 25). Bell did not argue punitive damages in its Opening Brief. The Mexican Claimants did not move for the applicability of Texas law to punitive damages in the Superior Court. Accordingly, punitive damages are not properly before this Court.

The Mexican Claimants moved "for the application of Texas law to all issues of liability and damages." (A590). They did not discuss punitive damages in their moving papers or engage in any Second Restatement analysis of punitive damages in their supporting brief. (Compare A590 with AR1-AR24). They did not argue punitive damages in opposition to Bell's motion to apply Mexican law to remedies. (AR52-AR78). Only after Bell pointed out that punitive damages were not at issue, in its opposition to the motion to apply Texas law to liability and damages,[5] did the Mexican

[5] Footnote 30 of Bell's opposition stated: "Though their motion fails to address the issue, and it is therefore not before the Court, Plaintiffs presumably also seek the application of Texas law in an effort to pursue punitive damages, which are unavailable in Mexico. But, even assuming for the sake of argument that Texas law would control, the United States Supreme Court has already ruled that punitive damages for unlawful acts occurring in Texas are beyond the purview of what can be awarded by a courts sitting outside that state. *See State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 421 (2003) (a state does not have a legitimate concern in imposing punitive damages to punish a defendant for unlawful acts committed outside of its jurisdiction)." (AR91).

Claimants first argue punitive damages in reply. (AR104-AR-105). This they may not do.

Moving generically for the application of Texas law to "all issues of liability and damages" does not preserve the issue of what law applies to punitive damages and is nothing more than a request for relief as to the case as a whole. A motion must "state with particularity the grounds therefor, and shall set forth the relief or order sought." Super. Ct. Civ. R. 7(b)(1). Moreover, "[c]hoice-of-law determinations must be made as to each issue when presented, not to the case as a whole." *Laugelle*, 2013 WL 5460164, at *3 (citations omitted). The Mexican Claimants simply have not engaged in the individualized choice of law analysis required by this Court under the Second Restatement, either in their filings below or in this Court.

Any contention that punitive damages are at issue—even if the question of what law applies to punitive damages had been presented below—is overwritten by the representation in the Answering Brief that "Plaintiffs have not asserted failure to warn claims against Bell (A238, 241), although Bell represents that they have. Bell's Br., p. 29." (AB at 27-28).[6]

[6] The Appendix references are to pages of the amended complaint in one of the seven cases in 2012. The expert reports served on March 3, 2014 [Trans. Id. 55086590] (A17) repeatedly discussed alleged failures to warn by Bell and offered ostensible opinions thereon. In that any failure to warn claims have now been expressly disavowed and/or withdrawn, Bell is not including those expert reports in the Reply Appendix.

Failure to warn is a liability theory upon which punitive damages typically are based. *See, e.g.*, *Cervantes* at *1 ("[i]n this case, the Plaintiff has alleged the negligent design of the Ford Explorer and the failure to warn consumers of allegedly known damages associated with this particular vehicle") (deciding motion to apply Michigan law to punitive damages).

The lawyers who filed suit in Delaware against a Texas-based defendant, seeking the application of Texas law, could have filed suit in Texas if they wanted to attempt to assert punitive damages in a manner that passes constitutional muster under U.S. Supreme Court precedent. They did not. They could also have moved for a choice of law determination on the availability of punitive damages and engaged in the individualized analysis compelled by the Second Restatement and Delaware law. They did not.

Having failed to brief punitive damages below, and having now affirmatively withdrawn the legal theory upon which such a claim would be based, the Mexican Claimants may not argue matters not at issue. This Court should not entertain their arguments regarding what law applies to punitive damages.

CONCLUSION

For all the foregoing reasons, as well as those set forth in Appellant's "Corrected" Opening Brief, the Superior Court erred as a matter of law in holding that Texas law governs liability, damages, and remedies and should be reversed.

Dated: November 13, 2014

Joseph J. Bellew (I.D. 4816)
Damien Nicholas Tancredi (I.D. 5395)
Cozen O'Connor
1201 North Market Street, Suite 1001
Wilmington, DE 19801
Telephone: (302) 295-2000
Facsimile: (302) 295-2013
Attorneys for Bell Helicopter Textron Inc.
Defendant Below-Appellant

Of Counsel:

Catherine Slavin (*pro hac vice*)
Gordon & Rees LLP
One Commerce Square
2005 Market Street, Suite 2900
Philadelphia, PA 19103
Telephone: (215) 717-4006
Facsimile: (215) 693-6650