STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: January 18, 2017)

HAROLD WAYNE MURRAY AND JANICE M. MURRAY *Plaintiffs,*	:	
v.	:	**C.A. No. PC-2016-0151**
3M COMPANY, et al. *Defendants.*	:	

DECISION

GIBNEY, P.J. Before this Court is Defendants' Motion to Apply Foreign Law; namely, the substantive law of Tennessee. The Defendants contend that the substantive law of Tennessee should apply in this personal injury action, while the Plaintiffs maintain that the substantive law of Virginia is most appropriate under Rhode Island's choice-of-law analysis. This Court exercises jurisdiction pursuant to G.L. 1956 § 8-2-14.

I

Facts and Travel

On January 12, 2016, the Plaintiffs filed the present Complaint against numerous Defendants seeking damages due to personal injuries suffered by Mr. Murray as a result of his alleged exposure to asbestos-containing products. The Plaintiffs' Fourth Amended Complaint, filed on April 13, 2016, alleged that Mr. Murray was exposed both directly and secondarily to asbestos-containing products which led to his subsequent mesothelioma diagnosis. Mr. Murray's deposition testimony reveals that he was born in a hospital that was "split right down the center by the state line [between Virginia and Tennessee]." See Defs.' Ex. B, 29.

Before high school, Mr. Murray worked as a farmhand in Sevierville, Tennessee. He graduated from Bristol High School in Tennessee in 1962. From 1961 to 1966, Mr. Murray worked as an auto mechanic in a garage in Bristol, Tennessee. After graduating high school, Mr. Murray accepted a sponsorship by the State of Virginia for a three-year apprenticeship program in plumbing and pipefitting, upon completion of which, he was certified by the State of Virginia. After serving in the United States Army from 1966 to 1969, Mr. Murray and his wife purchased a home at 1202 Huron Drive in Elizabethton, Tennessee, where they continued to live for forty years before moving to 2 Eagle Court in Johnson City, Tennessee.

From 1962 to 1972, Mr. Murray worked as a HVAC contractor for Fred Hayes Mechanical. He testified during deposition that while employed at Fred Hayes Mechanical, he worked at approximately seven jobsites in Virginia and six jobsites in Tennessee. In 1972, Mr. Murray started his own contracting business in Tennessee, which was later known as Murray Mechanical Contractors, LLC (Murray Mechanical).

Mr. Murray worked at Murray Mechanical until 2006 when he turned the business over to his sons. Mr. Murray testified that while working with Murray Mechanical, he worked on approximately nineteen jobsites in Tennessee. Murray Mechanical is licensed as a Class A Contractor in the State of Tennessee. Mr. Murray has never lived, worked, visited, or received medical care in the State of Rhode Island.

II

Parties' Arguments

The Defendants, collectively, contend that the substantive law of Tennessee should apply in the present action. The Defendants maintain that Rhode Island's choice-of-law principles favor the application of Tennessee law because Mr. Murray is domiciled in Tennessee, was

diagnosed in Tennessee, was treated in Tennessee, and the State of Tennessee is where the vast majority of his asbestos exposure occurred. The Defendants argue that under Rhode Island's interest-weighing analysis—and under additional factors that must be considered in Rhode Island tort cases—Mr. Murray's place of injury is Tennessee. The Defendants aver that after consideration of all the factors and after application of the interest-weighing analysis, Tennessee law is most applicable in this case. Finally, the Defendants note that Rhode Island law should not be applied because to do so would violate the U.S. Constitution, since the forum state lacks sufficient minimum contacts with Mr. Murray.

The Plaintiffs contend that the substantive law of Virginia should apply to the present action. The Plaintiffs maintain that the State of Virginia bears the most significant relationship to the events and parties. Furthermore, the Plaintiffs suggest that Mr. Murray's true place of injury under the tort-specific factors is actually Virginia, because that is where the majority of his earlier exposures occurred. The Plaintiffs maintain that pre-1972, Mr. Murray was only employed in Virginia, with up to eighty percent of his jobsites located in that state, thus suggesting that this earlier exposure in Virginia is actually the place of injury.

Generally, the Plaintiffs contend that under the interest-weighing factors, policy reasons dictate that Virginia's substantive law should apply. The Plaintiffs argue that although the State of Tennessee likely does have an interest in protecting its citizens, this factor is not entirely dispositive. The Plaintiffs suggest that even the federal government has a greater interest than Tennessee in the matter, since Mr. Murray was treated at a federal hospital and the hospital has placed a medical lien on any settlement or resolution of this case. Under this logic, the Plaintiffs maintain that the State of Tennessee is not likely the most interested party. Finally, Plaintiffs contend that Virginia has the better rule of law because the application of Tennessee's laws will

result in less than favorable results for the Plaintiffs and will have a chilling effect on possible settlement negotiations.

III

Standard of Review

In response to Defendants' Motion, this Court must determine if the laws of a foreign state are to be applied. In order to do so, this Court must conduct a choice-of-law analysis. The Court must first determine whether the laws of the two states in question are in conflict; i.e., if a "true conflict" exists. See Nat'l Refrigeration, Inc. v. Standen Contracting Co., 942 A.2d 968, 973-74 (R.I. 2008) (noting that it is well established that "[a] motion justice need not engage in a choice-of-law analysis when no conflict-of-law issue is presented to the court"). A "true conflict" exists when each state retains an interest in the application of its contradictory laws. Peavey Co. v. M/V ANPA, 971 F.2d 1168, 1171 (5th Cir. 1992). If the laws are found to be in true conflict, then this Court shall apply Rhode Island's interest-weighing approach. See Turcotte v. Ford Motor Co., 494 F.2d 173, 176-77 (1st Cir. 1974).

In Harodite Indus., Inc. v. Warren Elec. Corp., the Rhode Island Supreme Court adopted the interest-weighing approach with respect to choice-of-law questions. 24 A.3d 514, 525 n.17 (R.I. 2011). In doing so, the majority reaffirmed its holding in Cribb v. Augustyn, 696 A.2d 285, 288 (R.I. 1997), that the lex loci delicti conflict-of-law doctrine had been abandoned in Woodward v. Stewart, 104 R.I. 290, 299, 243 A.2d 917, 923 (1968). In applying the "interest-weighing approach," this Court "'look[s] at the particular . . . facts and determine[s] therefrom the rights and liabilities of the parties in accordance with the law of the state that bears the most significant relationship to the events and the parties.'" Harodite Indus., Inc., 24 A.3d at 534 (quoting Cribb, 696 A.2d at 288) (emphasis in original).

Under the interest-weighing approach, the following five factors shall be considered: 1) predictability of result; 2) maintenance of interstate and international order; 3) simplification of the judicial task; 4) advancement of the forum's governmental interests; and 5) application of the better rules of law. Najarian v. Nat'l Amusements, Inc., 768 A.2d 1253, 1255 (R.I. 2001). Additionally, for conflict-of-law questions involving tort actions, the Court must evaluate the following four specific factors: 1) the place where the injury occurred; 2) the place where the conduct causing the injury occurred; 3) the domicile, residence, nationality, place of incorporation and place of business of the parties; and 4) the place where the relationship between the parties, if any, is centered. Id.

IV

Analysis

The Defendants maintain that Tennessee substantive law should apply to the present action because, through an analysis of all the interest-weighing and tort-specific factors, the majority of Mr. Murray's exposure occurred in Tennessee, he was diagnosed and treated in Tennessee, and he has been a longtime resident of that state. Therefore, the Defendants argue that Rhode Island's interest-weighing conflict-of-law analysis dictates that Tennessee law must apply. Alternatively, the Plaintiffs contend that Mr. Murray's contacts with Virginia were much more significant in his exposure to asbestos-containing products and that, ultimately, policy considerations under the interest-weighing approach demand an application of Virginia law.

A

Conflict of Law

Before applying the particular facts of this present case to the enumerated factors, the Court must first determine that there is a "true conflict" between the substantive laws of

Tennessee and Virginia. See Nat'l Refrigeration, Inc., 942 A.2d at 973-74. A review of both Tennessee and Virginia law reveals that the substantive laws of the two states differ significantly. First, under the 2011 Tort Reform Act, Tennessee law instituted a statutory cap of $750,000 on non-economic damages. Tenn. Code Ann. § 29-39-102(2). Second, it instituted a cap on punitive damages of two times the amount of compensatory damages awarded or $500,000, whichever is greater, with a bifurcation of the trial required. Tenn. Code Ann. § 29-39-104(a)(5)(A + B). Third, Tennessee has adopted a modified comparative fault doctrine; for most types of claims, a defendant "shall only be severally liable for the percentage of damages for which fault is attributed to such defendant by the trier of fact, and no defendant shall be held jointly liable for any damages." Tenn. Code. Ann. § 29-11-107(a). Finally, defendants in Tennessee may also allocate fault to a nonparty to the suit. Tenn. Code Ann. § 29-11-107(d).

Conversely, under Virginia substantive law, there is a statutory cap of $350,000 on punitive damages, but no cap on non-economic damages. Va. Code Ann. § 8.01-38.1. Second, joint and several liability is allowed under Virginia law, and Virginia Courts have specifically applied this theory of liability to asbestos cases. Va. Code Ann. § 8.01-443; Ford Motor Co. v. Boomer, 736 S.E.2d 724, 732-33 (Va. 2013). Finally, Virginia employs a pure contributory negligence rule and rejects comparative negligence, meaning that a plaintiff's contributory negligence will outright bar recovery for injuries caused by the negligence of another. See Chilton v. Homestead, L.C., 79 Va. Cir. 708, 719 (Va. Cir. Ct. 2008).

After careful consideration of the differences between Tennessee and Virginia substantive law, this Court finds that a "true conflict" of law does, in fact, exist. See Harodite Indus., 24 A.3d at 525 n.17; Nat'l Refrigeration, 942 A.2d at 973-74. Most notable is the significant difference between joint and several liability in Virginia, versus the modified

comparative fault doctrine applied in Tennessee. See Va. Code Ann. § 8.01-443; Tenn. Code. Ann. 29-11-107(a). Thus, this Court must move on to an interest-weighing analysis to determine which state's substantive law is most appropriate in the present instance. See Harodite Indus., 24 A.3d at 525 n.17.

B

Tort-Specific Factors

1

Place of Injury

As previously noted, under Rhode Island law, tort cases involving choice-of-law questions shall focus on four specific factors that are critical to a Court's decision to apply the substantive laws of a foreign state. See Najarian, 768 A.2d at 1255. The Court will first evaluate factors one and two: 1) the place where the injury occurred, and 2) the place where the conduct causing the injury occurred. See id. This Court has previously evaluated this issue in the context of asbestos-related illnesses in the case of Carlson v. 84 Lumber Co., 2011 WL 1373508, at *5-6 (R.I. Super. Apr. 7, 2011).

This Court, in Carlson, recognized that the complicated nature of an asbestos-related illness, in itself, makes the task of assigning a location of "the injury" especially difficult. See id. Mesothelioma and other asbestos-related illnesses occur oftentimes many years later, after repeated and continued exposure to asbestos, making the act of pinpointing the injury extremely difficult, if not impossible. See id. Therefore, this Court, in Carlson, determined that—for the purpose of evaluating factors one and two under the tort-specific analysis—the place of injury and the place of the conduct causing the injury would be classified as the state where the plaintiff

was diagnosed and treated for his or her asbestos-related illness (due to the theory that plaintiffs are rarely aware of their injury until they have been diagnosed). See id.

In the present case, Mr. Murray was diagnosed with mesothelioma in the State of Tennessee, was treated at a federal facility located in Tennessee, and continues to reside in that state. This Court finds no reason to abandon the test outlined previously in the Carlson case and notes that such an analysis fits well with the unique facts and circumstances of this present case. See id. Testimony in this case reveals that Mr. Murray was exposed to asbestos over a protracted period of time, dating back to the 1960s. For the Court to postulate as to when he was exactly injured by asbestos or what specific exposures caused his illness is virtually impossible. Therefore, this Court determines that under the tort-specific factors, Mr. Murray was, in fact, injured in Tennessee because he was diagnosed and treated in that state. See Najarian, 768 A.2d at 1255; Carlson, 2011 WL 1373508, at *5-6. The place of injury is merely one factor in the larger choice-of-law analysis, and the Court now moves on to other factors. See Harodite Indus., 24 A.3d at 525 n.17.

2

Domicile and Residence

The Defendants contend that Mr. Murray is domiciled in Tennessee and that he is a longtime resident of that state. They note that Mr. Murray has lived in Tennessee for the past forty-seven years, while the numerous Defendants, on the other hand, are incorporated and have their principal places of business in many states across the country. The Plaintiffs note that Mr. Murray is in a somewhat unique situation, in that he was born and lived for a period of time in the Town of Bristol, which straddles the state line between Tennessee and Virginia and exists in

both states.[1] Therefore, the Plaintiffs contend that his domicile is in question and should not be weighed heavily in this Court's analysis.

After careful review of the record, this Court finds that Mr. Murray is, in fact, a resident of Tennessee and is domiciled in that state. See DeBlois v. Clark, 764 A.2d 727, 734 (R.I. 2001) (finding generally that to establish domicile a party must have an actual abode in that state and have the intention in good faith to reside there permanently). The record indicates that Mr. Murray did live near the border in 1966, but that he moved to Elizabethton, Tennessee in 1969 and later Johnson City, Tennessee, which are both farther into Tennessee. This Court finds no compelling reason to analyze the exact distance of each location to the state border, but merely notes that Mr. Murray is domiciled within the State of Tennessee and that he has resided there for the past forty-seven years. See id. Therefore, for the purpose of this particular factor, the Court finds that Mr. Murray is domiciled in Tennessee, rather than in Virginia. See id.; Harodite Indus., 24 A.3d at 525 n.17. Therefore, this Court finds that an application of Tennessee law is most appropriate under Rhode Island's tort-specific factors.[2] See Najarian, 768 A.2d at 1255.

[1] The unique circumstances of Bristol, Virginia and Tennessee were highlighted in a recent television advertisement for Geico Insurance. See https://www.youtube.com/watch?v=nPralT9It-E (accessed 1/5/2017).

[2] This Court finds that the final factor of the tort-specific analysis is inapplicable and unsuited to the facts of the present case, and therefore, the Court will not delve into an analysis of this final factor. See La Plante v. Am. Honda Motor Co., 27 F.3d 731, 742 (1st Cir. 1994) (noting that in most product liability actions, there being no "relationship" between the parties in the ordinary sense of the word, this factor is unhelpful in making a choice-of-law determination); see also Carlson, 2011 WL 1373508, at *5-6 (finding that such an analysis is particularly inapplicable in asbestos-related illnesses where a direct relationship between the parties is not discernible).

C

Interest-Weighing Analysis

Under the broader policy-based interest-weighing analysis, this Court must consider five additional factors in its choice-of-law determination. See Najarian, 768 A.2d at 1255. When deciding which state's substantive law shall be applied, Rhode Island law requires that the Court consider the predictability of results, the maintenance of interstate and international order, simplification of the judicial task, the advancement of the state's governmental interest, and the application of the better rule of law. See id.

The Defendants contend that an application of Tennessee law would perpetuate highly predictable results since Mr. Murray is a lifelong resident of Tennessee and has worked in that state for a majority of his career. The Defendants also contend that an application of Tennessee law—although not particularly likely to simplify the judicial task per se—will require just as much effort and resources as an application of Virginia law would require. The Defendants note that neither party is suggesting that Rhode Island law should apply, and therefore, a selection of Virginia law over Tennessee law will not simplify the judicial task. The Defendants suggest that the state of Mr. Murray's domicile has the most significant governmental interest in protecting its citizens' rights, and that Tennessee is also the better rule of law, since Mr. Murray's contacts with that state are thorough and long-standing.

Alternatively, the Plaintiffs contend that an application of Virginia law would not create unpredictable results since Mr. Murray has significant contacts with that state—most notably, his scholarship with the State of Virginia, his Virginia license, and his work in Virginia. The Plaintiffs also maintain that an application of Virginia law will, in fact, be an easier task for the Court and will simplify the judicial task because Rhode Island's tort law contains more

similarities to Virginia law than to Tennessee law—in particular, Rhode Island's joint and several liability and the prohibition against listing non-parties on the verdict form. The Plaintiffs suggest that, for broader policy reasons, Virginia substantive law should apply as the better rule of law.

This Court finds that in the instant case, an application of Tennessee substantive law would support the predictability of results, would maintain interstate order, would not overly stress the judicial task, and would advance the state's governmental interest in its citizens' cases. See Najarian, 768 A.2d at 1255. Overall, Tennessee's contacts with Mr. Murray render it the better rule of law. See id.; see also Brown v. Church of Holy Name of Jesus, 105 R.I. 322, 325, 252 A.2d 176, 178 (1969) (applying the general five factors of the interest-weighing approach to determine the best rule of law based on the parties' contacts with the state in question); La Plante, 27 F.3d at 742.

Tennessee substantive law provides the best predictability of results in this particular case because Mr. Murray is a long-time resident of that state, was diagnosed in that state, and was treated in a federal facility located in Tennessee. See Najarian, 768 A.2d at 1255. Furthermore, he did work in Tennessee during his career, was licensed in Tennessee, and he was allegedly exposed to asbestos-containing products in that state. See Pls.' Second Supplemental Req. for Produc.; Defs.' Ex. C, 1. Due to these facts, potential defendants could expect that the laws of the state where a plaintiff is injured and resides would apply. See Najarian, 768 A.2d at 1255.

Although Mr. Murray was born in Bristol, which is split down the middle by the Virginia-Tennessee border, Mr. Murray only lived near the border for a short period of time, before moving farther into Tennessee, where he has resided for the past forty-seven years. As such, the State of Tennessee has the most significant governmental interest in the protection of

its citizen and in the outcome of this case.[3] See Pardey v. Boulevard Billiard Club, 518 A.2d 1349, 1352 (R.I. 1986) (noting the particular weight of the governmental interest factor and stating that Rhode Island courts should give credence to a state's legitimate interest in protecting its citizens).

Finally, this Court also finds that Tennessee's substantive laws are the better rule of law because Tennessee has the most significant degree of contact with any of the parties involved, and Tennessee's laws do not outright prevent recovery in this case. See Victoria v. Smythe, 703 A.2d 619, 621 (R.I. 1997) (applying Florida law, rather than Rhode Island law, where the Rhode Island law would not assign any liability whatsoever under the circumstances of that particular case). After careful consideration of all the factors provided in Rhode Island's interest-weighing analysis, this Court finds that Tennessee's substantive law is the most appropriate for this particular case. See Najarian, 768 A.2d at 1255; Victoria, 703 A.2d at 621.

D

Constitutional Minimum Contacts

Rhode Island law dictates that, along with a conflict-of-interest analysis, this Court must consider if application of a state's substantive law will offend constitutional principles.[4] Woodward, 104 R.I. at 296, 243 A.2d at 921 (holding that a forum state does not have sufficient minimum contacts with involved parties merely because the suit has been brought in that state).

[3] Plaintiffs argue that the federal government may have more interest than even Tennessee in Mr. Murray's case simply because the federal hospital where Mr. Murray was treated has a medical lien on the outcome of this case. This Court finds no Rhode Island case law to suggest that such a lien would be a determinative factor in the interest-weighing analysis, and therefore, this Court declines to accept this particular argument.

[4] Neither party argues that an application of Rhode Island law is appropriate since the forum state of Rhode Island would likely fail a constitutional minimum contacts analysis for choice-of-law purposes. See Woodward, 104 R.I. at 296, 243 A.2d at 921.

For Tennessee substantive law to apply, the state must have sufficient minimum contacts with the parties involved in order to make an application of its laws constitutional and to avoid a violation of due process or equal protection. See Woodward, 104 R.I. at 296, 243 A.2d at 921.

The United States Supreme Court has held that "for a State's substantive law to be selected in a constitutionally permissible manner, that State must have a significant contact or significant aggregation of contacts, creating state interests, such that choice of its law is neither arbitrary nor fundamentally unfair." Phillips Petroleum Co. v. Shutts, 472 U.S. 797, 818 (1985) (quoting Allstate Ins. Co. v. Hague, 449 U.S. 302, 312-13 (1981)). This Court has noted that there are significant contacts between the Plaintiffs and the State of Tennessee in order to avoid a violation of constitutional rights.[5] See Phillips Petroleum, 472 U.S. at 818. Mr. Murray was born in Tennessee, worked in Tennessee, was diagnosed in Tennessee and treated in Tennessee, and resided there for over forty-seven years. These facts lead this Court to conclude that an application of Tennessee's substantive laws would pass constitutional muster. See Phillips Petroleum, 472 U.S. at 818; Allstate Ins. Co., 449 U.S. at 312-13.

V

Conclusion

This Court finds that there is a true conflict of law between Virginia and Tennessee substantive law. After careful consideration of Rhode Island's tort-specific and interest-weighing factors, this Court determines that the unique facts of this case warrant application of Tennessee's laws. Furthermore, an application of Tennessee law is appropriate under the constitutional minimum contacts analysis and not violative of any party's due process rights or

[5] The numerous Defendants in this case are incorporated and have their principal places of business in many states across the country, and therefore, an analysis of their minimum contacts (which include contact with Tennessee) is not particularly helpful or constructive to this Court's decision.

equal protection rights. Therefore, under Rhode Island's choice-of-law analysis, this Court determines that Tennessee substantive law shall apply. Counsel shall submit the appropriate order for entry.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	**Harold Wayne Murray and Janice M. Murray v. 3M Company, et al.**
CASE NO:	**PC-2016-0151**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**January 18, 2017**
JUSTICE/MAGISTRATE:	**Gibney, P.J.**
ATTORNEYS:	
For Plaintiff:	**See attached.**
For Defendant:	**See attached.**

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***Armstrong Pumps, Inc.**
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***Flowserve US, Inc., solely as successor to Vogt Valve Company (Sued as Flowserve US, Inc., individually and as successor to Aldrich Pumps, Edward Valves and Vogt Valves and individually and as successor to and as parent company to Rockwell Manufacturing Co., Durco, Durion, Valtek and Sealite)**
***Rockwell Automation, Inc. (Sued as "Rockwell Automation, Inc., Individually and as Successor to Timken Heating Business and S. Co., Inc., fka Scaife Company, as successor in interest to Rockwell Spring and Axle Company's Timken Silent Automatic Division"**
***Rockwell Automation, Inc. (Sued as "Rockwell Automation, Inc., Individually and as Successor to Allen-Bradley")**
***Daikin Applied Americas Inc. (Sued as "AAF-McQuay Inc., n/k/a Dakin Applied Americas Inc. d/b/a McQuay International, Individually and as successor to Singer")**
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***Graybar Electric Company**
***Homasote Company**
***Spirax Sarco, Inc.**
***Dometic LLC as alleged successor to Servel Corporation and Arkla Corporation**
***Carrier Corporation, including Bryant Heating & Cooling improperly named as "Carrier Corporation, individually and as successor to Bryant, f/k/a Bryant Heater & Manufacturing Company"**
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