FIRST DIVISION
June 23, 2014

No. 1-13-0960
2014 IL App (1st) 130960-U

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

BENNIE WOOD and LINDA WOOD, Plaintiffs-Appellees, v. NAVISTAR, INC. and NAVISTAR CANADA, INC., Defendants-Third Party Plaintiffs-Appellants, v. SITTON MOTOR LINES, INC., Third-Party Defendant-Appellee.	)	Appeal from the Circuit Court of Cook County No. 11 L 3859 Honorable Daniel T. Gillespie, Judge Presiding.

PRESIDING JUSTICE CONNORS delivered the judgment of the court.
Justices Cunningham and Delort concurred in the judgment.

ORDER

¶ 1 *Held:* Because Texas had the most significant relationship to the occurrence and the parties, Texas law, rather than Illinois law, applied to the action; reversed.

¶ 2 Plaintiffs Bennie and Linda Wood filed suit against defendants, Navistar, Inc. (Navistar) and Navistar Canada, Inc.,[1] alleging counts in strict liability, negligence, and loss of consortium following an injury Bennie suffered while driving a truck from Texas to California. During the litigation, Navistar filed a motion to apply Texas law to plaintiffs' claims, which the court denied. On Navistar's motion, the court certified the following question of law for this appeal pursuant to Illinois Supreme Court Rule 308 (eff. Feb. 26, 2010):

> "Whether, based on the record before the trial court, Illinois law or Texas law, which are materially different, should apply in a product liability and negligence action involving a claim of a serious closed head injury, where Plaintiff was and is a resident of Texas, purchased the truck tractor in Texas, and had all warranty repairs done in Texas; where Defendant's corporate headquarters are in Illinois; and where the accident occurred in California but the location of the accident appears to qualify as 'fortuitous' and thus there is no clear legal presumption as to choice of law?"

We answer that Texas law should apply in this action and reverse the judgment of the circuit court.

¶ 3 The record reveals that on May 22, 2007, Bennie fell from a tractor-trailer cab when the cab's handrail and fastener system detached. Allegedly, the grab handle, which was mounted to the cab, broke off while Bennie was either entering or exiting the cab. At the time, Bennie was in California delivering goods and was employed by Sitton Motor Lines, Inc. (Sitton), a Missouri corporation. Bennie and his wife, Linda, are Texas residents. Navistar manufactured the truck and is a Delaware corporation with its principal place of business in DuPage County, Illinois.

[1] According to Navistar, Navistar Canada, Inc. is a wholly-owned subsidiary of Navistar that is not authorized to do business in Illinois.

¶ 4 Filed in Cook County on May 7, 2009, plaintiffs' complaint alleged a products liability claim sounding in strict liability, negligence, and loss of consortium. In the strict liability counts, plaintiffs alleged that the tractor truck and its handrail and fastener system were "unreasonably dangerous" because the system did not properly secure the handrail to the truck cab, did not have a mechanism to tighten the handrail to the truck cab if the handrail became loose, did not have a fail-safe mechanism, and became loose when used in the manner for which it was intended and foreseeable. Additionally, plaintiffs alleged that defendants did not provide a reasonably safe fastener system for the truck's grab handle and failed to warn of the unreasonably dangerous condition. Further, plaintiffs alleged that defendants knew of the unreasonably dangerous conditions. As to the negligence claim, plaintiffs alleged that defendants were negligent for failing to do the following: properly secure the handrail and fastener system to the truck, provide a mechanism or manner to adequately tighten the handrail and fastener system to the truck if the handrail became loose, provide a fail-safe mechanism, manufacture the handrail and fastener system properly, warn of the dangerous condition of the handrail and fastener system, or provide a reasonably adequate fastener system for the grab handle. The loss of consortium claim alleged that Linda lost the companionship, security, and society of her husband and would incur expenses and debt.

¶ 5 In their answer, defendants raised in relevant part the following affirmative defenses: (1) Bennie was contributorily negligent; (2) plaintiffs' injuries and damages were caused by an intervening or superseding cause; (3) plaintiffs' damages were caused by open and obvious risks of which Bennie was or should have been aware and which he accepted, consented to, and assumed, including failing to exercise due care and using the tractor in a manner contrary to express and adequate warnings; (4) the design and manufacture of the handrail and fastener

system conformed to the state of the art when it was sold by the manufacturer; and (5) the handrail and fastener system was not in the same condition as when it left defendants' custody.

¶ 6 Defendants also filed a motion to transfer venue based on *forum non conveniens*, seeking to dismiss or transfer the case to DuPage County, where Navistar's headquarters were located.[2] In their motion, defendants contended in part that transfer was appropriate because the accident occurred in California, witnesses were located in California, Missouri, and Oklahoma, and the action's only connection to Illinois was Navistar's corporate headquarters in DuPage County. In response, plaintiffs asserted Cook County was a more appropriate forum because the relevant witnesses were located out-of-state and would have to pass through Cook County for proceedings. Additionally, plaintiffs asserted that Navistar's corporate headquarters "would have nothing to do with this lawsuit" because the inspection of the door-handle at issue and "anything having to [do] with the subject tractor's product integrity would be handled exclusively through Navistar's Fort Wayne, [Indiana] office." Plaintiffs also contended that Navistar conducted a substantial amount of business within Cook County.

¶ 7 The filings included an affidavit and deposition from J. Scott Miskin, a senior engineer in Navistar's Product Integrity Group. Miskin averred that the truck at issue was manufactured in Canada in 1999. Additionally, Miskin stated that any documentation or evidence related to plaintiffs' purchase of the truck would be obtained by employees in Warrenville, Illinois from a Navistar facility in Fort Wayne, Indiana, and that all investigation and management of plaintiffs' claim would be handled by employees in Warrenville and Fort Wayne. However, the Product Integrity Group, which dealt with product reliability and quality, was located only in Fort Wayne. When asked what part of plaintiffs' claim would be handled in Fort Wayne, Miskin responded that the Fort Wayne office would inspect the truck and "any claims that were made as

[2] At the time, it was believed that plaintiffs were Oklahoma residents.

to defaults of the truck or issues of the truck" and would "handle all the technical aspects related to the truck."

¶ 8 On December 9, 2009, the court granted defendants' motion and permitted plaintiffs to either transfer the case to DuPage County or refile in California. Plaintiffs filed a petition for leave to appeal to this court pursuant to Illinois Supreme Court Rule 306(a)(2) (eff. Sept. 1, 2006). Ultimately, this court reversed the circuit court, finding that defendants failed to meet their burden of showing that Cook County was inconvenient to defendants and that another forum was more convenient to all of the parties. *Wood v. Navistar, Inc. & Navistar Canada, Inc.*, No. 1-10-0438 (2010) (unpublished order under Supreme Court Rule 23).

¶ 9 On May 2, 2012, Navistar filed a third-party complaint for contribution against Sitton, alleging in part that Sitton was careless and negligent for failing to properly inspect, repair, replace, or adequately maintain the tractor's grab handles. Navistar contended that if it were found liable, Navistar would be entitled to contribution from Sitton. In its answer, Sitton asserted that Texas law applied to the issues in the case and that as a result, Navistar would not be entitled to any contribution from Sitton.

¶ 10 On October 25, 2012, Navistar filed a motion to apply Texas law to this action, contending that Texas had the most significant relationship to the parties' dispute. Navistar asserted that the place of injury, which might otherwise determine the law to be applied, was fortuitous and therefore did not have a meaningful connection to the parties or the claims. After noting that it intended to argue that Bennie's fall was caused by improper maintenance of the grab handle, Navistar asserted that the parties' relationship was centered in Texas because Bennie purchased the tractor from a seller in Texas, the tractor was titled in Texas, and all warranty repairs were performed at dealerships in Texas. Navistar also stated that all parties either resided

or did business in Texas, while the only connection to Illinois was Navistar's corporate headquarters. Further, according to Navistar, because the tractor was sold in Texas to a Texas resident, Texas had a strong interest in providing remedies in this case.

¶ 11 Attached to Navistar's motion were portions of depositions given by Linda and Bennie. According to these depositions, Bennie bought the subject truck used in 2002 at a Roberts Truck Center in Texas. Bennie testified that he checked the grab handle "pretty well all the time" and used a wrench to keep bolts tight. Bennie further testified that when the handle became loose, he would generally tighten it himself, but sometimes he took the truck to Sitton or to mechanics in Texas.

¶ 12 Navistar also attached the certificate of title for the subject truck, which indicated that the truck's previous owner was "International Truck and Dallas TX" and the lienholder was Navistar Financial Corporation, located in Rolling Meadows, Illinois. Additionally, Navistar attached the warranty history for the truck, which listed seven claims, all of which were performed in Texas.

¶ 13 The record also contains inspection and repair and maintenance records from Sitton. According to these records, the truck had been inspected in Missouri and had received repairs or maintenance five times in Texas, two times each in Oklahoma and Virginia, and one time each in Arkansas, Illinois, Mississippi, Missouri, and Tennessee.

¶ 14 Navistar's motion further included an affidavit from Stephen White, a Senior Product Engineer for Navistar. White averred that Navistar's truck engineering took place at its engineering center in Fort Wayne, Indiana, which was "responsible for the design, development, and testing of products assembled into International brand trucks."

¶ 15 Sitton responded to Navistar's motion, agreeing that Texas law should apply to plaintiffs' claims. However, Sitton asserted that Missouri law should apply to a workers' compensation lien

held by Sitton. In an affidavit, a Sitton representative averred that Bennie received workers' compensation benefits under Missouri law. Subsequently, the court ordered that Missouri law govern the enforcement of the workers' compensation lien.

¶ 16 In their response to Navistar's motion to apply Texas law, plaintiffs contended that based on the finding that Cook County was a more convenient venue, Illinois had a more significant relationship to the dispute. Plaintiffs further asserted that Navistar was a long-time domiciled corporation of Illinois and that Illinois had a paramount interest in applying its laws to resident corporations. Additionally, according to plaintiffs, "the direction for the corporation [begins] here and goes to Indiana or Canada[,]" pointing to a description of Navistar's headquarters that stated that employees there worked in design and engineering and International Trucks. Plaintiffs further contended that applying Texas law would frustrate the goals of forum state, Illinois, to provide full recovery for damages and encourage parties to settle.

¶ 17 Also attached to plaintiffs' response was a deposition of Richard Mink, who had been a Navistar test engineer. Mink testified that the grab handle at issue was installed on the subject truck in Canada, but Navistar did not manufacture its own grab handles and the grab handle was likely from an outside supplier. Referencing Bennie's deposition, Mink found it significant that Bennie and others had tightened the grab handle at various times. Mink further testified that the grab handle was not intended to become loose and that photographs indicated that the grab handles had been removed before the accident, which could occur if repairs needed to be made. Mink also described Navistar's quality control process, stating that inspectors are tasked with ensuring the truck is assembled as intended. Mink further testified that when a truck reaches a dealer, the dealer is to inspect the truck and ensure it "is built properly and ready for delivery to the customer."

¶ 18 Plaintiffs also attached information about Navistar's geographic footprint. A print-out of Navistar's website indicated that the company has facilities on six continents and that its products, parts, and services are sold through a network of nearly 1,000 dealer outlets in the United States, Canada, Brazil, and Mexico and more than 60 dealers in 90 countries throughout the world. According to a list of Navistar's facilities and their functions, Illinois is home to approximately five Navistar facilities, including Navistar Financial Corporation, information technology offices, an engine plant and technology center, a parts distribution center, and its corporate headquarters. In Texas, Navistar has an assembly plant and a parts distribution center.

¶ 19 In its reply, Navistar contended that the mere location of its corporate offices in Illinois was insufficient to require that Illinois law apply. According to Navistar, there was no evidence that the location of the company's headquarters had any connection to the dispute. Additionally, Navistar contended the court could not base its decision on whether one state's law was more favorable to one of the parties and that the analysis required for a *forum non conveniens* motion is distinct from a choice of law analysis, and therefore does not address whether Texas or Illinois law should apply.

¶ 20 On January 25, 2013, the court entered an order denying Navistar's motion to apply Texas law "for the reasons stated in open court." We note that we do not have the benefit of reports of proceedings or bystander's reports for any proceedings relating to Navistar's motion. See Ill. S. Ct. R. 323 (eff. Dec. 13, 2005). Subsequently, Navistar filed a motion pursuant to Illinois Supreme Court Rule 308(a) (eff. Feb. 26. 2010), which Sitton joined, to certify the choice of law question at issue. The circuit court granted the Rule 308 motion on March 13, 2013 and this court later granted defendants' petition for leave to appeal.

¶ 21 On appeal, defendants contend that Texas law, rather than Illinois law, should apply to plaintiffs' claims. Defendants argue that Texas has the most significant relationship to the occurrence and the parties and that the only contact with Illinois—Navistar's corporate headquarters—is an insufficient basis for applying Illinois law. Discussing the factors in section 145 of the Second Restatement of Conflict of Laws, defendants contend that the place of injury—California—was fortuitous and therefore not an important consideration. However, defendants assert that substantial maintenance and warranty work took place in Texas and there was no evidence that any conduct causing the alleged injury occurred in Illinois. Defendants further argue that the relationship between Bennie and Navistar arose out of a purchase in Texas, where the truck was titled. Defendants additionally contend that because Bennie and Linda are Texas residents, Texas has a stronger interest than Illinois in compensating them. Defendants also assert that Texas has an overriding interest because the vehicle was sold, titled, repaired, and operated from Texas.

¶ 22 In response, plaintiffs contend that Illinois has the most significant relationship to the occurrence and the parties. Plaintiffs argue that Illinois has a significant, enduring relationship with Navistar, which, in addition to having its corporate headquarters in Illinois, owns multiple properties in Illinois and has generated significant business within the state. Plaintiffs further note that the subject tractor had maintenance work performed in Illinois that could have caused or contributed to the accident. Plaintiffs also argue that Illinois has a paramount interest in regulating the conduct of its resident corporations and that applying Illinois law to this case would further the goals of the forum state to provide full recovery for damages and encourage parties to settle, while applying Texas law would frustrate these goals. Additionally,

acknowledging that Texas also seeks to fully compensate the injured, plaintiffs urge that Navistar should not be permitted to apply Texas law to frustrate both states' desire for full compensation.

¶ 23 Because the question certified by the circuit court is a question law, our review is *de novo*. *Barbara's Sales, Inc. v. Intel Corp.*, 227 Ill. 2d 45, 57-58 (2007). A choice-of-law determination is required when a difference in the law of the states will affect the outcome, using the choice-of-law rules of Illinois as the forum state. *Burlington Northern & Santa Fe Ry. Co. v. ABC-NACO*, 389 Ill. App. 3d 691, 699 (2009). When conducting a choice-of-law analysis in tort cases, Illinois has adopted the approach found in the Second Restatement of Conflict of Laws (*Gregory v. Beazer East*, 384 Ill. App. 3d 178, 196 (2008)), which provides that the rights and liabilities for a particular issue should be governed by the jurisdiction with the most significant relationship to the occurrence and the parties (*Barbara's Sales, Inc.*, 227 Ill. 2d at 61).

¶ 24 The parties agree that Illinois and Texas law conflict in two material respects. First, the two states have different approaches to allocating fault among joint tortfeasors. In Illinois, all defendants found liable are jointly and severally liable for the plaintiff's past and future medical and medically related expenses. 735 ILCS 5/2-1117 (West 2007). However, a defendant who is at least 25% at fault is jointly and severally liable for all other damages as well. *Id*. A defendant whose fault falls below this 25% threshold is only severally liable for all other damages. *Id*.

¶ 25 In contrast, in Texas, a liable defendant is responsible only for the proportion of damages equal to its percentage of fault. Tex. Civ. Prac. & Rem. Code Ann. § 33.013(a) (Vernon 2007). A liable defendant is jointly and severally liable for damages if its percentage of responsibility is greater than 50%. Tex. Civ. Prac. & Rem. Code Ann. § 33.013(b) (Vernon 2007). In practice, this means that only one defendant can ever be jointly and severally liable under Texas law. *Bay*

Rock Operating Co. v. St. Paul Surplus Lines Insurance Co., 298 S.W.3d 216, 233 (Tex. Ct. App. 2009).

¶ 26 Illinois and Texas laws also differ with respect to who can be apportioned fault by the trier of fact and who can be sued for contribution. In Illinois, a plaintiff's employer may not be included on the jury form for apportioning fault. 735 ILCS 5/2-1117 (West 2007). However, the plaintiff's employer remains liable in an action for contribution up to the amount of its workers' compensation liability. *Kotecki v. Cyclops Welding Corp.*, 146 Ill. 2d 155, 165 (1991). Further, good-faith settling tortfeasors who have been dismissed from the lawsuit are exempt from section 2-1117 and therefore may not be apportioned fault by the trier of fact. *Ready v. United/Goedecke Services, Inc.*, 232 Ill. 2d 369, 385 (2008). Settling tortfeasors are also immune from suits for contribution. 740 ILCS 100/2 (West 2007).

¶ 27 Meanwhile, in Texas, parties who settle and "responsible third parties," meaning anyone who is alleged to have caused or contributed to causing "in any way" the plaintiff's harm, can be apportioned fault by the trier of fact. Tex. Civ. Prac. & Rem. Code Ann. §§ 33.003, 33.011 (Vernon 2007). In addition, a liable defendant is not entitled to a right of contribution against any settling person or from any party against whom the plaintiff has no cause of action. Tex. Civ. Prac. & Rem. Code Ann. § 33.015(d) (Vernon 2007); *Port of Houston Authority v. Guillory*, 814 S.W.2d 119, 124 (Tex. App. 1991), *aff'd*, 845 S.W.2d 812 (Tex. 1993). Further, Texas does not allow third party claims for contribution against the plaintiff's employer if the plaintiff accepts workers' compensation benefits. *Id.*; *Davis v. Sinclair Refining Co.*, 704 S.W.2d 413, 416 (Tex. App. 1985). As a result, if Texas law applies to this action, then Sitton would be dismissed as a third-party defendant because Bennie accepted workers' compensation benefits from Sitton.

¶ 28 In short, the two states present different scenarios for which entities, if any, could be apportioned fault and which entities could ultimately bear the cost of any damages. Having established that differences between Illinois and Texas law would affect the outcome, we next consider whether Illinois or Texas has a more significant relationship with the occurrence and the parties. Under this approach, we do not merely count contacts because we recognize that other jurisdictions may have an interest in an issue that cannot be adequately reflected by a simple tally. *Gregory*, 384 Ill. App. 3d at 197. Further, the entire litigation must be considered in assessing which forum has the more significant contacts with the litigation. *Id*. at 196.

¶ 29 Two sections of the Second Restatement of Conflict of Laws guide our analysis. Section 6 contains three general principles relevant to choice-of-law determinations in personal injury tort cases: (1) the relevant policies of the forum; (2) the relevant policies of other interested states and the relative interests of those states in the determination of the particular issue; and (3) the basic policies underlying the particular field of law. *Townsend v. Sears, Roebuck & Co.*, 227 Ill. 2d 147, 170-71 (2007); Restatement (Second) of Conflict of Laws § 6(2)(b), (c), (e) (1971). These general principles must be considered along with the factual contacts or connecting factors in section 145: (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, if any, between the parties is centered. Restatement (Second) of Conflict of Laws § 145 (1971).

¶ 30 It does not make a difference whether a court looks first to the section 145 contacts or to the section 6 general principles. *Townsend*, 227 Ill. 2d at 168. As such, we will first consider the section 145 contacts. The injury here occurred in California, a location that both parties agree was fortuitous and therefore not important to the choice-of-law analysis. See *Murphy v.*

Mancari's Chrysler Plymouth, Inc., 408 Ill. App. 3d 722, 727-28 (2011) (where injury could just as easily have occurred in another state the driver traveled through, the place of injury was fortuitous and not an important consideration).

¶ 31 As for where the conduct causing the injury occurred, we must consider all conduct from any source contributing to the injury, which includes both plaintiffs' claims and defendants' affirmative defenses. *Id*. at 728. A review of the record shows that the conduct causing Bennie's accident likely occurred in a number of places. The grab handle was installed on the truck in Canada. Plaintiffs have presented different theories for the role that the corporate headquarters in Illinois played in the occurrence. In plaintiffs' response to defendants' motion to transfer venue based on *forum non conveniens*, plaintiffs asserted that the corporate headquarters "would have nothing to do with this lawsuit." When later contending that Illinois law should apply to this action, plaintiffs broadly stated that the "direction for the corporation" begins in Illinois and that employees in Illinois work on design and engineering and International Trucks. Yet, the record suggests that Navistar's facility in Fort Wayne, Indiana would also have a connection to the occurrence, since it is that facility that was responsible for the truck's design and development and tested products that were assembled into the truck.

¶ 32 Nonetheless, a cluster of activities highly relevant to issues in this matter occurred in Texas. Although the truck received repairs and maintenance in a number of states, including once in Illinois, the truck was serviced four times in Texas and all seven warranty claims were performed in Texas. Further, Bennie testified he would tighten the grab handle himself or would take the truck to either his employer or to mechanics in Texas. Dealers are also charged with inspecting Navistar trucks and ensuring that they are built properly, and Bennie bought the truck

in Texas. In contrast, there is little evidence that anything relating to the truck's design or repairs occurred in Illinois. We find that this second factor favors Texas.

¶ 33 Next, we consider the parties' domicile, residence, place of incorporation, and place of business. Navistar is incorporated in Delaware and its principal place of business is in Illinois. In addition to its global presence, Navistar has five facilities in Illinois, while Texas has a Navistar assembly plant and a parts distribution center. In addition, plaintiffs are residents of Texas. With both states represented by the parties, we find this third factor to be well-balanced between Illinois and Texas.

¶ 34 As to the place where the relationship between the parties is centered, to the extent any such relationship exists at all, this factor favors Texas. Bennie purchased the truck used from a dealer in Texas, although the relationship between this dealer and Navistar is not fully developed. Cf. *Gregory*, 384 Ill. App. 3d at 199 (place where relationship centered did not play a role where the plaintiff did not deal with the defendant personally and "bought the product from nonparty retailers he could not remember").

¶ 35 In sum, the first factor is of no importance here, the second factor favors Texas, the third factor is evenly balanced, and the fourth factor favors Texas, if anywhere. Our analysis of the section 145 factors thus points to Texas, and we must now consider these factors in light of the general principles in section 6 to see if those considerations overcome our conclusion that Texas is the state with the most significant relationship. See *Id*. at 199. We focus on three of the principles in section 6: (1) the relevant policies of the forum; (2) the relevant policies of other interested states and the relative interests of those states in the determination of the particular issue; and (3) the basic policies underlying the field of law. Restatement (Second) of Conflict of Laws § 6(2)(b), (c), (e) (1971).

¶ 36 To some extent, every tort rule is designed both to deter other wrongdoers and compensate the injured person. Restatement (Second) of Conflict of Laws § 146, comment e (1971). In Illinois, we have determined that the loss caused by unsafe products should be borne by those who create the risk of harm by participating in the manufacture, marketing, and distribution of unsafe products. *Graham v. Bostrom Seating, Inc.*, 398 Ill. App. 3d 302, 306 (2010). Our courts also impose strict liability to exert pressure on the manufacturer. See *Id*. Our supreme court has stated that the policy basis for strict products liability is "to almost insure a consumer's recovery in the case of a defective product." *Frazer v. A.F. Munsterman, Inc.*, 123 Ill. 2d 245, 265 (1988). Moreover, Illinois has a legitimate interest in the liability to be imposed on Illinois-based defendants under strict liability or negligence principles. *Townsend*, 227 Ill. 2d at 174. Additionally, Illinois's statutory scheme for contribution "clearly evinces a legislative intent to encourage settlements in tort litigation and promote judicial economy." *Nguyen v. Tilwalli*, 144 Ill. App. 3d 968, 972 (1986).

¶ 37 We also note that every state has an interest in compensating its domiciliaries for their injuries (*Townsend*, 227 Ill. 2d at 171), perhaps because a state normally formulates its tort and compensation policies with its own domiciliaries in mind or because it is the state of domicile that most clearly feels the social and economic impact of an injured party's tort recovery (*Gregory*, 384 Ill. App. 3d at 200). Texas has evinced a strong interest in protecting its residents from personal injury caused by defective products. *Huddy v. Fruehauf Corp.*, 953 F.2d 955, 957 (1992). It has been stated that the Texas legislature and courts have developed "an almost paternalistic interest" in protecting consumers and regulating the conduct of manufacturers that have business operations in the state. *Mitchell v. Lone Star Ammunition, Inc.*, 913 F.2d 242, 250 (5th Cir. 1990). See also *Ford Motor Co. v. Aguiniga*, 9 S.W.3d 252, 260-61 (1999) (noting

Texas's "strong policy in controlling corporate action in the manufacture of defective products" and the state's interest in protecting its citizens from, and compensating them for, injuries caused by defective products). Texas also has an interest in regulating the quality of products in its stream of commerce. *Sanchez ex rel. Estate of Galvan v. Brownsville Sports Center, Inc.*, 51 S.W.3d 643, 669-70 (2001), *vacated pursuant to settlement*. We note that Texas also encourages parties to settle. See *Stewart Title Guaranty Co. v. Sterling*, 822 S.W.2d 1, 9 (1991) (stating that the Texas Supreme Court "seeks to promote a public policy that encourages settlements").

¶ 38 Both states seek to compensate the injured and deter wrongdoers. Indeed, plaintiffs acknowledge that both states are aligned in their desire to fully compensate plaintiffs. However, plaintiffs contend that applying Texas law to this litigation will frustrate the goals of the forum state to provide a full recovery and promote settlement, asserting that Texas allows for only one defendant to be held jointly and severally liable and for defendants to try to reduce their percentage of liability by engaging in "empty chair" arguments towards parties who have settled and other immune and insolvent third-parties. Essentially, plaintiffs argue that they have a greater chance of economic recovery in Illinois than in Texas because Texas's laws tend to limit liability for defendants. This consideration, regardless of whether it is true, is not a factor in a choice-of-law analysis. Tort rules that limit liability are entitled to the same consideration when considering choice-of-law issues as rules that impose liability. *Townsend*, 227 Ill. 2d at 171. In addition, characterizations such as "pro-consumer" or "pro-business" and arguments that choice-of-law determinations should be influenced or based on these are not appropriate in our courts. *Gregory*, 384 Ill. App. 3d at 201. Moreover, the fact that a plaintiff's recovery would be greater under one state's laws versus another's does not mean that one state's interests are greater than the other. *Woosley v. C.R. England, Inc.*, 890 F. Supp. 2d 1068, 1075 (2012). We are also not

persuaded by plaintiffs' reliance on *Mitchell v. United Asbestos Corp.*, 100 Ill. App. 3d 485, 498 (1981), which, in discussing a Missouri law that would have found the plaintiff's suit was not properly brought, noted that "application of a state's statute or common law rule which would absolve the defendant from liability could hardly be justified on the basis of this state's interest in the welfare of the injured plaintiff" (quoting Restatement (Second) of Conflict of Laws § 6, comment f (1971)). Unlike applying Missouri law in *Mitchell*, applying Texas law here would not absolve defendants of liability. The Texas statutory scheme merely provides a different avenue for recovery.

¶ 39 Considering the relevant interests and principles, the section 6 analysis supports our conclusion that Texas law should apply. Texas has a strong interest in compensating its own residents and regulating the action of a corporation that does business in the state. Illinois's primary interest in this case is to impose liability on a resident corporation. However, Navistar's presence in Illinois appears to have little connection to the issues raised in this dispute, and seems to have been invoked to provide a forum for litigation. In contrast, many of the activities likely to be relevant to the dispute occurred in Texas. Navistar's presence in Illinois in ways that have little connection to the issues raised and the one time the truck was serviced in Illinois are insufficient to overcome Texas's interests in resolving this dispute. Therefore, we find that Texas has the most significant relationship to the occurrence and the parties and that Texas law should apply to this action.

¶ 40 For the foregoing reasons, the judgment of the circuit court is reversed.

¶ 41 Reversed.