

EXAMINERS' ANALYSIS OF QUESTION NO. 5

This question calls for a Michigan choice-of-law analysis. Under North Carolina's statute of repose, Pamela was required to file her lawsuit no later than June 2014 (i.e., 12 years after she purchased her vehicle). Yet under Michigan's 3-year statute of limitations, Pamela's lawsuit would be timely since it was filed within 3 years of the date of her accident. The issue is which law applies.

"In tort cases, Michigan courts use a choice-of-law analysis called 'interest analysis' to determine which state's law governs a suit where more than one state's law may be implicated." *Hall v General Motors Corp*, 229 Mich App 580, 585 (1998). "Although this balancing approach most frequently favors using the forum's (Michigan's) law, Michigan courts nonetheless use another state's law where the other state has a significant interest and Michigan has only a minimal interest in the matter." *Id.* Michigan courts "will apply Michigan law unless a 'rational reason' to do otherwise exists." *Id.* In determining whether a "rational reason" exists to apply another state's law, Michigan courts follow a two-step analysis:

First, we must determine if any foreign state has an interest in having its law applied. If no state has such an interest, the presumption that Michigan law will apply cannot be overcome. If a foreign state does have an interest in having its law applied, we must then determine if Michigan's interests mandate that Michigan law be applied, despite the foreign interests.
[*Id.*]

North Carolina has a substantial interest in having its law apply. Pamela lived and worked in North Carolina at the time of the accident, and received medical treatment there. As a result, she must be considered a North Carolina resident for purposes of a choice-of-law analysis. *Hall*, 229 Mich App at 591 ("[F]or Michigan choice-of-law analysis, a plaintiff's residency is determined as of the date of the injury, not as of the date of the filing of a lawsuit.") Moreover, her vehicle was purchased, registered, and insured in North Carolina.

Michigan's interest, on the other hand, is minimal. While Dendar is a Michigan corporation, and Pamela's vehicle was designed in Michigan, Dendar does business in all fifty states. Indeed, Pamela purchased her vehicle in North Carolina. Thus, it is in North Carolina's economic interest to encourage Dendar to continue to do business there by having its more restrictive statute of repose apply to a claim brought by one of its residents. "'Michigan has no interest in affording greater rights of tort recovery to a North Carolina resident than those afforded by North Carolina.'" *Hall*, 229 Mich App at 587, quoting *Farrell v Ford Motor Co*, 199 Mich App 81, 94 (1993).

Although the better answer is that the circuit court should determine that the law of North Carolina should apply, some credit will be given for a reasoned analysis concluding that the law of Michigan should apply. Finally, some credit may be given for recognizing the constitutional test for the permissible application of the law of either state.

While not necessary to achieve a perfect score, some credit may also be awarded for recognizing that this question also potentially implicates Michigan's "borrowing statute," MCL 600.5861, which provides:

An action based upon a cause of action accruing without this state shall not be commenced after the expiration of the statute of limitations of either this state or the place without this state where the cause of action accrued, except that where the cause of action accrued in favor of a resident of this state the statute of limitations of this state shall apply.

Under the borrowing statute, "whichever statute of limitations time-bars a plaintiff's claim (i.e., the statute of the state where an injury occurs, or Michigan's statute) should apply," except when the plaintiff is a Michigan resident, in which case Michigan's statute of limitations will be applied. *Hall*, 229 Mich App at 592.

Arguably, the borrowing statute would not govern here because the statutory language suggests that it applies only to "statute[s] of limitation[s]," and not statutes of repose. However, it is not necessary to resolve that issue here. Since Pamela was a resident of North Carolina at the time of her

injury (i.e., when the "cause of action accrued in [her] favor"), she would be precluded from taking advantage of Michigan's more generous statute of limitations in any event. This is because the only time the borrowing statute requires application of Michigan's statute of limitations is when the plaintiff is a Michigan resident at the time of the injury. Thus, even if the borrowing statute governed, it would support application of North Carolina's more restrictive statute of repose in the same manner as Michigan choice-of-law analysis.

As a result, Dendar's motion for summary disposition should be granted.