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JOHNSON & JOHNSON, JOHNSON & JOHNSON
PHARMACEUTICAL RESEARCH & DEVELOPMENT, L.L.C.,
and ORTHO-McNEIL PHARMACEUTICAL, INC., now known as
ORTHO-McNEIL-JANSSEN PHARMACEUTICALS, INC.

FILED
DEC 08 2010
JUDGE JESSICA R. HAYES

KELSEY DERY,

Plaintiff,

v.

JOHNSON & JOHNSON, JOHNSON &
JOHNSON PHARMACEUTICAL
RESEARCH & DEVELOPMENT, L.L.C.,
and ORTHO-McNEIL
PHARMACEUTICAL, INC.,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MIDDLESEX COUNTY
DOCKET NUMBER MID-L-5743-07-MT

CIVIL ACTION

IN RE ORTHO EVRA® BIRTH CONTROL
PATCH LITIGATION
CASE CODE 275

**ORDER REGARDING CHOICE OF LAW
ON THE ISSUE OF PUNITIVE DAMAGES**

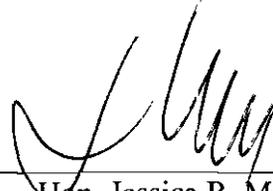
THIS MATTER having been brought before the Court by Drinker Biddle & Reath LLP, attorneys for Defendants Johnson & Johnson, Johnson & Johnson Pharmaceutical Research & Development, L.L.C., and Ortho-McNeil Pharmaceutical, Inc., now known as Ortho-McNeil-Janssen Pharmaceuticals, Inc. (“Defendants”), on a motion for an Order declaring that all issues related to the availability or amount of punitive damages shall be determined by New Jersey law, the Court having considered this application, ^{and having heard the arguments of counsel on Dec. 7, 2010,} and good cause having been shown;

IT IS ON THIS 8th day of December, 2010;

ORDERED as follows:

(1) All issues related to the availability or amount of punitive damages in this matter shall be determined by the laws of the State of New Jersey; and

(2) A copy of this Order be ^{perpet for} ~~served~~ on all counsel within 7 days from the date of entry.



Hon. Jessica R. Mayer, J.S.C.

This motion was:

Unopposed
 Opposed

* For the reasons set forth

in the court's written memorandum dated December 8, 2010.

OPPOSED

SUPERIOR COURT OF NEW JERSEY

CHAMBERS OF
JESSICA R. MAYER, J.S.C.
JUDGE



MIDDLESEX COUNTY COURT HOUSE
P.O. BOX 964
NEW BRUNSWICK, NEW JERSEY 08903-964

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE COMMITTEE ON OPINIONS**

**Memorandum of Decision on Defendants'
Choice-of-Law Motion**

Dery v. Ortho-McNeil Pharmaceutical, Inc. [Docket No. L-5743-07]
(In re: ORTHO EVRA® Birth Control Patch Litigation, Case No. 275)

For Defendants: Susan M. Sharko, Esq.
Kenneth J. Wilbur, Esq.

For Plaintiff: Stephen P. Kowlton, Esq.
Kate E. Jaycox, Esq.

Dated: December 8, 2010

Pending before the court is a motion filed on behalf of defendants, Johnson & Johnson, Johnson & Johnson Pharmaceutical Research & Development, L.L.C. and Ortho-McNeil Pharmaceutical, Inc., n/k/a Ortho-McNeil-Janssen Pharmaceuticals, Inc. (“Defendants”) requesting this court apply the laws of the State of New Jersey to the claim for punitive damages asserted on behalf of plaintiff, Kelsey Dery (“Plaintiff”). Plaintiff alleges that Defendants failed to warn of risks associated with the ORTHO EVRA birth control patch (“ORTHO EVRA®”). Plaintiff seeks both compensatory and punitive damages against Defendants.

In their motion, Defendants ask that the court apply the punitive damages law of New Jersey.¹ Because punitive damages are designed to deter and punish improper conduct, Defendants argue that this court should apply New Jersey law, as any alleged wrongful conduct would have occurred in New Jersey, where Defendants have their principal place of business and are incorporated.² Defendants further contend that all decision-making with respect to the development, testing, regulatory submissions, labeling and marketing of ORTHO EVRA® was done in New Jersey. See Waldstreicher Cert., ¶ 6.

Plaintiff opposes Defendants' motion, asserting that the law of Plaintiff's state of residence, Wisconsin, should apply. Alternatively, Plaintiff argues that the law of California should apply based on certain conduct allegedly occurring in that state.³ Plaintiff argues that Wisconsin and/or California have a greater interest in applying their own punitive damages laws than New Jersey has in applying its law.

Plaintiff argues that the alleged wrongful conduct occurred in Wisconsin by virtue of the Defendants' sales representatives' promoting ORTHO EVRA® to prescribing physicians, including Plaintiff's prescribing doctor. Alternatively, Plaintiff argues that the alleged wrongful conduct occurred in California because certain events leading to the development of ORTHO EVRA® took place in California, including the acquisition of the patch technology.

Defendants, in response to Plaintiff's opposition to the motion, contend that Plaintiff's allegations assert wrongdoings related to the marketing, distributing, and selling of ORTHO

¹ The parties agree that Plaintiff's claims for compensatory damages are governed by the substantive laws of the state in which Plaintiff resided at the time she was prescribed ORTHO EVRA®, e.g. Wisconsin substantive law. However, the parties disagree whether to apply New Jersey's punitive damages law or that of another state— e.g. Wisconsin or California.

² The two Johnson & Johnson defendants are incorporated in New Jersey. The Ortho-McNeil defendant is incorporated in Pennsylvania. All three Defendants have their principal place of business in New Jersey. See Certification of Joanne Waldstreicher, M.D., dated October 2010; ("Waldstreicher Cert.").

³ Plaintiff's opposing submission raises arguments supporting the imposition of punitive damages in this case. However, such arguments are premature as the only question before the court is which state's law should apply to Plaintiff's claim for punitive damage, not whether punitive damages should be imposed.

EVRA®. According to Defendants, these activities were undertaken at their corporate headquarters. Thus, Defendants contend that any alleged tortious conduct occurred at corporate headquarters in New Jersey, not in Wisconsin or California. This court must determine whether to apply the law of New Jersey, Wisconsin or California to the issue of punitive damages.

Background

In August 2005, Plaintiff, then age 17, was prescribed ORTHO EVRA® by her gynecologist located in Eau Claire, Wisconsin. ORTHO EVRA® is a birth control patch that delivers a transdermal dose of synthetic estrogen designed to prevent ovulation and fertilization. Plaintiff alleges that within three months of using ORTHO EVRA®, she developed a blood clot in her right leg and a blockage in her lung triggered by the patch. Plaintiff further alleges that, as of August 2005, Defendants knew the patch delivered a higher dose of estrogen than originally indicated and posed a risk of thromboembolism. According to Plaintiff, Defendants allegedly concealed this information from prescribing physicians. Moreover, Plaintiff contends that Defendants' salespeople explained that the risks associated with ORTHO EVRA® were similar to lower-dose estrogen-based alternatives such as birth control pills.

In support of the argument that Wisconsin has the most significant relationship to Defendants' wrongful conduct, Plaintiff alleges that Dr. Donna Schoenfelder, Plaintiff's prescribing gynecologist, received approximately forty "detailing" visits from Defendants' sales representatives in the three years prior to Plaintiff's prescription. Plaintiff alleges that Defendants' sales representatives misrepresented the safety of ORTHO EVRA® by understating the risk of thromboembolic events; by drawing inaccurate safety comparisons to non-comparable

lower-dose hormone therapies, including birth control pills; and by withholding key information about the higher-than-stated estrogen dose supplied by the patch. Because Plaintiff was living in Wisconsin when she was allegedly injured by ORTHO EVRA®, Plaintiff argues that Wisconsin law should govern her claim for punitive damages.

Plaintiff alternatively contends that ORTHO EVRA® was designed, developed, tested, and manufactured in California and, therefore, punitive damages under California law should be applied.⁵ Plaintiff, in support of her argument favoring application of California law on the issue of punitive damages, contends that Defendants licensed the transdermal patch technology developed by a California firm in 1999. Plaintiff also argues that scientists working for Defendants made pharmacokinetic decisions regarding ORTHO EVRA® in California and, further, that various corporate representatives traveled from Defendants' corporate headquarters in New Jersey to California to discuss ORTHO EVRA®. Additionally, Plaintiff asserts that Defendants relied on a key scientific study conducted in California when seeking approval for ORTHO EVRA® from the federal Food and Drug Administration ("FDA").⁶ Finally, Plaintiff claims that Defendants' manufacturing process in California was "plagued" with problems relating to uneven estrogen dosages and that such manufacturing problems were not disclosed to the FDA.

Defendants counter that the activities of their employees in California and Plaintiff's use of the patch in Wisconsin are irrelevant because these activities are separate from the misconduct alleged by Plaintiff that forms the basis for her punitive damages claim. Defendants respond that

⁵ Plaintiff's brief is replete with unsupported factual assertions, without any citation to the record or appropriate affidavit, claiming contacts allegedly undertaken by Defendants in California. The court recognizes that the strict requirements of R. 4:46-2 are inapplicable as Defendants' motion does not seek summary judgment. However, some quantum of evidence supported by way of the record or by way of a certification based on personal knowledge is required of Plaintiff in opposing Defendants' motion. See R. 1:6-6.

⁶ At oral argument, Plaintiffs' counsel conceded that this study, known as PHI-014, was not conducted in California.

any alleged misrepresentations about drug safety made by salespeople in Wisconsin relate back to corporate officials in New Jersey who made labeling and marketing decisions for ORTHO EVRA®. For purposes of the pending motion only, even if employees in California provided data about the patch and were consulted on various marketing and development issues, Defendants contend that there is no dispute that the decisions regarding developing, testing, approving, labeling, and marketing of ORTHO EVRA® were made in New Jersey. Consequently, Defendants argue that New Jersey has the most significant relationship to Plaintiff's claim for punitive damages and, therefore, New Jersey law properly applies to this issue.

Analysis

The court must apply New Jersey's choice-of-law rules to decide which state's substantive law will govern an out-of-state plaintiff's personal injury lawsuit. Erny v. Estate of Merola, 171 N.J. 86, 94 (2002). New Jersey has adopted the choice-of-law analysis of the Restatement (Second) of Conflict of Laws (the "Restatement") (1971). See P.V. ex rel. T.V. v. Camp Jaycee, 197 N.J. 132, 141 (2008). Consideration as to which state's law applies is to be determined by the court on an issue-by-issue basis, not the case as a whole. Camp Jaycee, *supra*, 197 N.J. at 143; see Restatement, *supra*, § 145 (explaining that choice of law factors "are to be evaluated according to their relative importance with respect to the particular issue."); In re Consolidated Parlodel Litig., 182 F.R.D. 441, 448 (D.N.J. 1998) ("New Jersey's choice of law rules incorporate the doctrine of depechage whereby the laws of different states may apply in the same case to different issues in the case").

Decisional law has established that, "the law governing the right to [punitive] damages need not necessarily be the same as the law governing the measure of compensatory damages,"

because one state may have “the dominant interest with respect to the issue of compensatory damages and another state ha[ve] the dominant interest with respect to the issue of [punitive] damages.” Restatement, supra, § 171 Reporter’s Notes to comment d; see also, e.g., Clawans v. United States, 75 F. Supp. 2d 368, 374-75 (D.N.J. 1999) (applying New Jersey law to issue of damages and Maryland law to issue of fault apportionment). Specifically, the availability of punitive damages should be treated as a separate issue in a choice-of-law analysis. Restatement, supra, § 171 comment d.

In this case, both parties agree that Wisconsin law governs the issues of liability and compensatory damages, but disagree as to the law governing punitive damages. Thus, the court must analyze Defendants’ request to apply New Jersey law governing punitive damages under New Jersey’s choice-of-law standards.

New Jersey case law has adopted the “significant relationship test” applying a presumption that the law of the place of injury governs, unless another state has a more significant relationship to the issue. Camp Jaycee, supra, 197 N.J. at 143. The first question under the Camp Jaycee analysis is whether there is an actual conflict in the laws of the interested states. Ibid. Absent a conflict, there is no choice-of-law issue to be resolved.

If there is a conflict, the first contact to be examined is the place where the injury occurred, as the law of the place where the injury occurred is presumed to apply. Id. at 143-44 (citing Restatement, supra, § 146). The presumption that the law of the place of injury governs may be overcome if one state has a more significant interest than another state. Id. at 144.

In this case, the court finds, as the parties concede, that the punitive damage laws of New Jersey, Wisconsin, and California are in actual conflict. Although punitive damages are

recoverable in all three states by statute,⁷ New Jersey caps total punitive awards at the smaller of (i) five times the compensatory award or (ii) \$350,000. N.J.S.A. § 2A:15-5.14b. The New Jersey Product Liability Act (“NJPLA”), N.J.S.A. § 2A:58C-1 to -11, also precludes punitive damages if a product was approved by the FDA unless the manufacturer “knowingly withheld or misrepresented” material information required for approval by FDA. N.J.S.A. § 2A:58C-5(c). No such restrictions exist in California or Wisconsin, either to cap punitive damage awards or to preempt such damages in pharmaceutical product liability cases.

Having determined that an actual conflict exists among New Jersey, California and Wisconsin governing punitive damages, the court must apply New Jersey’s choice of law factors. Since the injury to Plaintiff occurred in Wisconsin, where Plaintiff resides, the presumption favors application of Wisconsin law on the issue of punitive damages under the significant relationship test. Camp Jaycee, supra, 197 N.J. at 141. However, the presumption may be overcome if New Jersey bears a more significant interest to the issue of punitive damages than Wisconsin or California. Id. at 144-45.

Under section 145 of the Restatement, this court must also determine the contacts of the states as among New Jersey, Wisconsin and California. In ascertaining such contacts, the court must examine the location of the conduct causing the injury; the domicile, place of incorporation, or place of business of the parties involved; and the place where the relationship is centered. Id. at 145-47 (citing Restatement, supra, § 145).

The court does not simply count the number of a state’s contacts in a choice-of-law analysis. Rather, the court must assess the relative strength of the contacts in light of the

⁷ See Cal. Civ. Code § 3294 to -96 (Exemplary damages are available “where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice” as defined in the statute.); N.J.S.A. § 2A:15-5.9 to -5.17 (New Jersey Punitive Damages Act); Wisc. Stat. § 895.043(3) (“[P]laintiff may receive punitive damages if evidence is submitted showing that the defendant acted maliciously toward the plaintiff or in an intentional disregard of the rights of the plaintiff.”).

principles stated in section 6 of the Restatement. Camp Jaycee, supra, 197 N.J. at 143 (“Viewed through the section 6 prism, the state with the strongest section 145 contacts will have the most significant relationship . . .”). Based on the parties’ submissions, it is clear that the parties dispute the place where the conduct causing the injury occurred in the case. Defendants contend that the alleged wrongful conduct occurred in New Jersey. Plaintiff asserts that the alleged wrongful conduct causing her injury occurred in Wisconsin or, alternatively, California.

A. Location of Wrongful Conduct

Where, as in this case, the relief sought is intended “to punish the tortfeasor and thus to deter others from following his example,” the state where the wrongful conduct occurred is “the state of dominant interest.” Restatement, supra, § 146 comment e. In this case, the court must decide what conduct is relevant to the issue of punitive damages and where that conduct occurred.

Plaintiff argues that the court should consider the wrongful conduct of Defendants’ sales representatives who regularly met Dr. Schoenfelder in her Eau Claire office and allegedly misrepresented the risks of ORTHO EVRA®. Plaintiff also suggests that incorrect statements in the product label is wrongful conduct “that occurred” in Wisconsin. However, the sales representatives, as Defendants’ agents, were following the corporate marketing strategy developed at Defendants’ New Jersey headquarters and disseminating information based on data and decisions made by Defendants’ employees in New Jersey. The wrongful conduct alleged in this case, Defendants’ decisions related to the marketing and developing of ORTHO EVRA®, were made by corporate employees in New Jersey.⁸

This court also examined the location of the conduct underlying Plaintiff’s claims premised on alleged fraudulent misrepresentations purportedly made by Defendants to Plaintiff

⁸ Plaintiff acknowledges that Defendants’ decisions were not made in Wisconsin.

and her gynecologist. See, e.g., In re Commercial Money Ctr., Inc., 603 F.Supp. 2d 1095, 1027-28 (N.D. Ohio 2009) (finding state where fraudulent representations originated was the “undisputed situs of the conduct underlying these claims,” rather than the place of injury). The product label was reviewed and approved by Defendants in their New Jersey offices prior to submission to the FDA. Decisions concerning changes to the product’s label were also made in New Jersey at Defendants’ headquarters. Thus, the court concludes the site of the allegedly wrongful conduct is New Jersey.

The court rejects the notion that wrongful conduct occurs wherever a plaintiff may use a pharmaceutical product. To conclude as Plaintiff suggests would render the Restatement’s distinction between the location of the injury and wrongful conduct meaningless. Moreover, because the product label was distributed to and read by doctors in every state where ORTHO EVRA® was sold, Wisconsin has no stronger connection to the alleged wrongful conduct on those grounds than New Jersey or any of the remaining 48 states.

Plaintiff also offers California as the state with the most significant relationship to the parties and occurrences. Plaintiff has not shown that any of the decisions or actions allegedly taken by Defendants in California amount to wrongful conduct relevant to her punitive damages claim. Plaintiff alleges Defendants knew that ORTHO EVRA® delivered a higher dose of estrogen, and that the dose posed unsafe risks of thromboembolic injury. Plaintiff fails to show that any of these decisions by Defendants occurred in California. Plaintiff claims that ORTHO EVRA® was developed in California; that pharmacokinetic design decisions were made in California, that clinical trials were overseen by staff in California; that certain corporate employees based in New Jersey traveled to California for meetings; and that some batches of ORTHO EVRA® were manufactured at a California plant. These connections to California

cited in Plaintiff's opposition brief are unrelated to the wrongful conduct relevant to this analysis. Such connections do not rebut the fact that decisions regarding regulatory compliance, labeling, and marketing were made by corporate employees in New Jersey. See Deutsch v. Novartis Pharm. Corp., ___ F. Supp.2d ___, ___ 2010 U.S. Dist. LEXIS 81784 (E.D.N.Y. July 16, 2010) (slip op. at 4) (applying New Jersey's punitive damages law in analogous case alleging failure to warn because plaintiff "failed to rebut Novartis's plausible claim that the corporate decisions at issue were made from the company's corporate headquarters in New Jersey"). Based on this evidence, this court cannot conclude that California's relationship as to this issue is more significant than that of New Jersey.⁹

B. Analysis of Other Contacts Under Section 145 of the Restatement

Under § 145 of the Restatement, another factor in a choice of law analysis is the place where the injury occurred: Wisconsin in this case. However, for purposes of punishing Defendants, the court finds that the location of Plaintiff's injury is largely fortuitous because "it bears little relation to the occurrence and the parties with respect to the particular issue." Camp Jaycee, supra, 197 N.J. at 146, quoting Restatement, supra, § 145 comment e). In this mass tort, plaintiffs from nearly all fifty (50) states filed more than 600 actions in New Jersey's state courts. The location of the harms alleged was entirely a matter of chance as evidenced by the geographic diversity of the plaintiffs in this mass tort litigation. Thus, the court finds that the place of injury is less important.

The next contact under this analysis—the place of residence, incorporation, or principal place of business—is also not significant in this case. Plaintiff is a Wisconsin resident.

⁹ Plaintiff's citation to In re Vioxx Prods. Liab. Lit., 239 F.R.D. 450, 458 (E.D. La. 2006) is misplaced. The court in Vioxx expressly declined to decide "whether a specific aspect of a state's law, such as the learned intermediary doctrine or punitive damages, should be applied. . . ." In re Vioxx, supra, 239 F.R.D. at 455. Therefore, the district court's reasoning in Vioxx does not pertain to Defendants' choice of law motion addressed to the issue of punitive damages.

Defendants are incorporated in New Jersey, with the exception of Ortho-McNeil-Janssen Pharmaceuticals, Inc., and all Defendants have their principal place of business in New Jersey. On this basis, each state's contact counterbalances the other.

The last contact to be analyzed under § 145 of the Restatement is the relationship between Defendants and Plaintiff. Defendants never had any direct contact with Plaintiff, in Wisconsin or elsewhere. As there was no such direct contact in this case, this factor is irrelevant to the court's analysis.

C. Analysis of Choice-of-Law Principles Under Section 6 of the Restatement

The significant relationship test does not end with the foregoing analysis. Because the significant relationship test is "qualitative, not quantitative," and "the inquiry does not focus solely on the number of contacts with each state," Camp Jaycee, supra, 197 N.J. at 143 (citing Henry v. Richardson-Merrell, Inc., 508 F.2d 28, 32 (3d Cir. 1975)), the aforementioned factors must be assessed as to the particular issue (punitive damages) and in light of the section 6 principles of the Restatement. Id. at 132, 143 (citing Erny, supra, 171 N.J. at 101-02). Accordingly, this court next examines the aforementioned contacts in light of the Restatement's section 6 principles. These principles are: "(1) the interests of interstate comity; (2) the interests of the parties; (3) the interests underlying the field of tort law; (4) the interests of judicial administration; and (5) the competing interests of the states." Camp Jaycee, supra, 197 N.J. at 147 (quoting Erny, supra, 171 N.J. 86, 101-02).

First, the interest of interstate comity considers "whether application of a competing state's law would frustrate the policies of other interested states." Id. at 152 (citing Fu v. Fu, 160 N.J. 108, 122 (1999)). In this case, application of one state's law over the others would frustrate the law of the other states since the states involved follow opposite approaches – New Jersey

limits punitive damages based on the amount of the awarded compensatory damages, N.J.S.A. § 2A:15-5.14(b), while the laws of California and Wisconsin do not cap punitive damages.¹⁰ Additionally, NJPLA provides a defense with respect to punitive damage claims where a product is approved by the FDA, N.J.S.A. § 2A:58C-5(c), unlike the governing laws of California and Wisconsin. It is undisputed that New Jersey's laws have underlying policies that differ from California and Wisconsin. Thus, the application of the other states' laws on punitive damages would frustrate the policies of this state.

Next, as to the interests of the parties in applying the punitive damages law of a chosen state, this principle calls for examining the reasonable expectations and the need for a foreseeable result for each party. The imposition of punitive damages, generally, is not intended to address the expectations of a plaintiff. Instead, a plaintiff's interest is addressed through the award of compensatory damages pursuant to Wisconsin law. On the other hand, Defendants should reasonably expect to be governed by the punitive damages law of the state in which they maintain their principal place of business and place of incorporation, that is, New Jersey. In light of these reasonable expectations, this factor favors application of New Jersey law on punitive damages.

Regarding the interests underlying the field of tort law, this analysis focuses on whether the fundamental tenets of tort law, compensation and deterrence, would be furthered if the law of New Jersey were applied. As to compensating Plaintiff, that interest is settled through compensatory damages that Plaintiff may be awarded under Wisconsin law. See McDarby v. Merck & Co., Inc., 401 N.J. Super. 10, 91 (App. Div. 2008) ("In contrast [to punitive damages], the purpose of compensatory damages is to make the individual plaintiff whole. That purpose, in

¹⁰ See California and Wisconsin punitive damages statutes, supra, note 5. The court is not aware of, nor have the parties cited, any California or Wisconsin authority establishing caps on punitive awards or placing conditions on the availability of punitive damages in pharmaceutical cases in those states.

a personal injury compensation context, is neither to reward the plaintiff, nor to punish the defendant, but to replace plaintiff's losses.”) (quoting Caldwell v. Haynes, 136 N.J. 422, 433 (1994) (internal citations and quotations omitted).

As to the underlying interests in deterrence, this may be accomplished by applying New Jersey's punitive damages law. Punitive damages are designed specifically to punish and deter wrongful conduct. See Tarr v. Bob Ciasulli's Mack Auto Mall, Inc., 194 N.J. 212, 218 (2008). “Deterrence of egregiously wrongful conduct is . . . what punitive damages are all about.” Almog v. Israel Travel Advisory Serv., Inc., 298 N.J. Super. 145, 158-59 (App. Div. 1997); see also McDarby, supra, 401 N.J. Super. at 90 (“the purpose of a punitive damage award is ‘to punish the defendant and to deter that defendant from repeating such conduct.’”) (quoting N.J.S.A. § 2A:15-5.14(a)). If there is willful corporate misconduct on the part of Defendants, then New Jersey should punish Defendants to prevent such conduct in the future. Accordingly, the interests underlying the field of tort law will be furthered through the application of New Jersey law as to punitive damages and Wisconsin law as to compensatory damages.

Next, the interests of judicial administration focus this court's attention on the issues of “practicality and ease of application, factors that in turn further the values of uniformity and predictability.” Camp Jaycee, supra, 197 N.J. at 155 (citing Erny, supra, 171 N.J. at 102; Fu, supra, 160 N.J. at 124). In this case, a New Jersey trial court applying New Jersey law on the issue of punitive damages to an injury caused by a manufacturer doing business in New Jersey would be in the best interest of judicial administration. Because this mass tort litigation consists of plaintiffs from nearly all states throughout the country, it would not aid judicial administration to apply a different punitive damages law for each plaintiff based on where that plaintiff

originates. It is more practical to apply New Jersey's punitive damages law to each plaintiff in this litigation.

As to the competing interests of the states, this factor requires courts to consider whether application of an individual state's law under the circumstances will advance the policies that that particular law was intended to promote. Fu, supra, 160 N.J. at 125 (stating that this factor is "the most significant factor in the tort field") (quoting Pfizer, Inc. v. Employers Ins., 154 N.J. 187, 198 (1998)). In general, the determination as to which state law to apply "should be the state which has the dominant interest in the determination of the particular issue," rather than the case as a whole. Erny, supra, 171 N.J. at 96 (quoting Restatement, supra, § 171 comment b); see also Fu, supra, 160 N.J. at 125; White v. Smith, 398 F. Supp. 130, 134 (D.N.J. 1975) ("In order to determine which state has the greatest interest in the application of its own law, each issue must be analyzed separately"). Thus, if a state's statute provides for punitive damages under certain circumstances, a court should consider that state's legislative interest in having its law apply. See Pfizer, supra, 154 N.J. at 198). As such, the aforementioned factors will be analyzed as to the issue of punitive damages, rather than the case as a whole.

With regard to punitive damages, New Jersey has the prevailing interest in determining whether such damages should be awarded in this case. As to punitive damages:

[A]n important factor in determining which is the state of most significant relationship is the purpose sought to be achieved by the rule of tort law involved. If this purpose is to punish the tortfeasor and thus to deter others from following his example, there is better reason to say that the state where the conduct occurred is the state of dominant interest and that its local law should control than if the tort rule is designed primarily to compensate the victim for his injuries.

[Restatement, supra, § 146 comment e; see also id. § 145 comment c.]

In particular, “[t]he State [of New Jersey] has a legitimate interest in punishing unlawful conduct and deterring its repetition.” McDarby, supra, 401 N.J. Super. at 90 (quoting Tarr, 194 N.J. at 218).

Applying the foregoing analysis to Defendants’ motion, New Jersey law shall govern punitive damages because New Jersey has a more significant relationship as to that issue. New Jersey has an interest in imposing punitive damages for the purpose of punishing a wrongdoing defendant and deterring such a defendant from repeating wrongful conduct. See N.J.S.A. § 2A:15-5.14. If Defendants committed conduct warranting punishment, then New Jersey’s law would be the proper vehicle through which to deter such behavior.

Conclusion

Based upon the foregoing analysis, the court concludes that New Jersey has the most significant relationship on the matter of punitive damages. Therefore, the laws of the State of New Jersey shall apply to this issue. The court will sign the order as submitted by Defendants.


12/2/10

Jessica R. Mayer, J.S.C.