



To: TCJL Board of Directors

From: George Christian

Date: June 8, 2018

Re: *In Re Mahindra, USA Inc.* (No. 17-0019; decided June 8, 2018)

A unanimous Texas Supreme Court has held that a trial court did not abuse its discretion when it denied a motion to dismiss under the *forum non conveniens* statute a Texas resident's wrongful death claim arising from a fatal accident in Mississippi involving a Mississippi resident. The Court further held that the decedent's granddaughter, also a Texas resident, could invoke the Texas residency exception to the statute to maintain her common law bystander claim in Texas.

The decedent, a Mississippi resident, was killed when the front-end loader on the tractor on which he was working fell and crushed him. The decedent's granddaughter, a Texas resident, witnessed the accident. The decedent's son initiated probate proceedings in Mississippi, and then filed negligence and product liability actions in Texas against vendor Mahindra USA, headquartered in Houston, and manufacturer KMW, Ltd., a Kansas resident. In addition, the decedent's granddaughter filed a personal injury action in Texas. Mahindra moved to dismiss the claims on the basis of *forum non conveniens*, arguing that Mississippi was a more appropriate forum. The trial court denied the motion, and the Houston Court of Appeals (1<sup>st</sup> District) affirmed. Mahindra appealed to the Texas Supreme Court.

Writing for the court, Justice Devine analyzed both the statutory *forum non conveniens* provision (Chapter 71, CPRC), which governs personal injury and wrongful death actions, and the common law doctrine of *forum non conveniens*, which governs other civil actions. As Justice Devine pointed out, the common law doctrine may permit the dismissal of a claim by a Texas resident if the public and private factors a court must consider to determine the appropriate forum weigh in favor of an alternative forum. Since its adoption in 1993, however, Chapter 71 has contained an exception for Texas-resident plaintiffs or derivative claimants of a Texas resident, who can maintain their claims in Texas regardless of the outcome of the balancing test. Mahindra contended that the Texas-residency exception did not apply in this case because the decedent's son, who filed the wrongful death claim, is not a "plaintiff" under the statute because he is a "derivative claimant" of his non-resident father. Consequently, Mahindra argued that they could not invoke the exception, and, consequently, their claims should have been dismissed in favor of a forum in Mississippi.

At issue, then, was the statutory definition of "plaintiff," found in §71.051(h), CPRC. The statute defines a "plaintiff" as a person seeking damages for personal injury or wrongful death, but excludes so-called "nominal" plaintiffs, such a representative, administrator, guardian, or next friend who is not otherwise a derivative claimant of a legal resident of this state. The Court agreed with Mahindra that the decedent's son is not a "plaintiff" for purposes of the *estate's* claims, where he filed suit in his capacity as estate administrator and next friend of the granddaughter. He therefore cannot use his own Texas residency to "anchor" either the estate's or his own daughter's claim in Texas. The Court

had previously held, in *In Re Bridgestone Americas Tire Corp.*, 459 S.W.3d 565 (Tex. 2015), that the next friend's legal residency does not trigger the Texas residency exception, either.

The Court, however, found that the individual wrongful death claims of the decedent's children, as well as the granddaughter's common-law bystander claim, are anchored in Texas because they are personal, as opposed to representative. In response to Mahindra's objection that the trial court should have conducted a choice-of-law analysis and applied Mississippi procedural law governing wrongful death claims, the Court held that the trial court did not need to do so because *forum non conveniens* is a procedural matter governed by the law of the forum state, in this case Texas law. Consequently, because Texas law allows beneficiaries to bring suit and recover damages on their own behalf and because the decedent's sons are Texas residents, the trial court did not err in allowing their claims to go forward.

Having determined that the children were Texas resident plaintiffs, however, the Court still had to review whether the trial court abused its discretion in denying Mahindra's motion to dismiss the derivative claims related to the decedent's estate based on the six-factor test in the *forum non conveniens* statute (§71.051(b)). Because the statute does not require the trial court to state its findings of fact and conclusions of law when it denies a *forum non conveniens* motion (only when it grants one), the reviewing court (here SCOTX) can only substitute its own discretion for the trial court's if it finds that the facts and circumstances of the case foreclose the exercise of discretion altogether. Because in this case "all the factors do not conclusively favor the alternative forum," the Court declined to find an abuse of discretion and denied mandamus for the estate-derived claims.

This opinion continues a trend in which the Court distinguishes between the *direct* personal claims of Texas residents and derivative claims filed in Texas on behalf of a non-resident decedent, which the Legislature addressed at TCJL's behest in 2015 in response to the 2012 SCOTX decision in *In re Ford Motor Company*. Here, the Court conducted a *forum* review under the six statutory factors of the Mississippi estate's claims and determined that the trial court did not abuse its discretion. It also pointed out that in another case, *In re ENSCO Offshore Int'l Co.*, the Court found abuse of discretion where the trial court stated on the record that each of the statutory factors favored dismissal but nevertheless retained the case. In this situation, the Court reiterated that if each factor weighs in the favor of dismissal, the trial court *must* dismiss.

