

PERSONAL INJURY

Applying Choice-of-Law Principles to Punitive Damages Claims

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In 2008, the New Jersey Supreme Court established New Jersey's adherence to the "significant relationship test" in choice-of-law determinations. The court made clear that, pursuant to that test, there is a presumption in personal injury cases that the law of the state in which the injury occurred will apply. Critically, though, the court clarified that choice-of-law analyses must occur on an issue-by-issue basis, thereby allowing for the law of the forum state to apply to certain issues and the law of the state in which the injury occurred to others.

This article addresses the application of New Jersey's choice-of-law framework to one issue in particular—punitive damages. The first section of this article provides an overview of the "significant relationship test." The second section sets forth the application of that test to punitive damages claims. This analysis demonstrates that the presumption in favor of applying the law of the state in which the injury occurred will often be overcome for punitive damages, because the state in which the defendant's alleged conduct occurred will have the strongest interest in dictating whether and to what extent the conduct is punishable.

The Significant Relationship Test

New Jersey courts adhere to the conflict-of-law principles enunciated in the Restatement (Second) of Conflict of Laws (1971). As the New Jersey Supreme Court recently articulated, these principles require applying a "significant relationship test" in

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connection with the issues and various state laws involved. *P.V. v. Camp Jaycee*, 197 N.J. 132, 142–43 (2008). "Under that standard, the law of the state of injury is applicable unless another state has a more significant relationship to the parties and issues." *Id.* at 143. New Jersey's choice-of-law standard requires a "qualitative, not quantitative" assessment. *Id.* (citing *Henry v. Richardson-Merrell*, 508 F.2d 28, 32 (3d Cir. 1975)). The test is a two-step process, which first considers whether an actual conflict exists between the subject laws, and, if so, proceeds to an analysis of a number of factors and considerations to ascertain which state has a more significant interest in applying its law to the particular issue.

To determine whether the presumption in favor of applying the law of the state where the injury occurred is overcome, the inquiry turns to the contacts set forth in §145 of the Restatement and the principles set forth in §6.

Specifically, §145 provides that "[t]he rights and liabilities of the parties with respect to an issue in tort are determined by the local law of the state which, with respect to that issue, has the most significant relationship to the occurrence and the parties under the principles stated in §6." *Id.* at 140 (quoting Restatement §145(1)).

The contacts that are weighed in making that assessment include:

- (a) the place where the injury occurred;
- (b) the place where the conduct causing the injury occurred;
- (c) the domicile, residence, nationality, place of incorporation and place of business of the parties; and
- (d) the place where the relationship, if any, between the parties is centered.

Id. at 141 (quoting Restatement §145(2)(a)-(d)).

Section 6, in turn, proceeds from the quantitative analysis of the section 145 contacts to a qualitative analysis of several principles to “measure the significance of those contacts.” *Id.* at 147. “Reduced to their essence, the section 6 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.’” *Id.* (citing *Erny v. Estate of Merola*, 171 N.J. 86, 101–02 (2002)). In sum, the “most significant relationship” analysis first evaluates whether either state has more of the section 145 contacts, and then proceeds to ask whether “the section 6 considerations gin up or diminish the values to be ascribed to the contacts relative to the issue presented.” *Id.*

Application to Punitive Damages Claims

As noted, New Jersey’s choice-of-law framework takes place on an issue-by-issue basis. As a result, “the law governing the right to [punitive] damages need not necessarily be the same as the law governing the measure of compensatory damages[.]” *Irby v. Novartis Pharms. Corp.*, No. MID-L-1815-08, 2011 N.J. Super. Unpub. LEXIS 3188, at *7 (Law Div. Nov. 18, 2011). With respect to the issue of punitive damages, New Jersey courts generally have applied New Jersey law when the defendant company from which a plaintiff seeks to obtain a punitive damages award is located in New Jersey, even when the injury occurred elsewhere. See, e.g., *id.*; *Lyles v. McNeil-PPC*, No. ATL-L-8655-11 (Law Div. Aug. 28, 2014); *Dery v. Johnson & Johnson*, No. MID-L-5743-07 (N.J. Law. Div. Dec 8, 2010); *Meng v. Novartis Pharms. Corp.*, No. L-7670-07, 2009 N.J. Super. Unpub. LEXIS 3249 (N.J. Law Div. Nov. 23, 2009).

In *Irby*, for example, the plaintiff was a Virginia resident who allegedly was injured by a drug manufactured and marketed nationwide by the defendant, a Delaware corporation with its principal place of business in New Jersey. The court applied the above choice-of-law analysis and concluded that the state where the defendant’s alleged conduct occurred—New Jersey—had the strongest interest in applying its law to the issue of punitive damages.

In reaching that result, the court first observed that “the location of the injury bears little relation to the issue of punitive damages” because it bears little relation to the defendant’s allegedly harmful conduct. Contrarily, the location of the conduct that caused the injury “weighs in favor of applying New Jersey law on punitive damages” because, in *Irby*, the claim arose out of the defendant’s “business activities in New Jersey regarding the marketing, distributing, and selling” of

the drug that allegedly caused the plaintiff’s injury. *Id.* at *15–16.

After concluding that the third factor—“the domicile, residence, nationality, place of incorporation and place of business of the parties”—was neutral, the court considered the final factor, which addresses “the place where the relationship between the parties is centered.” The court determined that the plaintiff’s “claims stem from defendant’s New Jersey business activities,” all of which “originate from defendant’s corporate headquarters in New Jersey.” *Id.* at *17–18. Accordingly, that factor also favored applying New Jersey law.

In light of the clear directive that the “significant relationship test” is “qualitative, not quantitative,” the “‘inquiry does not focus solely on the number of contacts with each state.’” *Id.* at *18. Rather, “the aforementioned factors are to be assessed as to the particular issue (punitive damages) and in light of the §6 principles of the Restatement.” *Id.*

In *Irby*, the court first concluded that “interstate comity would be least offended by the application of New Jersey law to the issue of punitive damages” because “the alleged misconduct occurred in New Jersey” and “punitive damages are generally intended to regulate conduct within the bounds of an interested state.” Contrarily, “[i]nterstate comity (and the unique policies of interested states) would be frustrated if one state were to extend its conduct-regulating punitive damages laws to activities that occurred within another state’s bounds.”

The court likewise found that the second factor—the interests of the parties—weighed in favor of applying New Jersey law. The court considered the parties’ expectations and found that the plaintiff’s interest in being compensated “will be served through compensatory damages awarded” under the law of the state where the injury occurred, whereas the defendant “should reasonably expect to be governed by and punished under the punitive damages laws of the state in which it maintains its principal place of business.” *Id.* at *21–22.

The court next evaluated “the interests underlying the field of tort law,” which required a “focus[] on whether the fundamental goals of tort law—compensation and deterrence—would be furthered if the law of New Jersey were applied.” *Id.* at *22. Again, the interest of compensation is served by the availability of compensatory damages under the law of the state of the injury. Tort law’s “interest in deterring misconduct” is “accomplished by applying New Jersey’s punitive damages law” because “[p]unitive damages are designed specifically to punish and deter wrongful conduct” where it occurs. The court reasoned that “[i]f there was willful corporate misconduct ... that occurred in New Jersey, then New Jersey should punish defendant to prevent such conduct in the future.” *Id.* at *23. The court emphasized that even if application of New Jersey law could

preclude punitive damages, that is no basis to conclude that New Jersey law would frustrate the goal of deterrence.

Next, the court “evaluat[ed] the interests of judicial administration,” which require a “focus on the issues of practicality and ease of application, factors that in turn further the values of uniformity and predictability.” *Id.* at *24. *Irby* was a mass-tort litigation with plaintiffs in 41 states. On that basis, the court concluded that from a judicial economy perspective, “a New Jersey trial court applying New Jersey law on the issue of punitive damages to an injury caused by a pharmaceutical company doing business in New Jersey would be in the best interest of judicial administration.”

Finally, the court turned to “the competing interests of the states,” which it deemed “the most significant factor in the tort field.” *Id.* at *25. That 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.” Moreover, the court should apply the law of the state that “has the dominant interest in the determination of the particular issue”—here, punitive damages. *Erny*, 171 N.J. at 96.

[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.

Irby at *26. The court concluded that the law of the state in which the allegedly wrongful conduct occurred—New Jersey—was the proper law to apply to the plaintiff’s punitive damages claim.

Conclusion

New Jersey’s choice-of-law framework adheres to the “significant relationship test,” which presumptively favors applying the law of the state where the injury occurred. In contrast to that general presumption, a review of the pertinent factors involved in a choice-of-law inquiry demonstrates that for a punitive damages claim, application of the law of the state in which the allegedly wrongful conduct occurred is proper. Consequently, for entities with a principal place of business in New Jersey, courts generally will apply New Jersey punitive damages law. ■