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SUPREME COURT NO. ___________

IN THE SUPREME COURT OF CALIFORNIA

SUPREME COURT
FILED
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Deputy

HAIRU CHEN, et al.,
Plaintiffs and Appellants,

v.

L.A. TRUCK CENTERS, LLC,
Defendant, Respondent, and Petitioner.

PETITION FOR REVIEW

From the Opinion of the Court of Appeal of the State of California,
Second Appellate District, Division Eight, Case No. B265304
on Appeal from The Superior Court of California,
County of Los Angeles, Case No. BC469935
(Hon. J. Stephen Czuleger and Hon. Holly E. Kendig)

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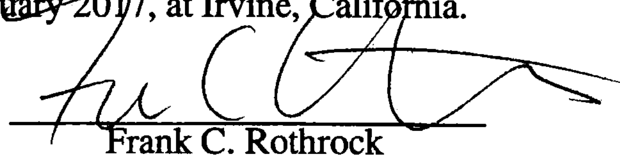
CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

In accordance with Rules 8.208 and 8.488 of the California Rules of Court, the undersigned, as counsel of record for defendant, respondent, and petitioner L.A. Truck Centers, LLC, certifies that the following individuals have an ownership interest of more than 10 percent in L.A. Truck Centers, LLC: James Andrew Barker; Bradley Charles Fauvre. With these exceptions, the undersigned knows of no other entity or person other than the parties to this proceeding who has a financial or other interest in its outcome.

Executed this 23rd day of February 2017, at Irvine, California.



Frank C. Rothrock

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PETITION FOR REVIEW

TO THE HONORABLE CHIEF JUSTICE OF CALIFORNIA AND THE ASSOCIATE JUSTICES OF THE CALIFORNIA SUPREME COURT:

L.A. Truck Centers, LLC respectfully petitions for review following the decision of the Court of Appeal, Second Appellate District, Division Eight, filed on January 18, 2017, which reversed a verdict in favor of LAT and ordered a new trial in this case. A copy of the Court of Appeal's decision is attached as Exhibit A.

ISSUE PRESENTED FOR REVIEW

Under the Court's decision in *Reich v. Purcell* (1967) 67 Cal.2d 551, 555, should the governmental interest analysis in determining choice of law in a personal injury or wrongful death case be based on the parties' relationships to the interested states on the date of the accident or injury? Similarly, should the interest analysis in a commercial case be tethered to the date of the underlying transaction?

Or, as held by the Court of Appeal, should later events such as the settlement and dismissal of one of multiple defendants be considered in the interest analysis? Put differently, should the choice-of-law determination be subject to reconsideration based on changes in the parties' status until trial commences or a verdict is entered?

INTRODUCTION: WHY REVIEW SHOULD BE GRANTED

This Court's landmark decision in *Reich v. Purcell, supra,* 67 Cal.2d 551, adopted the governmental interest approach to choice of law. *Reich* arose from a fatal accident in Missouri. A car carrying Ohio residents traveling to California collided with a car driven by a Californian traveling to Illinois. Although the surviving plaintiffs later moved to California, the Court treated them as residents of Ohio in the choice-of-law analysis. The Court explained that "if the choice of law were made to turn on events happening after the accident, forum shopping would be encouraged." (*Id.* at p. 555.)

One of California's leading choice-of-law scholars interpreted *Reich* as holding that "the relevant time for assessing the potentially competing interests in a case involving a limitation of damages in wrongful death actions is the time of the accident." (Symposium, *Comments on Reich v. Purcell* (1968) 15 UCLA L.Rev. 551, 588 (hereafter *UCLA Symposium*) [comments by Professor Herma Hill Kay; citing Currie, *Full Faith and Credit, Chiefly to Judgments: A Role for Congress* (1964) Sup. Ct. Rev. 89, 92-99].) By anchoring the parties' relationships to the interested states and the interests of these states in application of their law to the date of the accident, the rule of *Reich v. Purcell* provides predictability to the choice-of-law analysis and reduces the risk of gamesmanship (e.g., forum shopping or sweetheart settlements with selected defendants). In Professor Kay's words, "[Chief Justice] Traynor's approach in *Reich* is to be preferred as the one carrying the least risk of unsettling expectations." (*UCLA Symposium, supra*, 15 UCLA L.Rev. at pp. 588-589.)

This case arises from a fatal rollover accident in Arizona involving a tour bus taking Chinese tourists from Las Vegas, Nevada to the Grand Canyon. The tour bus was designed and manufactured in Indiana by defendant Forest River, Inc. ("Forest River/Starcraft"), where it was purchased and taken delivery of by L.A. Truck Centers ("LAT/Buswest"), which later sold the bus to a California-based tour company. Eight months before the case was then set for trial, Forest River/Starcraft and LAT/Buswest brought a successful motion to have the trial court apply Indiana substantive law. The trial court denied the plaintiffs' motion to reconsider the choice-of-law ruling after Forest River/Starcraft settled before trial and the case was tried to a defense verdict for LAT/Buswest under Indiana products liability law.

The Court of Appeal reversed the judgment on the ground the trial court erred in denying plaintiffs' motion to reconsider its choice-of-law decision after Forest River/Starcraft settled. The Court of Appeal's decision rejects the rule of *Reich v. Purcell* that the parties' relationships to the potentially interested states – and the resulting interests of these states in application of their substantive law – should be determined as of the date of the accident. Instead, the Court of Appeal held the rule of *Reich v. Purcell* is limited to consideration only of the parties' residences: "the Supreme Court simply held that the historical facts of the parties' residences were fixed at the time of the accident; it did not hold that the relevant state interests were." (Opn. p. 14.)

This narrow reading of *Reich v. Purcell* ignores a crucial component of the interests calculus: the state interests at issue derive from the parties' relationships with the potentially interested states.

The two are interlinked. The Court of Appeal's decision creates unpredictability and opens the door to gamesmanship in determining choice of law. It sets up a potential settlement bidding war between plaintiffs and defendants from different states, with the odds usually stacked against California defendants in product liability cases. It creates an unwarranted element of fluidity in deciding choice of law. What if a non-resident defendant settles during trial, or at any time before a verdict is reached? When – if at any time before a final verdict – should a choice-of-law ruling become final?

This petition meets the criterion of California Rules of Court, rule 8.500(b)(1) because it presents an important question of law. It implicates application of California's governmental interest approach to choice of law in personal injury and wrongful death cases involving defendants from multiple states. Review is also necessary to secure uniformity of decision: Should the choice-of-law analysis be governed by a rule that looks to the date of the accident or underlying transaction in assessing the potentially competing interests in a case? Or is the rule of *Reich v. Purcell* simply limited – as interpreted by the Court of Appeal – to the parties' places of residence as distinct from the competing state interests?

BACKGROUND

A. The Fatal Accident

This is a personal injury and wrongful death case. On October 17, 2010, a tour bus taking Chinese tourists from Las Vegas to the Grand Canyon rolled over when its driver lost control as the bus entered a curve in the highway in Arizona. There was evidence the bus was traveling at an excessive speed. (9 RT 3699, 3707, 3720, 3727-3728.)[1] Two of the eleven passengers died in the accident and the others sustained various injuries. (O.Br. at 20.)

B. The Manufacture and Sale of the Bus

The bus was manufactured by defendant Forest River/Starcraft at its plant in Goshen, Indiana. (1 AA 4:130; 7 RT 3062-3063.) LAT/Buswest and Forest River/Starcraft had a Dealership Agreement entered into in 2004, which included a mutual express indemnity provision. (4 AA 25:987-991; 7 RT 3021-3023.)[2] LAT/Buswest, which is a California-based business, ordered the bus from Forest

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[1] "RT" will refer to the Reporter's Transcript of the proceedings in the trial court, with references to the applicable volume. "O.Br." will refer to plaintiffs' Opening Brief to the Court of Appeal. "AA" will refer to plaintiffs' Appellants' Appendix, with references to the applicable volume, tab, and page. "RA" will refer to LAT/Buswest's Respondent's Appendix.

[2] The Court of Appeal used the name "Starcraft" for Forest River, even though Starcraft is actually an internal division of Forest River. (O.Br. at 13; see also 7 RT 3004.) The Court of Appeal also referred to L.A. Truck Centers as "Buswest," although Buswest is only a fictitious business name used by LAT. (8 RT 3420.)

River/Starcraft in 2005 and took delivery of the bus at Forest River/Starcraft's Indiana location. (1 AA 4:130-133; 7 RT 3062-3064; 8 RT 3449-3450.)

LAT/Buswest sold the bus to defendant TBE International, Inc. ("TBE") in March 2008. (8 RT 3451.) Although LAT/Buswest and TBE had business locations in California, the tour bus was delivered to TBE at LAT/Buswest's dealership location in Las Vegas, Nevada, so that TBE could obtain apportioned license plates that would enable it to use the bus for interstate travel. (4 AA 24:924, 25:989; 8 RT 3453.) The bus passenger seats did not have seatbelts. But there was no dispute that the tour bus was not required by federal law or regulations to have passenger seatbelts. In addition to seats for the driver and tour guide at the front of the bus, there were 14 passenger seats. (7 RT 3045; 8 RT 3447; 10 RT 3960.) Plaintiffs include the injured passengers and survivors of the passengers who died in the accident. (AA 1:2-3.)

C. The Pleadings and Parties

Plaintiffs initially sued TBE, the bus driver (Zhi Lu, a TBE employee), Forest River/Starcraft, and LAT/Buswest through a complaint filed September 20, 2011. (1 AA 1-2.) The case eventually proceeded under a Second Amended Complaint against TBE, Mr. Lu, Forest River/Starcraft, and LAT/Buswest under causes of action for negligence, strict products liability, and negligent infliction of emotional distress. (AA 1:1-16.)

In December 2012, TBE and Mr. Lu settled with plaintiffs.

They were dismissed from the case in August 2013. (RA 1:6; 2:20.)

D. The Trial Court's Choice-of-Law Ruling

On December 17, 2013, LAT/Buswest and Forest River/Starcraft filed a joint motion requesting the trial court determine that Indiana law should apply in this case. (1 AA 2:18.) At that time, the case was set for trial on August 18, 2014. (1 AA 7:268; 2 AA 11:466, 12:495.) The trial court granted the motion and ruled that Indiana substantive law should apply. (2 AA 10:448-465.)

In August 2014, the Indiana-resident manufacturer, Forest River/Starcraft, settled and it was dismissed from the case the following month. (RA 3:26, 5:81.) Plaintiffs then requested the trial court reconsider its choice-of-law ruling and apply California substantive law in the case going forward. Plaintiffs argued Forest River/Starcraft's dismissal meant Indiana no longer had any connection with or interest in the case. (RA 4:62.) The trial court declined to reconsider its choice-of-law ruling. But plaintiffs renewed their request for application of California law in a motion in limine filed before trial. (3 AA 21:606.) They again argued any Indiana interest in applying its law vanished with Forest River/Starcraft's settlement. (3AA 21:626.)

In each of their motions seeking reconsideration, plaintiffs argued that Indiana and California law are "reasonably identical" because Indiana's "unreasonably dangerous" test for design defect is essentially the same as California's consumer-expectations test and that any potential conflict between Indiana and California law is false.

(RA 4:62, 68; 3 AA 21:618-619.) The trial court heard argument on plaintiffs' choice-of-law motion in limine on February 20, 2015, and denied the motion. (2 RT 602-604, 614.)

The case proceeded to trial with LAT/Buswest as the sole remaining defendant. The trial court applied Indiana's "unreasonably dangerous" test for a product design defect in instructing the jury. (12 RT 5195.) On April 27, 2015, the jury returned a defense verdict in favor of LAT. (12 RT 5403-5405.) Judgment was entered on May 11, 2015 (4 AA 26:996-997), and plaintiffs filed a Notice of Appeal on July 7, 2015. (4 AA 28:1005.)

E. The Court of Appeal's Decision

The Court of Appeal filed its decision on January 18, 2017. A copy is attached to this Petition as Exhibit A. The decision reversed the judgment in favor of LAT/Buswest and remanded the case for a new trial "governed by California products liability law." (Opn. p. 24.)

The Court of Appeal's decision is anchored in two conclusions: (1) the trial court should have fully reconsidered its choice-of-law determination after Forest River/Starcraft's settlement (Opn. p. 10) and (2) once Forest River/Starcraft settled and was dismissed, Indiana no longer had any interest in application of its law (Opn. pp. 14, 20). These conclusions assume the choice-of-law issue is fluid and subject to change as a case proceeds to trial, and apparently even until there is a verdict. The Court of Appeal's decision rests on the assumption the competing states' interests change – potentially back-and-forth – as

parties are added or removed from a case through amendment, settlement, or dismissal.

The Court of Appeal rejected LAT's position that the parties' relationships with the potentially interested states, and those states' interests in application of their law, should be tethered to the date of the accident in order to promote predictability and reduce the opportunities for gamesmanship in determining choice of law. In the words of the Court of Appeal, "Buswest greatly overstates the effect of *Reich.* The Supreme Court simply held that the historical facts of the parties' residences were fixed at the time of the accident; it did not hold that the relevant state interests were." (Opn. p. 14.) The Court of Appeal reasoned that the "relevant interests cannot be accurately determined until the defendants, and the theories of liability alleged against them, are known – things that are only known for certain as the case gets closer to trial." (*Ibid.*)

The Court of Appeal also rejected the possibility that reconsideration of a choice-of-law decision based on settlement and dismissals of defendants from different states as a case progresses to trial may undermine predictability in the choice-of-law process and open the door to gamesmanship. "[T]he risk of gamesmanship only arose in this case because Buswest and Starcraft chose to seek a preliminary in limine ruling on choice of law 15 months before trial. Any prejudice arising from the parties' reliance on this ruling was due to their misunderstanding of the nature of a pretrial choice of law ruling, not from plaintiffs' proper attempt to re-determine the applicable law at the time of trial." (Opn. p. 15.) But the Court of Appeal overlooked the fact that, when Forest River/Starcraft and

LAT/Buswest brought their choice-of-law motion, trial was set only eight months away (1 AA 7:268; 2 AA 11:466, 12:495) and a choice-of-law ruling was necessary to preparation of summary judgment and other motions predicated on the applicable substantive law.[3] It was also necessary for the parties to identify the applicable substantive law (e.g., the standard for a design defect) to develop expert testimony.

Underlying the Court of Appeal's decision is the premise that choice of law should be treated as a motion in limine to be resolved close to trial and that it should be subject to reconsideration as parties are added or dropped from a case. The Court of Appeal cited *State Farm Mutual Automobile Ins. Co. v. Superior Court* (2004) 121 Cal.App.4th 490, for the rule a motion seeking a choice-of-law determination should be treated as a motion in limine. (Opn. p. 13.) But *State Farm* recognized a ruling on choice of law needs to be made before adjudication of any causes of action. (*State Farm, supra*, 121 Cal.App.4th at p. 502 [citing *First State Ins. Co. v. Superior Court* (2000) 79 Cal.App.4th 324, 327, for the proposition that choice of law must be determined before a court is able to rule on any dispositive motions (e.g., summary judgment)].)

The Court of Appeal's premise that the trial court's choice-of-law ruling was premature is countered by the record. Not only was a determination of applicable law necessary to permit a timely summary judgment motion and to identify the scope of expert testimony with trial then only eight months away, but the case was ripe for a choice-of-law determination. There were no missing persons in this case

[3] LAT/Buswest filed an unsuccessful motion for summary judgment within a month after the trial court's choice-of-law order. (2 AA 11:466; O.Br. at 28.)

when the choice-of-law motion was brought and decided. The two-year California statute of limitations (Code Civ. Proc., § 335.1) had expired and plaintiffs made no claim of prematurity or the possibility that additional defendants might be later found and added to the case.

The Court of Appeal also denied the possibility that Indiana's interest in application of its law extended to LAT/Buswest as a non-resident business engaged in economic activity in Indiana. (Opn. p. 19.) This rejection overlooked the fact that LAT/Buswest's Dealership Agreement with Forest River/Starcraft required it to sell at least 72 buses per year purchased from the Indiana-based manufacturer. (Opn. p. 3.) The Court of Appeal further rejected LAT/Buswest's argument that, based on an express indemnity provision in the Dealership Agreement between LAT/Buswest and Forest River/Starcraft, Indiana retained an interest in application of its law because of the potential indemnity-based liability of Forest River/Starcraft if a substantial verdict was returned against LAT/Buswest. (Opn. p. 19 ["No state's interest can reach that far."].)

Finally, the Court of Appeal disagreed with LAT/Buswest's position that any error in instructing the jury under Indiana law was not prejudicial because (1) evidence of industry custom and government standards admitted at trial would also have likely been admissible under California's risk-benefits test if plaintiffs had actually sought to have the case proceed under that test and (2) given plaintiffs' repeated arguments that Indiana law is reasonably identical to California's consumer-expectation test for design defect liability, plaintiffs had waived any argument that California's risk-benefits test

should apply. (Opn. pp. 23-24.)[4]

The Court of Appeal's decision reversed the judgment in favor of LAT/Buswest and ordered this case remanded for a new trial "governed by California products liability law." (Opn. p. 24.) LAT/Buswest filed a Petition for Rehearing with the Court of Appeal, which was denied on February 8, 2017.

LEGAL DISCUSSION

I. THE COURT OF APPEAL MISINTERPRETED AND FAILED TO FOLLOW *REICH V. PURCELL.*

This Court adopted the governmental interest approach to resolving choice-of-law issues in *Reich v. Purcell, supra*, 67 Cal.2d 551. (*Kearney v. Salomon Smith Barney, Inc.* (2006) 39 Cal.4th 95, 107 [referring to "Chief Justice Traynor's seminal decision for this Court in *Reich v. Purcell*"].) The governmental interest methodology for choice-of-law analysis originated in the writings of Professor Brainerd Currie. (*Bernhard v. Harrah's Club* (1976) 16 Cal.3d 313, 319 [Professor Currie was the "father of the governmental interest approach"].) Chief Justice Traynor's decision in *Reich v. Purcell* cited liberally to Professor Currie and Professor David Cavers. (*Reich v. Purcell, supra*, 67 Cal.2d at pp. 554-556.)

[4] The Court of Appeal observed: "At one point in their conflicts briefing, plaintiffs mistakenly argued that Indiana law and California law were not in conflict, in that they both used the 'consumer expectations' test to define a defective product." (Opn. p. 23, fn. 9.) In fact, plaintiffs asserted this position multiple times to the trial court. (RA 4:62, 68; 3 AA 21:618-619.)

Reich v. Purcell arose from a fatal automobile accident in Missouri when a car owned and operated by a California resident collided with another car driven by an Ohio resident who was traveling to California with her two children. The Ohio driver and one of her children were killed. The father and surviving child moved to California and brought a wrongful death action against the California-resident defendant. (*Id.* at p. 552.) This raised the issue of whether the plaintiffs should be treated as residents of California for purposes of assessing California's interest in application of its law. The Court determined they should be treated as residents of Ohio. It held the parties' residences at the time of the accident should be controlling. Otherwise, "if the choice of law were made to turn on events happening after the accident, forum shopping would be encouraged." (*Id.* at pp. 555-556 [citing Cavers, The Choice of Law Process (1965) p. 151, fn. 16]; see also *Kearney, supra*, 39 Cal.4th at p. 108 [the court in *Reich* "concluded that California had no interest in applying its law, because the plaintiffs had not been California residents at the time of the accident . . . ."].)

The Court of Appeal's decision gives a narrow reading to *Reich*. According to the Court of Appeal, *Reich* holds only that the residences of the parties should be determined as of the date of the accident: *Reich* "simply held that the historical facts of the parties' residences were fixed at the time of the accident; it did not hold that the relevant state interests were." (Opn. p. 14.)

The Court of Appeal's interpretation of *Reich* is at odds with the view of one of California's leading choice-of-law scholars, Professor Herma Kay of Boalt Hall. In analyzing *Reich v. Purcell*,

Professor Kay explained: "[Chief Justice] Traynor holds that the relevant time for assessing the potentially competing *interests* in a case involving the limitation of damages in wrongful death actions is the time of the accident." (*UCLA Symposium, supra*, 15 UCLA L.Rev. at p. 588, italics added.)

Professor Kay understood that *Reich* speaks beyond the issue of the parties' residences. The broader issue is the date or time for assessing the competing interests of the potentially interested states. She explained that this approach is "clearly in accord with the interest analysis, for Currie argued that normally the forum's interest in applying its law should be assessed at the time of the transaction or events on which the rights of the parties depend." (*Ibid.* [citing Currie, *Full Faith and Credit, Chiefly to Judgments: A Role for Congress* (1964) Sup. Ct. Rev. 89, 92-99].) Professor Kay summarized this rule as "the one carrying the least risk of unsettled expectations." (*Id.* at p. 589.) In other words, it promotes predictability in the choice-of-law analysis. Professor Kay also noted that determining the competing state interests based on the parties' relationships to the potentially interested states at the time of the underlying accident or transaction is consistent with several prior decisions authored by Chief Justice Traynor, which "recognized the value of assessing the potentially conflicting interests at the time of the transaction rather than the time of suit." (*Id.* at p. 589, fn. 30 [citing *Bernkrant v. Fowler* (1961) 55 Cal.2d 588, 595, and *People v. One 1953 Ford Victoria* (1957) 48 Cal.2d 595, 598-599].)

This Court's holding in *Reich* that the parties' relationships with the interested states in a wrongful death action should be

determined as of the date of the accident reaches well beyond the issue of the parties' residences. It provides a fixed point for determining the interests of the states in application of their laws. And it protects against the potential for gamesmanship and unpredictability in determining the applicable law in a case. This Court's concern about potential forum shopping, although applicable to the issue of post-accident changes in residence, also runs deeper. It expresses concern about gamesmanship and potential efforts to manipulate the choice-of-law interest analysis.

This manipulation can take different forms. For example, under the Court of Appeal's decision, piecemeal settlements with defendants who are residents of different states as a case proceeds to trial or to verdict offer an opportunity to reshape the interest analysis. The Court of Appeal's attempt to narrow *Reich v. Purcell* to the parties' residences is at odds with this Court's concern, expressed in *Reich v. Purcell*, about such post-accident (or post-transaction) efforts to change the choice-of-law calculus in a case. Professor Kay had no difficulty in understanding that *Reich v. Purcell* tethers the choice-of-law analysis to the time of the event or transaction on which the parties' claims or rights depend. (*UCLA Symposium, supra*, 15 UCLA L.Rev. at p. 589 & fn. 30.) Professor Currie also advocated that the choice-of-law analysis should focus on the date or time of the underlying transaction. (Currie, *supra*, 1964 Sup. Ct. Rev. at p. 95 ["ordinarily the interest of the forum that justifies the application of domestic law must have existed at the time of the transaction.")

II. THE COURT OF APPEAL'S DECISION OPENS THE DOOR TO UNPREDICTABILITY AND GAMESMANSHIP IN DETERMINING CHOICE OF LAW.

The Court of Appeal's decision holds the choice-of-law analysis in a wrongful death or personal injury case should consider post-accident developments such as the addition or deletion of parties through amendment or settlement as a case progresses to trial. It imposes fluidity and unpredictability in the choice-of-law process. And it opens the door to manipulation of the choice of law in a case as it proceeds to trial or verdict.

The Court of Appeal justifies this approach by relegating *Reich v. Purcell* to the narrow issue of the parties' residences and by characterizing a choice-of-law motion as a motion in limine that should not be resolved until a case is close to trial. (Opn. pp. 13-14.) The Court of Appeal cites *State Farm Mutual Automobile Ins. Co., supra*, 121 Cal.App.4th at p. 502, for the proposition that a motion to determine the law to be applied in a case is really a motion in limine. It then cites *Cristler v. Express Messenger Systems, Inc.* (2009) 171 Cal.App.4th 72, 90, fn. 6, for the rule that in limine rulings are "subject to reconsideration upon full information at trial" and *Kasel v. Remington Arms Co.* (1972) 24 Cal.App.3d 711, 732 as support for its conclusion that a choice-of-law order is a "non-binding ruling subject to reconsideration when the facts [are] fully developed at trial." (Opn. p. 13.)

There are several flaws in this analysis. First, it suggests a

choice-of-law ruling should be subject to change – perhaps repeated change – as a case proceeds to verdict. Second, it ignores the need for a choice-of-law determination before a trial court can address issues of substantive law (e.g., a motion for summary judgment). The Court of Appeal in *State Farm* recognized that a ruling on choice-of-law needs to be made before adjudication of any causes of action. It explained this with a quotation from *First State Ins. Co., supra*, 79 Cal.App.4th at p. 320: " '*Before* respondent court will be able to decide any dispositive motions in the Action, it is clear it will *first* be required to determine which jurisdiction's law will be applied to the issues raised in the motions.' " (*State Farm, supra*, 121 Cal.App.4th at p. 502, italics added by *State Farm* court.)

Third, although a choice-of-law ruling may be premature before the parties have engaged in comprehensive discovery and the statute of limitations has expired, this is a question of the appropriate time for making a choice-of-law ruling. It is unrelated to the date to which the interest analysis should be tethered and whether post-accident or post-transaction events such as changes in a party's residence or settlement and dismissal of defendants should be included in the choice-of-law analysis and support a change in the applicable law.

Here, the timing was appropriate for the trial court to determine the choice-of-law issue in January 2014. There were no missing parties. The motion was made over three years after the accident and over two years after plaintiffs filed their action – well after expiration of the two-year statute of limitations. Trial was then set for August 18, 2014, just over eight months after the choice-of-law ruling. (1 AA 7:268; 2 AA 10:448-465, 11:466, 12:495.) And LAT/Buswest moved

promptly to file a motion for summary judgment on February 7, 2014, less than a month after the choice-of-law ruling. (O.Br. at 28.)

Finally, the Court of Appeal's decision never engages the issue of whether its failure to apply the time-of-accident rule of *Reich v. Purcell* opens the door to gamesmanship and unpredictability in determining the choice of law. By linking the interest analysis to the date of the accident in a wrongful death or personal injury action or the date of the transaction in a commercial case, courts are given a fixed reference point for determining the interests of the states in application of their laws. And later attempts to manipulate the choice-of-law decision by forum shopping or settlements with residents of potentially interested states with less favorable law are forestalled.

The Court of Appeal's assertion that "the risk of gamesmanship only arose in this case because Buswest and Starcraft chose to seek a preliminary in limine ruling on choice-of-law 15 months before trial" (Opn. p. 15) misses the mark. As noted above, the motion was decided just over eight months before the then-scheduled trial date of August 18, 2014, and the motion was not premature. All potential tortfeasors had been identified, the statute of limitations had expired, and the parties needed to proceed with development of expert testimony and preparation of motions dependent on the applicable substantive law.

The Court of Appeal's decision overlooks the potential mischief and confusion that will result from serial choice-of-law determinations in multi-defendant cases as defendants from different states are added or settle and are dismissed during the progress of a case to verdict. How can it be sound policy to let the applicable