No. S240245

SUPREME COURT
FILED
MAR 02 2017
Jorge Navarrete Clerk
Deputy

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

HAIRU CHEN, et al.,

Plaintiffs and Appellants,

vs.

L.A. TRUCK CENTERS, LLC,

Defendant and Respondent.

FROM A DECISION OF THE CALIFORNIA COURT OF APPEAL,
SECOND APPELLATE DIVISION, DIVISION EIGHT, NO. B265304,
LOS ANGELES COUNTY SUPERIOR COURT NO. BC469935
(HON. J. STEPHEN CZULEGER AND HON. HOLLY E. KENDIG)

ANSWER TO PETITION FOR REVIEW

Martin N. Buchanan (SBN 124193)
Law Offices of Martin N. Buchanan
655 W. Broadway, Suite 1700
San Diego, CA 92101
Telephone: (619) 238-2426

David R. Lira (SBN 134370)
Girardi & Keese
1126 Wilshire Boulevard
Los Angeles, CA 90017
Telephone: (213) 977-0211
Facsimile: (213) 481-1554

Attorneys for Appellants

TABLE OF CONTENTS

INTRODUCTION. 1

FACTUAL AND PROCEDURAL BACKGROUND. 3

ARGUMENT. 3

I. The Court of Appeal's Decision Does Not Conflict With the Holding of *Reich v. Purcell* and is Consistent With Existing California Authorities. 3

II. The Court of Appeal Correctly Rejected BusWest's Claims of Gamesmanship. 7

III. This Case is Not the Proper Vehicle for Deciding the Issue, Because the Trial Court's Initial Choice-of-Law Ruling Was Wrong Anyway. 10

A. The Trial Court Erred in Ruling that California Had No Interest in Applying Its Laws. 11

B. Indiana *Never* Had Any Genuine Interest in Having Its Laws Applied. 12

1. Indiana Is a *Lex Loci Delicti* Jurisdiction. 12

2. As a *Lex Loci Delicti* Jurisdiction, Indiana Had No Interest in Having Its Laws Applied to an Accident That Occurred Outside Indiana. 16

CONCLUSION. 19

CERTIFICATE OF COMPLIANCE. 20

TABLE OF AUTHORITIES

CASES

Alli v. Eli Lilly and Co. (Ind. Ct. App. 2006)
854 N.E.2d 372. . . . . 13, 15

Bernhard v. Harrah's Club (1976)
16 Cal.3d 313. 18

Childers v. Childers (1946)
74 Cal.App.2d 56. 4

Consumer Lobby Against Monopolies v. Public Utilities Com. (1992)
25 Cal.3d 891. 4

Cristler v. Express Messenger Systems, Inc. (2009)
171 Cal.App.4th 72. 7

Danziger v. Ford Motor Co. (D.D.C. 2005)
402 F. Supp. 2d 236. . . . . 16, 18

Forsyth v. Cessna Aircraft Co. (9th Cir. 1975)
520 F.2d 608. . . . . 16, 18

Hubbard Mfg. Co. v. Greeson (Ind. 1987)
515 N.E.2d 1071. 13

Hurtado v. Superior Court (1974)
11 Cal.3d 574. 18

In re Bridgestone/Firestone, Inc. (7th Cir. 2002)
288 F.3d 1012. 13

Kasel v. Remington Arms Co. (1972)
24 Cal.App.3d 711. 7

Klein v. DePuy, Inc. (7th Cir. 2007)
506 F.3d 553. 13

Le Francois v. Goel (2005)
35 Cal.4th 1094. 9

Maroon v. State Dept. of Mental Health (Ind. Ct. App. 1980)
411 N.E.2d 404. 14

Offshore Rental Co. v. Continental Oil Co. (1978)
22 Cal.3d 157. 18

Patel v. Chriscoe (S.D. Ind. July 7, 2011)
2011 WL 2671221. 15

Paxton v. Washington Center Corp. (D.D.C. 2013)
991 F. Supp. 2d 29. 17

Phillips v. General Motors Corp. (Mont. 2000)
995 P.2d 1002. 17

Reich v. Purcell (1967)
67 Cal.2d 551. . . . . 2, 3, 4, 7, 12

Simon v. United States (Ind. 2004)
805 N.E.2d 798. . . . . 13, 15, 16

State Farm Mutual Automobile Ins. Co. v. Superior Court (2004)
121 Cal.App.4th 490. 7

Sutherland v. Kennington Truck Service, Ltd. (Mich. 1997)
562 N.W.2d 466. 17

Tompkins v. Isbell (Ind. Ct. App. 1989)
543 N.E.2d 680. 14

Trope v. Katz (1995)

11 Cal.4th 274..... 4

Umbarger v. Bolby (Ind. Ct. App. 1986)
496 N.E.2d 128..... 14

OTHER AUTHORITIES

Rest. 2d Conflict of Laws, § 145, com. h..... 17-18

INTRODUCTION

This is a lawsuit against petitioner L.A. Trucks, LLC, dba BusWest ("BusWest"), a California bus dealership, for failing to order passenger seatbelts for a tour bus it imported into the State of California and later sold to a California bus touring company. The Indiana manufacturer offered its dealers several different types of passenger seatbelts as optional features, but BusWest declined all of them. In a subsequent rollover accident, seven of 11 unrestrained members of a Chinese tour group were totally ejected from the bus, one was partially ejected, two suffered fatal injuries, and the rest suffered serious injuries. Seatbelts would have prevented the ejections, fatalities, and serious injuries.

When the Indiana manufacturer was still a defendant in the case, the trial court made a pretrial ruling that Indiana's more defense-oriented law applied, because of Indiana's alleged interest in protecting its own resident manufacturer from excessive damages. Well before trial, however, the Indiana manufacturer settled out of the case, leaving the California dealership, BusWest, as the only remaining defendant. Plaintiffs then asked the trial court to reconsider its choice-of-law ruling on the ground that any interest Indiana may have had in protecting the Indiana manufacturer was no longer implicated. However, the trial court refused to reconsider its prior ruling. The case proceeded to trial under Indiana law, resulting in a defense verdict.

The Court of Appeal correctly ruled that the trial court should have reconsidered its choice-of-law ruling and applied California law once the Indiana manufacturer settled and Indiana no longer had any remaining interest in the case. There is no conflict in the lower courts on this issue, and it does not raise any important question of law worthy of review. BusWest cites no authority to support its novel claim that a choice-of-law ruling is written in stone and may not be reconsidered even after a change in the parties that eliminates a state's interest in having its laws applied. The Court of Appeal properly rejected both of the arguments BusWest makes in its Petition for Review: (1) that its decision supposedly conflicts with *Reich v. Purcell* (1967) 67 Cal.2d 551; and (2) that its decision would lead to unpredictability and gamesmanship.

Furthermore, this case is not an appropriate vehicle for deciding the issue, because the trial court's initial choice-of-law ruling was wrong anyway. First, BusWest does not challenge the Court of Appeal's ruling that the trial court erred in finding that California had *no* interest in having its laws apply. Second, Indiana *never* had any genuine interest in having its laws applied to this action, even when the Indiana manufacturer was still in the case. Unlike California, Indiana is a traditional *lex loci delicti* jurisdiction that applies the substantive law of the state where the harm occurred in all but rare and exceptional cases. Because even Indiana courts would not apply Indiana law to a case involving a vehicle accident that occurred on a highway outside Indiana, Indiana never had any

interest in having its laws applied by a California court. For these reasons, review should be denied.

FACTUAL AND PROCEDURAL BACKGROUND

The Court of Appeal's decision fully and accurately states the relevant factual and procedural background. (Ex. A to Pet. for Review, at pp. 2-9.)

ARGUMENT

I. The Court of Appeal's Decision Does Not Conflict With the Holding of *Reich v. Purcell* and is Consistent With Existing California Authorities

BusWest's primary claim is that the Court of Appeal's decision supposedly conflicts with the holding of *Reich v. Purcell, supra,* 67 Cal.2d 551. According to BusWest, *Reich v. Purcell* held that "the parties' relationships with the interested states in a wrongful death action should be determined *as of the date of the accident*." (Pet. for Review, at pp. 18-19, emphasis added.)

The Court of Appeal correctly rejected this argument for several reasons. First, "BusWest greatly overstates the effect of *Reich*." (Ex. A to Pet. for Review, at p. 14.) In *Reich*, a car accident occurred in Missouri between the plaintiffs, who resided in Ohio, and the defendant, who resided in California. After the accident, the plaintiffs moved to California. In applying the governmental-

interests test, this Court merely held that "plaintiffs' present domicile in California does not give this state any interest in applying its law." (*Reich, supra,* 67 Cal.2d at p. 555.)

As the Court of Appeal observed: "The Supreme Court [in *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." (Ex. A to Pet. for Review, at p. 14.) *Reich* did not involve a situation anything like this one, where one state's alleged interest in having its laws applied to protect a resident product manufacturer was no longer implicated after that particular defendant settled before trial.

A Supreme Court decision is only authority "'for the points *actually involved* and actually decided.'" (*Trope v. Katz* (1995) 11 Cal.4th 274, 284, quoting *Childers v. Childers* (1946) 74 Cal.App.2d 56, 61.) "[A] case is not authority for a point that was not actually decided by the court." (*Consumer Lobby Against Monopolies v. Public Utilities Com.* (1992) 25 Cal.3d 891, 902.) Moreover, "the language of an opinion must be construed with reference to the facts presented by the case, and the positive authority of a decision is coextensive only with such facts." (*Trope, supra,* 11 Cal.4th at p. 284, citations & internal quotation marks omitted.) Thus, the Court of Appeal properly concluded that the holding of *Reich v. Purcell* does not control the vastly different issue presented in this case.

Second, BusWest does not explain how a rule that "the parties'

relationships with the interested states" must be "determined as of the date of the accident" would work in actual practice. (Pet. for Review, at pp. 18-19.) As of the date of an accident, it is unknown who "the parties" to the litigation will be—or whether litigation will even ensue. As the Court of Appeal explained, "the relevant state interests could not possibly be determined until it was known what parties would be sued." (Ex. A to Pet. for Review, at p. 14.)

The Court of Appeal gave the following hypothetical to illustrate this point: "Suppose, for example, that the plaintiffs in this case believed the bus was not defective at all, and had sued only [the bus driver] for his negligent driving. In such a case, Indiana would have no interest at all, and the dispute would be between the application of California negligence law and Arizona negligence law. The relevant interests cannot be accurately determined until the defendants, and the theories alleged against them, are known – things that are only known for certain as the case gets closer to trial." (Ex. A to Pet. for Review, at p. 14.) BusWest offers no meaningful response to this point in its Petition for Review.

A trial court simply cannot assess the respective interests of the states in having their laws applied without first determining which parties are involved in the litigation, where they reside and/or do business, and what issues are being raised in the lawsuit. And if the parties to the litigation change over time, this necessarily alters any judicial calculation of *"the parties' relationships* with the interested

states ... as of the date of the accident." (Pet. for Review, at pp. 18-19, emphasis added.) In this case, the only remaining *parties* to the case at the time of trial were plaintiffs and BusWest, a California bus dealership that made the fateful decision to import the bus into California without ordering available passenger seatbelts and later sold the bus to a California bus touring company. BusWest offers no real explanation why Indiana's alleged interest in protecting the Indiana manufacturer would still be relevant even after the Indiana manufacturer had settled out of the case and was no longer a party to the case or a participant in the trial.[1]

Finally, the Court of Appeal's decision is consistent with the other California authorities it cited. As the Court of Appeal noted, "[a] motion to determine the law to be applied in a case is 'the equivalent of an in limine motion that seeks to resolve a conflict of laws or choice of law issue.'" (Ex. A to Pet. for Review, at p. 13,

---

[1]BusWest obliquely suggests that Indiana still retained an interest because of an express indemnity agreement in the Dealership Agreement between it and the Indiana manufacturer. (Pet. for Review, at p. 15.) But the Court of Appeal rejected this argument, and BusWest does not make any effort to demonstrate why its reasoning was wrong. (Ex. A to Pet. for Review, at p. 19.) Moreover, BusWest fails to mention that under the indemnity provision, *BusWest* agreed "[t]o indemnify, save and hold [the manufacturer] harmless from any liability whatsoever caused by any act or acts of [BusWest] and its agents, servants or employees." (4 AA 988.) BusWest's decision not to order passenger seatbelts offered by the manufacturer was an act of BusWest and its agents, servants or employees, not an act of the manufacturer.

quoting *State Farm Mutual Automobile Ins. Co. v. Superior Court* (2004) 121 Cal.App.4th 490, 502.) "In limine rulings are not binding; they are subject to reconsideration upon full information at trial." (*Ibid.*, citing *Cristler v. Express Messenger Systems, Inc.* (2009) 171 Cal.App.4th 72, 90, fn. 6.) "[T]he original motion brought by Bus West and Starcraft was simply an in limine motion, filed a year before trial, which could obtain nothing more than a non-binding ruling subject to reconsideration when the facts were fully devloped at trial." (*Ibid.*, citing *Kasel v. Remington Arms Co.* (1972) 24 Cal.App.3d 711, 721, 732 [trial was bifurcated with choice of law litigated first; unsuccessful party could have sought reconsideration if stronger evidence had been introduced in the second phase].)

In sum, the Court of Appeal's decision does not conflict with *Reich v. Purcell* and is consistent with the other California authorities cited in its opinion. BusWest cites no decision from California or any other jurisdiction that conflicts with the Court of Appeal's ruling on this issue. Indeed, BusWest cites no other case from *any* jurisdiction in which this particular issue has even come up before. Because there is no conflict in the lower courts on the issue, and it comes up so rarely that neither party has discovered any other case in which it has ever been decided, review should be denied.

///

///

II. The Court of Appeal Correctly Rejected BusWest's Claims of Gamesmanship

BusWest asserts that the Court of Appeal's decision will lead to gamesmanship and unpredictability. Without explanation, BusWest claims that the ruling "sets up the potential for a settlement bidding war with the odds usually favoring the non-California defendants." (Pet. for Review, at p. 23.) But the Court of Appeal correctly responded to this argument as follows: "We think it unlikely that parties would settle, or hold up a potential settlement, based on the effects a settlement may have on the law to be applied when the remaining parties proceed to trial." (Ex. A to Pet. for Review, at p. 15.) The many variables that go into a settlement agreement are unlikely to be skewed by the mere possibility that a settlement with one defendant might affect a choice-of-law ruling as to others. BusWest's purely speculative claim to the contrary is not a basis for Supreme Court review.

Moreover, BusWest's proposed rule could itself result in gamesmanship or manipulation. Under its rule, a pretrial choice-of-law ruling would be binding and could not be altered by a change in the parties to the litigation. If that were the case, however, the plaintiffs here could have named only BusWest as a defendant in the initial complaint, obtained a ruling that California law applies, then amended their complaint to add the Indiana manufacturer as a defendant, without any risk that the court would then revisit its

choice-of-law ruling based on the changed circumstances. Thus, BusWest's rigid rule would likely result in the very type of manipulation that BusWest decries in its petition.

BusWest also asserts that a choice-of-law ruling must be made before dispositive motions, and that its choice-of-law motion was not premature because it moved for summary judgment promptly after the initial ruling that Indiana law applied. But the Court of Appeal did not hold that the initial choice-of-law motion was improper or premature; it only ruled that the decision was not *binding* at trial. All the Court of Appeal's decision says is that such a pretrial choice-of-law decision is "a non-binding ruling subject to reconsideration when the facts [are] fully developed at trial." (Ex. A to Pet. for Review, at p. 13.) Thus, the decision below will not prevent parties in future cases from obtaining a choice-of-law ruling before or in connection with dispositive motions.

In sum, there is nothing earth-shattering about the Court of Appeal's ruling. The sky will not fall just because pretrial rulings on choice-of-law issues may be revisited after the parties to the litigation change or the facts are more fully developed at trial. This is consistent with the other California authorities cited in the Court of Appeal's decision. (See also *Le Francois v. Goel* (2005) 35 Cal.4th 1094 [trial court has inherent authority to reconsider interim rulings].) The contrary rule advocated by BusWest is not supported by any authority, and is both illogical and unnecessarily rigid. A

choice-of-law ruling should not be treated as if it were written in stone when the entire rationale for the ruling has been undermined by the subsequent additional or removal of a party before trial. Once the Indiana manufacturer settled out of the case, Indiana no longer had an arguable interest in applying its own laws to protect the manufacturer against excessive financial burdens. This is the only interest the trial court ever found Indiana to have. Thus, the settlement with the Indiana defendant removed Indiana's only conceivable interest in the case.

III. This Case is Not the Proper Vehicle for Deciding the Issue, Because the Trial Court's Initial Choice-of-Law Ruling Was Wrong Anyway

BusWest's Petition for Review presupposes that the trial court's initial choice of Indiana law was both correct and binding at trial. But, as plaintiffs argued in the Court of Appeal, the initial choice-of-law ruling was wrong for two reasons. (AOB 40-51.) First, as the Court of Appeal has now ruled, the trial court erred in ruling that California had *no* interest in applying its laws. BusWest no longer disputes this point. Second, because even the Indiana courts would not apply the substantive law of Indiana to an accident that occurred outside its borders, Indiana never had any genuine interest in having its own law applied by a California court—even when the Indiana defendants were still in the case. Thus, California law should have been applied all along.

A. The Trial Court Erred in Ruling that California Had No Interest in Applying Its Laws

Both the original motions judge and the trial judge ruled that California literally had *no* interest in applying California law to this case. In her oral and written rulings on the original choice-of-law motion, Judge Holly Kendig explicitly found "that no 'true conflict' exists because California has *no interest* in applying California law to this case." (2 AA 448; 2 RT 2, emphasis added.) The trial judge, Judge J. Stephen Czuleger, correctly observed that "Judge Kendig ... found that California has *no interest* in the outcome of this action." (2 RT 603, emphasis added.)

Judge Czuleger also agreed with Judge Kendig that "California has *no interest* because neither the alleged ... failures of the bus nor the accident or injuries occurred in California." (2 RT 603, emphasis added.) Judge Czuleger stated that plaintiffs had "failed to explain how California has an actual interest in applying its product defects law given the specific facts of this case." (2 RT 604.) And Judge Czuleger concluded that "no specific wrongful conduct is alleged to have occurred in California, giving rise to a California interest." (2 RT 604.) Thus, Judge Kendig and Judge Czuleger both unequivocally ruled that California had no interest in applying its own laws.

The Court of Appeal has now concluded that this was legally incorrect. (Ex. A to Pet. for Review, at pp. 17-18.) After a lengthy

discussion of California's interests, the Court of Appeal found that "California's interest in imposing its rules of strict products liability in this case ... is strong." (*Id.* at p. 18.) BusWest does not challenge this portion of the decision in its Petition for Review. Thus, BusWest has effectively conceded that the trial court got California's interests wrong in its initial choice-of-law ruling.

B. Indiana *Never* Had Any Genuine Interest in Having Its Laws Applied

1. Indiana Is a *Lex Loci Delicti* Jurisdiction

The trial court also got Indiana's interests wrong. In fact, Indiana never had any interest in having its laws applied, even when the Indiana manufacturer was still in the case. Unlike California, Indiana is a traditional *lex loci delicti* jurisdiction—it has a strong presumption in favor of applying the substantive law of the state where the harm occurred. Only in extremely rare cases would Indiana courts apply Indiana law to a case where a defective product caused death or injury in another state. This is not such a case. Thus, even the Indiana courts would not apply Indiana law to this case.

"In tort cases, where a conflict exists, Indiana presumes that the traditional rule-*lex loci delicti*-governs. [Citation.] Under the rule, the district court applies the substantive law of 'the state where the last event necessary to make an actor liable for the alleged wrong

takes place.'" (*Klein v. DePuy, Inc.* (7th Cir. 2007) 506 F.3d 553, 555, quoting *Hubbard Mfg. Co. v. Greeson* (Ind. 1987) 515 N.E.2d 1071, 1073.) This is almost invariably the place where the harm occurred. (*Alli v. Eli Lilly and Co.* (Ind. Ct. App. 2006) 854 N.E.2d 372, 378-379, citing cases.) "Indiana is a *lex loci delicti* state: in all but exceptional cases it applies the law of the place *where harm occurred.*" (*In re Bridgestone/Firestone, Inc.* (7th Cir. 2002) 288 F.3d 1012, 1016, emphasis added.) "Only in 'rare cases' will the presumption in favor of the traditional rule be overcome." (*Klein, supra,* 506 F.3d at p. 556, quoting *Simon v. United States* (Ind. 2004) 805 N.E.2d 798, 806.)

Specifically, in products liability cases, Indiana's strong presumption is to apply the substantive law of the state where the product caused harm, rather than the state where the product was designed or manufactured. (See, e.g., *Klein,* 506 F.3d at 555-56 [Indiana *lex loci delicti* rule required application of substantive law of North Carolina, where patient received allegedly defective hip prosthesis, rather than Indiana, where product was manufactured, marketed, and distributed]; *In re Bridgestone/Firestone, supra,* 288 F.3d at 1015-1016 [Indiana *lex loci delicti* rule required application of substantive law of states where defective tires caused harm, rather than law of Indiana, where defendants were headquartered and tires were designed]; *Alli, supra,* 854 N.E.2d at pp. 378-379 [Indiana *lex loci delicti* rule required application of substantive law of Michigan, where patient committed suicide after taking Prozac, rather than Indiana, where drug manufacturer was headquartered].)

Likewise, in wrongful death cases, Indiana applies the substantive law of the state where the death occurred. (*Maroon v. State Dept. of Mental Health* (Ind. Ct. App. 1980) 411 N.E.2d 404, 409 [holding that Illinois substantive law applied to wrongful death claim against Indiana Department of Mental Health arising from murder of woman in Illinois committed by criminal sexual deviant who escaped from Indiana mental hospital].) "Indiana has long followed this choice-of-law rule as well as the general rule that the tort is committed, the wrong occurs, and the cause of action arises *where the injury or death occurred.*" (*Ibid.*, emphasis added.)

And in automobile accident cases, Indiana's *lex loci delicti* rule requires application of the substantive law where the accident occurred and the plaintiff was injured. For example, in *Tompkins v. Isbell* (Ind. Ct. App. 1989) 543 N.E.2d 680, the court applied Illinois law to a vehicle accident that occurred in Illinois, near the border of Indiana, even though all of the parties were residents or corporations of Indiana and the plaintiff was returning to Indiana at the time of the collision. (*Id.* at p. 681-682 [holding that "the last act necessary to make the defendant liable took place in Illinois" and applying "the doctrine of *lex loci*"]; *Umbarger v. Bolby* (Ind. Ct. App. 1986) 496 N.E.2d 128 [holding that Michigan law applied to automobile accident that occurred in Michigan even though plaintiff/passenger and defendant/driver were both Indiana residents and were returning to Indiana together after a visit to Michigan].)

Under Indiana law, the strong presumption in favor of the *lex loci delicti* rule may be overcome only in "rare cases in which the place of the tort is insignificant." (*Simon, supra,* 805 N.E.2d at p. 806; see also *Alli, supra,* 854 N.E.2d at p. 379 ["Indeed, it is a 'rare case[]' when the place of the tort is insignificant."].) In *Simon,* for example, the Indiana Supreme Court applied this "rare" exception to an airplane crash that occurred in Kentucky. (*Simon, supra,* 805 N.E.2d at p. 806.) The Court reasoned that "[t]he plane flew over multiple states during the course of the flight, and the crash might have occurred anywhere." (*Ibid.*) Moreover, the Court expressly distinguished cases involving automobile accidents as follows: "[U]nlike in cases involving an automobile accident, the laws of the state where the crash occurred did not govern the conduct of the parties at the time of the accident." (*Ibid.*)

"*Simon* indicates that the presumption of applying the *lex loci delicti* rule is strong and should only be overcome in rare cases, and that automobile accidents were generally not intended to fall under this exception." (*Rexroad v. Greenwood Motor Lines, Inc.* (Ind. Ct. App. 2015) 36 N.E.3d 1181, 1184.) "[I]n the case of an automobile accident, the laws of the state in which the accident occurs govern the conduct of the parties." (*Ibid.*; see also *see also Melton v. Stephens* (Ind. Ct. App. 2014) 13 N.E.3d 533, 540 ["*Simon* appears to suggest that most cases involving an automobile accident will be governed by the laws of the state where the accident occurred"]; *Patel v. Chriscoe* (S.D. Ind. July 7, 2011) 2011 WL 2671221, at *2 [*Simon* exception not applicable

to automobile accident].)

This case is nothing like an airplane crash where the location of the crash is nearly random and the laws of the state where the crash occurred do not govern the conduct of the parties. Here, the accident occurred on a highway in Arizona; it involved a group of tourists who were on a trip to visit the Grand Canyon in Arizona; and the bus driver and touring company were co-defendants who were sued for their negligent driving in Arizona. Thus, this is not one of those "rare cases where the place of the tort is insignificant." (*Simon, supra,* 805 N.E.2d at p. 806.) Under Indiana's traditional *lex loci delicti* rule, the Indiana courts themselves would not apply Indiana law to this case.

2. As a *Lex Loci Delicti* Jurisdiction, Indiana Had No Interest in Having Its Laws Applied to an Accident That Occurred Outside Indiana

Courts applying the governmental interests test have consistently held that a *lex loci delicti* jurisdiction has no interest in applying its own laws to an accident that occurred outside its borders. (See, e.g., *Forsyth v. Cessna Aircraft Co.* (9th Cir. 1975) 520 F.2d 608, 612 [Kansas had no interest in applying its laws to product liability claim against Kansas airplane manufacturer for accident that occurred in Washington because "the public policy of the state of Kansas is to utilize the rule of lex loci delicti in actions on out-of-state accidents"]; *Danziger v. Ford Motor Co.* (D.D.C. 2005) 402 F. Supp. 2d

236, 240-241 [Maryland had no interest in applying its laws to an accident that occurred in Nebraska because "Maryland applies the traditional test of *lex loci delicti*" and thus its own courts "would apply the law of Nebraska, where the accident occurred"]; *Phillips v. General Motors Corp.* (Mont. 2000) 995 P.2d 1002, 1011 [North Carolina had no interest in Kansas vehicle collision because "North Carolina still adheres to the traditional place of injury rule in tort cases" and thus "a North Carolina Court would not apply North Carolina law to these facts"]; *Sutherland v. Kennington Truck Service, Ltd.* (Mich. 1997) 562 N.W.2d 466, 467 [Ontario had no interest in applying its laws because it follows the *lex loci delicti* rule and the accident occurred in Michigan]; *Paxton v. Washington Center Corp.* (D.D.C. 2013) 991 F. Supp. 2d 29, 33 [Virginia did not have "a significant governmental interest" because "Virginia choice-of-law rules would apply the place where the injury occurred"].)

These cases all stand for a simple proposition: a state cannot have a genuine interest in having its laws applied by the courts of another jurisdiction if even its own courts would not apply that state's laws to the action. In this case, for example, BusWest has never explained how Indiana could have a genuine interest in having a *California* court apply Indiana law to a case in which even the Indiana courts would not apply Indiana law. The fact that the Indiana courts would not apply Indiana law "indicate[s] that no important interest of that state would be infringed if the [Indiana] rule were not applied by the [California] forum." (Rest. 2d Conflict

of Laws, § 145, com. h.) As a follower of the traditional *lex loci delicti* rule, Indiana "has no law or public policy against employing out-of-state tort law against [Indiana] corporations in accident cases arising in other states." (*Forsyth, supra,* 520 F.2d at p. 612.) Because even Indiana's own courts would not apply Indiana tort law, there is no "true conflict" of laws.[2] (*Id.* at pp. 612-613; *Danziger, supra,* 402 F. Supp. 2d at pp. 240-241.)

"Only if each of the states involved has a 'legitimate but conflicting interest in applying its own law' will we be confronted with a 'true' conflicts case." (*Offshore Rental Co. v. Continental Oil Co.* (1978) 22 Cal.3d 157, 163, citing *Bernhard v. Harrah's Club* (1976) 16 Cal.3d 313, 319.) Where the foreign state "has no interest whatsoever in having its own law applied, California as the forum should apply California law." (*Hurtado v. Superior Court* (1974) 11 Cal.3d 574, 582.) Thus, the trial court erred by refusing to apply

---

[2]In the Court of Appeal, BusWest claimed that this argument was equivalent to a discredited theory of *renvoi.* As plaintiffs demonstrated in their reply brief, however, BusWest was confusing the traditional doctrine of *renvoi* with its more modern use as part of the governmental-interests analysis. (ARB 16-22.) The latter has been approved by every jurisdiction to consider the issue, and has been endorsed both by legal commentators and the Restatement (Second) of Conflict of Laws. (Rest. 2d Conflict of Laws, § 8, com. k; *id.* at § 145, com. h.) The Court of Appeal acknowledged that plaintiffs had raised this issue on appeal, but declined to address it based on its decision that the trial court should have reconsidered its initial ruling once the Indiana manufacturer settled out of the case. (Ex. A to Pet. for Review, at p. 20, fn. 8.)

California law in its initial choice-of-law ruling.

CONCLUSION

The petition for review should be denied. The Court of Appeal correctly ruled that a pretrial choice-of-law ruling may be reconsidered if an intervening change in the parties removes a state's only interest in having its laws applied. There is no conflict in the lower courts on this issue, and it raises no important question of law deserving of Supreme Court review. Moreover, this case is not the proper vehicle to decide the issue because the initial choice of Indiana law was wrong anyway. California law should have applied all along.

Dated: March 1, 2017

LAW OFFICES OF MARTIN N. BUCHANAN

By: _____

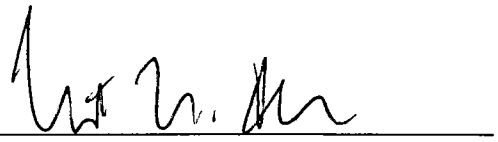
Martin N. Buchanan
Counsel for Appellants
Hairu Chen, et al.

CERTIFICATE OF COMPLIANCE

Pursuant to rule 8.504(d) of the California Rules of Court, I certify that the foregoing Answer to Petition for Review was produced on a computer in 13-point type. The word count, including footnotes, as calculated by the word processing program used to generate the brief is 4,653 words, exclusive of the matters that may be omitted under subdivision (c)(3).

Dated: March 1, 2017

LAW OFFICES OF MARTIN N. BUCHANAN

By: 

Martin N. Buchanan

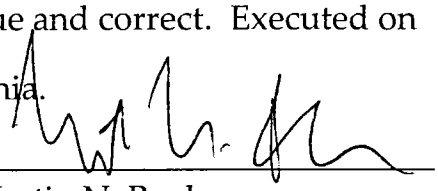
Counsel for Appellants
Hairu Chen, et al.

CERTIFICATE OF SERVICE

I, Martin N. Buchanan, am employed in the County of San Diego, California. I am over the age of 18 years and not a party to the within action. My business address is 655 W. Broadway, Suite 1700, San Diego, California 92101. On March 1, 2017, I served the **ANSWER TO PETITION FOR REVIEW** by mailing a copy by first class priority mail to each of the following:

Frank C. Rothrock (SBN 54452) Shook Hardy Bacon LLP 5 Park Plaza, Suite 1600 Jamboree Center Irvine, CA 92614-2546 (Counsel for Respondent L.A. Truck Centers, L.L.C.)	Hon. Holly E. Kendig Department 42 Los Angeles Superior Court 111 N. Hill Street Los Angeles, CA 90012
Hon. J. Stephen Czuleger Department 3 Los Angeles Superior Court 111 N. Hill Street Los Angeles, CA 90012	Clerk of Court California Court of Appeal Second District, Div. Eight 300 S. Spring Street, N. Tower Los Angeles, CA 90013

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on March 1, 2017, at San Diego, California.



Martin N. Buchanan