UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 03-10164-RWZ

THE TRAVELERS INDEMNITY COMPANY OF ILLINOIS,
as subrogee of PATCO CORPORATION

v.

WOLVERINE (MASSACHUSETTS) CORPORATION

MEMORANDUM OF DECISION

December 8, 2005

ZOBEL, D.J.

Plaintiff Travelers Indemnity Company of Illinois filed suit as a subrogee of Patco Corporation ("Patco") against defendant Wolverine (Massachusetts) Corporation regarding the malfunction of a thermal oxidizer sold by defendant to Patco pursuant to a sales agreement. Of the Complaint's original three counts alleging negligence, strict liability and breach of implied warranties of merchantability and fitness, only Count 1 remains. The question of negligence regards defendant's installation of and start-up assistance for the thermal oxidizer in addition to failure to warn of any dangers after providing such services. Although the parties dispute whether defendant in fact installed plaintiff's thermal oxidizer, they agree that defendant provided start-up assistance. Plaintiff contends that at least some of the thermal oxidizer problems resulted from faulty start-up assistance and now moves for the application of Rhode Island law to the determination of comparative negligence. Defendant opposes and argues that Massachusetts law properly governs the comparative negligence issue.

"The question of which state's law applies is resolved using the choice of law analysis of the forum state – in this case, Massachusetts." Reicher v. Berkshire Life Ins. Co. of America, 360 F.3d 1, 4 (1st Cir. 2004). When the issue involves a contractual dispute, "Massachusetts honors choice-of-law provisions in contracts." Northeast Data Sys., Inc. v. McDonnell Douglas Computer Sys. Co., 986 F.2d 607, 610 (1st Cir. 1993). Otherwise, Massachusetts' choice-of-law framework requires consideration of several factors in order to determine the appropriate forum state. See Reicher, 360 F.3d at 4-6.

Defendant argues, first, that the thermal oxidizer sales agreement governed the subsequent sale of start-up services, thereby placing disputes about start-up services within the scope of the agreement's choice-of-law provision (which invokes Massachusetts law). (See Def.'s Mem. of Law in Opp. to Pl.'s Mot. 8-11). Plaintiff, to the contrary, asserts that the sale of start-up services arose independently of the oxidizer sales agreement and that the correct state forum depends upon analysis under the Massachusetts choice-of-law framework. Determining whether the oxidizer sales agreement included start-up services is unnecessary, however, because the choice-of-law framework favors Massachusetts as the appropriate forum.

"The first step in a choice of law analysis is to determine whether an actual conflict exists between the substantive laws of the interested jurisdictions, here, Massachusetts and [Rhode Island]." Reicher, 360 F.3d at 4. Under Rhode Island law, plaintiff may recover for any portion of damages attributable to defendant, even if plaintiff is responsible for more than half of the malfunction. See R.I. Gen. Laws § 9-

20-4. If Massachusetts law applies, as recommended by defendant, a modified comparative fault rule would bar any recovery if plaintiff is more than 50% liable for the damages. See Mass. Gen. Laws ch. 231, § 85. Thus, finding that Patco was responsible for more than half of its own damages would bar all recovery by plaintiff under Massachusetts law, whereas Rhode Island would still permit plaintiff to obtain compensation for the portion of damages attributable to defendant. Accordingly, an actual conflict exists between Massachusetts and Rhode Island laws on the issue of comparative negligence.

Next, "Massachusetts courts consider a variety of factors" in order to determine which state demonstrates more significant relationship to the case. Reicher, 360 F.3d at 5. Plaintiff cites several factors in support of Rhode Island, including Patco's place of incorporation, the location of the injury and provision of start-up services, and the site where a majority of the business meetings between Patco and defendant occurred. (See Pl.'s Mem. of Law in Supp. of Its Mot. 10). Rhode Island's interest in protecting and compensating its businesses further advocate for application of its laws. (Id. at 11). Although plaintiff argues that "values of certainty, predictability, and uniformity of result do not favor the application of Massachusetts law," it relies upon circular reasoning in support of this argument. (Id. at 12).

Factors that favor Massachusetts, on the other hand, include defendant's place of incorporation and the forum for the instant litigation as selected by plaintiff. (See Def.'s Mem. of Law in Opp. to Pl.'s Mot. 17). Additionally, defendant argues that

Massachusetts' comparative negligence law operates, as intended by public policy, as a "loss-allocating rule" to protect resident defendants. (Id. at 14-15).

Determination of the appropriate state forum requires more than "simply adding up various contacts." Bushkin Assoc., Inc. v. Raytheon Co., 393 Mass. 622, 632 (1985). Instead, these should be considered in light of the "choice-influencing factors listed in § 6(2) of the Restatement (Second) of Conflict of Laws." Id. at 634. Unfortunately, several of these factors "point clearly toward neither State." Bushkin, 393 Mass. at 635. For example, the "relevant policies of the forum[s]" differ with respect to the degree of protection they offer for defendants – greater in Massachusetts – as compared to the degree of relief offered for plaintiffs – greater in Rhode Island. Restatement (Second) of Conflicts § 6(2)(b). Yet, this difference does not favor one forum over the other.

The factor concerning "the protection of justified expectations" bears relevance, however. Id. at § 6(2)(d). Regardless of whether defendant succeeded in explicitly designating Massachusetts as the selected forum as a matter law, defendant clearly expected Massachusetts law to apply to all of the services it provided. (See Def.'s Mem. of Law in Opp. to Pl.'s Mot. 8). Similarly, plaintiff expected that Massachusetts law would apply at least to all matters within the scope of that agreement and, even if the agreement does not cover start-up services, plaintiff never said that it expected Rhode Island law, and not Massachusetts law, to govern provision of the start-up services. Plaintiff contends, though, that defendant "act[ed] without giving thought to the legal consequences of [its] conduct or to the law that may be applied," and thereby

had “no justified expectations to protect.” Restatement (Second) of Conflict of Laws § 6 cmt. g. However, the fact that defendant may have acted negligently does not undermine the fact that it worked diligently to ensure a Massachusetts forum for any disputes or litigation. “Generally speaking, it would be unfair and improper to hold a person liable under the local law of one state when he had justifiably molded his conduct to conform to the requirements of another state.” Id. The facts that the injury occurred in Rhode Island and that comparative negligence favors the plaintiff under Rhode Island law do not outweigh defendant’s and, to a lesser extent, plaintiff’s demonstrated expectations that Massachusetts law would apply to their course of dealings.

Accordingly, plaintiff’s motion to apply Rhode Island law (#__ on the docket) is denied.

____________________	/s/ Rya W. Zobel
DATE	RYA W. ZOBEL
	UNITED STATES DISTRICT JUDGE