Affirmed and Opinion Filed August 3, 2020

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-18-01535-CV

SUSAN STEVENSON, INDIVIDUALLY AND AS PARENT OF THE MINOR CHILD, ABYGAIL ALANA JANE HARRIS, DECEASED, Appellant
V.
FORD MOTOR COMPANY, Appellee

On Appeal from the 380th Judicial District Court
Collin County, Texas
Trial Court Cause No. 380-06940-2019

OPINION

Before Justices Osborne, Partida-Kipness, and Pedersen, III
Opinion by Justice Osborne

Susan Stevenson, individually and as parent of the deceased minor child Abygail Alana Harris, appeals the trial court's amended final judgment in favor of Ford Motor Company, dismissing her wrongful-death and survival claims against Ford and ordering a take-nothing judgment. Stevenson raises one issue on appeal arguing the trial court erred when it granted Ford's traditional motion for summary judgment. Stevenson makes two alternative arguments in support of her sole issue: (1) the trial court did not conduct the proper choice-of-law analysis and incorrectly

applied the Texas products-liability statute of repose; and (2) even if the trial court correctly concluded Texas substantive law applies, the decedent's minority status tolled the Texas products-liability statute of repose as to Stevenson's survival claims. We conclude the trial court did not err. The trial court's amended final judgment is affirmed.

I. FACTUAL AND PROCEDURAL CONTEXT

On April 18, 1999, Ford released to Jim Bass Ford, Inc., a Texas dealership, the 1999 Ford Explorer involved in this case. That Explorer was designed in Michigan and assembled in Missouri. Jim Bass Ford subsequently sold the Explorer to a consumer on July 1, 1999. At some point, Anthony Harris acquired ownership of the Explorer.

On July 26, 2015, Kanda Foster, a Texas resident, was driving the Explorer in Virginia. Abygail Harris, a minor, and her father, Anthony Harris, both Texas residents, were passengers in the Explorer. Abygail Harris was not properly restrained by her seatbelt. Anthony Harris was asleep in the vehicle. Allegedly, Foster fell asleep while driving and lost control of the Explorer, causing it to roll over and strike a guardrail. Abygail Harris was ejected from the Explorer and sustained fatal injuries.

On July 26, 2017, Stevenson, Abygail Harris's mother, filed her original petition alleging: (1) wrongful-death and survival claims against Ford based on strict products liability due to a design defects theory of liability; and (2) wrongful-death

and survival claims against Foster and Anthony Harris based on a negligence theory of liability. On August 18, 2017, Ford filed its original answer generally denying the allegations and asserting, *inter alia*, the affirmative defense that Stevenson's wrongful-death and survival claims were barred by the Texas products-liability statute of repose.

On November 17, 2017, Ford filed a traditional motion for summary judgment on its affirmative defense that the Texas products-liability statute of repose barred Stevenson's wrongful-death and survival claims against it. Ford maintained that: (1) under the proper choice-of-law analysis, Texas law applied to Stevenson's wrongful-death and survival claims against Ford; (2) section 16.012(b) of the Texas Civil Practice and Remedies Code imposed a fifteen-year statute of repose in products-liability actions, which applied to Stevenson's wrongful-death and survival claims against Ford; and (3) Abygail Harris's minority status did not toll the Texas products-liability statute of repose. Stevenson filed a response to the motion for summary judgment arguing that, under the proper choice-of-law analysis, Virginia or Michigan law applied. Stevenson maintained that Michigan does not have a statute of repose and Virginia's statute of repose does not apply to products-liability claims. In the alternative, Stevenson argued that the Texas products-liability statute of repose was tolled because Abygail Harris was a minor and under Virginia law, her non-party, minor brother would also have a wrongful-death claim.

On March 8, 2018, the trial court granted Ford's traditional motion for summary judgment. Ford filed a motion to sever Stevenson's wrongful-death and survival claims against Ford from her claims against Foster and Anthony Harris, which the trial court granted. Stevenson then appealed the resulting final summary judgment.

II. JURISDICTION

As a preliminary matter, although neither party raised an issue relating to jurisdiction, we address this Court's jurisdiction. The trial court's November 26, 2018 order granting Ford's unopposed motion to sever and for entry of final judgment stated, "It is further ORDERED that contemporaneous with this Order, the [trial court] shall enter Final Judgment on [Stevenson's] claims and causes of action against [Ford]." The severance order contemplated that a separate final judgment would be signed. However, the record before the Court did not contain any further document that would constitute the final judgment referenced in the severance order.

An appellate court is obligated to review *sua sponte* issues affecting its jurisdiction. *Saleh v. Hollinger*, 335 S.W.3d 368, 370 (Tex. App.—Dallas 2011, pet. denied). Appellate jurisdiction is never presumed. *Id.* As a general rule, Texas appellate courts have jurisdiction only over final judgments. *See Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 195 (Tex. 2001). Generally, the severance of an interlocutory judgment into a separate cause makes it final. *See Diversified Fin. Sys., Inc. v. Hill, Heard, O'Neal, Gilstrap & Goetz, P.C.*, 63 S.W.3d 795, 795 (Tex.

2001) (per curiam); *Wise v. Mitchell*, No. 05-15-00610-CV, 2016 WL 3398447, at *4 (Tex. App.—Dallas June 20, 2016, pet. denied) (mem. op.). However, if the severance order contemplates additional proceedings will occur in the severed matter, the interlocutory judgment does not become final until those events have occurred. *See Diversified Fin. Sys.*, 63 S.W.3d at 795; *McRoberts v. Ryals*, 863 S.W.2d 450, 453 n.3 (Tex. 1993); *Wise*, 2016 WL 3398447, at *4; *see also Bank of Am., N.A. v. Lilly*, No. 07-11-00154-CV, 2011 WL 2226492, at *1 (Tex. App.—Amarillo Apr. 26, 2011, no pet.) (order of abatement) (per curiam); *In re S.A.A.*, No. 2-08-080-CV, 2008 WL 2002744 (Tex. App.—Fort Worth May 8, 2008, no pet.) (mem. op.) (per curiam); *Aleman v. Marsh USA, Inc.*, No. 13-04-084-CV, 2006 WL 181376, at *1 (Tex. App.—Corpus Christi–Edinburg Jan. 26, 2006, no pet.) (mem. op.) (per curiam).

Because this Court had questions relating to its jurisdiction, we ordered the parties to submit additional briefing relating to the finality of the trial court's severance order and to address how that order impacted this Court's jurisdiction over the appeal. In response, the parties filed a joint motion to abate the appeal, requesting that the appeal be temporarily abated to allow the trial court to sign a final judgment and assign a new cause number as contemplated in the trial court's severance order. This Court granted the joint motion and abated the appeal. On December 13, 2019, the trial court signed an amended final judgment, which was contained in a supplemental clerk's record filed with this Court. Then, the parties

filed an amended notice of appeal referencing the new cause number,[1] after which this appeal was reinstated. Accordingly, we conclude this Court has jurisdiction over this appeal.

III. TRADITIONAL SUMMARY JUDGMENT

In issue one, Stevenson argues the trial court erred when it granted Ford's traditional motion for summary judgment and dismissed her wrongful-death and survival claims against Ford. Stevenson makes two alternative points: (1) the trial court did not conduct the proper choice-of-law analysis and incorrectly applied the Texas products-liability statute of repose; and (2) even if the trial court correctly concluded Texas substantive law applies, the statute of repose was tolled for the survival claims of the minor decedent.

A. Standard of Review

An appellate court reviews the grant of summary judgment de novo. *See Lujan v. Navistar, Inc.*, 555 S.W.3d 79, 84 (Tex. 2018). Also, a choice-of-law analysis is a question of law to be reviewed de novo, unless the contacts raise disputed issues of fact. *Sonat Expl. Co. v. Cudd Pressure Control, Inc.*, 271 S.W.3d 228, 231 (Tex. 2008). Determining which state's substantive law governs a particular issue is ultimately a question of law for the court to decide. *Citizens Ins. Co. of Am. v. Daccach*, 217 S.W.3d 430, 440 (Tex. 2007); *Torrington Co. v.*

[1] The cause number for Stevenson's main lawsuit is trial court cause no. 380-03439-2017. The new cause number assigned to the severed claims and survival claims against Ford is trial court cause no. 380-06940-2019.

Stutzman, 46 S.W.3d 829, 848 (Tex. 2000). Determining the particular state's contacts to be considered in making this legal determination involves a factual inquiry. *Hughes Wood Prods., Inc. v. Wagner*, 18 S.W.3d 202, 204 (Tex. 2000).

B. Choice of Law

In the first part of issue one, Stevenson argues the trial court did not conduct the proper choice-of-law analysis and incorrectly applied the Texas products-liability statute of repose. Stevenson contends that under the "most significant relationship" test, Michigan or Virginia law applies to her lawsuit, and neither of those states has an applicable statute of repose.[2] Ford responds that the trial court conducted the proper choice-of-law analysis and correctly concluded that Texas law applied, requiring the dismissal of Stevenson's wrongful-death and survival claims against it.

1. Applicable Law

a. Restatement (Second) of Conflicts of Laws

Texas courts use the analysis described in the Restatement (Second) of Conflicts of Laws to resolve choice-of-law issues and select the particular substantive law that governs a case. *See, e.g.*, *Hughes Wood Prods.*, 18 S.W.3d at 205; *Gutierrez v. Collins*, 583 S.W.2d 312, 318–19 (Tex. 1979). Section 6 of the

[2] Stevenson also argues that "[she] has established that there exists a fact issue regarding the choice of law to be applied to [her] claims." However, Stevenson does not point to any evidence she claims raises a fact question precluding summary judgment or requiring a different legal decision. Rather, she argues that, when the most significant relationship test is applied to the undisputed facts, Virginia or Michigan substantive law applies to her claims against Ford.

Restatement identifies a framework that many courts follow when deciding which jurisdiction's law applies. *See Citizens Ins.*, 217 S.W.3d at 443 (Wainwright, J., concurring) (section IV-B of the majority opinion is a concurring opinion). It provides two sequential analyses, the second of which is conditioned on the inapplicability of the first. *See Citizens Ins.*, 217 S.W.3d at 443 (Wainwright, J., joined by Johnson, J., concurring); *id*. at 460 (Jefferson, C.J., joined by Brister and Medina, JJ., concurring) (together these concurring opinions comprise a majority of the justices on the Texas Supreme Court); *Am. Nat'l Ins. v. Conestoga Settlement Tr.*, 442 S.W.3d 589, 593 (Tex. App.—San Antonio 2014, pet. denied); *Busse v. Pac. Cattle Feeding Fund No. 1, Ltd.*, 896 S.W.2d 807, 813 (Tex. App.—Texarkana 1995, writ denied); *Am. Home Assurance Co. v. Safway Steel Prods. Co.*, 743 S.W.2d 693, 697 (Tex. App.—Austin 1987, writ denied). Section 6 of the Restatement is titled "Choice-of-Law Principles" and provides:

> (1) A court, subject to constitutional restrictions, will follow a statutory directive of its own state on choice of law.
>
> (2) **When there is no such directive**, the factors relevant to the choice of the applicable rule of law include
>
> (a) the needs of the interstate and international systems,
>
> (b) the relevant policies of the forum,
>
> (c) the relevant policies of other interested states and the relative interests of those states in the determination of the particular issue,
>
> (d) the protection of justified expectations,
>
> (e) the basic policies underlying the particular field of law,

(f) certainty, predictability and uniformity of result, and

(g) ease in the determination and application of the law to be applied.

RESTATEMENT (SECOND) OF CONFLICTS OF LAWS § 6 (AM. LAW INST. 1971) (emphasis added).

i. Statutory Directive

First, under § 6(1), a court determines whether there is "a statutory directive of its own state on choice of law" or a clear choice-of-law determination by the legislature of the forum state. *Id.* § 6(1); *see also Citizens Ins.*, 217 S.W.3d at 443 (Wainwright, J., joined by Johnson, J., concurring); *id*. at 460 (Jefferson, C.J., joined by Brister and Medina, JJ., concurring); *Am. Nat'l Ins.*, 442 S.W.3d at 593; *Busse*, 896 S.W.2d at 813; *Am. Home Assurance*, 743 S.W.2d at 697. A court, subject to constitutional limitations, must follow the directions of its legislature. RESTATEMENT § 6(1) cmt. a.

If there is a statutory directive, then a court examines that directive in light of constitutional limitations that might preclude the application of local law. *Citizens Ins.*, 217 S.W.3d at 443, 446 (Wainwright, J., joined by Johnson, J., concurring); *Busse*, 896 S.W.2d at 813–14; *Am. Home Assurance*, 743 S.W.2d at 697. The court must apply a local statutory provision directed to choice of law provided it would be constitutional to do so. RESTATEMENT§ 6(1) cmt. a.

If answering this does not resolve the choice-of-law question, a court can apply the forum law if it does not conflict with the laws of other interested

jurisdictions. *Citizens Ins.*, 217 S.W.3d at 443 (Wainwright, J., joined by Johnson, J., concurring); *see also Toyota Motor Co. v. Cook*, 581 S.W.3d 278, 283 (Tex. App.—Beaumont 2019, no pet.); *Am. Nat'l Ins.*, 442 S.W.3d at 593; *Vanderbilt Mortg. & Fin., Inc. v. Posey*, 146 S.W.3d 302, 313 (Tex. App.—Texarkana 2004, no pet.).

ii. The "Most Significant Relationship" Test

Second, under § 6(2), if there is no statutory directive and a variation in the laws of the interested jurisdictions creates a conflict, then courts will apply the "most significant relationship" test. *Citizens Ins.*, 217 S.W.3d at 443 (Wainright, J., joined by Johnson, J., concurring); *see also Am. Nat'l Ins.*, 442 S.W.3d at 593; *Liberty Mut. Ins. v. Transit Mix Concrete & Materials Co.*, No. 06-12-00117-CV, 2013 WL 3329026, at *5 (Tex. App.—Texarkana June 28, 2013, pet. denied) (mem. op.). The "most significant relationship" test involves at least two levels of analysis, and for personal-injury or wrongful-death lawsuits it involves three levels. *Ins. Co. of State of Pa. v. Neese*, 407 S.W.3d 850, 853–54 (Tex. App.—Dallas 2013, no pet.); *Liberty Mut. Ins.*, 2013 WL 3329026, at *5; *Vanderbilt Mortg.*, 146 S.W.3d at 314.

The first level of the "most significant relationship" test is provided in § 6(2) and involves the general test of weighing the competing policy interests of the different jurisdictions. RESTATEMENT§ 6(2); *Neese*, 407 S.W.3d at 853; *Liberty Mut. Ins.*, 2013 WL 3329026, at *4; *Vanderbilt Mortg.*, 146 S.W.3d at 314. The principles stated in § 6 underlie all choice-of-law rules and are used in evaluating the

significance of a relationship, with respect to a particular issue, to the potentially interested states, the occurrences, and the parties. RESTATEMENT § 145(1) cmt. b (general principle).

The second level of the "most significant relationship" test provides additional guidance by looking to the substantive law concerning a specific area. *Neese*, 407 S.W.3d at 853; *Liberty Mut. Ins.*, 2013 WL 3329026, at *5; *Vanderbilt Mortg.*, 146 S.W.3d at 314. Section 145 provides a more specific rule applicable to tort cases. RESTATEMENT § 145; *Liberty Mut. Ins.*, 2013 WL 3329026, at *5. Section 145 states:

> (1) The 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.
>
> (2) Contacts to be taken into account in applying the principles of § 6 to determine the law applicable to an issue 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.
>
> These contacts are to be evaluated according to their relative importance with respect to a particular issue.

RESTATEMENT § 145. The contacts set out in § 145 are not exclusive. For example, if the plaintiff's claim requires her to prove that the product reached her without

substantial change, then the usual location of the product is a relevant contact. *Crisman v. Cooper Indus.*, 748 S.W.2d 273, 278 (Tex. App.—Dallas 1998, writ denied). Further, application of the "most significant relationship" test does not turn on the number of contacts with a state but on the qualitative nature of those contacts as affected by the policy-related factors set out in § 6(2). *Gutierrez*, 583 S.W.2d at 319; *Crisman*, 748 S.W.2d at 276; *see also Liberty Mut. Ins.*, 2013 WL 3329026, at *6.

The third level of the "most significant relationship" test provides guiding principles for a specific context within the area of substantive law. *Neese*, 407 S.W.3d at 853; *Liberty Mut. Ins.*, 2013 WL 3329026, at *5; *Vanderbilt Mortg.*, 146 S.W.3d at 315. Sections 146 and 175 of the Restatement provide more specific context as to personal-injury and wrongful-death actions, including injuries for which the actor is responsible on the basis of strict liability. RESTATEMENT § 146 cmt. a (scope of personal-injuries section includes injuries for which actor is responsible on basis of strict liability); *id.* § 175 cmt. c (scope of wrongful-death section includes deaths for which actor is responsible on basis of strict liability). In actions for personal injury or wrongful death, the local law of the state where the injury occurred determines the rights and liabilities of the parties, unless, with respect to the particular issue, some other state has a more significant relationship under the principles stated in § 6 to the occurrence and the parties, in which event

the local law of the other state will be applied. RESTATEMENT § 146 (personal injuries); *id.* § 175 (wrongful death).

The standards in § 145 (general principle), § 146 (personal injuries), and § 175 (wrongful death) incorporate by reference the principles stated in § 6. *See Yelton v. PHI, Inc.*, 669 F.3d 577, 580 (5th Cir. 2012).

iii. Public Policy Directive

Third, if the law of the foreign jurisdiction has the "most significant relationship," a Texas court must determine if any exceptions apply that prevent the application of the law of the foreign state. *Vanderbilt Mortg.*, 146 S.W.3d at 316; *see also* RESTATEMENT § 90 (action contrary to public policy). Under the "public policy doctrine," Texas may not enforce a foreign law that is contrary to Texas public policy. *Larchmont Farms, Inc. v. Parra*, 941 S.W.2d 93, 95 (Tex. 1997) (per curiam); *Vanderbilt Mortg.*, 146 S.W.3d at 316 (recognizing exception to "most significant relationship" test); *see also Broussard v. Arnel*, 596 S.W.3d 911, 917 (Tex. App.—Houston [1st Dist.] 2019, no pet.) (declining to apply Missouri law recognizing validity of marriage and emancipation of 15 year old because Texas has declared such marriages void without court order); *Seth v. Seth*, 694 S.W.2d 459, 462–64 (Tex. App.—Fort Worth 1985, no writ) (declining to apply Kuwaiti or Indian law, where marriage and divorce ceremonies occurred, because "harshness" of Islamic law to non-Muslim divorced wife "runs . . . counter to our notions of good morals and natural justice"). However, mere differences between Texas law and a

foreign state's law do not render the foreign law so contrary to Texas public policy that it should not be enforced. *Vanderbilt Mortg.*, 146 S.W.3d at 316.

b. Texas Choice-of-Law Statute

When deciding which state's law should apply to a suit for injury or death occurring outside Texas, Texas courts apply Texas's choice-of-law rules. TEX. CIV. PRAC. & REM. CODE ANN. § 71.031(c); *Liberty Mut. Ins.*, 2013 WL 3329026, at *4. While as a general proposition, Texas applies the "most significant relationship" test, where the Texas Legislature has enacted legislation to govern the choice of law, Texas courts will follow the statutory directives of its own state. *See Citizens Ins.*, 217 S.W.3d at 443 (Wainwright, J., joined by Johnson, J., concurring); *id*. at 460 (Jefferson, C.J., joined by Brister and Medina, JJ., concurring) (generally resolve choice-of-law issue by following Restatement and § 6(1) provides court will follow statutory directive of its own state); *accord Hyde v. Hoffmann-La Roche, Inc.*, 511 F.3d 506, 511 (5th Cir. 2007).

The Texas Civil Practice and Remedies Code specifically permits a lawsuit where the wrongful death or injury takes place in a foreign jurisdiction if the law of Texas or the foreign state provides a cause of action, the action is begun within the time provided by Texas law, and the action is begun within the time provided by the laws of the foreign state:

> (a) **An action for damages for the death or personal injury of a citizen of this state**, of the United States, or of a foreign country may be enforced in the courts of this state, although the wrongful act,

> neglect, or default causing the death or injury **takes place in a foreign state** or country, if:
>
> (1) a law of the foreign state or country or of this state gives a right to maintain an action for damages for the death or injury;
>
> **(2) the action is begun in this state within the time provided by the laws of this state for beginning the action;**
>
> (3) for a resident of a foreign state or country, the action is begun in this state within the time provided by the laws of the foreign state or country in which the wrongful act, neglect, or default took place;
>
> . . . .
>
> (b) Except as provided by Subsection (a), all matters pertaining to procedure in the prosecution or maintenance of the action in the courts of this state are governed by the law of this state.
>
> (c) The court shall apply the rules of substantive law that are appropriate under the facts of the case.

CIV. PRAC. & REM. § 71.031 (emphasis added). Section 71.031 is essentially a codified choice-of-law rule governing the timeliness of actions. *Owens Corning v. Carter*, 997 S.W.2d 560, 573 (Tex. 1999); *accord Burdett v. Remington Arms Co.*, 854 F.3d 733, 735–36 (5th Cir. 2017); *Hyde*, 511 F.3d at 511; *see also In re Mahindra, USA Inc.*, 549 S.W.3d 541, 547 (Tex. 2018) (orig. proceeding) (noting choice-of-law provisions may dictate that substantive law of another jurisdiction applies but does not govern matters of procedure and § 71.031 incorporates such choice-of-law provisions); RESTATEMENT § 142 (statute of limitations of forum) (action will not be maintained if barred by statute of limitations of forum).

Section 71.031(a) is not a jurisdictional bar, but it is a statutory requirement or prerequisite that affects a plaintiff's right to obtain relief and should be met before a trial court proceeds. *Dubai Petroleum Co. v. Kazi*, 12 S.W.3d 71, 76–77 (Tex. 2000). Section 71.031(a)(2) and (a)(3) apply to all personal-injury and wrongful-death actions in Texas. *Owens Corning*, 997 S.W.2d at 571; *accord Hyde*, 511 F.3d at 513. Section 71.031(a)(2)–(3) includes a time limitation to prevent forum shopping. *See Gilcrease v. Tesoro Petroleum Corp.*, 70 S.W.3d 265, 269 (Tex. App.—San Antonio 2001, pet. denied); *accord Hyde*, 511 F.3d at 511–12.

Section 71.031(c) directs application of substantive law as "appropriate and under the facts of the case." CIV. PRAC. & REM. § 71.031(c); *Hyde*, 511 F.3d at 512. A statute of repose is viewed as substantive rather than procedural for choice-of-law purposes. *See Galbraith Eng'g Consultants, Inc. v. Pochucha*, 290 S.W.3d 863, 866, 868 (Tex. 2009) (noting statutes of repose create substantive right to be free from liability after legislatively determined period). Nevertheless, this general directive does not override the more specific reference in subsection (a)(2) to "the time provided by the laws of this state for beginning the action." *Hyde*, 511 F.3d at 512. Both statutes of limitations and statutes of repose serve to limit the amount of time under which suit may be brought, and a plaintiff bringing suit under § 71.031 must satisfy not only the statute of limitations but also the statute of repose. *See Gilcrease*, 70 S.W.3d at 269 (discussing the imposition of foreign statute of repose in suits brought by non-resident); *accord Hyde*, 511 F.3d at 511–12 (Texas resident must

satisfy Texas statute of repose for injuries sustained in another jurisdiction to maintain suit in Texas).

i. Texas Products-Liability Statute of Repose

Statutes of repose typically provide a definitive date beyond which an action cannot be filed. *Galbraith Eng'g*, 290 S.W.3d at 866. Unlike traditional limitations provisions, which begin running upon accrual of a cause of action, a statute of repose runs from a specified date without regard to accrual of any cause of action. *Id.* Repose differs from limitations in that repose not only cuts off rights of action after they accrue but can cut off rights of action before they accrue. *Id.* Thus, the purpose of a statute of repose is to provide certain parties with absolute protection from the burden of indefinite potential liability. *Id.*

Section 16.012(b) of the Texas Civil Practice and Remedies Code states that, absent an exception not at issue in this appeal, "a claimant must commence a products liability action against a manufacturer or seller of a product before the end of 15 years after the date of the sale of the product by the defendant." CIV. PRAC. & REM. § 16.012(b). Section 16.012(a)(2) defines a "products liability action" as "any action against a manufacturer or seller for recovery of damages or other relief for harm allegedly caused by a defective product, whether the action is based in strict tort liability, strict products liability, negligence, misrepresentation, breach of express or implied warranty, or any other theory or combination of theories, and

whether the relief sought is recovery of damages or any other legal or equitable relief," including suits for personal injury and wrongful death. *Id.* § 16.012(a)(2).

2. Application of the Law to the Facts

Stevenson argues that Texas applies only the "most significant relationship" test. Although many Texas opinions address only § 6(2) of the Restatement, Texas has adopted all of § 6, including subsection (1). *See, e.g.*, *Citizens Ins.*, 217 S.W.3d at 443 (Wainwright, J., joined by Johnson, J., concurring); *id*. at 460 (Jefferson, C.J., joined by Brister and Medina, JJ., concurring); *Am. Nat'l Ins.*, 442 S.W.3d at 593; *Busse*, 896 S.W.2d at 813; *Am. Home Assurance*, 743 S.W.2d at 697. Stevenson also contends that this Court should follow two Texas opinions that she claims held "the language included in [§] 71.031(c) that, 'the court shall apply the rules of substantive law that are appropriate under the facts of the case,' for cases arising under [§] 71.031 requires 'a most significant relationship' approach." We construe Stevenson's argument to be that § 6(1) of the Restatement does not apply because, in this case, § 71.031(c) of the Texas Civil Practice and Remedies Code overrides subsections (a) and (b) and directs the analysis back to the "most significant relationship" test in § 6(2) of the Restatement.

We disagree with Stevenson that our choice-of-law analysis involves only the "most significant relationship" test and that § 71.031(c) of the Texas Civil Practice and Remedies Code overrides subsections (a) and (b) and directs the analysis back to the "most significant relationship" test in § 6(2) of the Restatement. Rather, a

careful review of § 71.031 shows that its requirements resemble the two sequential analyses in § 6 of the Restatement. Both § 6(1) of the Restatement and § 71.031(a) direct courts to look first to their own forum's laws for a controlling choice-of-law rule. *Compare* RESTATEMENT § 6(1) (requiring courts to determine whether there is a statutory directive of its own state on choice of law) *with* CIV. PRAC. & REM. § 71.031(a) (permitting lawsuits where wrongful death or injury occur in foreign jurisdiction if law of Texas or foreign jurisdiction provides cause of action, action is begun within time provided by Texas law and laws of foreign jurisdiction). Further, both § 6(2) of the Restatement and § 71.031(c) incorporate the "most significant relationship" test. *Compare* RESTATEMENT § 6(2) (when there is no statutory directive, courts apply "most significant relationship" test) *with* CIV. PRAC. & REM. § 71.031(c) (directs application of substantive law appropriate to case), *and Total Oilfield Servs. Inc. v. Garcia*, 711 S.W.2d 237, 238–39 (Tex. 1986) (per curiam) (clarifying § 71.031(c) incorporates the "most significant relationship" test).

In support of her contention, Stevenson points us to the Texas Supreme Court's opinion in *Total Oilfield Services* and this Court's prior opinion in *Crisman*. *See Total Oilfield Servs*, 711 S.W.2d 237; *Crisman*, 748 S.W.2d 273. Those opinions are inapposite.[3]

[3] We also note that in 1997, after the Texas Supreme Court issued its opinion in *Texas Oilfield Services* and this Court issued its opinion in *Crisman*, § 71.031 was amended to add subsections (a)(3), (a)(4) and (b).

The Texas Supreme Court's opinion in *Total Oilfield Services* concerns a choice-of-law analysis in a wrongful-death action brought after a Texas resident, employed by a Texas corporation, was killed while working in Oklahoma. *Total Oilfield Servs.*, 711 S.W.2d at 238. In that opinion, the Texas Supreme Court limited its opinion to the conclusion that the court of appeals incorrectly concluded the case did not involve a choice-of-law question and the "most significant relationship" test was inapplicable. *Id.* While the Texas Supreme Court did clarify that § 71.031(c) incorporated the "most significant relationship" test, it did not state or suggest that § 71.031(a) is subordinate to § 71.031(c) or inapplicable when the "most significant relationship" test would result in the application of a foreign state's laws. *Id.*

This Court's opinion in *Crisman* concerned strict-products-liability and wrongful-death claims against an Ohio corporation that conducted business and had its principal place of business in Texas. *Crisman*, 748 S.W.2d at 275. A Tennessee resident was killed in a Florida traffic accident when her car ran into a truck pulling an air-compressor trailer. *Id.* The trailer was manufactured in Illinois and was originally sold and distributed in Florida. *Id.* This Court held that Florida had the most significant relationship with the plaintiff's claims against the non-resident defendant, even though Florida's interest in the suit meant Florida's statute of repose foreclosed the plaintiff's claims. *Crisman*, 748 S.W.2d at 279. This Court stated that § 71.031(c) directs courts to apply the appropriate rule of substantive law and, citing *Total Oilfield Services*, it noted that § 71.031(c) has been interpreted to require

the "most significant relationship" test. *Id.* at 276. Because the *Crisman* opinion did not address § 71.031(a) or § 6(1) of the Restatement, it does not hold that § 71.031(c) overrides those provisions.

Accordingly, as directed by § 6(1) of the Restatement, we begin our choice-of-law analysis by looking to the Texas choice-of-law statute applicable to this case.

a. The Texas Statute of Repose Applies Under § 71.031(a)(2)

Stevenson argues that the time limitation language in § 71.031(a)(2) includes statutes of limitation, which are procedural, but not statutes of repose, which are substantive, and she requests that this Court decline to follow the United States Court of Appeals for the Fifth Circuit's reasoning in *Hyde*. Ford responds that § 71.031(a)(2) requires all personal-injury and wrongful-death actions brought in Texas to begin within the time provided by Texas law and the Texas products-liability statute of repose is such a law.

Section 71.031 is a codified choice-of-law rule that governs the timeliness of Stevenson's wrongful-death and survival claims. *See Owens Corning*, 997 S.W.2d at 573; *accord Burdett*, 854 F.3d at 735–36; *Hyde*, 511 F.3d at 511. Section 71.031(a)(2) required Stevenson to begin her action within the time provided by Texas law. CIV. PRAC. & REM. § 71.031(a)(2). Both statutes of limitation and statutes of repose serve to limit the amount of time under which suit may be brought. *Gilcrease*, 70 S.W.3d at 269; *accord Hyde*, 511 F.3d at 511.

Further, we do not find Stevenson's argument that attempts to distinguish between statutes of limitation and statutes of repose on the basis that one is procedural and the other substantive persuasive. Section 71.031(a)(2) makes no such distinction. Rather, the distinction Stevenson makes is found in two subsequent subsections. Specifically, § 71.031(b) provides that Texas procedural law applies, and § 71.031(c) requires courts to apply the appropriate substantive law under the facts of the case. *Compare* CIV. PRAC. & REM. § 71.031(a)(2) *with* CIV. PRAC. & REM. § 71.031(b)–(c). The general directive in § 71.031(c) does not override the more specific directive in subsection (a)(2) requiring the action to be brought within the time provided by Texas law. *See Hyde*, 511 F.3d at 512. As stated in *Hyde*, "under Texas law, a resident plaintiff . . . must establish under subsection (a)(2) that his action was instituted in Texas 'within the time provided by the laws of [Texas] for beginning the action,' and that includes Texas statutes of repose." *Id.*

Having concluded that § 71.031(a)(2) requires the application of the Texas statute of repose, we must next determine whether the Texas products-liability statute of repose bars Stevenson's claims. Stevenson's wrongful-death and survival claims fall under § 16.012 of the Texas Civil Practice and Remedies Code. *See* CIV. PRAC. & REM. § 16.012(a) (products liability action includes strict products liability and includes suits for personal injury and wrongful death). Section 16.012(c) requires Stevenson to commence her products-liability action before the end of fifteen years after the date of the sale of the Explorer by Ford. *See id.* § 16.012(b).

Ford released the Explorer to a Texas dealership on April 18, 1999, and the Explorer was sold on July 1, 1999. Stevenson did not file her original petition until July 26, 2017, eighteen years after the Explorer was sold by Ford. Accordingly, we conclude that Stevenson's wrongful-death and survival claims are barred by the Texas products-liability statute of repose.[4] Based on our conclusion that Texas law applies we need not consider the Texas "public policy doctrine." Also, because we have concluded that Texas has an applicable statutory directive, we need not address Stevenson's arguments relating to or analyzing which state has the "most significant relationship" under § 6(2) of the Restatement because that section specifically states it applies "when there is no such directive."

b. Texas Law Also Applies Under the "Most Significant Relationship" Test

Nevertheless, even if we were to conclude that the "most significant relationship" test in § 6(2) of the Restatement must be applied in this lawsuit, we would still conclude that Texas law applies to Stevenson's wrongful-death and survival claims. However, before analyzing the three levels of the "most significant relationship" test, we must first determine whether the laws of the various jurisdictions conflict. *See Citizens Ins.*, 217 S.W.3d at 443 (Wainwright, J., joined

[4] Also, we note that Stevenson does not argue that constitutional limitations forbid the application of § 71.031 or § 16.012 of the Texas Civil Practice and Remedies Code. *See Owens Corning*, 997 S.W.2d at 573–76 (§ 71.031(a)(3) does not violate Privileges and Immunities Clause of the United States Constitution or open courts provision of Texas Constitution).

by Johnson, J., concurring); *see also Toyota*, 581 S.W.3d at 283; *Am. Nat'l Ins.*, 442 S.W.3d at 593; *Vanderbilt Mortg.*, 146 S.W.3d at 313.

Stevenson and Ford agree that there are differences among the laws of Texas, Michigan, and Virginia. Texas has a fifteen-year statute of repose for products-liability actions. *See* CIV. PRAC. & REM. § 16.012. Michigan, the state where the Explorer was designed, does not have a statute of repose in products-liability actions. *See Mitchell ex rel. Mitchell v. McNeilus Truck & Mfg., Inc.*, No. 304124, 2012 WL 5233630, at *7 n.5 (Mich. Ct. App. Oct. 23, 2012) (per curiam) (noting dissent attaches significance to fact Michigan does not have statute of repose in produc-liability actions); *cf.* MICH. COMP. LAWS § 600.5805(2), (12) (period of limitations is three years for death, injury, and products-liability action). We also find no authority that Virginia, the state where the death and injuries occurred, has an applicable statute of repose. *Cf.* VA. CODE ANN. §§ 8.01-243 (two-year statute of limitations for personal-injury actions regardless of theory of recovery), 8.01-244 (two-year statute of limitations from time of death in wrongful-death actions), 8.01-248 (two-year statute of limitations for every personal action for which no other limitation specified), 8.01-250 (five-year statute of repose for bodily injury or wrongful death arising out of defective or unsafe condition of improvement to real property); PETER N. SWISHER ET AL., VIRGINIA PRACTICE SERIES: TORT AND PERSONAL INJURY LAW § 15:18 (Aug. 2019 update) (products liability defenses–statute of limitations). We agree with the parties that Texas law differs from that of

Michigan and Virginia as to the existence of a statute of repose that could bar Stevenson's wrongful-death and survival claims against Ford.

In their briefs, the parties do not distinguish between Stevenson's wrongful-death claims and her survival claims with respect to the "most significant relationship" test. We cannot make a blanket determination that the law of Texas, Michigan, or Virginia applies to the entire case and are required to determine which state has the "most significant relationship" to each substantive issue in our choice-of-law analysis. *See Toyota Motor Co.*, 581 S.W.3d at 284; RESTATEMENT § 145 cmt. c (each issue to receive separate consideration if it would be resolved differently under laws of potentially interested states). However, because Stevenson's wrongful-death and survival claims involve the same individuals, facts, injuries, and vehicle and arise out of the same alleged product-design defect, we will address them together in our analysis. We address the three levels of the "most significant relationship" test in reverse order.

i. Application of Restatement §§ 146 and 175

We begin with an analysis of the third level of the "most significant relationship" test. Sections 146 and 175 of the Restatement provide that the local law of the state where the injury occurred determines the rights and liabilities of the parties, unless, with respect to the particular issue, some other state has a more significant relationship under the principles stated in § 6(2) to the occurrence and

the parties, in which event the local law of the other state will be applied. RESTATEMENT §§ 146 (personal injuries), 175 (wrongful death).

When the defendant's conduct and the injury occur in different states, the local law of the state of injury will usually be applied to determine most issues involving the tort. *Id.* §§ 146 cmt. e, 175 cmt. f. However, when the injured person resides or the decedent resided in the state where the defendant's conduct occurred, there is a greater likelihood that state will have the most significant relationship. *Id.* §§ 146 cmt. e, 175 cmt. f. The same may be true when the injury occurred in the course of a relationship that is centered in the state where the defendant's conduct occurred and when the injured person or decedent has no settled relationship with the state where the injury occurred. *Id.* §§ 146 cmt. e, 175 cmt. f.

The facts of this case implicate at least three different states, so we may not simply conclude under §§ 146 and 175 that the local law of the state where the injury occurred applies and end our choice-of-law analysis at the third level of the analysis. Accordingly, we continue by examining the remaining two levels of the "most significant relationship" test.

ii. Balancing of the Restatement § 145 Factors

The second level of the "most significant relationship" test requires us to look to the substantive law concerning torts through application of the four factors listed in § 145 of the Restatement. RESTATEMENT § 145. Stevenson argues that the § 145 factors result in the application of either Michigan or Virginia law to her case. Ford

concedes that the circumstances implicate several jurisdictions—Ford is incorporated in Delaware, the Explorer was designed in Michigan where Ford has its principal place of business, the Explorer was assembled in Missouri, the Explorer was put into the stream of commerce in Texas and owned by a Texas resident, and Abygail Harris's injuries and death occurred in Virginia. However, Ford contends that Stevenson's arguments limit the choice-of-law analysis to Michigan, Texas, and Virginia. Ford asserts that under a proper choice-of-law analysis, Texas law applies to this case.

(1) Place of the Injury

In determining the first § 145 factor we look to the place of the injury. RESTATEMENT § 145(2)(a). While it is undisputed that the physical injury occurred in Virginia, Ford maintains that the fact that the accident occurred in Virginia was fortuitous and is not controlling or dispositive of the choice-of-law analysis.

The place where the injury occurs is the place where the force set in motion by the actor first takes effect on the person. *Id.* § 175 cmt. b. This place is not necessarily where the death occurs. *Id.* § 175 cmt. b. Further, although the place where the injury occurred ordinarily plays an important role in the selection of the applicable law, situations do arise where the place of injury will not play an important role. *Id.* § 145 cmt. e. For example, when the place of injury can be said to be fortuitous or when for other reasons it bears little relation to the occurrence and the parties with respect to the particular issue. *Id.* When the place of the injury is

fortuitous, the place where the defendant's conduct occurred will usually be given particular weight in determining which state's law is applicable. *Id.*

In this case, the Explorer involved in the accident was placed into the stream of commerce in Texas, was owned by a Texas resident, and was passing through Virginia. Although the accident resulting in Abygail Harris's injuries and death occurred in Virginia, it was a fortuitous location. Because the place of Abygail Harris's injuries and death were fortuitous, we look to the place where Ford's conduct occurred, which is Michigan, the place where the Explorer was designed.

This § 145 factor weighs in favor of the application of Michigan law.

(2) Place Where the Conduct Causing the Injury Occurred

The second § 145 factor focuses on the place where the conduct causing the injury occurred. RESTATEMENT § 145(2)(b). The parties do not address this factor even though it plays a more important role in our analysis given that the location of the injury and death was fortuitous. *Id.* § 145 cmt. e. In a products-liability action, the "place where the conduct causing the injury occurred" is the place where the defendant designed, manufactured, or was otherwise involved with the product in question, not the location of the physical injury. *See Perry v. Aggregate Plant Prods. Co.*, 786 S.W.2d 21, 25 (Tex. App.—San Antonio 1990, writ denied) (Texas was place where conduct causing injury occurred where defective silo was designed, manufactured, and sold in Texas even though injury happened in Indiana).

Here, the location where the conduct giving rise to the injury is either Michigan where the Explorer was designed or Texas where it entered the stream of commerce and remained until it was fortuitously driven to Virginia. *See Toyota Motor Co.*, 581 S.W.3d at 285 (location of conduct causing injury was either Japan where vehicle was designed and manufactured or Mexico where it entered stream of commerce and remained until accident). We also note that there is no allegation that the Explorer was substantially changed after it was designed in Michigan, manufactured in Missouri, and shipped to Texas for introduction into the stream of commerce. *See Perry*, 786 S.W.2d at 24–25 (noting no allegation of subsequent changes that could change where silo entered stream of commerce).

This § 145 factor weighs in favor of the application of either Michigan or Texas law.

(3) Parties' Domicile, Residence, Place of Incorporation, and Place of Business

The third § 145 factor focuses on the domicile, residence, nationality, place of incorporation, and place of business of the parties. RESTATEMENT § 145(2)(c). Stevenson contends that this factor is "not determinative" because Ford is a "resident of Michigan" and Stevenson is and Abygail Harris was a resident of Texas. Ford responds that this factor weighs in favor of the application of Texas law.

If the interest affected is a business or financial one, the place of business is the more important contact. *Id.* § 145 cmt. e. At least with respect to most issues, a

corporation's principal place of business is a more important contact than the place of incorporation, and this is particularly true in situations where the corporation does little, or no, business in the latter place. *Id.* In the case of torts, the importance of these contacts depends largely upon the extent to which they are grouped with other contacts. *Id.* For example, the fact that the domicile and place of business of all parties are grouped in a single state is an important factor to be considered in determining the state of the applicable law. *Id.* The state where these contacts are grouped is particularly likely to be the state of the applicable law if either the defendant's conduct or the plaintiff's injury occurred there. *Id.* This state may also be the state of the applicable law when the conduct and injury occurred in a place that is fortuitous and bears little relation to the occurrence and the parties. *Id.*

The parties do not dispute that Stevenson, Anthony Harris, and Foster are Texas residents or that Abygail Harris was a Texas resident. It is also uncontested that the Explorer was sold in Texas and Anthony Harris purchased, titled, registered, and operated the Explorer in Texas. Nor do the parties dispute that Ford is incorporated in Delaware, has its principal place of business and designed the Explorer in Michigan, manufactured the Explorer in Missouri, and placed the Explorer into the stream of commerce in Texas. Further, no party argues that Delaware's or Missouri's laws should apply. In this case, the parties' contacts are grouped in Texas.

This § 145 factor weighs in favor of the application of Texas law.

(4) Place Where the Relationship Between the Parties is Centered

The fourth § 145 factor concerns the place where the relationship is centered. RESTATEMENT § 145(2)(d). Stevenson contends that "the place where the relationship is centered is where the [physical] injury occurred[—Virginia]." Ford responds that it is in Texas because Foster and Anthony Harris are and Abygail Harris was a Texas resident, Ford sold the Explorer in Texas, and Anthony Harris purchased, titled, registered and operated the Explorer in Texas.

When there is a relationship between the plaintiff and the defendant and when the injury was caused by an act done in the course of the relationship, the place where the relationship is centered is another contact to be considered. *Id.* § 145 cmt. e. On rare occasions, the place where the relationship is centered may be the most important contact of all with respect to most issues. *Id.* The relationship between the parties must center around the cause of action. *See Perry*, 786 S.W.2d at 25.

In this case, the wrongful-death and survival claims are centered around the alleged "unreasonabl[e], dangerous[], defective[], design[] [of the Explorer]." The parties do not dispute that the Explorer was designed in Michigan and placed into the stream of commerce in Texas. However, it was not until Anthony Harris purchased the Explorer in Texas that any relationship existed between any of the other parties and Ford.

This § 145 factor weighs in favor of the application of Texas law. Having analyzed the contacts to be considered under § 145, we now turn to the policy-related

matters to be considered under § 6(2). *See Crisman*, 748 S.W.2d at 278; *see also Toyota Motor Co.*, 581 S.W.3d at 285.

iii. Application of the Restatement § 6(2) Policy-Related Factors

Finally, we determine the first level of the "most significant relationship" test, which requires weighing the competing policy interests of Texas, Michigan, and Virginia. *See* RESTATEMENT § 6(2). In her brief on appeal, Stevenson does not address the policy factors outlined in § 6(2) of the Restatement. Instead, her argument focuses on only the § 145 factors. Ford argues that Texas has a strong policy interest in applying its law because the product was placed into the stream of commerce in Texas. Also, Ford contends that the fact that the accident occurred in Virginia is merely fortuitous and is neither controlling nor dispositive. The record shows that Ford released the Explorer, which was designed in Michigan, to a Texas dealership on April 18, 1999, and the Explorer was sold on July 1, 1999. Then, on July 26, 2015, in Virginia, Foster, a Texas resident, was driving the Explorer, which was owned by Anthony Harris, also a Texas resident, when the accident fatally injuring Abygail Harris, a Texas resident, occurred.

(1) The Needs of the Interstate System

The first policy-related factor requires us to consider the needs of the interstate system. *See* RESTATEMENT § 6(2)(a); *Toyota Motor Co.*, 581 S.W.3d at 286. According to the Restatement, choice-of-law rules "should seek to further

harmonious relations between states and to facilitate commercial intercourse between them." RESTATEMENT § 6 cmt. d; *Toyota Motor Co.*, 581 S.W.3d at 286.

Texas has a strong policy interest in protecting its residents by controlling corporate action in areas such as the design of products. *See Toyota Motor Co.*, 581 S.W.3d at 286. It also has a strong policy interest in protecting its residents to allow for recovery of adequate compensation for torts committed against them and in avoiding injury resulting from defective products sold to Texas residents. *See id.* The expansive Texas system of tort liability for defective products serves as an incentive to encourage safer design and to induce corporations to control more carefully their manufacturing processes. *See Sanchez ex rel. Estate of Galvan v. Brownsville Sports Ctr., Inc.*, 51 S.W.3d 643, 670 (Tex. App.—Corpus Christi–Edinburg 2001, pet. dism'd by agr.) (citing *Mitchell v. Lone Star Ammunition, Inc.*, 913 F.2d 242, 250 (5th Cir. 1990)). On the other hand, Texas has enacted a products-liability statute of repose for the purpose of providing absolute protection to certain parties from the burden of indefinite potential liability. *See Galbraith*, 290 S.W.3d at 866. With respect to Michigan, it has an interest in this lawsuit because Ford designed the Explorer there. Also, the safety of Virginia highways is a Virginia interest. *See Toyota Motor Co.*, 581 S.W.3d at 286 (discussing Mexico's interest in highway safety). Presumably, Virginia investigated the accident at issue. *See id.* So it is conceivable that applying the Texas statute of repose to tort claims that arose in Virginia could work to undermine Virginia's ability to regulate safety on its

highways. *See id.* Nevertheless, although the Explorer was designed in Michigan and ended up in an accident in Virginia, it was originally placed in the stream of commerce in Texas and the accident involved Texas residents.

(2) The Relevant Policies of the States with Basic Policies Underlying Tort Law

The second, third, and fifth policy-related factors require consideration of the relevant policies of Texas, Michigan, and Virginia together with the basic policies underlying the particular field of tort law. *See* RESTATEMENT § 6(2)(b)–(c), (e); *Toyota Motor Co.*, 581 S.W.3d at 286. For example, it would seem that the state where all interested persons are domiciled will, usually at least, have the greatest interest in determining the extent to which each shall share in a tort recovery. RESTATEMENT § 145 cmt. d. Also, the circumstances under which a passenger has a right of action against the driver of an automobile for injuries suffered as a result of the latter's negligence may be determined by the local law of their common domicile, if at least this is the state from which they departed and to which they intended to return, rather than by the local law of the state where the injury occurred. *Id.*

Texas, Michigan, and Virginia all permit causes of action based on the allegation that the injuries suffered were the result of a design defect. However, Michigan and Virginia do not offer strict products liability, while Texas does. *Compare Caterpillar, Inc. v. Shears*, 911 S.W.2d 379, 381 (Tex. 1995) (noting Texas

has adopted theory of strict liability expressed in § 402A of the Restatement (Second) of Torts), *with Prentis v. Yale Mfg. Co.*, 365 N.W.2d 176, 690–91 (Mich. 1984) (adopting pure negligence test in products-liability cases alleging design defect), *and Evan v. Nacco Materials Handling Grp., Inc.*, 810 S.E.2d 462, 246 (Va. 2018) (noting Virginia has not adopted strict-liability regime for products liability, but plaintiff may proceed under theory of implied warranty of merchantability or negligence); *see also Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 252 n.18 (1981) (noting that all but 6 states—Delaware, Massachusetts, Michigan, North Carolina, Virginia, and Wyoming—recognize strict liability).

In this case, the Explorer entered the stream of commerce in Texas and was being driven by Texas residents. Texas has a policy interest in overseeing products marketed and used in Texas and in regulating the activities of companies doing business in Texas. In contrast, while Michigan has an interest in regulating the design and manufacture of goods in its state, it does not have an interest in regulating products marketed, distributed, and used in Texas. Similarly, while Virginia has an interest in the safe design of vehicles operated within its borders, this interest is diminished as to vehicles fortuitously passing through Virginia as opposed to vehicles garaged in Virginia.

(3) Protection of Justified Expectations

The fourth policy-related factor requires consideration of the protection of justified expectations by all parties. *See* RESTATEMENT § 6(2)(d); *Toyota Motor Co.*,

581 S.W.3d at 288. Comments to the Restatement provide that, "[g]enerally 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." RESTATEMENT § 6(2) cmt. g; *see also Toyota Motor Co.*, 581 S.W.3d at 288. While this policy-related factor is of extreme importance in such fields as contracts, property, and wills and trusts, it is of lesser importance in the field of torts. RESTATEMENT § 145 cmt. b. This is because persons who unintentionally cause injury usually act without giving thought to the law that may be applied to determine the legal consequences of the conduct. *Id.*

In this case, Anthony Harris, a Texas resident, owned the Explorer, which was designed in Michigan. And, Foster, also a Texas resident, drove the Explorer. It is solely the design of the Explorer in Michigan that created any expectations of the parties in the protection of Michigan law. With respect to any expectation in the protection of Virginia law, Anthony Harris, Foster, and Abygail Harris, all Texas residents, initiated contact with Virginia only when they drove through the state; the Explorer was not purchased or registered in Virginia. However, Ford placed the Explorer into the stream of commerce in Texas and Foster, Anthony Harris, and Abygail Harris were all Texas residents. Also, the Explorer was purchased, titled, and registered in Texas. There is nothing to suggest that Ford had a reasonable expectation Virginia law would govern when it delivered the Explorer into the Texas stream of commerce or that the individual Texas residents involved in this case

expected Virginia law to apply in the event of a design-defects caused accident while traveling through Virginia.

In sum, this factor is of little importance in this tort case. Foster and the Harrises presumably had few if any expectations about the statute of repose when they bought or rode in the Explorer. If Ford had any relevant expectations, it presumably expected Texas's statute of repose to apply to vehicles it placed into the stream of commerce in Texas.

(4) Certainty, Predictability, Uniformity of Result, and Ease of Determination and Application of the Law to be Applied

The sixth and seventh policy-related factors require an examination of the certainty, predictability, uniformity of result, and the ease in the determination and application of the law to be applied. *See* RESTATEMENT § 6(2)(f)–(g); *Toyota Motor Co.*, 581 S.W.3d at 288.[5] Predictability and uniformity of result are of particular importance where the parties are likely to give advance thought to the legal consequences of their transactions. RESTATEMENT § 6(2) cmt. i.

In this case, although the injury occurred in Virginia, Ford designed the Explorer in Michigan and placed it into the stream of commerce in Texas. Also, the Explorer was owned by Anthony Harris, a Texas resident; was being operated at the

[5] In *Toyota Motor Company*, the Beaumont Court of Appeals concluded that applying Mexico's law fostered predictability where Texas residents were injured or killed in an automobile accident in Mexico, the vehicle was imported to Mexico, sold by a Mexican dealership to a Mexican resident, licensed in Mexico, driven exclusively in Mexico, and was being driven on a Mexican highway when the accident occurred. *Toyota Motor Co.*, 581 S.W.3d at 288.

time of the accident by Foster, a Texas resident; and allegedly caused injury and death to Abygail Harris, a Texas resident. Under the circumstances of this case, applying Texas law would more likely foster predictability and uniformity. And it makes choice-of-law determinations less complicated to hold that the state where a vehicle is registered and garaged should ordinarily supply the governing statute of repose, if any, for strict products-liability claims concerning that vehicle.

c. Conclusions

We conclude that, in this case, the § 145 factors and the § 6(2) policy-related factors show that Texas has the "most significant relationship" to the claims. We conclude the trial court did not err when it concluded that the Texas statute of repose applies.

The first part of issue one is decided against Stevenson.

C. Tolling of the Texas Products-Liability Statute of Repose

In the second part of issue one, Stevenson argues, in the alternative, that even if the trial court correctly concluded that the Texas statute of repose applies, the statute was tolled for the survival claims of the minor decedent.[6] We construe Stevenson's argument to be that the tolling provision of § 16.001 of the Texas Civil Practice and Remedies Code revives the products-liability claims of minors otherwise barred by the statute of repose in § 16.012. Stevenson contends we should

[6] Stevenson does not argue that the statute was tolled for her wrongful-death claims because Abygail Harris was a minor at the time of her death.

follow the reasoning of an unpublished order by the United States District Court for the Eastern District of Texas, which determined that the tolling of "limitations" for minors in § 16.001 applied to the products-liability statute of repose in § 16.012. *Eastman v. Ford Motor Co.*, No. 5:15-CV-14, 2016 WL 7732627, at *2–4 (E.D. Tex. Mar. 29, 2016) (order). Ford responds that statutes of repose are not subject to tolling and their protection against uncertainty of indefinite liability is absolute even when the claimant is a minor. Also, Ford contends that the tolling of "limitations" in § 16.001 does not apply to the statute of repose in § 16.012. Further, Ford argues that Stevenson is not a minor and Abygail Harris's survival claims vested in Stevenson as a surviving parent so there is no disability that could toll the statute of repose.

1. Applicable Law

Section 16.001 of the Texas Civil Practice and Remedies Code provides, in part, that for the purposes of §§ 16.001–.012, a person is under a legal disability if the person is younger than 18 years of age, regardless of whether the person is married. CIV. PRAC. & REM. § 16.001(a). Further, if a person entitled to bring a personal action is under a legal disability when the cause of action accrues, the time of the disability is not included in a "limitations period." *Id.* § 16.001(b). Section

16.012(b) provides that, except in situations that do not apply here,[7] a claimant must commence a products-liability action against a manufacturer or seller of a product before the end of 15 years after the date of the sale of the product by the defendant. *Id.* § 16.012(b). Statutes of repose begin to run on a readily ascertainable date, and unlike statutes of limitations, a statute of repose is not subject to judicially crafted rules of tolling or deferral. *Methodist Healthcare Sys. of San Antonio, Ltd., L.L.P. v. Rankin*, 307 S.W.3d 283, 286 (Tex. 2010). The key purpose of a repose statute is to eliminate uncertainties under the related statute of limitations and to create a final

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[7] Section 16.012(b) specifies that it does not apply in the following situations provided in subsections (c), (d) and (d-1):

> (c) If a manufacturer or seller expressly warrants in writing that the product has a useful safe life longer than 15 years, a claimant must commence a products liability action against that manufacturer or seller of the product before the end of the number of years warranted after the date of the sale of the product by that seller.
>
> (d) This section does not apply to a products liability action seeking damages for personal injury or wrongful death in which the claimant alleges:
>
> > (1). The claimant was exposed to the product that is the subject of the action before the end of 15 years after the date the product was first sold;
> >
> > (2) the claimant's exposure to the product caused the claimant's disease that is the basis of the action; and
> >
> > (3) the symptoms of the claimant's disease did not, before the end of 15 years after the date of the first sale of the product by the defendant, manifest themselves to a degree and for a duration that would put a reasonable person on notice that the person suffered some injury.
>
> (d-1) This section does not reduce a limitations period for a cause of action described by Subsection (d) that accrues before the end of the limitations period under this section.

CIV. PRAC. & REM. § 16.012.

deadline for filing suit that is not subject to any exceptions, except perhaps those clear exceptions in the statute itself. *Id.*

A personal-injury claim brought on a deceased person's behalf is commonly called a "survival action" or a "survival claim." *Durham v. Med. Ctr. of Dallas*, 488 S.W.3d 485, 490 (Tex. App.—Dallas 2016, pet. denied). Under the Texas Survival Statute, "[a] cause of action for personal injury to the health, reputation, or person of an injured person does not abate because of the death of the injured person." CIV. PRAC. & REM. § 71.021(a). The purpose of the survival statute is to continue a decedent's cause of action beyond death to redress the decedent's estate for decedent's injuries. *Cortez ex rel. Estate of Puentes v. HCCI-San Antonio, Inc.*, 131 S.W.3d 113, 119 (Tex. App.—San Antonio 2004), *aff'd on other grounds* 159 S.W.3d 87 (Tex. 2005). Thus, a personal-injury action survives the injured person's death and may be prosecuted on her behalf. CIV. PRAC. & REM. § 71.021(b); *Russell v. Ingersoll–Rand*, 841 S.W.2d 343, 345 (Tex. 1992). The actionable wrong in a survival action is that which the decedent suffered before death. *Russell*, 841 S.W.2d at 345. The damages recoverable are those the decedent sustained while alive. *Id.* However, once a minor dies, she ceases to be a minor; thus, tolling provisions for minority no longer apply, and there is nothing in the statutes to indicate the minor's survivors should have longer to assert their claims than an adult's survivors. *See Brown v. Shwarts*, 968 S.W.2d 331, 334 (Tex. 1998).

2. Application of the Law to the Facts

Stevenson's argument requires us to construe the meaning and effect of §§ 16.001 and 16.012 of the Texas Civil Practice and Remedies Code. In construing statutes, a court's primary objective is to give effect to the legislature's intent as expressed in the statute's language. TEX. GOV'T CODE § 312.005; *Galbraith Eng'g*, 290 S.W.3d at 867. If the words of a statute are clear and unambiguous, we apply them according to their plain and common meaning. *Galbraith Eng'g*, 290 S.W.3d at 867.

Sections 16.001 and 16.012 appear in Chapter 16 of the Texas Civil Practice and Remedies Code under the general heading of "Limitations." *Id.* at 866. Although the legislature has grouped statutes of limitation and statutes of repose together under the general heading of "Limitations," there are significant differences between the two. *Id.* While statutes of limitation operate procedurally to bar the enforcement of a right, statutes of repose take away the right altogether, creating a substantive right to be free of liability after a specified time. *Id.* The legislature can, of course, provide for the extension of a period of repose. *Id.*

We conclude that the legislature did not intend for § 16.001 to make an exception to the products-liability statute of repose in § 16.012, creating a scheme for reviving minor plaintiffs' products-liability claims. First, a plain reading of § 16.001 shows that it applies to statutes of limitations and does not include statutes of repose. Section 16.001 states that "[i]f a person entitled to bring a personal action

is under a legal disability when the cause of action accrues, the time of the disability is not included in a ***limitations*** period." CIV. PRAC. & REM. § 16.001 (emphasis added). In contrast, § 16.012 contains mandatory language and states that, except in situations that do not apply here, "a claimant must commence a products liability action against a manufacturer or seller of a product before the end of 15 years after the date of the sale of the product by the defendant." *Id.* § 16.012(b).

Second, statutes of repose are created by the legislature, and the legislature may, of course, amend them or make exceptions to them. *See Galbraith Eng'g*, 290 S.W.3d at 867. In fact, with respect to the products-liability statute of repose, the legislature has already expressly included an extension to the fifteen-year statute of repose for products with longer warranties and for products that cause latent diseases. CIV. PRAC. & REM. § 16.012(c)-(d-1); *Galbraith Eng'g*, 290 S.W.3d at 867; *see also Rankin*, 307 S.W.3d at 286 (statute of repose not subject to judicially crafted rules of tolling or deferral, and key purpose of repose statute is to eliminate uncertainties under related statute of limitations and create final deadline for filing suit that is not subject to any exceptions, except perhaps those clear exceptions in statute itself).

Third, the purpose of a statute of repose is to provide absolute protection to certain parties from the burden of indefinite potential liability. *Galbraith Eng'g*, 290 S.W.3d at 866. The consequence of construing "limitations" to encompass the statutes of repose defeats the very purpose of the statute of repose. *See id.* at 868.

Depending on the age of the minor at the time of injury or death, applying § 16.001 to revive products-liability claims could subject a product manufacturer to a much longer period of repose. *See id.* at 866–67.

Fourth, the products-liability statute of repose in § 16.012 is not the only statute of repose contained in the "Limitations" section of Chapter 16 that could be affected by the application of § 16.001 to revive claims otherwise barred by a statute of repose. For example, section 16.008, which is also contained in the "Limitations" section, includes a ten-year statute of repose eliminating "unlimited time liability" for suits for damages against engineers, architects, interior designers, and landscape architects.[8] *Galbraith Eng'g*, 290 S.W.3d at 866; *see also Hill v. Forrest & Cotton, Inc.*, 555 S.W.2d 145, 150 (Tex. App.—Eastland 1977, writ ref'd n.r.e.) (discussing earlier version of the statute and concluding that because minors' wrongful-death

[8] Stevenson contends we should follow the reasoning of the federal district court's unpublished order in *Eastman v. Ford Motor Co.*, No. 5:15-CV-14, 2016 WL 7732627*2–4 (E.D. Tex. March 29, 2016) (order). In *Eastman*, the plaintiffs alleged they suffered injuries in an accident involving a 1998 Ford Explorer on July 1, 2012. *Id.* at *1. The plaintiffs did not file suit until June 30, 2014, more than sixteen years after the Ford dealership sold the vehicle to a non-party customer. *Id.* The district court concluded the tolling of "limitations" for minors in § 16.001 of the Texas Civil Practice and Remedies Code applied to the products-liability statute of repose in § 16.012. *Id.* at *2–4. In *Eastman*, the district court reasoned that "[a] plain reading of § 16.001 confirmed it applied to § 16.012" because it states that for purposes of that subchapter the time of the disability is not included in a "limitations" period and § 16.012 is in the same subchapter. *Id.* at *3. The district court also reasoned that § 16.012 is the only section in that subchapter that identifies itself as a statute of repose and if the Legislature had intended it to be excluded from the tolling provision it could have placed the products-liability statute of repose in another subchapter. *Id.* at *4. *But see Galbraith Eng'g*, 290 S.W.3d at 866 (section 16.008, which is contained in "Limitations" section, includes ten-year statute of repose eliminating "unlimited time liability" for suits for damages against engineers, architects, interior designers, and landscape architects); CIV. PRAC. & REM. § 16.008. We are not persuaded by the reasoning in *Eastman*.

cause of action accrued after ten-year period of "limitations" had already expired, minors had no cause of action to which tolling statute might be applied).

Further, although Abygail Harris was a minor at the time of the automobile accident when she sustained her fatal injuries and died, once she died, she ceased to be a minor, and the tolling provisions of § 16.001 ceased to apply. *See Brown*, 968 S.W.2d at 334. Stevenson, an adult, does not assert that she has a disability that would toll her survival claims.

We conclude that the statute of repose was not tolled for Stevenson's survival claims of the minor decedent. The second part of issue one is decided against Stevenson.

IV. CONCLUSION

Stevenson's wrongful-death and survival claims are barred by the Texas products-liability statute of repose under § 6(1) of the Restatement and §§ 16.012 and 71.031(a)(2) of the Texas Civil Practice and Remedies Code. Alternatively, even if we determined there is no statutory directive on the choice of law or a clear choice-of-law determination by the Texas legislature and applied the "most significant relationship" under § 6(2), the Texas statute of repose would still apply. Finally, the statute of repose was not tolled for Stevenson's survival claims of the minor decedent.

The trial court's amended final judgment is affirmed.

/Leslie Osborne/
LESLIE OSBORNE
JUSTICE

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Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

SUSAN STEVENSON, INDIVIDUALLY AND AS PARENT OF THE MINOR CHILD, ABYGAIL ALANA JANE HARRIS, DECEASED, Appellant

No. 05-18-01535-CV V.

FORD MOTOR COMPANY, Appellee

On Appeal from the 380th Judicial District Court, Collin County, Texas Trial Court Cause No. 380-06940-2019.
Opinion delivered by Justice Osborne. Justices Partida-Kipness and Pedersen, III participating.

In accordance with this Court's opinion of this date, the amended final judgment of the trial court is **AFFIRMED**.

It is **ORDERED** that appellee FORD MOTOR COMPANY recover its costs of this appeal from appellant SUSAN STEVENSON, INDIVIDUALLY AND AS PARENT OF THE MINOR CHILD, ABYGAIL ALANA JANE HARRIS, DECEASED.

Judgment entered August 3, 2020