

No. DA 19-0546

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IN THE  
SUPREME COURT OF THE STATE OF MONTANA

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ZACHARY SCOTT BUCKLES, DECEASED, BY AND THROUGH HIS PERSONAL  
REPRESENTATIVE, NICOLE R. BUCKLES, AND NICOLE R. BUCKLES, PERSONAL  
REPRESENTATIVE, ON BEHALF OF THE HEIRS OF ZACHARY SCOTT BUCKLES,

*Plaintiffs/Appellees,*

VS.

CONTINENTAL RESOURCES, INC., BH FLOWTEST, INC., BLACK ROCK TESTING, INC.,  
JANSON PALMER DBA BLACK GOLD TESTING, AND DOES I-V,

*Defendants/Appellees.*

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ON APPEAL FROM THE MONTANA SEVENTH JUDICIAL DISTRICT COURT,  
RICHLAND COUNTY, HON. OLIVIA RIEGER, CASE No. DV 2015-14

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**DEFENDANT/APPELLANT BH FLOWTEST, INC'S OPENING BRIEF**

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## STATEMENT OF ISSUES

Following the original hearing on jurisdiction over Continental Resources, Inc. (“CRI”), the District Court held that Montana law applied to a wrongful death action occurring within the geographic boundaries of the State of North Dakota. When the parties sought reconsideration of that ruling following this Court’s order that an evidentiary hearing be had with regard to CRI (*Buckles by & through Buckles v. Cont’l Res., Inc.*, 2017 MT 235, 388 Mont. 517, 402 P.3d 1213), the District Court upheld its prior decision, appearing to rely on the prior District Court’s reasoning. Following certification, the question on appeal is:

1. Did the District Court err in concluding that Montana law applies to a fatal accident occurring within the geographical borders of North Dakota?

## STATEMENT OF THE CASE

Despite the uncontroverted evidence that the accident at issue occurred in North Dakota and the most significant relationship with the accident is with the state of North Dakota, the District Court issued an opinion which found that Montana law would apply to the matter. Appendix (“App.”) 1, Order on Defendant Black Rock Testing, Inc.’s Motion for Declaration of Applicable Law, August 19, 2016. The text of the original decision states that the basis for applying Montana law was “for reasons argued by Plaintiffs and because the Court has dismissed the only non-Montana party.” App. 1. When this decision was sought to be reviewed

by the new sitting judge following this Court's decision in *Buckles v. Continental Resources, Inc. et al.*, 2017 MT 235, 388 Mont. 517, 402 P.3d 1213, the District Court maintained the prior ruling, stating that:

Today, this case stands in the same place as it did when Judge Bidegaray ruled Montana law applied to the claims. Continental Resources, Inc. has been dismissed again for lack of specific personal jurisdiction. While *Otto* is persuasive, it is not controlling on our jurisdiction. This Court agrees with the Plaintiffs that nothing has changed in the law to warrant a "reconsideration" ...

App. 2, Order on Black Rock Testing, Inc.'s Motion for Reconsideration Re: Applicable Law, February 8, 2019.

This appeal thus arises from an interlocutory order, certified under Mont. R. Civ. P. 54(b) and accepted for review by this Court pursuant to Mont. R. App. P. 4(1)(b) and 6(6). *See* 8-1702918 Order. The district court certified for appeal its order on the application of Montana law to wrongful death claims arising from an alleged accident occurring in North Dakota. *See* App. 3, Order Granting Black Rock Testing, Inc.'s and BH Flow Test Inc.'s Motion for Rule 54(b) Certification of Choice of Law Issue, August 23, 2019. The issue pending before the Court is whether it is appropriate to apply Montana law to a well site in North Dakota.

### **STATEMENT OF THE FACTS**

In April of 2014, Mr. Zachary Buckles ("Buckles") was working under a d/b/a as Dozer Well Testing. Around April 17, 2014, he and independent

contractor Janson Palmer, who was doing business as Black Gold Testing, traveled from a well site in North Dakota to CRI's Federal 2-16H well site ("the Well") near Alexander, North Dakota. App. 4, (Sworn Statement of Janson Palmer, p. 28:11-18 (indicating Palmer and Buckles had been working for about two weeks prior to Buckles' death). Pursuant to an independent contract relationship with Black Rock, Black Gold was to perform tank gauging services at the Well for CRI under a master service agreement ("MSA") that BH Flowtest had in place with CRI while Black Rock was in the process of formalizing its own MSA with CRI. *See* App. 5, ¶ 3; R. 8 (Continental's Brief in Support of Motion to Dismiss for Lack of Personal Jurisdiction); App. 6 (BH Flowtest's Ans. and Demand for Jury Trial, ¶ 4; App. 7 (Black Rock's Ans. and Request for Jury Trial), ¶ 5; App. 8 (Black Gold's Ans. and Demand for Jury Trial), ¶ 6; *see also* Black Rock Appellate Br. Appendix No. 16.

The Well is a tank battery consisting of twenty tanks that support five production oil wells, including Tallahassee 2-16H tank number three and Tallahassee 3-16H tank number one. These wells were located on the Bakken Reservoir and the evidence to date is that Buckles was on site, living in a camper in North Dakota, up to the date of his passing. App. 4, 27:20-24.

Plaintiffs allege that on April 28, 2014, Buckles died as a result of becoming exposed to high levels of hydrocarbon vapors while manually gauging the crude oil



production tanks at the Well and that his death was the result of the negligent acts of the defendants. Notable for the present appeal are the specific allegations of wrongdoing. More particularly, plaintiffs allege that defendants failed to “maintain a safe oil well site and secure work area on the oil well site pursuant to contract and in fact.” App. 9, Pltf. Compl. ¶ 17 (Feb. 26, 2015). Plaintiffs continue, alleging defendants allowed “an inherently dangerous and unsafe well site to be operated which did not have adequate or appropriate air monitoring equipment in place to protect [Buckles] from overexposure to hydrocarbon vapors all of which was a substantial contributing factor to [Buckles’] fatal injuries and damages...” *Id.* ¶ 18. These alleged acts, as well as the death which they contend was the result, all occurred within the geographic boundaries of the State of North Dakota.

### **STANDARD OF REVIEW**

A district court's determination of which substantive law applies to a matter is made as a matter of law. *See Tidyman’s Management Service, Inc. v. Davis*, 2014 MT 205, ¶ 13, 376 Mont. 80, 330 P.3d 1139. This Court reviews such determinations on a *de novo* basis. *Harrington v. Energy W. Inc.*, 2015 MT 233, ¶ 7, 380 Mont. 298, 356 P.3d 441 (*citing Masters Grp. Int’l, Inc. v. Comerica Bank*, 2015 MT 192, ¶ 33, 380 Mont. 1, 352 P.3d 1101).

### **SUMMARY OF ARGUMENT**

North Dakota law governs Plaintiffs’ claims. The local law of the place of

injury is presumptively applicable. *Phillips v. General Motors Corp.*, 2000 MT 55, ¶¶ 30-32, 298 Mont. 438, 995 P.2d 1002 (holding “[u]nder the Restatement (Second) approach, the local law of the place of injury...is presumptively applicable in a product liability and wrongful death action...”); *Winter v. Pioneer Drillings Services*, Memorandum and Order at 4, Cause No. CV-14-20-GF-BMM (D. Mont., May 14, 2015) (holding that plaintiff’s injuries occurred at a drilling rig located in North Dakota and “[i]t is presumed therefore that North Dakota law applies...” (attached as App. 10)).

The Well was located in North Dakota. The work area was located in North Dakota. Work was performed, and services provided, in North Dakota. Allegedly inadequate or inappropriate air monitoring equipment was purportedly not in place in North Dakota. The events allegedly causing Buckles’ injuries and death occurred in North Dakota. Plaintiffs’ arguments to the contrary, the law demands that North Dakota apply to this wrongful death action.

## **ARGUMENT**

### **I. The District Court Incorrectly Determined that Montana Law Applied to a North Dakota Well Site.**

The choice of law analysis under the Restatement (Second) *Conflict of Laws* begins with § 6, which states:

(1) A court, subject to constitutional restrictions, will follow a statutory directive of its own state on choice of law.

(2) Where 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 a 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.

*Id.*

Here, because Montana has no statutory directive regarding the choice of law, the analysis turns to § 145 of the Restatement. That Section 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.

*Id.* Pursuant to the Restatement, these contacts are to be evaluated according to their relative importance with respect to the particular issue. *Id.*

**A. North Dakota Law is Presumptively Applicable and the Facts Support Upholding that Presumption.**

This Court has adopted the Restatement (Second) of *Conflict of Laws* in determining the choice of law for tort actions. *Phillips, supra*. Under the Restatement (Second) approach, “in product liability and wrongful death actions, the law of the place of injury is presumptively applicable...” *Id.* at 1009 and Restatement (Second) of *Conflict of Laws*, §§ 146 and 175.

In addition to the general provisions regarding conflicts of laws, the Restatement contains specific sections regarding personal injury and wrongful death actions. Chief among these sections are 146 and 175, which provide the lens through which any choice of law analysis should occur in this wrongful death action. Notably, these two Sections provide that the rights and liabilities of the parties are to be determined in accordance with the law of the state where the injury occurred unless another state has a more significant relationship. *Id.* This presumption of applicable law is similarly explained in 16 Am Jur. 2d, *Conflicts of*

*Laws*, § 119 (2009), which states:

In virtually all instances where the conduct and injury occur in the same state, that state has the dominant interest in regulating the conduct and determining whether it is tortious in character and whether the interest affected is entitled to legal protection. If conduct and injury occur in different states, the law of the state where the injury occurred will usually be applied to determine most issues involving the tort.

*Id.*

The law above provides the framework for the decision which the District Court in this action should have made. To put a finer point on it, the presumption is in favor of application of North Dakota law and that presumption could only be overcome by Buckles if it were shown that Montana has a *more* significant relationship to the matter.

It is not enough that two states may have an interest in the decision. The states do not come to the matter on equal footing. Rather, and specifically in this case, Montana can only apply its law to the accident if Buckles were able to establish that his citizenship and the operations of CRI in Montana overcome the allegations of negligence - which all occurred in North Dakota – and the damages – which similarly arose in North Dakota when Buckles died.

Buckles was working in North Dakota on a North Dakota well when he died. He had been in North Dakota for weeks at least prior to his death and was, in fact, living on site. App. 4, 27:20-24. The work he was to perform was directed to oil

extraction activities occurring in North Dakota. The allegedly dangerous activities in which he was engaged occurred not within Montana, but in North Dakota. The failure, if any, to provide equipment for the jobsite occurred in North Dakota. The failure, if any, to provide training for the work to be done at the Well was, once again, in North Dakota. While the defendant businesses may have organized in Montana, the work central to the relationship between Buckles and these parties was all in North Dakota.

In a similar factual scenario, the United States District Court for the District of Montana held that an action regarding a Montana resident, found deceased near an open hatch of an oil tank in a well site in North Dakota, was subject to North Dakota law. *Otto v. Newfield Exploration Co.*, 2016 WL 9461791 (D. Mont. July 26, 2016).

In *Otto*, Blaine, a Montana resident, was found near an open hatch of an oil tank at Newfield's well site in North Dakota. *Id.*, at \*1. Blaine's Estate brought claims against Newfield for negligent operation, failure to warn of latent dangerous conditions, ultra-hazardous activity, and punitive damages. *Id.* Judge Watters held that North Dakota law applied because (1) there was a conflict between North Dakota and Montana law on the issues of punitive damages and strict liability for ultrahazardous activities; and (2) North Dakota had the most significant relationship with the case. *Id.*, at \*2-6.

When holding that North Dakota had the most significant relationship to the case, Judge Watters found that (1) the injury occurred in North Dakota, which presumptively meant North Dakota law applied; (2) the Estate's claims centered on Newfield's workplace conduct, which occurred in North Dakota; and (3) the parties' relationship centered on the well site in North Dakota. *Id.*, \*5. Judge Watters held that Blaine being domiciled in Montana and Newfield having Montana offices was insufficient to overcome the significant relationship North Dakota had with the case. *Id.*

Here, the fact that Buckles was a citizen of Montana at the time of his tragic death does not override the presumption in favor of North Dakota's laws. Moreover, while it can be anticipated that the plaintiffs will assert that CRI's dealings in Montana (*see Buckles v. Continental Resources, Inc. et al.*, DA 19-0162) show Montana's relationship to this matter, those facts similarly do not outweigh the connection to and presumption in favor of North Dakota. This is because the actual claim of wrongful death is centered around activities, happenings, and purported malfeasance occurring in North Dakota and North Dakota has, as can be expected, a real and direct interest in governing the oil extraction activities occurring in its geographical borders. *See Otto*, 2016 WL 9461791, at \*6.

Considering the facts unique to this action, the presumption that applies to

wrongful death matters, and the specifically alleged conduct by the defendants, the District Court erred in determining Montana law applies.

**B. Due Process Requires Application of North Dakota Law to a North Dakota Well Site.**

The Due Process Clause of the Fourteenth Amendment to the United States Constitution places limits on choice of law. *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 818 (1985). The constitutional restriction on choice of law requires that for a state’s substantive law to apply, the state must have a significant contact or significant aggregation of contacts, creating state interests, such that choosing its law is neither arbitrary nor fundamentally unfair. *Id.* There must be a “significant contact or significant aggregation of contacts **to the claims asserted**” in the case. *Id.* at 821-22 (emphasis added). In determining whether a state has a significant contact or significant aggregation of contacts, the Court may not use its own “assumption of jurisdiction as an added weight in the scale when considering the permissible constitutional limits on choice of substantive law.” *Id.* at 821.

In the present case, North Dakota has significant contact and significant aggregation of contacts with Plaintiff’s asserted claims. The relationships between the parties were all centered on work to be performed there, which was done over a course of time that was not insubstantial.



## **CONCLUSION**

The District Court erred when it concluded that Montana law should apply to the wrongful death action pursued by the plaintiffs. The Well, Buckles' work, the alleged accident, and Buckles' passing all occurred in North Dakota. The presumption of applicability of North Dakota law falls in line with both the *Conflict of Laws* analysis outlined above and the constraints of Due Process.

WHEREFORE, Defendant/Appellant BH Flowtest, Inc. respectfully requests this Court to overrule the District Court and order that North Dakota law apply to this matter.

Dated this 26th day of December 2019.

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I hereby certify that the foregoing document was served upon counsel of record using the Montana Supreme Court electronic delivery, with the exception of the following *pro se* Defendant, who was served by US Mail this 26th day of December 2019 at the following address:

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Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double spaced; and the word count calculated by Microsoft Word is less than 10,000 words, excluding Table of Contents, Table of Authorities, Certificate of Compliance and Certificate of Service.

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