UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JOSEPH A. LANDRY & CORA R. LANDRY,	:	
Plaintiffs,	:	
v.	:	No. 3:04cv380 (MRK)
CHRISTOPHER POTTER, DAVID J. BOUCHARD, d/b/a DJB TRUCKING, DJB TRUCKING, INC.,	:	
Defendants.	:	

RULING AND ORDER

This diversity action arises from a motor vehicle accident that occurred in Massachusetts and allegedly injured a Connecticut resident. Pursuant to Rule 12(f) of the *Federal Rules of Civil Procedure*, Plaintiffs have moved to strike Defendants' First Affirmative Defense, which asserts that this negligence action is barred by the applicable statute of limitations. According to Rule 12(f), "[u]pon motion made by a party . . . the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, or scandalous matter." Fed. R. Civ. P. 12(f). "A motion to strike an affirmative defense under Rule 12(f) for legal insufficiency is not favored and will not be granted unless it appears to a certainty that plaintiffs would succeed despite any state of the facts which could be proved in support of the defense." *William Z. Salcer, Panfeld, Edelman v. Envicon Equities Corp.*, 744 F.2d 935, 939 (2d Cir. 1984), *vacated on other grounds by* 478 U.S. 1015 (1986); *see also Etienne v. Wal-Mart Stores, Inc.*, 197 F.R.D. 217, 219 (D.

Conn. 2000) ("Motions to strike . . . are not favored and will not be granted unless it is clear that the allegations in question can have no possible bearing on the subject matter of the litigation.") (internal quotation and citation omitted). Defendants' affirmative defense invokes Connecticut's two-year statute of limitations, Conn. Gen. Stat. § 52-584, but Plaintiffs contend that Massachusetts' law, not Connecticut's, governs and that this action is timely under Massachusetts' three-year statute of limitations, Mass. Gen. Laws Ch. 260, § 2A. The Court disagrees with Plaintiffs and therefore, DENIES their Motion to Strike [doc. #12].

As the Supreme Court held long ago in *Klaxon Co. v. Stentor Elec. Mfg. Co.*, 313 U.S. 487, 496 (1941), a district court sitting in diversity must apply the rules of the forum state in resolving choice-of-law issues. *See also Cantor Fitzgerald Inc. v. Lutnick*, 313 F.3d 704, 710 (2d Cir. 2002) ("To determine which state's law applies, a federal court sitting in diversity must apply the conflict-of-laws rules of the state in which the federal court sits."). Therefore, Connecticut's choice-of-law principles govern.

With an important exception discussed below, statutes of limitations rules are considered by Connecticut courts to be procedural, not substantive, and therefore "the limitation period established by the *lex fori* governs." *Baxter v. Sturm, Ruger & Co.*, 230 Conn. 335, 339 (1994); *see Morris Plan Indus. Bank v. Richards*, 131 Conn. 671, 674 (1945) (same); *Thomas Iron Co. v. Ensign-Bickford Co.*, 131 Conn. 665, 669 (1945) (same); *see also Lostritto v. Community Action Agency of New Haven, Inc.*, 269 Conn. 10, 22-23 (2004) ("A statute of limitations is generally considered to be procedural, especially where the statute contains only a limitation as to time with respect to a right of action and does not itself create the right of action."). As a consequence, Connecticut federal courts have uniformly held that Connecticut's statutes of

limitations ordinarily will govern in diversity actions such as the present case. *See, e.g.*, *Stephens v. Norwalk Hosp.*, 162 F. Supp. 2d 36, 41-42 (D. Conn. 2001); *Brady v. U.S. Airways Group, Inc.*, No. 3:00CV828 (AHN), 2001 WL 406327, at *1 (D. Conn. Apr. 4, 2001); *Slekis v. National RR Passenger Corp.* 56 F. Supp. 2d 202, 204 (D. Conn. 1999); *Palacio v. Munies*, No. 3:98CV01893 (GLG), 1999 WL 608818, at *2 (D. Conn. Aug. 5, 1999); *Drakatos v. Denison*, 493 F. Supp. 942, 944 (D. Conn. 1980); *Brown v. Merrow Machine Co.*, 411 F. Supp. 1162, 1164 (D. Conn. 1976). *Cf. Stuart v. American Cyanamid Co.*, 158 F.3d 622, 626-27 (2d Cir. 1998) ("Where jurisdiction rests upon diversity of citizenship, a federal court sitting in New York must apply the New York choice-of-law rules and statutes of limitations. New York courts generally apply New York's statutes of limitations, even when the injury giving rise to the action occurred outside New York.") (citations omitted); *Association for Preservation of Freedom of Choice v. Simon*, 299 F. 2d 212, 214 (2d Cir. 1962) ("Statutes of Limitations are traditionally considered to be procedural for conflicts purposes, and the forum state applies its own period of limitations to foreign claims for relief.").[1] As then-District Judge José A. Cabranes noted over 20 years ago, "[i]n suits with multistate aspects, Connecticut courts (including a federal court sitting in Connecticut) apply Connecticut statutes of limitations." *Drakatos*, 493 F. Supp. at 944.

The exception to this general rule is where the right of action " 'did not exist at common law and the foreign statute of limitations is so interwoven with the statute creating the cause of

[1] The lone exception to this consistent body of Connecticut federal court case law appears to be *Benefit Concepts New York, Inc. v. New England Life Ins. Co.*, No. 3:03CV1456 (DJS), 2004 WL 1737452, at *3-*9 (D. Conn. July 30, 2004). However, that decision did not discuss this long-standing body of case law and appears to have been focused on the parties' contractual choice of law provision. To the extent that *Benefits Concepts* suggests that under Connecticut's choice-of-law principles, statutes of limitations are ordinarily considered to be substantive rather than procedural, this Court rejects that suggestion.

action that forms the basis of the action as to become one of the congeries of the elements necessary to establish the right, [in which event,] that limitation goes with the cause of action wherever brought.' " *Feldt v. Sturm, Ruger & Co.*, 721 F. Supp. 403, 406 (D. Conn. 1989) (quoting *Ensign-Bickford Co.*, 131 Conn. at 669); *see also Stephens*, 162 F. Supp.2d at 42; *Slekis*, 56 F. Supp. 2d at 205; *Baxter*, 230 Conn. at 340; *Ecker v. Town of West Hartford*, 205 Conn. 219, 231 (1987).

Here, however, because Plaintiffs' complaint "sounds in simple negligence, a cause of action recognized at common law and not created by statute," the exception noted above does not apply and therefore, a "Connecticut court would consider the statutes of limitations procedural and would apply the statutes of limitations of the forum, Conn. Gen. Stat. § 52-584." *Slekis*, 56 F. Supp. 2d at 205. Because the Court sits in diversity, we do likewise. Accordingly, the Court DENIES Plaintiffs' Motion to Strike [doc. #12].

IT IS SO ORDERED.

/s/ Mark R. Kravitz
United States District Judge

Dated at New Haven, Connecticut: January 27, 2005