

## Gault and Smith Argue Wrongful Death Products Liability Case Before the Texas Supreme Court

Win Gault and Peyton Smith argued before the Texas Supreme Court on Wednesday on behalf of Mahindra USA Inc. Sharon Garner assisted in the briefing. This wrongful death products liability case presented the Texas Supreme Court with the first opportunity to address the 2015 amendments to the Texas Residency Exception in the Forum Non Conveniens statute. An article from Law360 is below:



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## Tractor Death Suit Belongs In Miss., Texas Justices Hear

By Michelle Casady

Law360 (February 7, 2018, 8:50 PM EST) -- Counsel for tractor manufacturing company Mahindra USA Inc. told the Texas Supreme Court in oral arguments Wednesday that a lawsuit brought in Houston by the sons of a man who died while using a tractor at his home in Mississippi must be tossed because it doesn't belong in Texas courts.

Edwin S. Gault of Forman Watkins & Krutz LLP told the court that the trial court disregarded the doctrine of forum non conveniens in allowing the lawsuit to stay in Texas simply because Venice Cooper's sons are Texas residents, arguing

that the Texas residency exception in the statute shouldn't apply because the sons filed “representative claims” on behalf of their father. Gault said the case “involves a Mississippi resident who died at his Mississippi home while working on his Mahindra tractor which he purchased in Mississippi.”

Justice Debra Lehrmann asked whether Gault would agree that the sons have their own claims, rather than simply representative claims. Gault said he would not, explaining that the sons' claims are not “independent or distinct,” so they don't fall within the Texas residency exception.

“We believe Mississippi law applies to the two sons' wrongful death and survival claims,” Gault said, “and under Mississippi law, wrongful death and survival claims are characterized as representative claims. Because Mississippi characterizes them as representative, they aren't included in the Texas residency exception.”

Mahindra filed its petition for writ of mandamus with the Texas Supreme Court in January 2017 after the trial court had ruled in August 2016 that because the plaintiffs were Texas residents, the Texas-residency exception applied.

According to court filings, on March 30, 2016, Venice Alan Cooper was using a Mahindra tractor at his home in Webster County, Mississippi, when a hydraulic line ruptured, causing the front-end loader to fall. Venice Cooper was trapped between the tractor's front wheels and the front-end loader and died at the scene of traumatic asphyxiation.

His sons, Jason Cooper and Christopher Cooper, who live in Harris County, Texas, filed a lawsuit there in June 2016, bringing claims for negligence, manufacturing defect, design defect and failure to warn, alleging that the company manufactured and assembled the tractor but failed to outfit it with a mechanical or hydraulic safety device which could have prevented the equipment failure.

Andrew Dao of The Buzbee Law Firm, who represents the Coopers, stressed to the court on Wednesday the Texas ties present in the case — the plaintiffs are Texas residents, Mahindra is headquartered in Houston and its products were assembled in a Texas facility.

Justice Lehrmann asked Dao to respond to Gault's argument that the Coopers' claims are representative.

“Mr. Gault cannot — without incorporating Mississippi law in this case — tell you how plaintiffs' claims are representative under forum non conveniens. He can't do it,” Dao said. “The only way he gets there is if this court decides to say individual claims for wrongful death in Texas don't exist anymore.”

The U.S. Chamber of Commerce filed an amicus brief in the case, arguing the trial court disregarded both the clear language and intent of the forum non conveniens statute by allowing a case with tangential connections to Texas to remain in Texas courts. The Chamber argued that the holding “sows confusion among the business community and risks the type of venue manipulation that the Legislature sought to prevent.”

Mahindra is represented by Edwin S. Gault Jr., Sharon M. Garner and T. Peyton Smith of Forman Watkins & Krutz LLP.

The Coopers are represented by Andrew Dao and Anthony G. Buzbee of The Buzbee Law Firm and Joseph M. Gourrier of Gourrier Law Firm PLLC.

The case is In re: Mahindra USA Inc., case number 17-0019, in the Texas Supreme Court.

--Editing by Marygrace Murphy.

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