

\*\* NOT FOR PRINTED PUBLICATION \*\*

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
BEAUMONT DIVISION

|                                    |   |                              |
|------------------------------------|---|------------------------------|
| BIJU MAKRUKKATTU JOSEPH, et al.,   | § |                              |
|                                    | § |                              |
| <i>Plaintiffs,</i>                 | § |                              |
|                                    | § | CIVIL ACTION No. 1-13-CV-324 |
| v.                                 | § |                              |
|                                    | § | JUDGE RON CLARK              |
| SIGNAL INTERNATIONAL, LLC, et al., | § |                              |
|                                    | § | SJF                          |
| <i>Defendants</i>                  | § |                              |

**ORDER RE: CHOICE OF LAW**

Defendants Signal International Texas, G.P., Signal International Texas, L.P., Signal International, Inc., Signal International, LLC (“Signal Defendants”) (Doc. # 225) and Plaintiffs (Doc. # 226), have filed briefs on choice of law, in accordance with the court’s Order (Doc. # 217).<sup>1</sup> The parties provided the court with briefing regarding the law to apply to breach of contract, fraud, negligent misrepresentation, and agency. The court finds that the breach of contract and fraud claims are governed by Texas law and orders additional briefing on negligent misrepresentation and agency.

**I. Applicable Law**

A federal court sitting in diversity applies substantive law of the forum state. *Bayle v. Allstate Ins. Co.*, 615 F.3d 350, 355 (5th Cir. 2010). The Texas Supreme Court has adopted the Restatement (Second) of Conflict of Laws as the proper expression of its choice-of-law rules. *DeSantis v. Wackenhut Corp.*, 793 S.W.2d 670, 677 (Tex. 1990). Under these rules, unless a true conflict exists between the laws of Texas and the laws of the other jurisdiction, Texas law

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<sup>1</sup> The other Defendants have not filed any briefing on this matter and the deadline set by the court for such briefing has past.

applies, because it is the forum state. *Flagship Credit Corp .v. Indian Harbor Ins. Co.*, 481 F. App'x 907, 910 (5th Cir. 2012) (citing *Duncan v. Cessna Aircraft Co.*, 665 S.W.2d 414, 419 (Tex.1984); *Greenberg Traurig of N.Y., P.C. v. Moody*, 161 S.W.3d 56, 70 (Tex.App.–Houston [14th Dist.] 2004, no pet.)).

## II. Analysis

### A. Breach of Contract and Fraud Claims

Regarding the breach of contract claims and the fraud claims, the parties both argue that Texas law applies because no true conflict exists between the laws of Texas and India. The court agrees with the parties that no true conflict exists between the laws of Texas and the laws of India on breach of contract and fraud. Under Texas's choice-of-law rules, as no true conflict exists, Texas law applies to Plaintiffs' breach of contract and fraud claims. *See Flagship Credit Corp.*, 481 F. App'x at 910.

### B. Negligent Misrepresentation

As to the negligent misrepresentation claims, the court finds that a true conflict between Texas and Indian law exists. Texas law requires a showing of reliance, a pecuniary loss, and the exercise of reasonable care or competence on the part of the speaker, whereas Indian law does not. A true conflict exists, and the court must now determine the appropriate law to apply. The parties' briefs do not appear to be discussing the same alleged misrepresentations. Plaintiffs' briefing seems primarily concerned with the alleged misrepresentations made in India by Defendant Dewan and Defendant Burnett, allegedly as agents of the Signal Defendants. The Signal Defendants' brief discusses only the alleged misrepresentations they, themselves, made in Texas. The Signal Defendants do not appear to take a position on what the appropriate law would be if Plaintiffs established an agency relationship that would confer liability on them as a result of the actions taken by Defendant Dewan and Defendant Burnett in India. Plaintiffs are

ordered to inform the court whether they disagree with the Signal Defendants' position on the law to apply to statements made in Texas. If Plaintiffs do disagree, they shall set out the factual and legal basis for such disagreement. Likewise, the Signal Defendants are ordered to inform the court if they disagree that Indian law would apply if Plaintiffs can establish that the Signal Defendants are liable for the alleged misrepresentations made in India by Defendant Dewan and Defendant Burnett. If so, they shall set out the factual and legal basis for such disagreement.

C. Agency

Plaintiffs provide a detailed comparison of Texas law regarding agency with sections of the Indian Contract Act of 1872, presumably because they plan to argue that Defendant Signal is liable for the actions taken by Defendant Dewan, Defendant Pol, and Defendant Burnett in India. Plaintiffs argue that no true conflict exists. The Signal Defendants provide no choice-of-law analysis. They appear to concede that an agency relationship exists, but that it is limited by the India Emigration Act of 1983. Plaintiffs are ordered to inform the court if they believe that the Signal Defendants' implication of the India Emigration Act of 1983 affects their position that no true conflict exists.

**III. Conclusion**

The court finds that the parties' briefing on the issues of breach of contract and fraud, and the court's review, are sufficient for the court to conclude that Texas law should govern those claims at trial. The parties shall have until March 13, 2015, to submit any additional choice-of-law briefing. Any additional briefing is limited to five pages per side.

So **ORDERED** and **SIGNED** this **6** day of **March, 2015**.



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Ron Clark, United States District Judge