**Florida A & M University Law Review**

Volume 8
Number 1 *The Rule of Law in an Age of Constitutional Uncertainty*
Article 4

Fall 2012

# Getting Nowhere: Florida's Failed Choice of Law Approach to Torts and a Proposal for Change

Shirley A. Wiegand

# GETTING NOWHERE: FLORIDA'S FAILED CHOICE OF LAW APPROACH TO TORTS AND A PROPOSAL FOR CHANGE

*Shirley A. Wiegand**

TABLE OF CONTENTS



> **Alice:** Would you tell me, please, which way I ought to go from here?
> **The Cat:** That depends a good deal on where you want to get to.
> **Alice:** I don't much care where.
> **The Cat:** Then it doesn't much matter which way you go.
> **Alice:** . . .so long as I get SOMEWHERE.

* Professor Emeritus, Marquette University Law School; Visiting Professor, Florida A&M University College of Law, 2008-11. B.A., 1976, Urbana College; M.S. 1980, J.D., 1983, University of Kentucky.

**The Cat:** Oh, you're sure to do that, if only you walk long enough.[1]

## I. INTRODUCTION

In 2011, American state and federal courts reported nearly 5,000 choice of law cases.[2] This no doubt represents only the tip of the iceberg; it is difficult to know how much time and money are spent on similar unreported cases at both the trial and appellate court levels. When one takes into account the hours invested by both courts and attorneys in choice of law disputes annually, the financial investment is staggering.

Choice of law disputes have always presented challenges, but until the 1960s, such disputes occurred far less often and involved far less time than they do today. In that "life was simpler" world, all courts followed traditional, First Restatement principles that made choice of law decisions fairly predictable. For contracts, courts applied *lex loci contractus* – the law of the place of contracting; for tort, *lex loci delicti*, the law of the place of wrong or place of injury; and for property disputes, *lex situs*, the law of the place where the property was located. The principles were simple and predictable, albeit at times irrational.

Beginning in the 1960s, though, states began to abandon traditional choice of law analysis and to explore a variety of alternatives. A latecomer to the choice of law revolution, the Florida Supreme Court waited until 1980 to reject *lex loci delicti* for tort. It instead adopted the Restatement (Second) of Conflict of Laws as its choice of law methodology for tort issues, noting, "In doing so we join with numerous other state courts which have adopted the more flexible, modern approach to this aspect of conflicts of law."[3] This more "flexible" approach has proven to be an unmitigated failure and, in a state like Florida where the number of out-of-state visitors promises an unending supply of choice of law cases, an expensive one as well.

---

1. LEWIS CARROLL, ALICE'S ADVENTURES IN WONDERLAND 89-90 (Boston, Lee and Shepard 1869) (1865).

2. Symeon C. Symeonides, *Choice of Law in the American Courts in 2011: Twenty-Fifth Annual Survey*, 60 AM. J. COMP. L. 291, 293 n.5 (2012). In diversity cases, federal courts must apply the law of the state, including its choice of laws methodology. Klaxon Co. v. Stentor Elec. Mfg. Co., 313 U.S. 487 (1941); Erie R.R. v. Tompkins, 304 U.S. 64 (1938).

3. Bishop v. Florida Specialty Paint Co., 389 So. 2d 999, 1001 (Fla. 1980). The Florida Supreme Court came close to rejecting traditional analysis in a much earlier case, then backed away. *See* Hopkins v. Lockheed Aircraft Corp., 201 So. 2d 743 (Fla. 1967).

Florida scholars have from time to time tracked the state's success with the Restatement (Second).[4] Less than ten years after its adoption, the authors of one article, after lamenting the courts' lack of "expertise in conflicts doctrine," noted hopefully, "One would hope . . . that the courts work through the growing pains that accompany adoption of a new doctrine."[5] Two years later, another scholar referred to the Florida Supreme Court's application of the Second Restatement as a story of "disintegration, confusion, and collapse."[6] And six years later, in 1995, one scholar noted the "widespread confusion" created as the state judiciary, lacking clear guidance from the state's highest court, "has largely shifted for itself as it extemporizes solutions within the notoriously open-ended standards of the *Restatement*."[7]

Since that first fifteen years of Florida's experience with the Second Restatement, another seventeen years have passed. The Florida courts still do not seem to know what to do with the Restatement, and attorneys are still left out in the cold, uncertain not only about the law the court might apply to choice of law issues, but also about the Restatement methodology the court might use, if any.

This article surveys the 150 cases decided in Florida under its "flexible" approach. The survey clearly demonstrates that the Restatement (Second) has proven unworkable, but it also demonstrates that some significant patterns have emerged from the courts' decisions. Those patterns can form the basis for a new choice of law approach consisting primarily of rules with additional operational standards. The rules, drawn from 150 cases decided by Florida courts since 1980, would constitute a true "restatement" of Florida's current law.

## II. Choosing Flexibility over Predictability

Florida is not alone in its confusing approach to choice of law. Some have suggested that courts over-reacted to the rigid simplicity of the traditional choice of law approach and instead adopted approaches

4. *See, e.g.,* Michael S. Finch, *Choice of law Problems in Florida Courts: A Retrospective on the* Restatement (Second), 24 Stetson L. Rev. 653, 655-71 (1995); Harold P. Southerland, *A Screaming Comes Across the Sky – Tort Choice of Law Doctrine in Florida under the Second Restatement of Conflicts,* 40 Mercer L. Rev. 781, 796-817 (1989).

5. Michael Finch and Lora Smeltzly, *The Restatement Second and Conflict of Laws: Extending the Bishop Approach to Problems in Contract,* 16 Stetson L. Rev. 261, 270 (1987).

6. Southerland, *supra* note 4, at 782. Professor Southerland's title refers to the first line of Thomas Pynchon's novel, *Gravity's Rainbow,* which he describes as a novel of "disintegration, confusion, and collapse" as he compares it to the Court's use of Restatement (Second).

7. Finch, *supra* note 4, at 653.

that offer too much flexibility.[8] A brief history demonstrates that the First Restatement's focus on predictability and uniformity led to irrational results, but that the Second Restatement's focus on flexibility has led to arbitrary and unpredictable decision-making.

Beginning in the middle of the twentieth century, First Restatement principles came under increasing attack by judges, lawyers, and scholars alike. The place of injury rule in particular drew criticism in those circumstances when it seemed purely arbitrary. For example, if a Florida plane with a Florida pilot carrying twelve Florida citizens took off from Miami on its way to New York and happened to crash in South Carolina, it made little sense for South Carolina law — the law of the place of injury — to govern all of the disputed issues. Many courts began to question such rigidity and devised a series of escape devices to bypass the place of injury rule. Sometimes they rejected the law of the place of injury under the "public policy" exception, i.e., refusing to apply another state's law when that law violated the forum's own public policy.[9] Other times they characterized the tort issue as a contractual dispute[10] or a dispute involving status[11] in order to justify the application of some law other than the law of the place of injury. Some courts chose to treat the disputed issue as one of procedure rather than as substance,[12] thus permitting them to apply their own law.

During the 1960s, a number of states rejected outright the traditional principles in favor of more flexible, interest-based rules. Today, only ten states follow traditional principles for tort and only twelve for contract.[13] In contrast, twenty-four states now follow the 1971 Restatement (Second) of Conflict of Laws for tort and twenty-

8. *See, e.g.*, Michael H. Gottesman, *Adrift on the Sea of Indeterminacy*, 75 IND. L.J. 527, 527 (2000); Alfred Hill, *For a Third Conflicts Restatement – But Stop Trying to Reinvent the Wheel*, 75 IND. L.J. 535, 538 (2000); Friedrich K. Juenger, *A Third Conflicts Restatement?*, 75 IND. L.J. 403, 403 (2000); Paul v. Nat'l Life, 352 S.E.2d 550, 551 (W. Va. 1986); FRIEDRICH K. JUENGER, CHOICE OF LAW AND MULTISTATE JUSTICE 235 (1993); Shirley A. Wiegand, *Fifty Conflict of Laws "Restatements": Merging Judicial Discretion and Legislative Endorsement*, 65 LA. L. REV. 1, 4 (2004-05).

9. *See* Loucks v. Standard Oil Co. of New York, 120 N.E. 198 (N.Y. 1918).

10. *See, e.g.*, Levy v. Daniels' U-Drive Auto Renting Co., 143 A. 163 (Conn. 1928). *See also* Florida Steel Corp. v. Whiting Corp., 677 F. Supp. 1140, 1141 n.1 (M.D. Fla. 1988); Herndon v. Government Employees Ins. Co., 530 So. 2d 516 (Fla. Dist. Ct. App. 1988).

11. See, *e.g.*, Haumschild v. Continentl Cas. Co., 95 N.W.2d 814 (Wis. 1959).

12. See, *e.g.*, Grant v. McAuliffe, 264 P.2d 944 (Cal. 1953).

13. Courts in the following states rely upon traditional principles for tort (T) and/or contract (C): Alabama (T&C), Florida (C), Georgia (T&C), Kansas (T&C), Maryland (T&C), New Mexico (T&C), North Carolina (T), Oklahoma (C), Rhode Island (C), South Carolina (T&C), Tennessee (C), Virginia (T&C), West Virginia (T), and Wyoming (T&C). Symeonides, *supra* note 2, at 308-09.

three for contract disputes.[14] This methodology incorporates a place of injury rule as the presumptive rule for most tort cases and the place of making for most contract cases, but it also calls for a consideration of a number of other factors and interests. Its strength is its flexibility, arguably taking into account various factors when they are most relevant in the particular case. In fact, it has become so flexible that one would be hard-pressed to predict the choice of law outcome in any dispute.

The Restatement (Second) can of course no longer be called "modern" – it was completed over forty years ago[15] – but no one can dispute its flexibility. No one can dispute its complexity, either. Once a court determines that the laws of at least two different states or countries are in conflict, the Restatement (Second) requires a fairly complicated three-step process to choose the applicable law.

One must first examine the Restatement to determine whether it provides for a "presumptive" law that should apply — unless some other state or country has a "more significant relationship" with the event and the parties. For example, section 146 provides:

> In an action for a personal injury, 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.[16]

The Restatement (Second) requires courts to apply the law of the place of injury unless that presumption is overcome.

The second step requires the courts to consider certain key contacts in making their evaluation. For example, for tort issues courts should take into account not only the place of injury, but also the place of the injury-causing conduct, "the domicile, residence, nationality, place of incorporation and place of business of the parties, and . . . the place where the relationship, if any, between the parties is centered."[17]

Finally, and most importantly, once a court has determined the presumptive rule and the key contacts, it is to apply the Second Restatement's Section 6 General Choice of Law Principles that pertain to every kind of issue – contract, tort, property, etc. Those Principles represent the heart of the Restatement and demonstrate that this "modern" methodology is a clear break from the old. While traditional methodology asked "where," the new asks what, who, why, and how.

---

14. Symeonides, *supra* note 2, at 308-09.
15. *See* RESTATEMENT (SECOND) OF CONFLICT OF LAWS (1971).
16. RESTATEMENT (SECOND) OF CONFLICT OF LAWS §146 (1971)(emphasis added).
17. *Id.* §145.

Choice of law does not focus on counting contacts or determining where a key event took place; instead, it examines the substance of each arguably applicable law and asks why a state adopted that law, what purpose it was designed to serve, why it might or might not apply in each particular case, and how its specific application in each case might or might not serve the law's purpose. In choice of law language, it clearly incorporates Professor Brainerd Currie's "interest analysis."[18] The Restatement (Second) requires a court in all cases to examine each of the Section 6 General Choice of law Principles:

(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.[19]

The result is that any court adopting the Restatement (Second) must be committed not only to counting the contacts but also to conducting a careful policy- and interest-based analysis. It is a process for neither the faint of heart nor perhaps for busy judges.

While the First Restatement's greatest strength was its predictability, today's Second Restatement demonstrates that predictability has all but disappeared. Choice of law has become a litigator's paradise, a judge's playpen, a scholar's career. This article proposes an alternative to Restatement (Second) for tort issues, an approach that offers both predictability and rationality while basing its choice of law approach on each state's own common law. It uses the state of Florida as a focal point.

## III. RE-STATING THE LAW

It is imperative that states find a way to make the choice of law decision more predictable without sacrificing the advantages of a policy- and interest-based approach.[20] Traditional choice of law rules, incorporated into the First Restatement, offered the utmost in predict-

18. Professor Currie's writings date to the late 1950s and are most accessible in BRAINERD CURRIE, SELECTED ESSAYS ON THE CONFLICT OF LAWS (Duke University Press 1963).

19. RESTATEMENT (SECOND) OF CONFLICT OF LAWS §6 (1971).

20. *See* Wiegand, *supra* note 8.

ability. But those rules did not take into account the interests and policies of the people and states involved. They were jurisdiction-selecting, concerned only with where a particular event took place and unconcerned with the content of the law prior to its application. It was far easier to routinely apply the law of the place of injury, no matter what it was and whether it made sense.

On the other hand, modern approaches like the Second Restatement focus on the laws of each arguably concerned state and on the interests of each state, the policies involved, the interests of the parties themselves, and a host of other factors. If one could devise a set of rules that make the choice of law simple and predictable yet incorporate the concerns reflected in the Second Restatement, one would have combined the best of both approaches. And if those rules were based on decisions already rendered by the state's courts, decisions that presumably reflect the state's policies and interests, the rules would demonstrate respect for and a close adherence to the state's values and its common law. Even if the courts of a given state have routinely misapplied their own interest-based analysis, a set of rules based on their decisions would at least reflect what they have done and will likely continue to do anyway. As one scholar has noted, courts will do what they will, regardless of their articulated reasoning.[21]

The best approach may be to bring such decision-making out in the open and adopt a body of rules based on that decision-making. Given that choice of law has historically developed through common law, basing predictable rules on that common law is preferable to creating a new approach out of whole cloth. Reliance on the state's own common law may also mean that the state's judiciary will find the new approach both acceptable and understandable. What I am proposing can best be described as a true "restatement" approach.

Currently, choice of law in this country is determined primarily through Restatements of Conflict of Laws. Thirty-eight states rely upon either the First or Second Restatement of Conflict of Laws in making choice of law decisions, and the others have borrowed heavily from such Restatements.[22] But what exactly is a Restatement? Is it an attempt to survey and then summarize — *re-state* — existing law?

21. Robert A. Leflar, *Conflicts Law: More on Choice-Influencing Considerations*, 54 CAL. L. REV. 1584, 1586 (1966).

22. For example, six states use the "significant contacts" test for either tort or contract, or both, which often requires reliance on relevant contacts taken from the Second Restatement. Ten states use a "combined modern" approach, again relying heavily on aspects of the First or Second Restatements of Conflict of Laws. For a list of the states and their approaches, see Symeonides, *supra* note 2, at 308-09.

Or is it something else? The American Law Institute (ALI), founded in 1923, is responsible for drafting Restatements of the Law in a variety of fields.[23] Its first project was to "address uncertainty in the law through a restatement of basic legal subjects that would tell judges and lawyers *what the law was*."[24] In other words, the ALI would provide a tool that would attempt to clarify the current state of the law.

Its work on the first Restatement of the Conflict of Laws did just that. It reviewed the common law of courts from around the country, all of which followed some form of traditional choice of law principles, then incorporated those principles into the Restatement of Conflict of Laws, published in 1934. Criticism of the first Restatement began shortly thereafter, and just twenty years later, the ALI began work on the Second Restatement. By this time, a number of scholars had begun formulating their own ideas of how choice of law decisions should be made, and many of these scholars participated in the ALI's drafting process.[25] The process lasted seventeen years and resulted in a document that has been called "a total disaster," "chaos," "gibberish," "a veritable playpen for judicial policymakers," and "a conflicts mine field in a maze constructed by professors drunk on theories."[26] It is not a "re-statement" of the law; rather, it is a combination of scholars' ideas of what the law *should* be. Perhaps because it is so unfocused, "[t]rying to be all things to all people,"[27] it can reasonably be considered a failure.

## IV. FLORIDA'S EXPERIENCE WITH THE RESTATEMENT (SECOND)

Since its adoption of a "modern" approach to choice of law for tort issues thirty-two years ago, Florida's state courts, its federal district courts, and the Eleventh Circuit Court of Appeals have reported at least 150 cases that required litigation of choice of law tort issues.

23. *About the American Law Institute*, http://www.ali.org/doc/thisIsALI.pdf, at 1. During its first twenty years, the American Law Institute drafted Restatements of the Law for Agency, Conflict of Laws, Contracts, Judgments, Property, Restitution, Security, Torts, and Trusts. It has since expanded its focus to a number of additional Restatements including second and third restatements in some areas. *Id.*

24. *Id.*

25. The ALI consists of "prominent American judges, lawyers, and teachers," elected to membership in the organization. *About the American Law Institute*, *supra* note 23, at 1.

26. Gottesman, *supra* note 8, at 527; Hill, *supra* note 8, at 538; Juenger, *A Third Conflicts Restatement?*, *supra* note 8, at 403; Paul v. Nat'l Life, 352 S.E.2d 550, 551 (W. Va. 1986); JUENGER, CHOICE OF LAW AND MULTISTATE JUSTICE, *supra* note 8, at 235; Wiegand, *supra* note 8, at 4.

27. Douglas Laycock, *Equal Citizens of Equal and Territorial States: The Constitutional Foundations of Choice of Law*, 92 COLUM. L. REV. 249, 253 (1992).

Ninety-eight of those – over sixty-five percent — have been decided in the past fifteen years. In other words, rather than decreasing (as one would expect if courts applied a consistent, predictable analysis to tort issues), the number of such cases has increased. In addition, federal court decisions – those in which the courts must guess at what the state court would do[28] – represent the majority of all such decisions; in the federal district courts, seventy-four percent of all tort choice of law cases decided since Florida adopted Restatement (Second) have arisen just since 2000.

More than thirty years after Florida adopted the Restatement (Second) for tort issues, its "more flexible, modern approach" has created chaos. It is safe to say there is neither uniformity nor predictability in this area of the law. It is also safe to say such chaos has cost lawyers and their clients many thousands of dollars and the court many thousands of hours. The state has continued to follow traditional analysis for contract issues, a decision that seems wise considering its experience with a "modern" approach for torts.

It is unlikely that the Florida courts will improve in their application of the Second Restatement. After all, they have had thirty-two years to do so and have not. An analysis of 150 cases[29] reveals that more than seventy percent of the time, courts fail to utilize the most important part of Second Restatement analysis, the crucial Section 6 General Choice of law Principles.[30] Not surprisingly then, given that Section 6 is the only section that reflects an interest analysis approach, courts rarely mention interest-analysis considerations. They refer to the Second Restatement's presumptive rule less than forty percent of the time. And over seventy percent of the time, they rely almost exclusively on the Section 145 list of "contacts to be taken into account." Most of the courts simply list some or all of those contacts, count them up, and choose the law of the one that has the most contacts or the

28. *See supra* note 2.

29. See Appendix A for a list of the cases included in this analysis. It is, of course, possible that a few cases have been overlooked, so the list does not purport to include every such case during this thirty-year period. It does include most of them, however.

30. There are exceptions, though none of them include decisions by the state's highest court. *See e.g.*, Nelson v. Freightliner, LLC, 154 Fed. Appx. 98 (11th Cir. 2005); Piamba Cortes v. American Airlines, Inc., 177 F.3d 1272 (11th Cir. 1999); Estate of Miller v. Thrifty Rent-A-Car Sys., Inc., 609 F. Supp. 2d 1235 (M.D. Fla. 2009); Pycsa Panama, S.A. v. Tensar Earth Tech., Inc., 2008 U.S. Dist. LEXIS 31457 (S.D. Fla. 2008); Medina v. American Airlines, Inc., 2005 U.S. Dist. LEXIS 18916 (S.D. Fla. 2005); *In re* Air Crash Near Cali, Colombia on Dec. 20, 1995, 1997 U.S. Dist. LEXIS 14143 (S.D. Fla. 1997); Connell v. Riggins, 944 So. 2d 1174 (Fla. Dist. Ct. App. 2006); Mezroub v. Capella, 702 So. 2d 562 (Fla. Dist. Ct. App. 1997); Wal-Mart Stores, Inc. v. Budget Rent-A-Car Sys., 567 So. 2d 918 (Fla. Dist. Ct. App. 1990).

contacts that the court believes are most relevant, without explaining their relevance. Most of the time, no attention is given to policies or states' interests. The analysis becomes merely a matter of contact-counting, bearing almost no relationship to the Second Restatement while purporting to follow it.

Recently, one federal district court judge criticized the defendants' choice of law argument for just this error:

> "[T]hey mechanically tally up the four contacts listed in section 145(2) . . . without even acknowledging the analysis required by section 6 . . . . [W]e cannot simply add up the factors . . . and then apply the law of the sovereign with the greatest numerical total . . . . Rather, we must, as mandated . . . , turn to the factors delineated in section 6 to determine which sovereign has the most significant contacts.[31]

And yet, most Florida state and federal courts ignore section 6 altogether.

Despite this practice, Florida courts often reach a reasonable result, no matter what methodology they purport to follow. They applied the law of the place of injury over sixty percent of the time, even when they failed to mention the Restatement's strong place-of-injury presumption. For out of state injuries, Florida courts overcame a natural inclination to apply their own law and instead applied Florida law just over twenty-two percent of the time. Thus, place of injury takes center stage in Florida decisions, just as it does in the Second Restatement when properly applied. The courts were most often reluctant to apply the law of the place of injury when the injury was the *only* contact with that place and when that place was merely "fortuitous" or a matter of "happenstance."[32]

A review of the cases since the Florida Supreme Court adopted the Second Restatement for tort leads to two important conclusions. First, applying the Restatement (Second) in the manner that its drafters intended takes a significant amount of time and analysis, which probably explains why courts rarely do so. One United States District Court opinion included twenty pages dedicated to a careful Restatement (Second) application.[33] Another dedicated eighteen pages to the

31. Canon Latin Am., Inc. v. Lantech (C.R.) S.A., 2011 U.S. Dist. LEXIS 6267, 12-17 (S.D. Fla. 2011).

32. *See, e.g.*, Crowell v. Clay Hyder Trucking Lines, Inc., 700 So. 2d 120 (Fla. Dist. Ct. App. 1997); Harris v. Berkowitz, 433 So. 2d 613 (Fla. Dist. Ct. App. 1983); Futch v. Ryder Truck Rental, Inc., 391 So. 2d 808 (Fla. Dist. Ct. App. 1980).

33. *See* Pycsa Panama, S.A. v. Tensar Earth Tech., Inc., 2008 U.S. Dist. LEXIS 31457 (S.D. Fla. 2008).

subject.[34] On the other hand, courts that engage in simple contact-counting have a much easier job of it, most of them devoting less than one page to the choice of law discussion.

Second, one cannot predict either the methodology the court will follow or the result it will reach. But — and this is the crucial point — some "rules" have emerged from the court's analysis, which, if acknowledged and adopted as part of a choice of law codification, will make the court's task easier and its results more predictable. This article next focuses on finding and articulating these rules – providing a true re-statement for Florida courts.

## V. A New Approach

It is clear that Florida – like many other states – requires a new approach to choice of law. The Second Restatement, though it includes a series of "presumptive" rules, is more accurately considered an "approach" to choice of law, a guideline or standard that courts consider in making individual *ad hoc* decisions for every case. It appears that in rejecting the rigid rules of the First Restatement, courts have over-reacted, opting for no rules at all. But rules have their place. They offer predictability and can include exceptions that provide flexibility; a number of choice of law scholars believe that the "pendulum has begun swinging back" to a rule-based methodology.[35]

What sort of rules? Here again, there are options. Rules can be made from whole cloth or from a combination of features from various choice of law methodologies. The latter is the approach taken recently by two different states in devising their own choice of law statutes. In both cases, state law reform commissions drafted comprehensive choice of law statutes which have now become law.[36]

Louisiana, the country's only civil code state, was the first to pass a choice of law code.[37] The project took four years and received approval from an advisory committee, then the Council of the Louisi-

34. *See In re* Air Crash Near Cali, Colombia on Dec. 20, 1995, 1997 U.S. Dist. LEXIS 14143 (S.D. Fla. 1997).

35. Symeon Symeonides, *Oregon's New Choice-of-Law Codification for Tort Conflicts: An Exegesis*, 88 Or. L. Rev. 963, 970 (2009).

36. *See* La. Civ. Code Ann. arts. 14, 3515-3549 (2009), effective in 1992, and Oregon Laws Ch. 451 (S.B. 561), effective January 1, 2010. Both were drafted by state law reform commissions comprised of members of all branches of government as well as members from other legal organizations and law faculties in the state. In both cases Conflict of Law Professor Symeon Symeonides served as the Reporter.

37. *See* La. Civ. Code Book 4, arts. 3515-3549 (2012).

ana State Law Institute, and finally the Louisiana legislature.[38] The code reflects threads of modern choice of law methodologies drawn from a variety of sources and has been met with mixed reviews.[39]

Oregon recently completed choice of law legislation for contract and tort disputes.[40] It too began with proposed legislation drafted by a state law reform commission and was then adopted first for contracts in 2001 and then for tort in 2010.[41] According to one of its principal architects, the new tort rules "drew on the vast experience of American courts in deciding tort conflicts in the four decades since the choice-of-law revolution began, as well as the experience of other jurisdictions in drafting rules for tort conflicts." Those jurisdictions included eighteen foreign countries, international conventions, the Second Restatement, and a host of other sources.[42] The result is a body of rules governing most issues, as well as a Second Restatement-like approach for those issues not addressed by the rules.

What neither state has done is to adopt choice of law legislation based on its own common law. Under this approach, a law reform commission or legislative committee would examine the state's common law history under whatever methodology the state has previously adopted, try to find patterns for at least those issues that arise with some regularity, and, based on those findings, develop choice of law rules, i.e., individual state "re-statements," to govern key choice of law areas in the state. Such statutes, based on the state's own common law, presumably already incorporate state policies. In Florida, for example, courts have clearly used methodological shortcuts to reach choice of law results, but the results themselves are surprisingly consistent. Thus, courts seem to have reached the "right" decision regardless of methodology, and those decisions most likely took into account underlying policies and interests – the sort of decisional concerns that courts routinely incorporate.

A law reform commission formed under the authority of the state's legislature with members representing many state constituencies would thus honor the efforts of the judicial branch while engaging

38. *See* Wiegand, *supra* note 8, at 13. For a fuller discussion of the Louisiana project, see Symeon C. Symeonides, *Louisiana's New Law of Choice of Law for Tort Conflicts: An Exegesis*, 66 TUL. L. REV. 677 (1992).

39. For a discussion of the Louisiana choice of law code and its critics, see Wiegand, *supra* note 8, at 13-16.

40. *See* Symeonides, *supra* note 35. *See also* James A.R. Nafziger, *Oregon's Conflicts Law Applicable to Contracts*, 38 WILLAMETTE L. REV. 397 (2002).

41. *See* Or. Rev. Stat. §§81.100-81.135 (2010) (contract choice of law); 2009 Or. Laws Ch. 451 (S.B. 561) (torts and non-contractual claims).

42. Symeonides, *supra* note 35, at 973 n.50.

as well representatives of the legislative and executive branches and a number of other state representatives. The result would be a written product that reflects the state's policies and jurisprudence – what I have termed a "true 'restatement' of the law" that merges judicial discretion and legislative endorsement.[43]

In the meantime, if the law reform process seems too daunting for states, or if the process promises to take too long, the state's judiciary itself might adopt a body of choice of law "rules" for recurring issues, based on their own precedent in similar cases. Those rules may serve as the basis for statutory reform at a later date.

The goal is to provide choice of law predictability, uniformity, and certainty in those areas that dominate the choice of law terrain. As expressed by one frustrated New York judge:

> The time has come . . . for us to endeavor to minimize what some have characterized as an *ad hoc* case-by-case approach by laying down guidelines, as well as we can, for the solution of . . . conflicts problems. We have had sufficient experience with enough variations of the patterns of fact and law in this type of case to permit us to acknowledge that several choice of law rules governing different types of fact patterns have been forged by our recent decisions.[44]

Reviewing the choice of law history of just one state — Florida — demonstrates that such an approach is workable and promises to increase predictability in this chaotic area of the law. Below are a few of the "rules" that Florida's judiciary or a law reform commission might adopt for issues relating to torts.

## VI. The Rule of the Common Domicile

> One of the clear trends emerging from the conflicts revolution is the widespread acceptance of the notion that, when the tortfeasor and the victim are domiciled in the same state and the conflict in question involves loss-distribution (as opposed to conduct-regulation) issues, the law of the common domicile should govern, even if both the conduct and the injury occurred in another state.[45]

The rule of common domicile dictates that when both or all of the parties are from the same state, the law of that state should be applied, no matter where the tort took place. This rule makes sense. The parties have all chosen to affiliate with a particular state. They

43. *See* Wiegand, *supra* note 8, at 2.

44. Tooker v. Lopez, 249 N.E.2d 394, 403 (N.Y. 1969) (Fuld, C.J., concurring).

45. Symeon C. Symeonides, *Choice of Law in the American Courts in 2007: Twenty-First Annual Survey*, 56 Am. J. Comp. L. 243, 256 (2008).

benefit from its laws and bear the concomitant responsibilities. They have impliedly agreed to abide by its laws. In addition, that state is the one state that would have the greatest interest in the parties' welfare.

In addition, the common domicile rule has a rich history. Nearly forty years ago, it was one of the three rules adopted by the New York Court of Appeals for resolving cases involving automobile guest statutes. The rule continues there today and not simply for guest statute disputes. Its origin can be traced to 1963 in *Babcock v. Jackson*,[46] a case that involved a New York driver, a New York passenger, and a one-car accident in Ontario. Under New York law the passenger could have sued the driver for ordinary negligence, but Ontario's guest statute imposed a higher standard of negligence. The New York Court of Appeals, in rejecting the traditional place-of-injury rule, noted,

> [I]t is New York, the place where the parties resided, where their guest-host relationship arose and where the trip began and was to end. . .which has the dominant contacts and the superior claim for application of its law. . . . the rights and liabilities of the parties which stem from their guest-host relationship should remain constant and not vary and shift as the automobile proceeds from place to place.[47]

In another guest statute case six years later, New York's highest court again focused on the parties' domicile, holding that New York law applied in a case in which the car accident occurred in Michigan and involved a New York driver and a New York passenger.[48] New York, the Court held, "has the only real interest in whether recovery should be granted."[49] Perhaps more important than the Court's majority opinion, however, was Judge Fuld's concurring opinion. He concluded that the Court had had enough experience with guest statute cases to "permit us to acknowledge that several choice of law rules governing different types of fact patterns have been forged by our recent decisions."[50] The first of his three rules (now known as the Neumeier Rules named after the 1972 case in which the court adopted them[51]) was the common domicile rule: when the driver and passenger "are domiciled in the same state, and the car is there registered, the

46. 191 N.E.2d 279 (N.Y. 1963).
47. *Id.* at 284-85.
48. Tooker v. Lopez, 249 N.E.2d 394 (N.Y. 1969).
49. *Id.* at 398.
50. *Id.* at 403.
51. *See* Neumeier v. Kuehner, 286 N.E.2d 454 (N.Y. 1972).

law of that state should control and determine the standard of care which the host owes to his guest."[52]

The common domicile rule applied initially only to guest statute cases. The rationale was that guest statutes are "loss-allocating" rather than "conduct regulating." They assume a tort has taken place; the statute merely determines who should bear the loss as between the two parties. A modern example of a loss-allocating rule is charitable immunity. As with guest statutes, a charitable immunity rule applies only after a tort has taken place and it determines whether or not the tortfeasor charity must pay; it determines how the loss will be allocated. It makes sense to apply the law of the common domicile since it is the only "interested" state, i.e., it is the only state that will be affected by the loss allocating dispute between its two citizens. In addition, the common domicile rule represents "prevailing judicial practice in the United States," as well as a growing trend worldwide.[53]

Issues relating to standards of conduct, i.e., conduct-regulating laws, on the other hand, are designed to regulate the tortious conduct itself. Speed limits are perhaps the simplest example. When tortious conduct takes place in a foreign state, as when a driver is speeding, then the state where the conduct takes place is likely to take an interest in keeping its roads safe. The common domicile, in other words, is not the only state with an interest in the dispute. Thus, an exception to the common domicile rule might occur when the conflict of law issue involves a clearly conduct-regulating law such as the proper standard of care. In that case, though the parties may both be from one state, when they are in another state and violate that state's conduct-regulating rule, the conduct-regulating rule should govern.

Since the adoption of the common domicile rule for guest statute cases, New York courts have adopted it for other loss-allocating rules as well, and other states have begun to follow suit. In 1993, in a worker's compensation case, New York's highest court declared that the rules adopted for guest statute cases "could, in appropriate cases, apply as well to other loss allocation conflicts."[54] By the end of 2011, state supreme courts that had rejected traditional analysis applied the law of the common domicile eighty-five percent of the time.[55]

52. *Id.* The other two rules address situations in which the driver and passenger do not share a common domicile.

53. Symeonides, *supra* note 35, at 1001.

54. Cooney v. Osgood Machinery, Inc., 612 N.E.2d 277, 281 (N.Y. 1993).

55. Symeonides, *supra* note 2, at 313.

One of those cases involved two Florida citizens, a husband and wife involved in a car accident in New Jersey.[56] The passenger wife sued her driver husband, permissible under the law of New Jersey, which had abandoned inter-spousal immunity. However, based on both their common domicile and their marital relationship, centered in Florida, the New Jersey Supreme Court applied Florida's loss-allocating law of inter-spousal immunity.[57]

### *A. Car and Plane Accidents*

Florida cases involve a variety of tort issues, but more than one-third of all choice of law tort cases decided since Florida's adoption of modern analysis arise from car or plane crashes. This includes cases that involve insurance-related issues and rental car company liability so long as the disputed issues are grounded in tort.[58]

The majority of car and plane cases involved parties from different states, the split domicile scenario. However, of the fifty car and plane cases surveyed, sixteen involved parties sharing a common domicile. If one can discern clear patterns from these cases, it is possible that one can begin to fashion a rule applicable to other cases as well.

Although Florida courts have applied the Restatement (Second) inconsistently, they have been fairly consistent in recognizing that the place of injury is often fortuitous and that the law of the common domicile should be applied. In *Crowell v. Clay Hyder Trucking Lines, Inc.*,[59] the Crowells, Florida residents, were the subjects of a hit and run accident in Georgia. The truck which hit them bore the insignia of a Florida trucking company. The court held that Florida law should apply, noting, "Florida decisions have repeatedly held that the

56. *See* Veazey v. Doremus, 510 A.2d 1187 (N.J. 1986).

57. However, in *Waite v. Waite*, 618 So. 2d 1360, 1361 (Fla. 1993), the Florida Supreme Court held that "both public necessity and fundamental rights require judicial abrogation of the [interspousal immunity] doctrine."

58. It does not include cases in which the courts held that contract rather than tort law governed the dispute. Often, it's hard to tell the difference. For example, in *Herndon v. Gov't Employees Ins. Co.*, GEICO argued that the issue of prejudgment interest on an uninsured motorist payment is grounded in tort and subject to the significant relationship test. The court instead treated it as a contract dispute governed by lex loci contractus. See also *Allstate Ins. Co. v. Clohessy*, 32 F. Supp. 2d 1328 (M.D. Fla. 1998). This article focuses exclusively on tort issues, because Florida has retained traditional analysis (place of contracting) for contract disputes. Generally, applying traditional analysis to contract issues provides far more predictability than applying Restatement (Second). Currently, twelve states follow traditional analysis for contract disputes: Alabama, Florida, Georgia, Kansas, Maryland, New Mexico, Oklahoma, Rhode Island, South Carolina, Tennessee, Virginia, and Wyoming. *See* Symeonides, *supra* note 2, at 308-09.

59. 700 So. 2d 120 (Fla. Dist. Ct. App. 1997).

happenstance of an accident's occurrence in another state does not create significant contacts for the purpose of applying that state's law in a conflict of law dispute."[60]

In *Krasnosky v. Meredith*,[61] two Florida residents were returning to Florida after a trip to visit relatives in Atlanta. Their car crashed into a tree in Georgia. In a suit by the Florida passenger against the Florida driver, the court refused to apply Georgia's guest statute, instead opting for Florida's statute that required a showing of only simple negligence. Similarly, in *Harris v. Berkowitz*,[62] two Florida residents were returning to Florida from a Maine summer camp, when their car crashed into a tree in Maine. The court had to determine whose wrongful death statute to apply. It chose Florida's. Despite the fact that the men had attended summer camp in Maine and the accident occurred there, the court still found the place of injury "fortuitous." Maine, it said, bore "little relation to the occurrence," particularly since both parties were from Florida.

Florida courts have applied the common domicile rule even when the parties are from a state other than Florida. In *Leinhart v. Jurkovich*,[63] an Illinois university student in Florida for a swim meet sued his university and Illinois van driver when the team's van was involved in an accident on Florida roads. The court refused to apply Florida's no-fault insurance law, opting instead for Illinois law.

In fact, the court applied the law of the common domicile in nine out of eleven automobile crash cases involving parties from the same state.[64] An exception is *Jones v. Cook*,[65] in which a Florida resident was struck by a vehicle in Georgia where she worked. The defendant was also a Florida resident. Rather than apply Florida's statute of lim-

60. *Id.* at 123.

61. 447 So. 2d 232 (Fla. Dist. Ct. App. 1983)

62. 433 So. 2d 613 (Fla. Dist. Ct. App. 1983).

63. 882 So. 2d 456 (Fla. Dist. Ct. App. 2004).

64. The court applied the law of the common domicile in *Rivas v. Ford Motor Co.*, 2004 U.S. Dist. LEXIS 7535 (M.D. Fla. 2004); *Leinhart v. Jurkovich*, 882 So. 2d 456 (Fla. Dist. Ct. App. 2004); *Mezroub v. Capella*, 702 So. 2d 562 (Fla. Dist. Ct. App. 1997); *Crowell v. Clay Hyder Trucking Lines*, 700 So. 2d 120 (Fla. Dist. Ct. App. 1997); *Beattey v. College Centre*, 613 So.2d 52 (Fla. Dist. Ct. App. 1992)(treating students attending college in New York as New York residents); *Stallworth v. Hospitality Rentals, Inc.*, 515 So. 2d 413 (Fla. Dist. Ct. App. 1987); *Pennington v. Grange Mut. Cas. Co.*, 456 So. 2d 507 (Fla. Dist. Ct. App. 1984); *Krasnosky v. Meredith*, 447 So. 2d 232 (Fla. Dist. Ct. App. 1983); *Harris v. Berkowitz*, 433 So. 2d 613 (Fla. Dist. Ct. App. 1983).

65. 587 So. 2d 570 (Fla. Dist. Ct. App. 1991).

itations under Second Restatement analysis,[66] the court applied Georgia law. It did not mention the crucial Section 6 of the Restatement, noting merely that the plaintiff worked in Georgia and the defendant "did business in Georgia on a regular basis." It did not mention why that might have given Georgia any interest in having its law apply. The court might have relied upon Section 146, comment e, of the Restatement (Second) for support, though it did not. Comment e provides that the presumptive law of the place of injury "is most likely to be applied when the injured person has a *settled relationship* to that state, *either* because he is *domiciled or resides there or* because *he does business there*."[67] The court might have treated place of business as a proxy for domicile, which Section 145 itself does when it lists as a relevant contact either domicile *or* place of business.[68] In fact, in a similar case the court had applied Florida's statute of limitations in a lawsuit filed by a Florida passenger against his Florida driver for an accident in Georgia. The difference between these two cases is that in the latter case, neither party worked in Georgia; they were merely attending a conference there.[69]

The second exception to Florida's application of the common domicile rule for automobile cases is *Hoffman v. Ouellette*.[70] There, both parties were from Quebec, yet the court applied Florida law. The court's decision may have been based on two factors. First, the parties resided in Florida approximately five months a year and the accident occurred in Florida. Second, Florida courts have demonstrated an understandable aversion to applying the law of another country, and, although the court failed to refer to it, Section 6 of the Second Restatement specifically directs courts to consider the "ease in the determination and application of the law to be applied."[71]

The law of the common domicile has been applied as well in plane crash cases. This article does not address mass tort cases involving large commercial planes. Such cases inevitably make choice of law more complex. In consolidated cases, i.e., cases that began by different plaintiffs in different states and consolidated for pre-trial purposes, courts may have to apply different bodies of law to different plaintiffs.

66. Florida adopted Second Restatement analysis for determining where a cause of action "arose" under Florida's borrowing statute, FLA. STAT. § 95.10, in *Bates v. Cook, Inc.*, 509 So. 2d 1112 (Fla. 1987).

67. RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 146 comment e (emphasis added).

68. RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 145.

69. Mezroub v. Capella, 702 So. 2d 562 (Fla. Dist. Ct. App. 1997).

70. 798 So. 2d 42 (Fla. Dist. Ct. App. 2001).

71. Restatement (Second) of Conflict of Laws § 6(g).

A number of choice of law proposals have surfaced to address the mass tort case, but to date mass torts present challenges yet to be resolved (and outside the scope of this article).[72] This article focuses only on cases that involve smaller non-commercial planes.

In *Proprietors Insurance Co. v. Valsecchi*,[73] a plane crashed in North Carolina. The flight began and was to end its journey in Florida. Three men, all temporary residents of Florida attending college in Florida, were killed, and their estates sued the plane's Florida owners and lessors. As the court notes, "North Carolina's *only* connection to the event and the parties was the purely adventitious circumstance that the aircraft crashed" there.[74] Although the three victims were not necessarily domiciled in Florida, the court noted that they were Florida residents, and "Florida's interest lies in the protection of its residents from excessive financial burdens . . . ."[75] The court applied Florida law.

Other plane crash cases involving parties sharing a common domicile led to similar results. In *Watts v. National Insurance Underwriters*,[76] the plane crashed in Louisiana. It was owned by Florida defendants and both the pilot and passengers were Florida residents. The court found the site of the crash fortuitous and applied Florida law.

None of the common domicile car or plane crash cases involved a conduct-regulating rule. All were loss-allocating, i.e., they did not implicate any conduct-regulating rule of the place of injury. Thus, the place of injury had no particular interest in how the case would be resolved when all the parties were from another state. For example, in *Crowell*, the issue involved "ownership of the . . . vehicle."[77] *Krasnosky* involved a guest statute. Both *Harris* and *Proprietors Insurance* involved wrongful death recovery limits and, in addition, *Proprietors Insurance* involved comparative/contributory negligence and the application of Florida's dangerous instrumentality (vicarious liability) doctrine.[78] *Watts*, too, involved the dangerous instrumentality doctrine.

---

72. *See, e.g., In re* Air Crash Disaster Near Chicago, Illinois on May 25, 1979, 644 F.2d 594 (7th Cir. 1981). For a discussion of the choice of law problem for mass torts, see Larry Kramer, *Choice of Law in Complex Litigation*, 71 N.Y.U. L. REV. 547 (1996).

73. 435 So. 2d 290 (Fla. Dist. Ct. App. 1983).

74. *Id.* at 295.

75. *Id.* at 297.

76. 540 F. Supp. 488 (S.D. Fla. 1982).

77. 700 So. 2d at 122.

78. Florida's dangerous instrumentality doctrine has been the subject of a number of conflict of laws cases. That number will undoubtedly decline or stop altogether since the Eleventh Circuit Court of Appeals has ruled that the doctrine imposing strict vicarious

Adopting a common domicile rule for tort cases makes good sense, at least for loss-allocating issues. It is generally what the Florida courts have done anyway and it thus pays homage to both precedent and to the Second Restatement that focuses much of its attention on the interests of the relevant states and on the domicile of the parties. Although the Restatement initially presumes that the law of the place of injury will apply in tort cases,[79] the law of another state will be applied when, "with respect to the particular issue," it has the most significant relationship with the parties and the occurrence.[80]

Relevant Restatement *contacts* under section 145 include the place of conduct and the place of injury, but when the "particular issue" in dispute does not focus on the conduct but rather on who will pay for the loss, then place of conduct and place of injury become less significant in common domicile cases. Other Restatement contacts include the domicile of the parties and the place where their relationship is centered, though most agree that in cases involving unplanned torts between strangers, there is no pre-existing relationship. Thus, of all the contacts listed in section 145, domicile appears the most relevant for common domicile cases involving loss-allocating issues.

The key "choice of law principles" found in section 6 of the Restatement reinforce domicile as a significant factor in common domicile cases. The principles include:

- relevant policies of the forum and other interested states and the "relative interests of those states in the determination of the *particular issue*;"
- "basic policies underlying the *particular field of law*;"
- "certainty, predictability and uniformity of result;" and
- "ease in the determination and application of the law to be applied."[81]

---

liability on car rental companies has been preempted by the Graves Amendment, 49 U.S.C. § 30106. *See* Garcia v. Vanguard Car Rental USA, Inc., 540 F.3d 1242 (11th Cir. 2008). The law of the common domicile was applied in *Stallworth v. Hospitality Rentals, Inc.*, 515 So. 2d at 413, which also involved the dangerous instrumentality doctrine. *Pennington v. Grange Mut. Cas. Co.*, 456 So. 2d at 507, involved interspousal immunity, a loss-allocating issue. That doctrine too has now been abrogated. *See* Waite v. Waite, 618 S. 2d 1360 (Fla. 1993).

79. *See, e.g.*, RESTATEMENT (SECOND) OF CONFLICT OF LAWS §§ 146, 147.

80. RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 146.

81. RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 6 (1971) (emphasis added). Other section 6 factors are less important for unplanned torts. The "protection of justified expectations" applies primarily in contract cases when the parties actually have expectations. The "needs of the interstate and international systems" are best served when simple, neutral, and predictable rules reduce the amount of time and expense involved in choice of law decisions.

Thus, applying a common domicile rule for all cases except those involving a standard of care does not represent any change in result. It simply means that courts and lawyers will spend less time and money in reaching that result. It is logical and predictable.

### *B. Other Common Domicile Cases*

The common domicile rule may also be a good rule for cases that do not involve car or plane crashes. There is nothing inherently special about cases involving car or plane crashes such that the common domicile rule should be reserved exclusively for them. In the few Florida common domicile cases that did not involve car or plane crashes, the courts applied the law of the common domicile regardless of whether the issue was loss-allocating or conduct-regulating.[82] Just as with car and plane crash cases, the parties in a common domicile case have all chosen to affiliate with a particular state and have impliedly agreed to abide by its laws. They benefit from those laws and should bear the burden as well. In addition, that common state is the one state that likely would have the greatest interest in the parties' welfare.

## VII. SPLIT DOMICILE CASES

### *A. Car and Plane Accidents*

The majority of Florida choice of law decisions for cases involving car crashes involves parties from different states. Of the twenty-five split domicile cases analyzed,[83] the court applied the law of the

82. *See* Central Trust Co. v. Shepard (*In re* Shepard), 29 B.R. 928 (1983 Bankr. LEXIS 6201); Robinson v. Merkle, 700 So. 2d 723 (Fla. Dist. Ct. App. 1997) (all parties resided in West Virginia at the time of the alleged medical malpractice though doctor later moved to Florida); Walsh v. Arrow Air, Inc., 629 So. 2d 144 (Fla. Dist. Ct. App. 1993).

83. Judge v. Am. Motors Corp., 908 F.2d 1565 (11th Cir. 1990); Miller v. Thrifty Rent-A-Car Sys., Inc., 609 F. Supp. 2d 1235 (M.D. Fla. 2009); Potts v. Budget Rent A Car Sys., Inc., 2005 U.S. Dist. LEXIS 27536 (N.D. Fla. 2005); Estate of Miller v Ford Motor Co., 2004 U.S. Dist. LEXIS 30811 (M.D. Fla. 2004); Barton v. Hertz Corp., 35 F. Supp. 2d 1377 (M.D. Fla. 1999); Liberty Mut. Ins. Co. v. Elec. Sys., Inc., 813 F. Supp. 802 (S.D. Fla. 1993); Hertz Corp. v. Piccolo, 453 So. 2d 12 (Fla. 1984); State Farm Mut. Auto. Ins. Co. v. Olsen, 406 So. 2d 1109 (Fla. 1981); Connell v. Riggins, 944 So. 2d 1174 (Fla. Dist. Ct. App. 2006); Sierra v. A Betterway Rent-A-Car, Inc., 863 So. 2d 358 (Fla. Dist. Ct. App. 2003); Jenkins v. Rockwood, 820 So. 2d 426 (Fla. Dist. Ct. App. 2002); Brown v. Nat'l Car Rental Sys., Inc., 707 So. 2d 394 (Fla. Dist. Ct. App. 1998); Deemer v. Budget Rent-A-Car Sys., Inc., 704 So. 2d 133 (Fla. Dist. Ct. App. 1997); Ryder Truck Rental, Inc. v. Rosenberger, 699 So. 2d 713 (Fla. Dist. Ct. App. 1997); Aetna Cas. & Surety Co. v. Huntington Nat'l Bank, 587 So. 2d 483 (Fla. Dist. Ct. App. 1991); Commerce Ins. Co. v. Atlas Rent A Car, Inc., 585 So. 2d 1084 (Fla. Dist. Ct. App. 1991); Wal-Mart Stores, Inc. v. Budget Rent-A-Car Sys., 567 So. 2d 918 (Fla. Dist. Ct. App. 1990); Barker v. Anderson, 546 So. 2d 449 (Fla. Dist. Ct. App. 1989); Avis

place of injury in nineteen of them, or seventy-six percent of the time.[84] But when one of the parties resided in the same state as the place of injury (in fifteen cases), the court applied the law of the place of injury every time.[85]

Applying the law of the place of injury in split domicile cases can be justified in a number of ways. First and most importantly, when the parties are from different states, the place of injury is likely the only place with which all parties have chosen to associate. Second, when there is a car crash the place of injury does provide some services such as police, ambulance, and hospital services. Third, the choice of place of injury furthers at least two of the seven Restatement choice of law principles: it promotes certainty, predictability, and uniformity of result and it furthers the needs of the interstate systems. Choosing between the laws of different states can result in interstate friction, and choosing one's own law appears parochial.

Several plane crashes involved split domicile as well. Unless the crash involved large, consolidated cases[86] or a crash over foreign soil,[87] Florida courts have applied the law of the place of injury for split domicile cases.[88] When the parties do not share a common domicile, conflict of laws decisions become more difficult and the place of injury can serve as a default. That is not always the wisest decision because

---

Rent-A-Car Sys., Inc. v. Abrahantes, 517 So. 2d 25 (Fla. Dist. Ct. App. 1987); AIU Ins. Co. v. Reese, 498 So. 2d 966 (Fla. Dist. Ct. App. 1986); Ploor v. Greyhound Lines, Inc., 474 So. 2d 1280 (Fla. Dist. Ct. App.1985); Amica Mut. Ins. Co. v. Gifford, 473 So. 2d 220 (Fla. Dist. Ct. App. 1985); Andrews v. Continental Ins. Co., 444 So. 2d 479 (Fla. Dist. Ct. App. 1984); Steele v. Southern Truck Body Corp., 397 So. 2d 1209 (Fla. Dist. Ct. App. 1981); Decker v. Great Am. Ins. Co., 392 So. 2d 965 (Fla. Dist. Ct. App. 1981).

84. *See* Potts, 2005 U.S. Dist. LEXIS at 27536; Estate of Miller, 2004 U.S. Dist. LEXIS at 30811; Liberty Mut. Ins. Co., 813 F. Supp. at 802; Hertz Corp., 453 So. 2d at 12; State Farm Mut. Auto. Ins. Co., 406 So. 2d at 1109; Connell, 944 So. 2d at 1174; Sierra, 863 So. 2d at 358; Jenkins, 820 So. 2d at 426; Brown, 707 So. 2d at 394; Ryder Truck Rental, Inc., 699 So. 2d at 713; Aetna Cas. &Surety Co., 587 So. 2d at 483; Commerce Ins. Co., 585 So. 2d at 1084; Barker, 546 So. 2d at 449; Avis Rent-A-Car, 517 So. 2d at 25; AIU, 498 So. 2d at 966; Ploor, 474 So. 2d at 1280; Amica Mut. Ins. Co., 473 So. 2d at 220; Steele, 397 So. 2d at 1209; Decker, 392 So. 2d at 965.

85. *See* Estate of Miller, 2004 U.S. Dist. LEXIS at 30811; Liberty Mut. Ins. Co., 813 F. Supp. at 802; Hertz Corp., 453 So. 2d at 12; State Farm Mut. Auto. Ins. Co., 406 So. 2d at 1109; Connell, 944 So. 2d at 1174; Sierra, 863 So. 2d at 358; Brown, 707 So. 2d at 394; Commerce Ins. Co., 585 So. 2d at 1084; Barker, 546 So. 2d at 449; Avis Rent-A-Car, 517 So. 2d at 25; AIU, 498 So. 2d at 966; Ploor, 474 So. 2d at 1280; Amica Mut. Ins. Co., 473 So. 2d at 220; Steele, 397 So. 2d at 1209; Decker, 392 So. 2d at 965.

86. *See In re* Air Crash Near Cali, Colombia on December 20, 1995, 24 F. Supp. 2d 1340 (S.D. Fla. 1998).

87. *See* Piamba Cortes v. American Airlines, Inc., 177 F.3d 1272 (11th Cir. 1999).

88. *See* Emmart v. Piper Aircraft Corp., 659 F. Supp. 843 (S.D. Fla. 1987); Peoples Bank & Trust Co. v. Piper Aircraft Corp., 598 F. Supp. 377 (S.D. Fla. 1984); Aerovias Nacionales de Colombia, S.A., Avianca, Inc. v. Tellez, 596 So. 2d 1193 (Dist. Ct. App. 1992).

when a dispute arises from a plane crash, place of injury – if that is the only contact – seems quite irrelevant. A plane can crash anywhere and, unlike car crashes, airline passengers have not intentionally entered into a particular state willingly and knowingly, relying upon its public services along the way.

Nevertheless, Florida's experience with such cases can serve as the foundation for choice of law rules. In eleven plane crash cases, five were common domicile (Florida) cases, and the courts applied Florida law.[89] Three of the other cases arose from one large plane crash in Colombia in 1995,[90] and because the courts were able to find significant contacts with Florida, they were able to avoid applying foreign law and, in all three instances, applied Florida law. In two of the Colombia crashes, the courts noted that the largest number of passengers were Florida residents and that the plane had taken off from a Florida airport.[91] In the third, in addition to the plane's departure from Florida, the court noted that two of the pilot defendants were Florida residents. In addition, Florida and Colombia laws were the only ones placed in contention.[92]

The remaining three air crash cases involved parties from different states and the crashes were in the United States.[93] In all of them, though, one of the parties resided in the same state in which the crash occurred, so the courts applied the place of injury. In addition, in all three cases, the decision to apply the law of the place of injury was made easier because the place of injury was not fortuitous. The planes crashed in the same state from which they departed and to which they intended to return. Thus, the parties intentionally affiliated with that state in some significant way.

89. *See* Schipper v. U.S., 2011 U.S. Dist. LEXIS 136980 (M.D. Fla. 2011) (Federal Tort Claims Act case applying Texas' Restatement (Second) analysis); Watts v. Nat'l Ins. Underwriters, 540 F. Supp. 488 (S.D. Fla. 1982); Proprietors Ins. Co. v. Valsecchi, 435 So. 2d 290 (Fla. Dist. Ct. App. 1983) (plaintiffs treated as Florida residents because of their student status there; no party argued for application of their home state's law); Hayden v. Krusling, 531 F. Supp. 468 (N.D. Fla. 1982) (involving crash in Gulf of Mexico; issue of maritime v. Florida law); Bishop v. Fla. Specialty Paint Co., 389 So. 2d 999 (Fla. 1980) (impliedly choosing Florida law by rejecting lex loci delicti analysis).

90. Piamba Cortes v. American Airlines, 177 F.3d 1272 (11th Cir. 1999); *In re* Air Crash Near Cali, Colombia on Dec. 20, 1995, 24 F. Supp. 2d 1340 (S.D. Fla. 1998); *In re* Air Crash Near Cali, Colombia on Dec. 20, 1995, 1997 U.S. Dist. LEXIS 14143 (S.D. Fla. 1997)(Colombia crash).

91. *See In re* Air Crash, 24 F. Supp. 2d at 1340 and U.S. Dist. LEXIS 14143.

92. *See* Piamba Cortes, 177 F.3d at 1272.

93. Boromei v. U.S., 2003 U.S. Dist. LEXIS 27859 (S.D. Fla. 2003); Emmart v. Piper Aircraft Corp., 659 F. Supp. 843 (S.D. Fla. 1987); Peoples Bank & Trust Co. v. Piper Aircraft Corp., 598 F. Supp. 377 (S.D. Fla. 1984).

One can develop a rule from these decisions that reflects the values articulated by the courts as well as those associated with the Second Restatement. The Restatement's presumptive place of injury rule should not carry much weight when a plane crashes mid-flight, and even the place of the negligent conduct may be irrelevant. For example, when the negligent conduct takes place in the air – perhaps because the pilots are busy with their smartphones and ignoring their duties – the state over which such behavior takes place should not thereby develop an interest in having its law applied. In such a case, where the plane finally crashes is also fortuitous. Then the only relevant Restatement contacts[94] are where the parties are domiciled, incorporated, or work; and where the parties' relationship is centered.

When a small plane crashes and the parties all share a domicile, Florida courts should ignore the place of injury and apply – as they have – the law of the common domicile. *Schipper, Bishop, Hayden, Proprietors Insurance,* and *Watts* so hold.[95]

If the parties do not share a domicile, courts should apply (and have applied) the place of injury if one of the parties resides in that state. This rule is reflected in *Boromei, Emmart,* and *Peoples Bank & Trust.*[96]

These results make sense and could easily be adopted as sensible, effective, predictable rules for similar cases.

This leaves those cases in which the parties' domiciles differ and none of the parties reside at the place of injury or death. These cases could receive thorough Restatement (Second) analysis or some modified version of it. In Florida, the only crash that would receive such analysis is *In re Air Crash*,[97] involving the 1995 crash in Colombia. In applying Florida law, the court placed some weight on the fact that the plane had taken off from a Florida airport. However, this fact may present problems, and courts should be wary of adopting a rule that places great value on where a plane takes off. For example, one who departs from Tallahassee may have to fly through Atlanta to get to Miami. If a plane crashes after takeoff from Atlanta, should Georgia law apply? Tallahassee residents already resent having to fly north to get south, and it seems quite unfair to charge them with Georgia law

94. *See* RESTATEMENT (SECOND) OF CONFLICT OF LAWS §145.

95. *See* Schipper, 2011 U.S. Dist. LEXIS at 136980; Bishop, 389 So. 2d at 999; Hayden, 531 F. Supp. at 468; Proprietors Ins. Co., 435 So. 2d at 290; Watts, 540 F. Supp. at 488.

96. *See* Boromei, 2003 U.S. Dist. LEXIS at 27859; Emmart, 659 F. Supp. at 843; Peoples Bank & Trust, 598 F. Supp. at 377.

97. 24 F. Supp. 2d at 1340.

as a result. Finding another Florida contact would make this result fairer, and Florida cases reflect this analysis, though unarticulated.

### *B. Other Split Domicile Cases*

Other than cases involving car and plane crashes, Florida courts decided sixty-two split domicile cases. In fifty-nine of those, one of the parties was domiciled in the state of injury. In nearly eighty-five percent of those (fifty of the fifty-nine cases), the courts applied the law of the place of injury. In the remaining cases, the choice of some other law can usually be explained by unique circumstances. For example, in *Calixto v. Watson Bowman Acme Corp.*,[98] the place of injury was Brazil and the courts have demonstrated reluctance to apply foreign law. In other cases, the injury was felt in more than one state, so the court applied the law of the place of conduct instead.[99] Two cases involved an issue for which specific Second Restatement comments indicate that the place of conduct should ordinarily determine the applicable law.[100] *Department of Corrections v. McGhee*[101] involved the sovereign immunity and duty of the Florida Department of Corrections, and the court applied Florida law. Moreover, when the place of conduct is merely "fortuitous," that is, where the injury could have occurred in any state (such as a mid-air plane crash), the court is less likely to give much weight to the place of injury.[102] It is notable that in the nine cases in which the court did not apply the law of the place of injury, it instead applied the law of the place of *conduct* seven times and in each of those cases, one of the parties was domiciled at the place of conduct.

## VIII. Issues Involving Marital Status

Some tort cases indirectly involve the marital status of the parties. They include interspousal immunity and loss of consortium claims. The rule of common domicile could surely apply here when both

98. 637 F. Supp. 2d 1064 (S.D. Fla. 2009).

99. *See* Default Proof Credit Card Sys., Inc. v. State Street Bank & Trust Co., 753 F. Supp. 1566 (S.D. Fla. 1990).

100. See *Merriman v. Convergent Bus. Sys., Inc.*, 1993 U.S. Dist. LEXIS 10528 (N.D. Fla. 1993) and *Trumpet Vine Investments, N.V. v. Union Capital Partners I, Inc.*, 92 F.3d 1110 (11th Cir. 1996), both citing Restatement (Second) of Conflict of Laws §145 comment f ("place of injury is less significant in the case of fraudulent misrepresentations . . . and of such unfair competition as consists of false advertising and the misappropriation of trade values.")

101. 653 So. 2d 1091 (Fla. Dist. Ct. App. 1995).

102. *See* Nelson v. Freightliner, LLC, 154 Fed. Appx. 98 (11th Cir. 2005) (truck driver killed by carbon monoxide fumes as he slept in the cab of his truck).

parties are from the same state. Alternatively, one could argue that the court should apply the law of the place where the marital relationship is based. The Restatement (Second) specifically directs that, for all intra-family immunity issues, the "applicable law will usually be the local law of the state of the parties' domicile."[103] However, that section also notes that this rule applies "only if the suit is between members of a family," and not when it involves third persons, for example, when "an injured spouse brings suit against a third person, and [the third person] in turn seeks contribution from the other spouse on the ground that the latter was partly responsible for the injury."[104] Understandably, when a third party from another state is involved, the family's domicile does not automatically have a greater interest in the result. However, again in the interest of predictability and simplicity, would such an across-the-board rule make sense?

Florida's courts have had experience with this issue. In *Avis Rent-A-Car Systems, Inc. v. Abrahantes*,[105] two Miami men were injured in the Cayman Islands when their jeep overturned. They sued the car rental company. Although the Florida court applied the law of the place of injury, Cayman Islands, to the main case, it applied Florida law to the wives' loss of consortium claims.[106] Citing cases from other states, the Florida court found that "[c]laims for loss of consortium are governed by the law of the state where the marriage is domiciled. . . ."[107] In *Pennington v. Dye*,[108] an Ohio couple was involved in a car accident in Florida. The issue was interspousal immunity. The court easily found that Ohio law should apply for a variety of reasons. Both the married couple and the other driver were from Ohio and had been vacationing in Florida, and their insurance policies were all issued in Ohio. The court noted, "A growing number of courts have held that the issue of contribution should be decided by the law of the state where all of the parties reside rather than by the law of the state where the accident occurred."[109] Although this case was easy, given that all the parties were from Ohio, the court might have added that when the issue of contribution is bound up with interspousal immunity, the law of the spousal domicile should be applied.

---

103. RESTATEMENT (SECOND) OF CONFLICT OF LAWS §169.

104. *Id.* §169 cmts. a, c.

105. 517 So. 2d 25 (Fla. Dist. Ct. App. 1987).

106. Avis Rent-A-Car Systems, Inc. v. Abrahantes, 559 So. 2d 1262 (Fla. Dist. Ct. App. 1990).

107. *Id.* at 1264.

108. 456 So. 2d 507 (Fla. Dist. Ct. App. 1984).

109. *Id.* at 510.

## IX. WORKERS' COMPENSATION

By examining Florida common law, one could also fashion a rule that governs a recurring workers' compensation issue. The rule might be that when an out-of-state employer hires an out-of-state worker who is injured while working in Florida and who collects worker compensation from his own state, the worker may not thereafter use the Florida courts to sue his employer in tort. The rule would reflect a strong Florida policy regarding employer immunity.

Three cases demonstrate the courts' acknowledgment of this policy. In *Garcia v. Public Health Trust of Dade County*,[110] a Spanish citizen and employee of Iberia Airlines was injured while in Miami, Florida. Iberia's physician treated him in a Miami hospital. Although he was compensated under Spanish workers compensation law, he sued the airline and physician in tort. The court applied Florida workers compensation law which did not permit double recovery, even though Spanish law would have permitted the additional damages. "Florida has articulated a strong public policy with respect to employer immunity for work related injuries. Because Spanish law allows suit against employers, Spanish law would contravene strong public policy of the forum state."[111] The court cited Florida Statute section 440.09 as support:

> Where an accident happens while the employee is employed elsewhere than in this state, which would entitle him or his dependents to compensation if it had happened in this state, the employee or his dependents shall be entitled to compensation. . . . However, if an employee shall receive compensation or damages under the laws of any other state, nothing herein contained shall be construed so as to permit a total compensation for the same injury greater than is provided herein.[112]

A similar result occurred in *Marion Power Shovel Co. v. Hargis*,[113] where an out-of-state contractor hired an Indiana sub-contractor to work on a project in Florida. The sub-contractor in turn hired an Illinois worker who was injured while working in Florida. The worker collected workers compensation benefits under Illinois law, and then sued the contractor in tort. The court held that, because the

110. 841 F.2d 1062 (11th Cir. 1988).

111. *Id.* at 1066.

112. The current statute provides that "if an employee receives compensation or damages under the laws of any other state, the total compensation for the injury may not be greater than is provided in this chapter." FLA. STAT. § 440.09 (1)(d) (2010).

113. 698 So. 2d 1246 (Fla. Dist. Ct. App. 1997).

injury and allegedly tortious conduct occurred in Florida, the contractor was immune from liability under Florida law.

In *Plath v. Malebranche*,[114] an Oregon worker was injured on an escalator while attending an employer-sponsored conference in Florida, rather than while working in the state. She collected Oregon workers compensation benefits and then sued the allegedly negligent co-worker and employer in tort. The court in that case applied Oregon law, which did not permit such suits. The court noted, however, that the result would likely be the same under Florida law. It cited Florida's "strong public policy of shielding an employer from liability for injuries for which the employee received workers' compensation" but also pointed out that "Oregon has an even stronger public policy of shielding employers from liability."[115] Thus, "given Plaintiff's minimal contact with Florida as compared to Oregon's strong public policy of shielding employers from liability, the fact that Plaintiff has already chosen to participate in Oregon's workers' compensation system, and that Plaintiff's employment relationship . . . is centered in Oregon, the Court finds Oregon has a more significant relationship to the instant action.[116]

Although the courts in these three cases applied varying methodologies, all three of them agreed that the employees were limited to worker compensation recoveries.

## X. Turning Judicial Practice into Legislative Action

The analysis above demonstrates how consistently courts choose the applicable law for many Florida tort cases. What is most inconsistent is the method they choose to get there. They tend to arrive at the same place via different routes, thus making the choice of law decision much more complex, unpredictable, and expensive than necessary. It is time to jettison the Second Restatement and replace it with something more user-friendly, more consistent, and more predictable.

A new approach to choice of law need not represent an entirely different approach. One can draft rules in many areas, based on what the Florida courts have already done.

Adopting rules based on these cases will facilitate choice of law decisions. Although adopting a rule sacrifices thorough analysis of in-

114. 351 F. Supp. 2d 1338 (M.D. Fla. 2005).
115. *Id.* at 1342.
116. *Id.*

terests and policies, courts rarely engage in such analysis anyway, even though many scholars would wish otherwise. Adopting rules rather than Restatement principles or standards inevitably results in less analysis. But less analysis might be considered preferable to the current bad analysis demonstrated by our courts, particularly when the new approach offers predictability and consistency.

In those areas not clearly addressed by the state's common law, one might look to the recent efforts of other states for additional guidance. As noted above, two states have already adopted their own choice of law statutes. Louisiana adopted its scheme in 1992, though it has not led to the predictability for which it was drafted.[117] That could be because its provisions rely too heavily, not on rules, but on the same sort of standard that makes the Second Restatement so uncertain. Instead of the Restatement's "most significant relationship" test, the Louisiana code provides some rules but generally requires application of "the law of the state whose policies would be most seriously impaired if its law were not applied." Like the Restatement's reference to various factors, the Louisiana Code requires reference to a variety of contacts and policies.[118] Its strongest feature is that it provides for a fairly simple analysis for issues related to standards of conduct and safety, and it adopts the common domicile rule for loss distribution issues.

Oregon's most recent effort appears to warrant closer attention. Effective January 1, 2010, the statute borrows heavily from the Louisiana effort[119] without incorporating the "seriously impaired" standard. Its rules are straightforward with appropriate escape devices for the exceptional case. Such a statutory scheme could easily be employed in Florida, relying for primary guidance on the state's thirty years of judicial decisions.

Under Oregon's statute, courts would apply Oregon law in actions against an owner of real property located in Oregon for injury on that property "arising out of conduct that occurs in Oregon."[120] Oregon law would also apply to "[a]ctions between an employer and an employee who is primarily employed in Oregon that arise out of injury

117. *See, e.g.,* Patrick J. Borchers, *Louisiana's Conflicts Codification: Some Empirical Observations Regarding Decisional Predictability,* 60 LA. L. REV. 1061 (2000); Russell J. Weintraub, *Courts Flailing in the Waters of the Louisiana Conflicts Code: Not Waving but Drowning,* 60 LA. L. REV. 1365 (2000). For a broader discussion of Lousiana's effort, see Wiegand, *supra* note 8, at 13-16.

118. LA. CIV. CODE art. 3542 (2010).

119. The similarities are not surprising, given that Professor Symeon Symeonides played a key role in the drafting of both.

120. Or. Rev. Stat. § 15.430(5)(2011).

that occurs in Oregon" and to "[a]ctions for professional malpractice arising from services rendered entirely in Oregon" by Oregon-licensed professionals.[121] There is a separate section for product liability, as well as a common domicile rule. Additional rules apply to specific circumstances, and the statute has a default provision when none of the rules apply. In such a case, the courts are instructed to apply "the law of the state whose contacts with the parties and the dispute and whose policies on the disputed issues make application of the state's law the most appropriate for those issues." Second Restatement-like principles guide this decision. For example, courts must consider states that have a relevant contact with the dispute, and must consider the needs and policies of each of those states.[122]

The point here is not that Oregon has figured out the most sensible choice of law approach. Rather, it is that the legislative scheme provides far more guidance and far less room for arbitrariness than the Second Restatement. It is likely that Florida courts would reach the same or similar results as Oregon courts will do under their new approach. Why? Because in most cases, the methodology does not seem to matter, particularly when it is properly applied so seldom.

Florida is ready for a similar effort. Relying on the patterns discussed in this article and incorporating additional rules and standards will lead to a choice of law statute that will minimize this area of uncertainty now and in the future. It will also honor the decisions made by Florida judges over the past thirty-two years as they struggled to utilize the complicated Second Restatement analysis.

121. Or. Rev. Stat. § 15.430(6), (7)(2011).
122. Or. Rev. Stat. § 15.445 (2011).

## APPENDIX A

Choice-of-Law Decisions Involving Tort Issues, 1980 – present
(Listed by court and in reverse chronological order)

### *Eleventh Circuit Court of Appeals*

Grupo Televisa, S.A. v. Telemundo Communications Group, Inc., 485 F.3d 1233 (11th Cir. 2007)
Nelson v. Freightliner, LLC, 154 Fed. Appx. 98 (11th Cir. 2005)
Green Leaf Nursery v. E.I. Dupont de Nemours & Co., 341 F.3d 1292 (11th Cir. 2003)
Piamba Cortes v. American Airlines, Inc., 177 F.3d 1272 (11th Cir. 1999)
Trumpet Vine Investments, N.V. v. Union Capital Partners I, Inc. 92 F.3d 1110 (11th Cir. 1996)
Digioia v. H. Koch & Sons, 944 F.2d 809 (11th Cir. 1991)
Judge v. American Motors Corp., 908 F.2d 1565 (11th Cir. 1990)
Shapiro v. Associated Int'l Ins. Co., 899 F.2d 1116 (11th Cir. 1990)
Garcia v. Public Health Trust of Dade County, 841 F.2d 1062 (11th Cir. 1988)
Boyd Bros. Transp. Co. v. Fireman's Fund Ins. Co., 729 F.2d 1407 (11th Cir. 1984)

### *United States District Court*

Walewski v. Zenimax Media, Inc., 2012 U.S. Dist. LEXIS 33181 (M.D. Fla. 2012)
Schippers v. United States of America, 2011 U.S. Dist. LEXIS 136980 (M.D. Fla. 2011)
Del Istmo Assurance Corp. v. Platon, 2011 U.S. Dist. LEXIS 129906 (S.D. Fla. 2011)
Zelma v. Williams, 2011 U.S. Dist. LEXIS 123933 (M.D. Fla. 2011)
Mardegan v. Mylan, Inc., 2011 U.S. Dist. LEXIS 89787 (S.D. Fla. 2011)
Oginski v. Paragon Props., 2011 U.S. Dist. LEXIS 88254 (S.D. Fla. 2011)
Learning Connections, Inc. v. Kaufman, 2011 U.S. Dist. LEXIS 80080 (M.D. Fla. 2011)
*In re* Trasylol Prods. Liab. Litig., 2011 U.S. Dist. LEXIS 80447 (S.D. Fla. 2011)

Costa v. Kerzner Int'l Resorts, Inc., 2011 U.S. Dist. LEXIS 66921 (S.D. Fla. 2011)

Canon Latin Am., Inc. v. Lantech, 2011 U.S. Dist. LEXIS 6267 (S.D. Fla. 2011)

Chapman v. Depuy Ortho., Inc., 760 F. Supp. 2d 1310 (M.D. Fla. 2011)

Lewandowski v. Bayer, 2010 U.S. Dist. LEXIS 128951 (S.D. Fla. 2010)

Pearlman v. MTV Networks, 2010 U.S. Dist. LEXIS 88873 (M.D. Fla. 2010)

*In re* Banco Santander Sec.-Optimal Litig., 732 F. Supp. 2d 1305 (S.D. Fla. 2010)

O'Donnell v. Wachovia Bank, N.A., 2010 U.S. Dist. LEXIS 34394 (S.D. Fla. 2010)

Pierson v. Orlando Reg'l Healthcare Sys., 2010 U.S. Dist. LEXIS 33974 (M.D. Fla. 2010)

Estate of Miller v. Thrifty Rent-A-Car Sys., Inc., 637 F. Supp. 2d 1029 (M.D. Fla. 2009)

De Leon v. Bank of Am., N.A., 2009 U.S. Dist. LEXIS 106845 (M.D. Fla. 2009)

Calixto v. Watson Bowman Acme Corp., 637 F. Supp. 2d 1064 (S.D. Fla. 2009)

*In re* United States Sugar, 669 F. Supp. 2d 1301 (S.D. Fla. 2009)

Estate of Miller v. Thrifty Rent-A-Car Sys., Inc., 609 F. Supp. 2d 1235 (M.D. Fla. 2009)

*In re* Nationsrent Rental Fee Litigation, 2009 U.S. Dist. LEXIS 23662 (S.D. Fla. 2009)

Rashid v. Barr Laboratories, Inc., 2008 U.S. Dist. LEXIS 102676 (M.D. Fla. 2008)

Auto Internet Marketing, Inc. v. Targus Information Corp., 2008 U.S. Dist. LEXIS 98595 (M.D. Fla. 2008)

Campbell v. Starwood Hotels & Resorts Worldwide, Inc., 2008 U.S. Dist. LEXIS 81121 (S.D. Fla. 2008)

Cohen v. Implant Innovations, Inc., 2008 U.S. Dist. LEXIS 64144 (S.D. Fla. 2008)

Valentino v. Bond, 2008 U.S. Dist. LEXIS 63485 (N.D. Fla. 2008)

Duckett v. Cable News Network LLLP, 2008 U.S. Dist. LEXIS 88667 (M.D. Fla. 2008)

Cohen v. Implant Innovations, Inc., 259 F.R.D. 617 (S.D. Fla. 2008)

Castellanos v. Pfizer, Inc., 2008 U.S. Dist. LEXIS 42586 (S.D. Fla. 2008)

Pycsa Panama, S.A. v. Tensar Earth Technologies, Inc., 2008 U.S. Dist. LEXIS 31457 (S.D. Fla. 2008)

Bravo v. Honigman Miller Schwartz and Cohn LLP, 2008 U.S. Dist. LEXIS 9787 (M.D. Fla. 2008)

Mukamal v. Bakes, 383 B.R. 798, 2007 U.S. Dist. LEXIS 96347 (S.D. Fla. 2007)

Horowitch v. Diamond Aircraft Industries, Inc., 526 F. Supp. 2d 1236 (M.D. Fla. 2007)

Lydia Security Monitoring, Inc., v. Alarm One, Inc., 2007 U.S. Dist. LEXIS 62087 (S.D. Fla. 2007)

Ziino v. Baker, 2007 U.S. Dist. LEXIS 61616 (M.D. Fla. 2007)

Berry v. Budget Rent A Car Sys., Inc., 497 F. Supp. 2d 1361 (S.D. Fla. 2007)

Topp, Inc. v. Uniden America Corp., 483 F. Supp. 2d 1187 (S.D. Fla. 2007)

Gulf Group Holdings, Inc. v. Coast Asset Mgmt. Corp., 516 F. Supp. 2d 1253 (S.D. Fla. 2007)

Int'l. Star Registry v. Omnipoint Marketing, LLC, 510 F. Supp. 2d 1015 (S.D. Fla. 2007)

Hendricks v. Smartvideo Technologies, Inc., 511 F. Supp. 2d 1219 (M.D. Fla. 2007)

Allapattah Services, Inc. v. Exxon Corp., 2006 U.S. Dist. LEXIS 59368 (S.D. Fla. 2006)

Border Collie Rescue, Inc., v. Ryan, 418 F. Supp. 2d 1330 (M.D. Fla. 2006)

Potts v. Budget Rent A Car System, Inc., 2005 U.S. Dist. LEXIS 27536 (N.D. Fla. 2005)

Medina v. American Airlines, Inc., 2005 U.S. Dist. LEXIS 18916 (S.D. Fla. 2005)

CFJ Mfr, L.P. v. Sweetworks, Inc., 2005 U.S. Dist. LEXIS 33953 (M.D. Fla. 2005)

Motmanco, Inc., v. McDonald's Corp., 2005 U.S. Dist. LEXIS 33965 (M.D. Fla. 2005)

Plath v. Malebranche, 351 F. Supp. 2d 1338 (M.D. Fla. 2005)

Cargill, Inc. v. Zeigler Bros., Inc., 2004 U.S. Dist. LEXIS 30758 (S.D. Fla. 2004)

Estate of Miller v. Ford Motor Co., 2004 U.S. Dist. LEXIS 30811 (M.D. Fla. 2004)

Rivas v. Ford Motor Co., 2004 U.S. Dist. LEXIS 7535 (M.D. Fla. 2004)

Altadis USA Inc. v. NPR, Inc., 308 F. Supp. 2d 1304 (M.D. Fla. 2004)

Boromei v. U.S., 2003 U.S. Dist. LEXIS 27859 (S.D. Fla. 2003)

Walker v. Paradise Grand Hotel, LTD., 2003 U.S. Dist. LEXIS 25660 (S.D. Fla. 2003)

Ungaro-Benages v. Dresdner Bank AG, 2003 U.S. Dist. LEXIS 27693 (S.D. Fla. 2003)

Gonzalez-Jimenez de Ruiz v. U.S., 231 F. Supp. 2d 1187 (M.D. Fla. 2002)

Gritzke v. M.R.A. Holding, LLC, 2002 U.S. Dist. LEXIS 28085 (N.D. Fla. 2002)

O'Keefe v. Darnell, 192 F. Supp. 2d 1351 (M.D. Fla. 2002)

Montgomery v. New Piper Aircraft, Inc., 209 F.R.D. 221 (S.D. Fla. 2001)

Estate of Cabello v. Fernandez-Larios, 157 F. Supp. 2d 1345 (S.D. Fla. 2001)

Northland Cas. Co. v. HBE Corp., 145 F. Supp. 2d 1310 (M.D. Fla. 2001)

Florida Evergreen Foliage v. E.I. Dupont de Nemours, 135 F. Supp. 2d 1271 (S.D. Fla. 2001)

Minor v. Metro. Life Ins. Co., 2000 U.S. Dist. LEXIS 12542 (M.D. Fla. 2000)

Barton v. Hertz Corp., 35 F. Supp. 2d 1377 (M.D. Fla. 1999)

*In re* Air Crash Near Cali, Colombia on Dec. 20, 1995, 24 F. Supp. 2d 1340 (S.D. Fla. 1998)

*In re* Air Crash Near Cali, Colombia on Dec. 20, 1995, 1997 U.S. Dist. LEXIS 14143 (S.D. Fla. 1997)

Jaisinghani v. Capital Cities/ABC, Inc., 973 F. Supp. 1450 (S.D. Fla. 1997)

Cymrot v. Smith Barney, Harris Upham & Co., Inc., 1994 U.S. Dist. LEXIS 20134 (S.D. Fla. 1994

Merriman v. Convergent Bus. Sys., 1993 U.S. Dist. LEXIS 10528 (N.D. Fla. 1993)

Liberty Mut. Ins. Co. v. Electronic Sys., Inc., 813 F. Supp. 802 (S.D. Fla. 1993)

Pulte Home Corp. v. Ply Gem Indus., 804 F. Supp. 1471 (M.D. Fla. 1992)

Garay v. BRK Elec., 755 F. Supp. 1010 (M.D. Fla. 1991)

Default Proof Credit Card Sys., Inc. v. State St. Bank & Trust Co., 753 F. Supp. 1566 (S.D. Fla. 1990)

Chierchia v. Treasure Cay Serv., 738 F. Supp. 1386 (S.D. Fla. 1990)

Lanchile Airlines v. Connecticut Gen. Life Ins. Co., 731 F. Supp. 477 (S.D. Fla. 1990)

Tew v. Chase Manhattan Bank, N.A., 728 F. Supp. 1551 (S.D. Fla. 1990)

Madera v. Hall, 717 F. Supp. 812 (S.D. Fla. 1989)

Norsul Oil & Mining Co. v. Texaco, Inc., 703 F. Supp. 1520 (S.D. Fla. 1988)
Florida Steel Corp. v. Whiting Corp., 677 F. Supp. 1140 (M.D. Fla. 1988)
Emmart v. Piper Aircraft Corp., 659 F. Supp. 843 (S.D. Fla. 1987)
Garcia v. Public Health Trust of Dade County, 657 F. Supp. 99 (S.D. Fla. 1987)
Bates v. Cook, Inc., 615 F. Supp. 662 (M.D. Fla. 1984)
Peoples Bank & Trust Co. v. Piper Aircraft Corp., 598 F. Supp. 377 (S.D. Fla. 1984)
Watts v. National Ins. Underwriters, 540 F. Supp. 488 (S.D. Fla. 1982)
Hayden v. Krusling, 531 F. Supp. 468 (N.D. Fla. 1982)

*United States Bankruptcy Court*

Advanced Imaging Center v. Cassidy (*In re* Cassidy), 352 B.R. 519 (Bankr. M.D. Fla. 2006)
Cuthill v. Greenmark, LLC (*In re* World Vision Entm't, Inc.), 275 B.R. 641 (Bankr. M.D. Fla. 2002)
Davis v. Barnett Bank, N.A., 99 B.R. 95 (Bankr. M.D. Fla. 1989)
Shepard v. Central Trust Co., 29 B.R. 928 (Bankr. M.D. Fla. 1983)

*Florida Supreme Court*

Fulton Co. Adm'r v. Sullivan, 753 So. 2d 549 (Fla. 1999)
Merkle v. Robinson, 737 So. 2d 540 (Fla. 1999)
Celotex Corp. v. Meehan, 523 So. 2d 141 (Fla. 1988)
Bates v. Cook, Inc., 509 So. 2d 1112 (Fla. 1987)
Hertz Corp. v. Piccolo, 453 So. 2d 12 (Fla. 1984)
State Farm Mut. Auto. Ins. Co. v. Olsen, 406 So. 2d 1109 (Fla. 1981)
Bishop v. Florida Specialty Paint Co., 389 So. 2d 999 (Fla. 1980)

*Court of Appeal of Florida*

Connell v. Riggins, 944 So. 2d 1174 (Fla. 1st Dist. Ct. App. 2006)
Siegel v. Novak, 920 So. 2d 89 (Fla. 4th Dist. Ct. App. 2006)
Hinton v. Benson, 898 So. 2d 967 (Fla. 3d Dist. Ct. App. 2005)
Leinhart v. Jurkovich, 882 So. 2d 456 (Fla. 4th Dist. Ct. App. 2004)
Sierra v. Betterway Rent-A-Car, Inc., 863 So. 2d 358 (Fla. 3d Dist. Ct. App. 2003)
Jenkins v. Rockwood, 820 So. 2d 426 (Fla. 4th Dist. Ct. App. 2002)
Hoffman v. Ouellette, 798 So. 2d 42 (Fla. 4th Dist. Ct. App. 2001)
Dean v. Johns, 789 So. 2d 1072 (Fla. 1st Dist. Ct. App. 2001)

Tune v. Philip Morris Inc., 766 So. 2d 350 (Fla. 2d Dist. Ct. App. 2000)
Renaissance Cruises, Inc. v. Glassman, 738 So. 2d 436 (Fla. 4th Dist. Ct. App. 1999)
Brown v. Nat'l Car Rental Sys., Inc., 707 So. 2d 394 (Fla. 3d Dist. Ct. App. 1998)
Campo v. Tafur, 704 So. 2d 730 (Fla. 4th Dist. Ct. App. 1998)
Mezroub v. Capella, 702 So. 2d 562 (Fla. 2d Dist. Ct. App. 1997)
Deemer v. Budget Rent-A-Car Sys., Inc., 704 So. 2d 133 (Fla. 1st Dist. Ct. App. 1997)
Crowell v. Clay Hyder Trucking Lines, Inc., 700 So. 2d 120 (Fla. 2d Dist. Ct. App. 1997)
Robinson v. Merkle, 700 So. 2d 723 (Fla. 2d Dist. Ct. App. 1997)
Marion Power Shovel Co. v. Hargis, 698 So. 2d 1246 (Fla. 3d Dist. Ct. App. 1997)
Ryder Truck Rental, Inc. v. Rosenberger, 699 So. 2d 713 (Fla. 3d Dist. Ct. App. 1997)
Dep't of Corrections v. McGhee, 653 So. 2d 1091 (Fla. 1st Dist. Ct. App. 1995)
Walsh v. Arrow Air, Inc., 629 So. 2d 144 (Fla. 3d Dist. Ct. App. 1993)
Beattey v. College Centre of Finger Lakes, Inc., 613 So. 2d 52 (Fla. 4th Dist. Ct. App. 1992)
Aerovias Nacionales de Colombia, S.A. v. Tellez, 596 So. 2d 1193 (Fla. 3d Dist. Ct. App. 1992)
Jones v. Cook, 587 So. 2d 570 (Fla. 1st Dist. Ct. App. 1991)
Commerce Ins. Co. v. Atlas Rent a Car, Inc., 585 So. 2d 1084 (Fla. 3d Dist. Ct. App. 1991)
Aetna Cas. & Surety Co. v. Huntington Nat'l Bank, 587 So. 2d 483 (Fla. 4th Dist. Ct. App. 1991)
Walsh v. Arrow Air, Inc., 1991 Fla. App. LEXIS 4718 (Fla. 3d Dist. Ct. App. 1991)
Tinwood N.V. v. Sun Banks, Inc., 570 So. 2d 955 (Fla. 5th Dist. Ct. App. 1990)
Wal-Mart Stores, Inc. v. Budget Rent-A-Car Sys., 567 So. 2d 918 (Fla. 1st Dist. Ct. App. 1990)
Avis Rent-A-Car Sys., Inc. v. Abrahantes, 559 So. 2d 1262 (Fla. 3d Dist. Ct. App. 1990)
Nance v. Eagle Picher Indus., 559 So. 2d 93 (Fla. 3d Dist. Ct. App. 1990)
Barker v. Anderson, 546 So. 2d 449 (Fla. 1st Dist. Ct. App. 1989)
Stallworth v. Hospitality Rentals, Inc., 515 So. 2d 413 (Fla. 1st Dist. Ct. App. 1987)

Avis Rent-A-Car Sys., Inc. v. Abrahantes, 517 So. 2d 25 (Fla. 3d Dist. Ct. App. 1987)
AIU Ins. Co. v. Reese, 498 So. 2d 966 (Fla. 2d Dist. Ct. App. 1986)
Ploor v. Greyhound Lines, Inc., 474 So. 2d 1280 (Fla. 3d Dist. Ct. App. 1985)
Amica Mut. Ins. Co. v. Gifford, 473 So. 2d 220 (Fla. 5th Dist. Ct. App. 1985)
Pennington v. Dye, 456 So. 2d 507 (Fla. 2d Dist. Ct. App. 1984)
Andrews v. Continental Ins. Co., 444 So. 2d 479 (Fla. 5th Dist. Ct. App. 1984)
Krasnosky v. Meredith, 447 So. 2d 232 (Fla. 1st Dist. Ct. App. 1983)
Proprietors Ins. Co. v. Valsecchi, 435 So. 2d 290 (Fla. 3d Dist. Ct. App. 1983)
Harris v. Berkowitz, 433 So. 2d 613 (Fla. 3d Dist. Ct. App. 1983)
Steele v. Southern Truck Body Corp., 397 So. 2d 1209 (Fla. 2d Dist. Ct. App. 1981)
Decker v. Great Am. Ins. Co., 392 So. 2d 965 (Fla. 2d Dist. Ct. App. 1980)
Futch v. Ryder Truck Rental, Inc., 391 So. 2d 808 (Fla. 5th Dist. Ct. App. 1980)

***