North Dakota Law Review

Volume 52 | Number 1 Article 8

1975

Interest Analysis for Resolving Conflict of Laws Problems in Tort - A Guide for North Dakota Practitioners

Gregory Johnson

NOTES

"INTEREST ANALYSIS" FOR RESOLVING CONFLICT OF LAWS PROBLEMS IN TORT — A GUIDE FOR NORTH DAKOTA PRACTITIONERS

I. INTRODUCTION

The Restatement (Second) Conflict of Laws provides the following definition: "Conflict of Laws is that part of the law of each state which determines what effect is given to the fact that the case may have a significant relationship to more than one state."[1] However, cases involving choice-of-law questions often do not lend themselves to easy resolution.[2] It is the purpose of this Note to acquaint North Dakota legal practitioners with "interest analysis" as a process for resolving choice-of-law problems in tort. The use and the abandonment of the lex loci delicti rule for the resolution of conflict of laws problems in tort will be discussed and the respective positions taken by the courts of North Dakota and Minnesota with regard to "interest analysis" will be presented.[3] It is submitted that, because North Dakota and Minnesota are geographically bounded, one by the other, with North Dakota's population centers on the common boundary, it is likely that automobile accidents and other torts involving Minnesota residents will occur on North Dakota highways, as borne-out by caselaw discussed below. As the respective parties become interrelated in choice-of-law problems, so also do the conflicts laws of the respective states. Additionally, the Note will explore the ramifications of those respective positions as they relate to "interest analysis" and examine available alternative approaches employing "interest analysis" for just resolution of torts choice-of-law problems.

---

1. RESTATEMENT (SECOND) CONFLICT OF LAWS § 2 (P.O.D. I, 1967).

2. *See* Prosser, *Interstate Publication*, 51 MICH. L. REV. 959, 971 (1953) which states:
> The realm of the conflict of laws is a dismal swamp, filled with quaking quagmires, and inhabited by learned but eccentric professors who theorize about mysterious matters in a strange and incomprehensible jargon. The ordinary court, or lawyer, is quite lost when engulfed and entangled in it.

See also R. WEINTRAUB, COMMENTARY ON THE CONFLICT OF LAWS (1971) wherein the author suggests that conflicts cases involving important and complex social problems must be carefully thought out and solved in clear and understandable terms, so as to avoid dysfunctional results.

3. The scope of this Note is limited to discussion of Minnesota and North Dakota regarding "interest analysis" for those reasons stated in the text. Neither South Dakota nor Montana has adopted "interest analysis", *see* notes 18, 19 *infra*, and are outside the scope of this Note.

II. LEX LOCI DELECTI

The traditional tort conflict-of-laws doctrine, adopted by the original Restatement,[4] required the application of the law of the place of the injury.[5] The rights of the parties to an occurrence were considered as having "vested"[6] according to the law of the place of the occurrence, the place of the injury being defined as the state or jurisdiction where the last event necessary to make an actor liable has its injurious consequences.[7] Proponents of the rule of lex loci delicti argued that it offered a practical formula for resolution of choice-of-law problems by providing uniformity of application, certainty of result, and ease of administration.[8] However, it became clear that the mechanical application of lex loci delicti to every multistate tort controversy often yielded harsh and unjust results, unrelated to the contemporary interests of the states involved or the realistic expectations of the parties.[9]

To avoid undesirable results produced by the inflexibility of the rule, various methods of "label-switching"[10] were devised by courts to escape the application of lex loci delicti without offending stare decisis. By characterizing the issue as a matter of procedural rather than of substantive law, courts were able to avoid application of lex loci delicti.[11] Since forum law is generally applied to matters

---

4. RESTATEMENT OF THE LAW OF CONFLICT OF LAWS § 377 (1934).

5. The North Dakota Supreme Court enunciated this rule in Pearson v. Erb, 82 N.W.2d 818, 821 (N.D. 1957): "This accident, having happened in the State of Minnesota, the liabilities of the parties must be determined according to the laws of that state." In Minnesota, adherence to this doctrine was stated as recently as Phelps v. Benson, 252 Minn. 457, 90 N.W.2d 533, 535 (1958).

6. Justice Holmes articulated the "vested rights" doctrine in Slater v. Mexican National R. R. Co., 194 U.S. 120, 126 (1904):

> But when such a liability is enforced in a jurisdiction foreign to the place of the wrongful act, obviously that does not mean that the act in any degree is subject to the *lex fori*. . . . The theory of the foreign suit is that although the act complained of was subject to no law having force in the forum, it gave rise to an obligation, an *obligatio*, which, like other obligations, follows the person, and may be enforced wherever the person may be found. . . . But, as the only source of this obligation is the law of the place of the act, it follows that the law determines not merely the existence of the obligation . . . but equally determines its extent.

See A. EHRENZWEIG, CONFLICTS IN A NUTSHELL § 6 (1965); R. LEFLAR, CONFLICT OF LAWS § 3 (1959); Page, *Conflict of Law Problems in Automobile Accidents*, 1943 WIS. L. REV. 145, 150 (1943).

7. RESTATEMENT OF THE LAW OF CONFLICT OF LAWS § 377 (1934).

8. *See* Adams v. Knickerbocker Nature Study Soc'y, Inc. (Opinion of Griswold, J.), *cited in* D. CAVERS, THE CHOICE OF LAW PROCESS 19, 20 (1965).

9. *See* Griffith v. United Air Lines, Inc., 416 Pa. 1, 203 A.2d 796, 803 (1964) where the Pennsylvania Supreme Court held that uniformity, predictability and simplicity of application are "insufficient reasons to retain an unsound rule."

10. *See* Weintraub, *The Emerging Problems in Judicial Administration of a State Interest Analysis of Tort Conflict of Laws Problems*, 44 S. CAL. L. REV. 877, 889 (1971).

11. *See* Kilberg v. Northeast Airlines, Inc., 9 N.Y.2d 34, 172 N.E.2d 526, 211 N.Y.S.2d 133 (1961) (limitation of damages); Grant v. McAuliffe, 41 Cal. 2d 859, 264 P.2d 944 (1953) (survival of the cause of action). The Brief of Plaintiff-Appellant at 30, Issendorf v. Olson, 194 N.W.2d 750 (N.D. 1972), is indicative of the argument used by counsel to persuade a court reluctant to apply lex loci delicti:

> The real question confronting the court is whether or not the retroactive application of the comparative negligence statute was a substantive change of

of procedure,[12] avoidance of the doctrine was achieved by the forum applying its own law at the outset to determine the particular matter as "procedural" rather than "substantive."[13] Similarly, a cause of action might be characterized as contract, rather than tort. The result of such characterization was that the applicable contract rule, whether the law of the place where the contract was made or the law of the place where the contract was to be performed, would displace the rule of lex loci delicti.[14] Even a change in the characterization label from "tort" to "family law" has been employed to achieve evasion of the mechanical rule and its subsequent harsh result.[15] Unfortunately, in the process of implementing techniques of re-characterization, the courts were deciding choice-of-law questions without objective examination of the real choice influencing factors. As a result, uniformity and certainty, the applauded virtues of the rule, became more illusory than real.[16]

Today, the majority of commentators on conflict of laws oppose the mechanical application of lex loci delicti.[17] Moreover, though in

---

Minnesota law and hence governed by the law of the place where the accident occurred, or was procedural and subject to the law of the place where the case was tried, a practice so universally accepted that it does not serve any purpose to present citations to that effect in this Brief.

But the North Dakota Supreme Court was disinclined to follow this argument, holding such characterization "unsatisfactory" as an approach to the resolution of the choice of law in tort cases. *Id.* at 754.

12. RESTATEMENT OF CONFLICT OF LAWS § 585 (1934). "All matters of procedure are governed by the law of the forum."

13. *Id.* at § 584. *See also* Kilberg v. Northeast Airlines, Inc., 9 N.Y.2d 34, 41-42, 172 N.E.2d 526, 529, 211 N.Y.S.2d 133, 137 (1961).

14. In Levy v. Daniels U-Drive Auto Renting Co., 108 Conn. 333, 143 A. 163 (1928), Connecticut law was applied by the court to impose vicarious liability on a Connecticut automobile renting agency by characterizing the plaintiff, who received injuries in Massachusetts caused by a customer of the agency, as a third party beneficiary under the Connecticut bailment contract. Since the scope of this Note is limited to "interest analysis" in tort, the development of the method in contract will not be discussed.

15. The court in Haumschild v. Continental Casualty Co., 7 Wis. 2d 130, 95 N.W.2d 814 (1959) departed from the place-of-the-wrong rule on the issue of interspousal tort immunity. A husband and wife, domiciled in Wisconsin, were driving in California where the wife was injured by the husband's negligence. Overruling a long line of Wisconsin cases, the court allowed suit by the wife against her husband and his liability insurer under Wisconsin law, even though, under California law, a California wife could not then maintain such a suit. The result was reached by reclassifying the immunity problem from one of "tort" to one of "family law," where domicile usually controls the law to be applied." *Id.* at 818. Although urged by many commentators as a characterization device which the courts should use to avoid the unsatisfactory results of lex loci delecti. *See* Cook, LOGICAL AND LEGAL BASES OF THE CONFLICT OF LAWS 346 (1942) (capacity to sue); STUMBERG, PRINCIPLES OF CONFLICT OF LAWS 205 (3d ed. 1963) (domestic relations); Ford, *Interspousal Liability for Automobile Accidents in the Conflict of Laws: Law and Reason Versus the Restatement*, 15 U. PITT. L. REV. 397, 424 (1954) (status); Kelso, *Automobile Accidents and Indiana Conflict of Laws: Current Dilemmas*, 33 IND. L.J. 297, 308 (1958) (family relations). Label-switching from "tort" to "family law" merely replaced one territorially-oriented rule with another.

16. Weintraub, *Comments on Reich v. Prucell*, 15 U.C.L.A. L. REV. 551, 556 (1968).

17. *See, e.g.*, Cavers, *A Critique of the Choice of Law Problem*, 47 HARV. L. REV. 173 (1933); Cheatham and Reese, *Choice of the Applicable Law*, 52 COLUM. L. REV. 959 (1952); Currie, *Comments on Babcock v. Jackson, A Recent Development in Conflict of Laws*, 63 COLUM. L. REV. 1212, 1233 (1963); Ehrenzweig, *The "Most Significant Relationship" in the Conflicts Law of Torts*, 28 LAW AND CONTEMP. PROB. 700 (1963); Leflar, *Choice-Influencing Considerations in Conflicts Law*, 41 N.Y.U.L. REV. 267 (1966); Reese, *Comments on Babcock v. Jackson*, 63 COLUM. L. REV. 1212, 1251 (1963); Traynor, *Is This Conflict Really Necessary?* 37 TEX. L. REV. 657 (1959).

the past decade several of the states have chosen to continue to adhere to that doctrine,[18] a greater number have rejected lex loci delicti in favor of a more flexible and rational choice-of-law approach to multistate tort cases.[19]

III. THE ADVENT OF INTEREST ANALYSIS

The Minnesota case of *Schmidt v. Driscoll Hotel*[20] has been attributed, by at least one commentator,[21] as being the decision that heralded the advent of "interest analysis" as a replacement for lex loci delicti, focusing on the policies underlying putatively conflicting domestic tort rules. The plaintiff, a Minnesota resident, was injured in an automobile accident in Wisconsin by a person who allegedly had become intoxicated at defendant's bar in Minnesota. Plaintiff brought suit under the Minnesota Dram Shop Act which imposes civil liability on the seller under such circumstances.[22] Wisconsin, the place of impact,[23] does not impose civil liability in such circumstances. The Minnesota court rejected argument for the place of the wrong rule and held that the Minnesota statute would apply. The decision was based on the court's determination that the policies underlying the Minnesota Dram Shop Act—control of the activities of Minnesota bar-

18. *See* Heidemann v. Rohl, 86 S.D. 250, 194 N.W.2d 164 (1972); Winters v. Maxey, 481 S.W.2d 755 (Tenn. 1972); Abendschein v. Farrell, 382 Mich. 510, 170 N.W.2d 137 (1969); Cook v. Pryor, 251 Md. 41, 246 A.2d 271 (1968); Marmon v. Mustang Aviation, Inc., 416 S.W.2d 58 (Tex. Civ. App. 1967), *aff'd.* 430 S.W.2d 182 (1968); Hopkins v. Lockheed Aircraft Corp., 201 So. 2d 748, *rev'd on rehearing*, 201 So. 2d 743 (Fla. 1967); Johnson v. St. Paul Mercury Ins. Co., 256 La. 289, 236 So. 2d 216 (1966); Landers v. Landers, 153 Conn. 303, 216 A.2d 188 (1966); McGinty v. Ballentine Produce, Inc., 241 Ark. 533, 408 S.W.2d 891 (1966); Cherokee Laboratories, Inc. v. Rogers, 398 P.2d 520 (Okla. 1965); Cobb v. Clark, 265 N.C. 194, 143 S.E.2d 103 (1965); Friday v. Smoot, 211 A.2d 594 (Del. 1965); McDaniel v. Sinn, 194 Kan. 625, 400 P.2d 1018 (1965); Oshiek v. Oshiek, 244 S.C. 249, 136 S.E.2d 303 (1964).

19. Issendorf v. Olson, 194 N.W.2d 750 (N.D. 1972); Fox v. Morrison Motor Freight, Inc., 25 Ohio St. 2d 193, 267 N.E.2d 405 (1971); Beaulieu v. Beaulieu, 265 A.2d 610 (Me. 1970); Kennedy v. Dixon, 439 S.W.2d 173 (Mo. 1969); Woodward v. Stewart, 104 R.I. 280, 243 A.2d 917 (1968), *cert. denied*, 393 U.S. 957 (1969); Armtrong v. Armstrong, 441 P.2d 699 (Alaska 1968); Mitchell v. Craft, 211 So. 2d 509 (Miss. 1968); Schneider v. Nichols, 280 Minn. 139, 158 N.W.2d 254 (1968); Schwartz v. Schwartz, 103 Ariz. 562, 447 P.2d 254 (1968); Casey v. Marson Constr. & Engineering Co., 247 Or. 274, 428 P.2d 898 (1967); Milik v. Sarahson, 49 N.J. 226, 229 A.2d 625 (1967); Myers v. Gaither, 232 A.2d 577 (D.C. Ct. of App. 1967); Reich v. Purcell, 67 Cal. 2d 551, 432 P.2d 727, 63 Cal. Rptr. 31 (1967); Wessling v. Paris, 417 S.W.2d 259 (Ky. 1967); Clark v. Clark, 107 N.H. 351, 222 A.2d 205 (1966); Wartell v. Formusa, 34 Ill. 2d 57, 213 N.E.2d 544 (1966); Fabricus v. Horgen, 257 Iowa 268, 132 N.W.2d 410 (1965); Griffith v. United Air Lines, Inc., 416 Pa. 1, 203 A.2d 796 (1964); Babcock v. Jackson, 12 N.Y.2d 463, 191 N.E.2d 279, 240 N.Y.S.2d 743 (1963).

20. 249 Minn. 376, 82 N.W.2d 365 (1957).

21. R. WEINTRAUB, COMMENTARY ON THE CONFLICT OF LAWS 231 (1971).

22. MINN. STAT. ANN. § 340.14(1)(a) (1972) provides: "No intoxicating liquor shall be sold . . . to any person obviously intoxicated. . . ." MINN. STAT. ANN. § 340.95 (1972), the Civil Damage Act, provides: "Every . . . person who is injured in person or property, . . . by any intoxicated person, or by the intoxication of any person, has a right of action, in his own name, against any person who, by illegally selling, bartering, or giving intoxicating liquors, caused the intoxication of such person, for all damages, sustained; . . ."

23. WIS. STAT. ANN. § 176.35 (1955) (applicable only if sale to a minor or, after notice to desist, to a habitual drunkard). Section 176.26 (since repealed) did make it a crime to sell to "any person intoxicated or bordering on intoxication."

tenders and compensation to those injured—were applicable despite the out-of-state occurrence of the injury.[24]

The case that established the pattern of interest analysis[25] to be followed by other courts is *Babcock v. Jackson.*[26] A New York resident, while a passenger in a New York automobile, was injured in Ontario, which prohibits recovery by a guest against a host driver. The New York Court of Appeals examined the traditional choice-of-law rule and concluded that its application failed to consider the valid interests of other jurisdictions, therefore often yielding unjust and anomalous results. The court concluded that "[j]ustice, fairness and the 'best practical result'. . . may best be achieved by giving controlling effect to the law of the jurisdiction which, because of its relationship or contact with the occurrence or the parties has the greatest concern with the specific issue raised in the litigation."[27] While most of the comment on *Babcock* has been favorable,[28] the decision has caused a number of commentators some discomfort.[29]

In the case of *Griffith v. United Air Lines,*[30] the Pennsylvania Supreme Court followed the "interest analysis" established by *Babcock.* The court abandoned the lex loci delicti rule "in favor of a more flexible rule which permits analysis of the policies and interests underlying the particular issue before the court."[31] A Pennsylvania domiciliary purchased a ticket from United Airlines, Inc. in Philadelphia for a round trip flight from Philadelphia to Phoenix, Arizona. In the course of landing at a scheduled stop at Denver, Colorado, the plane crashed, causing the immediate death of the traveler. Suit was brought by the decedent's executor against the airline in Pennsylvania.

The choice-of-law issue was whether the Colorado or the Pennsylvania Survival Act applied. The Colorado Survival Act limited survival recovery to earnings lost and expenses sustained by the decedent

---

24. Schmidt v. Driscoll Hotel, 249 Minn. 376, 82 N.W.2d 365, 368 (1957).
25. *See* R. WEINTRAUB, COMMENTARY ON THE CONFLICT OF LAWS 232 (1971).
26. 12 N.Y.2d 473, 240 N.Y.S.2d 743, 191 N.E.2d 279 (1963).
27. *Id.* at 481, 191 N.E.2d at 283, 240 N.Y.S.2d at 749.
28. *See Comments on Babcock v. Jackson, a Recent Development in Conflict of Laws,* 63 COLUM. L. REV. 1212 (1963), in which Professors Cavers, Cheatham, Currie, Ehrenzweig, Leflar and Reese have expressed their views on the decision.
29. *See* Ehrenzweig, *Comments on Babcock v. Jackson, A Recent Development in Conflict of Law,* 63 COLUM. L. REV. 1212, 1243 (1963); Sparks, *Babcock v. Jackson—A Practicing Attorney's Reflections Upon the Opinion and Its Implications,* 31 INS. COUNSEL J. 428 (1964). Although *Babcock* appeared to establish that New York's policy would give controlling effect to the law of the jurisdiction which "has the greatest concern with the specific issue raised in the litigation," by virtue of its "relationship or contact with the occurrence of the parties," the case was soon followed by Dym v. Gordon, 16 N.Y.2d 120, 209 N.E.2d 792, 262 N.Y.S.2d 463 (1965), which perverted New York's policy of interest analysis. *See* Weintraub, *The Emerging Problems in Judicial Administration of a State-Interest Analysis of Tort Conflict of Laws Problems,* 44 S. CAL. L. REV. 877, 886 (1971). Presumably, some of the commentators were discomforted by *Babcock* because the vagueness of its policy allowed such unorthodox interpretation.
30. 416 Pa. 1, 203 A.2d 796 (1964).
31. *Id.* at 21, 203 A.2d at 805.

between the time of injury and death.[32] As death was instantaneous in this case, application of Colorado law would permit no recovery. The Pennsylvania Survival Act allowed recovery of the present value of the decedent's probable future earnings for the period of his life expectancy, less the cost of his own maintenance during the period that he would have lived and less the amount that he would have spent to support his wife and children.[33]

In abandoning the place-of-the-wrong rule, in favor of a method that allows analysis of the underlying policies in issue, the court reasoned that Pennsylvania was no less interested in allowing recovery for Pennsylvania surviving dependents under its liberal act when the decedent's death occurred in a foreign state, than it would have been had the crash occurred in Pennsylvania.[34] Moreover, the court determined that the defendant, who did not shape his conduct in reliance on Colorado law, would not be unfairly surprised.[35] If Colorado's policy underlying limited recovery for wrongful death was to relieve Colorado courts of the guesswork involved in reducing future earnings to their present value, such a policy was inapplicable in a Pennsylvania forum.[36] On the other hand, if Colorado's policy was to shield Colorado defendants from large verdicts, Colorado had some interest in protecting United Air Lines. But, when viewed in light of the fact that United was not incorporated in Colorado and did business in many other states, this "interest" seemed slight.[37]

"Interest analysis," as an objective methodology of choice-of-law analysis, had arrived. Even the Supreme Court of the United States acknowledged the trend of abandoning the place-of-the-wrong rule in favor of considering the "interests" of the states that have contacts with the issues and the parties.[38] In holding that the Tort Claims Act[39] requires federal courts in multistate tort actions to look first to the law of the state where the acts of negligence took place,[40] and that a reading of the statute as a whole, with regard to its purpose, requires application of the whole law of the state where

32. COLO. REV. STAT. ANN. § 152-1-9 (Supp. 1960).

33. Law of April 18, 1949, art. VI, § 603, [1949] Pa. Stat. 512 (Repealed 1972). The limits of recovery were upheld in Skoda v. West Penn. Power Co., 411 Pa. 323, 355, 191 A.2d 822, 828-29 (1963).

34. Griffith v. United Air Lines, Inc., 416 Pa. 1, 203 A.2d 796, 807 (1964).

35. *Id.* at ——, 203 A.2d at 806.

36. *Id.* at ——, 203 A.2d at 807.

37. *Id.* This last point of analysis by the Pennsylvania court involved the weighing of the competing interests of the two states. It is submitted that Pennsylvania's policy of compensation was correctly advanced; but for the mere fortuity of the crash in Denver, Colorado, would have had no interest in the action. For a discussion of this case and criticism of the subjective weighing of the states' interests, see WEINTRAUB, COMMENTARY ON THE CONFLICT OF LAWS 234 (1971).

38. Richards v. United States, 369 U.S. 1, 12-13 (1962).

39. 28 U.S.C. §§ 1291, 1346, 1402, 1504, 2110, 2401, 2402, 2411, 2412, and 2671-2680 (1970).

40. Richards v. United States, 369 U.S. 1, 9 (1962).

the act occurred, including its choice-of-law rules,[41] the Court stated:

> Recently there has been a tendency on the part of some States to depart from the general conflicts rule in order to take into account the interests of the State having significant contact with the parties to the litigation. We can see no compelling reason to saddle the Act with an interpretation that would prevent the federal courts from implementing this policy in choice-of-law rules where the State in which the negligence occurred has adopted it.[42]

However, as many states moved quickly along the charted course of "interest analysis,"[43] they were to find that course was not without its tempests.

IV. THE NORTH DAKOTA POSITION

North Dakota also has abandoned the doctrine of lex loci delicti and has elected the "significant contacts" approach of *Babcock* to determine tort choice-of-law questions.[44] In *Issendorf v. Olson*, suit was brought by an automobile guest, a North Dakota resident, against the owner-operator, also a North Dakota resident, for injuries sustained in an automobile accident occurring in Minnesota. The conflict of laws issue was whether to apply the Minnesota statute of comparative negligence,[45] the place-of-the-wrong rule, or the North Dakota statute of contributory negligence,[46] the forum rule.

In holding to abandon the place-of-the-wrong rule,[47] the court stated:

> Most of the interest factors point to the application of North Dakota law. . . The plaintiff was a resident of North Dakota at the time of the accident; his loss of income and the medical bills he incurred all affect North Dakota's economy; the vehicle in which he was riding at the time of the accident was registered and garaged in North Dakota, was insured under North Dakota rates and was driven by a North Dakota resident; the trip in which the accident occurred originated in North Dakota, was to terminate there, and therefore the host-guest relationship originated in North Dakota. . . .
>
> We believe the contacts with North Dakota are much more significant than those with Minnesota. The contacts with Minnesota are minimal. The locus of the accident was fortuitous, having resulted from a brief journey into Minnesota for food, beverage, and entertainment.[48]

---

41. *Id.* at 14.
42. *Id.* at 12-13.
43. *See* note 19 *supra.*
44. 194 N.W.2d 750 (N.D. 1972).
45. MINN. STAT. ANN. § 604.01 (1969).
46. N.D. CENT. CODE § 9-10-06 (1959).
47. *See* note 6 *supra.*
48. Issendorf v. Olson, 194 N.W.2d 750, 755 (N.D. 1972).

Though the court did not feel that North Dakota's contributory negligence was the "better law,"[49] the court nevertheless held that the law of North Dakota should apply because "the significant contacts in this case are with this State and that accordingly our substantive law should be applied to this case."[50]

The North Dakota Supreme Court, in *Mager v. Mager*,[51] again faced a choice-of-laws problem between the substantive law of North Dakota and that of Minnesota. Plaintiff wife and defendant husband were both Minnesota residents. In an action by the wife against her husband for personal injuries sustained in an automobile accident that occurred in Minnesota, the complaint was dismissed by the trial court[52] on the ground that, under Minnesota law, the claim was barred by the interspousal immunity doctrine.[53]

On apppeal by the wife, the North Dakota Supreme Court reaffirmed "the significant-contacts rule as the choice-of-law rule to be applied in tort[54] litigation in this State when the wrong complained of occurred in a foreign State."[55] The court reasoned that, because the only contact North Dakota had with either the parties or the occurrence was the subsequent hospitalization and treatment of the plaintiff in Fargo, the *Issendorf* decision must be followed.[56] In response to the appellant's argument that the "better law" should be applied as in the Wisconsin case of *Zelinger v. State Sand & Gravel Co.*,[57] the North Dakota Supreme Court distinguished *Zelinger* on the grounds that one of the parties was a resident of Wisconsin, the forum state, and that the accident occurred in Wisconsin.[58]

V. THE MINNESOTA POSITION

Minnesota had followed the doctrine of lex loci delicti as recently as 1958, in *Phelps v. Benson.*[59] However, in *Milkovich v. Saari*,[60] the Supreme Court of Minnesota stated that it was abandoning that

49. *Id.* at 755-56.
50. *Id.* at 756.
51. 197 N.W.2d 626 (N.D. 1972).
52. *Id.* at 628.
53. Beaudette v. Frana, 285 Minn. 366, 173 N.W.2d 416 (1969). That case abrogated the interspousal immunity doctrine in Minnesota for all cases arising after December 19, 1969. The accident in *Mager* occurred on December 14, 1969, just five days before the *Beaudette* decision.
54. *See* First National Bank of Wibaux v. Dreher, 202 N.W.2d 670 (N.D. 1972) where the North Dakota Supreme Court felt constrained to follow this state's applicable territorially-oriented statute, N.D. CENT. CODE § 9-07-11, holding that the validity of a contractual provision is to be determined according to the law of the place of performance, and if such is not indicated, then according to the law of the place where the contract is made. The court so held despite its stated awareness of criticism of the inherent weakness and the statutory origin of such rules. *Id.* at 672.
55. Mager v. Mager, 197 N.W.2d 626, 628 (N.D. 1972).
56. *Id.*
57. 38 Wis. 2d 98, 156 N.W.2d 466, 473 (1968).
58. Mager v. Mager, 197 N.W.2d 626, 629 (N.D. 1972).
59. *See* note 6 *supra.*
60. 295 Minn. 155, 203 N.W.2d 408 (1973).

territorially-oriented doctrine, and choosing instead to follow the "better-law" concept as a methodology and not a rule in choice-of-law situations.[61] In *Milkovich*, plaintiff automobile guest and defendants automobile owner and driver, all residents of Ontario, Canada, had traveled to Minnesota on a shopping and pleasure trip. While in Minnesota, plaintiff was injured when the car went off the road. Suit was brought in Minnesota against the owner and driver of the automobile, which was registered, insured, and garaged in Ontario. The guest statute of Ontario requires proof of gross negligence to allow recovery,[62] while Minnesota does not have such a statute.

The Supreme Court of Minnesota held that the choice-of-law factors of "advancement of forum's legitimate governmental interests" and "application of the better law" required application of Minnesota's common-law rules of negligence rather than Ontario's guest statute.[63] The court pointed out that five choice-influencing considerations originally proposed by Professor Leflar,[64] a recognized commentator in the field, had been adopted by the court in *Schneider v. Nicols*,[65] indicating Minnesota's approval of the better law approach and rejection of the guest statute concept.[66] These choice-influencing factors are as follows: (1) predictability of results; (2) maintenance of interstate and international order; (3) simplification of the judicial task; (4) advancement of the forum's governmental interests; and (5) application of the better rule of law.[67] Adhering to the list, the Minnesota court found that the "predictability of results" was relatively unimportant. As no one plans to have an accident, except for the remote possibility of forum shopping, this factor bears little significance to an automobile accident case.[68] As to "simplification of judicial task," the court stated that, in the appropriate case, it would have no trouble applying the guest statute rule of gross negligence.[69] Maintenance of interstate and international order, the court determined, is not threatened in this case, "where. . . the forum state has a substantial connection with the facts and issues in-

61. *Id.* at 170, 203 N.W.2d at 416. In Balts v. Balts, 273 Minn. 419, 142 N.W.2d 66 (1966) and Kopp v. Rechtzigel, 273 Minn. 441, 141 N.W.2d 526 (1966), Minnesota initially replaced lex loci delicti with the "significant contacts" doctrine in Babcock v. Jackson. In Bolgrean v. Stich, 293 Minn. 8, 196 N.W.2d 442 (1972), Minnesota adopted the "center of gravity" test which is the same process as "significant contacts". *Milkovich* represents a shift in the court's position on "interest analysis" to the "forum's legitimate governmental interest" and "better law" tests.

62. ONTARIO REVISED STATUTES ch. 202 § 132(3) (1970).

63. Milkovich v. Saari, 295 Minn. 155, 170, 203 N.W.2d 408, 417 (1973).

64. R. LEFLAR, AMERICAN CONFLICTS LAW (1968).

65. 280 Minn. 139, 158 N.W.2d 254 (1968).

66. Milkovich v. Saari, 295 Minn. 155, 164, 203 N.W.2d 408, 413 (1973).

67. *Id.* at 161, 203 N.W.2d at 412. *See also* R. LEFLAR, AMERICAN CONFLICTS LAW (1968). A consideration of the "better law" concept is whether a competing domestic rule "is anachronistic, behind the times." *Id.* at 256.

68. Milkovich v. Saari, 295 Minn. 155, 161, 203 N.W.2d 408, 412 (1973).

69. *Id.* at 170, 203 N.W.2d at 416-17.

volved."[70] The court cited Minnesota as the place of the accident and the place of the plaintiff's hospitalization as yielding the "substantial connection."[71] The court continued:

> In that posture, we are concerned that our courts not be called upon to determine issues under rules which, however, accepted they may be in other states, are inconsistent with our own concept of fairness and equity. We might also note that persons injured in automobile accidents occurring within our borders can reasonably be expected to require treatment in our medical facilities, both public and private.[73]

In considering the last of the factors, "the better rule of law," the court found any policy considerations that Ontario might have in protecting hosts from ungrateful guests or in preventing collusive suits by guest and host unpersuasive.[74]

Following *Milkovich* came *Schwartz v. Consolidated Freightways Corporation of Delaware*.[75] Plaintiff, a Minnesota resident, brought an action for personal injuries sustained in an automobile accident in Indiana against two defendant nonresident coporations licensed to do business in Minnesota. The trial court jury returned a verdict finding the plaintiff 10 percent negligent and the defendants 90 percent negligent.[76] The choice-of-law question presented to the Supreme Court of Minnesota was whether to apply Minnesota's law of comparative negligence[77] or Indiana's law of contributory negligence.[78]

The court discussed the methodology used in the *Milkovich* decision, pointing out that only "advancement of the forum's governmental interests" and "application of the better rule of law" are relevant to tort cases.[79] "Forum governmental interests" were found by the court to exist by virtue of the plaintiff's residence in the state and his subsequent medical treatment in Minnesota, an "economic impact. . . felt by Minnesota residents."[80] Moreover, though not residents, both defendants were licensed to do business in Minnesota.[81] On the other hand, the court found Indiana's "governmental interests" to be limited to the situs of the accident and to the jurisdiction where plaintiff received initial medical attention, which the court

---

70. *Id.*
71. *Id.*
72. *Id. See also*, Leflar, *Conflicts Law: More on Choice-Influencing Considerations*, 54 CALIF. L. REV. 1584, 1594 (1966).
73. *Id.*
74. *Id.*
75. ——Minn.——, 221 N.W.2d 665 (1974).
76. *Id.* at ——, 221 N.W.2d at 666.
77. MINN. STAT. ANN. § 604.01 (Supp. 1975).
78. IND. ANN. STAT. § 2-1025 (1968).
79. ——Minn.——, 221 N.W.2d 665, 668 (1974). The court stated that application of "the forum's governmental interests" contemplates the presence of factual contacts with the forum and policy consideration of the forum relevant to its choice of law.
80. *Id.*
81. *Id.*

concluded were "much less substantial" than Minnesota's "governmental interests."[82] While not actually applying "the better rule of law test" of the adopted Leflar methodology, the court pointed out that, because the plaintiff would recover nothing under Indiana's contributory negligence rule even though plaintiff was found to be only 10 percent negligent, they were less than convinced that Indiana had the "better rule." Moreover, the court declared it had the "power to find such a result contrary to basic state policy."[83]

Myers v. Government Employees Insurance Co.[84] is Minnesota's most recent response to choice-of-law questions in tort. Plaintiffs, all Minnesota residents, sustained personal injuries in an automobile accident that occurred in Louisiana. Suit was brought against defendant insurer, a District of Columbia corporation licensed to do business in both Louisiana and Minnesota. Although Louisiana has a direct action statute[85] that would allow such suit against an insurer, Louisiana's one-year statute of limitations would bar the action if brought in that state.[86] Minnesota has no such statutory allowance for direct actions against insurers, but Minnesota does have a survival statute, permitting causes of action that arose outside of Minnesota and which have vested in citizens of Minnesota.[87] Application of this survival statute would allow the cause of action under Minnesota's six-year statute of limitations.[88] The conflict of laws issue was whether to apply Louisiana's one-year statute of limitations, a bar to plaintiff's cause of action, or to apply Minnesota's survival statute, which would allow suit.

---

82. *Id.*

83. *Id.* at ——, 221 N.W.2d at 669. One may infer from this statement that the court would have declared Minnesota's comparative negligence the "better law," had the court felt compelled to apply the "better rule of law" test.

84. ——Minn.——, 225 N.W.2d 238 (1974).

85. LA. REV. STAT. Title 22, § 655 (Supp. 1975) provides in part:

> The injured person or his or her survivors or heirs . . . shall have a right of direct action against the insurer within the terms and limits of the policy; and such action may be brought against the insurer alone, or against both the insured and insurer jointly and in solido, in the parish in which the accident or injury occurred or in the parish in which an action could be brought against either the insured or the insurer under the general rules of venue prescribed by Art. 42, CODE OF CIVIL PROCEDURE. The right of direct action shall exist whether the policy of insurance sued upon was written or delivered in the State of Louisiana or not and whether or not such policy contains a provision forbidding such direct action, provided the accident or injury occurred within the State of Louisiana. . . . It is the intent of this Section that any action brought hereunder shall be subject to all of the lawful conditions of the policy or contract and the defenses which could be urged by the insurer to a direct action brought by the insured, provided the terms and conditions of such policy or contract are not in violation of the laws of this State. . . .

86. LA. CIV. CODE ANN. art. 3536 (West 1965) provides a one-year statute of limitations on tort claims.

87. MINN. STAT. ANN. § 541.14 (1945) provides: "When a cause of action has arisen outside this state and, by the laws of the place where it arose, an action thereon is there barred by lapse of time, no such action shall be maintained in this state unless the plaintiff be a citizen of the state who has owned the cause of action ever since it accrued."

88. MINN. STAT. ANN. § 541.05 (1945).

The court held that plaintiffs could bring a direct cause of action against the insurer, pursuant to the Louisiana direct action statute, since the Minnesota Survival Statute expressed a legislative intent to allow the vested cause of action when commenced within the Minnesota statute of limitations, even though the Louisiana statute of limitations would bar such an action.[89] In making its determination, the court focused on "advancement of the forum's governmental interests" and "application of the better rule of law,"[90] even though a determination of the latter consideration was not reached.[91]

The court's analysis of the "governmental interests" test considered the interests of both the forum and Louisiana.[92] The court found Louisiana's interest, under its direct action statute, to be the protection of claims of the public, including plaintiffs. But the court concluded that Louisiana's protection interest would be nominally served by having its one-year statute of limitations applied when nonresidents were seeking application of another state's statute of limitations in that state's courts.[93] However, the "governmental interests" of Minnesota were found to be significant, by providing access to its courts for its citizens and by considering its socio-legal policies, expressed by its legislature and courts.[94] The court, then, examined which of its competing "interests" should be advanced, its statute which allows survival of vested claims or its prohibition of direct actions against insurers. Holding that the major consideration of Minnesota as the forum state is the availability of its courts to enforce the vested rights of its citizens, the Supreme Court of Minnesota allowed the action.[95]

---

89. Myers v. Government Employees Insurance Co., ——Minn.——, 225 N.W.2d 238, 243-44 (1974).

90. *Id.* at ——, 225 N.W.2d at 242.

91. *Id.* at ——, 225 N.W.2d at 244. The court indicated that the "better-rule" test should be used only when the other choice-influencing factors provide no resolution.

92. *Id.* at ——, 225 N.W.2d at 242-43. Although not discussed by the court, the *Myers* case involved the use of de'pecage, a multiple-issue choice-of-law approach whereby references to the law of different jurisdictions ar used to decide different issues. The Minnesota court ruled that Louisiana's direct action statute gave plaintiffs a vested cause of action. In addition, the court determined that Minnesota's Survival Statute allowed the cause of action to endure when commenced within the Minnesota Statute of Limitations. For discussion of the merits of de'pecage as a choice-of-law approach, see Reese, *De'pecage: A Common Phenomenon in Choice of Law*, 73 COLUM. L. REV. 58 (1973); Weintraub, *Beyond De-pecage: A "New Rule" Approach to Choice of Law in Consumer Credit Transactions and a Critique of the Territorial Application of the Uniform Consumer Credit Code*, 25 CASE WESTERN RESERVE L. REV. 16 (1974); Wilde, *De'pecage in the Choice of Tort Law*, 41 S. CAL. L. REV. 329 (1968).

93. ——Minn.——, 225 N.W.2d 238, 243 (1974).

94. *Id.* at ——, 225 N.W.2d at 244.

95. *See* R. WEINTRAUB, COMMENTARY ON THE CONFLICT OF LAWS 39 (1971). Although Weintraub's is but a suggested method of analysis, it is submitted that it is a generally accurate picture of the process of interest analysis, endorsed by its proponents.

VI. COMMENT: RAMIFICATIONS AND ALTERNATIVES

"Interest analysis" as a process for the resolution of choice-of-law problems may be seen as a methodology in steps:[96]

(1) The forum court must focus on the apparently conflicting rules in the jurisdictions having contacts with the parties or the occurrence.

(2) The forum court must examine the policies underlying each state's rules to determine which would be meaningfully advanced. If, at that state of the process, it appears that only the policies of one state would be so advanced, then no "true"[97] conflict exists. Thus the choice-of-law question should be resolved in favor of that jurisdiction whose interests are meaningfully advanced.

(3) If the competing policies of the jurisdictions having contacts with the particular fact situation are determined to be in "true" conflict, the forum court might then look to a number of proposed solutions: (a) it might consider policies or trends in the development of the law that the competing jurisdictions share;[98] (b) it might employ Leflar's five choice influencing factors;[99] (c) the Restatement (Second) might provide the answer with its "most significant relationship" test;[100] (d) the court might apply the forum rule, as one author has suggested;[101] (e) or election might be made for another author's "principles of preference."[102] For tort actions involving guest-host automobile accidents in which no policy of any of the concerned jurisdictions can be meaningfully advanced, the *Neumeier* rules might provide the answer.[103]

It is submitted that the above process of "interest analysis" would show that *Issendorf* is not a "true" conflict. Step (1) reflects

---

96. *See* Currie, *Notes on Methods and Objectives in the Conflict of Laws*, 1959 DUKE L. J. 171, 174 (1959); Traynor, *Is This Conflict Really Necessary?* 37 TEX. L. REV. 657, 667-74 (1959). *But see* Leflar, *True "False Conflicts," Et Alia*, 48 BOSTON U.L. REV. 164, 170-73 (1968), wherein Leflar opposes the term "false conflict" for any case in which two states have different laws on the same issue where both have contacts with the occurrence in issue. He would use the term to indicate the situation where both states have identical rules or different rules which would yield the same result.

97. *See* WEINTRAUB, COMMENTARY ON THE CONFLICT OF LAWS 39 (1971).

98. WEINTRAUB, COMMENTARY ON THE CONFLICT OF LAWS 39 (1971).

99. R. LEFLAR, AMERICAN CONFLICTS LAW (1968).

100. RESTATEMENT (SECOND) CONFLICT OF LAWS § 145 (1969).

101. Currie, *The Disinterested Third State*, 28 LAW & CONTEMP. PROB. 754, 757 (1963).

102. D. CAVERS, THE CHOICE OF LAW PROCESS (1965).

103. Neumeier v. Kuehner, 31 N.Y.2d 121, 286 N.E.2d 454, 335 N.Y.S.2d 64 (1972). *Neumeier* has been termed a case "unprovided for" by interest analysis. The decedent was a resident of Ontario, a guest statute jurisdiction, and the accident occurred there. The defendant was a resident of New York where his automobile was insured. Ontario had no interest in protecting the New York host and his insurer from tort liability, and New York had no interest in applying its law to allow recovery to a non-resident injured in

conflict in the rules of the two jurisdictions—Minnesota's statute of comparative negligence versus North Dakota's statute of contributory negligence. Step (2), however, reveals that, but for the fortuity of the accident happening in Minnesota, that state would have no connection to the parties or the occurrence and, consequently, no policy that would be meaningfully advanced. North Dakota, on the other hand, could advance its policies as set out previously. Therefore, the court reached the correct result but for the wrong reasons.

In employing its "significant contacts" test, as opposed to resolution of the problem as a "false" conflict, the court appears to be "counting contacts,"[104] particularly in regard to the place where the guest-host relationship originated. A similar "significant contacts" finding by the New York Court of Appeals in *Dym v. Gordon*[105] generated substantial confusion in New York as to the meaning of "significant contacts." However, in *Tooker v. Lopez*,[106] the New York Court of Appeals determined that the place where the guest-host relationship originated or is centered is wholly irrelevant to the policies of the concerned jurisdictions.[107] Clearly, such a territorial approach is inconsistent with interest analysis.

In *Mager*, the North Dakota Supreme Court, it is submitted, again faced no "true" conflict. But for the fortuity of the situs of the accident being North Dakota and the subsequent hospitalization in that state, North Dakota had no connection with the fact situation and no policy to advance. It might be argued that North Dakota does have a policy of insuring compensation to its medical creditors. As

---

his home state. Questioning the utility of interest analysis in such a case, the court devised three choice-of-law rules for determination:

(1) When the guest-passenger and the host-driver are domiciled in the same state, and the car is registered there, the law of that state should control and determine the standard of care which the host owes to his guest.

(2) When the driver's conduct occurred in the state of his domicile and that state does not cast him in liability for that conduct, he should not be held liable by reason of the fact that liability would be imposed upon him under the tort law of the state of the victim's domicile. Conversely, when the guest was injured in the state of his own domicile and its law permits recovery, the driver who has come into that state should not—in the absence of special circumstances—be permitted to interpose the law of his state as a defense.

(3) In other situations, when the passenger and the driver are domiciled in different states, the rule is necessarily less categorical. Normally, the applicable rule of decision will be that of the state where the accident occurred but not if it can be shown that displacing that normally applicable rule will advance the relevant substantive law purposes without impairing the smooth working of the multi-state system or producing great uncertainty for litigants. *Id.* at 128, 286 N.E.2d at 457-58, 335 N.Y.S.2d at 70.

As none of the North Dakota or Minnesota decisions discussed can be termed "unprovided for" cases, the *Neumeier* rules will not be analyzed in this Note. But for in-depth discussion and analysis, see *Symposium—Neumeier v. Kuehner: A Conflicts Conflict*, 1 HOFSTRA L. REV. 93 (1973). Although the *Neumeier* rules and their taint of territorialism are outside the scope of this Note and must be a topic for another paper, it should be noted that none of those who wrote for the above symposium favor these rules.

104. *See* Weintraub, *The Emerging Problems in Judicial Administration of a State-Interest Analysis of Tort Conflict of Laws Problems*, 44 S. CAL. L. REV. 877, 883-89 (1971) for a discussion of "counting contacts" in New York cases.

105. 16 N.Y.2d 120, 209 N.E.2d 792, 262 N.Y.S.2d 463 (1965).

106. 24 N.Y.2d 569, 249 N.E.2d 394, 301 N.Y.S.2d 519 (1969).

107. *Id.* at 579 n.2, 249 N.E.2d at 400 n.2, 301 N.Y.S.2d at 527 n.2.

such, the case would present a "true" conflict of competing states' policies. But surely this policy can't compete with Minnesota's policies regulating the marital rights of its domiciliaries.[108]

In *Milkovich*, as in *Mager*, the forum court's only connections with the parties or the occurrence were that the forum state was the situs of the accident, a territorial "contact," and the place of plaintiff's hospitalization. It is submitted that the merely fortuitous connection with the forum as the place of the injury and plaintiff's hospitalization render this action, under the suggested process of interest analysis, a "false" conflict. As in *Mager*, though the forum might have an interest in protecting its medical creditors, Ontario's policy behind its guest statute, that of protecting the host and buyers of liability insurance, is more compelling. After all, it is Ontario, not Minnesota, that would have to live with the result. Additionally, the fact that all Minnesota medical creditors had been paid precluded any merit to this compensatory protection policy. The court's fear of "hospital-shopping" or "litigation-directed pressures on the payment of debts to medical facilities"[109] appears something less than a policy consideration which would be meaningfully advanced.

Although the case adopts Leflar's choice-influencing considerations, the Minnesota court presupposed maintenance of interstate and international relations when it determined "substantial connection" with the occurrence. Such presupposition destroys the merit of any test of "interest analysis." In addition, the court's finding of "governmental interests" viewing itself as a "justice administering state" dictating application of rules consistent with its own ideas of fairness and equity,[110] the "better law," precluded any real analysis of policies which Ontario might have regarding the issue before the court. Rather, the *Milkovich* decision stands as a case decided on the law of the forum, under the guise of "interest analysis."

The *Schwartz* decision adhered to the Leflar methodology of "interest analysis" more closely than *Milkovich*. Though the court stated that only "governmental interests" and "better rule of law" are relevant to tort cases, the decision emphasized that policy considerations and factual contacts were necessary prerequisites.[111] It is submitted that the case could have been determined a "false" conflict; Indiana's only connections were "place-of-the-injury" and "place of medi-

108. For a discussion of compensatory protection of medical creditors as a policy, see R. WEINTRAUB, COMMENTARY ON THE CONFLICT OF LAWS 246 (1971).

109. Milkovich v. Saari, 295 Minn. 155, 171, 203 N.W.2d 408, 417 (1973). For a discussion of this hypothetical policy in *Milkovich, see Conflict of Laws: Minnesota rejects the "Significant Contacts" Doctrine in Favor of the "Better Law" Test*, 58 MINN. L. REV. 199, 204-05 (1973-74).

110. Milkovich v. Saari, 295 Minn. 155, 171, 203 N.W.2d 417 (1973).

111. Schwartz v. Consolidated Freightways Corp. of Del., ——Minn.——, 221 N.W.2d 665, 668 (1974).

cal treatment." In choosing to consider medical treatment as an "interest," the court realistically concluded that it was far less compelling than Minnesota's more substantial economic policy considerations. The plaintiff was continuing to receive medical care in Minnesota where he was currently domiciled, "saddled with crippling physical disabilities arising from the collision. Thus, the economic impact of these injuries and of subsequent litigation will be felt by Minnesota residents."[112]

The "better law" test was not considered in *Schwartz* since the "governmental interests" of Minnesota were held sufficient to apply Minnesota law. However, the court's statement that, because Indiana's contributory negligence would leave the plaintiff entirely uncompensated, "[i]t is within the ambit of this court's policy to find such a result contrary to basic state policy,"[113] causes some concern.

One author has recommended the "better law" consideration if two conditions are met: (1) there must be a true conflict of policies underlying the laws of each state; and (2) the domestic law of each state must be significantly and legitimately advanced by application of its own law.[114] However, the "better law" test has been criticized as an escape device, affording courts a means to avoid dealing with conflicts problems.[115] Moreover, the "better law" test raises the jurisprudential question of judicial legislation: should courts determine the merits of social policy established by legislative action? The answer must be that such determination is surely outside the bounds of judicial authority.

The *Myers* case presented the Supreme Court of Minnesota with a "true" conflict of laws problem.[116] The two states involved have conflicting laws—application of Minnesota's "borrowing statute" would allow the action to survive, while application of the Louisiana one-year statute of limitations would prohibit the action. In addition, both states have social policies which would be advanced: Minnesota seeks to provide its citizens access to its courts, while Louisiana seeks to protect its defendants from long-term threats of suit, so as to provide them peace of mind.

In its decision, the court determined and, it is submitted, correctly so, that Louisiana had at best a minimal interest in having another state's statute of limitations apply to nonresidents in that

112. *Id.*

113. *Id.* at ——, 203 N.W.2d at 669.

114. *See* R. WEINTRAUB, COMMENTARY ON THE CONFLICT OF LAWS 244-46 (1971).

115. *See* Cavers, *Conflict of Laws Round Table, the Value of Principled Preferences*, 49 TEX. L. REV. 211 (1971).

116. Though Leflar, as cited by the court, would term the case a "false conflict," he defines the term as indicative of a fact situation in which the relevant laws of both jurisdictions differ but in which both have policy interests to advance. *See* Myers v. Government Employees Insurance Co., ——Minn.——, 225 N.W.2d 238, 242 (1974).

state's courts.[117] However, the Minnesota court failed to consider any interests in regard to defendants that Louisiana might have in setting time limitations for suit. Such a policy consideration seems both plausible and significant. Though the policy of the forum court to provide judicial access to its citizens seems more compelling, the Minnesota court, as in *Milkovich*, failed to remain true to its adopted methodology of "interest analysis" by not giving any real consideration to the "legitimate governmental interests" of the other state in interest.

VII. CONCLUSION

The territorially-oriented rule of lex loci delicti fails to examine the significant interests of jurisdictions having connections with the parties or the occurrence in tort litigation. As a result, the great majority of jurisdictions have replaced that doctrine with "interest analysis" as a method for resolving choice-of-law problems in tort.

The North Dakota courts have elected the "significant contacts" approach of interest analysis. The potential problems inherent in such an approach are the danger of considering contacts, with a view toward quantity rather than quality, and the failure to resolve the conflict as "false" when only one jurisdiction has a policy to advance even though other jurisdictions have some "contact" with the parties or the occurrence.

Minnesota, which originally abandoned lex loci delicti in favor of "significant contacts," has adopted Leflar's five choice-influencing considerations as an interest analysis approach. Aside from the "better law" test which clothes the judge in legislative robes, this methodology offers a just and workable solution. But the Minnesota courts have not been faithful to their adopted approach. They have presumed "legitimate governmental interests" without first considering any policies of the other interested jurisdictions that could be meaningfully advanced.

GREGORY JOHNSON

117. *See* Huson v. Chevron Oil Co., 430 F.2d 27 (5th Cir. 1970), *aff'd* 404 U.S. 97 (1971) in which the Fifth Circuit Court of Appeals held that Louisiana's one-year statute of limitations is a procedural restraint which bars the remedy, but does not extinguish the right.