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Workmen's Compensation and the Conflict of Laws in New York

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WORKMEN'S COMPENSATION AND THE CONFLICT OF LAWS IN NEW YORK

In our increasingly mobile society an employee's work may take him to several states. Since he has contacts with each, it may be unclear in which state the employment relationship is located. If injured in the course of such employment, the employee may seek compensation in the most convenient forum[1] or in the state offering the highest rate of compensation.[2] The state or states in which recovery is sought must then determine whether their statutes apply. If each state decides that the accident is more properly the concern of another, the employee may be denied all recovery; if more than one state allows compensation, the employer might be forced to pay a double award. An arbitrary or mechanical rule may deny compensation for some injuries in which the state has a legitimate interest, and thereby frustrate the practical and humanitarian objectives of a workmen's compensation system.

Practicalities usually preclude one state from applying the workmen's compensation law of another,[3] since in most states a claim may be brought only through a special workmen's compensation board or other administrative body.[4] But there are few constitutional limitations on the power of states to apply their own statutes in adjudicating claims arising from out-of-state accidents. The full faith and credit clause was once held to preclude the forum from applying its own law if the accident was of greater concern to another state.[5] Placing greater emphasis on the due process clause of the fourteenth amendment, the Supreme Court has since recognized that several states may have a legitimate interest in the same accident, and that each may

1 Every state now has a workmen's compensation statute. *See* 2 A. LARSON, WORKMEN'S COMPENSATION 509-61 (Appendices A-C) (1961) [hereinafter cited as LARSON].

2 The amount of recovery allowed under the various state statutes differs considerably. *See id.* at 524-53 (Appendix B).

3 A state may constitutionally apply the workmen's compensation law of another state. *Cf.* Alaska Packers Ass'n v. Industrial Accident Comm'n, 294 U.S. 532 (1935) (dictum).

4 *See, e.g.*, Grenier v. Alta Crest Farms, Inc., 115 Vt. 324, 58 A.2d 884 (1948) and cases cited therein. *But see* Floyd v. Vicksburg Cooperage Co., 156 Miss. 567, 126 So. 395 (1935), in which Mississippi applied the Louisiana compensation act, which is court administered.

5 Bradford Elec. Light Co. v. Clapper, 286 U.S. 145 (1932). In this case claimant's decedent was killed while on a casual trip to New Hampshire in the course of his employment. All other incidents of the employment were in Vermont. Claimant elected to bring a common law action for wrongful death in New Hampshire, whose compensation act permitted such election. The Court held that the Vermont compensation act was a defense to this action since it barred recourse to actions based on tort.

apply its own law.[6] The state in which the injury takes place can always apply its statute,[7] as can any other state which has a substantial connection with the employer-employee relationship.[8]

Although more than one state can constitutionally apply its act, there is no possibility of double recovery. It is settled that recovery under the compensation act of one state does not preclude an award by another state for the same injury, if the employer receives credit for the prior award.[9] It is better to assure an employee the maximum award to which he is legally entitled than it is to protect the employer from a series of compensation claims.[10]

The states have seldom exerted jurisdiction to the fullest extent constitutionally permissible. Indeed, by the time the Supreme Court defined the constitutional limitations, most states had already adopted more limited tests for determining the extraterritorial reach of their statutes. Some early cases treated workmen's compensation as a statutory tort and applied the torts conflict rule, usually *lex loci delicti*.[11] This approach was soon abandoned, and courts began to apply the local statute to some out-of-state accidents. Many states adopted the contract theory,[12] under which employment contracts were viewed as incorporating the compensation act of the state in which the contract was formed.[13] But exclusive reliance on contract technicalities may

6 *See* Alaska Packers Ass'n v. Industrial Accident Comm'n, 294 U.S. 532 (1935), in which the Court allowed California to apply its statute to the claim of a workman injured in Alaska. The Court said that either state could, consistently with due process, apply either workmen's compensation law. The employee had been hired in California and returned there following his accident. Since he was not paid until his return to California and probably could not have afforded another trip to Alaska to prosecute a claim there, he might have become a public charge of California. Thus California was deemed to have a legitimate public interest.

7 Pacific Employers Ins. Co. v. Industrial Accident Comm'n, 306 U.S. 493 (1939).

8 Cardillo v. Liberty Mut. Ins. Co., 330 U.S. 469, 476 (1947).

9 *See* Industrial Comm'n v. McCartin, 330 U.S. 622 (1947); RESTATEMENT OF CONFLICT OF LAWS §§ 402-03 (1934) [hereinafter cited as RESTATEMENT]; RESTATEMENT (SECOND) OF CONFLICT OF LAWS §§ 402-03 (Tent. Draft No. 9, 1964), [hereinafter cited as RESTATEMENT (SECOND)]. *Contra*, Magnolia Petroleum Co. v. Hunt, 320 U.S. 430 (1943). It was suggested in Rounsaville v. Central R.R., 87 N.J.L. 371, 374, 94 A. 392, 393 (Sup. Ct. 1915), that a complete double recovery under the acts of two states might be possible. This would occur only in rare situations such as when an employee is performing services for two employers located in different states under circumstances making both state statutes applicable. Shelby Mfg. Co. v. Harris, 112 Ind. App. 627, 44 N.E.2d 315 (1942).

10 *See* LARSON § 85.60.

11 North Alaska Salmon Co. v. Pillsbury, 174 Cal. 1, 162 P. 93 (1916); Gould's Case, 215 Mass. 480, 102 N.E. 693 (1913).

12 *See* LARSON § 87-11 & pp. 520-21 (Appendix A, table 6).

13 *See, e.g.*, Kennerson v. Thames Towboat Co., 89 Conn. 367, 94 A. 372 (1915); Ohlhausen v. Sternberg Dredging Co., 218 La. 677, 50 So. 2d 803 (1951); Filson v. Bell Tel.

bring within the jurisdiction of the state some accidents in which the state has no real interest.[14]

Under another theory, a state would apply its statute extraterritorially only when it is the place of regular employment or the place where the employment relationship is located.[15] This practice has been termed the most relevant to compensation theory and the least artificial;[16] but it is often difficult to determine where an abstract relationship is located, especially when the employment is transitory.

Other rules, which have achieved no general acceptance, range from a simple refusal to apply the local statute to any injury occurring in another state,[17] to complicated statutory and judicial tests that weigh a myriad of factors.[18]

Labs., Inc., 82 N.J. Super. 185, 191, 197 A.2d 196, 199 (App. Div. 1964); N.J. REV. STAT. § 34:15-9 (1937); Rothman, *Conflict of Laws in Labor Matters in the United States*, 12 VAND. L. REV. 997, 1001-02 (1959). *See also* RESTATEMENT § 398.

14 *See* LARSON § 87.34; Dwan, *Workmen's Compensation and the Conflict of Laws*, 11 MINN. L. REV. 329, 337-45 (1927).

15 LARSON § 87.12.

16 LARSON § 87.41.

17 Oklahoma originally applied this extreme rule on extraterritoriality. Battiest v. State Indus. Comm'n, 197 Okla. 618, 173 P.2d 922 (1946); Sheehan Pipe Line Constr. Co. v. State Indus. Comm'n, 151 Okla. 272, 3 P.2d 199 (1931); Beck v. Davis, 175 Okla. 623, 626, 54 P.2d 371, 373 (1936) (dictum). Since its amendment in 1955, the Oklahoma statute applies only when the accidental injury or the entering of the contract took place in Oklahoma. Scotty's Flying & Dusting Serv., Inc. v. Neeser, 393 P.2d 842 (Okla. 1964); OKLA. STAT. ANN. tit. 85, § 4 (Supp. 1966).

18 *See* COLO. REV. STAT. ANN. §§ 81-16-1 to 81-16-3 (1963). Reciprocity requirements and time limitations have been added to the general test which was developed by the Colorado courts. (No recovery is allowed in Colorado unless 2 of the following 3 conditions are met: contract of employment created in Colorado; employment in Colorado under a contract created outside the state; substantial employment in Colorado.) The statute itself has been further refined by judicial interpretation. Denver Truck Exch. v. Perryman, 134 Colo. 586, 597, 307 P.2d 805, 812 (1957); State Compensation Ins. Fund v. Howington, 133 Colo. 583, 298 P.2d 963 (1956). *See also* United States Fidel. & Guar. Co. v. Industrial Comm'n, 99 Colo. 280, 284, 61 P.2d 1033, 1035 (1936) (decided before the adoption of these statutory provisions).

The courts of Minnesota and Wisconsin have attempted to find a concrete status which can be fixed in a given state. Minnesota looks to the place where the business is "localized." *See, e.g.*, Hubbard v. Midland Constructors, Inc., 269 Minn. 425, 131 N.W.2d 209 (1964); Krekelberg v. M. A. Floyd Co., 166 Minn. 149, 207 N.W. 193 (1926); State *ex rel.* Chambers v. District Court, 139 Minn. 205, 166 N.W. 185 (1918). If the business is clearly established both in the state of injury and in Minnesota, compensation is granted under the Minnesota act only if the particular services involved are "referable" to the Minnesota business. The *Hubbard* case implies that the Minnesota act may be construed to apply more broadly whenever there are substantial business connections or personal ties.

Wisconsin requires that the claimant have "status" as a workman in Wisconsin before he can recover compensation. Every workman in the state is deemed to have at least

Most states assume jurisdiction over all accidents occurring within their borders, regardless of the contacts the employment has with other states.[19] But a few states do not apply their statutes even to in-state accidents when the employment is deemed to be the concern of another state.[20]

I

THE NEW YORK STATUTE

New York's workmen's compensation law provides that an employer must compensate his employees for injuries arising out of and in the course of their employment.[21] But the statute does not specify its applicability to claims that also concern a sister state, and judicial interpretation has failed to yield any clear test for what constitutes New York employment. The recent cases of *Rutledge v. Al. G. Kelly & Miller Brothers Circus* and *Rhodes v. Mushroom Transportation Co.*[22] again brought this question before the court of appeals. In its attempt to define the jurisdiction of the New York Workmen's Compensation Board, the court once more found it necessary to exhume a series of past decisions in order to determine their effect on the New York rule.

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temporary status, which is lost upon leaving if he has no additional ties with the state. Perfect Seal Rock Wool Mfg. Co. v. Industrial Comm'n, 257 Wis. 133, 42 N.W.2d 449 (1950); Interstate Power Co. v. Industrial Comm'n, 203 Wis. 466, 474-76, 234 N.W. 889, 892-93 (1931). An employee who has worked for a Wisconsin employer covered by the act or who has otherwise obtained status as a Wisconsin employee retains constructive status in Wisconsin even while working elsewhere, and can obtain compensation under the Wisconsin statute for out-of-state injuries until he acquires actual status in another state. Western Condensing Co. v. Industrial Comm'n, 262 Wis. 458, 461-62, 55 N.W.2d 363, 365 (1952); McKesson-Fuller-Morrison Co. v. Industrial Comm'n, 212 Wis. 507, 512-14, 250 N.W. 396, 398-99 (1933). A resident of Wisconsin who is hired in the state is covered by the act regardless of where he is injured or where his services are rendered, while an employee who neither is a resident of Wisconsin nor renders services there is not covered for an accident outside the state regardless of where the contract for employment was formed. Interstate Power Co. v. Industrial Comm'n, *supra* at 472, 234 N.W. at 891.

19 *E.g.*, Beck v. Davis, 175 Okla. 623, 626, 54 P.2d 371, 373-74 (1936); Interstate Power Co. v. Industrial Comm'n, 203 Wis. 466, 475-76, 234 N.W. 889, 892-93 (1931); *see* LARSON § 87.22. Such accidents clearly fall within the police power of the state. Mountain Timber Co. v. Washington, 243 U.S. 219, 237-38 (1916).

20 Most of the states that do not apply their statutes to all accidents occurring within their borders provide that coverage be exempted only when the accident is covered by the statute of another state. *See, e.g.*, COLO. REV. STAT. ANN. § 81-16-1 (1964); ORE. REV. STAT. § 656.126(2) (1965). *Contra*, House v. State Indus. Accident Comm'n, 167 Ore. 257, 117 P.2d 611 (1941). There is still some question whether New York will apply its statute to all accidents within the state. *See* pp. 158-59 & notes 42-47 *infra*.

21 N.Y. WORKMEN'S COMP. LAW § 10 (McKinney 1965).

22 Decided together. 18 N.Y.2d 464, 223 N.E.2d 334, 276 N.Y.S.2d 873 (1966).

A. *Extraterritorial Application*

In its earliest decision on the issue, *Post v. Burger & Gohlke*,[23] the court of appeals held that an accident need not take place in New York in order to occur in the course of New York employment. The court rejected the tort theory of liability and seemed to adopt the contract theory. But contrary to the implications of *Post*, the court two years later made it clear that the formation of the contract in New York would not necessarily bring an out-of-state accident within the provisions of the New York statute.[24] Thus, it was still uncertain what constituted New York employment.

1. *The Cameron "Fixed Employment" Test*

The most influential decision on the extraterritorial effect of the New York statute was *Cameron v. Ellis Construction Co.*[25] Claimant was a resident of Canada who had worked in Canada at a sand pit near the New York border. He continued to work in the sand pit for a new employer, a Massachusetts corporation building a road in New York, and was injured in the course of that employment. The Industrial Board awarded compensation based on an injury incidental to a hazardous industrial enterprise in New York. The court of appeals reversed, Judge Lehman writing:

> The statute imposes upon every employer, foreign or domestic, the duty to secure to his workmen compensation for injuries, wherever sustained, arising out of and in the course of employment located here. Absence of a workman from the State in the course of such employment does not interrupt that duty where the duty has been imposed upon the employer under the statute. It has not been imposed upon the employer in connection with employment located outside the State. The test in all cases is the place where the employment is located.
>
> When the course of employment requires the workman to perform work beyond the borders of the State, a close question may at times be presented as to whether the employment itself is located here. Determination of that question may at times depend upon the relative weight to be given under all the circumstances to opposing considerations. The facts in each case, rather than juristic concepts, will govern such determination. Occasional transitory work beyond the State may reasonably be said to be work performed in the course of employment here; employment confined to work at a fixed place in another State is not employ-

23 216 N.Y. 544, 111 N.E. 351 (1916).

24 *See* Smith v. Heine Safety Boiler Co., 224 N.Y. 9, 119 N.E. 878 (1918).

25 252 N.Y. 394, 169 N.E. 622 (1930).

> ment within the State, for this State is concerned only remotely, if at all, with the conditions of such employment. . . .[26]

The distinction between work at a fixed location outside the state and transitory work beyond state borders became the governing criterion in subsequent cases.

2. *Confusion Following Cameron*

On its facts, *Cameron* was properly decided; and the opinion seemed to endorse flexibility in determining where the employment is located. But *Cameron*, like decisions before and since, failed to spell out any policy or social purpose that would be helpful in determining how the rule it laid down should be interpreted. Instead the court searched for a controlling objective factor that could be used as an absolute indicator of the employment's location. Although Judge Lehman stated that all the circumstances in a given case must be considered, subsequent courts, lured by the apparent certainty of the fixed employment test, adopted as the controlling factor the mobility of work done outside New York.[27]

In many cases the mobility of work done outside New York is, in fact, the single most important consideration. An employee who once worked in New York but who has since been transferred to a permanent location elsewhere is no longer a New York employee. Similarly, an employee hired in New York to work at a particular place in another state, or hired by a New York employer in another state to work in that state, is not a New York employee. In such cases the fixed employment test leads to the proper result; compensation is denied under the New York statute, because the employment is not of local concern.[28] At the same time, an employee who spends most or all of his time outside New York but who never locates at a particular situs outside the state may continue to be related most closely to New York. The fixed employment test is equally successful here; New York has properly allowed the claims of transitory employees such as travelling salesmen,[29] interstate bus drivers,[30] and airplane pilots.[31]

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26 *Id.* at 397-98, 169 N.E. at 623.

27 The courts at first refused to apply the fixed employment test as a rigid rule. *See* Smith v. Aerovane Util. Corp., 259 N.Y. 126, 181 N.E. 72 (1932). *But see id.* at 131, 181 N.E. at 74 (Lehman, J., dissenting). But often the rule was strictly applied to deny compensation for claims in which New York had a real interest. *E.g.*, Amaxis v. N.A. Vassilaros, Inc., 258 N.Y. 544, 180 N.E. 325 (1931).

28 *E.g.*, Bagdalik v. Flexlume Corp., 281 N.Y. 858, 24 N.E.2d 499 (1939); Copeland v. Foundation Co., 256 N.Y. 568, 177 N.E. 143 (1931); Stephens v. Hudson Maintenance Co., 274 App. Div. 1077, 85 N.Y.S.2d 505 (3d Dep't 1949).

29 Roth v. A.C. Horn Co., 287 N.Y. 545, 38 N.E.2d 221 (1941); Flinn v. Remington

But mere mobility is not the only important factor, nor is it always easy to determine. When employment settles at a particular out-of-state location until a given job is finished, the question is presented whether successive jobs in different locations constitute one continuous employment or several individual employments, each tied to the particular state where the work is done.[32] Work done outside the state but directed and controlled from within may have significant contacts with New York.[33] When a New York resident is hired in the state to work elsewhere, and then returns home disabled by an industrial accident, the state is legitimately concerned.[34] In deciding whether to award compensation in these more difficult cases, judges often seemed to rely primarily upon an instinctive feeling of what constitutes New York employment or upon the particular employee's need for protection. Yet, courts usually paid lip service to the fixed employment test, and as a result some fine and often inconsistent factual distinctions were made.[35]

3. *Nashko and the Significant Contacts Test*

The need for a positive restatement of New York's position and for an emphasis on criteria other than the mobility of out-of-state employment was finally met in *Nashko v. Standard Water Proofing Co.*[36] The New York board had awarded compensation to an employee working in New Jersey, because the employment was so closely tied to New York.[37] The appellate division reversed, holding that under the

Rand, Inc., 277 N.Y. 641, 14 N.E.2d 199 (1938); Wagoner v. Brown Mfg. Co., 274 N.Y. 593, 10 N.E.2d 567 (1937); Reiss v. Standard Garment Co., 281 App. Div. 720, 117 N.Y.S.2d 847 (3d Dep't 1952); Baduski v. S. Gumpert Co., 277 App. Div. 591, 102 N.Y.S.2d 297 (3d Dep't), *appeal dismissed*, 302 N.Y. 702, 98 N.E.2d 491 (1951).

30 Etters v. Trailways of New England, Inc., 266 App. Div. 929, 43 N.Y.S.2d 884 (3d Dep't 1943).

31 *Cf.* Spelar v. American Overseas Airlines, Inc., 80 F. Supp. 344 (S.D.N.Y. 1947); Tallman v. Colonial Air Transp., Inc., 259 N.Y. 512, 182 N.E. 159 (1932).

32 *See, e.g.*, Cradduck v. Hallen Co., 304 N.Y. 240, 107 N.E.2d 61 (1952).

33 Many cases emphasized this factor in finding that New York had jurisdiction. *E.g.*, Roth v. A.C. Horn Co., 287 N.Y. 545, 38 N.E.2d 221 (1941); Flinn v. Remington Rand, Inc., 277 N.Y. 641, 14 N.E.2d 199 (1938). *But see* Shorr v. U-Wanna-Wash Frocks, Inc., 284 App. Div. 778, 135 N.Y.S.2d 143 (3d Dep't 1954) (per curiam).

34 *See* Alaska Packers Ass'n v. Industrial Accident Comm'n, 294 U.S. 532, 542 (1935).

35 *Compare* Cradduck v. Hallen Co., 304 N.Y. 240, 107 N.E.2d 61 (1952), *with* Lewis v. Knappen Tippetts Abbett Eng'r Co., 304 N.Y. 461, 108 N.E.2d 609 (1952).

36 4 N.Y.2d 199, 149 N.E.2d 859, 173 N.Y.S.2d 565 (1958).

37 The employee, who steam cleaned buildings, was hired in New York to work at locations in both New York and New Jersey. He had been working continuously in New Jersey for 10 months before his injury there. His employer for the New Jersey work was technically a New Jersey corporation, but the corporation was identical to the one that hired him in New York. Both were wholly owned by the same individual; the New

Cameron fixed employment test the injury was not compensable.[38]

In overruling the appellate division, the court of appeals stated that "[t]here is no fixed, invariable touchstone by which the presence or absence of jurisdiction in cases like the present one may be determined."[39] Geographic mobility of extraterritorial work is not the sole governing criterion. Other factors tending to show a "substantial connection,"[40] such as hiring in New York, employer payment of out-of-state expenses, employee residence in New York, payment of compensation insurance in New York, and an understanding that the employee is to return to New York after out-of-state assignments, are significant in determining whether New York has jurisdiction. The controlling test today is whether there are "sufficient significant contacts with this State . . . so that it can reasonably be said that the employment is located here . . . ." The determination "is governed by the facts of the particular case."[41]

B. *Injuries in New York: Rutledge and Rhodes*

In an effort to achieve consistency and symmetry under the *Cameron* rule, the courts in two subsequent cases interpreted the fixed employment test as applying to in-state as well as out-of-state injuries.[42] Thus, New York would not assume jurisdiction over an employee injured in the course of temporary work in New York if the employment was fixed in another state. This reverse effect of the fixed employment test, carried to a logical extreme, would lead to a doctrine of mutually exclusive jurisdiction under which New York would not take jurisdiction if another state had sufficient contacts under the New York rule to assume jurisdiction itself. The *Nashko* court suggested that New York might apply such a doctrine when "circumstances and elements . . . indicate that the employment is in fact

Jersey corporation was formed to comply with local laws. The employee received expenses from his employer while in New Jersey; the employer procured the compensation insurance in New York; and the New Jersey labor unions considered the employee a New York worker.

38 Nashko v. Standard Water Proofing Co., 3 App. Div. 2d 963, 163 N.Y.S.2d 165 (3d Dep't 1957), *rev'd*, 4 N.Y.2d 199, 149 N.E.2d 859, 173 N.Y.S.2d 565 (1958).

39 4 N.Y.2d at 200, 149 N.E.2d at 861, 173 N.Y.S.2d at 567.

40 This test was applied in Cardillo v. Liberty Mut. Ins. Co., 330 U.S. 469 (1947). *See* p. 152 *supra*.

41 Nashko v. Standard Water Proofing Co., 4 N.Y.2d 199, 201, 149 N.E.2d 859, 861, 173 N.Y.S.2d 565, 567 (1958).

42 Whitmire v. Blaw-Knox Constr. Co., 263 N.Y. 675, 189 N.E. 753 (1934); Proper v. Polley, 233 App. Div. 621, 253 N.Y.S. 530 (3d Dep't 1931), *aff'd*, 259 N.Y. 516, 182 N.E. 161 (1932).

located in another State."[43] This was the subject for argument in *Rutledge v. Al. G. Kelly & Miller Brothers Circus* and *Rhodes v. Mushroom Transportation Co.*[44]

The employers in *Rutledge* and *Rhodes* argued that, although the employees were injured in New York, the employment was actually based in another state.[45] It was contended that *Nashko,* while it enlarged the jurisdiction of New York over out-of-state accidents, had the obverse effect of narrowing jurisdiction over accidents within the state. The court of appeals, hearing the two cases together, refused to apply a doctrine of mutually exclusive jurisdictions.[46] Instead, it implied that New York, because of its "primary public interest," would assume jurisdiction over *all* accidents occurring within the state, "even though control of the work, payment of wages, and employment of the claimant all may have their roots elsewhere."[47] Whether such an absolute rule will be followed, however, is still open to question. Two concurring judges pointed out that the accidents in issue occurred in the course of employment planned and arranged to be performed in New York, rather than employment which happened to be carried out in New York on a casual, temporary, or emergency basis. Thus, if the contacts with New York are less substantial than those in *Rutledge* and *Rhodes,* New York might deny jurisdiction.

II

The Present New York Rule: Its Expression and Its Merits

New York presently applies its workmen's compensation law to any employment with which it has "sufficient significant contacts . . . so that it can reasonably be said that the employment is located" in New York.[48] Once employment is established in New York, jurisdic-

43 Nashko v. Standard Water Proofing Co., 4 N.Y.2d 199, 201, 149 N.E.2d 859, 861, 173 N.Y.S.2d 565, 567 (1958).

44 Decided together. 18 N.Y.2d 464, 223 N.E.2d 334, 276 N.Y.S.2d 873 (1966).

45 *Rutledge* involved the claim of a guard hired in his home state of Arkansas to work in a travelling circus based in Oklahoma. He was injured while the circus was touring in New York. In *Rhodes* the claimant was employed as a truck driver by a Pennsylvania corporation and injured on one of his regular trips to New York.

46 This holding is consistent with several recent lower court decisions. *See, e.g.,* Armstrong v. Aero Mayflower Transit Co., 14 App. Div. 2d 958, 221 N.Y.S.2d 225 (3d Dep't 1961). *Rutledge* and *Rhodes* were decided similarly below. 24 App. Div. 2d 521, 260 N.Y.S.2d 136 (3d Dep't 1965); 23 App. Div. 2d 421, 261 N.Y.S.2d 340 (3d Dep't 1965). *See also* Atkinson v. Marquette Mfg. Co., 24 App. Div. 2d 795, 263 N.Y.S.2d 927 (3d Dep't 1965).

47 18 N.Y.2d at 474, 223 N.E.2d at 338, 276 N.Y.S.2d at 879.

48 Nashko v. Standard Water Proofing Co., 4 N.Y.2d 199, 201, 149 N.E.2d 859, 861, 173 N.Y.S.2d 565, 567 (1958); Atkinson v. Marquette Mfg. Co., 24 App. Div. 2d 795, 263

tion is retained until the work becomes established elsewhere, even though work is done outside the state.[49] So long as substantial connections are maintained with New York, jurisdiction is not relinquished, even though the work is done at a fixed location in another state;[50] nor is it relinquished when the work done outside the state is merely transitory or temporary.[51]

New York has indicated that it may compensate all employees injured in the state.[52] But if there is no other connection with the state, status as a New York employee is lost as soon as the workman leaves the state. Judge Desmond's concurring opinion in *Rutledge*, suggesting that New York will not apply its act to an accident in the course of casual, temporary, or emergency work done in the state, ignores New York's interest in the safety of all employees in the state, the possibility that the employee will become a public charge in the state of injury, the fact that payment of local medical expenses may have to be sought out-of-state, and the danger that the employee will be covered by no compensation statute other than New York's. The last result is particularly harsh. Employees injured in other states have been denied the protection of any statute,[53] a result which might well have followed in *Rutledge* had New York not assumed jurisdiction.[54]

N.Y.S.2d 927 (3d Dep't 1965); Levin v. Eutectic Welding Alloys Corp., 21 App. Div. 2d 925, 251 N.Y.S.2d 127 (3d Dep't 1964); Solow v. Regency Thermographers, Inc., 16 App. Div. 2d 859, 227 N.Y.S.2d 989 (3d Dep't 1962); Maisel v. Berle, 11 App. Div. 2d 831, 202 N.Y.S.2d 562 (3d Dep't 1960).

49 Solow v. Regency Thermographers, Inc., 16 App. Div. 2d 859, 227 N.Y.S.2d 989 (3d Dep't 1962).

50 *Cf.* Levin v. Eutectic Welding Alloys Corp., 21 App. Div. 2d 925, 251 N.Y.S.2d 127 (3d Dep't 1964); Burton v. Ziegler Pharmacal Corp., 9 App. Div. 2d 811, 192 N.Y.S.2d 509 (3d Dep't 1959).

51 McMains v. Trans World Airlines, 18 App. Div. 2d 956, 237 N.Y.S.2d 812 (3d Dep't), *motion for leave to appeal denied*, 13 N.Y.2d 593, 190 N.E.2d 905, 240 N.Y.S.2d 1025 (1963); Clingman v. Cushman, 12 App. Div. 2d 671, 207 N.Y.S.2d 732 (3d Dep't 1960); Maisel v. Berle, 11 App. Div. 2d 831, 202 N.Y.S.2d 562 (3d Dep't 1960); Houghton v. Babcock & Wilcox Co., 9 App. Div. 2d 575, 189 N.Y.S.2d 436 (3d Dep't 1959); Carlson v. Solomon R. Guggenheim Foundation, 8 App. Div. 2d 892, 187 N.Y.S.2d 46 (3d Dep't 1959); Brueser v. Blackman, 8 App. Div. 2d 872, 186 N.Y.S.2d 709 (3d Dep't 1959). The law in Wisconsin seems analogous in many respects to the rule developing in New York. *See* note 18 *supra*.

52 An example of this is the decision in Thomas v. James E. Strates Shows, Inc., 25 App. Div. 2d 455, 265 N.Y.S.2d 920 (3d Dep't 1966). The concept of temporary status accorded employees in Wisconsin is analogous.

53 House v. State Indus. Accident Comm'n, 167 Ore. 257, 117 P.2d 611 (1941).

54 In *Rutledge* the employment was connected with Arkansas and Oklahoma as well as with New York. Arkansas has no extraterritorial provision in its statute and apparently would not have applied its act in this case. Nor would the Oklahoma statute have covered this accident. *See* note 16 *supra*.

The development of broader tests for determining the applicability of a state workmen's compensation law[55] parallels the general growth of the law of conflicts.[56] Such criteria as "most significant contacts," "center of gravity," and "grouping of contacts" are employed with increasing frequency in resolving conflicts of tort[57] (and contract[58]) law. But despite the use of similar terminology in dealing with out-of-state torts and out-of-state employment injuries, the problems involved are quite different. When states with conflicting laws each have significant contacts with the parties and events in a tort action, a choice must be made among the laws of the interested states in order to determine the applicable standard of conduct and relevant defenses. No such choice is necessary when more than one state is legitimately interested in seeing that workmen's compensation is paid.[59] Since no conflict of laws is involved, compensation for the same injury can be sought in each interested state. The only question presented is one of liability under the forum's own statute;[60] the relative interests of another state are immaterial.

Many of the criticisms leveled at the use of a "significant contacts" test in tort conflicts law thus have no relevance in the context of workmen's compensation. No mechanical counting and comparing of contacts or analysis of competing foreign policies is necessary.[61] The argument that a "significant contacts" formula is inadequate to

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55 *Compare* RESTATEMENT (SECOND) § 398, *with* RESTATEMENT §§ 398-400.

56 *Compare* RESTATEMENT (SECOND) § 332 & § 379 *with* RESTATEMENT § 332 & §§ 378-79.

57 New York's choice-of-law rule for torts is now couched in terms of weighing significant contacts and applying the law of the state most directly concerned. *See* Macey v. Rozbicki, 18 N.Y.2d 289, 221 N.E.2d 380, 274 N.Y.S.2d 591 (1966); Dym v. Gordon, 16 N.Y.2d 120, 209 N.E.2d 792, 262 N.Y.S.2d 463 (1965); Babcock v. Jackson, 12 N.Y.2d 473, 191 N.E.2d 279, 240 N.Y.S.2d 743 (1963).

58 *See, e.g.*, Auten v. Auten, 308 N.Y. 155, 124 N.E.2d 99 (1954).

59 *Restatement (Second)* recognizes this fact by dividing the workmen's compensation section into separate titles on "Constitutional Law Questions" (§§ 398-403a) and "Conflict of Laws Questions" (§§ 403b-403c). The latter title is concerned only with the power of the state to grant recovery for wrongful death or tort when an applicable workmen's compensation law in another state bars such actions, and with the right of action against third parties in one who has paid a workmen's compensation award. The original *Restatement* §§ 398-403 considered the entire area as one of conflict of laws—hence its inclusion in the *Restatement* of that title.

60 *See* p. 152 & notes 9-10 *supra*.

61 *See* A. EHRENZWEIG, CONFLICT OF LAWS § 142, at 400, § 174, at 463-64, § 211, at 548 (1962); Currie, *Conflict, Crisis and Confusion in New York*, 1963 DUKE L.J. 1, 34-52; Ehrenzweig, *The "Bastard" in the Conflict of Laws—A National Disgrace*, 29 U. CHI. L. REV. 498 (1962).

define a principle of law[62] has no validity when significance is judged in terms of the policies and interests of the forum state. Such terminology is at least as adequate for defining a principle of law as the expressions "due process," "reasonableness," and "unjust enrichment."[63] Specific limitations will be developed as the need arises, but they should remain subordinate to the ultimate goals of justice, fairness, and the best possible result.[64]

It remains for subsequent cases to define more clearly the factors that are sufficiently significant to cause New York to assume jurisdiction over workmen's compensation claims. In clarifying the relevant factors, courts should emphasize not the occurrence of particular factual events in a given state, but rather the ties between the state and the parties involved. Workmen's compensation legislation is intended to serve both as a humanitarian measure for the benefit of injured employees and as a protection for the fiscal interests of the state and its citizens. New York's concern with the payment of compensation stems from its interest in the welfare of the employee, the burden of compensation on the employer, the effect of the accident on third parties in the state (such as the employee's family and persons seeking payment for medical services), and the possibility that the injured employee will become a public charge of the state. Such ties are present whenever an accident occurs within the state. Accidents that occur outside the state and have no significant ties with New York are constitutionally beyond the reach of its statute. But when an injured employee has a "substantial connection" with New York, the state has a legitimate governmental interest and should broadly construe its statute to ensure that compensation is paid.[65]

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62 *See* Judge Van Voorhis's *Babcock* dissent. 12 N.Y.2d at 486, 191 N.E.2d at 286, 240 N.Y.S.2d at 753.

63 The United States Constitution is sufficient testimony to the merit of stating fundamental principles of law in general terms.

64 *See* Babcock v. Jackson, 12 N.Y.2d 473, 481, 191 N.E.2d 279, 283, 240 N.Y.S.2d 743, 749 (1963).

65 The author is not aware of any situation in which it would be undesirable for New York to apply its statute despite the presence of constitutionally sufficient ties with the accident, but it is conceivable that such a situation could arise. New York's rule need not be identical with the test for constitutionality under the Federal Constitution.