70949-6

70949-6

NO. 70949-6-I

COURT OF APPEALS FOR DIVISION I
STATE OF WASHINGTON

CLAIRE C. WOODWARD,
a single individual,

Appellant,

v.

AVA A. TAYLOR and "JOHN DOE" TAYLOR,
wife and husband, and THOMAS G. KIRKNESS
and "JANE DOE" KIRKNESS, husband and wife,

Respondents.

BRIEF OF APPELLANT, CLAIRE C. WOODWARD

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I. INTRODUCTION

In this case, the plaintiff, Washington resident Claire Woodward, is an injured passenger suing her driver, also a Washington resident, for negligence in a one-car, roll-over accident that occurred in Idaho on March 27, 2011. The plaintiff filed suit in King County, Washington more than two years, but less than three years after the roll-over occurred. This is an appeal of the trial court's dismissal on the pleadings of the plaintiff passenger's negligence claim against the defendant driver based on what the plaintiff argues was the erroneous application of Idaho law. The issue on appeal is whether Washington's substantive negligence law, and thus its 3-year statute of limitations, should apply in this case where Washington's relationship to the parties and underlying issue of negligence predominates over Idaho's.

The plaintiff was one of four occupants of the car, all of whom were Washington residents. The four women occupants, all friends, had borrowed the car from one of the women's parents, also a Washington resident, for the purpose of visiting Las Vegas, Nevada. They were returning from their visit, at about 2:30 a.m., driving through mountainous, snowy, icy conditions near Lake

Mountain Home, Idaho on Interstate 84 when the driver spun out on ice, the car flipped 1 ½ times, and plaintiff was injured.

The plaintiff filed suit in King County Superior Court on May 8, 2013 claiming general negligence against the driver: "Defendant Ava Taylor was negligent in driving too fast for the conditions of the roadway at the time and place of the one-car, roll-over collision, as alleged." The suit was filed invoking Washington negligence law, as the only relationship or connection the injury accident had to Idaho was that the roll-over occurred in Idaho.

Defendants filed what was denominated a summary judgment motion, but which was, as recognized by the trial court, a motion on the pleadings asserting that because the roll-over occurred in Idaho, Idaho substantive law applied and that because Idaho substantive law applied, the Idaho 2-year statute of limitation applied. Because the suit was filed more than two years from the date of the injury, the defendant's asked that the defendant driver be dismissed pursuant to Idaho's statute of limitations.

The trial court granted that part of defendants' motion on the pleadings that asked that the plaintiff's claims against the defendant driver be dismissed because they were barred by Idaho's 2-year

statute of limitations. The order was subsequently certified as a final order. This appeal by the injured plaintiff followed.

Plaintiff's appeal questions, in the setting of a motion on the pleadings: (1) whether defendants showed any difference between Idaho's and Washington's law pertaining to the negligence involved in driving too fast for prevailing weather and road conditions such that a conflict of laws question was raised; (2) whether, in a negligent driving case, assuming defendant demonstrates a conflict of laws, Washington courts apply a "most significant relationship" test to determine the choice-of-law, rather than *lex loci delecti*; and (3) whether, if the defendants indeed raised a conflict of laws question, plaintiff has pleaded facts, or demonstrated hypothetical scenarios reasonably within the pleaded factual setting, that supports the application of Washington substantive law to an instance of negligent driving occurring in another state.

II. ASSIGNMENT OF ERROR

The trial court erred in entering the order of August 16, 2013 insofar as it granted that part of defendants' motion on the pleadings that sought dismissal of plaintiff's negligence claims against the defendant driver and her alleged spouse (Ava Taylor and "John Doe" Taylor). CP 88-89, *see also* CP 109-16.

Issues Pertaining to the Assignment of Error:

1. In a one-car roll-over injury accident case involving only Washington residents and a car registered to a Washington owner, in which against the Washington driver the injured Washington plaintiff alleged only that "Defendant Ava Taylor was negligent in driving too fast for the conditions of the roadway at the time and place of the one-car, roll-over collision . . .", where the injury accident occurred in Idaho, but suit was filed in Washington invoking Washington negligence law, and where the defendant demonstrates no conflict between Washington and Idaho law regarding the negligence alleged, does Washington's common law of negligence presumptively apply?

2. In a one-car roll-over injury negligent driving case involving only Washington residents and a car registered to a Washington owner, where the injury occurred in Idaho, but suit was filed in Washington, and where Washington's relationships with the parties and the issue of the alleged negligence predominate, if a conflict of laws question is demonstrated does the court engage in a "most significant relationship" test, or has that test been abandoned in favor of application of *lex loci delecti*?

3. Even assuming that a conflict of laws has been raised in a motion for dismissal on the pleadings, in a one-car roll-over injury accident case filed in Washington, involving only Washington residents and a car registered to a Washington owner, in which against the Washington driver the injured Washington plaintiff alleged only that defendant "was negligent in driving too fast for the conditions of the roadway at the time and place of the one-car, roll-over collision . . .", where the plaintiff's pleadings and hypotheticals demonstrate that Washington's relationship with the parties and the issue predominate and prevail over Idaho's, does Washington's negligence law, and thus its 3-year statute of limitations, apply to the dispute?

III. STATEMENT OF THE CASE

This case involves a single-car, roll-over accident in which the plaintiff, Washington resident Claire Woodward, was a passenger and defendant, Washington resident Ava Taylor, was the driver. CP 1-6, Complaint. The injury occurred in Idaho while the occupants, all Washington residents, were returning from a trip to Las Vegas, Nevada. *Id.* Defendant, Washington resident Thomas Kirkness, is alleged to have negligently entrusted a defective, Washington registered vehicle to his daughter, Katherine

Kirkness, and her three companions, two of whom were Ms. Woodward, a sleeping passenger, and Ms. Taylor, the driver, all Washington residents, for the road trip to Las Vegas. *Id.* He is also alleged to be liable to Ms. Woodward by virtue of the family car doctrine. *Id.* That family resided in Washington. *Id.* All parties were Washington residents.

The trip began and was to end in Washington. *Id.* The vehicle was registered in Washington, garaged in Washington and insured in Washington. *Id.* The negligent entrustment occurred in Washington. *Id.* The agency involved in the family car doctrine was centered in Washington, where Mr. Kirkness and his household resided. *Id.*

Defendants noted their underlying motion to dismiss, entitled a motion for summary judgment, seeking to dismiss all claims against all defendants. CP 19-33, Defendants' Motion for Summary Judgment. The motion was supported by the declaration of defense attorney Mark Cole; however, the only exhibits to the declaration were the plaintiff's Complaint (Exhibit 1), the Summons (Exhibit 2), and the trial court's Civil Case Schedule (Exhibit 3). *Id.*; *also* CP 32-47, Declaration of Mark S. Cole and exhibits thereto.

Defendants' motion was submitted solely on the basis of the

pleadings and no factual material outside the pleadings was introduced. In turn, plaintiff, in her opposition, relied on the pleadings and her right to postulate hypotheticals that she could reasonably prove within the pleadings, as is allowed on CR 12 (b) motions, which this "summary judgment" essentially was. CP 48-81, Plaintiff's Opposition to Defendants' Motion for Summary Judgment, including Exhibit 1 thereto (Answer of Defendants Taylor) and Exhibit 2 (Answer of Defendants Kirkness).

The trial court recognized that defendants' motion was a motion on the pleadings, not a summary judgment. VRP p. 4, lines 1-7; p. 27, lines 3-7. The trial judge also modified the proposed order granting the defendants Taylor their requested dismissal to reflect that it was a motion on the pleadings, not a summary judgment motion. CP 88-90, Order Granting in Part and Denying in Part Defendants' Motion on the Pleadings.

The plaintiff, Claire Woodward, the injured passenger, is a King County, Washington resident, as pled in her Complaint, CP 1, para. 1.1.

Defendant Ava Taylor, the driver being sued, is a King County, Washington resident. CP 70, Defendants Taylor's Answer, para. 2.

Defendant Thomas Kirkness is a resident of King County, Washington. CP 77, Defendants Kirkness's Answer, para. 3.

The Complaint alleges the following:

> 2.1. On about March 27, 2011, plaintiff Claire Woodward was a passenger in a car being driven by defendant Ava Taylor. The car was traveling west on Interstate 84 near Lake Mountain Home, in Ada County, Idaho. Also passengers in the car were Katherine Kirkness and Angelina Miller. The group was returning from a trip to Las Vegas, Nevada. The trip had originated in Washington where each of the car's occupants resided and the group was returning to their homes in Washington. The car was owned by defendant Thomas Kirkness, a Washington resident. The car was registered in Washington. Defendant Thomas Kirkness insured the car in Washington. Defendant Thomas Kirkness customarily kept the car at his residence in Washington and maintained the car in Washington. At the time and place of the one-car collision described hereafter, the group was merely passing through Idaho on their way back to their homes in Washington.
>
> 2.2. Defendant Thomas Kirkness had given permission to his daughter, Katherine Kirkness and the group composed of the remainder of the car's occupants to use the car for their trip to and from Las Vegas, Nevada. Said permission was given in Washington. Defendant Mr. Kirkness knew when he gave permission for his daughter and the group to use the car to travel to and from Las Vegas, Nevada, that the car's speedometer was defective.
>
> 2.3. At about 2:30 a.m. on March 27, 2011, plaintiff Claire Woodward was a passenger, as described. She was wearing a lap and shoulder belt and was seated in the right, rear passenger seat. Defendant Ava Taylor was driving the car. The group was driving through mountainous terrain. There was snow on the ground and ice on the roadway. Snow was visible on the sides of the road and the road was slick with ice. On the same road, sometime earlier, the

group had witnessed a car in front of them spin out due to the slick road conditions. Despite these conditions, the driver, defendant Ava Taylor set the cruise control at 82 m.p.h. The posted speed limit was 75 m.p.h.

2.4. As the group was traveling, as described, defendant Ms. Taylor encountered a patch of ice and lost control of the car. The car went into a spin and drifted sideways, caught its tires on the dirt near the shoulder of the road and rolled 1 ½ times, coming to rest on its roof. Ms. Woodward was tangled in her seatbelt and unable to detach her seatbelt. She was injured. She had to be extracted from the car by responding aid personnel. She was transported via ambulance to a nearby hospital.

2.5. A state trooper responded to the scene of the roll-over. The trooper drove the stretch of highway leading up to the point at which defendant Ava Taylor lost control of the car and confirmed that snow was visible along the roadway leading to the spot and ice was visible in the roadway leading to the spot.

2.6. As a proximate result of the described one-car roll-over, plaintiff Claire Woodward was injured, including, but by no means limited to, a complex comminuted fracture of her neck, at her C2 vertebra.

III. NEGLIGENCE – DEFENDANT AVA TAYLOR

3.1. Plaintiff incorporates sections I and II of this complaint herein as if fully set forth.

3.2. Defendant Ava Taylor was negligent in driving too fast for the conditions of the roadway at the time and place of the one-car, roll-over collision, as alleged.

3.3. As a proximate result of the alleged negligence, plaintiff Claire Woodward suffered personal injuries and damages including, but not limited to: physical injury, disfigurement and disability, which is permanent; physical and emotional pain and suffering to date, which

> more likely than not will continue in the future; and loss of enjoyment of life to date, which is permanent. As a further proximate result of the negligence alleged, Ms. Woodward: has incurred health care bills and costs to date and more likely than not will incur additional health care bills and costs in the future; has sustained interruption of her education, which has resulted in increased costs associated with tuition, books, fees, meals and other ancillary costs; has sustained a loss of income; and has sustained a loss of earning capacity.

Complaint, CP pp. 2-4. Plaintiff also alleged against defendants Kirkness negligent entrustment and liability under the family car doctrine. The relationships out of which these allegations grew are all centered in Washington; however, those claims were not dismissed and are not at issue on this appeal.

In her Answer, defendant Ava Taylor has pled Idaho's host-guest statute as a bar to plaintiff's recovery:

> 22. Plaintiff was a guest passenger and is not entitled to recover under statutes of the State of Idaho.

Defendants Taylor's Answer, CP 73, para. 22. In his Answer, defendant Thomas Kirkness has also pled Idaho's host-guest statute as a bar to plaintiff's recovery:

> 22. Plaintiff was a guest passenger and is not entitled to recover under statutes of the State of Idaho.

Defendants Kirkness's Answer, CP 79, para 22.

The trial court considered all briefing and heard oral argument on the matter and granted defendants' motion on the

pleadings to dismiss the negligence claim against the defendant driver:

> First of all, the Court is construing this as a motion on the pleadings and, in that light, the Court considers the facts of the light most favorable to the Plaintiff and any hypotheticals in favor of the plaintiff.
>
> The Court does start with [R.C.W.] 4.18.020, which statute says if a claim is based upon the law of one other state, the Statute of Limitations of that state applies unless – and there is further language. Generally speaking, the substance of the cases hold that in a personal injury case the law of the state where the injury occurs applies, unless another state has a greater interest in a particular issue.
>
> The *Ellis* case clearly holds that in a negligence action, that's based upon the rules of the road, is subject to the law of the state where an accident occurred.
>
> In this case there is an allegation of speeding. The speeding has to be based upon the rules of the road where the accident occurred. It has to be based upon the traffic laws of the state of Idaho. The traffic laws of the state of Idaho have been demonstrated to be different and in conflict with the traffic laws of the state of Washington. There is an allegation in the Complaint that the driving was above the posted speed limit.
>
> So the Court would find as to the claim of negligence against Defendant Ava Taylor that I would grant the Motion to Dismiss as outside Idaho's two-year Statute of Limitations, that 4.18.020 applies, that the *Ellis* case is determinative of this issue.

VRP p.27, line 2 – p. 28, line 9; *see also* CP p. 88-89, Order Granting in Part and Denying in Part Defendants Motion on the Pleadings.

IV. SUMMARY OF ARGUMENT

The plaintiff argues that the trial court should have applied Washington substantive negligence law, which would have meant the application of Washington's 3-year statute of limitations. Such a result would have resulted in denial of defendants' requested dismissal of the defendant driver.

As evident in plaintiff's Complaint, the plaintiff, Ms. Woodward, has pled only general negligence against the driver. She has pled negligent driving on the part of defendant Ava Taylor based on Ms. Taylor's driving too fast for the snowy, icy conditions.

Plaintiff has not pled a cause of action against defendant for speeding. She has not pled the violation of any statutes, regulations or rules of the road peculiar to Idaho. No conflict is demonstrated between Washington's and Idaho's negligence law with regard to driving too fast for conditions. Therefore, Washington law applies.

The plaintiff argues that Washington's relationship with the parties and issues in the case on appeal predominates and prevails over Idaho's. In point of the facts pled, as well as hypothetically within the scenario pled by plaintiff, she could well prove that Washington has every relationship with the parties and with plaintiff's claims and allegations and that Idaho's sole relationship

to this matter is that the accident happened there. Washington's overwhelming relationships to the parties and to Ms. Woodward's claims of negligence and injury should lead to the conclusion that Washington's substantive negligence law applies and that, therefore, Washington's 3-year statute of limitations for negligence claims applies.

V. ARGUMENT

A. Standard of Review of an Order of Dismissal on the Pleadings is *De Novo*.

The Court of Appeals reviews an order for judgment on the pleadings *de novo*. In reviewing an order entering judgment on the pleadings, the Court of Appeals examines the pleadings to determine whether the claimant can prove any set of facts, consistent with the complaint, which would entitle the claimant to relief. The Court of Appeals may consider any factual scenario under which the litigant might have a valid claim, including facts asserted for the first time on appeal. *North Coast Enterprises, Inc. v. Factoria Partnership, et al.*, 94 Wn. App. 855, 858-59, 974 P.2d 1257 (1999).

B. Conflict of Law Analysis in Washington.

1. Washington's Law Presumptively Applies.

Washington law is presumed to apply in a case filed in Washington by a Washington resident against other Washington residents. It is up to any party advocating the application of a different state's law due to conflicts of law to demonstrate the conflict to the opposing party and to the court:

> A scholar in the field of conflict of laws, Professor Currie, suggests several principles that serve as a useful starting point in choice of law analysis:
>
> 1. The normal business of courts being the adjudication of domestic cases, and the normal tendency of lawyers and judges being to think in terms of domestic law, *the normal expectation should be that the rule of decision will be supplied by the domestic law as a matter of course.*
>
> 2. The court should ordinarily depart from this procedure only at the instance of a party wishing to obtain the advantage of a foreign law.
>
> 3. The law of the forum, as the source of the rule of decision, should normally be displaced only by the interested party's timely invocation of the foreign law. The interested party invokes foreign law by calling attention to its relevance and its superior claim to be applied, and by informing the court of its tenor.
>
> (Italics ours.) Brainerd Currie, *Selected Essays on the Conflicts of Laws* 75 (1963).

Burnside v. Simpson Paper Co., 123 Wn.2d 93, 100, 864 P.2d 937 (1994) (emphasis in the original); *see also, Williams v. State* 76

Wn. App. 237, 240-41, 885 P.2d 845 (1994).

2. If No Conflict of Laws Exists, Washington Law Applies.

Unless a party advocating the application of another state's law first demonstrates that an actual conflict of law exists and should be applied to the controversy, Washington law will apply. A choice of law determination is made only if there is an actual conflict between the laws or interests of Washington and the laws or interests of another state. *Burnside, supra*, 123 Wn.2d at 100-04; *Seizer v. Sessions*, 82 Wn. App. 87, 92, 915 P.2d. 553 (1996).

3. Differences in Limitation Periods do Not Present a Conflicts Issue.

The conflict must consist of a conflict in substantive law or policy; the difference between Washington's limitation periods and another state's limitation periods never constitutes a conflict and is never analyzed as a conflict:

> . . . variations in limitation periods are not subject to conflict of laws methodology.

Rice v. Dow Chemical Co., 124 Wn.2d 205, 210, 875 P.2d 1213 (1994).

4. If an Actual Conflict Exists, then the "Most Significant Relationship" Standard Applies to Determine Choice-of-Law.

Only after an actual conflict in substantive law is demonstrated to exist do Washington Courts engage in a conflict of law analysis, which involves examining which state has the most significant relationship to the parties and issues:

> *Washington's Approach to Choice of Law Questions: The "Most Significant Relationship" Standard*
>
> In an ordinary conflict of laws case, the applicable law is decided by determining which jurisdiction has the "most significant relationship" to a given issue. *Johnson v. Spider Staging Corp.*, 87 Wn.2d 577, 580, 555 P.2d 997 (1976); *Bar v. Interbay Citizens Bank*, 96 Wn.2d 692, 697, 635 P.2d 441 649 P.2d 827 (1981); *Southwell v. Widing Transp., Inc.*, 101 Wn.2d 200, 204, 676 P.2d 477 (1984). *See generally* Philip A. Trautman, *Evolution in Washington Choice of Law—A Beginning,* 43 Wash.L.Rev. 309 (1967-1968).

Burnside, supra, 123 Wn.2d at 100; *see also Williams, supra*, 76 Wn. App. at 241.

If the analysis gets that far, the question which state has the most significant relationship with the parties and issues involves multiple factors:

> Contacts to be taken into account in applying the principles of § 6 to determine the law applicable to an issue include:

(a) the place where the injury occurred,
(b) the place where the conduct causing the injury occurred,
(c) the domicile, residence, nationality, place of incorporation and of business of the parties, and
(d) the place where the relationship, if any, between the parties is centered.

These contacts are to be evaluated according to their relative importance with respect to the particular issue.

Williams v. State, supra, 76 Wn. App. at 242 quoting Restatement of Conflicts § 145 and citing *Johnson, supra*, 87 Wn.2d at 580-81.

For purposes of determining which state has the most significant relationship, the following factors are relevant:

* * *

(b) the relevant policies of the forum,
(c) the relevant policies of other interested states and the relative interests of those states in the determination of the particular issue,
(d) the protection of justified expectations,
(e) the basic policies underlying the particular field of law,
(f) certainty, predictability and uniformity of result, and
(g) ease in determination and application of the law to be applied.

Restatement (Second) of Conflict of Laws § 6.

Williams, supra, 76 Wn. App. at 242, quoting Restatement of Conflicts § 6.

C. Defendants Did Not Demonstrate a Conflict of Laws; Therefore, Washington Law Applies.

Plaintiff has pled only general negligence against the driver, defendant Ava Taylor. Plaintiff has not pled any violation of Idaho's statutes, speed limits, regulations, or rules of the road. In their opening brief before the trial court, defendants did not point out a single instance of Idaho's substantive negligence law being in conflict at all with Washington's. CP p. 19-30, Defendants' Motion for Summary Judgment. They argued only that a strict *lex loci delecti*, rule applied. *Id.* As plaintiff would have no further opportunity to respond to defendants' motion, in her opposing brief she asked the Court to be strict in striking from the record any supposed conflicts defendants attempted to raise for the first time in their reply. CP p. 56, line 24 – p. 57, line 2, Plaintiff's Opposition to Defendants' Motion for Summary Judgment.

Washington, not Idaho, substantive law should apply to the negligent driving issue in this case. In the first instance, if no conflict of laws is demonstrated, Washington law applies; if a conflict is shown to exist, the court must then determine which state has the most significant relationship with the parties and issues. *Burnside, supra,* 123 Wn. 2d at 103 ("An actual conflict between the law of

Washington and the law of another state must be shown to exist before Washington courts will engage in a conflict of law analysis."). In the absence of a conflict in substantive law, Washington law will apply. *Id.,* 123 Wn.2d at 104; *Seizer, supra,* 82 Wn. App. at 92. It was up to defendants to identify supposed conflicts. They identified no conflicts and the Court should have denied their motion.

Plaintiff's action against the defendant driver is based solely on negligence. There are no material differences between Washington and Idaho law on the standard for negligence.

Idaho pattern jury instructions define "negligence" as:

> [T]he failure to use ordinary care in the management of one's property or person. The words "ordinary care" mean the care a reasonably careful person would use under circumstances similar to those shown by the evidence. Negligence may thus consist of the failure to do something which a reasonably careful person would do, or the doing of something a reasonably careful person would not do, under circumstances similar to those shown by the evidence.

Idaho Jury Instruction (Civil) 2.20.

Washington defines negligence in the same manner:

> Negligence is the failure to exercise ordinary care. It is the doing of some act that a reasonably careful person would not do under the same or similar circumstances or the failure to do some act that a reasonably careful person would have done under the same or similar circumstances.

WPI – Civil – 10.01. These two definitions of negligence are

identical in the standard they define; they are not in conflict.

In their answers, the defendants made only one reference to Idaho law. In paragraphs 22 of their Answers, they pled the Idaho guest passenger statute as a bar to plaintiff's recovery. CP p. 10, lines 15-16, Taylors' Answer; CP p. 16, lines 19-20, Kirknesses' Answer. In Washington, there is no host-guest statute barring a guest passenger's recovery of tort damages against a host driver. The apparent conflict is, however, false; Idaho's Supreme Court, in 1974, struck down Idaho's guest passenger statute as unconstitutional:

> From the above analysis it is concluded that the guest statute's denial of the guest's negligence cause of action against his host does not bear a rational relationship to the objectives of the guest statute of promotion of hospitality, prevention of collusion and parity between licensees and automobile guests. By denying automobile guests a negligence cause of action against their host, but allowing negligence actions against the host by paying passengers, guests in other automobiles, drivers of other automobiles and pedestrians, the guest statute draws an impermissible classification scheme and is in violation of the equal protection of the laws guarantees of the Idaho and United States Constitutions.

Thompson v. Hagan, 96 Idaho 19, 23, 523 P.2d 1365, 1369 (1974). It appears that there is not in effect at present a guest passenger statute in Idaho.

As there appears, in effect, no conflicting guest passenger statute in Idaho, there is no conflict between Washington and Idaho law in such regard.

In their reply brief, for the first time and precluding any substantive response by plaintiffs, defendants cited the following instances in which they allege Idaho negligence law conflicts with Washington negligence law pertaining to the negligence alleged against the defendant driver, Ava Taylor:

With regard to comparative fault, the difference between Idaho Code § 6-801 and RCW 4.22.070;

With regard to negligence *per se*, the difference between Idaho Jury Instruction (Civil) 2.22 and RCW 5.40.050;

With regard to the host-guest statute, Idaho has one, Idaho Code § 49-2415, and Washington does not; and

With regard to driving speed, the difference between Idaho Code § 49-654 and RCW 46.61.400.

CP p. 85, lines 4-11, Defendants' Reply in Support of Summary Judgment.

Defendants did not discuss the supposed conflicts raised in their reply brief. They did not cite any case law interpreting or applying the newly mentioned supposed conflicts. Defendants

made no attempt to explain the alleged distinctions and differences and how the supposed conflicts applied to the facts of this case. Defendants did not discuss how these alleged differences weighed out in the test of Washington's and Idaho's relationships to the parties and issues in the case at hand. *Id.* pp. 82-86. As in their opening brief, defendants confined their analysis and argument to the strict application of *lex loci delecti.*

In the setting of a motion on the pleadings, the difference between Idaho and Washington law concerning comparative fault does not present a true conflict of laws. Idaho Code ("I.C.") § 6-801 provides for contributory fault the same as R.C.W. 4.22.070, so long as the plaintiff's fault is not equal to or greater than a defendant's:

> Contributory negligence or comparative responsibility shall not bar recovery in an action by any person or his legal representative to recover damages for negligence, gross negligence or comparative responsibility resulting in death or in injury to person or property, if such negligence or comparative responsibility was not as great as the negligence, gross negligence or comparative responsibility of the person against whom recovery is sought, but any damages allowed shall be diminished in the proportion to the amount of negligence or comparative responsibility attributable to the person recovering. Nothing contained herein shall create any new legal theory, cause of action, or legal defense.

I.C. § 6-801.

Until the point where a plaintiff's negligence is equal to or greater than a defendant's in producing the personal injury complained of, the Idaho comparative fault statute operates the same as Washington's in apportioning fault between the plaintiff and the defendant:

> Section 6–801's intent is clear: Contributory negligence is not to be a complete bar to recovery; instead, liability is to be apportioned between the parties based on the degree of fault for which each is responsible.

Salinas v. Vierstra, 107 Idaho 984, 989, 695 P.2d 369, 374, rehearing denied, (1985).

> First, the Idaho legislature, when it enacted comparative negligence legislation, adopted the "individual rule" which requires that, when comparing percentages of negligence, the negligence of the plaintiff must be compared against each individual defendant in determining whether the plaintiff may recover. I.C. §§ 6–801, 6–802 and 6–803; *Odenwalt v. Zaring,* 102 Idaho 1, 624 P.2d 383 (1980). The statute requires that a plaintiff prove that a defendant's negligence was greater than that of the plaintiff before a judgment can be rendered against that defendant. *Odenwalt v. Zaring, supra*.

Ross v. Coleman Co., Inc., 114 Idaho 817, 830-31, 761 P.2d 1169, 1182-83, rehearing denied, (1988)(footnote omitted).

The underlying motion in this case was a motion on the pleadings. No discovery has been accomplished. In response to a

motion on the pleadings, Ms. Woodward is entitled to have the pleadings and reasonable hypotheticals construed in her favor.

As pled, and hypothetically, defendant Ava Taylor was the driver in a one-car roll-over injury accident in which plaintiff Ms. Woodward claims Ms. Taylor was negligent in driving too fast for the snowy, icy conditions that were evident on the roadway. Ms. Woodward has pled and it is certainly available to her to prove, that she was a sleeping, properly seat-belted, rear-seat passenger. In actuality, and certainly in the hypothetical, Ms. Woodward did not contribute at all to her own injury; therefore, the potential bar to recovery for a plaintiff who was as negligent, or more negligent, than the defendant that is provided by the Idaho statute does not come into play. In actuality, and certainly hypothetically, there is no conflict between Idaho Code § 6-801 and RCW 4.22.070 with regard to comparative/contributory fault.

Defendants in their reply brief mentioned, but did not brief or discuss at all, Idaho's employment of negligence *per se* (Idaho Jury Instruction (Civil) 2.22) compared to Washington's RCW 5.40.050, which provides that violation of a statute may be evidence of negligence, but is not conclusive on the issue. Plaintiffs have not pled the violation of any statute, rule, or regulation – they have pled

under general negligence principles that defendant Ava Taylor was negligent in driving too fast for the existing snowy, icy conditions. Plaintiff has not pled the application of negligence *per se*. Defendants have certainly not pled the application of Idaho's negligence *per se*. Because negligence *per se* is not an issue in the case, no conflict of laws is presented.

Defendants for the first time in their reply brief mentioned, but did not discuss, the difference in Idaho and Washington statutes limiting driving speed. This issue was raised in oral argument, VRP pp. 6-7, and the trial judge seized upon this in dismissing the defendant driver. VRP pp. 27-28. Idaho Code § 49-654, in pertinent part, provides the following:

> (1) No person shall drive a vehicle at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing. Consistent with the foregoing, every person shall drive at a safe and appropriate speed when approaching and crossing an intersection or railroad grade crossing, when approaching and going around a curve, when approaching a hillcrest, when traveling upon any narrow or winding highway, and when special hazards exist with respect to pedestrians or other traffic or by reason of weather or highway conditions.
>
> (2) Where no special hazard or condition exists that requires lower speed for compliance with subsection (1) of this section the limits as hereinafter authorized shall be maximum lawful speeds, and no person shall drive a vehicle at a speed in excess of the maximum limits:

* * *

(b) Seventy-five (75) miles per hour on interstate highways;

* * *

Idaho Code § 49-654. Basic rule and maximum speed limits

Washington's RCW § 46.61.400, in pertinent part provides as follows:

> (1) No person shall drive a vehicle on a highway at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing. In every event speed shall be so controlled as may be necessary to avoid colliding with any person, vehicle or other conveyance on or entering the highway in compliance with legal requirements and the duty of all persons to use due care.
>
> (2) Except when a special hazard exists that requires lower speed for compliance with subsection (1) of this section, the limits specified in this section or established as hereinafter authorized shall be maximum lawful speeds, and no person shall drive a vehicle on a highway at a speed in excess of such maximum limits.
>
> * * *
>
> (c) Sixty miles per hour on state highways.
>
> * * *
>
> The maximum speed limits set forth in this section may be altered as authorized in RCW 46.61.405, 46.61.410, and 46.61.415.
>
> (3) The driver of every vehicle shall, consistent with the requirements of subsection (1) of this section, drive at an appropriate reduced speed when approaching and crossing

> an intersection or railway grade crossing, when approaching and going around a curve, when approaching a hill crest, when traveling upon any narrow or winding roadway, and when special hazard exists with respect to pedestrians or other traffic or by reason of weather or highway conditions.

RCW 46.61.400 – Basic rule and maximum limits.

The differences urged at oral argument by defense counsel were (1), that Idaho's speed limit for the highway involved was 75 mph, not 60 or 70 mph, and (2) that the Idaho statute mandated a "reasonable and prudent" driving response to adverse conditions, whereas Washington mandated that a driver slow down. In this argument, defense counsel never brought to the Court's attention IC § 49-654 (2), *supra*, which explicitly states that the reasonable and prudent response to adverse driving conditions, including those presented by weather, is to drive at a "lower speed." Nor could defense counsel have supported with research and briefing any argument that an actual conflict of laws question was presented by the two statutes. Besides the Idaho statute's explicit provision that a "lower speed" IS the reasonable and prudent response, the Idaho case law also demonstrates such. After extensive research into Idaho cases interpreting I.C. § 49-654 your appellant has not found a single one that would lend itself to the argument that the

reasonable and prudent response required of a driver encountering adverse driving conditions such as snow and ice is anything other than to SLOW DOWN to a speed that is reasonable and prudent. The two statutes legislate the same response to adverse driving conditions.

The defense has demonstrated no actual conflict between the laws of Idaho and the laws of Washington with regard to the negligence involved in a driver's response to encountering adverse driving conditions. Idaho's statute requires a driver to drive at a "lower speed" when encountering such conditions; Washington's statute requires that such a driver "drive at an appropriate reduced speed." There is no conflict between these requirements.

At the same time, plaintiffs have not alleged that defendant Ava Taylor was "speeding." As facts, Ms. Woodward alleged that the posted speed limit was 75 m.p.h. and that the defendant driver set the cruise control on the car at 82 m.p.h. Those are merely factual allegations. They say nothing about Ms. Taylor's speed at the time of the roll-over. We know nothing about Ms. Woodward's actual rate of speed at the time of the roll-over. Just because she set the cruise control at 82 m.p.h. doesn't mean she was driving 82 m.p.h. when she encountered the ice and went out of control.

In the first place, the speedometer was alleged to be defective, so no one yet knows what a cruise control setting of 82 m.p.h. translated to in actual miles per hour. In the second place, people set their cruise controls all the time and thereafter speed up and slow down as they encounter traffic and road conditions.

The plaintiff is not suing the defendant driver for violation of the posted speed limit. The plaintiff is suing the defendant driver for negligence: "Defendant Ava Taylor was negligent in driving too fast for the conditions of the roadway at the time and place of the one-car, roll-over collision, as alleged." The cause of action alleged is negligence, which would be decided under the standard defined in WPI – Civil – 10.01, quoted *supra*.

Defendants did not raise any conflict of laws issue in their motion. To the extent potentially conflicting laws were raised and brought to the court's attention, they were false conflicts, in addition to having been raised for the first time in defendants' reply brief. Because no actual, true conflicts have been identified by defendants, Washington substantive law should apply to this case.

D. To the Extent there is a Conflict of Laws Issue, a "Most Significant Relationship Test," Not *Lex Loci Delecti*, Applies to Determine Which State's Law Applies.

For choice-of-law questions in tort cases, Washington has

adopted the "most significant relationship" test and rejected the *lex loci delecti* rule that required the court to apply the law of the place of wrong:

> . . . our recent decisions have rejected the lex loci delecti choice-of-law rule and have adopted the most significant relationship rule for contracts and tort choice-of-law problems.

Johnson v. Spider Staging Corp., 87 Wn.2d 577, 580, 555 P.2d 997 (1976). The enactment of RCW 4.18.020 did nothing to alter this.

When a conflict of law exists, Washington courts consider multiple factors to determine which state has the most significant relationship to the issue. *Id.*, 87 Wn.2d at 580-84. The law of the state with the most significant relationship to the parties and issues will apply. *Id.* The factors include the place where the injury occurred, the place where the conduct causing the injury occurred, the domicile, residence and nationality of the parties, and the place where the relationship, if any, between the parties is centered, the relevant policies of the forum, the relevant policies of other interested states and the relative interests of those states in the determination of the particular issue, the protection of justified expectations, the basic policies underlying the particular field of law, certainty, predictability and uniformity of result, and ease in

determination and application of the law to be applied. *Id.* at 581;

The court will not merely count contacts, but rather will "consider which contacts are most significant and . . . determine where these contacts are found." *Id.*

The enactment of RCW 4.18.020, Conflict of Laws – Limitation Periods, in 1983, did not alter Washington's choice of law rule examining the most significant relationship for determination of choice of law questions in tort cases – including negligent driving cases. Washington's rejection of the *lex loci delecti* choice of laws test, as held in *Johnson, supra,* still stands. *Williams v. State*, 76 Wn. App. 237, 241, 885 P.2d 845 (1994).

The *Williams* case, a traffic accident wrongful death case decided eleven years after enactment of RCW 4.18.020, affirmed, if such was ever in doubt, that Washington courts continue to employ the "most significant relationship" test when deciding choice of law question:

> In determining choice of law, Washington applies the most significant relationship test set forth in the Restatement (Second) of Conflict of Laws (Restatement of Conflicts) § 145 (1971). *Johnson v. Spider Staging Corp.*, 87 Wn.2d 577, 580, 555 P.2d 997 (1976); *Bush v. O'Conner*, 58 Wn. App. 138, 143, 791 P.2d 915, *review denied*, 115 Wn.2d 1020 (1990). Under this test, choice of law depends upon which of two or more jurisdictions has the "most significant relationship" to a specific issue. *Burnside*, 123 Wn.2d at 100

(quoting *Johnson*, at 580). Therefore, each State's interests must be analyzed in relation to each issue presented.

Williams, supra, 76 Wn. App., at 241. Significantly, in applying the "most significant relationship" test to this traffic accident, the court found that, on the issue of Oregon's non-claim statute, Oregon, not Washington, had the most significant relationship and held that Oregon, not Washington, law would apply to that issue, thus dismissing plaintiff's wrongful death claim against the state of Oregon, even though the traffic accident occurred in Washington. *Id.*, at 247-49.

In the case currently on appeal, even assuming a true conflict of laws, Washington has by far the most significant relationship with the parties and issues. Therefore, as discussed in the following subsection of this brief, Washington substantive law should apply.

E. In Point of Facts Pled, and Certainly Hypothetically in the Setting of a Motion on the Pleadings, Washington's Relationship to the Parties and the Controversy so Predominates that Washington Substantive Negligence Law Should Apply and Defendants' Motion on the Pleadings Should Have Been Denied.

The case of *Mentry v. Smith*, 18 Wn. App. 668, 571 P.2d 589 (1977) provides exactly the "hypothetical" within which Ms. Woodward could prove that Washington's substantive negligence

law, not Idaho's, should apply to her case. The *Mentry* case involved two states' relationships to the contesting parties and the negligent driving issue that is exactly the same as Washington's and Idaho's relationships with plaintiff, Ms. Woodward, and defendant, Ms. Taylor, and those states' relationships to the issue of negligence in this case. The *Mentry* Court employed the proper analysis of the relationships involved in a dispute that arises between a negligent Washington driver and her injured Washington passenger, where no foreign state resident is involved in the dispute and where the injury occurs in a state through which the Washington resident parties just happen to be passing in order to return to their homes in Washington. Where the sole issue is the liability of a Washington driver to her Washington passenger for the driver's negligence, it is Washington's relationships that predominate and prevail, especially where the driver/passenger relationship is centered in Washington, the subject road trip began and was to end in Washington and the automobile is registered, garaged and insured in Washington.

In *Mentry*, the Washington plaintiff was a passenger in a two-car collision in Oregon and filed suit for her injuries in Washington against the Washington driver of the Washington

vehicle in which she was a passenger. The owner/driver/occupants of the second car, all Oregon residents, had separately filed suit against the Washington driver in Oregon and they were not parties to the Washington case. The Washington plaintiff/ passenger was a member of the Washington driver's family, which resided in Washington. Plaintiff and defendant were Washington residents. The driver interposed the Oregon host-guest statute as a bar to plaintiff's recovery and argued to the Court that Oregon's host-guest statute governed in the Washington case. The Court held that in light of the lack of any significant relationship Oregon had with the parties or to the injuries solely to a Washington resident, Washington had the most significant relationship to the parties and issues involved and Washington tort law would apply, regardless of the effect of Washington's repeal of its host-guest statute; the Court's discussion is instructive:

> On August 9, 1974, Richard and Bethel Smith, husband and wife, and their daughter, Dixie Mentry, all residents of Buckley, Washington, drove to Medford, Oregon, to attend a family reunion. The accident occurred on August 13 near Roseburg, Oregon, as the family was returning home on Interstate 5. Bethel Smith, driving the Smiths' pickup truck, attempted to pass an automobile being driven by one Consuelo Sewell of Roseburg, lost control, and struck the center divider causing the pickup to flip over and collide with the Sewell vehicle. Both Sewell and Mentry were injured.

Under Oregon Law, a host-driver is not liable to his guest for ordinary negligence.

> No person transported by the owner or operator of a motor vehicle, an aircraft, a watercraft, or other means of conveyance, as his guest without payment for such transportation, shall have a cause of action for damages against the owner or operator for injury, death or loss, in case of accident, unless the accident was intentional on the part of the owner or operator or caused by his gross negligence or intoxication. As used in this section:
>
> . . .
>
> (2) "Gross negligence" refers to negligence which is materially greater than the mere absence of reasonable care under the circumstances, and which is characterized by conscious indifference to or reckless disregard of the rights of others.

Ore. Rev. Stat. § 30.115. Washington repealed a similar statute before the accident occurred.

Mentry filed suit in Washington. The trial court dismissed her complaint holding: (1) the substantive law of Oregon, including the Oregon guest statute, should apply, and (2) Bethel Smith's conduct did not as a matter of law constitute gross negligence under Ore. Rev. Stat. § 30.115. The threshold question is whether Oregon or Washington law should be applied.

The Supreme Court in *Johnson v. Spider Staging Corp.*, 87 Wn.2d 577, 555 P.2d 997 (1976), reiterated its rejection of the lex loci delecti choice-of-law rule in favor of the most significant relationship rule of the Restatement (Second) of Conflict of Laws (1971). It quoted § 145 which sets out the general principles to be applied to a tort choice-of-law problem:

(1) The rights and liabilities of the parties with respect to an issue in tort *are determined by the local law of the state which, with respect to that issue, has the most significant relationship to the occurrence and the parties under the principles stated in § 6.*

(2) Contacts to be taken into account in applying the principles of § 6 to determine the law applicable to an issue include:

(a) the place where the injury occurred,
(b) the place where the conduct causing the injury occurred,
(c) the domicile, residence, nationality, place of incorporation and place of business of the parties, and
(d) the place where the relationship, if any, between the parties is centered.

These contacts are to be evaluated according to their relative importance with respect to the particular issue.

Johnson v. Spider Staging Corp., supra at 580-81 As in *Johnson*, we summarize the contacts with each state involved:

Washington	Oregon
1. All parties to this action are domiciliaries and residents of Washington.	1. The site of the accident was in Oregon.
2. The relationship between the parties is centered in Washington.	2. An Oregon resident, driving an automobile registered in Oregon, was injured in the same accident.

3. The trip originated and was to terminate in Washington.	3. An independent lawsuit was filed in Oregon by the Oregon resident against the Smiths.
4. The vehicle in which all parties were riding was registered and insured in Washington.	4. The purpose of the trip was a family reunion in Oregon.

> Contacts are not merely counted; they are evaluated to determine which ones are most significant. The Smiths assert that in a two-car collision the residence of the driver of the second car is crucial in making a choice of laws. This, they argue, is especially true when that driver has been injured and has filed suit in her home state. Were Ms. Sewell, the Oregon driver, a party to this action, that argument might be more persuasive; but she is not. While her involvement in the accident will be put on the scale, it will be given very little weight. We agree with the Second Circuit, which, applying New York law, considered the significance of a second vehicle in a guest-host suit and concluded that it was an "extraneous factor" . . . [citing *Tooker v. Lopez*, 24 N.Y.2d 569, 249 N.E.2d 394, 301 N.Y.S.2d 519 (1969) and quoting *Pryor v. Swarner*, 445 F.2d 1272, 1275 (2d Cir. 1971)] . . . .
>
> . . . When the contacts are balanced, Washington has the most significant relationship to the occurrence and the parties.
>
> In conjunction with the most significant relationship rule, the court in *Johnson* also employed state interest analysis. Accordingly, we will consider whether Washington or Oregon has a legitimate interest in having its law applied on the basis of the law's purpose and whether the law's application would advance that purpose. The Smiths claim that the policies behind the Oregon guest statute are twofold: (1) to assure the priority of injured third parties in the assets of a negligent host, and (2) to prevent collusive suits against insurance companies. We reject the Smiths' contention that a purpose of the statute is to protect the recovery fund for injured non-guests, and find that Oregon's policy of

> preventing collusive suits is not furthered by application of Oregon law to the case at bar. In so doing, we adopt the reasoning of the New York Court of Appeals in *Tooker v. Lopez*, 24 N.Y.2d 569, 575, 249 N.E.2d 394, 301 N.Y.S.2d 519 (1969):
>
> > If the purpose of the statute is to protect the rights of the injured "non-guest", as opposed to the owner or his insurance carrier, we fail to perceive any rational basis for predicating that protection on the degree of negligence which the guest is able to establish. The only justification for discrimination between injured guests which can withstand logical as well as constitutional scrutiny . . . is that the legitimate purpose of the statute – prevention of fraudulent claims against local insurers or the protection of local automobile owners – is furthered by increasing the guest's burden of proof. This purpose can never be vindicated when the insurer is a New York carrier and the defendant is sued in the courts of this State. Under such circumstances, the jurisdiction enacting such a guest statute has absolutely no interest in the application of its law.
>
> (Citations omitted.) The effect of the repeal of the Washington guest statute is not now before the court, but Washington has a legitimate interest in the application of its law.

Mentry, supra, 18 Wn. App. at 669-73.

As decided in *Mentry*, as between the driver, Ms. Taylor, and her passenger, Ms. Woodward, both of whom are Washington residents, in a lawsuit by the passenger against the driver for the driver's negligence resulting in a one-car roll-over occurring in Idaho during a trip back to Washington from a trip that originated in

Washington, Washington law applies when the parties' relationship and contacts are all centered in Washington.

Before the trial court, defendants relied heavily on *Ellis v. Barto*, 82 Wn. App. 454, 918 P.2d 540 (1996). An initial factor that distinguishes the case currently on appeal from the *Ellis* case is that *Ellis* was decided as a summary judgment on material facts that were not in controversy. 82 Wn. App. at 457. The case currently on appeal is an appeal from a judgment on the pleadings. The trial court in the case currently on appeal should have given plaintiff the benefit of all favorable inferences from all facts as pled and from all hypotheticals reasonably available to plaintiff within the facts pled.

Another factor that distinguishes Ms. Woodward's case from the *Ellis* case is the fact that defendants in Ms. Woodward's case have identified no true conflicts of laws in Ms. Woodward's case, as the defendants appear to have done in *Ellis*. There, the plaintiff and defendant, apparently strangers to each other, but both Washington residents, were involved in a two-car accident in Idaho. The court recited the laws brought to the court's attention by the defendants in that case as conflicting with the laws of Washington:

> Here, the conflicting laws identified are the differences between Washington's and Idaho's (a) liability limits of vehicle owners for the negligence of third persons operating their vehicle with permission, (b) comparative fault statutes, and (c) rules governing vehicle turnarounds.

Ellis, supra, 82 Wn. App. at 457. The court did not elaborate at all on these recited conflicts, but as this was a summary judgment decided on material facts that were not in dispute, we must assume there was an actual conflict. As has been discussed, based on the facts as pled and reasonable hypotheticals within those facts, the defendants in the case currently on appeal have not identified any true conflicts between Washington and Idaho negligence law.

Another factor important in distinguishing this case from *Ellis* is the parties involved. *Ellis* involved a two-car accident between strangers and the strangers were suing each other – they had no relationship centered in Washington. Unlike *Mentry*, *Ellis* is a suit in which the occupant of one car was suing the driver of the other. In that circumstance, the parties could have been from any states; that they both happened to be from Washington was merely random chance. The dispute was one between strangers on an Idaho roadway and involved alleged violation of Idaho rules of the road concerning vehicle turnarounds, which were, apparently, in true conflict with Washington's.

In Ms. Woodward's case, as in the *Mentry* case, the parties were companions, both Washington residents, with a relationship centered in Washington, who were together throughout their trip to Las Vegas and were returning from Las Vegas to Washington when the roll-over occurred. Ms. Woodward is suing Ms. Taylor strictly on the negligence involved in driving too fast for the prevailing weather and road conditions; no Idaho rules of the road are involved and, in any case, no applicable rules of the road have been shown to be in conflict. No other car and no Idaho property damage were involved. In this context, the fact that the injury occurred in Idaho is practically meaningless. Ms. Woodward's lawsuit does not rely upon Idaho's rules of the road. Rather, she relies on general principles of negligence, which do not create such conflicts as the Court cited in *Ellis*.

In fact, and certainly in the hypothetical, Ms. Woodward could prove that the relationship between Washington and the parties, between Idaho and the parties, and both states' relationships to the issue in controversy equate exactly to the relationships among Washington, Oregon and the parties in *Mentry,* in which Washington's relationships to the parties and the controversy were found to predominate and prevail. If *Mentry* is

good law, and it has never been overruled, either explicitly or by implication, then, given the standard for decisions on motions on the pleadings, defendants' motion on the pleadings to dismiss Ms. Woodward's claims against Ms. Taylor should have been denied.

In the case presently before the Court, all parties to this lawsuit are Washington residents, just as in *Mentry*. Just as in *Mentry*, the suit is between a Washington resident passenger and her Washington resident driver. Just as in *Mentry,* the relationship between the parties is centered in Washington. As in *Mentry*, the trip originated in Washington and was to terminate in Washington. As in *Mentry*, the vehicle in which the trip took place was registered, maintained, garaged, and insured in Washington. The only thing that happened in Idaho was that the roll-over occurred there, just as the *Mentry* case.

Adding to the overwhelming weight of Washington's predominant and pervasive relationship to the parties and controversy in Ms. Woodward's case, here, no other vehicle was involved and no strangers or residents of other states were involved. There was no damage to Idaho property. Idaho has absolutely no interest in this case, whatsoever. As in *Mentry*, Washington law should apply. Because the substantive law of

Washington should apply, under RCW 4.18.040 Washington's statute of limitation should apply also.

VI. CONCLUSION

The trial court's order granting defendants' motion on the pleadings dismissing injured plaintiff Claire Woodward's negligent driving claim against defendant driver Ava Taylor on the basis that Idaho substantive negligence law, and therefore its 2-year statute of limitations, applied to plaintiff's negligent driving claim against the defendant driver, should be reversed. In the setting of a motion on the pleadings:

Defendant driver demonstrated no actual conflicts of laws between Washington's and Idaho's negligence law pertaining to plaintiff's negligence claim against defendant driver; therefore Washington negligence law applied;

The "most significant relationship" test, not *lex loci delecti*, is used to determined which state has the most significant relationship to the parties and issues and therefore supplies the law under which the issues are to be tried;

In the case on appeal, where the plaintiff pled facts and demonstrated hypotheticals within those facts in which Washington has the predominant and prevailing relationship with the parties and

with the negligence pled, Washington law applies to the issue of alleged negligent driving too fast for prevailing roadway conditions; and

Because Washington substantive negligence law applies, under RCW 4.18.020(1)(a), Washington's 3-year statute of limitations applies.

RESPECTFULLY SUBMITTED this 21ST day of January 2014.

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Attorneys for Appellant Claire Woodward

By: _____
Daniel L. Hannula, WSB 7830

And by: _____
Harold T. Dodge, Jr., WSB 15191

Certificate of Service

Pursuant to RAP 5.4(b), the undersigned certifies under the penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned, a citizen of the United States, a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On January 22, 2014, I caused to be served with this Certificate of Service the following documents in the manner indicated: **APPELLANT'S BRIEF**

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SIGNED this 22nd day of January, 2014, at Tacoma, Washington.

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