THE SUPREME COURT
OF THE STATE OF WASHINGTON

NO. 91270-0

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.

PETITION FOR REVIEW
(From Court of Appeals, Division One, No. 70949-6-I)

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APPENDIX:

I. IDENTITY OF PETITIONER

The petitioner in this case, who was the plaintiff at trial, and appellant below, is Washington resident Claire Woodward, 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 as a result of the driver losing control on a dark, snowy, icy highway returning to Washington during a road trip that had originated in Washington. The plaintiff filed suit in King County, Washington more than two years, but less than three years after the roll-over occurred. The trial court dismissed on the pleadings petitioner passenger's negligence claim against the defendant driver based on what the plaintiff argues were erroneous choice-of-law decisions resulting in the application of Idaho law and thus Idaho's 2-year statute of limitations. The Court of Appeals affirmed the trial court's dismissal on the pleadings.

II. CITATION TO COURT OF APPEALS DECISION

The decision for which review is sought is *Claire C. Woodward, Appellant v. Ava A. Taylor, Respondent*, Case # 70949-6-I, filed October 6, 2014. A true and correct copy of the decision is at Appendix 1.

A Motion to Publish was timely filed. The Order Granting Motion to Publish was filed on December 22, 2014. A true and correct copy of the Order is at Appendix 2.

III. ISSUES PRESENTED FOR REVIEW

The decision of the Court of Appeals affirming the trial court's dismissal on the pleadings of plaintiff's negligence claims against the defendant driver (Ava Taylor and "John Doe" Taylor, CP 88-89, *see also* CP 109-16), is in conflict with Washington Supreme Court precedent prescribing conflict-of-laws methodology and is in conflict also in bypassing established precedent requiring that where, and if, a true conflict of laws exists, the Courts employ the "most significant relationship" test to resolve conflicts issues rather than *lex loci delecti.* (RAP 13.4(b)(1). The decision is also in conflict with another Court of Appeals decision weighing the significance of relationships in a case that is exactly analogous to the instant case. (RAP 13.4(b)(2).

IV. 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 four vehicle occupants, all Washington residents, were returning from a trip to Las Vegas, Nevada. *Id.* Driving too fast for the existing conditions, the defendant lost control of the vehicle on a dark, snowy, icy highway, skidded off the roadway and rolled the vehicle. *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, 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 Complaint alleges only the general negligence involved in driving too fast for conditions.

Notably, petitioner never alleged that the defendant driver was "speeding," based on Idaho's posted speed limit. The Complaint is silent on the speed at which the driver was traveling relative to the posted speed limit before or at the time she encountered the dark, snowy, icy conditions and lost control.

In her Answer, defendant Ava Taylor pled Idaho's host-guest statute as a bar to petitioner's recovery. Defendants Taylor's Answer, CP 73, para. 22.

The trial court granted defendants' motion on the pleadings to dismiss the negligence claim against the defendant driver. 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.

The Court of Appeals affirmed the dismissal. This decision is in conflict with Washington Supreme Court precedent providing for conflict of laws methodology and analysis. There was no analysis of whether the supposed conflicts were actual conflicts, as opposed to mere false conflicts.

When and if analyzed, any claimed conflicts are shown to be false conflicts. Where no actual conflict of laws is demonstrated, Washington law applies. Even if some actual conflict is shown to exist, the decision substitutes *lex loci delecti*, as the conflicts rule, which is in conflict with Washington Supreme Court precedent requiring a "most significant relationship" analysis. And the decision is in conflict with another Court of Appeals decision, which in less compelling circumstance than presented by this case found that Washington has the most significant relationship to the parties and issues involved.

V. ARGUMENT

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

Appellate courts review de novo an order for judgment on the pleadings. *North Coast Enterprises, Inc. v. Factoria Partnership, et al.*, 94 Wn. App. 855, 858-59, 974 P.2d 1257 (1999).

B. The Appellate Court Decision Conflicts with Washington Supreme Court Precedent Establishing Conflict of Law Methodology and Analysis in Washington.

1. Precedent Establishes that Washington's Substantive 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. *Burnside v. Simpson Paper Co.*, 123 Wn.2d 93, 100, 864 P.2d 937 (1994); *see also, Williams v. State* 76 Wn. App. 237, 240-41, 885 P.2d 845 (1994).

2. Precedent Establishes that if no Conflict of Laws is Shown to Exist, Washington Law Applies.

Unless a party advocating the application of another state's law first demonstrates that a true 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). The Uniform Conflict of Laws – Limitations Act has no effect on this methodology and analysis.

3. Precedent Establishes that 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. *Rice v. Dow Chemical Co.*, 124 Wn.2d 205, 210, 875 P.2d 1213 (1994). This holding was made after the passage of the Uniform Conflict of Laws – Limitations Act.

4. Precedent Establishes that, 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. *Burnside, supra*, 123 Wn.2d at 100; *see also Williams, supra*, 76 Wn. App. at 241. Again, the Uniform Conflict of Laws – Limitations Act has no effect on this methodology and analysis. The

Washington Supreme Court has established and maintained the "most significant relationship" test, and rejected *lex loci delecti*, as the rule in conflict of laws analysis.

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 v. Spider Staging Corp.,* 87 Wn.2d 577, 580-81, 555 P.2d 997 (1976)

C. The Court of Appeals Never Analyzed Whether an Actual Conflict of Laws was Presented; where there is no Actual Conflict, Washington Law Applies.

Petitioner has pled only general negligence against the driver, defendant Ava Taylor. Petitioner **has not pled** any violation of Idaho's

statutes, speed limits, regulations, or rules of the road. Below, the Court of Appeals did not identify or discuss at all a single instance of Idaho's substantive negligence law being in actual, true conflict with Washington's. Defendants had argued only that a strict *lex loci delecti*, rule applied. *Id.*

Washington's, not Idaho's, substantive law should apply to the negligent driving issue in this case. In the first instance, if no true conflict of laws is demonstrated, Washington law applies; if a true 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."). *Burnside* reiterates the Washington Supreme Court's precedent for conflicts methodology and analysis. *Burnside* was a car accident case. Conflicts methodology and analysis is no different for a car accident case than for any other type of case. In the absence of an actual, true 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 actual conflicts and the Court of Appeals took no notice of this primary principle of conflicts analysis in its decision.

Petitioner's action against the defendant driver is based solely on negligence. There are no actual, true differences between Washington and Idaho law on the standard for negligence. *Compare* Idaho's pattern jury instructions defining "negligence" (Idaho Jury Instruction (Civil) 2.20) (Appendix 3a)to Washington's definition of negligence (WPI – Civil – 10.01. (Appendix 3b)). 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. *Thompson v. Hagan*, 96 Idaho 19, 23, 523 P.2d 1365, 1369 (1974). As there is no conflicting guest passenger statute in Idaho, there is no conflict between Washington and Idaho law in such regard.

In the course of proceedings after their initial brief before the trial court, defendants recited the following instances in which they alleged 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 (Appendix 4a and 4b); with regard to negligence *per se*, the difference between Idaho Jury Instruction (Civil) 2.22 and RCW 5.40.050 (Appendix 5a and 5b); and with regard to driving speed, the difference between Idaho Code § 49-654 and RCW 46.61.400 (Appendix 6a and 6b). CP p. 85, lines 4-11, Defendants' Reply in Support of Summary Judgment.

Defendants did not analyze or discuss the supposed conflicts raised in their reply brief before the trial court. 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 at the trial court level confined their analysis and argument to the strict application of *lex loci delecti.*

The recited difference between Idaho and Washington law concerning comparative fault does not present an actual, true conflict of laws. Idaho Code ("I.C.") § 6-801 provides for contributory fault the same as RCW 4.22.070, so long as the plaintiff's fault is not equal to or

greater than a defendant's. I.C. § 6-801 (Appendix 4a).

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. *See Salinas v. Vierstra*, 107 Idaho 984, 989, 695 P.2d 369, 374, rehearing denied, (1985); *Ross v. Coleman Co., Inc.,* 114 Idaho 817, 830-31, 761 P.2d 1169, 1182-83, rehearing denied, (1988)(footnote omitted).

In the setting of a Motion on the Pleadings, Ms. Woodward has pled, and it is certainly available to her to prove, that she was a sleeping, properly seat-belted, rear-seat passenger with no percentage of fault attributable to her. 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. This is a false conflict.

Defendants in their briefs mentioned, but did not analyze or discuss at all, Idaho's employment of negligence *per se* (Idaho Jury Instruction (Civil) 2.22) (Appendix 5a) compared to Washington's RCW 5.40.050 (Appendix 5b), which provides that violation of a statute may be evidence of negligence, but is not conclusive on the issue. Petitioner has not pled the application of Idaho 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. Again, this is a false conflict.

In their briefing subsequent to their opening brief before the trial court, defendants mentioned, but did not analyze, 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 petitioner's allegation of a posted 75 m.p.h. speed limit together with a factual allegation of an 82 m.p.h. cruise control setting to misinterpret petitioner's cause of action as one for speeding, thus dismissing the defendant driver. VRP pp. 27-28.

When Idaho Code § 49-654, Idaho's basic rule and maximum speed limits (Appendix 6a) is compared to Washington's RCW § 46.61.400 (Appendix 6b), it is seen that Idaho's law does not conflict with Washington's insofar as what they require of a driver when encountering adverse weather and road conditions.

The differences urged by defense counsel have been (1), that Idaho's speed limit for the highway involved was 75 mph, not 60, 65, 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 Courts' attention I.C. § 49-654 (2) (Appendix 6a),

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 analysis 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 petitioner 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 mandate the same response to adverse driving conditions.

At the same time, plaintiff **has not alleged** that defendant Ava Taylor was "speeding," either as recited by the trial judge or in the Court of Appeals decision. 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 the same as dark, snowy, icy conditions. They say nothing about Ms. Taylor's speed at the time of the roll-over. We know nothing about Ms. Taylor's actual rate of speed at the time of the roll-over. Just because she set the

cruise control at 82 m.p.h. does not 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, drivers set their cruise controls all the time and thereafter speed up and slow down as they encounter traffic and road conditions. The petitioner is entitled to have all the pleadings and hypotheticals resolved in her favor and against the defendant, not the other way around.

Defendants did not raise any conflict of laws issue in their initial motion. To the extent potentially conflicting laws were later raised and brought to the Courts' attention, they were false conflicts. 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. *Johnson v. Spider Staging Corp.*, 87 Wn.2d 577, 580, 555 P.2d 997 (1976). As demonstrated, *supra,* 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. Given a true, actual conflict of laws, 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. *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 *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 questions. *Williams, supra*, 76 Wn. App., at 241. *Id.*, at 247-49.

In the instant case, 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 Petition, 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 Court of Appeals' decision conflicts with the Court of Appeals' decision in *Mentry v. Smith*, 18 Wn. App. 668, 571 P.2d 589 (1977), which is on all fours with the instant case and provides exactly the "hypothetical" within which Ms. Woodward should prevail in having Washington's substantive negligence law, not Idaho's, 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 petitioner, 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 or property 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.

Mentry actually involved a collision between the Mentry Washington registered vehicle and an Oregon vehicle; however, the Oregon driver filed her lawsuit in Oregon and was not a party to the Washington resident/passenger's lawsuit against her Washington-resident driver in Washington.

In *Mentry*, the Washington resident defendant 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.** *Mentry, supra,* 18 Wn. App. at 669-73.

In Ms. Woodward's case, exactly as in the *Mentry* case, the parties are all Washington residents, with relationships centered in Washington,

who were together for a brief trip out of state and who were returning to Washington when the one-car, rollover, accident occurred. Adding to the overwhelming weight of Washington's predominant and pervasive relationship to the parties and controversy, in Ms. Woodward's case no other vehicle was involved and no strangers or residents of other states were involved. 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. In this context, the fact that the injury occurred in Idaho is practically meaningless. As there are no actual conflicts of laws, Washington does not need to defer to any other state in deciding the justice of this lawsuit as between the Washington-resident parties. Because the substantive law of Washington should apply, under RCW 4.18.040 Washington's statute of limitation should apply also.

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VI. CONCLUSION

The Washington Supreme Court should accept review of the court of Appeals' decision in this case, which is in conflict with the Supreme Court's precedents on conflict of laws methodology and with a Court of Appeals decision on the balance of relationships in an exactly analogous setting.

RESPECTFULLY SUBMITTED this 20th day of January 2015.

Rush, Hannula, Harkins & Kyler, L.L.P.
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 20th, 2015, I caused to be served with this Certificate of Service the following documents in the manner indicated:

PETITION FOR REVIEW

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SIGNED this 20th day of January, 2015, at Tacoma, Washington.

Denise Johnson

Denise Johnson, Legal Assistant
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APPENDIX 1

IN THE COURT OF APPEALS OF THE 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.	)	No. 70949-6-I DIVISION ONE UNPUBLISHED OPINION FILED: October 6, 2014

TRICKEY, J. — Under the Uniform Conflict of Laws-Limitations Act, chapter 4.18 RCW, the statute of limitations of the state where the claim is substantively based applies. Here, while the driver, the passengers and the vehicle owner were from Washington, the automobile accident occurred in Idaho. We conclude the injured passenger's suit is based in Idaho's interest in its rules of the road and the conduct on those roads. We affirm the trial court's dismissal of the claim as barred by Idaho's two-year statute of limitations.

FACTS

On March 27, 2011, Claire Woodward, Angelina Miller, and Katherine Kirkness were passengers in a car driven by Ava Taylor.[1] Thomas Kirkness owned the car, which he had loaned to his daughter, Katherine, for the group's trip from Washington to Las Vegas, Nevada.[2] Returning from Las Vegas, the

[1] Clerk's Papers (CP) at 2-3.
[2] CP at 2-3.

group was travelling west on Interstate 84, near Lake Mountain Home in Ada County, Idaho, when the accident occurred.[3]

Snow was visible on the sides of the road and the road was slick with ice.[4] Earlier the travelers had witnessed a car in front of them spin out due to the road conditions.[5] Taylor had the cruise control set at 82 m.p.h. on a road in which the posted speed limit was 75 m.p.h.[6]

Taylor encountered a patch of ice, lost control of the car, which rolled over one and half times, coming to rest on its roof.[7] Woodward was tangled in her seatbelt and had to be extricated by responders.[8] Woodward was injured.

Woodward filed suit alleging Taylor was driving too fast for the conditions of the road.[9] She also sued the owner of the vehicle for loaning a car with a defective speedometer.[10] Woodward filed suit in King County, Washington, more than two years but less than three years after the roll-over occurred.

The trial court held Idaho's two-year statute of limitations applied, rather than Washington's three-year statute of limitations and granted judgment on the pleadings, dismissing the action against Taylor.[11] The action against Thomas Kirkness for negligently lending a defective car to the group was not dismissed.

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[3] CP at 2.
[4] CP at 3.
[5] CP at 3.
[6] CP at 3.
[7] CP at 3.
[8] CP at 3.
[9] CP at 4.
[10] CP at 5.
[11] CP at 88-90.

The court entered CR 54(b) findings and this court accepted review of the matter.[12]

ANALYSIS

In 1983, Washington State adopted the Uniform Conflict of Laws-Limitations Act.[13] RCW 4.18.020(1)(a) provides that if a claim is substantively based on the law of another state, then the limitation period of that state applies.[14] The statute is in accord with section 6 of the Restatement (Second) of Conflict of Laws that a court (subject to constitutional restrictions) follows the statutory directive of its own state on choice of law. This limitation on bringing an action is not generally subjected to an independent conflicts analysis.[15]

Whether a statute of limitations bars a plaintiff's action is typically a question of law that this court reviews de novo. Elllis v. Barto, 82 Wn. App. 454, 457, 918 P.2d 540 (1996). Under RCW 4.18.020, in cases involving disputes over which statute of limitations applies, courts must first determine which state's substantive law forms the basis of the plaintiff's claims. Rice v. Dow Chem. Co., 124 Wn.2d 205, 210, 875 P.2d 1213 (1994).

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[12] CP at 109-116.

[13] Seven states have adopted the act: Colorado, CRSA 13-82-101 through 13-82-107; Minnesota, MSA 541.30 through 541.36; Montana, MCA 27-2-501 through 27-2-507, Nebraska, NE ST 25-3201 through 25-3207; North Dakota, NDCC 28-01.2-01 through 28-01.2.05, Oregon, ORS 12.410 through 12.480; and Washington, RCW 4.18.010 through 4.28.904.

[14] RCW 4.18.020 states as follows:

> (1) Except as provided by RCW 4.18.040, if a claim is substantively based:
> (a) Upon the law of one other state, the limitation period of that state applies; or
> (b) Upon the law of more than one state, the limitation period of one of those states, chosen by the law of conflict of laws of this state, applies.
> (2) The limitation period of this state applies to all other claims.

[15] Christopher R.M. Stanton, Note, IMPLEMENTING THE UNIFORM CONFLICT OF LAWS-LIMITATIONS ACT IN WASHINGTON, 71 WASH. L.REV. 871, 883 (1996).

Washington courts determine which law applies in a tort action by ascertaining 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). The court "must evaluate the contacts both quantitatively and qualitatively, based upon the location of the most significant contacts as they relate to the particular issue at hand." Martin v. Goodyear Tire & Rubber Co., 114 Wn. App. 823, 830, 61 P.3d 1196 (2003) (citing Johnson, 87 Wn.2d at 581). Johnson set forth the contacts to be evaluated for their relative importance as

> (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.

Johnson, 87 Wn.2d at 580-81 (quoting RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 145(2) (1971)).

At first glance the contacts in the tort claim in this case appear to be equally divided with the (a) and (b) factors (negligence and injury) both occurring in Idaho while the other two factors, (c) and (d) (residence and relationship), are centered in Washington. But as the Johnson court noted, the factors must be evaluated qualitatively as well as quantitatively. 87 Wn.2d at 581. As stated in Comment e of the Restatement (Second) of Conflict of Laws § 145:

> In the case of personal injuries or of injuries to tangible things, the place where the injury occurred is a contact that, as to most issues, plays an important role in the selection of the state of the applicable law . . . when the injury occurred in a single, clearly ascertainable state and when the conduct which caused the injury also occurred there, that state will usually be the state of the applicable law.

To determine which laws apply, Washington uses the "most significant relationship" test. Under that test, the applicable law in a personal injury suit is almost always the law of the place where the injury and the conduct causing the injury occurred. RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 145. Here, that place is Idaho.

Moreover, the facts here are similar to those found in Ellis, which held that Idaho's law applied to a two car accident that occurred in Idaho even though both drivers were Washington residents who were each separately visiting Coeur d'Alene for one day. In reaching that decision the court noted:

> [I]n personal injury actions, the substantive law of the state where the injury occurs applies, unless with respect to the particular issue, some other state has a more significant relationship to the occurrence and the parties.

Ellis, 82 Wn. App. at 458; see also Bush v. O'Connor, 58 Wn. App. 138, 144, 791 P.2d 915 (1990).

Basing its decisions on the relevant factors found in the Restatement (Second) of Conflict of Laws, the Ellis court noted:

> Every state has adopted rules of the road which govern the responsibilities and liabilities of those driving within its boundaries and most drivers expect to be bound by those rules. When an accident occurs, the purpose of these rules and the policies behind them are best achieved by applying local law. Although a forum state has an interest in protecting its residents generally, as well as establishing requirements for licensing, registering and insuring motor vehicles and drivers domiciled within the state, such interest does not extend so far as to require application of the forum state's rules of the road to an accident not occurring within its boundaries. Idaho has the most significant relationship to the driving conduct at issue and the rights and liabilities of the parties with respect to their violation or adherence to the rules of the road.

82 Wn. App. at 458-59. Under that rationale, Idaho's interest in applying its rules of the road outweighs the two contacts in Washington. As our Supreme Court held, Washington's interest in seeing its residents compensated for injuries is not overriding where other contacts with Washington are minimal. Rice, 124 Wn.2d at 216.

Woodward relies primarily on Mentry v. Smith, 18 Wn. App. 668, 571 P.2d 589 (1977), a case decided before Washington adopted the Uniform Conflict of Laws-Limitations Act in 1983, to support her position that Washington law should apply. But the litigants in Ellis also cited Mentry and the court correctly found it unpersuasive. 82 Wn. App. at 459.

In Mentry, the driver of a Washington vehicle, the mother of the passenger, both of whom were Washington residents, attempted to pass another car driven by an Oregon resident while in Oregon. The Washington vehicle struck the center divider, flipping it over, and colliding with the Oregon vehicle. Mentry, 18 Wn. App. at 669. The passenger brought suit against her mother for injuries sustained in the accident. Mentry, 18 Wn. App. at 670. The trial court ruled Oregon law applied and that the mother's conduct did not as a matter of law constitute gross negligence. Mentry, 18 Wn. App. at 670.

The issue in Mentry was the relationship between the parties and whether Oregon's host-guest statute would apply. If it did, the statute barred the action unless there was gross negligence. Thus, the question before the court was which law applied, Oregon's or Washington's. The Court of Appeals reversed the trial court based on Washington's interest in not having Oregon's host-guest

statute bar the claim. Mentry, 18 Wn. App. at 672-73. Mentry did not involve a statute of limitations question.

In Ellis, as here, it is the violation of the "local rules of the road and [the] liability issues arising from a violation of those rules" that is at issue. 82 Wn. App. at 460. Woodward pleaded violations of Idaho's rules of the road and as such is subject to its statute of limitations.

Affirmed.

Trickey, J

WE CONCUR:

APPENDIX 2

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

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.	)	No. 70949-6-I ORDER GRANTING MOTION FOR EXTENSION OF TIME AND MOTION TO PUBLISH OPINION

Attorney Mark S. Cole, representing the respondents on appeal, has filed a motion to publish herein. The appellant, Claire Woodward, has filed a response to the motion to publish along with a motion for extension of time. The court has taken the matters under consideration and has determined that the appellant's motion for extension of time to file a response be granted, and further, that the motion to publish should also be granted.

Now, therefore, it is hereby

ORDERED that appellant's motion for extension to file a response to the motion to publish be granted; and, it is further

ORDERED that the motion to publish the opinion filed in the above-entitled matter on October 6, 2014, is granted. The opinion shall be published and printed in the Washington Appellate Reports.

Done this 22nd day of December, 2014.

FOR THE COURT:

Trickey, J

APPENDIX 3a

IDJI 2.20 - Definition of negligence

INSTRUCTION NO. __

When I use the word "negligence" in these instructions, I mean the 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. [The law does not say how a reasonably careful person would act under those circumstances. That is for you to decide.]

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APPENDIX 3b

WPI 10.01 Negligence--Adult--Definition

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.

APPENDIX 4a

Idaho Code § 6-801

Copy Citation

Statutes current through the 2014 Session

- **Idaho Code**
- **Title 6 Actions in Particular Cases**
- **Chapter 8 Actions for Negligence**

6-801. Comparative negligence or comparative responsibility — Effect of contributory negligence.

- 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.

APPENDIX 4b

4.22.070. Percentage of fault — Determination — Exception — Limitations.

(1) In all actions involving fault of more than one entity, the trier of fact shall determine the percentage of the total fault which is attributable to every entity which caused the claimant's damages except entities immune from liability to the claimant under Title 51 RCW. The sum of the percentages of the total fault attributed to at-fault entities shall equal one hundred percent. The entities whose fault shall be determined include the claimant or person suffering personal injury or incurring property damage, defendants, third-party defendants, entities released by the claimant, entities with any other individual defense against the claimant, and entities immune from liability to the claimant, but shall not include those entities immune from liability to the claimant under Title 51 RCW. Judgment shall be entered against each defendant except those who have been released by the claimant or are immune from liability to the claimant or have prevailed on any other individual defense against the claimant in an amount which represents that party's proportionate share of the claimant's total damages. The liability of each defendant shall be several only and shall not be joint except:

(a) A party shall be responsible for the fault of another person or for payment of the proportionate share of another party where both were acting in concert or when a person was acting as an agent or servant of the party.

(b) If the trier of fact determines that the claimant or party suffering bodily injury or incurring property damages was not at fault, the defendants against whom judgment is entered shall be jointly and severally liable for the sum of their proportionate shares of the claimants [claimant's] total damages.

(2) If a defendant is jointly and severally liable under one of the exceptions listed in subsections (1)(a) or (1)(b) of this section, such defendant's rights to contribution against another jointly and severally liable defendant, and the effect of settlement by either such defendant, shall be determined under RCW 4.22.040, 4.22.050, and 4.22.060.

(3)

(a) Nothing in this section affects any cause of action relating to hazardous wastes or substances or solid waste disposal sites.

(b) Nothing in this section shall affect a cause of action arising from the tortious interference with contracts or business relations.

(c) Nothing in this section shall affect any cause of action arising from the manufacture or marketing of a fungible product in a generic form which contains no clearly identifiable shape, color, or marking.

History

1993 c 496 § 1; 1986 c 305 § 401.

▼ Annotations

Notes to Decisions

- **Constitutionality.**
- **"Acting in concert."**
- **Affirmative defense.**
- **Agents.**
- **Appeal.**
- **Applicability.**
- **Apportionment of fault.**
- **Burden of proof.**
- **Cause of action.**
- **Children.**
- **Choice of law.**
- **Construction.**
- **Credit or offset.**
- **—Not warranted.**
- **Damages.**
- **Employer's immunity.**
- **Entity.**
- **Evidence.**
- **Fault.**
- **Fault-free plaintiff.**
- **Hazardous waste exception.**

APPENDIX 5a

IDJI **2.22** - Violation of statute or ordinance - negligence per se

INSTRUCTION NO. __

There was a certain statute in force in the state of **Idaho** at the time of the of the occurrence in question which provided that: [quote or paraphrase the applicable statute.]

A violation of the statute is negligence, [unless (compliance with the statute was impossible) (or) (something over which the party had no control placed the individual in a position of violation of the statute) (or) (an emergency, not of the party's own making, caused the individual to fail to obey the statute) (or) (an excuse specifically provided for within the statute existed)].

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APPENDIX 5b

.40.050. Breach of duty — Evidence of negligence — Negligence per se.

- A breach of a duty imposed by statute, ordinance, or administrative rule shall not be considered negligence per se, but may be considered by the trier of fact as evidence of negligence; however, any breach of duty as provided by statute, ordinance, or administrative rule relating to: (1) Electrical fire safety, (2) the use of smoke alarms, (3) sterilization of needles and instruments used by persons engaged in the practice of body art, body piercing, tattooing, or electrology, or other precaution against the spread of disease, as required under RCW 70.54.350, or (4) driving while under the influence of intoxicating liquor or any drug, shall be considered negligence per se.

APPENDIX 6a

Idaho Code § 49-654

Copy Citation

Statutes current through the 2014 Session

- Idaho Code
- Title 49 Motor Vehicles
- Chapter 6 Rules of the Road

49-654. Basic rule and maximum speed limits.

- **(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:
    - **(a)** Thirty-five (35) miles per hour in any residential, business or urban district, unless otherwise posted in accordance with section 49-207(2) or (3), Idaho Code;
    - **(b)** Seventy-five (75) miles per hour on interstate highways provided that this speed may be increased to eighty (80) miles per hour if the department completes an engineering and traffic study on the interstate highway and concludes that the increase is in the public interest and the transportation board concurs with such conclusion;
    - **(c)** Sixty-five (65) miles per hour on state highways provided that this speed may be increased to seventy (70) miles per hour if the department completes an engineering and traffic study on the state highway and concludes that the increase is in the public interest and the transportation board concurs with such conclusion;

- **(d)** Fifty-five (55) miles per hour in other locations unless otherwise posted up to a maximum of seventy (70) miles per hour.

- **(3)** For vehicles with five (5) or more axles operating at a gross weight of more than twenty-six thousand (26,000) pounds the maximum lawful speed limit on interstate highways in nonurban areas shall not exceed ten (10) miles per hour less for vehicles with less than five (5) axles and operating at a gross weight of twenty-six thousand (26,000) pounds or less, and in urban areas the maximum lawful speed limit on interstate highways for such vehicles shall not exceed sixty-five (65) miles per hour.

APPENDIX 6b

Rev. Code Wash. (ARCW) § 46.61.400

Copy Citation

Statutes current through the 2014 Regular Session

- **Annotated Revised Code of Washington**
- **Title 46 Motor Vehicles**
- **Chapter 46.61 Rules of the Road**
- **Speed Restrictions**

Basic rule and maximum limits.

- 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.

- 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.
    - Twenty-five miles per hour on city and town streets;
    - Fifty miles per hour on county roads;
    - 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.

- 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.