70949-6

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Case No. 70949-6-I

COURT OF APPEALS, DIVISION I
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 A. KIRKNESS and "JANE DOE" KIRKNESS, husband and wife,

Respondents.

BRIEF OF RESPONDENTS

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I. INTRODUCTION

This case arises out of a motor vehicle accident which occurred in Idaho. Respondent Ava Taylor was driving a vehicle on an Idaho highway. Appellant Woodward was a passenger. Woodward alleged that Taylor was negligent in driving too fast. In particular, Woodward alleged that:

> "... the driver, Defendant Ava Taylor set the cruise control at 82 m.p.h. The posted speed limit was 75 m.p.h."

According to Woodward, Taylor lost control of the vehicle and went off the road. Woodward alleges that she was injured.

After Idaho's two year statute of limitations deadline had passed, Woodward filed an action in Washington against Respondents Taylor and Kirkness (the owner of the vehicle driven by Taylor). Washington's statute of limitations is three years.

In their Answer to Plaintiff's Complaint, Taylor and Kirkness alleged that Woodward failed to commence this action within the time required by statutes of the State of Idaho.

Thus, from the earliest pleading, Respondents put Woodward on notice of Idaho law regarding statutes of limitation. Subsequently, Taylor and Kirkness filed a Motion for Summary Judgment, asking the Court to dismiss the action on the grounds

that the action was not brought within two years, as required by the Idaho statute of limitations.

The trial court determined that the two year Idaho statute of limitations applied. In this regard, the trial court properly began its analysis by looking to RCW 4.18.020. Under that statute, if a claim is substantively based upon the law of another state, the limitation period of that state applies. The pleadings showed that the actions causing the motor vehicle accident occurred in Idaho. The pleadings showed that the accident and injuries occurred in Idaho. In light of that, Woodward's claim was substantively based upon the law of Idaho. Pursuant to RCW 4.18.020, the suit limitation period for Idaho governed this case. The trial court dismissed Woodward's claims against Taylor pursuant to Idaho's two year statute of limitations.

Woodward filed this appeal, erroneously asserting that the statute of limitations issue should be decided by traditional conflicts of law analysis. Appellant's arguments are contrary to Washington statute, RCW 4.18.020, and contrary to well established Washington case law.

II. ASSIGNMENT OF ERROR

Respondents Taylor and Kirkness make no assignment of error.

The issues to be determined in this appeal are as follows:

1. In a personal injury action arising out of a motor vehicle accident, where the acts which caused the accident occurred in Idaho, and the accident and injuries occurred in Idaho, does the substantive law of the State of Idaho govern the claim?
2. Where a Washington action is substantively based on the law of the State of Idaho, does the Idaho statute of limitations apply, pursuant to RCW 4.18.020?
3. In light of RCW 4.18.020 and *Rice v. Dow Chemical Company,* 124 Wn.2d 205, 875 P.2d 1213 (1994), is a traditional conflicts of law analysis appropriate in determining which statute of limitations applies?

III. STATEMENT OF THE CASE

Appellant Woodward was a resident of King County, Washington. CP 1, Plaintiff's Complaint, Lines 19 and 20. Respondents Taylor and Kirkness were residents of King County,

Washington. CP 1, Plaintiff's Complaint, Lines 21-25. CP 2, Plaintiff's Complaint, Lines 1-6.

Woodward and Taylor were returning from a trip to Las Vegas, Nevada. CP 2, Plaintiff's Complaint, Lines 15-16. Woodward was a passenger in a vehicle being driven by Taylor. The vehicle was traveling westbound on Interstate 84 in Ada County, Idaho. CP 2, Plaintiff's Complaint, Lines 12-15.

Woodward alleged that Taylor was negligent in driving too fast. CP 4, Plaintiff's Complaint, Lines 9-11. In particular, Woodward alleged that:

> "... the driver, Defendant Ava Taylor set the cruise control at 82 m.p.h. The posted speed limit was 75 m.p.h."

CP 3, Plaintiff's Complaint, Lines 14-15.

At approximately 2:30 a.m. on March 27, 2011, as Taylor was driving, the subject vehicle went off the road and eventually came to rest. CP 3, Plaintiff's Complaint, Lines 7-22. Woodward alleged that a State Trooper responded to the scene and investigated. CP 3, Plaintiff's Complaint, Lines 23-25.

Woodward alleges that she was injured in the accident. CP 3, Plaintiff's Complaint, Lines 16-22. She alleges that her

injuries were proximately caused by the negligence of Taylor. CP 4, Plaintiff's Complaint, Lines 7-22.

The Complaint was signed by Plaintiff's attorney on May 7, 2013. CP 6, Plaintiff's Complaint. The Complaint was filed in the King County Superior Court on May 8, 2013. CP 1, Plaintiff's Complaint. Thus, this action was commenced more than two years, and less than three years, after the date of the accident.

The statute of limitations for a personal injury action under Idaho law is two years. In this regard, Idaho Code § 5-214 states:

> "The periods prescribed for the commencement of actions other than for the recovery of real property are as follows.
> ...
> Section 5-219
> Within two (2) years:
> ...
> 4. An action to recover damages for professional malpractice, or for an injury to the person ..."

In their Answer to Plaintiff's Complaint, Taylor and Kirkness alleged, as an affirmative defense, that Plaintiff failed to commence the action within the time required by statutes of the state of Idaho. CP 10, Answer, lines 15-16.

Respondents Taylor and Kirkness filed a Motion for Summary Judgment asking the trial court to dismiss the claims of the Woodward against them on the grounds that the action was

not commenced within two years, as required by the Idaho statute of limitations. CP 19, CP 29, lines 6-18.

The trial court considered the motion as a motion for judgment on the pleadings. CP 109, lines 17-20. The trial court granted the motion to dismiss Taylor and denied the motion to dismiss Kirkness. CP 116.

Appellant Woodward thereafter filed this appeal. CP 117.

IV. ARGUMENT

1. Standard of Review

In this case, which involves issues of law, the standard of review is de novo. *Ellis v. Barto*, 82 Wn. App. 454, 457, 918 P.2d 540 (1996).

2. RCW 4.18.020 Controls the Selection of the Statute of Limitations.

A. Traditional Approach and Criticisms

Prior to 1983, Washington followed the traditional approach when confronted with differing statutes of limitation. Under the traditional approach, courts were free to apply their own statute of limitations to any claim over which the court had jurisdiction, regardless of the forum's relationship to the claim and regardless of the substantive law which governed the claim. Christopher R.

M. Stanton, Note, *Implementing The Uniform Conflict of Laws-Limitation Act in Washington*, 71 Wash. L. Rev. 871 (1996).

Both commentators and courts recognized the inequitable and often inefficient results of this traditional approach. *Id, See also Heavner v. Uniroyal, Inc.,* 305 Atlantic 2d 412, 415-16 (N.J. 1973).

The traditional approach encourages forum shopping. *E. Scoles and P. Hay, Conflict of Laws* at 60 (1982). *See also,* Shawn B. Jensen, *Legislative Developments in Conflict of Laws: Washington Adopts the Uniform Conflict of Laws – Limitations Act,* 20 Gonzaga Law Rev. 291 at 293. A claim which would be barred if the action were brought in one state may not be barred if the action is brought in a state with the longer limitations. Thus, "delay – prone" plaintiffs search for the forum with the longest limitation. 20 Gonzaga Law Rev. 291 at 293.

These problems led the National Conference of Commissioners on Uniform State Laws to propose the Uniform Conflict of Laws – Limitations Act. *Uniform Conflict of Laws – Limitation Act,* 12 U.L.A. 61-65 (Supp. 1994). *See also,* 71 Wash. L. Rev. 871 at 872 - 873.

The Uniform Act sets forth a consistent and rational method for selecting a statute of limitations in a conflict situation. It provides for the application of the statute of limitations of the state upon whose law the claim is substantively based. *Uniform Conflict of Laws – Limitation Act 2(a)(1),* 12 U.L.A. 61-63 (Supp. 1994). *See also,* 71 Wash. L. Rev. 871 at 873.

The goal of the Uniform Act is to tie the limitation period to the law upon which the case is substantively based. *Robert A. Leflar, Choice - of – Law Statutes,* 44 Tenn. L. Rev. 951, 961 (1977); *See also,* 71 Wash. L. Rev. 871 at 878.

B. Washington Adopts Uniform Act

In 1983, Washington adopted the Uniform Act. There was no testimony or argument against the bill, and the arguments for the bill were uniformity and prevention of forum shopping. *H.R. Rep., H.B.* 925, 48th Leg. (1983). *See also,* 71 Wash. L. Rev (1996), *supra,* note 65.

That statute, RCW 48.18.020, states as follows:

Conflict of laws – Limitation periods.

> (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 states 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.

Pursuant to the statute, then, if a court is faced with differing statutes of limitations, the court first determines the state upon whose law the claim is substantively based. Under RCW 4.18.020, that same state's statute of limitations shall apply to the case.

In this regard, 12 U.L.A. 51 at 52 (Supp. 1985) § 2 Commissioner's comment states:

> "This section treats limitation periods as substantive, to be governed by the limitations law of a state whose law governs other substantive issues inherent in the claim."

As a result, the statute of limitations that applies to a particular suit is that of the same state as the substantive law controlling the suit. 20 Gonzaga Law Rev. 291, *supra,* at 292 note 6.

C. Methodology for Selecting Statute of Limitations

Washington's Supreme Court has established the methodology for determining which statute of limitations should apply. In *Rice v. Dow Chemical Company,* 124 Wn.2d 205, 875 P.2d 1213 (1994), the Court indicated that under RCW 4.18.020,

the initial determination which a court must make is which state's substantive law forms the basis of the Plaintiff's claims. *Rice,* 124 Wn.2d at 210. *See also, Fields v. Legacy Health Systems,* 413 F.3d 943 (CA9 2005). Once the court decides which state's substantive law governs, that state's statute of limitations applies. *Rice,* 124 Wn.2d at 210.

D. Determining Which State's Substantive Law Should Apply

Washington follows the Restatement (Second) of Conflict of Laws § 145 (1971) in determining the substantive law to apply in tort cases. *Rice,* 124 Wn.2d at 213. The language of that Restatement is as follows:

> (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.

In evaluating the factors above, Washington also follows the Restatement (Second) of Conflict of Laws § 6 (1971). Pursuant to that Restatement, the relevant factors are:

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

E. Substantive Law in Motor Vehicle Accident Personal Injury Cases

Washington cases hold that the substantive law to be applied in a motor vehicle accident – personal injury case is the law of the State where the accident occurred. This is particularly true where both the conduct causing the accident and the injury occur in the same state. *Ellis v. Barto*, 82 Wn. App. 454, 918 P.2d 540 (1996).

In that case, Ellis, a Washington resident, was driving in Idaho. Ellis's vehicle collided with a pickup truck driven by Barto,

a Washington resident. The truck was owned by Bohn, who was also a Washington resident. Both vehicles were registered in Washington. Both drivers were licensed in Washington.

Ellis commenced an action against Barto and Bohn for personal injuries in the Spokane County Superior Court. She alleged negligence by Barto in striking the Ellis vehicle.

Barto and Bohn moved for dismissal, contending that Idaho's statute of limitations barred the action. The trial court granted the motion. Ellis commenced an appeal to Division III of the Court of Appeals.

The Court of Appeals observed that differences in limitation periods are not subject to conflict of law methodology. Rather, those differences are determined pursuant to RCW 4.18.020. With regard to that statute, the Court of Appeals stated:

> "It provides that if a claim is substantively based upon the law of another state, the limitation period of that state applies. RCW 4.18.020(1)(a)"

In determining which state's substantive law applied, the Court of Appeals stated:

> "For purposes of determining which state's substantive law applies to the merits of a tort claim, Washington has adopted the most significant relationship rule. *Johnson v.*

Spider Staging Corp., 87 Wn.2d 577, 580, 555 P.2d 997 (1976)."

The Court of Appeals went on to state:

> "Therefore in 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. *Bush v. O'Connor*, 58 Wn.App. 138, 144, 791 P.2d 915 (citing Restatement (Second) of Conflict of Laws § 146 (1971)), review denied, 115 Wn.2d 1020 (1990)."

The Court of Appeals stated:

> "For the 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 a 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) Conflict of Laws § 6 (1971)."

The Court of Appeals determined that the substantive law of the state of Idaho should apply. The Court's reasoning was as follows:

> "Based on the relevant factors, we find that Washington did not have a more significant relationship to the accident at issue than Idaho. 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."

The *Ellis* rationale makes sense. It is not uncommon to have a vehicle carrying Washington residents, another vehicle carrying Canadian residents, and another vehicle carrying Montana residents, sharing Idaho roads with Idaho residents. A policy which would apply different rules of the road to each of these different vehicles, while driving on Idaho roads, would create confusion for drivers and increase the probability of accidents and injuries. The goals of promoting safety and providing clear guidance to drivers can only be achieved if all vehicles on the road are subject to the "rules of the road" of one state, rather than multiple states.

The *Ellis* decision was cited with approval in the case of *Martin v. Goodyear Tire and Rubber Co.,* 114 Wn.App. 823, 61 P.3d 1196, (2003) where, at p. 832 of 114 Wn.App., the court stated:

"In contrast, where a defendant's violation of the local tort laws or rules of the road is at issue, courts tend to apply the law of the injury state, even if only one or neither of the parties is a resident."

The reasoning in *Ellis*, *supra*, is consistent with other authorities. The comments to the Restatement (Second) Conflicts of Laws § 145, comment d states:

> "So, for example, a state has an obvious interest in regulating the conduct of persons within its territory and in providing redress for injuries that occurred there. Thus, subject only to rare exceptions, the local law of the state where the conduct and injury occurred will be applied to determine whether the actor satisfied minimum standards of acceptable conduct and whether the interest affected by the actor's conduct was entitled to legal protection"

Similarly, the Restatement (Second) Conflicts of Laws § 146 states as follows:

> "In an action for personal injury, the local law of the state where the injury occurred determines the rights and liabilities of the parties, unless, with respect to the particular issue, some other state has a more significant relationship under the principals stated in § 6 to the

> occurrence and the parties, in which event the local law of the other state will be applied."

This is particularly true when both the conduct causing injury and the injury itself occur in the same state. Comment (d) of the Restatement (Second) Conflict of Laws § 146 states:

> "... In the majority of instances, the actor's conduct, which may consist either of action or non-action, and the personal injury will occur in the same state. In such instances, the local law of the state will usually be applied to determine most issues involving the tort. The state will usually be the state of dominant interest, since the two principle elements of the tort, namely, conduct and injury, occurred within its territory."

Just as in the present case, the court in *Ellis* had to determine whether Washington or Idaho substantive law applied in a personal injury lawsuit arising out of an automobile accident that occurred in Idaho. The Court in *Ellis* concluded that in personal injury actions the substantive law of the state where the injury occurred applied, unless with respect to the particular issue, some other state had a more significant relationship to the occurrence and the parties. The *C*ourt then analyzed the factors set forth in Restatement (Second) of Conflicts of Laws § 6 (1971), as previously set forth above. The Court found that based on the relevant factors, Washington did not have a more significant

relationship to the accident at issue than Idaho did. *Ellis*, 82 Wn. App. at 458. The Court pointed out that every state has adopted rules of the road which govern the responsibilities and liabilities of those driving within its boundaries. The Court concluded that when an accident occurs, the purpose of that state's rules of the road and the policies behind them were best achieved by applying local law. *Ellis*, 82 Wn. App. at 459. The Court held that pursuant to RCW 4.18.020(1)(a) and the most significant relationship rule, the limitation period of the state of Idaho applied because the substance of the claim was governed by Idaho law. *Ellis*, 82 Wn. App. at 459.

Applying the analysis set forth in *Ellis* to the present case leads to the same result - that Idaho substantive law should apply and therefore Idaho's statute of limitations should apply. Just as in *Ellis*, the individuals involved in the present case were Washington residents who were involved in an automobile accident that occurred in Idaho. As the Court in *Ellis* clearly stated, the state of Idaho has adopted rules of the road that govern those driving within its boundaries and when an accident occurs in Idaho, the purpose of Idaho's rules of the road and

policies behind them are best achieved by applying Idaho law. Just as in *Ellis*, the same interests are at issue in the present case, and Washington's 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." *Ellis*, 82 Wn. App. at 459. Just as in *Ellis*, pursuant to RCW 4.18.020(1)(a) and the most significant relationship rule, Idaho's statute of limitations should apply in the present case.

Rice v. Dow Chemical Company, 124 Wn.2d 205, 875 P.2d 1213 (1994) was a case where a Washington court applied the law of the state (Oregon) where the exposure to dangerous chemicals occurred, even though the Plaintiff was a Washington resident. Plaintiff Rice was a United States Forest Service employee. He alleged that he was routinely exposed to harmful chemicals manufactured and sold by Dow Chemical (which did business in all 50 states) while he was working in Oregon during the years 1959 through 1963. (there was one instance of exposure in Washington state). Rice subsequently moved to Washington.

In July 1985, Rice learned from his physician that he had chronic lymphocytic leukemia and was informed of the possible connection between his illness and the exposure to Dow's chemicals. Rice filed a lawsuit on June 8, 1988 in the Pierce County Superior Court, in Washington. The trial court judge granted Defendant Dow's motion for summary judgment and dismissed Rice's claims. Rice appealed.

The Supreme Court stated that variations in limitation periods are not resolved by a traditional conflicts of law analysis. Rather, a court looks to RCW 4.18.020. Under that statute, a court must first determine which state's substantive law applies. *Rice,* 124 Wn.2d at 210.

The *Rice* Court evaluated which state had the most significant contacts. Rice argued that he was a resident of Washington, and Washington had an interest in "seeing to it that its residents are compensated for personal injuries". *Rice,* 124 Wn.2d at 216.

The Supreme Court indicated that this was not an overriding concern. At page 216 of 124 Wn.2d, the Supreme Court stated:

> "Although this is a real interest, recognizing this as an overriding concern, despite the lack of contacts, would mean that Washington law would be applied in all tort cases involving any Washington resident, regardless of where all the activity relating to the tort occurred. Furthermore, residency in the forum state alone has not been considered a sufficient relation to the action to warrant application of forum law. *See*, e.g., Restatement (Second) of Conflict of Laws § 145 cmt. e (1971) ("The fact ... that one of the parties is domiciled ... in a given state will usually carry little weight of itself."); *Ferren v. General Motors Corp.*, 137 N.H. 423, 427, 628 A.2d 265 (1993) ("`The possibility that the employee might change his residence at any time, after the injury, and thus shift the burden of support to another state, makes the fact of present residence less significant.'") (quoting Robert A. Leflar, American Conflicts Law § 160, at 329-30 (3d ed. 1977)).

At page 216 of 124 Wn.2d, the Supreme Court noted Oregon's interest in the matter:

> Oregon's interest is in providing repose for manufacturers doing business in Oregon and whose products are used in Oregon state. The fact that a person living in Oregon, who is exposed to allegedly harmful chemicals while at work in Oregon, using products shipped to Oregon, later moves to another state does not extinguish Oregon's interest in allegedly dangerous or mislabeled products used within its state's boundaries. Applying Oregon law achieves a uniform result for injuries caused by products used in the state of Oregon and predictability for manufacturers whose products are used or consumed in Oregon."

The Supreme Court concluded that Oregon law would apply to the substantive claims in that case. As a result, the

Oregon statute of limitations would apply as well. *Rice,* 124 Wn.2d at 217.

Appellant Woodward was a Washington resident. However, as the Supreme Court indicated in *Rice, supra,* this is not an overriding concern. Otherwise, Washington law would be applied to all tort cases involving any Washington resident, regardless of where the activity relating to the tort occurred.

In the case at bar, Defendants are also Washington residents. However, it does not appear that this would be an overriding concern. Washington has no interest in requiring its residents to comply with Washington's "rules of the road" when they are driving in other states. Indeed, the better policy is to encourage Washington residents to comply with the rules of the road for the particular state that the resident is driving in. In this regard, Washington courts should similarly promote policies which require drivers from other states to comply with Washington's rules of the road while they are driving in Washington. Washington has no interest in encouraging drivers from other states to be guided by the "rules of the road" of their home state while they are driving on Washington roads.

Consistent with the Supreme Court's analysis in *Rice,* Idaho has an interest in providing "rules of that road" for those persons utilizing the roads in Idaho, whether those persons are Idaho residents or residents of other states. The fact that a person utilizing an Idaho road is from another state does not extinguish Idaho's interest in providing for the safety of all persons who travel upon the roads of Idaho. Applying Idaho substantive law achieves a uniform result for injuries caused by accidents in the State of Idaho and predictability for both plaintiffs and defendants who are involved in accidents on the roads of Idaho.

In the case of *Hein v. Taco Bell, Inc.,* 60 Wn.App. 325, 803 P.2d 329 (1991), the substantive law of California applied to a tort occurring in California, even though the Plaintiff was a Washington resident and the Defendant did business in Washington. Dr. Hein purchased a taco salad at a Taco Bell restaurant in Anaheim, California. Shortly thereafter, he bit into the salad and cracked several teeth. Dr. Hein found that there had been an aluminum staple in the salad.

Dr. Hein was a resident of Washington. Taco Bell did business in both California and Washington.

Dr. Hein filed suit against Defendant Taco Bell in the King County Superior Court.

Defendant Taco Bell moved to dismiss on the basis of lack of jurisdiction and on the grounds that Plaintiff failed to file suit within one year, as required by the California statute of limitations. The trial court dismissed the case on jurisdictional grounds. Plaintiff appealed.

The Court of Appeals determined that the court had jurisdiction, but dismissed Plaintiff's case because Plaintiff failed to file suit within one year, as required by the California statute of limitations. In this regard, the Court of Appeals noted that Washington had adopted the Uniform Conflict of Laws - Limitations Act, set forth in RCW 4.18.020, 030, and 040.

Hein conceded that the substantive law of California applied to the claim. This concession was consistent with the fact that both the conduct and the injury occurred in California. In light of RCW 4.18.020, the Court of Appeals determined that California statute of limitations must apply.

Hein argued, however, that California's one year statute of limitation was unreasonable when applied to a Washington plaintiff. The Court of Appeals dismissed the argument. In this regard, the Court of Appeals stated:

> "This argument is without merit. The fact that a forum state's limitation period is shorter than Washington's does not justify the application of the "escape clause" in RCW 4.18.040. Uniform Conflict of Laws-Limitations Act § 4 comment, 12 U.L.A. 59 (Supp. 1990). Absent other evidence indicating unfairness, we hold that the California limitation period provided Hein with a "fair opportunity" to sue."

3. Appellant's Traditional Conflicts of Law Analysis is Inapplicable

Appellant seeks to employ a traditional conflicts of law analysis to determine which statute of limitations applies. That approach is incorrect for several reasons.

First, the approach ignores RCW 4.18.020, which specifically governs the statute of limitations issue.

Second, in *Rice,* the Washington Supreme Court stated that a statute of limitations issue is not subject to conflict of laws methodology. Curiously, Appellant cited *Rice* for the correct proposition that "... variations in limitation periods are not subject to conflict of laws methodology". *See* Page 34 of Appellant's

Brief. Nevertheless, Appellant proceeded with a traditional conflicts of law analysis to determine which statute of limitations should apply.

The correct methodology was described by the Supreme Court in *Rice* as follows:

> "...Washington adopted the Uniform Conflict of Laws – Limitations Act (Act) in 1983. Under this act, the "borrowing statute", RCW 4.18.020, indicates that there is first a determination of which state's substantive law applies before there is any consideration of which state's statute of limitations applies. ..."
>
> The *Rice Court* went on to state:
>
> "After the forum chooses that substantive law of another state, then the state's limitation period will apply."

See 15 Lewis H. Orland and Karl Tegland, Wash. Prac., *Trial Practice* § 433, at 145 (1986).

Plaintiff has failed to comply with RCW 4.18.020 and has contradicted the holding of *Rice, supra.*

In her brief, Appellant evaluates whether there is an actual conflict of laws between Washington and Idaho. While such an evaluation may be necessary in traditional conflicts of law methodology, the evaluation is completely unnecessary in this case. The reason is that a traditional conflicts of law methodology

is not utilized to determine statute of limitations issues. Rather, the statute of limitations issue is evaluated under RCW 4.18.020, using the methodology stated by the Supreme Court in the *Rice* case.

Although an evaluation of actual conflicts between Washington law and Idaho law is unnecessary, the actual conflicts in the substantive law between the two states illustrate why Idaho substantive law should apply to this case.

Plaintiff alleged in her Complaint that the speed limit posted on the Idaho highway was 75 m.p.h. CP 3, Plaintiff's Complaint, Line 15. This is consistent with Idaho Code § 49-654.

The speed limit for the State of Washington is set forth in RCW 46.61.400 at 60 m.p.h., subject to changes in the maximum speed limit as determined by the Secretary of State.

Clearly, the substantive law of Washington and Idaho are different. This difference goes to the heart of Plaintiff's case. Woodward alleges that Taylor engaged in the following conduct: "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." CP 3, Plaintiff's Complaint, Lines 14-16. Woodward

alleged further that Taylor was driving "too fast for the conditions". CP 4, Plaintiff's Complaint, Lines 9-11.

It would be unfair to Respondents, and misleading for a jury, if the jury heard evidence that the cruise control was set at 82 m.p.h., and then the jury was instructed that the applicable speed limit was 60 m.p.h. pursuant to Washington statute.

The jury's view of the case would be dramatically different if they heard evidence that the cruise control was set at 82 m.p.h., and then were instructed that the applicable speed limit was 75 m.p.h. pursuant to Idaho law.

Further, a jury would be confused if they heard evidence that the posted speed limit was 75 m.p.h., but were instructed that the applicable speed limit was 60 m.p.h. pursuant to Washington statute RCW 46.61.400.

Where the conduct and the accident occurred in Idaho, the substantive law of Idaho should apply. To decide otherwise would make the trial of this case confusing and nonsensical to the trier of fact and could lead to an unfair and unjust result.

It is clear that Woodward originally intended to apply Idaho substantive law to her case. Otherwise, there would have been

no reason to make the factual allegation that Taylor had set the cruise control to 82 m.p.h. when the posted speed limit was 75 m.p.h.

In her brief, Appellant asserts that this case is not about "speeding". Appellant attempts to argue that her allegations about the cruise control and posted speed limit were "merely factual allegations". Appellant overlooks the fact that evidence about speed will be highly important in the case. For example, if the evidence showed that Taylor has slowed her vehicle to 71 m.p.h., and the jury is instructed that the applicable speed limit is 75 m.p.h. pursuant to Idaho statute, a jury could conclude that Taylor slowed her vehicle to a speed below that of the posted limit, and therefore, was not negligent. On the other hand, if the evidence showed that Taylor had slowed her vehicle to 71 m.p.h., and the jury is instructed that the applicable speed limit is to 60 m.p.h., or even 70 m.p.h. pursuant to Washington statute, a jury could conclude that Taylor was negligent.

Such a result would be contrary to the factors set forth in the Restatement (Second) of Conflict of Laws § 6 (1971). Washington should avoid a policy which exposes Washington

residents to greater liability where a Washington resident is driving in Idaho, is driving in compliance with Idaho rules of the road, but whose driving is contrary to Washington rules of the road. If a Washington resident is driving in Idaho, is in compliance with Idaho rules of the road, and an accident and injury occurs in Idaho, Washington should promote a policy which permits the Washington driver to assert defenses based on Idaho rules of the road, and not face greater liability because of differing Washington rules of the road.

Washington should avoid a policy of encouraging or requiring Washington drivers to ignore the rules of the road of the state in which they are driving, and follow Washington's rules of the road, no matter where they are driving. Such a policy would create confusion and greatly increase the danger of accidents.

Such a policy would ignore the legitimate interests of Idaho in creating understandable "rules of the road" to guide all drivers. It would frustrate the legitimate interests of Idaho in maintaining safety on its roadways.

Such a policy would not protect justified expectations. Indeed, people driving in Idaho, no matter where they reside,

have an expectation that the applicable speed limit is the Idaho speed limit, not speed limits utilized in other states.

Such a policy would be contrary to the basic policies underlying motor vehicle accident tort law. Such a policy would not be consistent with certainty, predictability and uniformity of result. Rather, such a policy would create confusion and increase the danger of accidents.

Such a policy would not ease determination and application of the law to be applied. Indeed, such a policy would be contrary to ease of determination and application. As an example, applying Washington substantive law to the case at bar would result in a trial where a jury would hear evidence that the posted speed limit was 75 m.p.h., but the jury is instructed that the applicable speed limit is 60 m.p.h., pursuant to Washington statute.

Another difference in the substantive law concerns the obligations of a driver when a "special hazard" or condition exists. The wording of Idaho Code § 49-654 is different from RCW 46.61.400. The Idaho statute states in pertinent part:

> "Consistent with the foregoing, every person shall drive at a safe and appropriate speed... when special hazards

exist... by reason of weather or highway conditions."

Another portion of the statute states in pertinent part:

> "Where no special hazard or condition exists that requires lower speed for compliance with subsection (1)... the limits as hereinafter authorized shall be maximum lawful speeds."

Pursuant to this wording, Respondents can argue, and a jury could conclude, that if special hazards due to weather or road conditions exist, the driver may drive at a safe and appropriate speed, unless the hazard or condition is such that it **requires** a lower speed.

In contrast, RCW 46.61.400 states in pertinent part:

> "The driver of every vehicle shall... drive at an appropriate reduced speed... when special hazard exists... by reason of weather or highway conditions."

Under this statute, Appellant Woodward could argue that it is mandatory for a driver to reduce speed any time a special hazard caused by weather or road conditions is present. This contrasts with the argument which can be made under the Idaho statute that a driver can continue at a reasonable and prudent speed, and no reduction is necessary unless the special conditions are such that a reduction in speed is **required**.

Thus, there is no question that the wording of the statutes

is different. There is a true conflict, because the difference in the wording of the statute permits differing arguments to a jury. Further, the difference in the wording may result in the jury applying the statutes differently to the specific facts of the case. This is particularly true in the case at bar, where Woodward has made allegations that the snow or ice was present on the roadway.

Another difference in the substantive laws concerns contributory fault.

Under Idaho Code § 6-801, the contributory negligence of the plaintiff will not bar recovery by the plaintiff so long as plaintiff's negligence is smaller than the negligence of the defendant. This, of course, is different from Washington's contributory fault statute, RCW 4.22.070.

Woodward argues that there is no conflict between the two statutes because, according to Ms. Woodward, she did not contribute at all to her own injury.

However, as Appellant herself points out, there has been no discovery in this action. If, after discovery, there is evidence indicating that Woodward was urging Taylor to drive as fast as

possible in order to get home to meet a deadline, a jury could conclude that Woodward's percentage of negligence was greater than Taylor's percentage of negligence. In that instance, Woodward's claim would be barred. Thus, there is an important difference between the two statutes, and the difference between them is not a "false conflict".

The foregoing illustrates some of the differences between Washington and Idaho's substantive law. These examples illustrate the wisdom of applying the substantive law of the state where the accident occurred, particularly when both the conduct and the injury occurred in the same state.

Appellant argues that some of the differences in substantive law were raised by the Respondents in their summary judgment reply memorandum. The Clerk's Papers do not disclose a request by Woodward for a continuance so that Woodward could respond to the information in the reply memorandum. The Clerk's Papers do not disclose a Motion for Reconsideration filed by Woodward in the trial court.

The original Order signed by the Judge does not reflect a motion for a continuance made by Woodward and denied by the

Court. CP 88-89. After the Judge signed the original Order, Woodward filed a motion to amend the Order to show that there was no just cause for delay of entry of final judgment, thereby permitting immediate appeal. Nothing in that motion showed that Woodward requested a continuance or that such a continuance was denied by the trial court.

Appellant's reliance on *Burnside v. Simpson Paper Company,* 123 Wn.2d 93, 864 P.2 937 (1994) is misplaced. Burnside was an employment discrimination case. The Court was faced with the question of whether Washington or California employment law should apply. The Burnside case did not involve personal injuries arising out of a motor vehicle accident. The case did not involve a question as to which state's statute of limitations would apply. Thus, while traditional conflicts of law analysis was appropriate for determining the issues in the *Burnside* case, that same traditional conflicts of law analysis is not appropriate in the case at bar, which involves a motor vehicle accident tort, a statute of limitations issue, and which is controlled by RCW 48.18.020.

Appellant's reliance on *Johnson v. Spider Staging Corp.,*

87 Wn.2d 577, 555 P.2d 997 (1976) is also misplaced. In *Johnson,* Spider Staging, located in Washington state, manufactured scaffold equipment. Johnson, a resident of Kansas, purchased Spider manufactured scaffolding. Johnson was killed when he fell from the scaffolding, adjacent to a building he owned in Kansas. Johnson brought suit against Spider in Washington, claiming that Spider defectively designed the scaffold.

Defendant Spider argued that, under Kansas law, there was a $50,000 wrongful death limitation. Washington law had no such limitation. The trial court determined that Kansas law applied to the case. Johnson filed an appeal.

The Supreme Court had to determine whether to apply the Kansas law limiting recovery, or apply Washington law, which had no limit. In order to resolve this issue, the Supreme Court engaged in a traditional conflicts of law analysis. It's significant to note that *Johnson* did not involve a personal injury claim arising out of a motor vehicle accident. In addition, the Court was not faced with the question of which state's statute of limitation applied. RCW 4.18.020 was not applicable to that case. In light

of those differences, the traditional conflicts of law analysis engaged in by the *Johnson* Court does not apply to the case at bar.

Appellant incorrectly states in her brief that Defendants (Respondents here) argued only that a strict *lex loci delecti* rule applied. See Appellant's Brief at Page 18.

In fact, Defendants below (Respondents here) argued that pursuant to RCW 4.18.030, the Court must first determine which state's substantive law applies to the claim. Defendants below (Respondents here) argued that the Court should look to the state which has the most significant relationship to the occurrence and the parties, as set forth in the case of *Ellis v. Barto*, 82 Wn. App. 454, 918 P.2d 540 (1996). CP 19-29.

Appellant cites *Williams v. The State of Washington,* 76 Wn.App. 237, 885 P.2d 845 (1994). In that case, Chappell, an Oregon resident, was driving his truck in Washington. As Chappell crossed the bridge between Washington and Oregon, he was killed when his truck struck the superstructure of the bridge. The accident occurred on the Washington side of the bridge.

Chappell's personal representative sued both the State of Washington and the State of Oregon for wrongful death and survival actions, alleging that the death was proximately caused by the failure of Washington State and Oregon State to properly maintain the roadbed of the bridge and failing to provide adequate guardrails on the bridge.

The State of Oregon filed a motion for summary judgment which was granted by the trial court. The case was appealed to Division II of the Court of Appeals.

There were two issues facing the Court of Appeals. The first issue was whether the Washington or Oregon statute of limitations applied. The second issue was whether Oregon's nonclaim statute would apply.

With regard to the statute of limitations issue, the Court of Appeals stated that the issue is not subject to conflict of laws methodology. In this regard, the Court of Appeals stated:

> "As the Washington Supreme Court has recently noted, the specific issue of "limitation periods [is] not subject to conflict of laws methodology" since Washington adopted the Uniform Conflict of Laws - - Limitation Act (UCLLA) in 1983, codified as *RCW 4.18.020. Rice, 124 Wn.2d at 210-11.* Rather, UCLLA's "borrowing statute" required the court first to determine which state's substantive law applies under Washington's choice-of-law rules, and then to apply

> the statute of the "state whose law governs others substantive issues inherent in the claim." *Rice, 124 Wn.2d at 211 (*quoting Unif. Conflict of Laws-Limitations Act § 2 cmt., 12 U.L.A. 63 (Supp. 1994)); *RCW 4.18.020(b)(b)."*

The injury occurred in Washington. It appears that a portion of the conduct causing accident also occurred in Washington. The Court of Appeals eventually determined that the substantive law of Washington should apply with regard to the statute of limitations. Washington law applied, notwithstanding the fact that the Plaintiff was an Oregon resident, as was one of the Defendants (State of Oregon).

The Court of Appeals went on to evaluate the issue regarding the nonclaim statute. It appears that the Court of Appeals appropriately engaged in a traditional conflict of law analysis to resolve the nonclaim statute issue. The Court of Appeals eventually determined that Oregon's nonclaim statute would apply. Plaintiff had failed to comply with that statute. Therefore, the Court of Appeals dismissed Plaintiff's case against the State of Oregon.

V. CONCLUSION

The conduct causing the accident in this case occurred in Idaho. The accident and injury also occurred in Idaho. After the

deadline for commencing an action under Idaho law had passed, Appellant Woodward filed this case in Washington alleging that Respondent Taylor was driving too fast for conditions. Woodward specifically alleged that Taylor has set her cruise control for 82 m.p.h., even though the posted speed limit was 75 m.p.h.

Respondents filed a motion in the trial court, asking for dismissal of Woodward's claims on the basis of the two year Idaho statute of limitations.

Washington has a statute, RCW 4.18.020, which provides specific guidance in determining which statute of limitations should apply. The Washington Supreme Court, in the *Rice* case, set forth the methodology to follow in light of the statute. *Rice* made it clear that the statute of limitations conflict is not resolved under a traditional conflict of law analysis. Rather, the Supreme Court stated that a court first determines which state's substantive law governs the claim. That state's statute of limitations applies to the case.

In determining which state's substantive law applies, Washington courts look to the Restatement (Second) of Conflict

of Laws § 145 and Restatement (Second) of Conflict of Laws § 6 to determine which state has the most substantial contacts.

Washington cases have held that where both the conduct and the injury occur in the same state, that state's substantive law should apply.

This is particularly true in personal injury cases arising out of motor vehicle accident. The *Ellis* case, in particular, sets forth the applicable rationale and policy reasoning. The *Ellis* Court noted that every state has adopted rules of the road which govern the responsibility and liabilities of those driving within its boundaries. In the case at bar, the purpose of those rules and the policy behind them are best achieved by applying the local law of Idaho. Washington's interest does not extend so far as to require application of Washington's rules of the road to an accident not occurring within its boundaries. Rather, Idaho has the most significant relationship to the driving conduct at issue and the rights and liability of the parties with respect to their violation or adherence to the rules of the road.

While Washington has an interest in protecting its residents, that interest is not an overriding concern, particularly

when the conduct and the injury occurred outside of Washington. To hold otherwise would mean that Washington law would be applied in all tort cases involving any Washington resident, regardless of where all the activity relating to the tort occurred. Further, our Supreme Court has indicated that residency in the forum state alone has not been considered a sufficient relation to the action to warrant application of forum law.

Application of Washington law to the facts in this case would lead to confusion for a jury, who will hear evidence about the posted speed limit of 75 m.p.h., but would be instructed, if Washington substantive law applied, about contrary Washington speed limits.

Washington Courts should encourage a policy where Washington drivers, when driving in other states, should follow the rules of the road of the state in which they are driving. This is a natural extension of a legitimate Washington policy which requires that all persons driving on Washington roads, no matter where they reside, should follow Washington rules of the road. Appellants position in this case would lead to a policy which would create confusion for drivers as to which rules they must

follow when driving outside the State of Washington. Appellant's position is likely to increase the number of accidents and injuries.

Respondents respectfully request that this Court affirm the Order of the trial court dismissing Woodward's claims against Defendant Taylor.

RESPECTFULLY SUBMITTED this 21st day of February, 2014.

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Certificate of Service

Pursuant to RAP 5.4(b) I, Tami L. Foster, the undersigned, certify and declare under penalty of perjury under the laws of the State of Washington that the following statements are true and correct.

1. I am over the age of eighteen (18) years and not a party to the aforementioned action.

2. I certify that on February 21, 2014, I sent out for service by ABC Legal messenger service for filing with the Court of Appeals for the State of Washington Division I the original and one copy of the Brief of Respondents; and a copy of the same was emailed and sent out for service by ABC Legal messenger service to be served on the following:

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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED at Seattle, Washington, this 21st day of February, 2014.

Tami L. Foster, Legal Assistant