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**COURT OF APPEALS FOR DIVISION I  
STATE OF WASHINGTON**

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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.

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**REPLY BRIEF OF APPELLANT**

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## TABLE OF CONTENTS

<b>The Standard of Review</b> .....	1
<b>Conflicts of Law Methodology</b> .....	2
<b><i>Hein v. Taco Bell, Inc.</i></b> .....	9
<b><i>Rice v. Dow Chemical Co.</i></b> .....	9
<b><i>Mentry v. Smith and Ellis v. Barto</i></b> .....	12
<b>Conclusion</b> .....	13

## TABLE OF AUTHORITIES

### Cases

<i>Bar v. Interbay Citizens Bank</i> , 96 Wn.2d 692, 697, 635 P.2d 441 649 P.2d 827 (1981) .....	4
<i>Burnside v. Simpson Paper Co.</i> , 123 Wn.2d 93, 100, 864 P.2d 937 (1994).....	4, 5
<i>Bush v. O'Conner</i> , 58 Wn. App. 138, 143, 791 P.2d 915, <i>review denied</i> , 115 Wn.2d 1020 (1990) .....	5
<i>Ellis v. Barto</i> , 82 Wn. App. 454, 918 P.2d 540 (1996) .....	12
<i>Hein v. Taco Bell, Inc.</i> , 60 Wn. App. 325, 803 P.2d 329 (1991) .....	9
<i>Johnson v. Spider Staging Corp.</i> , 87 Wn.2d 577, 580, 555 P.2d 997 (1976) .....	4, 5
<i>Mentry v. Smith</i> , 18 Wn. App. 668, 571 P.2d 589 (1977) .....	1, 2, 12, 13
<i>North Coast Enterprises, Inc. v. Factoria Partnership, et al.</i> , 94 Wn. App. 855, 858-59, 974 P.2d 1257 (1999). .....	1
<i>Rice v. Dow Chemical Co.</i> , 124 Wn.2d 205, 875 P.2d 1213 (1994) .....	9, 10, 11, 12
<i>Southwell v. Widing Transp., Inc.</i> , 101 Wn.2d 200, 204, 676 P.2d 477 (1984) .....	4
<i>Williams v State</i> , 76 Wn. App. 237, 241, 885 P.2d 845 (1994) .....	5

**Statutes**

RCW 4.18.020.....2, 3, 4, 8, 9, 10  
RCW 4.18.020(1)(a) ..... 14  
RCW 4.18.040 .....3, 9

**Restatement**

Restatement (Second) of Conflict of Laws § 145 (1971) .....4, 5

**Other Authorities**

Philip A. Trautman, *Evolution in Washington*  
*Choice of Law—A Beginning*,  
43 Wash.L.Rev. 309 (1967-1968) .....4

### **The Standard of Review.**

As an initial point in reply, the Court must recall that this is an appeal from a judgment on the pleadings. We do not know any facts, except those admitted in the defendants' answers. The Court of Appeals reviews an order for judgment on the pleadings *de novo*. In reviewing an order entering judgment on the pleadings, the Court of Appeals examines the pleadings to determine whether the claimant can prove any set of facts, consistent with the complaint, which would entitle the claimant to relief. The Court of Appeals may consider any factual scenario under which the litigant might have a valid claim, including facts asserted for the first time on appeal. *North Coast Enterprises, Inc. v. Factoria Partnership, et al.*, 94 Wn. App. 855, 858-59, 974 P.2d 1257 (1999).

In deciding this case as an appeal from a judgment on the pleadings, the Court asks whether under any set of facts within the pleadings, admitted or hypothetical, the plaintiff can show that Washington's negligence law applies to an injury accident that occurred in another state. Referring to appellant's opening brief, its discussion of *Mentry v. Smith*, 18 Wn. App. 668, 571 P.2d 589 (1977) provides exactly the "hypothetical" within which Ms.

Woodward could prove that Washington's substantive negligence law, not Idaho's, should apply to her case. Therefore, we know that the answer to the question whether Washington negligence law can apply to a traffic accident that occurred in Idaho is yes. *Mentry v. Smith* has never been overruled and remains good law and controlling precedent.

As discussed in Ms. Woodward's opening brief, her case is on all fours with the facts in *Mentry*. In terms of the States' relationships to the parties and the issues, Ms. Woodward's case is even stronger for the application of Washington law because Ms. Woodward's case does not involve any other drivers, either from Idaho or any other state. As *Mentry* remains good, controlling law, then appellant has it open to her to prove that she comes within the point of law expressed in that case: where Washington's relationships to the parties and issues predominate over another state's, Washington law will provide the law of decision for the case. Where Washington provides the substantive law for the case, then, according to RCW 4.18.020, Washington's 3-year statute of limitations applies.

**Conflict of Laws Methodology.**

Much of respondents' opposition brief concerns the

methodology for determining which state's substantive negligence law applies. Respondents seem to argue on one hand that auto-accident tort cases are analyzed differently than other conflict cases, but on the other hand cite cases employing the "most significant relationship" test in all instances.

With respect, appellant believes she has set forth the correct methodology and result in her opening brief. The methodology is the same for automobile tort cases as it is for any other case analyzing a conflict of laws question.

The methodology does not change where a statute of limitations issue is determined by the result of a conflict of laws analysis. It is apparent from RCW 4.18.020 that a Court must first determine which state's substantive law will apply to an issue – through a "conflict of laws analysis." Once this is determined, the statute of limitations from the state supplying the substantive law is applied to that issue:

- (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.

RCW 4.18.020.

As stated, the method for determining which statute of limitations applies to an issue is first to determine which state's substantive law applies. This is done by a standard "conflict of laws" analysis using Washington conflict of laws rules. It makes no difference whether the tort involved is an automobile tort case, or some other sort of case. This point is well-recognized in the cases and would seem uncontroversial:

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

*Burnside v. Simpson Paper Co.*, 123 Wn.2d 93, 100, 864 P.2d 937 (1994). *Burnside* is an age discrimination/breach of implied contract case. The methodology is the same for an automobile tort case:

In determining choice of law, Washington applies the most significant relationship test set forth in the Restatement (Second) of Conflict of Laws (Restatement of Conflicts)

§ 145 (1971). *Johnson v. Spider Staging Corp.*, 87 Wn.2d 577, 580, 555 P.2d 997 (1976); *Bush v. O'Conner*, 58 Wn. App. 138, 143, 791 P.2d 915, *review denied*, 115 Wn.2d 1020 (1990). Under this test, choice of law depends upon which of two or more jurisdictions has the "most significant relationship" to a specific issue. *Burnside*, 123 Wn.2d at 100 (quoting *Johnson*, at 580). Therefore, each State's interests must be analyzed in relation to each issue presented.

*Williams v State*, 76 Wn. App. 237, 241, 885 P.2d 845 (1994).

*Williams* is an automobile versus bridge abutment collision/wrongful death and survival action.

Once the determination is made which state's substantive law applies, the limitation period of the state providing the substantive law is applied to the issue.

First of all, Ms. Woodward's complaint brought a claim for negligent driving – driving too fast for conditions – in Washington, invoking only one state's law – Washington's. Defendant, Ava Taylor, interposed the law of another state – Idaho – setting up a standard "conflict of laws" analysis to determine which state's law would provide the law of decision for the case.

The first step in a conflict of laws analysis, as Ms. Woodward set forth in her opening brief, is to determine whether any true conflict of laws has been demonstrated by those arguing for the

application of Idaho negligence law. As argued by Ms. Woodward, respondents have demonstrated no conflicts.

Ms. Woodward has demonstrated to the Appellate Court that Washington's and Idaho's definitions of negligence are not in conflict. Respondents have not attempted to refute this.

In their attempts to set up conflicts, respondents mention several hypotheticals involving speed limits and cruise control settings, which they argue lead to conflicts. In response, in the first instance, there has been no discovery in this case. The Court knows of no other facts than those admitted in defendants'/respondents' Answers to plaintiff's/appellant's Complaint. In the second instance, at this point in the proceedings, judgment on the pleadings, it is plaintiff/appellant who is entitled to the benefit of hypothetical facts subject to proof within the parameters of her complaint, not defendants.

Plaintiff has alleged that respondent/Ms. Taylor was negligent in driving too fast for dark, snowy, icy conditions of which she had ample notice. It is unimportant to Ms. Woodward's driving too fast for conditions allegation what the posted speed limit was. The speed at which Ms. Taylor set the car's cruise control is, likewise, unimportant to that allegation. The most critical facts

involved in this allegation are the nature of the road conditions Ms. Taylor encountered, what, if anything, she did upon encountering the snowy and icy road conditions, and how fast Ms. Taylor was actually driving when she encountered the conditions.

In this scenario, the speed limit, be it 75 m.p.h., 70 m.p.h., or 60 m.p.h., is not important. Neither is the speed at which Ms. Taylor, the driver, set the cruise control on the car. People set their cruise controls at one speed and then speed up or slow down in response to conditions all the time. We and the Court have no idea of the speed Ms. Taylor was driving at the time she encountered the snowy, icy conditions and the cruise control setting has nothing to do with how fast she was driving when she encountered the snowy, icy conditions.

In any event, there is no conflict between Washington and Idaho law in this particular – both require the driver to slow down to a reasonable and prudent speed, as dictated by the conditions. This is unrefuted by respondents.

Respondents also raise a hypothetical in which Ms. Woodward might be shown to have been 50% or more at fault by urging the driver to drive faster and faster in order to get home sooner, thus invoking a conflict between Washington's comparative

fault and Idaho's comparative/contributory fault laws. Again, there has been no discovery and we and the Court know of no facts to suggest this farfetched scenario. We know for a fact only what has been admitted. Ms. Taylor has admitted that Ms. Woodward was a properly seat-belted rear seat passenger. CP 8, Taylor's Answer to Woodward's Complaint, paragraph 8. Again, respondents forget that Ms. Woodward, the injured passenger, not Ms. Taylor, the allegedly negligent driver, is the one who gets the benefits of all pleaded and hypothetical facts at this stage of the proceedings. It is admitted that she was a properly seat-belted, rear seat passenger and it is certainly open to her to show that she did absolutely nothing to contribute to Ms. Taylor's negligent driving, in which case Ms. Woodward will certainly be shown to be at no fault whatsoever for Ms. Taylor's negligent driving.

As demonstrated in Ms. Woodward's opening brief, no true conflicts of law have been set forth by defendants/respondents. Because no conflicts of laws have been demonstrated, Washington negligence law applies under Washington conflict of laws analysis. Because Washington negligence law applies, Washington's 3-year statute of limitations for negligence cases applies pursuant to RCW 4.18.020.

**Hein v. Taco Bell, Inc.**

The respondents rely on *Hein v. Taco Bell, Inc.*, 60 Wn. App. 325, 803 P.2d 329 (1991) for the proposition that in tort cases, the substantive law of the state where the injury occurred always applies and so, under RCW 4.18.020, that state's statute of limitations always applies. However, in *Hein*, the plaintiff CONCEDED that California law applied. Plaintiff's argument was that California's 1-year statute of limitations did not provide him with a fair opportunity to assert his claim and that the "escape clause" in RCW 4.18.040 allowed application of the Washington statute of limitations, even though California substantive law applied. In this regard, Ms. Woodward is NOT conceding that Idaho negligence law applies. She is arguing that Washington negligence law applies under Washington conflict of laws rules, and, along with Washington substantive law, Washington's statute of limitations applies.

**Rice v. Dow Chemical Co.**

Likewise, the case *Rice v. Dow Chemical Co.*, 124 Wn.2d 205, 875 P.2d 1213 (1994), does not stand for the proposition that the Court is not required in an automobile negligence case to make a conflict of laws determination under RCW 4.18.020. *Rice*

involved a claim by a forest worker that his leukemia was caused by exposure to herbicides manufactured by Dow Chemical Co. His exposure occurred almost entirely in Oregon, but he later moved to Washington where his disease was diagnosed and he sued Dow.

*Rice* is right in line with Ms. Woodward's position that a conflict of laws analysis is required in order to determine, in a conflict situation, which state's substantive law will apply. The Court in *Rice* went through a conflict analysis, including an analysis of whether true conflicts were shown to exist:

To engage in a choice of law determination, there must first be an actual conflict between the laws or interests of Washington and the laws or interests of another state. Where there is no conflict between the laws or interests of two states, the presumptive local law is applied. The conflicting law identified by the parties here is the difference between the Washington and Oregon statutes of limitations and repose.

Although the Oregon limitation period of 2 years . . . and the Washington limitation period of 3 years . . . do meaningfully differ, variations in limitation periods are not subject to conflict of laws methodology. Washington adopted the Uniform Conflict of Laws-Limitation 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 limitation applies.

\* \* \*

After the forum chooses the substantive law of another state, then that state's limitation period will apply. . .

*Rice*, 124 Wn.2d at 210 (citations omitted).

Finding an actual conflict of law based on Oregon's statute of repose, the Washington Supreme Court engaged in a "most significant relationship" analysis and determined that because the overwhelming time of exposure to the subject chemicals was in Oregon while the plaintiff was an Oregon resident, Oregon had the much more significant relationship with the issue of exposure than Washington had:

Beginning with an examination of the contacts with each state, the record discloses that Plaintiff's exposure to the Defendant's chemicals occurred almost entirely in Oregon. Although Plaintiff declares in his brief that the exposure occurred in both Washington and Oregon, this is misleading. While working in Oregon, Plaintiff underwent routine, extensive exposure to herbicides. On some days Plaintiff was exposed to the chemicals continuously for 8 to 10 hours. Plaintiff both applied the chemicals on the ground and was involved in helicopter spray projects. Plaintiff retrieved sensor cards from freshly treated brush, put out to detect whether there was chemical saturation after helicopter spraying, and would leave the brush with his clothing and shoes soaked in chemicals.

In Washington, a chemical product splashed on Plaintiff once, while he was testing out a "hypohatchet", a piece of equipment which cuts and sprays chemicals at the same time. As Plaintiff himself stated, "the contact was very minor" and lasted about a minute. This brief, 1-time contact is almost irrelevant when compared to the frequent and lengthy exposure which occurred in Oregon.

*Rice*, 124 Wn.2d at 213-14 (citations omitted).

Thus, Oregon substantive law was held to apply and, along with it, the Oregon statute of repose. Significantly, Oregon had this statute of repose that was an issue in the case, which, as opposed to a statute of limitation, is subject to a conflict of laws analysis.

***Mentry v. Smith and Ellis v. Barto.***

With regard to the two cases, *Mentry v. Smith*, 18 Wn. App. 668, 571 P.2d 589 (1977) and *Ellis v. Barto*, 82 Wn. App. 454, 918 P.2d 540 (1996), Ms. Woodward believes that those cases are fully compared and contrasted in her opening appellant's brief and would refer the Court back to her analysis set forth on pages 32 – 42. *Mentry*, a Division I case, analyzed in great detail the balance of relationships favoring Washington negligence law in a case in which, in all material respects, those relationships were exactly like those in Ms. Woodward's case. *Ellis*, a division III case, is nowhere near as detailed, precise and clear in its analysis. The point is not that *Mentry* and *Ellis* are the only two cases concerning choice of law, the point is that the choice of law question depends on the existence of true conflicts and an examination and analysis of the

contesting states' "most significant relationship" to the parties and issues.

Again, Ms. Woodward's appeal is before the Court of Appeals after the Trial Court dismissed on the pleadings her negligence claims against the driver, respondent Ava Taylor. Under the standard of review for dismissals on the pleadings the Appellate Court must decide whether there are any facts available to Ms. Woodward within the pleadings, including facts that are, at present, hypothetical, that would result in Washington law applying to her one-car, roll-over accident, which occurred in Idaho. Given the *Mentry* case, the answer must be yes. Ms. Woodward should have the opportunity to prove that Washington's relationship with the parties and the issues predominates over another state's, as was shown in *Mentry*.

**Conclusion.**

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

the pleadings:

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

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

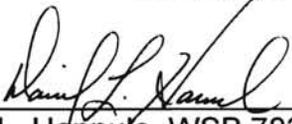
In the case on appeal, where the plaintiff pled facts and demonstrated hypotheticals within those facts in which Washington has the predominant and prevailing relationship with the parties and with the negligence pled, Washington law applies to the issue of alleged negligent driving too fast for prevailing roadway conditions; and

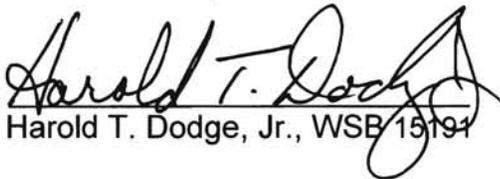
Because Washington substantive negligence law applies, under RCW 4.18.020(1)(a), Washington's 3-year statute of limitations applies.

RESPECTFULLY SUBMITTED this 20 day of March

2014.

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Attorneys for Appellant Claire  
Woodward

By:   
Daniel L. Hannula, WSB 7830

And by:   
Harold T. Dodge, Jr., WSB 15194

**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 March 20, 2014, I caused to be served with this Certificate of Service the following documents in the manner indicated:   **APPELLANT'S REPLY BRIEF**

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SIGNED this 20<sup>th</sup> day of March, 2014, at Tacoma, Washington.

  
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