



CONFLICTS OF LAW: AN ISSUE BY ISSUE ANALYSIS



I. INTRODUCTION

***Magnuson v. Ramage* - \$9.5 Million Wrongful Death Verdict in St. Louis County**

This article discusses and illustrates the case of *Cynthia Magnuson, et al., v. Robert Ramage, et al.*¹ which demonstrates how a Court's ruling on Choice of Law issues can affect the viability of your case and the damages awarded to your clients. In the Magnuson case, if the trial Court would have applied Missouri Liability law, plaintiffs would have not been allowed to bring a lawsuit against The National Rental Car defendants, and if the trial Court would have applied Ontario's damage laws, plaintiffs could have arguably been limited to much lower compensation.

BACKGROUND

Keith Magnuson was killed in an automobile accident on December 15, 2003 in Ontario, Canada. The Magnuson family sued the driver of the automobile, Defendant Robert Ramage, a St. Louis, Missouri, resident, for negligence. The Magnuson family also sued ANC Rental Corporation, NT Limited, Partnership, and National Car Rental Canada, Inc. ("National Car Rental defendants"). The National Car Rental defendants were Canadian corporations that leased the automobile to Defendant Ramage. The proper venue for filing the lawsuit was in St. Louis County where Ramage resided.

In Ontario, the owner and lessee of a vehicle is liable for the negligence of permissive users of the vehicle under § 192(2) and § 192(3) of Ontario's Highway Traffic Act. The Ontario Highway Act states the following:

"The owner of a motor vehicle or street car is liable for loss or damage sustained by any person by reason of negligence in the operation of the motor vehicle or street car on a

highway, unless the motor vehicle or street car was without the owner's consent in the possession of some person other than the owner or the owner's chauffeur." See, § 192(2).

"A lessee of a motor vehicle or street car is liable for loss or damage sustained by any person by reason of negligence in the operation of the motor vehicle or street car on a highway, unless the motor vehicle or street car was without the lessee's consent in the possession of some person other than the lessee or the lessee's chauffeur." See, § 192(3).

There was no dispute that the National Car Rental defendants leased the subject automobile to Defendant Ramage. The Magnuson family claimed Defendant Ramage's negligence in operating the leased vehicle caused the collision and Keith Magnuson's death. Therefore, the Magnuson family alleged that the National Car Rental defendants were vicariously liable under § 192 for the negligence of Robert Ramage and the death of Keith Magnuson.

II. CONFLICTS OF LAW ANALYSIS

There were two legal issues for the court to analyze in the Magnuson case: (1) whether the law of Missouri or Ontario, Canada was applicable on the issue of an automobile owner's and/or lessee's liability for the negligence of another operating the vehicle; and (2) whether the law of Missouri or Ontario, Canada was applicable on the issue of wrongful death damages. Missouri allows this analysis on an issue by issue basis. In analyzing conflicts of laws issues, Courts must first determine if there is a true conflict.

Where there are true conflicts, the differing laws are viewed "issue by issue," and different states' laws may be

applied to different issues in the same case.”² The state whose interests are more impaired as to a particular issue will have its laws applied to that issue.³ Under *Kennedy v. Dixon*, and the Restatement (Second) of Conflict of Laws, the conflict analysis is made **issue by issue** in terms of which state has the most significant relationship to the occurrence and the parties **with respect to that particular issue**.⁴

Interestingly, under this analysis the basic law does not favor a plaintiff or defendant. The facts of each individual case may favor either side. Thus, a plaintiff or defense attorney may be able to use the exact briefs and argument submitted against him from one case to the next based on the changing facts.

Until 1969, Missouri followed the rule of *Lex Loci Delicti* which holds that the state of the occurrence is the state whose law should be applied for all substantive issues. The Missouri Supreme Court adopted § 145 of the Restatement (Second) of Conflict of Laws and held that Missouri should follow the significant relationship test (also referred to as the significant contacts test). The Court set forward the test stated in the Restatement (Second) of Conflict laws and held that the Court should consider “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. The contacts are to be evaluated according to their relative importance with respect to the particular issue.”⁵

In *Hicks v. Graves Truck Lines, Inc.*, the Western District Court of Appeals noted under this approach, significant local contacts under the test of the restatement, § 145, are enough to warrant use of the forum law without balancing foreign contacts and interests.⁶ In *Hicks* the Court held that in cases where the significant contacts test outlined in *Kennedy v. Dixon* revealed more than one forum as having a legitimate local interest, a true conflicts of law case may be involved and a different test would be required for analyzing which of the two interested states’ laws should be applied.⁷ In *Hicks*, the Court “conclude[d] the **government interest analysis** (also referred to as the “comparative impairment approach”) offers the better method for resolving true conflict of law cases, that is, cases in which the Restatement § 145 test discloses significant contacts with two or more states, each of which has a legitimate local interest in the **particular issue** in contest.⁸ This approach asks the Court to determine “which state’s interests, assuming a ‘true’ conflict, would be more impaired if its policy were subordinated to the policy of the other state.”⁹ “This analysis proceeds on the principal that true conflicts should be resolved by applying the law of the state whose interest would be the more impaired if its law were not implied.”¹⁰

This leaves Courts with a two-part test in order to determine which forum state’s law should apply **to a specific issue**. First the Court must analyze whether one or more states have an actual significant interest in a particular issue to satisfy the test outlined in *Kennedy*. If more than one state has a significant interest in the particular issue, then the Court must move to the government interest approach outlined in *Hicks*. Under the government interest analysis, “the determinative laws are that of the state with greatest interest in governing the particular issue. The first step in the analysis is to determine whether a conflict exists between the laws of the interested states. Any such conflict is to be determined on an **issue-by-issue** basis. If an actual conflict exists, the next step

is to identify the governmental policies underlying the law of each state and how those policies are affected by each state’s contact to the litigation and to the parties. If the state’s contacts are not related to the policies underlying its law then the state does not possess an interest in having its law applied. Consequently, the qualitative, not quantitative, nature of the state’s contacts ultimately determine whether its law should apply.”¹¹

A. Plaintiffs argued that Ontario’s law applied as to the issue of an automobile owner’s and/or lessee’s liability for the negligence of a permissive user.

In *Magnuson*, as an initial step, the Court had to identify whether a conflict existed between Missouri’s common law and Ontario’s law, specifically § 192 of Ontario’s Highway Traffic Act, which imposed vicarious liability on the vehicle owner/lessee for injuries arising from the negligence of anyone using or operating its vehicle with permission. If Missouri common law applied, regardless of Ramage’s negligence, The National Car Rental defendants could not be liable to the Magnusons. However if Ontario’s law applied, and Ramage was determined to be liable to the Magnusons, then The National Car Rental defendants would be liable to the Magnusons, as Ontario imposes vicarious liability on the vehicle owner/lessee for injuries arising from the negligence of anyone using or operating its vehicle with permission.¹²

It could hardly be disputed that there is clearly a “conflict” between the laws of Missouri and Ontario as the laws related to **this issue**. Therefore, plaintiffs argued that the next issue for the Court to determine was if there is a “true conflict”. It was plaintiffs’ position that other Courts analyzing facts analogous to the facts before the *Magnuson* Court found that a “true conflict” does not exist and therefore the Court should apply § 192 of Ontario’s Highway Traffic Act. Plaintiffs argued that although there is no Missouri case comparing Missouri common law to a statute similar to the Ontario statute, other states that follow the same common law as Missouri, which is predicated on traditional agency principles, have analyzed its state’s law to a statute similar to § 192 of Ontario’s Highway Traffic Act using the **governmental interest** analysis and have unanimously held that a “true conflict” does not exist.¹³

Plaintiffs emphasized that all states that have used the “governmental interest” approach in analyzing facts analogous to facts in the *Magnuson* case have determined that the state with the law similar to Ontario’s law has the only true interest in having its law applied. The reasoning applied by the Courts is best illustrated in *Garcia v. Plaza Oldsmobile, Ltd.*¹⁴ and *McKinney v. S&S Trucking, Inc.*¹⁵ (The Courts sometimes wrote the state with less interest had a “false conflict” as in it did not really conflict with the state’s interest.)

i. *Garcia v. Plaza Oldsmobile, Ltd.*

Garcia v. Plaza Oldsmobile, Ltd. is a case that arises from a motor vehicle accident in Pennsylvania involving plaintiff Rodolfo Garcia, a Pennsylvania citizen, and defendant Timothy Gladney, a New York citizen and New York licensed driver. Garcia was driving a Dodge truck registered and insured in Pennsylvania. Gladney was driving a Toyota

automobile that he had rented earlier that day in Brooklyn, New York, from defendant Plaza Oldsmobile, a New York corporation. Garcia alleged that he suffered permanent and disabling injuries as a result of the accident and that Plaza, as owner of the vehicle, was liable to him for his injuries. In the District Court, Plaza and Garcia filed cross motions for partial summary judgment seeking a determination of whether the Court should ascertain Plaza's potential liability by application of Pennsylvania common law, which is predicated on traditional agency principles (similar to Missouri common law) or § 388(1) of New York's Vehicle and Traffic Law (which imposes the same vicarious liability on the vehicle owner/lessee as § 192 of Ontario's Highway Traffic Act).

The Court noted that the distinction is critical because under Pennsylvania common law, which is predicated on traditional agency principles, regardless of Gladney's culpability, Plaza could not be liable to Garcia whereas, under New York law, if Gladney was determined to be liable to Garcia, Plaza also would be liable to him as New York imposes vicarious liability on the vehicle owner for injuries arising from the negligence of anyone using or operating its vehicle with permission.¹⁶

The Court indicated that the sole question presented on appeal is a narrow conflicts of law issue: whether the Court should use Pennsylvania common law or New York statutory law to determine if Plaza can be liable.¹⁷ The Pennsylvania Court held that "applying New York law to impose liability on Plaza does not impair the interests of Pennsylvania, while on the contrary, the application of Pennsylvania law would impair New York's interest in providing injured plaintiffs with a financially responsible defendant, and imposing a high degree of responsibility on the owners of vehicles. Therefore, this case presents a false conflict, and the district court should apply the law of the only interested jurisdiction."¹⁸

As is the case in Missouri, the Pennsylvania Supreme Court abandoned the traditional *lex loci delicti* conflicts rule in which the law of the place of the wrong governs the substantive rights and liabilities of the parties and substituted it with the "government interest approach, a more flexible rule which permits analysis of the policies in interests underlying the particular issue before the court."¹⁹ The Court argued that this new methodology has evolved into a hybrid approach that combines the approaches of both restatement "contacts establishing significant relationships" and interest analysis "qualitative appraisal of the relevant state's policies with respect to the controversy."²⁰ Under Pennsylvania law, before assessing the governmental interests of the jurisdiction whose laws may control and examining their contact with the dispute, the Court must determine what type of "conflict," if any, exists between the purported competing bodies of law.²¹ The Court began with a government interest analysis of the policies of all interested states and then based on the results of the analysis determined whether the case involved a "true" or "false" conflict or whether it was unprovided for.²² The Court stated that "there is a true conflict when the governmental interests of both jurisdictions would be impaired if the laws were not applied."²³ The Court emphasized that if a case presents a true conflict, Pennsylvania choice of law rules "call for the application of the law of the state having the most significant contacts or relationships with the particular issue."²⁴ The Court reasoned that "there is a *false conflict* if only one jurisdiction's governmental

interest would be impaired by the application of the other jurisdiction's law."²⁵ If there is a *false conflict*, the Court will apply the law of the only interested jurisdiction.

The Court acknowledged that § 388(1) of New York's Vehicle and Traffic Law provided that "every owner of a vehicle used or operated in the state should be liable and responsible for death or injuries...resulting from negligence in the use or operation of such a vehicle...by any person using or operating the same with the permission, express or implied, of such owner."²⁶ The Court emphasized that the statute imposed vicarious liability on vehicle owners for the negligence of anyone using or operating their vehicles with their permission, without regard to whether the owner, by its negligence, contributed to the accident.²⁷ The Court first analyzed the wording of the statute to determine if it would be applicable to accidents outside of the state. The Court determined that New York had consistently interpreted the statute to having extraterritorial application. After reviewing Pennsylvania's common law and New York's statutory law, the Court concluded that the case presented a "*false conflict*" and therefore the District Court correctly determined that the law of the only interested jurisdiction, New York, must be applied.²⁸

In the Court's analysis, it first examined New York's interest in having its law applied. It emphasized that New York's legislature in enacting § 388 furthered its dual policy of (1) providing injured plaintiffs with a financially responsible defendant, and (2) imposing a high degree of responsibility on owners who allow others to operate their vehicles. The Court assumed that the statute was "enacted to ensure access by injured persons to a financially responsible party against whom to recover for injuries and to change the common law rule and to impose liability upon the owner of the vehicle for the negligence of a person legally operating the car with permission, express or implied, of the owner."²⁹

The Court found that it is "clear that New York's interest in protecting persons injured by New York vehicles, whether injured or harmed within or without New York State, *would be impaired* by the application of Pennsylvania's *less expansive liability law* which in this case would *free* Plaza from liability."³⁰ The Court emphasized that "it is difficult to conceive of *any case* in which a person injured in Pennsylvania or, indeed, in *any common law state*, would be better off by the application of local as opposed to New York law."³¹ The Court held that "in short, a failure to apply § 388 would impair New York's interest in insuring that entities such as Plaza share in New York's goal of protecting the victims of tortfeasors, as well as demanding responsibility of owners who allow others to operate their vehicles. Furthermore, New York's interest in having its laws applied to an owner in the position of Plaza clearly would be undermined by the application of Pennsylvania common law in a case such as this, in which the vehicle's operator and owner denied having agency relationship, so that vicarious liability would not be imposed on the owner."³²

The Court then analyzed Pennsylvania's interest in the application of its common law. It noted that the state of Garcia's domicile, Pennsylvania, has an interest in providing for his recovery if Gladney is liable in order to make him whole. The Court emphasized however, that it "is clear that the application of New York's vicarious liability law cannot undermine the advancement of that interest. Simply put, Plaza is unable to demonstrate how the application of New York's

more plaintiff-friendly provision would undermine Pennsylvania's interest in ensuring that its injured parties are compensated fully.³³ The Court ruled that "even if we were to consider Pennsylvania's adherence to the common law on the issue of owner liability as expressing an interest in establishing the scope of a vehicle owner's liability, this interest is not diminished where another state has statutorily imposed greater liability on its own citizens."³⁴ The Court emphatically stated that "in fact, we believe that the application of Pennsylvania law on the liability issue here, which would preclude Garcia from recovering from Plaza, *does not* further Pennsylvania's interest in protecting its residents and providing adequate recovery from its injured citizens."³⁵

The Court emphasized that "we cannot conceive how the application of the common law as opposed to the New York statute to determine an owner's liability ever can be advantageous to a plaintiff and thus further the goal of providing full compensation for a plaintiff's injuries. Thus, we do not reach our result on a fact specific basis to aid a single litigant."³⁶ The Court summarized its holding by stating that "applying New York law to impose liability on Plaza does not impair the interest of Pennsylvania, while on the contrary, the application of Pennsylvania law would impair New York's interest in providing injured plaintiffs with a financially responsible defendant, and imposing a higher degree of responsibility on the owners of vehicles. Therefore, this case presents a false conflict, and the District Court should apply the law of the only interested jurisdiction, New York."³⁷

ii. *McKinney v. S&S Trucking, Inc.*³⁸

In *McKinney v. S&S Trucking, Inc.*³⁹ a New Jersey motorist (McKinney) was injured in New Jersey when her automobile collided with an automobile that was registered in New York, driven by a New York resident (Baker), and subject to a lease agreement between Baker and Barco Leasing Group. Baker brought personal injury action against the automobile's driver, Lessor and Lessee. The Lessor, defendant Barco, moved for summary judgment. In reviewing the conflict of law analysis, the Court noted that "the instant motion presents for adjudication to the court primarily a legal question whether the law of New York or New Jersey is applicable on the issues of an automobile's owner liability for the negligence of another operating the vehicle."⁴⁰ The District Court held that this case presented a false conflict and held that the action was governed by New York law, which holds vehicle owner's liable for negligence of others operating the vehicle with permission of owner, rather than by New Jersey's law, which provides that automobile owner bears no liability for driver's negligence unless driver is acting as owner's agent or employee.

The Court concluded that the "State of New Jersey has little or no interest in applying its common law rule on vehicle owner liability to vehicle owners who are not New Jersey residents and whose vehicles are not registered in New Jersey. On the other hand, the quality of New York's contact with the vehicle and its owners, and New York's comprehensive policy and strong interest in regulating the conduct of its resident vehicle owners, *make New York the only state with a compelling interest* in the outcome of the issue regarding defendant Barco's liability. Consequently, the law of New York, specifically § 388 of New York's Vehicle and Traffic law, provides the standard against which the liability of defendant Barco must be measured."⁴¹

B. **Plaintiffs argued that Missouri's wrongful death and damage laws applied because there is no conflict between the laws of Missouri, Ontario, and Illinois as they related to the issue.**

The second issue the Magnuson Court had to determine was whether Missouri, Ontario or Illinois law of damages would apply. Plaintiffs argued that the elements for a wrongful death claim in all three jurisdictions were the same; therefore, there is no conflict. Further, plaintiffs argued that there are no significant differences between the damages allowed in all three jurisdictions. Therefore, plaintiffs argued there is no conflict for the Court to analyze. (See chart). Plaintiffs argued that since there is no conflict, then the Court does not perform a conflict of laws analysis.

The National Car Rental defendants argued that there is a conflict. In support of their argument they cited three Supreme Court of Canada decisions. In 1978, the Supreme Court of Canada decided three cases, which are referred to as the "trilogy."⁴² The Court provided precedent in these three decisions that Canada's Appeals Courts would monitor damage awards and reduce any non-pecuniary awards to a maximum of approximately \$100,000. Plaintiffs argued that the "trilogy" of appellate court remitter decisions are not "laws" but rather rulings based on specific facts. Plaintiffs argued that the elements of wrongful death were the same in Missouri and Ontario and that the trilogy decisions dealt with nothing more than a court using their discretionary judgment to remit an award. It is generally accepted that an appellate court ruling on interpretations of actual law is not subject to choice of law analysis. Plaintiffs pointed out that the trial Court in Missouri could remit any damages that the Court determined to be excessive. Plaintiffs emphasized that the Court must look at the Ontario interest involved, which on damage issues was virtually absent.⁴³

The trial Court in this case ruled there was no conflict of laws and used the MAI instructions regarding damages.

For purposes of this article, plaintiffs will discuss the analysis the Court would use if there was a "true conflict." If the Court determined that there was a conflict of law on the issue of damages, the Court would follow Missouri's two part test in order to determine which forum states law should apply *to the specific issue of damages*.

First the court would have to determine if one or more states have an actual significant interest in a particular issue to satisfy the test (look at the contacts with each state) outlined in *Kennedy*. If more than one state has significant contacts and a significant interest in the particular issue, then the Court must move to the government interest approach outlined in *Hicks*. Under the government interest analysis, "the determinative laws are that of the state with greatest interest in governing the particular issue. The first step in the analysis is to determine whether a conflict exists between the laws of the interested states.

If an actual conflict exists, the next step is to identify the governmental policies underlying the law of each state and how those policies are affected by each state's contact to the litigation and to the parties. If the state's contacts are not related to the policies underlying its law, then the state does not possess an interest in having its law applied. Consequently, the qualitative, not quantitative, nature of the state's contacts ultimately determine whether its law should apply."⁴⁴

MISSOURI	ONTARIO	ILLINOIS
<p>Elements for W/D cause of action:</p> <p>(1) the defendant owed a duty of care to the decedent; (2) the defendant breached that duty; (3) the breach was the cause in fact and the proximate cause of his death; and (4) as a result of the breach, the plaintiff suffered damages.</p>	<p>Elements for W/D cause of action:</p> <p>(1) duty of care; (2) breach of the duty; (3) proximity; and (4) damage resulting from that breach;</p> <p>(Allen M. Linden, <i>Canadian Tort Law</i>, 6th ed. (Toronto: Butterworths, 1997) (<i>Crocker v. Sundance Northwest Resorts Ltd.</i>, [1988] 1 S.C.R. 1186 (S.C.C.)).</p>	<p>Elements for W/D cause of action:</p> <p>(1) the defendant owed a duty of care to the decedent; (2) the defendant breached that duty; (3) the breach was the cause in fact and the proximate cause of his death; and (4) as a result of the breach, the plaintiff suffered damages.</p>
<p>Pecuniary Loss:</p> <ol style="list-style-type: none"> 1. Pecuniary losses suffered by reason of death, 2. Funeral expenses, 3. The reasonable value of the services, 4. Consortium, 5. Companionship, 6. Comfort, 7. Instruction, 8. Guidance, 9. Counsel, 10. Training, 11. Support of which those on whose behalf suit may be brought have been deprived by reason of such death; 12. Aggravating/punitive. 	<p>Pecuniary Loss:</p> <ol style="list-style-type: none"> 1. Past/future loss of dependency income; 2. Future loss of wealth; 3. Special damages/Out of pocket expenses (i.e., funeral expenses); 4. Past/future loss of housekeeping/handyman services; 5. Loss of companionship; 6. Loss of care; 7. Loss of guidance; 8. Anguish and suffering involved in the grief and sorrow; 9. Punitive damages. 	<p>Pecuniary Loss:</p> <ol style="list-style-type: none"> 1. What (money,) (benefits,) (goods,) (and) (services) the decedent customarily contributed in the past; 2. What (money,) (benefits,) (goods,) (and) (services) the decedent was likely to have contributed in the future; 3. Decedent's personal expenses (and other deductions); 4. What instruction, moral training, and superintendence of education the decedent might reasonably have been expected to give his child had he lived.

i. Missouri has the Most Significant Contacts to the Issues Presented, as they relate to Wrongful Death Damages.

In analyzing a choice of law issue, first the Court must analyze whether one or more states have actual substantial contacts and interest in a particular issue to satisfy the test outlined in *Kennedy*.⁴⁵

Plaintiffs argued that there were numerous contacts with Missouri.⁴⁶ The defendants argued that the contacts with Ontario were numerous.⁴⁷ While courts do not engage in the mere counting of the number of contacts, courts must evaluate the contacts with each state in order to determine what state has the most significant contacts. Although Plaintiffs argued that Missouri had more contacts and a greater concern than Ontario with respect to the damages sustained as a result of this collision, if the Court finds that Missouri and Ontario both had significant contacts, then the Court must then use the Government Interest Analysis.

ii. Under the Comparative Impairment Analysis/ Government Interest Analysis, Missouri Law Applies to Damages.

Plaintiffs argued that Ontario's interest would not be impaired if Missouri's damages laws applied. The National Rental Car defendants argued that Ontario has an interest in making sure that their residents do not receive a non-pecuniary award against them in excess of \$100,000. Plaintiffs argued that Missouri law provided a remedy for excessive verdicts and therefore there is no "true conflict." Plaintiffs argued that if Ontario had an interest in making sure its citizens were not exposed to "excessive damages," the Missouri remittitur law would protect Ontario's interest. Plaintiffs stressed that Missouri Courts have routinely ruled that Missouri damage law shall apply in cases brought in Missouri even when the accident occurred outside the boundaries of Missouri. The Courts have held that any other states' interest that may exist are not greatly impaired if

Missouri's substantive law, as it relates to damages, is applied.⁴⁸ Plaintiffs emphasized that the Court must look at the Ontario interest involved, which on damage issues is none, and not the self-serving interests of the Defendants.⁴⁹ Missouri courts recognize that the state where the tort was committed may not be the state with the superior interest in such an issue as the amount of damages a jury may return on the cause of action.⁵⁰

III. CONCLUSION

When determining if you are going to invest your time and resources in a personal injury case where the injury occurred in another state and/or country, you should first do a conflicts of law analysis on an issue by issue basis. This analysis will assist you in determining if the case is a viable case and will further assist you in determining your client's recoverable damages. Doing an issue by issue analysis at the beginning of the case will assist you in determining the discovery you will need to obtain on each issue. With the information gained in discovery, you will be in the best position to prevail in the conflicts of law analysis. ■

ENDNOTES:

1. *Miller v. Heartland Reg'l Med. Ctr.*, filed in the Circuit Court of Buchanan County, Case No. 396-1770CC.
2. *Goede v. Aerojet General Corp.*, 143 S.W.3d 14, 25 - 26 (Mo. App. E.D. 2004)(California liability laws and Missouri damages laws applied under *Depacage*); *Hicks v. Graves Truck Lines, Inc.*, 707 S.W.2d 439, 443-44 (Mo. App. W.D. 1986) (reversing and directing trial court to apply Missouri fault system to Kansas collision involving Kansas corporation); *Glasscock v. Miller*, 720 S.W.2d 771, 774 (Mo. App. S.D. 1986) (Missouri approach "does not require that all issues in a particular case be controlled by the law of the same state").
3. *Hicks*, 707 S.W.2d at 443-44.
4. See also, *Thompson by Thompson v. Crawford*, 833 S.W.2d 868, 870 (Mo. banc 1992) (emphasis added).
5. *Kennedy v. Dixon*, 439 S.W.2d 173, 181 (Mo. banc 1969).
6. *Hicks v. Graves Truck Lines, Inc.*, 707 S.W.2d 173, 181 (Mo. Banc 1969).
7. *Id.*
8. *Id.* at 444. (emphasis added).
9. *Id.*
10. *Hicks v. Graves Truck Lines, Inc.*, 707 S.W.2d 439, 443 (Mo. App. W.D. 1986).
11. *McKinney v. S&S Trucking, Inc.*, 85 F.Supp 105 (D.N.J. 1995); See also, *Hicks v. Graves Truck Lines, Inc.*, 707 S.W.2d 439, 444 (Mo. App. W.D. 1986).
12. See, § 192 of Ontario's Highway Traffic Act.
13. See, *Garcia v. Plaza Oldsmobile, Ltd.*, 421 F3.d 216 (3d Cir. 2005); *McKinney v. S&S Trucking, Inc.*, 85 F.Supp 105 (D.N.J. 1995); *Haggerty v. Cedeno*, 653 A.2d 1166 (App. Div. 1995); See also, *Vasquez v. Christian Herald Ass'n Inc.*, 588 N.Y.S.2d 291, 292 (1992) (holding § 388 applicable to Ohio resident injured by New York resident in Pennsylvania); *Van Dyke v. Bolves*, 258A.2d 372 (App. Div. 1969) and *White v. Smith*, 398 F.Supp. 130 (D.N.J. 1995).
14. 421 F3.d 216 (3d Cir. 2005).
15. 85 FSupp 105 (D.N.J. 1995).
16. *Garcia v. Plaza Oldsmobile, Ltd.*, 421 F3d 216, 218 (3d Cir. 2005).
17. *Id.* at 219.
18. *Id.* at 223.
19. *Id.* at 219-220.
20. *Garcia v. Plaza Oldsmobile, Ltd.*, 421 F3d 216, 218, 219-220 (3d Cir. 2005).
21. *Id.*
22. *Id.*
23. *Id.*
24. *Garcia v. Plaza Oldsmobile, Ltd.*, 421 F3d 216, 218 (3d Cir. 2005).
25. *Id.* at 220. (emphasis added).
26. *Id.*
27. *Id.* at 221.
28. *Garcia v. Plaza Oldsmobile, Ltd.*, 421 F3d 216, 218 (3d Cir. 2005) (emphasis added).
29. *Id.* at 221-222.
30. *Id.* at 222. (emphasis added).
31. *Id.*
32. *Garcia v. Plaza Oldsmobile, Ltd.*, 421 F3d 222 (3d Cir. 2005).
33. *Id.* at 222-223.
34. *Id.* at 223.
35. *Id.*
36. *Garcia v. Plaza Oldsmobile, Ltd.*, 421 F3d 216, 218 (3d Cir. 2005).
37. *Id.*
38. 85 F.Supp 105 (D.N.J. 1995).
39. *Id.*
40. *Id.* at 106.
41. *Id.* at 110.
42. See, *Andrews v. Grand and Toy Albert Ltd.* [1978] 2 S.C.R. 267; *Thornton v. Prince George Board of Education* [1978] 2 S.C.R. 267, [1978] *Arnold v. Teno*, 2 S.C.R. 267.
43. See, *Hicks v. Graves Truck Lines, Inc.*, 707 S.W.2d 439 (Mo. App. 1986); *Kennedy v. Dixon*, 439 S.W.2d 173 (Mo. banc. 1969).
44. *McKinney v. S&S Trucking, Inc.*, 85 F.Supp 105 (D.N.J. 1995); See also, *Hicks v. Graves Truck Lines, Inc.*, 707 S.W.2d 439, 44 (Mo. App. W.D. 1986).
45. See, *Kennedy v. Dixon*, 439 S.W.2d 173 (Mo. banc 1969) (which adopted certain provisions of the Restatement (Second) of Conflict of Laws).
46. Plaintiffs argued the following contacts: Defendant Robert Ramage is a resident of the state of Missouri; Defendant Robert Ramage was a professional hockey player in the National Hockey League ("NHL") and played in Missouri; For several years, since Defendant Robert Ramage retired from professional hockey, he has been a member and officer of the NHL Alumni Association and did business in Missouri; Defendant Robert Ramage was Vice President of the NHL Alumni Association at the time of the wreck and testified he conducted NHL Alumni Association business out of his home in St. Louis County, Missouri; During Defendant Robert Ramage's membership with the NHL Alumni Association, he employed the services of National Car Rental (Canada) Inc.; Defendant Robert Ramage learned of the services of National Car Rental (Canada) Inc. from reading an advertisement in the local yellow pages in St. Louis, Missouri and also from his membership with NHL Alumni Association; When Defendant Robert Ramage rented an automobile from National Car Rental (Canada) Inc., he made the reservation for the rental and paid a deposit for the rental with his credit card from St. Louis, Missouri; Each time Defendant Robert Ramage rented an automobile from National Car Rental(Canada) Inc., he rented the automobile through my membership with National Car Rental(Canada) Inc.'s "National Emerald Club." Membership in the National Emerald Club entitled Defendant Robert Ramage to receive travel offers, special discounts, rental credits, and frequent flyer miles when he used the car rental services of one the entities participating in the National Emerald Club program; As advertised on the website at nationalcar.com, one of the entities participating in the club program is National Car Rental (Canada) Inc. and member services are available in Ontario, Canada. The National Emerald Club offered and continues to offer a one-year membership in exchange for \$50.00 and the completion and filing of a signed Master Rental Agreement Profile; Defendant Rob Ramage paid the annual fee of \$50.00 by credit card to the National Emerald Club through the website at "nationalcar.com" from St. Louis, Missouri; Defendant Robert Ramage also signed and sent for filing with the National Emerald Club a Master Agreement Profile from St. Louis, Missouri; In making the payment, Defendant Robert Ramage transmitted to the National Emerald Club his billing address, including the fact that he resides in St. Louis, Missouri; In completing the Master Agreement Profile, Defendant Robert Ramage transmitted to the National Emerald Club his contact information, including the fact that he resides in St. Louis, Missouri; The National Emerald Club, in turn, mailed the Emerald Club Program Rules and Conditions of the agreement to Defendant Robert Ramage at his residence in St. Louis, Missouri; The NHL Alumni Association also had a business membership agreement with the National Emerald Club; In exchange for additional benefits to its members, the NHL Alumni Association agreed to promote and use the car rental entities participating in the National Emerald Club, including National Car Rental (Canada) Inc.; On December 15, 2003, Defendant Robert Ramage was driving an automobile which he rented from National Car Rental (Canada) Inc.; Defendant Robert Ramage made the reservation through his personal National Emerald Club membership and through the NHL Alumni Association's business membership by calling National Car Rental (Canada) Inc. from his home in St. Louis, Missouri; Defendant Rental companies routinely transact business in Missouri; Defendant Robert Ramage has received medical care in Missouri related to the accident; Defendant Robert Ramage

flew from St. Louis to Canada and was conducting NHL Alumni Association business. Defendant Robert Ramage plans and preparations for his trip to Canada were made in Missouri.

47. Defendants argued the following contacts: The Rental Agreement was entered into in Ontario, Canada; The death of Keith Magnuson occurred in Ontario, Canada; The investigation of the death took place in Ontario, Canada; The NHLAA, which Mr. Magnuson and Mr. Ramage were on business at the time of the accident, is headquartered in Ontario, Canada; The coroner who investigated the death of Mr. Magnuson is located in Ontario, Canada; Defendant Robert Ramage was a professional hockey player in the National Hockey League and played in Ontario, Canada; For several years, since defendant Robert Ramage retired from Professional Hockey, he has been a member and officer of the NHL Alumni Association, and did business in Ontario, Canada; Defendant Robert Ramage was Vice President of the NHL Alumni Association at the time of the collision and conducted business with the NHL Alumni Association out of Ontario, Canada; During Defendant Robert Ramage's membership with the NHL Alumni Association, he employed the services of National Car Rental (Canada), Inc. Defendant Robert Ramage learned of the services of National Car Rental (Canada), Inc. from ready an advertisement mailed to him from the NHL Alumni Association located in Ontario, Canada; Each time defendant Robert Ramage rented an automobile from National Car Rental (Canada), Inc., he rented the automobile through his membership with National Car Rental (Canada), Inc.'s National Emerald Club; Membership in the National Emerald Club entitled defendant Robert Ramage to receive travel offers, special discounts, rental credits, and frequent flyer miles when he used the car rental services of one of the entities participating in the National Emerald Club program; As advertised on the web site at National Car.com, one of the entities participating in the club program is National Car Rental (Canada), Inc. and member services are available in Ontario, Canada; The National Emerald Club offered an continues to offer a one-year membership in exchange for Fifty Dollars (\$50.00) and the completion of filing of a signed Master Rental Agreement Profile; Defendant Robert Ramage is a citizen of Canada; The NHL Alumni Association had a business membership agreement with the National Emerald Club; In exchange for additional benefits to its members, the NHL Alumni Association agreed to promote and use the rental car entities participating in the National Emerald Club, including National Car Rental (Canada), Inc.; On December 15, 2003, defendant Robert Ramage was driving an automobile which he rented from National Car Rental (Canada), Inc. in Ontario, Canada; Defendant Robert Ramage made the reservation through his personal National Emerald Club Membership and through the NHL Alumni Association's business membership by calling National Car Rental (Canada), Inc. located in Ontario, Canada; Defendants' rental companies routinely transact business in Ontario, Canada; Defendant Robert Ramage has received medical care in Ontario, Canada related to the accident; Defendant Robert Ramage flew from St. Louis to Canada and was conducting NHL Alumni Association business; Defendant Robert Ramage currently resides in Ontario, Canada.

48. See, *Goede v. Aerojet General Corp.*, 143 S.W.3d 14, 25-26 (Mo. App. E.D. 2004)(California liability laws and Missouri damages laws applied under *Depacage*); *Hicks v. Graves Truck Lines, Inc.*, 707 S.W.2d 439, 443-44 (Mo. App. W.D. 1986) (reversing and directing trial court to apply Missouri fault system to Kansas collision involving Kansas corporation); *Kennedy v. Dixon*, 439 S.W.2d 173 (Mo. banc 1969).

49. See, *Hicks v. Graves Truck Lines, Inc.*, 707 S.W.2d 439 (Mo. App. 1986); *Kennedy v. Dixon*, 439 S.W.2d 173 (Mo. banc. 1969).

50. *Carver v. Schafer*, 647 S.W.2d 570 (Mo. App. 1983) and Restatement (Second) Conflict of Laws, §171 (1971).