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## Louisiana Conflicts of Law - Torts and Workmen's Compensation

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## LOUISIANA CONFLICTS OF LAW—TORTS AND WORKMEN'S COMPENSATION

In the area of torts law, the Louisiana rule in conflict of laws cases has been that the law of the place of the wrong governs the rights and liabilities of the parties. The theory underlying *lex loci delicti* was that if the law of the state where the wrong was committed granted a cause of action to the injured party, that right could be enforced in the courts of another state. However, if the law of the state of the injury did not recognize an actionable wrong, no other state was considered competent to create a cause of action.<sup>1</sup> The argument favoring *lex loci delicti* was its certainty and ease of application; however, the rule drew widespread criticism for sacrificing justice for expediency.<sup>2</sup> In many cases the state where the tort was committed had no other contact with the parties than that one accidental occurrence; thus, the application of *lex loci delicti* was governed by mere chance. In recent years the rule has been abandoned in many jurisdictions as well as by the Restatement (Second).<sup>3</sup> However, until the 1973 case of *Jagers v. Royal Indemnity Co.*,<sup>4</sup> the Louisiana supreme court had steadfastly refused to discard *lex loci delicti*. The *Jagers* case orders a complete reversal of much of Louisiana's prior conflicts cases, and the spirit of the opinion portends even wider effects upon the jurisprudence.

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1. *Lex loci delicti* was adopted by the Restatement of Conflict of Laws which looked to the law of the place of the wrong to determine whether a legal injury had been sustained, as well as for any specific limitations on an actor's standard of care, and all rights arising from wrongful death actions. RESTATEMENT OF CONFLICT OF LAWS § 378-90 (1934).

2. Reviewing the multitude of criticisms, one writer has summarized them as maintaining that "it [*lex loci delicti*] applied the law of one state . . . with complete disregard for the . . . purposes of the competing laws; there is no reason . . . why the place of the tort is more significant than some other reference points . . . ; the place of the tort obviously can be quite fortuitous and irrelevant to the issue being litigated, and its application thus producing rather perverse results . . . . Further the purpose of uniformity is to enable parties to plan transactions . . . [and] such planning and predictability are not so relevant to torts, because the place of the tort cannot be anticipated." Couch, *Choice-of-Law, Guest Statutes, and the Louisiana Supreme Court: Six Judges in Search of a Rulebook*, 45 *TUL. L. REV.* 100, 105 (1970).

3. The introductory note to the subject of torts criticized the Restatement because "[s]ituations arise where the state of the last event (place of injury) bears only a slight relationship to the occurrence and the parties with respect to the particular issue." The Restatement (Second) adopted a more realistic policy which is summarized as the principle that: "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 . . . ." RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 145 (1969).

4. 276 So. 2d 309 (La. 1973).

*Lex Loci Delicti— The Foreign Cause of Action*

Prior to *Jagers*, Louisiana courts had held that in tort cases the substantive law of the place of the wrong should govern the legal rights of the parties.<sup>5</sup> This rule was followed even in cases involving only Louisiana domiciliaries who would have had a cause of action under Louisiana law.<sup>6</sup> Particularly harsh results followed in Louisiana cases in which a wife was barred from suing her husband's insurer for injuries received through his negligence because the state where she was injured did not grant her a cause of action.<sup>7</sup> Perhaps the denial by a state of a cause of action in such circumstance is the result of a desire to prevent collusive suits or to promote marital harmony by preventing suit by one spouse against the other. Such a purpose should be respected in the courts of the state when that state's citizens are involved. However, it is senseless to apply that state's law to Louisiana citizens in a Louisiana suit simply because the accident occurred out of state. The other state has no interest in the incident other than being the place of the injury, and certainly lacks any interest in the marital relationship between two Louisiana domiciliaries.

*Lex loci delicti* has also been used to deny recovery in suits by a guest passenger against his driver for his alleged negligence in causing an accident. Although Louisiana law would allow recovery on the proof of ordinary negligence,<sup>8</sup> many states grant a cause of action only for willful and wanton negligence.<sup>9</sup> In cases involving only Louisiana residents injured in a foreign state with such a rule, Louisiana courts

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5. *McDaniel v. Petroleum Hel., Inc.*, 455 F.2d 137 (5th Cir. 1972); *Fry v. Lamb Rent. Tools, Inc.*, 275 F. Supp. 283 (W.D. La. 1967); *Johnson v. St. Paul Mercury Ins. Co.*, 256 La. 289, 236 So. 2d 216 (1970); *Williams v. Petroleum Hel., Inc.*, 234 So. 2d 522 (La. App. 2d Cir. 1970); *Nicholson v. Atlas Assur. Corp.*, 156 So. 2d 245 (La. App. 4th Cir. 1963); *Blount v. Blount*, 125 So. 2d 66 (La. App. 1st Cir. 1960); *Cone v. Smith*, 76 So. 2d 46 (La. App. 2d Cir. 1954).

6. *McDaniel v. Petroleum Hel., Inc.*, 455 F.2d 137 (5th Cir. 1972); *McNeal v. State Farm Mut. Auto. Ins. Co.*, 269 So. 2d 499 (La. App. 3d Cir. 1972), *rev'd*, 278 So. 2d 108 (1973); *Williams v. Petroleum Hel., Inc.*, 234 So. 2d 522 (La. App. 3d Cir. 1972).

7. *Nicholson v. Atlas Assur. Corp.*, 156 So. 2d 245 (La. App. 4th Cir. 1963); *Burke v. Massachusetts Bond. & Ins. Co.*, 19 So. 2d 647 (La. App. 1st Cir. 1944), *aff'd*, 209 La. 495, 24 So. 2d 875 (1946). Louisiana does recognize the wife's cause of action against the husband's insurer; under the direct action statute the insurer may not rely upon defenses which are merely personal to its insured, such as interspousal immunity.

8. *Johnson v. St. Paul Mercurs Ins. Co.*, 256 La. 289, 311, 236 So. 2d 216, 224 (1970) (dissenting opinion); *Sears v. Interurban Transp. Co., Inc.*, 125 So. 748 (La. App. 2d Cir. 1930).

9. *See, e.g.*, TEXAS REV. CIV. STAT. ANN. (Vernon 1969); FLA. STAT. ANN. § 320.59 (1968).

following *lex loci delicti* have consistently denied recovery by requiring the higher degree of negligence.<sup>10</sup>

Defenses to the merits of a suit are also considered an element of substantive law, and thus they too would be determined by the law of the place of the wrong.<sup>11</sup> The element of damages and legal interest also came under the rule of *lex loci delicti* as part of the body of substantive law.<sup>12</sup> The foreign law would determine not only what rate of interest should be awarded, but also at what point in the litigation it should begin to accrue.<sup>13</sup> The foreign law would also be adopted by Louisiana courts to determine the proper parties to bring a cause of action, especially under wrongful death statutes.<sup>14</sup>

### *The Direct Action Statute*

Although *lex loci delicti* required the application of the substantive law of the state where the wrong occurred, the forum was to apply its own procedural law. This was illustrated in *Honeycutt v. Indiana Lumbermans Mutual Insurance Co.*,<sup>15</sup> where a Louisiana court applied Texas' Guest Statute requiring wanton negligence, but refused to apply Texas' Dead Man Statute, which would have excluded the testimony of one of the parties to the accident. The court ruled that, "[s]ince the matter before the court was one of procedure relating to matters of evidence, the rules of evidence in this state should prevail."<sup>16</sup>

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10. *Johnson v. St. Paul Mercury Ins. Co.*, 256 La. 289, 236 So. 2d 216 (1970); *Sullivan v. Hardware Mut. Cas. Co.*, 260 So. 2d 35 (La. App. 3d Cir. 1972), *remanded*, 278 So. 2d 30 (1973); *Orestiadou v. Succession of Andrews*, 236 So. 2d 884 (La. App. 3d Cir. 1970); *Blanchard v. Blanchard*, 180 So. 2d 564 (La. App. 3d Cir. 1965); *Honeycutt v. Indiana Lbr. Mut. Ins. Co.*, 130 So. 2d 770 (La. App. 3d Cir. 1961); *Blount v. Blount*, 125 So. 2d 66 (La. App. 1st Cir. 1960); *Cone v. Smith*, 76 So. 2d 46 (La. App. 2d Cir. 1954).

11. RESTATEMENT OF CONFLICT OF LAWS § 388 (1934). Thus in *Smith v. Northern Insurance Co.*, 120 So. 2d 309 (La. App. Orl. Cir. 1960), a finding that the driver of the automobile was guilty of wanton negligence precluded the defense of contributory negligence, following the decisions of the Alabama courts, the state where the accident occurred.

12. RESTATEMENT OF CONFLICT OF LAWS § 412 (1934). See *Fry v. Lamb Rent. Tools, Inc.*, 275 F. Supp. 283 (W.D. La. 1967); *Petroleum Prod. Corp. v. Sklar*, 87 F. Supp. 715 (W.D. La. 1949); *Holmes v. Barclay*, 4 La. Ann. 63 (1849); *Smith v. Northern Ins. Co.*, 120 So. 2d 309 (La. App. Orl. Cir. 1960).

13. *Williams v. Petroleum Hel., Inc.*, 234 So. 2d 522 (La. App. 3d Cir. 1970); *Holmes v. Barclay*, 4 La. Ann. 63 (1849).

14. *Fry v. Lamb Rent. Tools, Inc.*, 275 F. Supp. 283 (W.D. La. 1967); *Mock v. Maryland Cas. Co.*, 6 So. 2d 199 (La. App. Orl. Cir. 1942).

15. 130 So. 2d 770 (La. App. 3d Cir. 1961).

16. *Id.* at 772.

Since the courts would apply Louisiana's laws when only a procedural matter was involved, the characterization of a right as either procedural or substantive could produce significant results. That process of characterization has produced a great deal of litigation concerning Louisiana's Direct Action Statute.<sup>17</sup> The courts have struggled with the question of whether the right of direct action was a remedial one, in which case it could be enforced in Louisiana regardless of the place of the injury, or if it was to be interpreted as creating a new and substantive cause of action against the insurer. In the latter instance, *lex loci delicti* would demand that it be applied only in cases of injuries occurring within the state. This uncertainty<sup>18</sup> in the law was resolved by the Louisiana supreme court in 1967 in *Webb v. Zurich Insurance Company*.<sup>19</sup> In an exhaustive review of the prior jurisprudence and the statutory history of the right of direct action, the court concluded that there was a clearly expressed public policy to "make a fund directly available to one injured as a result of the acts of the insured, provided there are *minimum contacts* in Louisiana."<sup>20</sup> In the court's opinion there would certainly be those minimum contacts when the injury occurred in Louisiana; when the injury occurred outside of the state the Direct Action Statute could still apply, provided there was some contact between the parties and this state.<sup>21</sup> It is notable that the *Webb* case did not follow the traditional dichotomy of Louisiana conflicts cases between substantive and pro-

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17. La. R.S. 22:655 (1950), *as amended by* La. Acts 1950, No. 541: "The injured person or his or her survivors or heirs hereinabove referred to, at their option, shall have a right of direct action against the insurer within the terms and limits of the policy; and such action may be brought against the insurer alone, or against both the insured and the insurer jointly and in solido, in the parish in which the accident or injury occurred, or in the parish in which an action could be brought against either the insured or the insurer under the general rules of venue prescribed by Art. 42, Code of Civil Procedure. This right of direct action shall exist whether the policy of insurance sued upon was written or delivered in the State of Louisiana or not and whether or not such policy contains a provision forbidding such direct action, provided the accident or injury occurred within the State of Louisiana."

18. For a brief history of the direct action statute see *Webb v. Zurich Insurance Co.*, 251 La. 558, 205 So. 2d 398 (1967), and the cases cited therein.

19. 251 La. 558, 205 So. 2d 398 (1967).

20. *Id.* at 568-69, 205 So. 2d at 402. (Emphasis added.) The court referred to *Morrison v. New Hampshire Insurance Co.*, 249 La. 546, 187 So. 2d 729 (1966), for its reliance upon "minimum contacts."

21. The court found more than the minimum requirement in *Webb* "when the policy was secured in this state; from an agent of the insurer that was doing business in this state; was secured by an insured domiciled in this state; was issued for the specific purpose of protecting the public generally, including the plaintiffs, and who brought their suit at the domicile of the insured." 251 La. 558, 578, 205 So. 2d 398, 405 (1967).

cedural rights. Rather, the emphasis was placed upon the *interest* of the state in extending this right to as many persons as possible.

*Dissatisfaction with Lex Loci Delicti*

Although *lex loci delicti* had received criticism,<sup>22</sup> it had never been rejected by a Louisiana court of appeal prior to *Johnson v. St. Paul Mercury Insurance Co.*<sup>23</sup> *Johnson* involved an action for personal injuries by a guest passenger against his driver's insurer. Only Louisiana citizens were involved. However, because the accident occurred in Arkansas, the Arkansas Guest Statute<sup>24</sup> was applied, and because no proof was made of willful or wanton negligence, the case was dismissed. The court of appeal reversed, refusing to follow *lex loci delicti*. Relying on the language of *Webb* which approved the direct action whenever there were minimum contacts with the state, the court found that there were "more than the minimum contacts with Louisiana"<sup>25</sup> to enable the court to assert jurisdiction over the parties, and to apply Louisiana's law in deciding the case.

The minimum contacts formula offered a very rational solution in this case, and could have provided a foundation for further development in later cases. However, as persuasive as that opinion may have been, it was not accepted by the Louisiana supreme court. In reversing,<sup>26</sup> the court noted that *lex loci delicti* afforded a certainty of application and result which had become the "settled law" of the state which would not be "abandoned without some compelling reason." The court specifically refused to abandon *lex loci delicti* until a new rule could be formulated which would be equally workable.

*Jagers—The False Conflict of Laws*

*Jagers v. Royal Indemnity Co.*<sup>27</sup> was a suit by a Louisiana resident against her son and her son's insurer for injuries resulting from an automobile accident in Mississippi. The trial court followed *Johnson* in applying the substantive law of Mississippi and allowed recovery because it did not find that Mississippi law would have barred the suit. The defendant appealed, assigning as error that Mis-

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22. *Blanchard v. Blanchard*, 180 So. 2d 564 (La. App. 3d Cir. 1965)(concurring opinion).

23. 218 So. 2d 375 (La. App. 2d Cir. 1969), *rev'd*, 256 La. 289, 236 So. 2d 216 (1970).

24. ARK. STATS. § 75-913 (1957).

25. 218 So. 2d 375, 382 (La. App. 2d Cir. 1969), *rev'd*, 256 La. 289, 236 So. 2d 216 (1970).

26. *Johnson v. St. Paul Mercury Ins. Co.*, 256 La. 289, 236 So. 2d 216 (1970).

27. 276 So. 2d 309 (La. 1973).

Mississippi did have a rule of intra-family immunity which would have required dismissal of the suit. Although the supreme court indicated that Mississippi law would not prohibit this suit, it preferred instead to apply Louisiana law which would allow the parent's suit. In abandoning *lex loci delicti* the court noted that this case involved only Louisiana residents whose sole connection with Mississippi was the accident. The court found this to be a "false conflict of laws question" which is presented "when it is found that only a single state has an interest in the application of the law, and that the other state involved has no interest in the application of its law in the case."<sup>28</sup> The factors which would give a state a basis to apply its laws under this analysis presumably would include the citizenship of the parties, their intention to return to the state, the place where the insurance contract was made, and perhaps the registration of the vehicle in that state.<sup>29</sup> The fact of an accident occurring within the state would not of itself be sufficient to give the state the right to apply its laws, especially when none of the parties intended to remain there, to bring suit there, or to involve citizens of that state in litigation.

Thus, the *Jagers* decision would demand a different result in cases involving only Louisiana residents where relief would be denied merely because of the law of the state where the accident occurred.<sup>30</sup> The recognition that only Louisiana has an interest in the rights and obligations of the resident parties would allow effectuation of Louisiana's law of granting recovery in interspousal or guest passenger cases.

However, a question not presented in *Jagers* is what analysis the courts are to adopt in deciding cases in which two or more states have substantial contacts with the transaction. Although *Jagers* specifically discards the use of *lex loci delicti* in "false conflict" cases only, the majority's criticism of that rule is broad in scope, and leaves little reason to suppose that it will be considered valid in any conflicts problem. The opinion does not specifically adopt any of the particular conflicts formulas which it had rejected in *Johnson*,<sup>31</sup> but it does rely

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28. *Id.* at 311. The concept of the "false conflict" was taken from the work of Professor Brainerd Currie. See Couch, *Choice-of-Law, Guest Statutes, and the Louisiana Supreme Court: Six Judges in Search of a Rulebook*, 45 TUL. L. REV. 100, 106 (1970).

29. *Sullivan v. Hardware Mut. Cas. Co.*, 278 So. 2d 30, 31 (La. 1973); *Jagers v. Royal Ind. Co.*, 276 So. 2d 309, 310 (La. 1973).

30. See *Romero v. State Farm Mut. Auto. Ins. Co.*, 277 So. 2d 649 (La. 1973); Note, 48 TUL. L. REV. 149 (1973).

31. The court criticized as deficient: the "grouping of contacts" theory of *Babcock v. Jackson*, 12 N.Y.2d 473, 240 N.Y.S.2d 743, 191 N.E.2d 279 (1963); the "most significant relationship" theory of the Restatement (Second); the "proper law" theory of

upon the Restatement (Second) for certain principles to be applied in the determination of the applicable law:

- (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.<sup>32</sup>

In weighing the facts of each case in the light of those principles, Louisiana need not adopt the position of the Restatement (Second) which looks to the state with the "most significant relationship"<sup>33</sup> to the case, nor the "center of gravity" or "grouping of contacts"<sup>34</sup> test of other jurisdictions. Perhaps a further development of the "minimum contacts" formula of *Webb* and *Johnson* would yield a suitable framework. Previously the minimum contacts requirement seemed to be satisfied by mere numbers of contacts, but after *Jagers* the number would not be as crucial as their relative importance to the states and parties involved. The desire to give effect to relevant state policies and governmental interests would be of major concern and would probably be decisive in many cases. In guest passenger and intra-family suits, this would often result in the application of the law of the state where the relationship was centered because of that state's continuing interest in regulating that particular relationship. This proposition draws support from *Jagers* and the later case of *Sullivan v. Hardware Mutual Casualty Co.*<sup>35</sup> in which the domicile of the parties was stressed as an extremely important consideration.

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Professor Morris; the "governmental interest" theory of Brainerd Currie; and, the rule of the "place where the car is permanently garaged" suggested by Professor Ehrenzweig.

32. RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 6 (1969).

33. *Id.* § 145.

34. *Babcock v. Jackson*, 12 N.Y.2d 473, 240 N.Y.S.2d 743, 191 N.E.2d 279 (1963). The courts seem to use these two phrases synonymously. All three of these tests require examination of the contacts which the case has with the particular states involved, weighed on the basis of their importance and relevance to the issues in question. These formulas offer great flexibility of application, and are particularly attuned to the policy interests of the various states and rules of law since these will greatly influence the judgment as to which contacts are most important.

35. 278 So. 2d 30 (La. 1973).

The exact formula by which choice of law principles are to be weighed need not be articulated now. The immediate replacement of one mechanical rule by another would not be the most prudent way of making this transition. Rather, a method for balancing the relevant choice of law factors should be evolved on a case by case basis.

### *Workmen's Compensation*

The Louisiana Workmen's Compensation Act<sup>36</sup> does not offer any specific guidance for its application in conflict of laws questions. However, in cases involving injuries out of state, or employment relationships created out of state, Louisiana courts have been inclined to administer the Act as liberally as possible in favor of an injured workman.

The Louisiana court of appeal in *Hargis v. McWilliams Co.*<sup>37</sup> determined that Louisiana compensation benefits should be granted for injuries suffered outside of the state when the employment contract was created in the state.<sup>38</sup> The argument that the Act should have no extraterritorial effect was rejected by the court. The court emphasized the contractual nature<sup>39</sup> of the cause of action and effectively dismissed the importance of the place of the injury in the determination of the permissible application of the law.<sup>40</sup>

The question arose in *Johnson v. El Dorado Creosoting Co.*<sup>41</sup> whether Louisiana's Compensation Law could be applied to an injury

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36. LA. R.S. 23:1021-1351 (1950).

37. 119 So. 88 (La. App. Orl. Cir. 1928).

38. *Accord* *Mattel v. Pittman Const. Co.*, 248 La. 540, 180 So. 2d 696 (1965); *Ohlhausen v. Sternberg Dred. Co.*, 218 La. 677, 50 So. 2d 803 (1951); *Welch v. Travelers Ins. Co.*, 225 So. 2d 623 (La. App. 1st Cir. 1969); *Brooks v. Griggs Casing Crews, Inc.*, 136 So. 2d 693 (La. App. 2d Cir. 1961); *Cobb v. International Paper Co.*, 76 So. 2d 460 (La. App. 2d Cir. 1954); *Williams v. Travelers Ins. Co.*, 19 So. 2d 586 (La. App. 1st Cir. 1944); RESTATEMENT OF CONFLICT OF LAWS § 398 (1934).

39. The right of compensation granted an injured employee has been recognized as arising from the contract of employment rather than from any theory of tort. Thus the Act provides that its benefits will not apply "unless prior to the injury they [the employer and employee] have so elected by agreement, either express or implied, as hereinafter provided." LA. R.S. 23:1038 (1950). However, it is further provided that any contract of hiring will "be presumed to have been made subject to the provisions [of the act], unless there is as a part of the contract an express statement in writing" to the contrary. LA. R.S. 23:1039 (1950).

40. The court stated that "[i]t is immaterial under the act where the work has to be done; the law looks to the workman, not to the place where the work is done. The workman is not deprived of the protection of the law because the work is done outside of Louisiana." *Hargis v. McWilliams Co.*, 119 So. 88, 89 (La. App. Orl. Cir. 1928).

41. 71 So. 2d 613 (La. App. 2d Cir. 1954).

occurring in Louisiana when the contract of employment had been made out of state. In considering this problem, the court relied upon the United States Supreme Court decision of *Pacific Employers Ins. Co. v. Industrial Accident Commission*.<sup>42</sup> In *Pacific* the Supreme Court had refused to apply the full faith and credit clause so as to require California, the state of the injury, to defer from administering its own law in favor of the law of Massachusetts, where the employment contract had been made. It did not construe the full faith and credit clause to demand that a state forbear from exercising its

constitutional authority . . . to legislate for the bodily safety and economic protection of employees injured within it. Few matters could be deemed more appropriately the concern of the state in which the injury occurs or more completely within its power.<sup>43</sup>

The Court found the interests of Massachusetts in regulating contracts made in the state, and of California in providing for the compensation of persons injured there to be equally valid; thus, there was no constitutional bar to the application by the forum of its law.

Following that reasoning, the Louisiana court in *Johnson* allowed recovery under Louisiana's Compensation Law when the injury occurred within the state. The recognized interest of Louisiana in the safety of persons within the state, as well as the possibility that a person injured here might require aid at the public expense was held sufficient grounds for coverage by Louisiana's law.<sup>44</sup>

Louisiana decisions have upheld the application of Louisiana's Compensation Law when it is the situs of either the injury or of the contract of employment. In addition, four grounds have been suggested upon which a state could also be found to have a legitimate interest in applying its law, when it is the

place where the employment relation exists or is carried out;  
place where the industry is localized;  
place where the employee resides; or  
place whose statute the parties expressly adopted by contract.<sup>45</sup>

The right of a state to apply its compensation law has been upheld when it is the location of an injury<sup>46</sup> or of the contract of employment<sup>47</sup>; thus, the situation may arise in which an employee

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42. 306 U.S. 493 (1930).

43. *Id.* at 503.

44. *Accord* *Lisenby v. Tibbits*, 225 F. Supp. 870 (W.D. La. 1963), *aff'd*, *Lisenby v. Fidelity & Cas. Co.*, 327 F.2d 665 (5th Cir. 1964).

45. 3 LARSON, *THE LAW OF WORKMEN'S COMPENSATION* 86.10 (1973).

46. *Johnson v. El Dorado Creosoting Co.*, 71 So. 2d 613 (La. App. 2d Cir. 1954).

47. *Hargis v. McWilliams Co.*, 119 So. 88 (La. App. Orl. Cir. 1928).

may have a choice as to which state's remedy he will pursue. Moreover, he may accept benefits from one state and later attempt to claim further benefits from another state. In *Magnolia Petroleum Co. v. Hunt*<sup>48</sup> the United States Supreme Court seemed to indicate that such later suit would be barred under the full faith and credit clause by a judgment from the first state if that law declared that it was to be the sole remedy of the workman. On the basis of that decision a Louisiana court of appeal dismissed a claim of compensation in *Griffin v. Universal Underwriters Insurance Co.*<sup>49</sup> on an exception of res judicata since plaintiff had previously secured a final award from the Texas Industrial Accident Board. The supreme court reversed<sup>50</sup> on the authority of the United States Supreme Court decision in *Industrial Commission of Wisconsin v. McCartin*.<sup>51</sup> The court noted that *McCartin* limited *Hunt* in holding that a successive suit would be barred *only* when the original award was made under a law plainly purporting to be exclusive of any remedy in any other state. The provision of the Texas Compensation Statute declaring it to be the exclusive remedy of the injured employee was construed to mean only that the compensation award was to be exclusive of any other remedy *within* that state. Thus failing to find anything in the Texas law designed to preclude further recovery in another state, the court declared that Louisiana would be free to grant compensation under its own laws after allowing a credit for the amount of the Texas award.

Once an award has been granted under Louisiana's Compensation Law, the grant remains subject to all the provisions of the Act, regardless of whether the claimant later leaves the state. Thus in *Festervand v. Laster*<sup>52</sup> an award made to the widow of a worker killed in the course of Louisiana employment was held exempt from garnishment as provided by the Louisiana Act.<sup>53</sup> Even though she was then a Texas resident, the court found that the exemption from garnishment did not specifically limit that benefit to Louisiana residents.

In those cases in which the Louisiana Compensation Law is not applicable, the plaintiff may ask the court to award relief under another state's law. If the other state channels compensation claims through an administrative agency the Louisiana court will dismiss

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48. 320 U.S. 430 (1943).

49. 268 So. 2d 702 (La. App. 1st Cir. 1972).

50. 283 So. 2d 748 (La. 1973).

51. 330 U.S. 622 (1947).

52. 130 So. 634 (La. App. 2d Cir. 1930).

53. LA. R.S. 23:1205 (1950).

the case because it lacks the machinery to administer the appropriate relief.<sup>54</sup> However, if the other state's compensation claims are judicially handled the Louisiana courts feel competent to grant the remedies prescribed under the foreign law.<sup>55</sup> The desirability of such a result is questionable. At least one writer has suggested that the mere fact that another state's compensation law is judicially administered is not enough to guarantee that Louisiana courts will be able to "provide substantially all of the remedy guaranteed by the foreign statute."<sup>56</sup> It has been further suggested that the test in such cases should not be merely the method of the administration of the compensation law, but whether, in each particular case, the court possesses the power to grant substantially the same compensation as the worker would have received from the courts of the state whose law was applied.<sup>57</sup>

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54. *Smith v. Continental Nat. Am. Group*, 321 F. Supp. 1354 (E.D. La. 1971); *Mattel v. Pittman Const. Co.*, 174 So. 2d 141 (La. App. 4th Cir.), *rev'd on other grounds*, 248 La. 540, 180 So. 2d 696 (1965); *Woodham v. Travelers Ins. Co.*, 161 So. 2d 368 (La. App. 3d Cir. 1964).

55. *Smith v. Globe Ind. Co.*, 243 So. 2d 882 (La. App. 1st Cir. 1971); *Babineaux v. Southeastern Drill. Corp.*, 170 So. 2d 518 (La. App. 3d Cir. 1965).

56. Larson, *Constitutional Law—Conflicts and Workmen's Compensation*, 1971 DUKE L.J. 1037, 1044.

57. *Id.* at 1043-45.