

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

**KAREN DEMATOS AND KAREN)
DEMATOS AS PERSONAL)
REPRESENTATIVE OF THE ESTATE)
OF NICHOLAS DEMATOS,)
)
 PLAINTIFFS)
)
v.)
)
**EDUCATIONAL FUND)
INSTITUTE FOR CULTURAL)
EXCHANGE, INC.)
)
 DEFENDANT)****

Civil No. 96-104-P-H

ORDER ON MOTION TO DETERMINE APPLICABLE LAW

INTRODUCTION

In this case, a choice of law determines whether Maine’s \$75,000 cap on wrongful death damages, 18-A M.R.S.A. § 2-804(b) (1995), or Massachusetts’s unlimited recovery, M.G.L.A. c. 229, § 2 (1996), governs a Maine resident’s wrongful death claim against a Massachusetts corporation. Following the principles of the Restatement (Second) of Conflict of Laws, as Maine law dictates, I conclude that Maine law applies.

STATEMENT OF FACTS

The facts, though tragic, are straightforward. In December, 1993, Nicholas DeMatos, an eighth grade Freeport Middle School student and a citizen of Maine, learned of a study tour to France from his French teacher, Danielle Pemberton. Pemberton offered the program through Defendant EF Institute for Cultural Exchange, Inc. d/b/a “EF Educational Tours” (hereinafter “EF”), which had successfully marketed its program to Pemberton at a conference in Portland, Maine. EF is a wholly-owned subsidiary of a California corporation, and EF’s principle place of business is Cambridge, Massachusetts. In February, 1994, Pemberton began receiving EF brochures and distributing the information to interested students at Freeport Middle School. On March 13, 1994, Karen DeMatos, Nicholas’s mother and a citizen of Maine, submitted her son’s application and fee for the study tour. On June 28, 1994, the group flew from Boston to New York, and then switched planes and flew to France, arriving in Paris on June 29, 1994. On the morning of June 30, 1994, Nicholas fell from his window in the Hotel Moris in Paris, France, and died.

Nicholas’s mother now brings this wrongful death action on her own behalf and on behalf of Nicholas’s estate. Both parties seek a declaration of which law, and therefore which wrongful death cause of action, applies.

CHOICE OF LAW

In a diversity action, the choice of law principles of the forum state, Maine, govern. See Klaxon Co. v. Stentor Elec. Mfg. Co., 313 U.S. 487, 496 (1941). The Maine Supreme Judicial Court sitting as the Law Court has explicitly embraced the “most significant relationship” test of the Restatement (Second) of Conflict of Laws. See Mason v. Southern New England Conference Ass’n of Seventh-Day Adventists, 696 F.2d 135, 137 (1st Cir. 1982); Priestman v. Canadian Pac. Ltd., 782

F. Supp. 681, 685 (D. Me. 1992); Adams v. Buffalo Forge Co., 443 A.2d 932, 934 (Me. 1982). To determine which law applies, therefore, I turn to the Restatement.

Section 175 of the Restatement specifies that “[i]n an action for wrongful death, the local law of the state where the injury occurred determines the rights and liabilities of the parties unless, with respect to the particular issue, some other state has a more significant relationship under the principles stated in § 6¹ to the occurrence and the parties, in which event the local law of the other state will be applied.” Restatement (Second) of Conflict of Laws § 175 (1971) [hereinafter “Restatement”] (footnote added). Similarly, section 146, the Restatement section devoted specifically to personal injuries, directs the court to “the local law of the state where the injury occurred . . . unless, with respect to the particular issue, some other state has a more significant relationship under the principles stated in § 6. . . .” Id. § 146. These sections initially point to the

¹ Restatement (Second) of Conflicts of Laws § 6 (1971) provides:

§ 6. Choice-of-Law Principles

- (1) A court, subject to constitutional restrictions, will follow a statutory directive of its own state on choice of law.
- (2) When there is no such directive, the factors relevant to the choice of the applicable rule of law include
 - (a) the needs of the interstate and international systems,
 - (b) the relevant policies of the forum,
 - (c) the relevant policies of the 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.

application of French law, but both parties agree that French law should not apply and that both Maine and Massachusetts have a more significant relationship than France under the proper analysis. Thus, the only issue for me is whether Maine or Massachusetts law should apply. I turn therefore to section 145, “the general principle.” Section 145 states as the general principle that “the local law of the state which . . . has the most significant relationship to the occurrence and the parties under the principles stated in § 6,” shall govern. Id. § 145(1). Section 145 then gives a four-factor test for determining which local law applies:

Contacts to be taken into account in applying the principles of § 6 to determine the law applicable to an issue include:

- (a) the place where the injury occurred,
- (b) the place where the conduct causing the injury occurred,
- (c) the domicil, residence, nationality, place of incorporation and place of business of the parties, and
- (d) the place where the relationship, if any, between the parties is centered.

These contacts are to be evaluated according to their relative importance with respect to the particular issue.

Id. § 145(2); see also Adams, 443 A.2d at 934-35 (applying this four-pronged test under Maine Law).

The contacts in this case make the fourth factor, the place where the parties’ relationship is centered, determinative. The first and second factors, the place of the injury and the conduct causing the injury, are inapplicable since they point toward the application of French law, which is not urged here. The third factor results in a draw, since the decedent, the decedent’s mother and the decedent’s

estate are Maine residents, and the defendant's principal place of business is Massachusetts. Thus, I turn to factor (d), the center of the relationship between the parties.

Both parties have submitted lengthy lists enumerating the relevant contacts in each state. The contacts are difficult to weigh, since the parties urge opposite conclusions for the same contacts. The payment of the fee, for instance, is interpreted as a Maine contact by the defendants (since the money was mailed from Maine), and a Massachusetts contact by the plaintiffs (since the money was received in Massachusetts). Similar arguments are made about the signing, mailing, and receipt of the application. Overall, however, as between Maine and Massachusetts, the relationship was centered in Maine. There were, to be sure, several superficial contacts with Massachusetts (such as the receipt of the money and letter and the place where the informational brochures originated), but Maine is the state in which the defendant voluntarily attended a conference to solicit business; the defendant's agent, Pemberton, operated in Maine, carrying out the correspondence and organization necessary for the trip; the defendant's customers in this instance were a group of Maine students who learned of and planned for the study tour in Maine; and finally, all of the potential wrongful death plaintiffs—the parents of the students—were Maine citizens.

The interests of the states in having their laws applied, see Restatement § 6(2)(b), (c), also point toward the application of Maine law. See id. § 145 cmt. c (“The purpose to be achieved by the relevant tort rules of the interested states, and the relation of these states to the occurrence and the parties, are important factors to be considered in determining the state of most significant relationship.”); id. § 6 cmt. e (“A court should have regard for the[] purposes [of the relevant statutes] in determining whether to apply its own rule or the rule of another state in the decision of a particular issue.”). The primary issue here is how much money the Maine residents shall recover.

Maine has an obvious interest in that determination.² In wrongful death actions, moreover, the Restatement instructs that whatever law is selected will determine how the recovery will be distributed. *Id.* § 177. That too is a matter of primary concern to Maine where the DeMatos family lives. Maine’s statute both determines who will benefit from any wrongful death recovery and sets a statutory cap on recovery reflecting Maine’s historically conservative stance in awarding pain and suffering damages to wrongful death plaintiffs.³ Maine’s statutory limit reflects the legislature’s policy determination that Maine wrongful death plaintiffs should be compensated, but should not receive a windfall in damages for emotional loss. If Maine law were not applied, Maine’s policy of limiting damage awards to wrongful death plaintiffs would be frustrated.

Massachusetts, by contrast, has little interest in the application of its law here. Its only interest is deterrence of negligent conduct by entities like the defendant. Since the negligent conduct occurred in France and the persons harmed were residents of Maine, that is a much less significant interest.

²The plaintiffs argue that an “Agreement” between the parties (contained in the study tour application) centered the parties’ relationship in Massachusetts. Specifically, the Agreement contained a clause stating that “[t]his agreement shall be governed in all respects, and performance hereunder shall be judged, by the laws of the Commonwealth of Massachusetts.” In a prior hearing, the plaintiffs conceded that the Agreement does not apply to this wrongful death action and is not determinative of the choice of law decision. *See Tr. of Proceedings*, at 14 (Sept. 3, 1996). Treating the choice of law clause as one factor in the choice of law analysis, I conclude that its use does not outweigh the Maine contacts or interest set forth in torts concerning wrongful death.

³Originally, Maine allowed no recovery for emotional loss. *See Dostie v. Lewiston Crushed Stone Co.*, 136 Me. 284, 290 (1939) (“Neither loss of the decedent’s society and companionship, nor any grief suffered by the beneficiaries has proper place in the award.”); *Carrier v. Bornstein*, 136 Me. 1, 2 (1938) (“Sentimental hurts, losses from the deprivation of society or companionship, wounds of the affections, any distress of mind, any grief, suffered by the beneficial plaintiffs, are not elements which may properly find reflection in damages.”). Not until 1967 did Maine slowly begin to allow limited emotional suffering damages, beginning with a \$5,000 allowance which has crept up over the years to the present \$75,000 limit. *See Durepo v. Fishman*, 533 A.2d 264, 266 n.3 (Me. 1987) (reciting the advent and legislative history of the statutory allowance for damages ““for the loss of comfort, society and companionship of the deceased”). A statutory cap, however, has always accompanied the allowance.

CONCLUSION

Because both the contacts and the state interest point to Maine, I conclude that the factors outlined by section 145, including the section 6 considerations, counsel the application of Maine law. Consequently, Maine law applies to this wrongful death action.

SO ORDERED.

DATED THIS 10TH DAY OF JANUARY, 1997.

D. BROCK HORNBY
UNITED STATES CHIEF DISTRICT JUDGE