

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

CLAIRE JACOBSON,)	
)	
PLAINTIFF)	
)	
v.)	Civil No. 98-248-P-H
)	
RAYTHEON AIRCRAFT COMPANY,)	
ET AL.,)	
)	
DEFENDANTS)	

**ORDER ON PLAINTIFF’S MOTION FOR DETERMINATION
THAT FLORIDA LAW APPLIES TO ISSUE OF DAMAGES**

The plaintiff has moved for a determination that Florida law applies to the calculation of damages in this case involving an airplane crash and has directed her attention to the personal injury/wrongful death claim. The motion is **DENIED**. I conclude that Maine law applies.

All parties agree that Maine choice-of-law principles apply in this diversity case. Maine has adopted the Restatement analysis. See, e.g., Collins v. Trius, Inc., 663 A.2d 570, 572-73 (Me. 1995) (citing Adams v. Buffalo Forge Co., 443 A.2d 932, 934 (Me. 1982)). Whether the case is personal injury or wrongful death, under §§ 146 and 175 of the Restatement (Second) of Conflict of Laws (1971),

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 § 6 to the occurrence and the parties, in which event the local law of the other state will be applied.¹

¹ See also Restatement (Second) of Conflict of Laws § 178 (1971), which states that “[t]he law
(Continued next page)

Here, the personal injury/death occurred in Maine. Thus, the presumption is that Maine law applies.

The principles of the Restatement (Second) of Conflict of Laws § 6 (1971), to which sections 146 and 175 refer, are:

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

Restatement (Second) of Conflict of Laws § 6(2) (1971). Section 145 of the Restatement instructs that in a tort case the “contacts” to be considered in applying section 6 are:

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

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

Restatement (Second) Conflict of Laws § 145(2) (1971).

This lawsuit arises out of a plane crash (the plaintiff’s decedent died as a result) that occurred in Maine shortly after takeoff from a Maine airport. The plaintiff claims that two of the defendants, Maine corporations doing business in Maine, improperly and negligently refueled the plane causing

selected by application of the rule of § 175 determines the measure of damages in an action for wrongful death.”

its weight to be severely unbalanced. She also claims that the other two defendants—the manufacturers of the airplane, Kansas corporations with their principal place of business in Kansas—designed defective fuel gauges and provided inadequate instruction manuals that prevented the decedent pilot from detecting the problem before takeoff or later dealing with it. At the time of the crash, the decedent pilot and his wife, the personal representative here, were citizens of Florida summering in Maine. Assessing the § 145 contacts, therefore, I conclude: (a) the injury occurred in Maine; (b) the primary conduct causing the injury—the alleged improper refueling—occurred in Maine; (c) the plaintiffs’ domicil was Florida²; two defendants were incorporated and had their principal place of business in Maine; two other defendants (actually one is the successor to the other) were incorporated and had their principal place of business in Kansas³; and (d) there was no relationship between the parties.

Applying the analysis of these contacts to the principles of section 6 of the Restatement (Second), I conclude that no other state has a more significant relationship to the occurrence and the parties.

Some additional comments. (1) If the focus is limited to the cause of action against the airplane manufacturers, I observe that they have no Maine connections under § 145(c). Furthermore, their alleged wrongful conduct would have occurred outside Maine. Nevertheless, their wrongful conduct alone would not have caused the plane crash and must be considered in conjunction with the

² At the time of the accident, the plaintiff and the decedent had a residence in Florida, at which they spent about nine and one-half months out of the year. Dep. of Claire Jacobson at 11. At the time of the accident, the plaintiff and the decedent also had a residence in Dresden, Maine, where they summered. *Id.* at 11. At the time of his death, the decedent had a Maine driver’s license listing his address on this license as Dresden, Maine. See Docket Item 36, tab 3.

³ One of them designated a registered agent in Florida.

wrongful conduct of the Maine refuelers. (2) The plaintiff argues that the plane was shipped to Florida, the site of operations of the pilot's employer. That does not create any relationship between the plaintiff and the aircraft manufacturers to assess under (d). (So far as the Maine defendants are concerned, if a relationship was created in the request for refueling, it was centered in Maine.) I still conclude, therefore, that there is no reason to overcome the presumption that Maine law applies. This conclusion is reinforced by the complexities of applying different substantive law to the parties in this jury trial involving an airplane accident. See Restatement (Second) Conflict of Laws (1971) § 6(2)(g). (3) I observe that Florida and Maine have different, competing, policies on the damages to be recovered in a wrongful death action. Maine has severe limitations on nonpecuniary and punitive damages. 18-A M.R.S.A. § 2-804(b). Florida, on the other hand, does not. Fla. Stat. Ann. §§ 768.21(2), 768.73. These competing policies do not call for overcoming the presumption that the law of Maine—where the accident occurred— applies. (4) The plaintiff argues that at least one of the Maine defendants has since moved operations to Florida. That has no effect upon my analysis of the contacts under Restatement principles. (5) Finally, Collins v. Trius, Inc., 663 A.2d 570 (Me. 1995), does not call for a different result. That case involved a bus accident in Maine involving Canadian occupants of the bus who were suing the Canadian bus owner and operator for negligence. They were in Maine in transit on a tour that originated in Canada. The Maine Law Court recognized that “the one incontestably valuable contribution of the choice-of-law revolution in the tort conflict field is the line of decisions applying common-domicile law in cases where the parties are co-domiciliaries of the same state.” Id. at 573 (citations omitted). That was the key to Trius. Maine's only contact was the fact that the accident occurred here. That was not enough to overcome otherwise exclusively Canadian contacts.

For all these reasons, I conclude that the Maine law of wrongful death damages applies to this lawsuit. The plaintiff's motion is **DENIED**.

SO ORDERED.

DATED THIS 30TH DAY OF APRIL, 1999.

D. BROCK HORNBY
UNITED STATES CHIEF DISTRICT JUDGE