

IN THE COURT OF APPEALS OF MARYLAND

No. 84

September Term, 1994

AMERICAN MOTORISTS INSURANCE CO.

v.

ARTRA GROUP, INC.

Eldridge
Rodowsky
Chasanow
Karwacki
Bell
Raker
McAuliffe, John F. (retired,
specially assigned),

JJ.

Dissenting Opinion by Raker, J.

Filed: June 22, 1995

Raker, J., dissenting:

CONFLICT OF LAWS

CONFLICT OF LAWS with its peppery seasoning,
Of pliable, scarcely reliable reasoning,
Dealing with weird and impossible things,
Such as marriage and domicil, bastards and kings,
All about courts without jurisdiction,
Handing out misery, pain and affliction,
Making defendant, for reasons confusing,
Unfounded, ill-grounded, but always amusing
Liable one place but not in another
Son of his father, but not of his mother,
Married in Sweden, but only a lover in
Pious dominions of Great Britain's sovereign.
Blithely upsetting all we've been taught,
Rendering futile our methods of thought,
Till Reason, tottering down from her throne,
And Common Sense, sitting, neglected, alone,
Cry out despairingly, "Why do you hate us?
Give us once more our legitimate status."
Ah, Students, bewildered, don't grasp at such straws,
But join in the chorus of Conflict of Laws.

Chorus

Beale, Beale, wonderful Beale,
Not even in verse can we tell how we feel,
 When our efforts so strenuous,
 To over-throw,
 Your reasoning tenuous,
 Simply won't go.
For the law is a system of
 wheels within wheels
Invented by Sayres and Thayers and Beales
 With each little wheel
 So exactly adjusted,
 That if it goes haywire
 The whole thing is busted.
So Hail to Profanity,
 Goodbye to Sanity,
Lost if you stop to consider or pause,
On with the frantic, romantic, pedantic,
Effusive, abusive, illusive, conclusive,
Evasive, persuasive Conflict of Laws.

Thurman Arnold, *Fair Fights and Foul: A Dissenting Lawyer's Life*
21-22 (1965) (footnotes omitted).

SECOND VERSE

If Arnold thought reason had gone from its throne
Clear back in '14, O now how he'd groan
For Babcock and Jackson had a terrible row
And seeds of new policy surely did sow.
The seeds were from plants nursed in academia's groves
And from '20 to '60 grew in great droves;
But, once out of the classroom and into the courts
The profuse little seedlings grew into sports.
Though the new growth was reason supplanting mere rites
When growing in Academe's neat little sites;
In real rows the neat rows fit nothing quite right,
And we often get darkness instead of new light.
But if light be our metaphor, mixed as it is,
Old light was dimmer and fuzzy as fizz;
Nothing it showed but shadow to fools
Who mistake simple outlines for the sureness of rules.
Now New light makes "sense" always the goal
And explores each case nuance with the Restated tools
So, Lawyers, relax, break up the old straws,
And join in the chorus of Conflict of Laws.

McLaughlin, *Conflict of Laws: The New Approach to Choice of Laws: Justice in Search of Certainty, Part Two*, 94 W. Va. L. Rev. 73, 108 n.65 (1991).

Today, the majority fails to shed new "light" on the murky maze of Conflict of Laws. Instead, in an unwarranted departure from the bedrock of Maryland choice of law in contract cases -- *lex loci contractus* -- the majority adopts a "limited *renvoi* exception." Majority Op. at --. In so doing, it unwisely qualifies a solid, predictable rule in favor of the often criticized and rejected doctrine of *renvoi*.¹ In my view, it makes

¹*Renvoi* has been rejected not only by most scholars, but also by most of our sister states and the Restatement (Second) of Conflict of Laws (1971), except in special circumstances not relevant in the instant case. See *Cooper v. Ross & Roberts, Inc.*,
(continued...)

no "sense" in the instant case to curtail Maryland's well-established rule.

Moreover, the facts of this case do not lend support to the engrafting or the application of *renvoi*. Under an Illinois choice-of-law analysis, Illinois would most likely apply Illinois substantive law to interpret the insurance contract, *not* Maryland

¹(...continued)

505 A.2d 1305, 1307 n.3 (Del. Super. Ct. 1986); *Polglase v. Greyhound Lines, Inc.*, 401 F. Supp. 335, 337 (D. Md. 1975); *Hobbs v. Firestone Tire & Rubber Co.*, 195 F. Supp. 56, 59 (N.D. Ind. 1961).

This doctrine has also been soundly rejected by most early scholars and judges. Professor Lorenzen concluded:

The *renvoi* doctrine, is therefore, no part of the conflict of laws of the United States. Its introduction into our law would be most unfortunate on account of the uncertainty and confusion to which it would give rise in the administration of justice and its demoralizing effect upon the future development of the Conflict of Laws.

Lorenzen, *The Renvoi Theory and the Application of Foreign Law*, 10 Colum. L. Rev. 327, 344 (1910). In a later article, Professor Lorenzen noted that "[n]o proper system of the conflict of laws can be built up among the civilized nations as long as this doctrine remains." Lorenzen, *The Renvoi Doctrine in the Conflict of Laws -- Meaning of "The Law of a Country,"* 27 Yale L.J. 509, 528 (1918). He concluded that "[i]ts days ought to be few after its deceptive character is fully understood." *Id.* at 529. See also Schreiber, *Doctrine of Renvoi in Anglo-American Law*, 31 Harv. L. Rev. 523, 571 (1918) ("An examination into its merits and demerits will, it is believed, require its rejection in all but the most exceptional cases.").

substantive law.² Thus, this is not a case in which both the foreign state and the forum would apply the law of the forum.

I believe that today's decision will lead to uncertainty, confusion, and unpredictability. Accordingly, I respectfully dissent.

²See *Sandfer Oil & Gas, Inc. v. ALG Oil Rig of Texas, Inc.*, 846 F.2d 319, 324 (5th Cir. 1988) (finding that the location of the risk is less significant when the policy covers risks in several states); *Gould, Inc. v. Continental Casualty Co.*, 822 F. Supp. 1172, 1176 (E.D. Pa. 1993) (same); *St. Paul Surplus Lines Insurance Co. v. Diversified Athletic Services*, 707 F. Supp. 1506 (N.D. Ill. 1989) (same); RESTATEMENT (SECOND) CONFLICT OF LAWS §§ 188, 193 (1971); see also *Continental Insurance Co. v. Beecham, Inc.*, 836 F. Supp. 1027 (D.N.J. 1993) (finding that for environmental damage cases, application of the law of the state of the pollution cite would lead to inconsistent results); *Potomac Elec. Power Co. v. California Union Ins. Co.*, 777 F. Supp. 968, 972 (D.D.C. 1991) (deciding that the state containing the headquarters of the insured was the state with the most significant contacts).