Online Appendices
Klerman & Spamann, Law Matters – Less Than We Thought

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OA.1 2017 Invitation Letter

Re: Invitation to Participate in an Experiment at the Harvard/FJC Law & Society Program

Dear Judge:

I look forward to welcoming you to the session on "Theories and Empirics of Judicial Decision-Making" at the Harvard/FJC Law & Society program on April 10 at 10:45am.

In agreement with the FJC, I will use the first 50 minutes of my session for an experimental study of judicial decision-making. I hope you will participate in the study, but participation is entirely voluntary.

If you do participate, you will be asked to judge a fictitious case, and provide brief reasons for your decision on a piece of paper. The goal of the study is to learn about legal reasoning and the role of various factors therein. I am not testing your knowledge of, or opinions about, particular legal issues.

Your answers will be anonymous. All relevant legal materials will be provided to you.

The attached form describes the study as required by Harvard's Institutional Review Board (IRB). If you choose to participate, the IRB also requires that I obtain your signature on this form to document your consent. I will distribute paper copies of the form at the event, but if you wish, you may also bring a signed form with you. Your name and signature will be kept entirely separate from the study document, and will not be linked to your study answers in any way.

If you have any questions about the study, please do not hesitate to contact me. I look forward to meeting you on April 10.

OA.2 2017 Email to Repeat Participants

[Subject: FJC/HLS Seminar, April 10]

Dear Judge ___:

Denise Neary (FJC) told me you were planning to attend the FJC/Harvard Law & Society Seminar again on April 10. I look forward to welcoming you back.

I am reaching out to you because I will again offer a study as I did two years ago, and discussed last year. If you were in attendance at those sessions, you are still very welcome to participate in this year's study, which is different from the last one. That said, to minimize interference of the two studies with one another, it would be great if you did not discuss the last study with other seminar participants until after my session. I would really appreciate your cooperation.

Sincerely yours,

Holger Spamann

OA.3 2017 Opening Remarks

Good morning, your honors.

My name is Holger Spamann, and I am a professor here at the law school.

It is truly a great pleasure and a privilege to be able to talk to you today.

As you know from Denise and from my letter, I have prepared an exercise for you, and I suggest we get started on that right away so that we have enough time for discussion later.

You will find in front of you a binder and an envelope with your name on it. If the name is not yours, please let my assistants know and we will change it.

The name is on the envelope only so that we could keep track of the materials as we distributed them. Your name is not on any other document and will not be linked to your answers in any way. Your answers will be completely anonymous.

The only document that is not anonymous is the consent form, which is the first document you will find in the envelope. The form is required by Harvard's rules for research. Please sign the consent form if you want to participate. When we collect the materials, we will separate the consent form from the other materials, so that your name will not be linked to your answers.

Everything else is explained in the instructions in the envelope. You have up to 50 minutes to complete the exercise. When you are done, please return the full stack of materials to me or one of my two assistants, Brooke and Jeremy. We will then give you an exit survey to complete. Once everyone is done, I will debrief.

Please begin. I hope you will find this interesting and educational.

OA.4 2018 Invitation Letter

Re: Invitation to Participate in a Study in Preparation for the Harvard/FJC Law & Society Program

Dear Judge X:

I look forward to welcoming you to the session on "Empirical Studies of Judicial Decision-Making in the U.S. and Abroad" at the Harvard/FJC Law & Society Program on April 25.

The most interesting data are those that we generate ourselves. I invite you to participate in the enclosed study so that we can discuss it at the session. The maximum time you should spend on the study is 50 minutes, and you can do it at any time before you arrive at Harvard. You can submit your answers online at [link specific to treatment condition], or write them on the enclosed form [which contained a file number that encoded the treatment condition] and hand the form to me on the first morning of the workshop (April 23).

Your answers will be anonymous. The study is designed to generate information about judicial decision-making in general. I am not testing your knowledge of, or opinions about, particular legal issues.

I hope you will participate in the study, but participation is entirely voluntary. The attached form describes the study as required by Harvard's Institutional Review Board (IRB).

If you have previously participated in a session that I offered at the Harvard/FJC Program or read about it, you may still participate in the study if you wish, but you should know that I will not use your answers in analyzing and discussing the results.

If you have any questions about the study, please do not hesitate to contact me. I look forward to meeting you on April 25.

OA.5 Instructions for Participants

Instructions

Please imagine you are sitting by designation in the District of [Wyoming / South Dakota]. One of the judges in the District of [Wyoming / South Dakota], Judge Frederick Simmons, had a stroke and is on disability leave. You have been assigned his cases.

One of Judge Simmons's cases is Parker v. Rogers. Judge Simmons held a bench trial in that case and drafted Findings of Fact and Conclusions of Law. Damages, however, depended on whether Kansas's statutory cap on non-economic damages applied. Judge Simmons, therefore, ordered both parties to brief whether Kansas or Nebraska law should apply. Unlike Kansas, Nebraska does not cap non-economic damages. Judge Simmons asked both parties to submit their briefs simultaneously, without response or reply.

Your packet of materials includes:

- *Judge Simmons's Findings of Fact and Conclusions of Law*
- *Defendant's Memorandum for Application of Kansas Law*
- *Plaintiff's Memorandum for Application of Nebraska Law*
- *Full texts of all cases, statutes, and other materials cited in the parties' memoranda*
- *A form for recording your decision and reasoning*

Your task is to decide whether Kansas or Nebraska law applies to the calculation of damages.

[2017 version:]

> *Please do NOT access any information other than the information in your packet, and please do NOT talk to your neighbors until the study is completed.*
>
> *You have 50 minutes to reach a decision and submit a brief summary of your reasoning on the paper provided.*

[2018 version:]

> *While working on the task, please do NOT access any information other than the information in your packet, and please do NOT discuss the task or issues it raises with anyone until you have finished.*
>
> *In your own interest and that of the study, please spend no more than 50 minutes on this task, including time reading the materials and writing the brief summary of the reasons for your decision.*

Please write and submit your decision and the brief summary of your reasoning either

online at [treatment specific link]

or

on the paper provided and hand it to me the first morning of the Program (April 23).

OA.6 Judge Simmons's Findings of Fact and Conclusions of Law

[NB: Words in square brackets indicate words, phrases, or sentences that differ by treatment condition, as explained in section 2.3. Some formatting and spacing has been removed for brevity.]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF [FORUM STATE]

BEATRICE PARKER,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CIV 14-4149-[3-letter treatment code]
	)	
GARY ROGERS,	)	
	)	
Defendant	)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After a non-jury trial in the above captioned matter, and review of the pleadings filed by the parties, the Court makes the following Findings of Fact and Conclusions of Law.

Findings of Fact

1. Plaintiff Beatrice Parker ("Parker") is a citizen of [Domicile state]. She has lived in [City in domicile state, Domicile state] all her life, works there as a [Parker's job], and plans to reside there indefinitely.
2. Defendant Gary Rogers ("Rogers") is a citizen of [Forum state]. Before the accident, he lived all his life in [City in domicile state, Domicile state], but, after the accident, he moved to [City in forum state, Forum state, reason Rogers moved to Forum state]. He plans to reside in [Forum state] indefinitely.
3. The amount in controversy between Parker and Rogers exceeds $75,000.
4. Parker and Rogers grew up in [City in domicile state, Domicile state]. They met in high school. [Description of post-high school lives]
5. In April 2014, Rogers's grandfather Edwin Rogers died. He left Rogers [description of inheritance] in [Accident state]. Rogers wanted to inspect the property but [reason he didn't have a car]. Parker offered to drive him in her [Parker's vehicle].
6. Parker and Rogers started to drive to [Accident state] in the early afternoon of May 16, 2014. They planned to reach their destination by 9 p.m. Near [City in accident state], however, the engine of the [Parker's vehicle] overheated. Parker and Rogers had to interrupt their drive and leave the [Parker's vehicle] in a garage in [City in accident state].
7. Parker and Rogers attempted to rent a replacement vehicle from Avis Car Rental in downtown [City in accident state]. However, [Parker/Rogers] got into an argument with the manager, Arjun Gupta, about the price, which [Parker/Rogers] found abusively high. When [Parker/Rogers] used a racial slur, Gupta refused to rent to Parker and Rogers. As it was then already 6 p.m., other car rentals in downtown [City in accident state] were closed, and Parker and Rogers had to go to the airport to find an open car rental. Rogers ultimately rented a [rental car type] from Hertz Rent a Car. As part of the rental, he purchased the Liability Insurance Supplement (LIS), which provides liability coverage up to $1,000,000.
8. Parker and Rogers finally continued their drive at around 8 p.m. Rogers's inheritance was located in [Small city in accident state], a small town about four hours away from [City in accident state]. Rogers drove the rented [rental car type]. Parker sat in the front passenger seat.
9. Around 11:30 p.m., Parker noticed that Rogers was tired and suggested that he pull over and take a nap. Rogers declined. After driving a little longer, he fell asleep. The car veered off the

road and hit a telephone pole while traveling approximately sixty miles per hour. The car struck the pole near the right front corner of the car such that the biggest impact was on the passenger side.

10. Rogers suffered minor injuries.

11. Parker suffered major injuries to her head, back, and right leg, including a shattered jaw and fracture-dislocated vertebrae that compressed her spinal cord.

12. Parker was trapped in the car for several hours. Emergency workers did not remove her immediately, because they thought moving her would aggravate her spinal injury. During this period, Parker endured enormous pain in her jaw, and her lower body was numb from the spinal injury.

13. Parker was hospitalized for ten weeks at the University of [Accident state] Medical Center. The injuries to her jaw, spine, and leg required multiple surgeries, including reconstructive surgery for her shattered jaw. She subsequently required extensive physical therapy to regain partial use of her leg. Her medical expenses from the surgeries, hospitalization, and subsequent treatment, including physical therapy, were $624,257.34. The treatments were successful in that she regained sufficient use of her legs to perform ordinary tasks of daily living and to pursue her chosen career as a [Parker's job].

14. Parker's injuries made it impossible for her to work for five months, until October 22, 2014. Her [salary or average commission] is $3000 per month. So the injury caused her to lose five months of income or $15,000.

15. In the weeks after the accident, Parker suffered from considerable pain in her back, legs and face. The face and leg pain has been cured and the back pain has lessened, but her doctors predict that she will continue to endure mild back pain for the rest of her life.

16. As a result of the accident, Parker has a large scar across her right cheek, in spite of extensive reconstructive surgery. Her doctors predict that the scar will remain visible for the rest of her life.

17. Although the surgeries and physical therapy allowed her to regain sufficient use of her right leg to work and to perform ordinary tasks of daily living, Parker was not able to regain full motion in her right leg, and doctors predict she never will. As a result, Parker walks with a limp, and she is unable to perform strenuous activities or play most sports. Prior to the accident, she went on eight-mile runs several nights a week and spent virtually all her vacations hiking. She is no longer able to hike or run.

Conclusions of Law

1. The court has jurisdiction over the case pursuant to 28 U.S.C. § 1332.

2. Rogers's conduct, falling asleep while driving, constitutes negligence under both Nebraska and Kansas law.

3. Damages depend on whether Nebraska or Kansas law applies. The plaintiff and defendant shall each, therefore, submit to the court, with a copy to the other party, no later than 21 days from the date of this ruling, a memorandum of points and authorities on whether Nebraska or Kansas law applies. Neither party shall file a response, opposition, or reply memorandum unless the court so orders.

4. **If Nebraska law applies to damages**, Rogers is liable to Parker for the full amount of both the economic and non-economic damages. Economic damages are $639,257.34, which is $624,257.34 in medical costs plus $15,000 in lost income. The Court finds the following amounts in non-economic damages to be fair and just considering the nature and extent of Parker's injuries: $300,000 for past pain and suffering, $200,000 for future pain and suffering, $50,000 for scarring and disfigurement, and $200,000 for loss of enjoyment of life. Non-economic damages, therefore, total $750,000. Therefore, total damages are $1,389,257.34.

5. **If Kansas law applies to damages,** Rogers is liable to Parker for the entirety of the economic damages, but non-economic damages are capped at $250,000. Kan. Stat. Ann. § 60-19a02 (2014). As noted in the preceding paragraph, economic damages are $639,257.34 and uncapped non-economic damages would be $750,000. With Kansas's cap on non-economic damages, total damages are, therefore, $889,257.34.

DATED this 3rd day of March, 2018.

BY THE COURT

FREDERICK W. SIMMONS
United State District Judge

OA.7 Sample Legal Briefs

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ATTORNEY FOR PLAINTIFF

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF SOUTH DAKOTA

BEATRICE PARKER,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CIV 14-4149-SKS
	)	
GARY ROGERS,	)	
	)	
Defendant	)	

PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF APPLICATION OF NEBRASKA LAW

Under *Klaxon Co. v. Stentor Elec. Mfg. Co.*, 313 U.S. 487 (1941), this Court must apply South Dakota's choice of law rules. The South Dakota Supreme Court has made clear on numerous occasions that South Dakota employs the *Restatement (Second)* approach to choice-of-law issues. *See Andrews v. Ridco, Inc.*, 863 N.W.2d 540, 554 (S.D. 2015); *Chambers v. Dakotah Charter*, 488 N.W.2d 63, 67 (S.D. 1992). In tort cases, the *Restatement (Second) of Conflict of Laws* § 145(1) states that the law of the state with "the most significant relationship to the occurrence and the parties" applies. "Contacts to be taken into account … include (a) the place where the injury occurred, (b) the place where conduct causing the injury occurred, (c) the domicile [and] residence … of the parties, and (d) the place where the relationship, if any, between the parties is centered." *Id* at § 145(2). These provisions govern "the measure of damages," *id* at § 171, including "what limitations, if any, are imposed upon the amount of recovery." *Id* at § 171 cmt. a.

Contacts (c) and (d) mentioned in *Restatement (Second) of Conflict of Laws* § 145(2) both suggest that Nebraska is the state with "the most significant relationship" to the dispute. As to contact (c), both Beatrice Parker and Gary Rogers resided and were domiciled in Nebraska at the time of the accident, for most of their lives, and immediately after the accident. Beatrice Parker continues to live in Nebraska. Although Gary Rogers moved sometime after the accident, his unilateral, post-accident actions should not influence applicable law. As to contact (d), Nebraska is clearly where the relationship between the parties was centered. Nebraska is where Beatrice Parker and Gary Rogers met, where they planned their trip to Kansas, and where they returned after the accident.

Contacts (a) and (b) mentioned in *Restatement (Second) Conflict of Laws* § 145(2) both point to Kansas, because that is where the accident took place. Nevertheless, the *Restatement (Second)* makes clear that in "common domicile" cases like this one, the state where both parties were domiciled and where their relationship was centered is the state with the most significant relationships:

> When the plaintiff and defendant are domiciled in the same state, and particularly if in addition there is a special relationship between them which is centered in this state, it would seem that this state is likely to be the state with the most significant relationship with respect to the issue of damages.

Restatement (Second) Conflict of Laws § 171 cmt. b.

The Supreme Court of South Dakota has decided two common domicile tort cases since adopting the *Restatement (Second)* in 1992. In both cases, the Court decided that the state where plaintiff and most defendants resided was the state with the most significant relationship and applied the law of that state, even though it was not the state where the injury took place.

Chambers v. Dakotah Charter, 488 N.W.2d 63, 67 (S.D. 1992) is the case in which the South Dakota Supreme Court adopted the *Restatement (Second)*'s most significant relationship approach to choice of law. The suit involved a South Dakota plaintiff who sued a South Dakota corporation for injuries the plaintiff sustained in Missouri while falling from the steps of defendant's bus. Although Missouri was the place of injury, the Supreme Court of South Dakota applied South Dakota's law of comparative negligence. The court emphasized that "South Dakota was the domicile, residence, place of incorporation, and place of business of the parties, as well as the place where the relationship of the parties was centered." *Id.* at 68.

In *Selle v. Pierce*, 494 N.W.2d 634 (S.D. 1993), a Nebraska resident filed a defamation action against another Nebraska resident regarding a defamatory letter mailed to South Dakota. Even though the plaintiff's business and social reputation in South Dakota was injured by the defamation, the Court applied Nebraska law, which barred punitive damages, because the parties resided in Nebraska and the relationship between plaintiff and defendant was "centered" in Nebraska. *Id.* at 637.

South Dakota's application of the law of the place of common domicile is in accord with the decisions of nearly all states that have adopted the *Restatement (Second)* and other modern choice-of-law methods. So, for example, Symeon Symeonides, a leading choice-of-law scholar, concluded:

> When both the tortfeasor and the injured party are domiciled in the same state, judicial opinions converge on the proposition that the state of common domicile has a better claim to apply its law… All together, a total of 50 common-domicile cases have reached 34 state supreme courts with, and since, the abandonment of the *lex loci delicti* rule. Forty-four of these cases (or 88%) applied the law of the common domicile, and six cases (12%) did not.... Of the latter cases, two were factually exceptional, one was overruled, and the remaining three are probably discredited.

Symeon Symeonides, *The American Choice of Law Revolution: Past, Present and Future* 155 (2006).

Symeonides does mention one case that is superficially similar to this case and which applied the law of the place of accident. *Peters v. Peters*, 634 P.2d 586 (Haw. 1981); Symeonides, *supra* at 155. In that case, a husband and wife, who resided in New York, rented a car in Hawaii and got into an accident there. The wife sued the husband, and the court applied Hawaii law, which barred suit between spouses. The court applied Hawaii law because the defendant had purchased insurance from the rental car agency, and the court thought the rental car agency would have calculated premiums based on the assumption that Hawaii law would apply. The court therefore concluded that it would be improper for the rental car agency to have to pay a claim that would have been barred by Hawaii law. *Peters* does not provide justification to deviate from the law of the place of common domicile for several reasons. First, *Peters* was decided by the Hawaii Supreme Court, and so, unlike *Chambers* and *Selle*, the South Dakota cases discussed above, it is not binding authority. Second, unlike South Dakota, Hawaii does not apply the *Restatement (Second)*'s "most significant relationship test," but instead performs "an assessment of the interests and policy factors involved." *Peters*, 634 P.2d at 593. Third, when a car is rented in Hawaii, it is absolutely clear that the car will only be driven in Hawaii, because Hawaii is an island. It thus makes sense that both the rental car agency and renter would expect Hawaii law to apply. In contrast, when, as in this case, a car is rented in Wichita, which is less than 60 miles from the border with Oklahoma and easy driving distance to Nebraska and Missouri, neither the rental car agency nor the renter has a reasonable expectation that Kansas law will apply.

Thus, the overwhelming weight of authority, both in South Dakota and elsewhere, supports the application of Nebraska law, because both plaintiff and defendant were domiciled in Nebraska before and after the accident, and because their relationship was centered there.

Respectfully submitted, March 24, 2017.

By: / s / Jeffrey G. Klosterman

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ATTORNEY FOR DEFENDANT

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF SOUTH DAKOTA

BEATRICE PARKER,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CIV 14-4149-SKS
	)	
GARY ROGERS,	)	
	)	
Defendant	)	

DEFENDANT'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF APPLICATION OF KANSAS LAW

Klaxon Co. v. Stentor Elec. Mfg. Co., 313 U.S. 487 (1941) requires a district court to apply the same choice-of-law methods as the state in which the district court is sitting. In resolving choice-of-law issues in tort cases, South Dakota applies the *Restatement*'s "most significant relationship test." *Burhenn v. Dennis Supply Co.*, 2004 S.D. 91, ¶ 24, 685 N.W.2d 778, 784 (S.D. 2004); *Selle v. Pierce*, 494 N.W.2d 634, 635-36 (S.D. 1993); *Restatement (Second) of Conflict of Laws* § 145(1).

Kansas is the state with the most significant relationship to this dispute, because that is where the accident took place. In addition, Kansas was the place where Gary Rogers rented the car, where Beatrice Parker and Gary Rogers's journey in the rental car began, where they planned to inspect Rogers's inheritance, and where their journey in the rental car was anticipated to end.

Under the *Restatement (Second)* there are four contacts that courts analyze: "(a) the place where the injury occurred, (b) the place where conduct causing the injury occurred, (c) the domicile [and] residence … of the parties, and (d) the place where the relationship, if any, between the parties is centered." *Restatement (Second) of Conflict of Laws* § 145(2). The first two contacts point unambiguously toward Kansas, because that is where the accident occurred. The third contact, the parties' residence and domicile, is unhelpful, because it does not point to a single state. While Beatrice Parker resides and is domiciled in Nebraska, Gary Rogers resides and is domiciled in South Dakota.

While it is true that the South Dakota Supreme Court has twice decided cases in favor of the law of the place of common domicile, *Chambers v. Dakotah Charter*, 488 N.W.2d 63 (S.D. 1992); *Selle v. Pierce*, 494 N.W.2d 634 (S.D. 1993), those cases do not support application of Nebraska law in this case for two reasons. First, as noted above, this is not a "common domicile" case, because Beatrice Parker is domiciled in Kansas, and Gary Rogers is domiciled in South Dakota. Second, neither *Chambers* nor *Selle* involved a situation, like that presented here, in which

the injury and injurious conduct were both entirely in a single state that was different from the state where the parties resided or were domiciled. When injury and injurious conduct are in the same state, as in this case, the first two of the *Restatement (Second)* factors point toward the same state, and that state has a powerful interest in applying its own law. Neither of the South Dakota Supreme Court cases was of this kind.

Chambers v. Dakotah Charter, 488 N.W.2d 63 (S.D. 1992), is very different from this case. First, as noted above, "the principal conduct which allegedly caused the injury" (the distribution of candy on the bus) and the injury (slipping on candy and falling off a step of the bus) did not happen in the same state. It is unknown where the wrongful conduct occurred, but the court is clear that it did not happen in Missouri, where the injury occurred. *Chambers*, 488 N.W.2d at 68. This bifurcation of wrongful act and injury between two states made it less plausible that either would be the state with "the most significant relationship" and heightened the significance of the common domicile. Second, the Court in *Chambers* noted that the bus involved in the accident was "on an interstate journey from South Dakota to Arkansas. It was merely fortuitous that [the plaintiff] slipped while the bus was passing through Missouri." *Id.* In contrast, the fateful journey in this case took place entirely in Kansas. Gary Rogers rented the car in Wichita, and Beatrice Parker and Gary Rogers intended to drive from there to a place in Kansas and then back again to Wichita, where they would have to return their rental car.

Selle v. Pierce, 494 N.W.2d 634 (S.D. 1993) also points towards application of Kansas rather than Nebraska law. In *Selle*, the injury was spread over several states. The plaintiff's reputation was injured in his home state, Nebraska, as well as in South Dakota. In fact, because the defamatory words primarily concerned the plaintiff's activities in Nebraska, that state was not only the state of common domicile, but also the place where the brunt of the injury occurred. *Id.* at 637. In contrast, in this case, the injury to Beatrice Parker, as well as Gary Rogers's conduct, both occurred entirely in Kansas.

Cases from outside South Dakota support the application of Kansas law in this case. A Hawaii Supreme Court case, *Peters v. Peters*, 634 P.2d 586 (Haw. 1981), is very similar to this case. In that case, the plaintiff and defendant, Mr. and Mrs. Peters, both resided in New York. They flew to Hawaii, where they rented a car. While Mr. Peters was driving, their car collided with a truck and Mrs. Peters was injured. The issue was whether the court should apply Hawaii law, which barred suits between spouses, or New York law, which did not. The Court held that Hawaii law should apply because the journey that resulted in the accident took place exclusively in Hawaii, even though both Mr. and Mrs. Peters were domiciled in New York and even though their relationship was centered there. The Court emphasized the importance of the purchase of insurance in Hawaii for the rental car. It noted that the "the insurance policies covering them undoubtedly were written with the laws of Hawaii in mind. To have New York law govern a tort action arising from the operation of such a vehicle would, of course, contravene the expectations of both insurer and lessor." *Id.* at 594. Similarly, in this case, Gary Rogers purchased insurance for the rental car in Kansas, so it was the expectation of both the rental car agency and Gary Rogers that Kansas law would apply.

A leading authority on choice of law, Symeon Symeonides, acknowledges that *Peters*, *supra*, makes a justified departure from the pattern of common domicile cases. Unlike other cases deviating from that pattern, which he describes as "overruled" or "probably discredited," Symeonides classifies *Peters* as "factually exceptional." Symeon Symeonides, *The American Choice of Law Revolution: Past, Present and Future* 155 (2006). See also non-critical discussion of *Peters* in Symeonides, *supra* at 145 n. 10. This case, like *Peters*, differs factually from the common

domicile cases decided by the South Dakota Supreme Court in that both injury and injurious act occurred in the same state (Kansas). In addition, as noted above, this case is not really a common domicile case at all, because Gary Rogers is domiciled in South Dakota.

The state with the most significant relationship with the dispute is therefore Kansas, where Gary Rogers's injurious conduct occurred, where Beatrice Parker suffered injury, where Gary Rogers rented the car and purchased insurance, and where their entire journey in the rental car both occurred and was intended to occur. As a result, Kansas law, which caps noneconomic damages, should apply.

Respectfully submitted, March 24, 2017.

By: / s / Eric K. Rutledge

OA.8 Exit Survey (differences between 2017 and 2018 versions in square brackets)

Thank you very much for completing the main study! Please answer the following six short follow-up questions:

1. *What proportion of your colleagues do you think decided the case as you did?*

2. *What type of judge are you: circuit, district, bankruptcy,* [2018 only: *federal claims,*] *or magistrate?*

3. *In the cases you have decided as a judge, have you ever had to choose between the law of the place of the accident or of the parties' common domicile, as in Parker v. Rogers?*

4. *Did the case seem realistic to you? If not, why not?*

5. *What do you think this study was about?*

6. *I administered a similar* [2017: *experiment*; 2018: *study*] *at this workshop* [2017: *two*; 2018: *one and three*] *years ago, and talked about it* [2017: *last year*; 2018: *two years ago*]. *Did you take part in* [2017: *this workshop last year or the year before*; 2018: *those workshops*]*, or did you otherwise hear or read about my prior* [2017: *experiment*; 2018: *studies*]*?*

OA.9 Full Participation Matrix

Number of judges assigned (participated) [chose Kansas law] by treatment and judge type

	Treatment combinations							
Forum	WY	WY	WY	WY	SD	SD	SD	SD
Accident location	KS	KS	NE	NE	KS	KS	NE	NE
Sympathy	P	D	P	D	P	D	P	D
2017								
Circuit	1 (0)[–]			1 (0)[–]	2 (2)[0]	2 (2)[1]	2 (2)[0]	2 (2)[1]
District		1 (1)[1]	1 (0)[–]		3 (3)[1]	4 (2)[0]	3 (3)[1]	4 (4)[1]
Bankruptcy		1 (1)[1]		1 (1)[1]	2 (2)[2]	1 (1)[0]	3 (2)[0]	1 (1)[1]
Magistrate	1 (1)[1]		1 (0)[–]		2 (2)[1]	1 (1)[0][1]	1 (1)[1]	2 (2)[0]
(missing judge type information)			(1)[0]			(2)[1][2]		
2018								
Circuit	1 (0)[–]	1 (0)[–]	1 (0)[–]			1 (1)[0]	1 (0)[–]	1 (0)[–]
District	2 (1)[0]	1 (0)[–]	1 (1)[0]	1 (0)[–]	1 (1)[0]	1 (0)[–]	1 (0)[–]	2 (1)[0]
Bankruptcy	2 (0)[–]	2 (0)[–]	2 (2)[0]	3 (2)[0]	3 (2)[1]	2 (2)[1]	3 (3)[0]	2 (2)[1]
Magistrate	1 (1)[0]	1 (0)[–]	1 (0)[–]	1 (1)[0]	1 (1)[1]	1 (1)[0]	1 (0)[–]	1 (0)[–]
Total	8 (3)[1]	7 (2)[2]	7 (4)[0]	7 (4)[1]	14(13)[6]	13(12)[3]	15(11)[2]	15(12)[4]

The first number in each cell shows the number of each type of judge that we assigned to each of the 2×2×2=8 treatment combinations. The next number in each cell, in parentheses, shows the number who actually participated. The last number in each cell, in square brackets, shows the number who chose Kansas law (the cap on damages) (recall that when the forum is Wyoming (South Dakota), judges are legally supposed to choose Kansas law if and only if the accident was in Kansas (Nebraska)). When there were zero participants in a cell, we indicate the number choosing Kansas law as "[-]" because "[0]" might be misinterpreted as application of Nebraska law.

[1] We erroneously labeled this judge a district judge during randomization. For consistency, we also treat this judge as a district judge for inference. This ensures that the assignment mechanism in our randomization inference is exactly the same as that used in the experiment, as it should.

[2] While a glance at the table might suggest that these two participants must be district judges because only two district judges did not complete the study in the SD-KS-D treatment, that inference is erroneous because there was also a judge assigned to SD-KS-D who identified as a district judge and who explicitly did not finish the study. This means that we must have distributed SD-KS-D materials to one more judge by accident.

OA.10 Judgment Reasons

Judge types: B- Bankruptcy, C- Circuit, D- District, M- Magistrate.

treatment	law chosen	Judge type	reasons
			2017
SD-KS-D	KS	C	Applying the 4 factors, I think Kansas law must apply. (1) the injury happened in Kansas. (2) the conduct which led to the injury happened in Kansas, including the purchase of insurance. (3) the domicile of the parties does not require an outcome either way, because Ms. Parker lives in Nebraska and Mr. Rogers lives in South Dakota. (4) the place where the relationship is centered is Nebraska, but this is the only factor that weighs in favor of Nebraska.
SD-KS-D	KS		In the case sub judice the conflict of laws determination is controlled by the application of the forum state, South Dakota. South Dakota has adopted the Restatement (Second) of Conflict of Laws §145(1). Klaxon Co. v. Stentor Elec. Mfg. Co., 313 U.S. 487 (1941); Andrews v. Ridco, Inc., 863 N.W.2d 540, 554 (S.D. 2015). This court rules that the substantive law of Kansas controls. In reaching this conclusion, the court finds that the most significant relationship to the occurrence and the parties applies. The injury occurred in Kansas, the conduct causing the injury occurred in Kansas. Burhenn v. Dennis Supply Co. 2004 S.D. 91, 685 N.W.2d 778 (S.D. 2004). In so ruling the court notes that plaintiff Parker is a resident of Nebraska, and defendant is a resident of South Dakota. The auto was rented in Kansas, the auto was driven in Kansas, and the injury occurred in Kansas. This court finds that the most significant contacts were in Kansas.
SD-KS-D	NE	C	• The parties agree that South Dakota choice of law rules control, and that South Dakota law follows the Restatement most significant relationship test. • At the time of the relevant event, both parties were residents of Nebraska with intentions to return to Nebraska after the accident • The specific rule here does not directly regulate conduct (like for example speeding law, etc.), but rather regulates the shifting of costs that occur as a result of any type of negligent behavior. • Nebraska policy is to shift entirely the cost to the tortfeasor (as much as one can). • Kansas' policy choice of not shift[ing] full costs (and thus protecting [defendant]) not really implicate[d] here because no party is a Kansas resident who would bear cost in either instance. • We don't know what South Dakota law is, but since a cap is likely a defense + defendant does not argue for South Dakota law, we can ignore that and perhaps even assume South Dakota law is normal tort rule (although best perhaps simply to deem whole South Dakota-based argument waived) • P.S. post-accident move of domicile—not determinative in this analysis because defendant did not point to South Dakota law, but if it were posed more directly, need to avoid creating incentive to change residence to avoid large damages.

treatment	law chosen	Judge type	reasons
SD-KS-D	NE	D	Under Klaxon Co. v. Stentor Elec. Mfg. Co., 313 U.S. 487 (1941), the court must apply South Dakota's choice of law rules. The South Dakota Supreme Court holds that South Dakota employs the Restatement (Second) approach to its choice-of-law issues which, for tort cases, states that the law of the state with the "most significant relationship to the occurrence and the parties" applies. In the instant matter, the contacts to be taken into account — "(a) the place where the injury occurred, (b) the place where conduct causing the injury occurred, (c) the domicile [and] residence…of the parties, and (d) the place where the relationship, if any, between the parties is centered…" — are split equally between Nebraska and Kansas. Thus a closer examination must be made as to which of these contacts should be accorded more weight. Given the facts of this particular case, it appears that the events leading up to accident were determined largely because of the relationship of the parties; that is, their longstanding friendship and relationship or knowledge of one another. Therefore where (as here) the parties' relationship is significant to the reason why the accident took place. The place where the relationship is centered takes on more significance than the place where the injury occurred or where the conduct causing the injury occurred. Especially since, in the instant matter, the location was of a temporary nature. The reliance on Peters v. Peters is misplaced as the Hawaii Supreme Court's choice of law analysis differs vastly from that of South Dakota as it takes into account the expectations of the insurer and insured which are factors not to be necessarily considered under the Restatement approach.
SD-KS-D	NE	D	Nebraska has a greater interest in the outcome. Kansas is the location where the accident occurred; but that is all. The Restatement does not address whether the domicile of which it speaks is to be considered at the time of the injury or filing. I am inclined to believe it refers to the time of injury. Thus, the test outlined at Restatement Second Conflict of Laws is resolved in favor of Nebraska
SD-KS-D	NE	D	Domicile at time of the injury appears to be the most significant factor. The parties travel to and through Kansas does not advance the relative rights and protection afforded to the plaintiff incidental to occurrences or related to injury. Choice of law to be applied the Restatement (Second) of Conflict of Laws §145 (1). Contacts (c) and (d) point to Nebraska. Both lived in Nebraska at the time of accident -- Most significant relationship Place of common domicile is in accord with the decisions of nearly all states. Hawaii case is distinguishable on intent to rent a car in Hawaii in [unintelligible] of rental that intent not present here.
SD-KS-D	NE	B	Restatement 171* – damages issue – domicile of both parties at time of injury + defendant's post-accident change should not have an impact on the analysis. South Dakota has no more interest than Alaska. Additionally, much of the damage suffered by plaintiff – the consequences will occur in Nebraska – the effect on her income, future pain + suffering, etc. *And Burhenn v. Dennis Supply- South Dakota Supreme Court would likely so decide.

treatment	law chosen	Judge type	reasons
SD-KS-D	NE		I NORMALLY TYPE. THIS IS AWKWARD AND UNCOMFORTABLE. Using the most significant relationship test Nebraska has the most significant relationship to the occurrence + the parties. The conduct causing the injury centered around the journey to inspect the property. This journey began in Nebraska and clearly the parties intended to return. They planned the journey in Nebraska. Their relationship was centered in Nebraska and they were both residents of Nebraska. The fact that Rogers later moved is not particularly relevant. South Dakota law controls choice of law and clearly has abandoned lex loci. The choice of Nebraska law seems more in keeping with the policy + principles set forth in my brief review of its case law.
SD-KS-P	KS	D	I accept, and do not feel at liberty to disturb, Judge Simmons's factual finding that Rogers is a citizen of South Dakota, even though I might have decided the question differently. This deprives Parker's argument of much of its force. Under Restatement §145(2), factors (a) and (b) point to Kansas. Factor (d) points to Nebraska. Factor (c) is indeterminate. The comments to §145 state that "the fact…that [only] one of the parties is domiciled or does business in a given state will usually carry little weight itself." So Parker's residence carries little weight. It is true that the parties' relationship was centered in Nebraska, but the same comments state that this factor would be "the most important contact of all" only "on rare occasions." Of course, Nebraska has a strong interest in providing full compensation to its citizens, but Kansas presumably has an equally strong interest in limiting the exposure of defendants, so this is a push. I say this even though I give little weight to the Peters decision, which appears not to have given the Restatement factors adequate consideration; to have adopted a lex domicilii test when insurance is at stake; and to have recognized that it was departing from the Restatement. I don't like this result but I think it is what the law compels.
SD-KS-P	KS	B	Many of the factors applied literally could have led to a conclusion for Kansas or Nebraska. However, for me the change in rental cars breaks the close tie. All of a sudden there is a new contract for the car in Kansas, the insurance taken would certainly portend that Kansas law would apply to any dispute over coverage. This added to the fact that the inherited property is in Kansas + the accident took place in Kansas due to defendant's negligence tips the scale. As a non-legal, but still a possible thought on the sympathy scale ("I know, I know) the difference in the total award between the states is not enormous. The fact that the defendant moved after the accident does not really factor into my decision. It is more important as of the time the accident happened.
SD-KS-P	KS	B	South Dakota's choice of law rules in accordance with Klaxon and §§145 and 147 of the Restatement of the Law. In considering that South Dakota employs the Restatement (Second) approach with its most significant relationship analysis, the court finds that the Kansas cap is applicable. The place of the injury, the place where conduct causing the injury occurred is Kansas. The domicile of the parties is not a common domicile, contrary to defendant's contention, and the place where the relationship between the parties is not centered in Nebraska since Rogers moved. Therefore, Kansas law controls.

treatment	law chosen	Judge type	reasons
SD-KS-P	KS	M	While the action was commenced in South Dakota, plaintiff resided in Nebraska, defendant after the accident relocated to South Dakota, + accident occurred in Kansas. Car rented in Kansas, insurance contract entered in Kansas, subject inherited property from his decedent grandfather in Kansas, accident in Kansas, trip expected to end and indeed did end in Kansas. Parties, although domiciled at the time of the accident in Nebraska, did not share a special relationship such as husband and wife, + defendant subsequently changed domicile. His time of residence in Nebraska may have been fluid + accidental, on account of his incarceration. Plaintiff was hospitalized in Kansas for an extended period, + received rehabilitative treatment in Kansas. Rental insurance contract which provided $1 million coverage, anticipated that Kansas law would be applied, although this is not evident from the evidence presented in any event since the balance of contacts seems to weigh in favor of Kansas, it seems apparent that since the car was rented in Kansas, the inherited property is in Kansas, + the accident was in Kansas, that Kansas law should apply. All medical + rehabilitative treatment was received in Kansas, + presumably the Kansas facilities would seek reimbursement from the tortfeasor through subrogation. The shared domicile argument seems trivial in view of the number of Kansas contacts, + is insubstantial as a basis for application of Nebraska law to the circumstances.
SD-KS-P	NE	C	1. Disregard Rogers' post-accident move to South Dakota. Later, unilateral acts like that should not change applicable legal rules & consequences. [Query, what if Nebraska still followed lex loci delicti!] 2. That leaves factors under §145 split 2-2: Kansas is location of injury and wrongdoing. Nebraska was shared domicile of parties and center of relationship between them. 3. Relative importance on interstate trip? Seems artificial to confine "journey" to just rental-car trip in Kansas. Kansas has minimal interest in applying its damages rules here. See Restatement (2d) §171, comment (b). 4. South Dakota cases can be distinguished factually, but overall thrust emphasizes common location of center of relationship in Chambers. 5. Peters from Hawaii seems to be literally an outlier based on island status. The insurance contract may be the economic reality here, but rules as between plaintiff and defendant should not be affected by that insurance contract. 6. The ugly episode in this, as well as Rogers' troubled history and Parker's more virtuous life, also should not matter. 7. Bottom line — for me, center of parties' relationship trumps the more fortuitous location of the accident.

treatment	law chosen	Judge type	reasons
SD-KS-P	NE	C	The parties agree on choice of law principles/ governing cases. The two parties both lived in Nebraska at the time of the harm/the accident—the relevant events for purposes of choice of law. The factors seem strongly to favor Nebraska law. 3) domicile + 4) the center of the parties' relationship favor Nebraska. The rental car company, Hertz, whose product by its nature travels, must have an expectation that it may be subject to liability in various states and prices its insurance accordingly.* Yes, the 1) injury and 2) conduct causing it occurred in Kansas, tending to favor Kansas choice of law, at least under Peters; but Peters is "a departure from the pattern," distinctive in view of Hawaii's geographic isolation, (and perhaps unpersuasive in any event given the New York situs of the marriage, relevant to the marital-centric rule at issue in Peters.) *not sure where/how that is even pertinent, given the four relevant factors; and Hertz isn't the defendant, (but we assume stands for its insured?) I suppose the insurance/business planning re: risk issue figures into factors about the law governing the situs of the injury. But the expectations of the natural persons, as illustrated by GR's purchase of $1 million insurance coverage, seem primary. And shows he thought his exposure was high.
SD-KS-P	NE	D	The application of either state's laws would find equal support when applying the four contacts analysis of Restatement (Second) of Conflict of Laws. Nebraska is the place where the injury occurred and where the conduct causing injury occurred. Kansas is domicile of parties and the place of relationship at the time of incident. Normally domicile is controlling when applying South Dakota law, but there is support for considering the parties' relationship with the insurance company issuing a policy on a car that is not subject to a cap. Because the parties have a reasonable expectation that the policy will cover an amount of damages when driving in Nebraska, Kansas cap does not apply.
SD-KS-P	NE	D	At the time of the accident, the relationship of the parties was "centered" in Nebraska, where both parties resided. Thus, contacts (c) and (d) of the most significant relationship test point to Nebraska law as the applicable law. Most courts applying this test in similar circumstances have found (c) and (d) to be more important than either the place where the injury occurred or the negligence took place. This is true of South Dakota decisions and decisions from other jurisdictions. The exception cited by defendant, a case from Hawaii, is unique. The Hawaii Supreme Court was concerned with a particular policy—Hawaii's prohibition against interspousal suits and that expansion of the law for nonresidents would impact insurance rates for residents as well. The court noted that Hawaii has enacted its particular no-fault compulsory insurance law "to address problems related to motor vehicle liability insurance, including costs." Peters v. Peters, 634 P.2d 586, 595 (Hawaii S. Ct. 1981). No such findings have been noted with respect to Kansas insurance law, and of course, in the ordinary case, unless in Hawaii, it may be expected that cars are rented in Kansas and driven to other locations.

treatment	law chosen	Judge type	reasons
SD-KS-P	NE	M	1. more significant contacts; accident in Kansas purely fortuitous; only meaningful events were the accident and medical care (+ this finding will enable payment for medical care) — similar to Chambers (except clear accident occurring in Kansas) 2. weight of opinions seems to support this result (see Symeonides) (although not clear "common domicile case). 3. Carries out defendant's intention (perhaps plaintiff's as well) in purchasing $1M "LIS"). 4. Will do the most good in compensating the innocent victim + using insurance money to do so—insurer factors in risk of liability payment + will record its payments. 5. To rule otherwise would impose an added burden on Nebraska which would be providing care + benefits to its resident victim.
SD-NE-D	KS	C	Majority of contacts in Kansas—parties are from there. Travel began there. Restatement says it is the majority rule. Seems to follow prior South Dakota cases.
SD-NE-D	KS	D	The common domicile applies here because that was the status of the parties prior to the accident. Applying that factor as controlling the determination of choice of law here seems most consistent with the South Dakota Supreme Court's case law. The Hawaii case is not controlling and is most distinguishable by the fact that the vehicle there was rented on the islands, and clearly only would be driven there. As such reasonable expectations would warrant application of Hawaii law. [Note— in fairness to the research project— I am influenced by the fact that the damages would be higher for the severely injured plaintiff if I were to apply Nebraska law— but no insofar as to disregard the controlling authority (which is NOT pro-plaintiff in either Chambers or Selle).
SD-NE-D	KS	B	The court must apply the significant relationship test. While the conduct causing the injury + the injury itself occurred in Nebraska, the parties had a longstanding relationship centered in Kansas, both were Kansas residents when the accident occurred, and the fact that the injury occurred in Nebraska was a matter of timing, which neither party intentionally controlled.
SD-NE-D	NE	C	Both parties agree that South Dakota's choice of law rules apply. South Dakota, they agree, applies the Restatement's "most significant relationship test." That test requires the analysis of this issue in this matter under four contacts. The first two point without doubt to Nebraska—the injury occurred there and the conduct causing the injury (sleeping) occurred there. The third contact factor does not help because the parties are domiciled in two different states —Kansas and South Dakota. The fourth factor's influence is unclear here—regarding the relationship, are we looking at how the parties are personally related, i.e. how they know each other, or do we look to where the nature of the relationship that caused them to be together for this matter is centered. Perhaps in both instances, it would be Kansas, but there is an agreement that the relationship regarding the car rental is centered in Nebraska. Bottom line: in weighing the factors, I would apply the totality of the circumstances test and rule "Nebraska."

treatment	law chosen	Judge type	reasons
SD-NE-D	NE	D	Accident happened in Nebraska, car was rented in Nebraska, endpoint of trip was in Nebraska, insurance bought in Nebraska, defendant has assets in Nebraska. These factors outweigh citizenship at time of accident + location of prior relationship of parties
SD-NE-D	NE	D	I find the fact that both the insurance contract, the negligent act, and the resulting damages all occurred in Nebraska leads one to apply Nebraska law as "the most significant relationship" test requires. I am also pleased that it will possibly lead to full recovery for this injured plaintiff, but it alone is neither the underlying reason nor a factor in applying the law.
SD-NE-D	NE	D	NE Restatement (a) + (b) + insurance contract KA (c)+(d)
SD-NE-D	NE	M	Contacts: a) place of injury -> Nebraska b) per Chambers v. Dakotah Charter, because the law issue does not determine what is negligent, but only what damages are recoverable, place where conduct causing injury is important -> Nebraska c) domicile/residence -> Kansas, except Rogers at the time of action resident of South Dakota, so less important factor d) place where relationship centered -> Kansas. Also, economic consequences of injury not exclusively in Kansas
SD-NE-D	NE	M	South Dakota applies the Restatement Second approach to choice of law. Under this approach Nebraska law applies. The Restatement states that in cases of personal injury, the place where the injury occurred is a contact that plays an important role in the selection of the applicable law. It further states that where the injury occurred in a single clearly ascertainable state and when the conduct also occurred there that state will usually be the state of the applicable law. These 2 factors clearly apply here: plaintiff's injury occurred in a car accident in Nebraska. The restatement 2 has additional factors but on balance most of them lean toward applying Nebraska law. For instance our defendant no longer resides in South Dakota where plaintiff resides. Finally, as a policy matter, Nebraska has a significant interest in ensuring the damage award to those injured in its state are enforced. The accident + injury occurred entirely in Nebraska. South Dakota has no significant interest in this case or this accident, a one time event. The accident did not involve recurring business or transport between the 2 states. Hence consistent with Chambers v. Dakotah Charter, as Nebraska would be deeply affected, and South Dakota would not, the court concludes that Nebraska law governs application of damages in this case.

treatment	law chosen	Judge type	reasons
SD-NE-P	KS	D	Whereas balancing factors a and b against factors c and d could lead one to either decision, and there certainly is an argument for holding that the place of the injury should be able to regulate conduct there, that place is fortuitous, and the driver is unlikely to be influenced by its laws. In my view, it is better to apply the more predictable laws of Kansas, which the parties are more likely to be familiar with. The Hawaii case is factually exceptional, and the driver's post-accident move should not have a major impact.
SD-NE-P	KS	M	Most significant relationship test from Restatement (Second) Conflict of Laws requires four contacts to be analyzed: a) the place where the injury occurred; b) the place where conduct causing injury occurred, c) domicile and residence of the parties, d) the place, if any, where the parties' relationship was centered. Here, the injuries and conduct causing injury occurred in Nebraska. The parties' relationship was centered in Kansas (they grew up in Kansas, met in high school there, and lived there all their lives up to the time of the accident, forming the basis of the suit). The domicile and residence of the parties at the relevant time is also in Kansas. Two factors then weigh in favor of applying Kansas law, and two factors weigh in favor of applying Nebraska law. The accident occurred in Nebraska on a road trip that began and was to end in Kansas. It was fortuitous that the accident occurred in Nebraska, which militates against application of Nebraska law. Additionally Kansas law has a compelling interest in having its state's law applied where a tort occurs between individuals that share Kansas as their common domicile. For these reasons, the court will apply Kansas law to the issue of damages.
SD-NE-P	NE	C	Plaintiff's reasoning and arguments distinguishing the cases relied on by defendant are persuasive. Also, the argument of the expectations of the insurance company is persuasive.
SD-NE-P	NE	C	Very close case. The place where the conduct occurred that caused the injury in Nebraska. But both parties were domiciled in Kansas. Arguably, though their relationship was centered in Kansas, they no longer have a relationship at all. However, Nebraska has a greater interest in its choice of law because the car was rented in Nebraska, the car was presumably damaged (& Nebraska law should govern liability for that), the liability insurance was issued in Nebraska, and the premiums presumably were calculated in relationship to Nebraska. Moreover, the entire purpose of the trip was to visit Rogers' land that he owned in Nebraska, which he inherited under Nebraska probate law and for which he will pay Nebraska property taxes, even though he now lives in South Dakota. Judgment for Parker in the amount of $1,389,257.34. Applied Restatement significant relationship test, Peters— dist[inguish] the two SD cases.

treatment	law chosen	Judge type	reasons
SD-NE-P	NE	D	Nebraska is the state with the most significant relationship. Nebraska is where the negligent conduct occurred, that is where the serious injury occurred, and that is where the parties intended to travel to inspect property there. The state or states of the parties' residencies do not have the most significant relationship to or impact on the dispute.
SD-NE-P	NE	D	1. The doctrine of lex loci delicti prevails in this dispute. Unlike the facts in Chambers the facts here do not present the kind of "multi state tort actions" addressed in the Restatement of Conflict of Laws. In Chambers, the bus traveled through several states during its journey before the incident occurred. Here, all of the material facts leading to the incident occurred solely in the state of Nebraska, to wit: the car was rented in Nebraska only, it traveled through Nebraska only, the insurance coverage, presumably, covered accidents in Nebraska only (customary usage), the driver, Parker, was warned of his risks of driving in an impaired state in Nebraska only, and the injuries were sustained in Nebraska only. These compelling facts render it difficult to strip away Nebraska's greater interest in the application of its own laws to the incident. 2. To the extent a balancing of contacts is desired under the "most significant relationship" test, the court would still find that Nebraska law must apply. The common circumstances of domicile among the parties at least at the time of the accident, fails to overcome factors noted when applying the law of the location of the incident.
SD-NE-P	NE	B	The court incorporates by reference the findings of fact contained in the March 3, 2017, order by Judge Simmons. The court uses the factors found under §145(2) of the Restatement Second on Conflict of Laws. First, the place of injury and the conduct giving rise thereto is, without any question, Nebraska. There appears to be no ground for disagreement on that point. Respecting the third and fourth factors, a bright line analysis is difficult. Concerning domicile, Mr. Rogers has spent a veritable lifetime in Kansas. At least the most recent two years of his residency, however, were at the sovereign's selection given his incarceration. Further, he became a South Dakota resident immediately following the accident, thus diminishing any significant reliance on the third factor in adjudicating the choice of law controversy. These same concerns reduce the weight of the fourth factor as well. Mr. Rogers' imprisonment doubtless interfered with the usual course of his relationship with Ms. Parker as well. The analysis thus results in a strong connection to Nebraska and a much more tenuous connection to Kansas. As noted in the commentary to §145, "when the injury occurred in a single, clearly ascertainable state and when the conduct which caused the injury also occurred there, the state 'will usually supply the governing law' to most issues involving tort."* *The common domicile cases are distinguishable for reasons to be provided in a forthcoming supplemental opinion.

treatment	law chosen	Judge type	reasons
SD-NE-P	NE	B	Burhenn is dispositive that "most significant relationship test applies" in a SD state. In a federal diversity case, Klaxon makes it clear that SD's test applies. Place of car rental, destination place of insurance contract, place of accident, place of injury, place of emergency treatment, place of hospitalization, place of extended treatment, place of residences of plaintiff (including for economic and noneconomic loss) all in Nebraska. Meeting in Kansas is immaterial. Post-accident residence of defendant is immaterial.
WY-KS-D	KS	D	Accident occurred in Kansas. Wyoming, like most states, applies the law of the jurisdiction where the tort or wrong was committed. While some states recognize a distinction in applying the rule between liability and damages, Wyoming has not thus far. It would be up to the Wyoming Supreme Court to carve out exceptions to the general rule, and it has not. Wyoming "borrows" law from the jurisdiction in which the action took place, here Kansas. Absent a definitive statement from the Wyoming Supreme Court adopting a public policy exception to the general rule, Kansas law in its entirety should apply.
WY-KS-D	KS	B	1. Wyoming applies lex loci delicti = Kansas law 2. No Wyoming court has deviated from LLD — on account of public policy 3. Fed court — diversity = must apply state law as propounded by the forum's highest court 4. Common domicile doesn't seem to be enough to deviate from the rule — no guiding law on this
WY-KS-P	KS	M	Wyoming applies the rule of lexi loci delicti—the cause of action here took place in Kansas and Kansas law applies. Under Kansas law, noneconomic damages are capped at $250k. The public policy exception does not apply to the facts of this case because, as the defendant points out, the Wyoming Supreme Court has never deviated from the lex loci delicti rule on grounds of public policy. And under Wyoming law, damage caps do not violate fundamental principles of Wyoming law. The court rejects plaintiff's argument that, under the Second Restatement of Conflict of Laws, the law of the state where both parties resided should apply. And the court finds that applying the lex loci delicti rule does not violate public policy in this case. The cases cited by plaintiff are distinguishable.
WY-NE-D	KS	B	Adopt defendant's briefing on issue primarily since both were citizens of/domiciled in Kansas at the time, the emerging view applying the common domicile law should apply. Thus the Kansas cap should apply.

treatment	law chosen	Judge type	reasons
WY-NE-P	NE		A federal court sitting in diversity jurisdiction must apply state law of the forum state. Applying Wyoming law, the Wyoming Supreme Court held in Boutelle that the lex loci delicti rule remains the law. Here, the negligent operation of the vehicle occurred in Nebraska, the accident occurred in Nebraska, and the injuries were sustained in Nebraska that gave rise to damages. Moreover the Wyoming Supreme Court declined to adopt an interest analysis in determining where the action arose. Under such an analysis, Kansas has a significant interest in seeing that its law is applied to its citizens. But Wyoming has rejected such an approach even in cases of common domicile. Accordingly, Nebraska law applies.
			2018
SD-KS-D	KS	B	Informed by the Restatement (Second) on choice-of-law in tort cases, I considered the nature of the contacts comprising the most significant relationship to the occurrence-i.e., the negligent conduct and the resulting injury-and to the parties. Based on the facts relevant to this inquiry, South Dakota would look to Kansas law. The injury and the negligent conduct leading to the injury occurred in Kansas (a & b). The domicile, residence and place of work of the parties are, respectively, in Nebraska and South Dakota, making the third element a non-factor. In applying the fourth factor, the court discounted the early history of the parties-i.e., growing up together and attending the same high school-as not being relevant to the incident at issue. Were the facts slightly altered, such that Parker's car was involved and Rogers' domicile remained in Nebraska, such that he was only temporarily caring for his ailing aunt, there would be a stronger basis for the application of Nebraska law.

treatment	law chosen	Judge type	reasons
SD-KS-D	NE	C	If you are driving through Kansas, you reasonably expect that Kansas Law governs your conduct and as relevant here, specifies what is negligent and what you are liable for if your actions are negligent and you injure someone as a result of your negligence. So if Kansas caps your liability why should not that limit apply? What give the court the right to pick and choose what features of Kansas Law should give way just because the parties are from a different state? These two friends were from Nebraska, they planned their trip in Nebraska, and at the time of the accident intended to return to Nebraska. The driver has a basic duty not to be negligent to his passenger. In terms of the passenger's ability to recover from her injuries, why should it matter where the accident happened to occur? The basic duty not to be a careless driver does not vary from state to state. Why should the passenger's ability to be made whole for her injuries depend on the [locality?] of where the driver happened to fall asleep? If the two states do not really define negligence differently, and the only material difference is the cap on recovery, then the fact that the parties were both domiciled in Nebraska and their relationship was [created?] there arguably takes on more importance. Especially if Nebraska's public policy vis-a-vis recovery [? ?] differs from that of Kansas. No double there is an argument that if Nebraska has expressed a public policy in favor of full recovery for tortious conduct that should shift the balance in favor of applying Nebraska Law given the limits that Kansas imposes on damages, especially if the negligence law of Kansas and Nebraska is otherwise comparable.
SD-KS-D	NE	B	The district court, sitting in South Dakota, is required to apply the choice of law rules adopted by the South Dakota state courts. The South Dakota Supreme Court, following the majority of other courts, adopted the Restatement (Second) most significant relationship approach (rejecting the place of injury approach) in resolving multi-state torts conflicts of law. In Burhenn, a case mentioned only in passing by the defendant, the South Dakota Supreme Court focused on the center of the relationship between the parties, in applying the most significant relationship test in a wrongful death case. Restatement Section 145, Comment (d) suggests that the local law of the parties' common domicile should control if that was both the state from which the trip started and the state to which the parties intended to return. Here, Nebraska was the state where the trip began and where the trip was intended to end. Nebraska was also, at the time of the crash, the state of domicile of both parties. Restatement Section 145, Comment (e), Illustration 1 further supports the conclusion that, applying South Dakota's choice of law principles, the factors mentioned lead to the conclusion that the center of the relationship between these parties was Nebraska.

treatment	law chosen	Judge type	reasons
SD-KS-D	NE	M	Per Klaxon Co v. Stentor Electricity, the Court applies South Dakota's choice-of-law rules which apply the Restatement (2d) of Conflict of Laws. The parties raise Section 145(1) as four factors to consider, which the Court does. The Court also considers the principles stated in Section 6. For the reasons that follow, applying these legal factors to the facts as previously determined, Nebraska law applies as the law of the state with the most significant relationship. It is undisputed that the injury was caused and resulted in Kansas, but the domicile and residence at the time of the event (not at the time of the filing of this suit) was Nebraska, where the parties knew each other for years and set off with the intention of traveling to Kansas. Restatement Section 6 slightly tips the balance in that the relative intent of Nebraska where the injured party committed to the unfortunate trip (factor c), her justified expectation of recovery from any injury with her friend (factor a), the basic policies of full recovery for injury (factor c), uniformity of result between two parties near to each other and committed to the enterprise (factor b) and use of application (factor g) favor that.
SD-KS-P	KS	B	Review of the Restatement leads me to conclude that the "particular issue" involved for the "most significant relationship test" has more to do with the place where the conduct and the injury occurred and less to do with the relationship between the parties and their common domicile (accepted the plaintiff's position that the parties are commonly domiciled notwithstanding the defendant's current residence in South Dakota). Restatement § 145: "These contacts are to be evaluated according to their relative importance with respect to the particular issue." The remaining factors under § 6 are more significant than common domicile: needs of the interstate systems, relevant policies of the forum, relevant policies of other interested states (esp. Kansas limits damages and the insurance policy that covers this accident was sold in connection with a rental in Kansas). Comment e on Subsection (2): "When the injury occurred in a single, clearly ascertainable state and when the conduct which caused the injury also occurred there, that state will usually be the state of the application law with respect to most issues involving the tort." As for cases, the most comparable case is Peters v. Peters, in which similar policy considerations existed for the state in which the conduct and injury occurred.
SD-KS-P	KS	M	Applying "most significant relationship" test - car rental, car rental usage and car accident occurred in Kansas.

SD-KS-P NE D I misunderstood the assignment and drafted an order. Here it is:

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA

BEATRICE PARKER,)
)
Plaintiff,)
)
v.) No. 14-4149-SKN
)
GARY ROGERS,) Judge [judge name omitted for anonymity]
)
Defendant.)

ORDER

Plaintiff Beatrice Parker was injured in single-car accident in a car driven by Defendant Gary Rogers. Judge Frederick W. Simmons of this court conducted a bench trial on Parker's negligence claims against Rogers and issued Findings of Fact and Conclusions of Law in her favor, concluding that Rogers' conduct was negligent, and that Rogers suffered substantial economic and non-economic injuries. Parker was a resident of Nebrask, as was Rogers at the time of the accident. But the accident occurred in Kansas. Judge Simmons reserved ruling on the issue of whether Kansas or Nebraska law applies here—a significant question because Kansas, but not Nebraska, caps recovery for non-economic damages. The case has been reassigned to this court and, as explained below, the court concludes that Nebraska law applies. The court therefore awards Ms. Parker $1,389,257.34.

DISCUSSION

A federal judge sitting in diversity applies the choice of law principles of the state in which it sits, see Klaxon Co. v. Stentor Elec. Mfg. Co., 313 U.S. 487 (1941)—in this case, South Dakota. More than twenty years ago, South Dakota moved away from the traditional "lex loci delicti" standard "in favor of an approach which gives flexibility and addresses conflicts of laws issues in a responsible and equitable manner." Owen v. Owen, 444 N.W. 2d 710, 715 (S.D. 1989) (Miller, J., concurring specially). In Chambers v. Dakotah Charter, Inc., 488 N.W.2d 63 (S.D. 1992), the South Dakota Supreme Court formally adopted the "most significant relationship" approach, under which the Court applies the law the state "which, with respect to [an issue in tort] has the most significant relationship to the occurrence and the parties. . . ." 488 N.W.2d at 68, citing Restatement (Second) of Conflict of Laws § 145 (1971). That determinination will govern not only liability determinations, but the measure of damages as well. Restatement (Second) of Conflict of Laws § 171. In determining which state has the most significant relationship, the court considers the place where the injury occurred, the place where the conduct causing the injury occurred, the places of 4residence and domicile of the parties, and the "place where the relationship, if any, between the parties is centered." Chambers, 488 N.W.2d at 68.

At first blush, the four factors appear evenly balanced. As Judge Simmons explained in his ruling, the injury occurred in Kansas, and the negligence resulting in the injury (Parker's falling asleep at the wheel) occurred there, as well. Parker and Rogers met in

treatment	law chosen	Judge type	reasons

Nebraska, however, and it was in Nebraska that they formed the plan to drive to Kansas to examine Rogers' property. Rogers notes that he is no longer a Nebraska resident, but his post-accident move is not relevant to the question of what state has the most significant interest in the injury at issue.

As the Restatement explains, however, the contacts that the court takes into account "are to be evaluated according to their relative importance with respect to the particular issue." Restatement (Second) § 145. This court concludes in this case that the parties' place of residence and the location where their relationship is centered has greater relative importance than the location of the injury. Parker is a lifelong resident of Nebraska, which state has an interest in the financial wellbeing of its residents. Rogers lived all his life in Nebraska, as well, up to the time of the accident. The two have known each other since high school, and that relationship is significant because without Parker, Rogers could not have taken the road trip at all. Case law cited by the parties, as well as scholarship cited by both sides, confirms that when the parties share a common domicile, the state of domicile "has a better claim to apply its law." Symeon Symeonides, The American Choice of Law Revolution: Past, Present and Future 155 (2006).

Rogers cites Peters v. Peters, 634, P.2d 586 (Haw. 1981), where a husband and wife domiciled in New York had an accident in Hawaii. Despite their common domicile thousands of miles away, the Hawaii Supreme Court applied its own state's law to a tort action between the spousesThe court there applied Hawaii law in part because the parties had purchased insurance from a rental car agency, presumably at rates set with an eye toward damages standards of Hawaii. Rogers, similarly, purchased insurance from a rental agency in Kansas. . It is not clear that Hawaii utilizes the same "most significant relationship" test that prevails in South Dakota. And, as Parker points out, cars rented in Hawaii can only be driven there; rental car agencies in Nebraska presumably recognize cars rented there may well be driven across state borders. In any event, to the extent the insurer's expectations are relevant at all, they ought not control the question of what damages award is appropriate as a matter of law for a tort claim between two private parties. Had Rogers been driving without insurance of any kind, he may not have assets to pay the judgment, but the choice of law analysis should be the same.

The court concludes that South Dakota law applies and awards Plaintiff damages of $1,389,257.34.

ENTER:

April 23, 2018 _____
[judge name omitted for anonymity]

treatment	law chosen	Judge type	reasons
SD-KS-P	NE	B	Under the "most significant relationship" test that So. Dakota law applies in conflict of law cases, the court is to consider certain factors, but uses the words "includes," which means other factors may be considered. The first two factors favor Kansas law, the law two favor Nebraska, but other considerations include the facts that the parties were Nebraska residents before and after the accident; that Nebraska would have a vested interest in how the parties who were NE residents when the agreement to travel was made and to where the parties returned after the accident would be impacted; that similar to the bus injury case, it is happenstance that plaintiff's car broke down in KS (the car could have broken down in NE); that the parties do not cite any law to suggest that KS has some vested interest or policy in having its law apply to non-KS residents. If plaintiff has filed suit immediately, both parties would have been in NE and there would have been no question that NE law should apply.
SD-NE-D	KS	B	"The SD Supreme Ct has clearly adopted the Restatement (2d) approach to choice of law issues. Both sides agree. Thus, 4 factors are to be considered. 1. Place of injury. 2. Place where conduct causing injury occurred. 3. Domicile of parties. 4. Place of relationship between the parties. There is no question that the injury occurred in NE. The is no question that at all relevant times, the parties were domiciled in KS (the fact that one moved after the accident is not relevant as that would be a strange and artificial way to determine domicile). Their relationship was in KS. The conduct was mostly in NE (the accident, ?hat? tiredness is attributable to the entire trip beginning in KS.) The case is very similar to Chambes where the trip started in SD, the parties were domiciled in SD and the accident (admittedly perhaps not as definitive occurred in MO) The Ct applied SD law. Further a review of the Restatement shows that: (i) §171 (p. 171) that domicile is important :(2) p. 418 in discussion shows a preference for domicile in ?comment? at end of 1st full ¶ and middle of 2nd ¶; (3) again on p. 421. Illustration 1 is also very similar to this one and notes a trip starting in State X ending in X with accident in Y should use X's laws. Y is a fortuituous place of accident. Finally, although not determinate Symeonidis shows not one use of domicile. p.197&151. The Hawaii case is non-hurting and there significantly the trip was solely in Hawaii (starts and ends) whereas this case was KS to KS with a stop in NE. The rental car situation does not change the analysis"
SD-NE-D	NE	D	"Nebraska is the state of both conduct and injury and when considered relative to factors under restatement Kansas can not be considered to have a greater interest in the application of its law, to with: injury in Nebraska; negligence in Nebraska; domicile and residence variable depending on time measured; the relationship of driver/passenger is more relevant than mere friendship given issues material to controversy and accordingly relationship at time of conduct/injury is "centered" in Nebraska. Facts of contrary authority distinguishable: domicile/residence not variable and where relationship was centered was different"

treatment	law chosen	Judge type	reasons
SD-NE-D	NE	B	"S.D.'s choice of law rules apply. SD adopts Restatement (2d) approach to Choice of Law in torts cases. Restatement sets out a 4-part test. Here, the first two factors, place of injury and place of conduct, are entirely and unambiguously in Nebraska as are place of car rental and insurance contracts. The remaining two factors are murkier. While Parker's domicile has continuously been in Kansas, Rogers has moved from Kansas to S.D. Even though he moved after the accident, it is not self-evident that his current S.D. residence bears no relevance in applying the Restatement's third criterion. As for the fourth criterion, the place where the parties' relationship is centered, even though Kansas appears to have been that place, there was nothing about the relationship between these two high school acquaintances that would create the type of special relationship that would elevate this criterion to significance in directing the choice of law. For these reasons Nebraska law shall govern the assessment of damages against Rogers."

treatment	law chosen	Judge type	reasons
SD-NE-P	NE	B	This Court must apply South Dakota's choice of law rules. Klaxon. South Dakota Supreme Court employs the Restatement (Second) approach to choice-of-law matters. In tort cases, the Restatement (Second) of Conflict of Laws states that the law of the state with ''the most significant relationship to the occurrence and the parties applies." "Contact to be taken into account...include (a) the place where the injury occurred, (b) the place where conduct causing the injury occurred, (c) the domicile [and] residence ... of the parties, and (d) the place where the relationship, if any, between the parties is centered." In applying this standard, the injury and the conduct causing the injury occurred in Nebraska, under prongs (a) and (b) of the Restatement provision. The domicile and residence of the parties at the time of the accident was Kansas, although Defendant moved to South Dakota after the accident, under prong (c) of the Restatement provision. As to prong (d) of the Restatement provision, the court must consider the place where the relationship is centered. Both parties grew up in Kansas and met in high school in Kansas. At the time of the accident, they were residing in Kansas. Although the defendant argues that Kansas under the theory of "common domicile" cases the state where both parties were domiciled and where their relationship was centered is the state with the most significant relationship. Defendant quotes from Section 171 of the Restatement (Second) Conflict of Laws: "When the plaintiff and defendant are domiciled in the same state, and particularly if in addition there is a special relationship between them which centered in this state, it would seem that this state is likely to be the state with the most significant relationship with respect to the issue of damages." Although the plaintiff and defendant were domiciled in the same state at the time of the accident, the most significant relationship with respect to the issue of damages is Nebraska. Nebraska is where the accident occurred. It is the place where the plaintiff was injured by the conduct of the defendant. Plaintiff spent ten weeks at a Nebraska medical center. Nebraska is the state with the "most significant relationship to the occurrence and the parties." Therefore, defendant is liable to plaintiff for the full amount of both the economic ($639,257.34) and non-economic damages ($750,000), for a total of $1,389,257.34.
SD-NE-P	NE	B	Both the conduct and the injury took place in "a single, clearly ascertainable state": Nebraska. While it is true that the journey began in Kansas, and both were living in Kansas at the time, the journey in the rental car was entirely in Nebraska, and the Defendant has since moved to South Dakota, thus lessening the interest that Kansas has in the matter. Finally, the findings on the parties actual relationship are pretty skimpy, and there is no aspect of the relationship (so far as we can tell) that bears on the tort in question, or defenses or claims related to the tort. So Restatement Section 145(2) factors (a) and (b) strongly support Nebraska law, while factor (c) weakly supports Kansas law, while factor (c) is immaterial.

treatment	law chosen	Judge type	reasons
SD-NE-P	NE	B	1) Place injury occurred - Nebraska; 2) Place of conduct - Nebraska; 3) Domkicile < SD - cannot find anything in materials that says domicile is based @ time of event; 4) Relationship - cases relying on this element often refer to "special relationship". The materials do not appear to define this term. While the parties were not strangers, they don't have a relationship like husband and wife. Nebraska contract - gives Nebraska greater interest than other states. Restatement references cases that "the local law of the state where conduct and injury occurred has usually been applied to determine what itens are INCLUDIBLE IN THE DAMAGES" (emphasis added)
WY-KS-P	NE	D	The law of Kansas, where the accident took place, governs the issues of liability and punitive damages. However, on the facts of this case, the public policy exception to the lex loci delicti rule must be applied on the issue of noneconomic damages. The plaintiff was injured and initially treated in Kansas. She is a lifelong resident of Nebraska. After she was treated in Kansas, she returned to Nebraska. At the time of the accident, her future pain and suffering, including disability, scars, disfigurement and loss of the enjoyment of life was in Nebraska. Neither Wyoming nor Kansas has any economic stake in her future health and happiness. Therefore, pursuant to Nebraska law, no cap should be placed on her noneconomic damages.
WY-KS-P	NE	M	Wyoming's choice of law applies the lex loci delicti rule only to the substantive law of the state where a cause of action arose. Because damages caps are not substantive rules regulating tortious conduct, the default application of lex loci delicti to damages caps is not compelled by any Wyoming precedent. Here, the parties were both domiciled in Nebraska at the time of the accident. In that case, the overwhelming majority of courts apply the law of the common domiciliary state for purposes of awarding damages. Nothing stops Wyoming from following that majority rule, and it should do so here because both Wyoming and Nebraska favor full compensation to victims.
WY-NE-D	NE	B	Wyoming law, as it is right now appears to favor lex loci delicti. While the state Supreme Court may not have visited this issue in some time, that is the law as we find it. I also did not agree with D's argument that C'Hair applies - I think damages are a substantive part of a case. The argument that Wyoming Supreme Court has used the Second Restatement on occasion also seemed to be asking this court to change Wyoming law, when that is the job of the Wyoming Supreme Court. Finally, I did not agree with the public policy argument because the statute that D cited related to public entities and the purpose is to protect the government entity from exorbitant damages.

treatment	law chosen	Judge type	reasons
WY-NE-D	NE	B	"The choice of law in Whoming is lex loci delicti, apply the law of the place where the tort occurred. There is no good argument to ignore Wyoming law. There are no cases saying that the damages determination should not be subject to the rule. Damages are not procedural determination and to apply the rule to some elements of the tort but not all makes no sense to me. The existence of public policy exception without a rationale to apply it here is unpersuasive. While the common domicile rule is the apparent majority view, it isn't the rule in Wyoming. Nebraska law applies. No damage cap."
WY-NE-D	NE	M	"This is a diversity action. The court applies substantive law of Wyoming. Wyoming is the forum. It applies the rule of lex loci delicti and First Restatement of Conflict of Laws. Nebraska is where the accident occurred. This is a tort case. Damages are an element of a negligence claim. Wyoming law and the Restatement First Conflict of Laws provides that the measure of damages for a tort is determined by the law of the place of the wrong."
WY-NE-P	NE	D	"Because (1) this is a post-injury issue, and parties now live in different states, so that factor is less clear. If were a liability issue, then Kansas law applies. (2) Nebraska is place of injury, place of rental (not a big issue) (3) justice weighs in and plaintiff has significant injuries"
WY-NE-P	NE	B	"The action was filed in WYOMING. On a conflict of laws issue, the Court looks to the law of that State. WYOMING Law has adopted the lex loci delicti rule as to substantive (but NOT procedural) matters. Damages should be deemed to be a substantive, NOT procedural matter. Since the action accrued in Nebraska, the applicable damages law should apply to this case unless WYOMING recognizes an applicable exception to lex loci delicti. While Wyoming does have a statute that limits damages in actions against certain medical care providers, this does NOT suggest Wyoming has a strong inclination to cap damages. I see no public policy concern which should cause the Court to disregard the lex loci delicti rule. While I see strong merit to the common domicile doctrine, no WYOMING cases to date seem to suggest Wyoming would recognize this doctrine. It is not for me to fashion NEW WYOMING Law but, rather, to follow existing WYOMING Law. It occurred to me that this legal question could be certified to the WYOMING Supreme Court but I concluded I should make my legal findings and leave it to an appellate court to refer the question to the WYOMING Supreme Court if they so choose. As a side note & not as a part of my rationale, it occurred to me that the insurance carrier will be covering up to $1 million of the damages in this case. The policy was issued in Nebraska, presumably priced IN VIEW of NEBRASKA law and the carrier should not be surprised that Nebraska laws would apply to this case."

treatment	law chosen	Judge type	reasons
WY-NE-P	NE	B	The court shall apply Nebraska law because a federal court sitting in diversity is to apply the choice of law principles of the state in which it sits. Wyoming choice of law principles are thus controlling. Under those principles and as established by the Wyoming Supreme Court, the law of the place where the tort occurred should be applied. Because the tort occurred in Nebraska, the law of the state of Nebraska, including the lack of any cap on non-economic damages should apply. The Defendant's policy arguments are unavailing, and the decisions cited in the Defendant's brief are either inapplicable or distinguishable.