

Symeonides: Choice of Law for Products Liability

Symeon C. Symeonides, Dean of the College of Law at Willamette University, has just last week posted Choice of Law for Products Liability: The 1990s and Beyond (forthcoming on the Tulane Law Review, Vol. 78, No. 1247, 2004) on SSRN. Here is the abstract:

This Article provides a comprehensive review of product-liability conflicts cases decided by American courts between 1989 and 2004 and involving significant choice-of-law questions.

Among the Article's findings are that choice-of-law methodology plays a less significant role in the courts' choice of the governing law than do other factors, such as the number and pertinence of factual contacts with a given state. For example, regardless of methodology, in 79% of the cases in which the product's acquisition and the victim's domicile and injury were in the same state, the courts applied that state's law, regardless of whether it favored the plaintiff or the defendant and regardless of whether that state was also the forum. Among the Article's unexpected findings are that, contrary to prevailing perceptions, forum-shopping is not as common or rewarding as critics assume, and that courts do not unduly favor plaintiffs as a class nor the law or the domiciliaries of the forum state.

The Article concludes that an all-inclusive review of the cases reveals that, on the whole, the record of American courts in resolving these most intractable of conflicts is much better than one might assume from a selective reading of a few cases. However, because this record entails a heavy cost in time and resources for courts and litigants, the Article proposes a new choice-of-law rule that would produce mostly the same results as the decided cases, but much more quickly and at a lower cost.

The proposed rule differentiates between liability and damages and, within certain narrow parameters, allows plaintiffs and secondarily defendants to choose the state whose law will determine liability. Surprisingly, this rule will not favor plaintiffs more than the decided cases, but it should increase the

incentive for early negotiations with regard to damages and encourage settlements without resort to litigation.

The complete list of Prof. Symeonides' works (where are often announced on this site) can be found on the SSRN author page.