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The recent case of *Cipolla v. Shaposka* offers a good opportunity for examining a conflict of themes in the choice-of-law process.[1] Territorialism and the better rule of law are set in dramatic opposition in a case presenting a deployment of contacts not seen before in multi-state automobile accident cases.[2] The law-fact pattern is simple but provocative: The passenger is from Pennsylvania where local law holds a driver accountable for ordinary negligence. The driver is from Delaware, the place of the accident, where a guest statute holds a driver liable to a gratuitous passenger only for gross negligence or worse. The purpose of the trip is to take the passenger from the defendant's home in Delaware to the home of the former in Pennsylvania. The car is garaged and insured in Delaware. The forum is Pennsylvania, the defendant having been served after entering the state to join the plaintiff for a game of golf.[3]

The majority selects the Delaware guest statute to dispose of the passenger's claim which fails because only ordinary negligence is evident.[4] The laws of Pennsylvania and Delaware are in obvious conflict and the analysis of the policies underlying those laws and the evaluation

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1. Professor Ehrenzweig has discussed the relationship between the choice-of-law process and domestic law and argued that radical changes in the choice-of-law process are influenced by dissatisfaction with domestic laws, noting particularly the current ferment in the area of torts. Ehrenzweig, *A Counter-Revolution in Conflicts Law? From Beale to Cavers*, 80 HARV. L. REV. 377 (1966). *See also* Felix, *Interspousal Immunity in the Conflict of Laws: Automobile Accident Claims*, 53 CORNELL L. REV. 406 (1968).

2. The only case found by the court to have a law-fact pattern nearly identical to this one is Schneider v. Nichols, 280 Minn. 139, 158 N.W.2d 254 (1968). There a Minnesota passenger sued a North Dakota driver for personal injuries arising out of an automobile accident in North Dakota while the parties were on a temporary pleasure trip which began and was to end in Minnesota. Emphasizing that the driver, notwithstanding that the automobile was insured in North Dakota, was a traveling salesman recently removed from Minnesota, whose work was largely in Minnesota in a car still licensed in Minnesota and operated with a Minnesota driver's license, the Minnesota court refused to apply the North Dakota guest statute. The case was assimilated to a precedent decision where both parties were from Minnesota, that that state had an overriding interest in the relationship of the parties and in the adjudication of their rights. Kopp v. Rechtzigel, 273 Minn. 441, 141 N.W.2d 526 (1966). Although the court does not discuss the matter in such terms, it is interesting to note that a case of some difficulty—certainly not a false conflict case—is subsumed under decision in a case of false conflict.

3. Record 1a.

4. The complaint charges that the automobile was operated in "a negligent, careless, reckless, wilful and wanton manner." Record 4a. The deposition of the plaintiff, however, does not indicate that anything more than negligence could fairly be argued. It appears that the defendant's vehicle skidded on ice and ran head-on into an oncoming automobile. Record 20a-21a.

of the bases of concern of the two states reveal to the court a "true conflict." The court cannot serve two masters. The result itself cannot be greatly complained of. A true conflict is resolved in a way that avoids an arguably tenuous application of the better rule of law in a transitory cause of action based on personal jurisdiction over a non-resident conveniently assumed on the occasion of a friendly rendezvous. The decision is "safe" and the invitation to radical innovation is declined.

The route of the majority to its decision is nevertheless curious. The reasoning is twofold, based in part on interest analysis and in part on "territorial justice." These lines of development point to the same result, but they appear somewhat skewed in their relationship one to the other. The handling of the significance of the occurrence of the accident in Delaware accounts for this imbalance. To determine which state has the greater interest in the application of its own law the majority purports to weigh the contacts *qualitatively*. After aggregating the Delaware contacts against the sole fact that the passenger is from Pennsylvania (balanced of course by the fact that the driver is from Delaware), the majority treats as controlling that "it appears that insurance rates will depend on the state in which the automobile is housed rather than the domicile of the owner or driver."[5] Even assuming the context of the immediate law-fact pattern, keeping in mind that the "law of the garage" is protective of the driver and insurer, the conclusion that Delaware's contacts are qualitatively greater than Pennsylvania's seems marred by the majority's next statement. "In this analysis the fact that the accident occurred in Delaware is not a relevant contact because the Delaware statute does not set out a rule of the road."[6] If the place of injury is irrelevant, then the law of that place is irrelevant as well and whether the driver enjoys the partial immunity of a guest statute or not is in actuarial terms insignificant. Delaware would resolve this issue according to the *lex loci delicti*,[7] an approach insensitive to the reckoning of insurance rates. Pennsylvania appears more solicitous of insurers in Delaware than Delaware itself. Most states near Delaware do not have guest statutes.[8] If many claims of this kind against insurers in

5. 439 Pa. 556, 267 A.2d 856 (1970).
6. *Id.* at footnote 2.
7. Friday v. Smoot, 211 A.2d 594 (Del. 1965) (Delaware Guest and Host).
8. Only Virginia has a guest statute, CODE VA. § 8-646.1 (1957). Massachusetts has a similar rule by decisional law. Massaletti v. Fitzroy, 228 Mass. 487, 118 N.E. 168 (1917). Where recovery is sought for wrongful death, however, liability is based on ordinary negligence. Gallup v. Lazott, 271 Mass. 406, 171 N.E. 658 (1930). Connecticut in 1927 was the first state to enact a guest statute. It was repealed in 1937, CONN. GEN. STAT. § 540E (Supp. 1939). The Vermont guest statute was recently repealed, VT. LAWS 1970, Ch. 194.

Delaware arise from accidents in those states, presumably these are figured into policy rates. If very few are presented, Pennsylvania still seems to insist on being "more Roman than the Romans."[9]

In seeming paradox the majority makes large use of the fact that the accident occurred in Delaware as it looks beyond the expectations of insurance companies to risks fairly to be imposed upon the driver. Professor Cavers is quoted as authority for the territorial theme which underlies the proposition that one who acts within his home state should not be put to the hazard of more demanding standards of conduct or higher limits of financial protection when he deals with persons from states which provide rules of compensation more favorable to plaintiffs.[10] Professor Cavers' principles of preference are an admirable blend of domiciliary (relational) and territorial indexes for the choice-of-law process, but the present fact situation is at one remove from the situations upon which he has expressly articulated his views. In so taking Professor Cavers, the majority makes a rule out of what is intended as a principle of preference, thus making universal what is intended to be typical. Professor Cavers has argued for a case by case development of doctrine in elaboration of his principles of preference. What is now objected to is the paucity of reasoning in the opinion to show a rationalized connection between the event and the choice-of-law principle assumed to control the issue arising out of it. While the reliance of the majority upon Professor Cavers' views is supportable by inference or implication, it is not demanded by any express statement.[11]

This is not the same case as when a Pennsylvania resident strikes up a guest-host relationship with a Delaware resident for a ride between points in Delaware. Here, just as it may be said that the plaintiff has exposed himself to the operation of the Delaware guest statute by accepting a ride there, so it may be said that the Delaware driver has

9. *Cf.* Frankfurter, J., dissenting in Hughes v. Fetter, 341 U.S. 609, 621 (1951).

10. D. CAVERS, THE CHOICE-OF-LAW PROCESS (1965). The case at hand is deemed to be governed by Professor Cavers' second principle of preference:

> 2. Where the liability laws of the state in which the defendant acted and caused an injury set a lower standard of conduct or of financial protection than do the laws of the home state of the person suffering the injury, the laws of the state of conduct and injury should determine the standard of conduct or protection applicable to the case, at least where the person injured was not so related to the person causing the injury that the question should be relegated to the law governing the relationship.

Id. at 46.

11. The following variant of *Cipolla* could be assimilated to a hypothetical case presented by Professor Cavers. Suppose the driver had picked up the passenger at home in Pennsylvania and the accident had happened after they entered Delaware on their way to school. Presumably Professor Cavers would apply Delaware law. *Cf. id.* at 154 n.20 and accompanying text.

exposed himself to the potential operation of the regime of ordinary negligence by agreeing to take the plaintiff home to Pennsylvania. Thus viewed, the decision turns on the conjunction of the accident happening in Delaware and the driver being domiciled there, facts given no controlling importance in the first part of the opinion.

In fairness to the majority it may be conceded that elements of the law-fact pattern which point to reasonable protection of insurance interests need not be the same elements as points to reasonable protection of the driver. Given the premises assumed, it is fortunate that both aspects of the case indicate the same choice of law. But what of the cases where these lines of analysis point to differing rules of law, as when the place of garage and insurance and the place of injury inflicted by a domiciliary are not the same. Professor Cavers's principle of preference would still point to the second while the majority would be left in conflict with itself. Such a conflict presumably would be resolved as suggested from Professor Cavers because the driver is legally the defendant of interest, notwithstanding that the insurer is probably holding the financial bag.

That a territorial view seems preferable to a personal view may be so but, in *Cipolla v. Shaposka* such an observation distorts important features of the case. Certain it is that territorialism in the form of the *lex loci delicti* principle is on the wane.[12] Departures from the First Restatement in tort cases have been made by relegating issues not bearing upon conduct to the law of the seat of the relationship or the common domicile of the parties.[13] A personal view is not available in *Cipolla v. Shaposka* because such affiliating circumstances are divided

12. Since the landmark decision of the New York Court of Appeals in Babcock v. Jackson, 12 N.Y.2d 473, 191 N.E.2d 279, 240 N.Y.S.2d 743 (1963), the *lex loci delicti* rule has increasingly been abandoned. "In a short time, the District of Columbia and at least 21 states have rejected the place-of-wrong rule in some context, usually in a court decision revealing general acceptance of the premises of state-interest analysis." R. WEINTRAUB, COMMENTARY ON THE CONFLICT OF LAWS, 234 (1971) (footnote containing citations by jurisdiction omitted). *See also Annot.*, 29 A.L.R.3d 603 (1970). It is interesting to note that Justice Roberts, who dissents in Cipolla v. Shaposka, is the writer of the opinion in which Pennsylvania breaks with the *lex loci delicti* rule, Griffith v. United Air Lines, 416 Pa. 1, 203 A.2d 796 (1964).

13. A case illustrating the simultaneous adoption of a domiciliary reference and the reformulation of domestic law to achieve a better rule is Balts v. Balts, 273 Minn. 419, 142 N.W.2d 66 (1966). In a case involving a suit between a Minnesota parent and child arising out of an accident in Wisconsin, the court decided that this was "a matter of family law rather than tort law" and proceeded to rule prospectively that the parent-child immunity should no longer be a defense. *Id.* at 425, 142 N.W.2d at 70. *See also* RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 169 (Proposed Official Draft, Part II, 1968). Although the Second Restatement does not treat the guest-host problem specifically by section, the influence of *Babcock* is evident generally and in particular in Section 145, Comment *e*, Illustration 1. The law-fact pattern of Cipolla v. Shaposka is not treated.

between the two states. Domiciliary references here are not of independent importance. Delaware as a domiciliary contact supports a territorial resolution. Pennsylvania as a domiciliary contact supports a better rule of law resolution, and the general obligation of the forum to serve the policies of its own State.[14] Thus, the real conflict in the case is between territorial fairness and the better rule of law.

The real importance of *Cipolla v. Shaposka* is that these themes are in conflict and that there is argument as well as merit on both sides.[15] The argument of the dissent is candidly that Pennsylvania law should apply its own better rule of law. That the dissent is more than a result-oriented cry in the wilderness and must be taken seriously is indicated by agreement on both sides that *Cipolla v. Shaposka* presents a true conflict, making defensable the application of the law of either concerned jurisdiction. The resolution of true conflicts may be seen as an exercise in comparative reasonableness. To say that a decision one way is wise is not to imply that a decision the other way is a wrong headed insistence on the better seeming law of an unconcerned or little concerned jurisdiction. Further, the resolution of a true conflict readily invites a comparison of the intrinsic merits of the laws in conflict, not a comparison which disregards the bases of concern of the states involved,

14. The application of the *lex fori* as such, in the absence of a common domiciliary reference and unsupported by better law considerations, would not seem to outweigh territorial considerations in this case where connecting factors variously viewed as individually controlling are collected in one place. Where parties are domiciled in different states Professor Ehrenzweig has profferred a "law of the garage" rule as reasonable to allow insurance planning by the host. A. EHRENZWEIG, CONFLICT OF LAWS, 580-81 (1962). *See also* Ehrenzweig, *Guest Statutes in the Conflict of Laws—Toward a Theory of Enterprise Liability Under "Foreseeable and Insurable Laws": I*, 69 Yale L.J. 595 (1960). On the premise, however, that the insurer does not calculate his premium in this manner, a better rule approach which points to the law of the forum may suit Professor Ehrenzweig.

> Although the "better rule" principle is not generally capable of replacing conflicts rules, I see little justification within the limits set by settled law for the prevailing horror against the recognition of that principle as one of many determining the growth of conflicts laws.

Ehrenzweig, *"False Conflicts" and the "Better Rule": Threat and Promise in Multi-State Tort Law*, 53 VA. L. REV. 847, 855 (1967).

15. In Clark v. Clark, 107 N.H. 351, 222 A.2d 205 (1966) (New Hampshire husband and wife motoring between two points in New Hampshire involved in accident in Vermont), a false conflict was presented, and the rejection of the Vermont guest statute in favor of New Hampshire's rule of ordinary negligence was clearly indicated. Reliance on the better rule of law consideration in this case has been called unnecessary. See Baade, *Counter-Revolution or Alliance for Progress? Reflections on Reading Cavers, The Choice-of-Law Process*, 46 TEX. L. REV. 141, 152-156 (1967). Professor Cavers has answered charges that his landmark article of a generation ago, *A Critique of the Choice-of-Law Problem*, 47 HARV. L. REV. 173 (1933), advocated an ad hoc preference for "better rules". See D. CAVERS, THE CHOICE-OF-LAW PROCESS 8-10, 75-81 (1965). It is ironic that as a better rule concept is more candidly accepted as an influence in the choice-of-law process—certainly more desirable than covert devices such as characterization and manipulation of choice-of-law rules—"justice in the individual case" may assume larger proportions than Professor Cavers intended or intends.

but a comparison which can assume a detached perspective because the bases of concern are keenly divided.

To view more clearly the conflict of themes presented here the choice-of-law process must be seen at several operating levels. The choice-of-law process can be seen as bearing upon the legal system, its institutions, and the way laws are formulated and applied. At one level the choice-of-law process may operate to correct and improve the way in which the whole range of multi-state problems is handled intergovernmentally and institutionally. Thus, in discussing the choice-influencing considerations operating in the choice-of-law process, Professor Leflar argues that solutions to multi-state problems should contribute to interstate harmony, predictability and certainty, and simplification of the judicial task.[16] That the application of Delaware law here conduces to greater interstate harmony can be argued. But the application of Pennsylvania law would have to be seen as a blow against federalism before it could be seriously complained of on this point. Such argument seems better suited to cases involving foreign countries in matters of national interest, political or commercial.[17] Here the parties are from different states and the issue is not one which strikes at the sovereignty of Delaware in the policing of automobile traffic on its highways. Predictability and certainty are useful, but modern scholarship—judicial and academic—has found them to be elusive values in the choice-of-law process, and of questionable importance in unplanned events such as the automobile accident. Insurance companies, for the most part the real defendants, cannot claim unfair surprise in an age when multi-state automobile traffic has become commonplace. Of the simplification of the judicial task, little need be said. A trial of the issue of negligence is probably simpler than a trial on the issue of gross negligence, which requires as

16. Professor Leflar identifies the following choice-influencing considerations:
(A) Predictability of results;
(B) Maintenance of interstate and international order;
(C) Simplification of the judicial task;
(D) Advancement of the forum's governmental interests;
(E) Application of the better rule of law.
R. LEFLAR, AMERICAN CONFLICTS LAW 245 (1969).

17. In support of his second "principle of preference," giving to the one who causes injury at home the benefit of laws of his home state which are more protective of him, Professor Cavers cites two cases involving fatal air crashes in Brazil. Armiger v. Real S.A. Transportes Aereos, 377 F.2d 943 (D.C. Cir. 1967) and Tramontana v. S.A. Empresa de Viacao Aerea Rio Grandense, 350 F.2d 468 (D.C. Cir. 1965). Cavers, *Comments on Reich v. Purcell*, 15 U.C.L.A. L. REV. 647, 652 n.21 (1968). Those cases emphasize governmental interests as interests of national policy to the Brazilian government. The decisions are political in a sense well beyond that comprehended by the use of the term "governmental interest" to indicate that events and transactions involving private persons are generally subject to the laws of the state where they occur.

well a determination of who is a guest, and the avoidance of any trial at all by the application of a guest statute does not purchase the kind of simplification which is at stake in the choice-of-law process.

On the points of implementation of the policies and purposes of the area of law involved and of securing the better rule of law we find the choice-of-law process operating at the level of solution of discrete controversies on the merits as to claims presented by the parties. The question raised is to what extent should the choice-of-law process as a system for managing the relationships between states and as a mechanism for securing the better working of legal institutions be subordinated to the solution of the controversy which motivated or precipitated the action. It is a classroom axiom that private persons do not go to law for the purpose of testing interstate relationships or of proving the integrity of legal institutions, certainly not in the matter of an automobile accident. The plaintiff seeks some private redress and the defendant refuses to accede voluntarily. Stated otherwise, the question is when can or ought the choice-of-law process to view the controversy on the merits as the object of decision in some sense other than as a matter to be allocated to the local law of one or another concerned jurisdiction.

In his dissenting opinion Justice Roberts argues that Pennsylvania's rule of ordinary negligence ought to apply because Pennsylvania is a concerned jurisdiction with a better rule of law. The argument should be that an otherwise appropriately applicable rule of law is better because this is a multi-state case. This makes the choice-of-law process a force for fashioning dispositive rules in developing a common system of multi-state rules. The obvious effect is the expansion by the participating forums of seemingly better rules at the expense of localizing seemingly inferior rules, forensically as well as territorially. The choice influencing consideration of advancement of the forum's governmental interest strengthens this prospect and further undercuts the territorial theme qua territorial.

Indeed the multi-state nature of the case is not fully developed in any of the opinions. It is true that contacts in the two states are presented and weighed in the light of differing laws and policies with respect to the issue, but the guest-host relationship is seen as split between the two states rather than as a multi-state relationship. This trip is a venture planned as a multi-state event or transaction. It was intended to cross state lines. To say that the defendant acted only within his home state is

to obscure this point. The defendant may be from Delaware and his conduct causing the injury may have occurred there, but the planned transaction was to extend to and have its end in Pennsylvania, the defendant having the further private motive to retrieve tools which he had loaned to the plaintiff.[18] That the accident happened in Delaware is not exactly fortuitous, but Pennsylvania is as likely a spot, given the planned ride across state lines.[19] The analogy presented is as in the case of consensual arrangements where the proposition that in multi-state cases the arrangements should be upheld if this can be done fairly has much influence impliedly if not expressly.[20] There is indicated in the field of torts a principle of alternative reference to secure the "socially favored arrangement."[21]

For Justice Roberts, then, the better rule of law concept, is a second level consideration, to be given account of only after all else has failed. Although Professor Cavers has come to see the principles of preference as more than "tie breakers" for choice-of-law problems as to which a policy or interest analysis will not indicate a single or predominantly concerned jurisdiction,[22] Justice Roberts relegates better rule of law considerations to that function:

> It must be remembered, however, that it is only because I believe that Delaware and Pennsylvania, on the basis of relevant contacts, are equally concerned that I feel free to choose either jurisdiction's law.

This serves the end that the choice-of-law process should operate to regulate and harmonize the effect of and to establish the reasonable reach of state laws, but it masks the fact that in this case it is difficult to

18. Deposition of M.F. Cipolla, Record 21a.

19. A look at a map will show that a ride of any distance out of Delaware generally and Wilmington in particular, will take one into a neighboring state without a guest statute. Delaware's *lex loci delicti* rule, Friday v. Smoot, 211 A.2d 594 (Del. 1965), as has been noted, thus functions to avoid the application of the guest statute, even in a case where both parties are from Delaware. "One is tempted to call this a 'better law' decision." Baade, *supra* note 12 at 146 n.30 "This reasoning alone can also justify seemingly mechanical adherence to a foreign *lex loci* in preference over the *forum's own guest* statute." (Citing *Friday*). A. EHRENZWEIG, CONFLICTS IN A NUTSHELL 2d., 257-258 (1970).

20. On the principle of validation ("lex validitatis") *see* A. EHRENZWEIG, CONFLICT OF LAWS, 465 *et seq.* (1962).

21. *Cf.* Leflar, *Choice-Influencing Considerations in Conflicts Law*, 41 N.Y.U.L. REV. 267, 284, 295-304 (1966). The phrase is Professor Leflar's. The indicated "rule of compensation" is developed in Weintraub, *A Method for Solving Conflicts Problems—Torts*, 48 CORNELL L.Q. 215 (1963).

22. As principles of preference are elaborated on a case by case basis, would they not come to embody analyses by which conflicts have hitherto been resolved or dismissed as false? At a recent Round Table at the annual meeting of the Association of American Law Schools (December 28, 1969) Professor Cavers allowed that principles of preference might have use beyond the resolution of true conflicts. I think my memory is correct in this.

see that the governmental interests of the forum can be avoided in the case of a true conflict where the better rule is the home rule. The sum of the functions of the guest statute and of ordinary negligence rules can be thought of in terms of good or bad irrespective of multi-state considerations. Policies of compensation, risk distribution, loss allocation, injury compensation, as opposed to policies of avoidance of ingratitude and collusion are preferable as such, and to the extent that these policies are of multi-state dimension, it is unquestionable that the multi-state rule would implement them and relegate the policies relating to collusion and ingratitude to case by case institutional scrutiny and private arrangement. Thus viewed no properly concerned jurisdiction in a multi-state case would ever apply a guest statute.

Quite evidently, this approach requires some rethinking of what is a multi-state guest-host case. That the parties are from different states would not be enough as such to make a case more than nominally multi-state. The event or transaction must have a significantly multi-state dimension. *Cipolla v. Shaposka* is arguably such a case. Thus, notwithstanding the fact of the accident in Delaware, the venture is a Delaware-Pennsylvania undertaking: a transaction involving persons from different states intending to cross state lines. The state affiliations of the parties and the states comprehended by the undertaking would largely mark out the concerned states. If the transitory or ambush feature of in personam jurisdiction were removed, the bases of adjudicatory jurisdiction would provide the occasion for the free application of the better rule of law in the choice-of-law process.

The major objection to the better rule of law approach is not in applying the better of two rules of law, but the difficulty in rationalizing which is better. Seldom is either of the competing rules of no redeeming quality. Even in *Cipolla* the rejection of the Delaware guest statute, argued for by Justice Roberts, can't quite be justified in such terms. As a better rule case *Cipolla* is easy, but what of the distinctions more difficult to resolve? There is the further problem of who is to decide which is the better rule of law. The better rule of law is inevitably a *lex fori* determination.[23] As such, it is perhaps best preserved for so called true

23. "All other considerations being the same . . . , we would apply the law of a non-forum state if it were the better law." Zelinger v. State Sand and Gravel Co., 38 Wis. 2d 98, 113, 156 N.W.2d 466, 473 (1968). A decision on this express ground is wanting, one suspects, not because courts are parochial in a pejorative sense, but because a court faced with such a choice may prefer to choose its own law as a matter of choice of law and then reform its domestic law. This, however, may be impossible where local law is statutory.

conflict cases as a guide to choice of law. As a guide to the assessment of concerns it might prove mischievous—as substituting of the forum's view of what another jurisdiction's policies are or ought to be.

If a better rule of law approach is taken in a case like *Cipolla*, the rule for the case ought to be closely responsive to the reasons why the forum thinks the rule selected is better. Justice Roberts opts for negligence liability in the driver. One reason is that insurance coverage is pervasive. Automobile liability insurance rates are generally set upon the basis of the volume of claims rather than upon the vagaries of local law.[24] Besides, insurance is a matter of contract and adjustment to local peculiarities can be accomplished beforehand.[25] It is doubtful that these exceptions to the general regime of negligence law, which are becoming more curious as time goes on, can have much impact on the rate of policy premiums. But this goes only to liability within insurance limits. It is instructive to note that the damages claimed hardly exceed the compulsory liability minimum coverages required by the laws of Delaware and Pennsylvania.[26] To this point, it cannot be said that the driver has been unfairly put to the hazard of dealing with the passenger from an ordinary negligence state. And his insurance company must be held to accept the hazard of varying state laws by doing business in insuring cars which are known to cross state lines. Where damages exceed policy limits, however, it is harder to escape the pull of territorial allocation of law-making responsibility. If the particularity suggested cannot or will not be achieved by the court, then it may finally have to be admitted that the guest-host problem is not important enough an occasion for breaking down state boundaries.

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24. *See* McNamara, Automobile Liability Insurance Rates, 35 Ins. Counsel J. 398 (1968).

25. *Compare*, N.Y. Ins. Law § 167(3) (McKinney 1966), which, in response to the abrogation of interspousal immunity, provides with respect to liability insurance that no policy "shall be deemed to insure against any liability of an insured because of death of injuries to his or her spouse . . . unless express provision . . . is included in the policy." This protection may not obtain in a multi-state case. In an automobile accident in Pennsylvania involving local spouses in one car and New York spouses in the other, the insurer was not permitted to deny coverage after a judgment of contribution for the driver of the other car against the New York spouse of the injured party, despite the absence of express coverage. Goulding v. Sands, 237 F. Supp. 577 (W.D. Pa. 1965). The decision was affirmed on the more satisfying ground of estoppel to deny coverage after management of the insured's defense. Goulding v. Sands, 355 F.2d 230 (3d Cir. 1966). *See also* Haines v. Mid-Century Insurance Co., 47 Wis. 2d 442, 177 N.W.2d 328 (1970) (Forum statute declaring family-exclusion clauses to be invalid applied to override exclusion clause in policy issued in state where exclusion is upheld according to decisional law).

26. The complaint alleges damages "in excess of Ten Thousand Dollars." Record 7a. In case of bodily injury to or death of one person, Pennsylvania requires coverage of not less than $10,000, 75 P.S. Section 1404 (1960); in such case Delaware also requires $10,000, 21 Del. Code Section 2904 (Supp. 1968).