DOWNLOAD PDF GENERAL REMARKS ON INSURANCE CONFLICT OF LAWS

Chapter 1 : Clarification On NY Choice-Of-Law Provisions - Law

General Remarks on Insurance Conflict of Laws 4. Admission of Insurance and Reinsurance Services and Products to the EU Market-Conflict of Laws Issues Part II. Jurisdictional Recognition and Enforcement of Judgments Problems and Possible Solutions Section I. Jurisdictional Problems and Possible Solutions: Preliminary Observations 5.

STATUTE Alabama A conflict of interest involves any action, inaction, or decision by a public official or public employee in the discharge of his or her official duties which would materially affect his or her financial interest or those of his or her family members or any business with which the person is associated in a manner different from the manner it affects the other members of the class to which he or she belongs. A conflict of interest shall exist when a member of a legislative body, public official, or public employee has a substantial financial interest by reason of ownership of, control of, or the exercise of power over any interest greater than five percent of the value of any corporation, company, association, or firm, partnership, proprietorship, or any other business entity of any kind or character which is uniquely affected by proposed or pending legislation; or who is an officer or director for any such corporation, company, association, or firm, partnership, proprietorship, or any other business entity of any kind or character which is uniquely affected by proposed or pending legislation. Refer to Alaska Stat. Arizona A conflict of interest exists if a public officer has "a substantial interest in any contract, sale, purchase or service to such public agency. California "No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest. Subsequent statutory sections provide additional details and prohibitions regarding conflicts of interest. Colorado A member who has a personal or private interest in any measure or bill proposed or pending before the general assembly, shall disclose the fact to the house of which he is a member, and shall not vote thereon. Connecticut A conflict of interest exists if a legislator "has reason to believe or expect that he, his spouse, a dependent child, or a business with which he is associated will derive a direct monetary gain or suffer a direct monetary loss, as the case may be, by reason of his official activity. No conflict of interest exists if he or she "does not have an interest which is in substantial conflict with the proper discharge of his duties in the public interest and of his responsibilities as prescribed by the laws of this state, if any benefit or detriment accrues to him, his spouse, a dependent child, or a business with which he, his spouse or such dependent child is associated as a member of a profession, occupation or group to no greater extent than any other member of such profession, occupation or group. Delaware Conflict of interest exists if a legislator has a personal or private interest in any measure or bill pending in the General Assembly or if a "personal or private interest in a measure or bill Florida A conflict of interest exists if there is "any matter that the officer knows would inure to his or her special private gain or loss. Guam Conflict of interest may exist when an official action directly effects: Hawaii Prohibition on conflicts of interest prohibit legislators from assisting "any person or business or act[ing] in a representative capacity before any state or county agency for a contingent compensation in any transaction involving the State Illinois Illinois prescribes a four-factor test to determine whether a conflict of interest exist, referred to as a "conflict situation. Indiana A public servant commits "conflict of interest" if he or she "knowing or intentionally: Kentucky Definitions of a conflict of interest include: Louisiana A conflict of interest exists if a legislator has a "personal substantial economic interest" in a transaction that involves a governmental entity. Receiving compensation or reimbursement not authorized by law for services, advice or assistance as a Legislator; D. Appearing for, representing or advocating on behalf of another before the Legislature, unless without compensation and for the benefit of a citizen; E. Michigan A conflict of interest may exist if a legislator is "interested directly or indirectly in any contract with the state or any politial subdivision thereof. Mississippi The code section dealing with conflicts of interest, in the statement of policy section, refers to "any effort to realize personal gain through official conduct, other than as provided by law, or as a natural consequence of the employment position. More specifically, "No public

servant shall use his official position to obtain, or attempt to obtain, pecuniary benefit for himself other than that compensation provided for by law, or to obtain, or attempt to obtain, pecuniary benefit for any relative or any business with which he is associated. Missouri Prohibition on conflict of interest prevents a legislator from acting or refraining "from acting in any capacity in which he is lawfully empowered to act as such an official or employee by reason of any payment, offer to pay, promise to pay, or receipt of anything of actual pecuniary value paid or payable, or received or receivable, to himself or any third person, including any gift or campaign contribution, made or received in relationship to or as a condition of the performance of an official act, other than compensation to be paid by the state or political subdivision. Nebraska "A member of the Legislature who would be required to take any action or make any decision in the discharge of his or her official duties that may cause financial benefit or detriment to him or her, a member of his or her immediate family, or a business with which he or she is associated, which is distinguishable from the effects of such action on the public generally or a broad segment of the public. New Mexico A conflict of interest is the use of powers or resources of public office to "obtain personal benefits or pursue private interests," as opposed to using those powers or resources "only to advance the public interest. New York A conflict of interest exists if a legislator has any interest or engages in any business, transaction, or professional activity, or incurs any obligation, which is in substantial conflict with the proper discharge of his or her duties in the public interest. North Dakota A conflict of interest occurs if a legislator "has a direct and substantial personal or pecuniary interest in a matter before that Oklahoma Generally, a conflict of interest is when a member of the legislature engages in activities or has interests which "conflict with the proper discharge of their duties and responsibilities. The term does not include an action having a de minimis economic impact or which affects to the same degree a class consisting of the general public or a subclass consisting of an industry, occupation or other group which includes the public official or public employee, a member of his immediate family or a business with which he or a member of his immediate family is associated. Puerto Rico "Conflict of interest. South Carolina A conflict of interest may exist if a legislator makes, participates in making, or attempts to use public office "to influence a governmental decision in which he, a family member, an individual with whom he is associated, or a business with which he is associated has an economic interest. South Dakota A conflict of interest may exist if a public officer has an interest in or derives a direct benefit from any contract 1 with the state agency to which the public officer is attached for reporting or oversight purposes that requires the expenditure of government funds; 2 with the state that requires the approval of the authority, board, or commission and the expenditure of government funds; or 3 with a political subdivision of the state if the political subdivision approves the contract and is under the regulatory oversight of the authority, board, or commission, or the agency to which the authority, board, or commission is attached for reporting or oversight purposes. Tennessee In lieu of defining a conflict of interest, Tennessee law requires legislators and candidates to disclose various economic interests. Generally, a conflict of interest may exist if a public official knowingly and intentionally uses his or her office or the prestige of his or her office for private gain or gain of another, excluding incidental gains. Wyoming A conflict of interest occurs if a legislator "requests or receives any pecuniary benefit, other than lawful compensation, on any contract, or for the letting of any contract, or making any appointment where the government employing or subject to the discretion or decisions of the public servant is concerned. Virgin Islands A conflict of interests exists if a legislator "will derive a direct monetary gain or suffer a direct monetary loss, as the case may be, by reason of his official activity.

Chapter 2 : Conflicts of Interest with Insurance Companies | LegalMatch Law Library

Scoles & P. Hay, Conflicts of Law Â§ , at (). At least one state Maryland -- continues to follow the doctrine of renvoi when addressing choice of law issues, at least with respect to issues deemed of significant importance.

In Tyson Foods Inc. How the court reached this result is a case study in how courts address these issues of choice of law and standard of proof. The standard of proof for lost policies is important because it is often dispositive in lost policy litigation. See Mueller Copper Tube Prods. And some courts have ducked adopting a specific standard of proof. So, the bottom line is that choice of law matters with respect to standard of proof: This dichotomy was clearly presented in the recent Tyson Foods case where the insurer argued for Arkansas law clear and convincing evidence standard, according to the insurer and the policyholder argued for Delaware law preponderance of the evidence standard, according to the insured. The approach of the Tyson Foods Delaware Superior Court to choice of law exemplifies the fairly straightforward approach of state courts generally to choice-of-law issues when dealing with common-law claims pending before them. Is the standard of proof for lost policies a procedural matter, to be governed by federal law, or a substantive matter, to be governed by state law? It would appear that the question of what standard of proof applies would similarly be outcome determinative â€" and hence a question of state law to be applied by the federal court. In practice, however, federal courts have been both inconsistent and opaque in how they deal with choosing what standard of proof they apply in lost policy cases. Most federal courts apply the standard of proof used by the state in which the federal court is sitting. The court in the So. This is, apparently, not the universal view of federal courts. While we have been focused on the importance of choice of law in determining standard of proof in lost policy cases, choice of law can be crucially important in other aspects of such cases. For example, whether a lost policy case will be decided by a judge or a jury is a significant question that may be affected by choice of law. In the Coltec case, the court held that no federal right to a jury trial exists in a lost policy case. The court focused its analysis on the Seventh Amendment right to a jury trial under the United States Constitution and noted that many federal courts have concluded that neither party is entitled to a jury trial under the Seventh Amendment on the existence, terms and conditions of lost insurance policies, citing numerous cases. The point is that counsel should be alert to creative favorable uses of choice of law in lost policy litigation. The recent Tyson Foods decision by the Delaware Superior Court serves as a reminder of both the complexity and the importance of choice of law in lost policy cases. Similarly, where a case is pending in federal court, counsel need to be alert to the possibility of arguing that a more favorable federal rule should trump a less favorable state rule. Hugh Scott and Elissa M. Fix is an associate at the firm in the Boston office. The opinions expressed are those of the authors and do not necessarily reflect the views of the firm, its clients, or Portfolio Media, publisher of Law This article is for general information purposes and is not intended to be and should not be taken as legal advice.

Chapter 3 : Laws Applicable To Contracts â€“ Conflict of Laws

Louisiana Law Review Volume 47|Number 5 Student Symposium: Conflict of Laws in Louisiana May Conflict of Laws: Insurance Michael W. Mengis This Article is brought to you for free and open access by the Law Reviews and Journals at LSU Law Digital Commons.

C Poste Italiane s. Ajani voluzione del diritto comunitario e alla sua attuazio- ne in Italia, alle esperienze legislative e giurispru- Redazione di Amburgo: Some General Remarks Contents: The consumer from a European perspective. The law applicable to con- sumer contracts under the Rome Convention. The protection of the Consumer in Rome I Regulation. In fact consumer law in Europe 4 prospered only in the late s and s 5. In Europe Sweden being pioneer country in the field of consumer law. In reference to the Italian legal system, according to the Author: For more see also Lurger, Con- sumer protection. The case of Austrian SAGGI from the proper functioning of a free market and guaranteed by clear rules of competition, which prohibit limitations deriving from agreements and practices or from abuse by professionals in dominant positions. An initial safeguard was in fact already emerging under Art. However consumers 8 , are in an inferior position compared to the Consumer Law, in Grundmann and Schauer eds. Selected issues, Wien, , pp. The meaning of purposes which are outside his trade, business or profession is not clear. It may cover the business person making pur- chases which are incidental to his or her business. From this perspective one question must be asked: Contra in reference to the Italian legal system Gatt, sub art. Ambito soggettivo di applicazio- ne della disciplina. Il consumatore e il professionista, in Bianca and Busnelli eds. In particular, non-commercial legal entities find them- selves in the same condition of informational asymmetry and contractual weakness. In fact consum- ers 11 are often drawn to signing up to contracts of this kind due to the in- fluence of a myriad of factors; from psychological ones or even merely the exaltative levels of professional advertising standards to those that influ- ence certain levels of education 12 or language These arguments, within a situation that is currently conditioned in all respects by Europe, naturally lead to more and more frequent discussion of European consumer protection, which aims to contribute to the imple- mentation of so-called Community policy In order to contribute to this policy, as we will see further, it is important to restore an equilibrium between powerful professionals and weaker consumers. Direttiva comunitaria ed ordinamento italiano, Milano, , p. Searching for the Real Consumer, in Eur. Busi- ness Organization Law Rev. COM def. SAGGI mation duties on undertakings and regulate market behaviour through strict regulation of advertising, marketing practices and contract terms 15 in addition to guaranteeing to the consumer that the law applied is that which is most favourable to him. Therefore, an important role is also played by private international law that, as is well known, is characterized by the search for an optimal balance between the principle of freedom of choice and the need of States to re- quire the parties to respect the rules to which they assign the function of protecting their economic interests and their conception of justice It is within this context that one finds the greatest degree of tension between two concepts: This im- balance, which is defined by many as a contractual asymmetry 19 , has 15 Stuyck, European consumer law after the Treaty of Amsterdam: One of the greatest proponents of this doctrine was the Austrian, Von Mises. Precisely in order to avoid a situation where the freedom to choose the applicable law may deprive the consumer of their rightful protection, the Rome Convention 20 , followed by the Rome I Regulation, also went on to regulate cases where it is necessary to identify the applicable law in the absence of a choice by the parties It should be pointed out that the starting point here is an analysis of the Rome Convention, which still applies today to any contracts dated prior to 17 December as well as contracts entered into with Denmark. A number of points need to be made here. This clarification is based on the fact that Denmark, the United Kingdom and Ireland, by virtue of the opting out and opting in schemes, agreed upon in the drafting of the Treaty of Amsterdam, may refrain from the automatic application of Community regulations. To date Ireland and the United Kingdom have opted in 23 , therefore, only Denmark remains excluded, and has not yet expressed the intention to join the Rome I

Regulation. It follows that the Danish courts will still continue to apply the criteria dic- tated by the Convention, at least until Denmark formally agrees to adhere to the Rome I Regulation. In fact the territorial aspect, which has always played a very important role in private international law and has become a very ambiguous term in conflicts of laws 24 , to date, with Denmark which contratti internazionali conclusi dai consumatori, in Rivista diritto e impresa, , p. Dal contratto del consumatore al contratto asimmetrico? Codice del consumo annotato con la dottrina e la giurisprudenza, Napoli, , p. In particular, Articles 3 and 4 of the Convention established, in a break with tradition, that international contracts are defined as those that involve several ju- risdictions. This legislation, however, was not applied to contracts concluded by consumers or employees on an individual basis. These contracts, in fact, were regulated strictly by Articles 5 and 6. The reason for this substantial difference is therefore clear: Indeed as seen 26 , the greater eco- nomic power, hence contractual power, of the other party, as well as the growing internationalization of production, distribution and exchange of consumer products 27 , was placed the consumer in a position of inferior- ity from the moment that the law applicable to the contract was chosen For the most important see Delaume, The European convention on the law applicable to contractual obligations: Law Quarterly, , p. Anselmi, Milano, , p. Therefore, according to Art. In ad- dition, in the event that the parties were to choose to apply a different law, this choice, as just noted, may not deprive the consumer of the protection afforded by the mandatory provisions of the law of the country where he habitually resides 30 ; mandatory provisions being those for which the law of that same country does not permit contractual derogation. This assumption was certainly going to restrict the choice of the appli- cable law 31 , which was not considered as the result of the joint intention of the parties: Thus, the law of the country of habitual residence was considered by the Convention as the law to refer to, inasmuch as it was more suitable to meet the demands of consumer protection. Having determined the latter, it was necessary to consider 29 According to Bonomi, Il nuovo diritto internazionale privato dei contratti, in Banca, borsa, tit. It is this evaluation that is open to interpre- tation and which gave rise to many doubts on the effective protection that this legislation guaranteed to the consumer. In fact nothing precludes that the provisions of the law chosen by the parties may prove more protective than the mandatory rules of the habitual residence of the consumer in one example and less protective in another Taking this view, there are those who believed that the interpreter, in order to ensure maximum protection of the weaker party, was obliged to make a selection of the provisions of the two laws, applying those that for each aspect of the contract would provide greater protection for the consumer. In this way, the law applied in practice to contracts would be that resulting from the partial application of both laws in question, in those aspects that would most favour the consumer. There are, indeed, another opinions opposed to this one, which ex- cludes the combination of the two laws. The second part of Art. In such a case the Convention held, as just related, that the law of the country of habitual residence was the law to refer to, inasmuch as it was most suitable to meet the demands of consumer protection. With this solution the EU Convention framers sought to avoid an unnecessary quest for the better law; all of which was for the benefit of the private international law and therefore of clarity and legal certainty. This solution, although certainly less complex and easier for the interpreter to apply, did not however lack critical profiles that could prejudice the weaker party. In fact, the law of the country of residence of the consumer is not always the most favourable, considering also that the laws of the Member States do not always offer the same level of protec- tion This European instrument for the contractual obligations 36 , introduces some profound innovations compared to the Rome Convention and therefore the system of private in- ternational law and in particular the rules of contracts concluded by con- sumers Also in Rome 1 Regulation as in Rome Convention, contracts con- cluded by consumers hold a privileged position. Specifically, examination of this policy document demonstrates that the Regulation discards the so- lution, which was welcomed initially in the Proposal, to repeal the au- tonomy of freedom of regulatory choice and conserves the principal of choice of law, while subordinating it to the country in which the consumer has his habitual residence and to the conditions 38 that will be subse- quently listed. In fact the Regulation under Art. Passarelli, La legge applicabile ai contratti internazionali conclusi dai consumatori alla

luce del regolamento Roma I, in Rass. SAGGI the rules of legislative conflict, connoted by a stereotypical trend in the re- lated issues, albeit in the recognition of the undoubted importance given to the autonomy of the parties and the appropriate safeguards for the con- sumer. The first formal difference com- pared to the Rome Convention emerges precisely from an analysis of the pre-mentioned article: This clarification is probably inserted in order to emphasize when the regulation in discussion is to be applied. From a substantive point of view, however, from among the various innovations, what emerges above all is that while Art. The new provision, in fact, also makes mention with regard to negotiating figures in respect of which the applica- tion of Art. Schlesingher, Milano, , p. The Law Applicable to Contractual obligations in Europe, cit. In fact, there are those who argued that the applicable law would be that of the stronger party banks, entrepre- neurs, hence professional traders , to whom therefore, the application of their own more familiar law, certainly more favourable in content, would be guaranteed. This is certainly a theory aimed at protecting manufacturers and exporters of the most industrial- ized countries, rather than the consumer, the weaker party to the contract. In fact, there are those who say that the subjects of e-commerce are not the consumers and the professional but the suppliers and the recipient of services, except for the emphasis that it concerns an individual or statutory entity. This changed approach seems to highlight the awareness on the part of the Community legislature of the fact that in online relationships the factors that determine contractual strength and weakness and the critical aspects of a transaction may look different compared to those in the traditional marketplace However, it is especially through e-commerce that the pro- pensity to the aforementioned phenomenon of so-called standardization of contract can be determined: This type of trading could raise delicate problems both regarding the court deemed to have jurisdiction for resolving disputes and the law that the same is bound to apply. This reveals that the Community legislature does not want to overturn the protection already guaranteed by the Convention: In the light of this analysis, it is clear that the provision of Art. It then follows that the law applicable to a contract between a pro- fessional and the consumer is that specified by the parties or, when such a choice is not made, that of the country in which the consumer habitually resides, provided that the professional â€” and this is the real innovation re- garding the Rome Convention â€” pursues his commercial or professional activities in the country where the consumer habitually resides 51 , or di- rects his activities, by any means, to that country and the contract falls within the sphere of the said activity But the question is: In fact the Austrian consumer would be purchasing goods from another Member State Italy , in circumstances where the website does not, however, do any business with the Austrian market, despite there being a German website. Therefore in some cases this rule seems to be incompatible with the EU Regulation aim to guarantee higher pro- tection to European consumer. See also further footnote. After having concluded the con- tection guaranteed by the mandatory tract via the internet and having re- consumer protection rules established ceived a defective computer the con- by Austrian law. The framework in question is likewise applicable if the parties choose the applicable law. It is likewise necessary to remember that the legislature in recent years has given rise to a broad production of rules 55 on consumer contracts 56 , without also considering the differences of national rules in E. The technique followed was, in fact, that of inserting regulations on conflict in the directives on consumer contracts, regardless of the need for coordination between these standards on the one hand and those of the Rome Convention and the Rome I Regulation on the other. These regulations, where they are properly implemented by Member States, supersede the provisions of the Rome I Regulation and, therefore, the criteria referred to in attached Articles 3 and 4 of the same. Con- sumer Policy, , p. SAGGI practical point of view the interpretation therefore may easily be mistaken, which makes it a delicate and difficult task. As a consequence some different but connected questions might be raised: Is there a need for harmonization and would this be useful?

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Chapter 4 : Insurance in private international law : a European perspective in SearchWorks catalog

Insurance in Private International Law General Remarks on Insurance Conflict of Laws 27 1. The Major Importance of Choice of Law Questions in Some Remarks on.

Third Party Liability Claims and N. May a third party claimant accept a settlement, made in accordance with N. Under the regulation, does the cashing of a check by the third party claimant constitute an accord and satisfaction? In and of itself, the cashing of a check by the third party claimant would not operate as an accord and satisfaction. The regulation does not address a conflict of laws question. An insurer offered a third party claimant a settlement computed in accordance with the N. The third party claimant took the settlement under protest and then proceeded to sue the insured in small claims court. The insurer, in defending its insured, asserted that, because the claim was settled in accordance with the regulation, there was no further liability. The insurer asserted that cashing the check operated as an accord and satisfaction. A anticipates that a case may come before him in which the plaintiff and the defendant will be from differing states and the question of the applicability of N. Certain of these standards and requirements are made applicable to claims arising under motor vehicle liability insurance contracts affording coverage for claims of property damage by third parties caused by the alleged negligence of the insured. Thus, in adjusting a third party claim for a total loss of an automobile, the insurer must comply with the requirements in N. Checks or drafts in payment of claims; releases. No insurer shall issue a check or draft in payment of a first party claim or any element thereof, arising under any policy subject to this Part, that contains language or provision that expressly or impliedly states that acceptance of such check or draft shall constitute a final settlement or release of any or all future obligations arising out of the loss. No insurer shall require execution of a release on a first- or third-party claim that is broader than the scope of the settlement. With respect to both first- and third-party claims, an insurer may not require execution of a release that is broader than the scope of the settlement. In order to ensure that the release is not broader than the scope of the settlement, the release must describe the claim with specificity, and include an explanation and calculation of the payment that the insurer will make in settlement of the claim. Although in this instance the insurer has not required the execution of any release, its claim that the third-party claimant has, by cashing the check, released the insurer from further liability outside the scope of the settlement contravenes the regulation. Section of the Insurance Law prohibits insurers doing business in this State from engaging in unfair claims settlement practices and provides that, if any insurer performs any of the acts or practices proscribed by that section without just cause and with such frequency as to indicate a general business practice, then those acts shall constitute unfair claims settlement practices. There is no provision in either the statute or the regulation regarding resolution of a conflict of laws issue. B dated October 27, Department of Financial Services.

Chapter 5 : The Choice-Of-Law Conundrum - Law

conflict of laws in air crash cases: remarks from a european's perspectve michael bogdan i. introduction 0 n march 3, , a douglas dc passenger air-.*

Choice of laws[edit] Courts faced with a choice of law issue have a two-stage process: The court will determine the law of the state in which land is situated lex situs that will be applied to determine all questions of title. The law of the place where a transaction physically takes place or of the occurrence that gave rise to the litigation lex loci actus will often be the controlling law selected when the matter is substantive, but the proper law has become a more common choice. Conflict of marriage laws In divorce cases, when a court is attempting to distribute marital property, if the divorcing couple is local and the property is local, then the court applies its domestic law lex fori. Whereas commercial agreements or prenuptial agreements generally do not require legal formalities to be observed, when married couples enter a property agreement agreement for the division of property at the termination of the marriage , stringent requirements are imposed, including notarization, witnesses, special acknowledgment forms. In some countries, these must be filed or docketed with a domestic court, and the terms must be "so ordered" by a judge. Upon presenting a property agreement between spouses to a court of divorce, that court will generally assure itself of the following factors: International child abduction[edit] See also: The only reason why the Japanese mother[clarification needed] took and keeps her children in Japan is because of forum shopping. This is because the Japanese mother does not have to share custody with the American father, if her children in Japan. If her children are in the United States she would have to share custody with the American father. In Japan the mother gets sole custody of the children and decides the visitation terms of the father. After spending two weeks in jail he was allowed to return to the United States. If the Japanese mother of the same children were to return to the United States she would be arrested and face charges for taking her children to Japan. It is a criminal offense under United States law for a Japanese mother to take her children from the United States to Japan. Under Japanese law it is a criminal offense for an American father to take the same children from Japan back to the United States. Choice of law clauses may specify which laws the court or tribunal should apply to each aspect of the dispute. This matches the substantive policy of freedom of contract and will be determined by the law of the state where the choice of law clause confers its competence. Contractual clauses relating to consumers, employees, and insurance beneficiaries are regulated under additional terms set out in Rome I , which may modify the contractual terms imposed by vendors. The Hague Conference on Private International Law is a treaty organization that oversees conventions designed to develop a uniform system. The deliberations of the conference have recently been the subject of controversy over the extent of cross-border jurisdiction on electronic commerce and defamation issues. There is a general recognition that there is a need for an international law of contracts: But other branches of the law are less well served and the dominant trend remains the role of the forum law rather than a supranational system for conflict purposes. Even the EU, which has institutions capable of creating uniform rules with direct effect , has failed to produce a universal system for the common market. Article would give the Court of Justice jurisdiction to interpret and apply their principles so, if the political will arises, uniformity may gradually emerge in letter. Whether the domestic courts of the Member States would be consistent in applying those letters is speculative.

Chapter 6 : Conflict of laws in the United States - Wikipedia

Some courts have held that if general animosity between the insurance company and the insured rises to a level where it produces a conflict of interest, the insurance company will be obligated to pay for independent counsel for its client.

Your efforts to strengthen compliance and ethics throughout the private sector are profoundly important. Today I would like to address a topic of perpetual importance to all aspects of compliance and ethics programs, conflicts of interest. I will then turn to the role of risk management and risk controls within firms in identifying and managing conflicts of interest, especially the significance of managing conflicts of interest for the criteria laid out in SEC and FINRA compliance program rules and the U. Federal Sentencing Guidelines on effective compliance and ethics programs. Of course I begin by noting that views I express here today are my own and do not necessarily reflect the views of the Commission or of my colleagues on the staff of the Commission. This is based on the long experience of our exam program that conflicts of interest, when not eliminated or properly mitigated, are a leading indicator of significant regulatory issues for individual firms, and sometimes even systemic risk for the entire financial system. Accordingly, we focus on conflicts of interest as an integral part of our assessment of which firms to examine, what issues to focus on, and how closely to scrutinize. In addition, over the past two years we conducted a sweep on conflicts of interest around confidential information received through investment banking and other business operations, and have just issued a report on that sweep which I will discuss in a few minutes. We also try to flag conflicts of interest that we have identified in our National Examination Risk Alerts and other public statements. Other regulators have a similarly keen focus on conflicts of interest. For example, FINRA is currently conducting a sweep exam of its member firms concerning their efforts to identify and manage conflicts of interest. Conflicts of Interest and the Federal Securities Laws. Last year at this event I spoke about the ways in which ethics underpinned the federal securities regulatory regime. So I should begin by tying ethics to conflicts of interest. As in the microbial world, these viruses come in a vast array of constantly mutating formats, and if not eliminated or neutralized, even the simplest virus is a mortal threat to the body. Especially when combined with the wrong culture and incentives, conflicts of interest can do great harm. Accordingly, conflicts of interest are an integral part of our assessment of which firms to examine, what issues to focus on, and how to examine those issues. It is hardly a term of art. A simple Google search shows that it is used in varying ways in different contexts. I prefer to think of a conflict of interest as a scenario where a person or firm has an incentive to serve one interest at the expense of another interest or obligation. This might mean serving the interest of the firm over that of a client, or serving the interest of one client over other clients, or an employee or group of employees serving their own interests over those of the firm or its clients. This way of thinking about conflicts takes the discussion to a broad consideration of what is the right thing to do as a matter of law and ethical decision-making. It also recognizes that there are reputational risks that can be damaging or even fatal to a business organization when people or firms make decisions that may be technically within the letter of the law, but are not in keeping with the spirit of the law and hard to explain to the constituencies with which they must keep faith, such as customers, creditors, investors, or employees. This rubric is useful as far as it goes, but really just about any bad behavior can be explained in terms of conflicts of interest. The types of conflicts that I find most challenging are situations where people who profess to be ethical and clear-thinking are led astray by cultural pressure poor tone at the top , misaligned financial incentives, herd behavior everybody else is doing it , or just personal weaknesses â€”vanity, self-delusion or poor judgment. The best antidote for this type of conflict is a strong ethics program for the organization, as well as a strong internalized sense of ethics by everyone in an organization, manifested in their ability â€” especially executives, business managers, compliance officers and lawyers â€” to think independently, rigorously, and objectively. Conflicts of interest exist throughout the commercial world. They are a particularly important challenge for large and complex financial institutions, which can have affiliations that lead to a host of potential conflicts of interest. Just as

important, these businesses are highly dynamic, as new products, activities and trading strategies constantly evolve to meet changing client needs and market conditions. This means that new conflicts are constantly arising, and so these firms need to be very disciplined in continually searching for new conflicts and working through how to address them. In addition, approaches to remediating existing conflicts may also require regular reconsideration as circumstances change. Failure to manage conflicts of interest has been a continuing theme of financial crises and scandals since before the inception of the federal securities laws. During the early s, the Pecora hearings held by the Senate Committee on Banking and Currency revealed a vast array of self-dealing and other conflicts of interest throughout the financial markets, such as the use of bank loans to support bank affiliates and affiliate-underwritten securities, and incentives on the part of banks to give investment advice that supported affiliate-underwritten securities. The Pecora hearings of , which focused on the causes of the crash and the subsequent banking crisis, uncovered a wide range of abusive practices on the part of banks and bank affiliates. These included a variety of conflicts of interest; the underwriting of unsound securities in order to pay off bad bank loans; and "pool operations" to support the price of bank stocks. Recent decades have seen numerous examples of conflicts leading to crisis. The s and early s exposed yet more financial scandals. The crisis exposed apparent conflicts of interest in many areas, particularly in the production and sale of mortgage-backed securities, and among credit rating agencies that rated these instruments. LIBOR is a critically important benchmark that is used to set short-term interest rates on many derivatives and other financial instruments. The SEC and its staff have a long tradition of focusing on conflicts of interest. As one example, in then-SEC enforcement director Steven Cutler gave an important speech on the topic of conflicts of interest in that was a call to action for the financial services industry to institutionalize its controls around conflicts of interest and to monitor and control conflicts at a senior level. It is important to recognize that regulators also have an obligation to be diligent about identifying and addressing conflicts of interest as they emerge. When our examination program identifies conduct that may create new risks for the industry, we share our concerns so that senior management, compliance and risk managers are not taken by surprise. One important vehicle by which we communicate key risks, such as conflicts of interest, is through our Risk Alerts, which we began issuing last year. These documents are a window through which we want to offer the public and the financial services industry a view on key risks and to share effective risk management practices that we have observed. These include conflicts of interest that we want to highlight, as well as practices that we have observed to control or mitigate conflicts. I want to also stress that the effective practices that we describe in the risk alert are for informational purposes and do not represent new legal or regulatory requirements. For example, the report explains that certain groups within broker-dealers routinely engage in discussions with corporate insiders in order to provide advice on strategic activities and financial management issues: Moreover, certain groups within broker-dealers, such as sales, trading, stock lending or prime brokerage, may obtain non-public information regarding their institutional clients, such as order and position information. Such information, provided on a confidential basis to facilitate services provided to customers, could be misused to further the interests of the broker-dealer, either by giving it an unfair advantage in trading or enabling it to issue research reports based on such information. The staff was concerned that despite the conflict between their business responsibilities and receipt of material non-public information, the broker-dealers did not impose mitigating controls such as physical barriers, documentation or monitoring on that individual or group. Some of the conflicts of interest that are currently a high priority for our examinations include: Compensation-Related Conflicts and Incentives: This includes, for example, the retailization of complex instruments such as structured securities products. It also includes aggressive marketing of retirement products, and whether adequate due diligence is being performed on underlying investment vehicles; Lack of oversight of outside business activities of representatives; Incentives to place investors in accounts with fee structures that are high relative to the services provided, such as certain investment adviser or wrap fee accounts; Portfolio Management-Related Conflicts: Investment advisers that prefer one client over another when managing multiple accounts side-by-side, due to financial incentives or

personal relationships; Portfolio management activities by fund advisers that involve risks beyond the risk tolerance levels or stated objectives in the prospectus, such as overconcentration in a single issuer or sector, purchasing illiquid securities that appear to deliver higher returns, or a mismatch of fund liquidity to an expectation of fund redemptions; Affiliations between investment advisers and broker-dealers: In addition to the high-profile cases that I mentioned earlier, conflicts of interest are at the heart of many cases that the Commission brings on a routine basis. For example, just last month the Commission brought a settled administrative proceeding against Focus Point Solutions and the H Group, two Oregon-based investment advisory firms and their owner regarding their failure to disclose compensation through a revenue-sharing agreement and other potential conflicts of interest to clients. As the Commission stated in its press release: Because Focus Point received a percentage of every dollar that its clients invested in these mutual funds, there was an incentive to recommend these funds over other investment opportunities in order to generate additional revenue for the firm. This is proving to be a very effective tool for the staff to identify significant conflicts among private fund registrants, and to use that information to target both examination and enforcement resources. Other financial regulators also frequently focus on this issue. FINRA has explained that the goal of the sweep is to better understand industry practices in this area, and that it will seek to develop potential guidance for the industry based on what it learns from the sweep. According to the MSRB, this proposal follows a number of civil and criminal prosecutions involving alleged fraudulent activities relating to municipal securities offerings in which undisclosed third-party payments played a role. The Dodd â€"Frank Act contains numerous provisions relating to conflicts of interest. For example, Title VII contains a number of provisions that explicitly address conflicts of interest in the derivatives market. Effective Practices for Managing Conflicts of Interest. Turning from how regulators approach conflicts to how firms can assess and mitigate conflicts, I believe that an effective conflicts risk governance framework includes three broad considerations. The first is that there needs to be an effective process, led by a cross-functional leadership team, to identify and understand all conflicts in the business model. These conflicts need to be understood both in terms of their practical business implications as wells as in relation to relevant legal standards. This includes a recognition that conflicts are dynamic, and that in addition to continually scanning for new conflicts, each and every conflict that has been identified and addressed needs to be revisited periodically to determine if it is still being appropriately controlled in light of new business circumstances, changing customer profiles, new regulatory obligations, etc. For instance, in our exams of how firms protect material non-public information MNPI from inappropriate uses, such as insider trading, we have observed instances where firm programs lagged behind new business strategies that created new sources of MNPI. While the business model evolved, the control framework did not and that exposed these firms to significant risks. It is also important to risk-assess and prioritize which conflicts of interest present the greatest risk to the organization so that resources can be allocated accordingly to mitigate and manage those conflicts effectively both from a compliance risk and reputation risk perspective. The second broad consideration, I believe, is to have a good compliance and ethics program tailored to address the conflicts of interest the firm has identified and prioritized. This is a topic of concern to every broker-dealer and investment adviser, given their supervisory obligations under the federal securities laws. For instance Rule 4 -7 under the Investment Advisors Act and Rule 38a-1 under the Investment Company Act establish such requirements for investment advisors and investment companies. In addition, for reference purposes the U. The and amendments to the Guidelines, as you know, explicitly require an effective compliance and ethics program as a mitigating factor in determining criminal sentences for corporations. The Guidelines list seven factors that are minimally required. I would like to examine each of these factors in turn, and explain how I believe it relates to effectively managing conflicts of interest. I believe that this analysis is also very germane to whether broker-dealers and investment advisers have met their supervisory obligations under the federal securities laws. However, I believe that for any organization, developing a strong process for identifying and managing conflicts of interest is a key means of preventing and detecting not just criminal conduct, but other behavior

that may create regulatory or reputational risks for the business. Since new conflicts of interest can arise rapidly as a business grows and evolves, and may become apparent to front-line employees before they come to the attention of more senior managers or control functions, communications about these standards and procedures are also an opportunity to emphasize to all employees the importance of their role in recognizing new conflicts of interest, and their responsibility to elevate such conflicts to appropriate control functions. Some firms enhance this process by including conflicts assessment within other processes, such as new product or business approval, conduct customer surveys for potential conflicts, or conduct periodic or ad hoc self-assessments of their business practices. In order to complement this oversight, some firms establish standing committees, composed of senior executives and senior control personnel, with focused responsibility on conflicts assessment. I believe that, in the financial services world, unremediated conflicts of interest are a leading indicator of the types of problems that a compliance and ethics program is intended to root out. Therefore, I find it difficult to see how the governance structure of a financial services firm can satisfy this factor unless its oversight includes consideration of the effectiveness of the compliance and ethics program in addressing conflicts of interest. Leadership consistent with effective ethics and compliance program. The third factor is that the organization use reasonable efforts to exclude from any position of leadership any individual who has engaged in conduct inconsistent with an effective compliance and ethics program â€" in other words, that the fox is not guarding the henhouse. Again, in my view it would be difficult for a financial services firm could satisfy this standard if any of its business unit heads or senior managers has not shown a commitment to proactively identifying and remediating conflicts of interest in the business model of the organization. The fourth factor is that the organization take reasonable steps to periodically train and otherwise communicate with its leadership, employees and agents about its compliance and ethics program, including its standards and procedures for implementing the program. It follows from what I have already said that, in my view, this training and other communication should include communication about the responsibilities of everyone in the organization regarding identifying, escalating and remediating conflicts of interest. It should be tailored to specific conflicts in the business model and clearly set forth the governance, risk management and compliance procedures to mitigate and manage these conflicts. The fifth factor is to take reasonable steps to ensure that the compliance and ethics program is followed, including monitoring and auditing, as well as periodic testing of the effectiveness of the program, and to have and publicize a system by which employees and agents of the organization can report or seek guidance regarding potential criminal conduct without fear of retaliation. Some firms will discuss with legal and compliance issues prior to a review and then report on issues discovered to any designated conflicts review authority. The sixth factor is whether the organization has appropriate incentives to support the compliance and ethics program, and appropriate disciplinary measures for failing to take reasonable steps to prevent or detect criminal conduct. I believe that this factor, especially as it relates to incentives, goes to the heart of many problematic conflicts, since these often may involve incentives that an individual has that are inconsistent with duties that he or she owes to the organization, its clients or his or her customers. The final factor is whether the organization takes reasonable steps to respond to any criminal conduct and to prevent its recurrence, including making any necessary modifications to its compliance and ethics program.

Chapter 7 : Conflict of laws - Wikipedia

Conflict of laws in the United States is the field of procedural law dealing with choice of law rules when a legal action implicates the substantive laws of more than one jurisdiction and a court must determine which law is most appropriate to resolve the action.

For example, a dispute regarding property would be decided by the law of the place the property was located. For example, suppose State X has a rule that says that if property located in State X is conveyed by a contract entered into in any other state, then the law of that other state will govern the validity of the contract. Suppose also that State Y has a rule that says that if a contract entered into in State Y conveys property located in any other state, then the law of that other state will govern the validity of the contract. If a lawsuit arising from that transaction is brought in State X, the law of State X requires the courts of that state to apply the law of the state where the contract was made, which is state Y. However, the courts of State X might note that a court in State Y would apply the law of State X, because that is where the land is located, and the law of State Y follows the land. The basic criticism of renvoi is that it can lead to an endless circle. In the above example, it could be argued that if the law of State Y points back to State X, then the law of State X would only once again require application of the law of State Y, and so forth and so on without end. Significant contacts test[edit] The significant contacts test evaluates the contacts between the states and each party to the case, and determines which state has the most significant contacts with the litigation as a whole. This test has been criticized for failing to respect the sovereignty of the state in which the cause of action arose, and because courts can tip the balance in one way or another in deciding which contacts are significant. Seat of the relationship test[edit] The seat of the relationship test specifically examines the relationship between the parties to the lawsuit, and uses the law of the state in which the relationship between the parties was most significant. For example, if two people who live in State X meet and develop a relationship in State Y, and a cause of action arises between them while they are traveling through State Z, a court of any state applying this test would probably apply the law of State Y, because that state is the seat of the relationship between these two parties. Balance of interests test[edit] The balance of interests test examines the interests of the states themselves, and the reasons for which the laws in question were passed. It is the brainchild of University of Chicago law professor Brainerd Currie , who outlined the doctrine in a series of articles from the s and 60s. Under this form of analysis, the court must determine whether any conflict between the laws of the states is a true conflict, a false conflict, or an unprovided-for case. A true conflict occurs when one state offers a protection to a particular party that another state does not, and the court of the state that offers no such protection is asked to apply the law of the state offering the protection. For example, suppose A, lives in State X, which has no cap on tort damages for injuries received in an auto accident. While traveling through State X, B causes an auto accident in which A is seriously injured. In this situation, it can be argued that State X has chosen to place no limit on recovery in order to protect its citizens and keep its roads safer; while State Y has chosen to place a limit on tort damages to prevent tort abuse and keep insurance costs down. In such a case, if the interests are balanced, the law of the forum will prevail. A false or apparent conflict occurs when the state offering the protection has no actual interest in the endorsement of that protection against the particular parties to the case. For example, some states prohibit spouses from suing one another for negligent torts, in order to prevent them from colluding in order to collect from insurance companies. Other states permit such suits, on the theory that people should be able to recover for their injuries, and possible collusion can be presented as a factor for the jury to deal with. Suppose that a couple, A and B, live in state X, which prohibits these suits, and they travel to state Y, which permits these suits. While in state Y, A negligently injures B, and upon their return to state X, B sues A in the court of state X, asserting that the law of state Y should govern. In this case, since neither party is from state Y, state Y has no interest in the application of the law to these persons. An unprovided-for case is one in which each party is seeking to apply the law of the other state. For example,

suppose State X has a law that limits recovery in a tort suit, and state Y has no such limit. In such a case, the law of the forum will prevail. Some courts have sought to distinguish different types of law, giving more weight to laws of foreign states that are intended to regulate conduct e. The "better rule" test[edit] Use of the "better rule" test, like renvoi, is frowned upon because it appears to be little more than a gimmick to allow a court to apply the law of its own state. The test itself presupposes that, between the laws presented by the two or more states in which the action arose, there is one set of laws which is empirically better. Because courts will almost always presume that their own state has better laws, this is effectively a device to avoid applying choice of law principles altogether. Constitution on the ability of states to apply their own law to events occurring in other states. In one of the earliest cases in this area, Home Insurance Co. Dick , U. The plaintiff had sued a New York reinsurer of a Mexican corporation that was primarily insured in Mexico, which is where the "injury" had occurred when a tugboat owned by the company was lost in a fire. The plaintiff was living in Mexico at the time although not a resident , but returned to Texas to file suit. The doctrine steadily developed in a series of cases over the following decades. In Pacific Employers Insurance Co. Industrial Accident Commission , U. This was reaffirmed in Watson v. Employers Liability Assurance Corp. A decade later, in Clay v. Sun Insurance Office, Ltd. Hague , U. In the case itself, a Wisconsin resident who was employed over the state line in Minnesota was killed in a motorcycle accident in Wisconsin. In Phillips Petroleum Co. Shutts , U. The Kansas court hearing the case simply assumed that the law of Kansas was adequate for all the claims. The Supreme Court disagreed, holding that the Kansas court was required to determine the law of each state on the substantive questions of law, and apply the laws of each state to the claims brought by plaintiffs from that state. In the related case of Sun Oil Co. Wortman , U. There the Court held that they had long been viewed as procedural matters. The states could choose to use their own with no concern for violating the Constitution.

Chapter 8 : Alabama Legal Ethics

Conflict of laws questions relating to immovables are generally decided in accor- dance with the law of the jurisdiction in which such property is situated. 17 The situs rule is based upon the rationale that the situs jurisdiction has the greatest.

Chapter 9 : Insurance | State of California - Department of Justice - Office of the Attorney General

Commentaries on the Conflict of Laws, Foreign and Domestic, in Regard to Contracts, Rights, and Remedies, and Especially in Regard to Marriages, Divorces, Wills, Successions, and Judgments The first systematic work on the subject and an indisputable legal classic.