

## **Product Liability Conflicts in the United States (summary)**

**Naoshi TAKASUGI**

Associate Professor, Tezukayama University

### I. Introduction

Products liability conflicts have proliferated in the last quarter of the last century in the United States. This paper reviews the U. S. courts' performance over the last decade, and then discusses some choice-of-law rules that have been proposed by some academics.

### II. Recent Cases

A review of products liability conflicts decided during the last decade reveals that this area of the law remains in a state of flux. It is due to the diversity of choice-of-law methodologies adopted by states. Nevertheless it is possible to discern the common denominator among recent cases, that is a list of factual contacts being usually taken into account in identifying the concerned jurisdiction and in resolving products liability conflicts. These contacts are the domicile or habitual residence of the injured party, the place where the injury occurred, the place where the product was acquired or marketed, the place where the product was manufactured, and the principal place of business of the manufacturer.

The current state of the case law however has not produced new choice-of-law for products liability conflicts. Neither interest analysis nor the Second Restatement will resolve all cases. Rather the modern methodologies impair the certainty or predictability of result.

### III. Some Proposed Rules

Several academic commentators have proposed rules for products liability conflicts. The most striking common feature of all but one of the rules is that they give the victim the option of choosing the applicable law. This option is justified by the pervasive objective that is to spread the risk either by insurance or by imposition of the cost on the business or on the product. Thus the victim should be entitled to the application of the more beneficial of the conflicting rules because the law is protective of the injured and because the policy that favors the spread-

ing of the risk will often be considered a superior policy.

#### IV. Concluding Remarks

The common denominator among recent cases in the U. S. and the common feature of the proposed rules serve much inspiration in considering the choice-of-law rule for products liability conflict in Japan as well.