

Public Policy Exception to Application of Foreign Law – What Does That Mean in South Carolina?

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Generally, South Carolina applies the doctrine of *lex loci delicti* in tort actions, and thus, applies the law of the state in which the purported injury occurred. An exception to this general rule is the public policy exception; foreign law will not be applied if it violates the public policy of the state. What does that mean? The United States District Court recently addressed this exception in *Hughes v. Medical Depot, Inc., et al* 2019 WL 1772401 (April 23, 2019).

In *Hughes*, Plaintiff, a South Carolina resident, purchased a rolling walker through Amazon.com that was delivered to him in South Carolina. While visiting a museum in Georgia, he sat on the walker, following which the frame snapped and he fell, striking his head and breaking his hip. Plaintiff filed suit in South Carolina against Amazon.com, as well as Defendants Medical Depot, Inc. and AMG Medical, Inc., which manufactured the walker, alleging causes of action for strict liability, negligence and breach of warranty. The matter came before the court on Amazon.com's motion for judgment on the pleadings.

Because South Carolina follows *lex loci delicti*, Amazon.com's motion as to Plaintiff's strict liability claim relied upon Georgia law that excludes sellers from its strict liability statute. Thus, the claims against it were subject to dismissal.

In opposition to Amazon.com's motion, Plaintiff argued the court should decline to apply Georgia law pursuant to the public policy exception. Specifically, Plaintiffs relied upon South Carolina's adoption of the comments to §402A of the Restatement (Second) of Torts in applying strict liability to product sellers, which provide that public policy requires the burden of accidental injuries caused by products be placed upon those who market them. The court rejected this argument, finding it failed to meet the requirements of the public policy exception.

Application of the public policy exception requires a determination that the foreign law in question violates good morals or natural justice, or for some other, similar reason, the enforcement of it would be prejudicial to the general interest of South Carolina's citizens. Because a foreign law is against the policy underlying a South Carolina law is simply insufficient; good morals or natural justice are not violated when foreign law precludes a tort action for money damages. The court found no indication that the application of Georgia law, which bars an action for strict liability against a seller, violates the good morals or natural justice of South Carolina. Quite attenuated from Plaintiff's argument, the court cited to examples of violations of public policy including prohibited marriages, wagers, lotteries and the like.

The court took the opportunity in *Hughes* to not only address but to emphasize, by way of historical reference, the basic nature of the public policy exception to *lex loci delicti*. The court's treatment of the exception suggests a continue respect for *lex loci delicti* and that mere substantive differences in foreign law are not sufficient to meet the public policy exception.

Cheryl D. Shoun is a trial attorney and certified mediator whose experience includes construction law, insurance defense, personal injury defense, employment litigation and medical malpractice. As a frequent writer, she serves as editor for Nexsen Pruet's TIPS: Torts, Insurance and Products Blog.