IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SUSAN C. LIEBMAN, DONALD A. BERG, RICHARD GERSON, Trustees Under Deed of Trust Dated May 11, 1984 of Samuel A. Liebman, and HAROLD C. WRIGHT, JR.,	:	
Plaintiffs	:	**CIVIL ACTION**
	:	**NO. 02-2566**
v.	:	
PRUDENTIAL FINANCIAL, INC.,	:	
Defendant	:	

MEMORANDUM OPINION AND ORDER

RUFE, J. **November 14, 2003**

Presently before the Court is Plaintiffs' Motion with Respect to Choice of Law. Early in this litigation Defendant moved to dismiss all three counts of the Complaint: equitable estoppel (Count 1), fraud (Count 2), and negligent misrepresentation (Count 3). The Court dismissed the fraud claim, but denied the motion as to the equitable estoppel and negligent misrepresentation claims because it could not determine whether these counts could withstand Defendant's Rule 12(b)(6) motion without first determining which state's law to apply, an issue that had not been briefed adequately by the parties. See Liebman v. Prudential Fin., Inc., 2002 WL 31928443, 2002 U.S. Dist. LEXIS 25045 (E.D. Pa. Dec. 30, 2002). With leave of Court, the parties have submitted memoranda of law and relevant evidence, and the choice of law issue is now ripe.[1] For the reasons below, the Court agrees with Plaintiffs that New Jersey law should apply to this action.

[1] The Court also granted leave for Plaintiffs to file an Amended Complaint, but they did not do so.

I. FACTUAL BACKGROUND

The following is presented for summary purposes only. A more detailed account of the facts may be found in the Court's prior memorandum opinion. This case arose from Defendant Prudential Financial Inc.'s "demutualization," *i.e.*, its conversion from a mutual life insurance company to a publicly traded stock company. Defendant is a New Jersey corporation with its principal place of business in New Jersey. Prior to the demutualization Defendant was a New Jersey mutual life insurance company.

Plaintiffs are Susan C. Liebman, Donald A. Berg and Richard L. Gerson, all trustees under a Deed of Trust of Samuel A. Liebman (the "Trust"). The Trust was the owner of insurance contracts issued by Pruco Life Insurance Company ("Pruco"), a wholly-owned subsidiary of Defendant. Plaintiff Harold C. Wright also owned Pruco insurance contracts. All Plaintiffs are citizens of Pennsylvania.

In February 1998, Defendant publicly announced its demutualization and set up a toll-free telephone hotline and website to address policyholders' questions about the proposed demutualization. The Settlor of the Trust called the toll-free hotline and spoke to a Prudential representative to determine whether Pruco policies would be eligible for the announced distribution of stock, cash or increased policy benefits under the demutualization plan. Plaintiffs allege that a hotline representative told the Settlor that the Trust was not eligible for any such distribution because Pruco, the issuer, was already a stock company and not a mutual company. Plaintiff Wright made the same inquiry and received the same information from the hotline and the website. Plaintiffs received the same information in subsequent calls and allege a hotline representative encouraged them in some way to surrender their policies.

Plaintiffs made these phone calls and visited the website while in Pennsylvania. The hotline operators received Plaintiffs' calls at a "call center" in New Jersey. Defendant's employees responsible for the content of the website worked in New Jersey.[2]

In reliance on the alleged misrepresentations, Plaintiff Wright and the Trust surrendered their policies in April and November 2000, respectively. After approval by its policyholders and the New Jersey Department of Banking and Insurance, Defendant determined that Pruco Policies *would* be eligible for demutualization compensation in the form of stock, cash or policy credits. However, only those policy holders owning Pruco Policies on December 15, 2000 would be eligible. As a consequence, Plaintiffs were not eligible, having surrendered their policies prior to the eligibility date. The instant action followed.

II. CHOICE OF LAW

Plaintiffs contend that New Jersey law should apply to the instant action, while Defendant argues in favor of Pennsylvania law. It is well settled that a federal court sitting in diversity must apply the choice of law rules of the forum state. Klaxon v. Stentor Elec. Mfg. Co., 313 U.S. 487, 496 (1941); Standard Bent Glass Corp. v. Glassrobots Oy, 333 F.3d 440, 444 n.7 (3d Cir. 2003).

Under Pennsylvania choice of law analysis, a court must first look to see whether an actual conflict exists between the laws of the competing jurisdictions. If there is no difference between the laws of the forum state and those of the foreign jurisdiction, the court may bypass the choice of law issue and rely interchangeably on the law of both states, although presumably the law of the forum state applies. Lucker Mfg. v. Home Ins. Co., 23 F.3d 808, 813 (3d Cir. 1994); Nova Telecom, Inc.

[2] The parties submitted to the Court a lengthy stipulation concerning facts relevant to today's decision. Only key facts are recited here.

v. Long Distance Mgmt. Sys., Inc., No. Civ.A.00-2113, 2000 WL 1593994, at *6-7 (E.D. Pa. Oct. 26, 2000) (in absence of conflict, relying on forum state law).

Where competing laws differ, the court must ask whether such differences present a "false conflict." LeJeune v. Bliss-Salem, Inc., 85 F.3d 1069, 1071 (3d Cir. 1996). A false conflict exists where "only one jurisdiction's governmental interests would be impaired by the application of the other jurisdiction's laws." Lacey v. Cessna Aircraft Co., 932 F.2d 170, 187 (3d Cir. 1991). In other words, "although two jurisdictions have nominal contacts with the transaction, only one jurisdiction is truly concerned with the result." Kuchinic v. McCrory, 422 Pa. 620, 624 n.4 (1966). In such a situation, the court must apply the law of the state whose interests would be impaired if its law were not applied. Lacey, 932 F.2d at 187.

Where there is no "false conflict," *i.e.*, an actual conflict exists, a court must proceed to the second step of the analysis and determine "which state has the greater interest in the application of its law." LeJeune, 85 F.3d at 1071.[3] This second step has been described as a "hybrid approach that

[3] As the Court noted in its previous opinion, 2002 WL 31928443 at *2 n.2, 2002 U.S. Dist. LEXIS 25045 at *6 n.2, Third Circuit precedent varies slightly on the meaning of "false conflict." The Lucker court declared that a "false conflict" exists where there is no difference between the competing laws. 23 F.3d at 813; see also Williams v. Stone, 109 F.3d 890, 893 (3d Cir. 1998) ("where the law of the two jurisdictions would produce the same result," a false conflict exists). On the other hand, the Lacey court declared that a false conflict exists where "only one jurisdiction's governmental interests would be impaired by the application of the other jurisdiction's laws." 932 F.2d at 187; see also LeJeune, 85 F.3d at 1071; Air Prods. and Chems., Inc. v. Eaton Metal Prods. Co., 272 F. Supp. 2d 482, 490 n.9 (E.D. Pa. 2003) (noting that courts in Pennsylvania have used "false conflict" interchangeably to mean both a situation in which no conflict at all exists and a situation in which only one state's interests would be harmed by application of the other's law). These pronouncements seem to encourage different analytical frameworks. The Lucker approach would require a court to determine which state has the "greater interest in the application of its laws" if there is *any* difference in the competing laws. By contrast, the Lacey approach allows a court to end its analysis if, a difference in the laws notwithstanding, only one jurisdiction is truly concerned with the result. See, e.g., Deere & Co. v. Reinhold, No. 99-CV-6313, 2000 WL 486607, at *5-6 (E.D. Pa. Apr. 24, 2000) (finding false conflict where Michigan's interests not impaired by application of Pennsylvania law); Kirby v. Lee, No. Civ.A.98-6483, 1999 WL 562750, at *1-3 (E.D. Pa. July 22, 1999) (finding false conflict where Maryland's interest would be impaired by application of Pennsylvania law, but not vice versa); Farrell v. David Davis Enter., Inc., No. Civ.A.95-2986, 1996 WL 21128, at *3 (E.D. Pa. Jan. 19, 1996) ("Because this case presents a 'false conflict' warranting the application of Pennsylvania law, the Court need not reach the second step of Pennsylvania choice of law analysis - - the hybrid significant relationship/government interests test."). At least one court has

'combines the approaches of both Restatement II (contacts establishing significant relationships) and interest analysis (qualitative appraisal of the relevant States' policies with respect to the controversy).'" Lacey, 932 F.2d at 187 (quoting Melville v. Am. Home Ass. Co., 584 F.2d 1306, 1311 (3d Cir. 1978)).

As explained in greater detail in the Court's previous opinion, Pennsylvania does not recognize "equitable estoppel" as a cause of action, while New Jersey does. See, e.g., Miller v. Miller, 478 A.2d 351 (N.J. 1984) (holding permanent child support obligation may be imposed on a stepparent on the basis of equitable estoppel); Graham v. Pennsylvania State Police, 643 A.2d 849, 852 (Pa. Commw. Ct. 1993) ("[E]quitable estoppel . . . has only been recognized as a defense and not as a cause of action in itself."). Having identified this conflict, the Court opined that a true conflict existed:

> It is the opinion of this Court that there is not a false conflict because both Pennsylvania's and New Jersey's interest would be impaired by the application of the other's law. New Jersey's interests would be impaired were this Court to preclude a right that its courts enforce; conversely, Pennsylvania's interests would be impaired by application of a cause of action expressly rejected by its courts. Accordingly, this is a true conflict, and the Court must determine "which state has the greater interest in the application of its law."

2002 WL 31928443 at *4, 2002 U.S. Dist. LEXIS 25045 at *11. Plaintiffs now ask the Court to revisit this issue, arguing that there are important considerations not raised by the Court that demonstrate a false conflict between Pennsylvania and New Jersey's laws of equitable estoppel. As noted previously, the Court made the above observation without the benefit of briefing by the parties. Moreover, the above language is *dicta* insofar as the Court did not rule on the choice of law issue.

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opined that the Lucker approach stems from an incorrect use of the term "false conflict," and that the Lacey court presented the correct analysis. See Naviant Mktg. Solutions, Inc. v. Larry Tucker, Inc., No. Civ.A.00-6036, 2002 WL 15918, at *3 n.14 (E.D. Pa. Jan. 4, 2002) (Robreno, J.). This Court agrees with Judge Robreno, and will follow the Lacey court's conception of a false conflict: confronted with relevant differences between competing laws, a court may apply the law of one jurisdiction if the governmental interests of the other would not be affected. See id.

After carefully considering the parties' thoughtful arguments, the Court is persuaded that it should reexamine the question of whether there is a false conflict between Pennsylvania and New Jersey's laws of equitable estoppel in this case.

The Court's previous opinion also noted a difference in Pennsylvania and New Jersey's laws regarding negligent misrepresentation, and the parties now express their agreement that Pennsylvania's standard is more stringent and difficult to prove because it requires elements of proof that New Jersey's standard omits.[4] The Court noted this difference but expressed no opinion on whether the difference presents a false conflict. See 2002 WL 31928443 at *4-5, 2002 U.S. Dist. LEXIS 25045 at *13-14. Because Plaintiffs' two theories arise from the same conduct and invoke similar governmental interests, *i.e.*, a government's interest in crafting and enforcing its tort law, the Court will analyze them together in determining whether a false conflict exists.

The Court must first identify Pennsylvania and New Jersey's respective governmental interests. Then it must ask whether the application of the other state's law, in the context of this case, would impair those interests. See Lacey, 932 F.2d at 187. Plaintiffs argue correctly that New Jersey's primary interest in this case is in holding its domiciliaries and regulated entities, such as Defendant, to the full measure of damages and standard of care provided by New Jersey tort law and in deterring future misconduct by its domiciliaries. Mueller v. Parke Davis, 599 A.2d 950, 953-54 (N.J. App. Div. 1991) (citing Pfau v. Trent Aluminum Co., 263 A.2d 129 (N.J. 1970)). In a

[4] New Jersey courts provide that "[a]n incorrect statement, negligently made and justifiably relied upon, may be the basis for recovery of damages for economic loss or injury sustained as a consequence of that reliance." H. Rosenblum, Inc. v. Adler, 461 A.2d 138, 142-43 (N.J. 1983). Under Pennsylvania law, negligent misrepresentation requires proof of (1) a misrepresentation of a material fact; (2) made under circumstances in which the misrepresenter ought to have known its falsity; (3) with an intent to induce another to act on it; (4) which results in injury to a party acting in justifiable reliance on the misrepresentation, and like any action in negligence, there must exist a duty owed by one party to the other. Bortz v. Noon, 729 A.2d 555, 561 (Pa. 1998). Thus, Pennsylvania requires a separate duty and an intent to induce another to act on a misrepresentation, while New Jersey does not.

misguided effort to attack this characterization, Defendant argues that because its hotline is no longer in operation and its website no longer contains information about demutualization policy conversions, New Jersey has no interest in deterring the kind of misconduct alleged here, presumably because it is incapable of repetition. This argument misses the mark by a wide margin. New Jersey's interest is in "deterring future misconduct on the part of its domiciliaries," a class of actors obviously not limited to Defendant alone, nor limited to actors accused of wrongdoing in the past. Id. at 954. Rather, New Jersey has a generally applicable interest in deterring future torts by all actors domiciled within its borders. See id. at 953 ("[New Jersey] has an interest in assuring that its domiciliaries perform their duties and obligations."). Application and enforcement of its tort laws serves this interest. As Plaintiffs note, if application of New Jersey's deterrence interest was as narrow and transaction-specific as Defendant contends, it would be no deterrent at all.

Plaintiffs argue that application of Pennsylvania law would impair New Jersey's interest in this case because (1) it would deprive Plaintiffs of a cause of action available to them in New Jersey (equitable estoppel), and (2) it would impose upon them a more difficult tort standard for proving negligent misrepresentation. The Court agrees that both of these consequences would prejudice New Jersey's dual interests in holding its domiciliaries to the full measure of damages and standard of care provided by New Jersey tort law and in deterring future misconduct by its domiciliaries. Defendant offers little argument to counter these conclusions.

Plaintiffs also argue that Pennsylvania's interests would not be impaired by the application of New Jersey law. Even assuming Plaintiffs' injuries arose in Pennsylvania, the only Pennsylvania interest implicated here is in compensating its citizens for these injuries and in deterring tortious conduct within its borders. As such, Plaintiffs argue, Pennsylvania's interests are actually *better*

served by application of New Jersey's law in these circumstances because New Jersey law is more favorable to these Pennsylvania Plaintiffs: it provides for a cause of action not available in Pennsylvania, and it has a less restrictive negligent misrepresentation standard. Surely, so the argument goes, Pennsylvania cannot have any interest in depriving its citizens of the benefits of more favorable laws. Moreover, to the extent that Pennsylvania has an interest in application of its own tort laws in order to protect its residents and industry from large recoveries, no such interest is implicated here because Defendant is not domiciled in Pennsylvania.

The Third Circuit has adopted similar reasoning, and the Court finds it should apply here. In Lacey, the Third Circuit analyzed products liability claims by an Australian citizen injured in an airplane crash in British Columbia. 932 F.2d at 187-88. One of the defendants was a Pennsylvania corporation. The plaintiff brought suit in Pennsylvania, which utilized a strict liability standard, whereas British Columbia utilized a negligence standard. Although it was working with an incomplete record, the court identified Pennsylvania's adoption of the strict liability standard as evincing an "interest in deterring the manufacture of defective products and in shifting the costs of injuries onto producers." Id. at 188. British Columbia, on the other hand, had rejected the strict liability standard in favor of a more defendant-protective negligence standard in order to foster industry within its borders. See id. Therefore, the court reasoned, applying Pennsylvania law to a Pennsylvania defendant would further its interest in deterrence and cost-shifting without impairing British Columbia's interest, which was not implicated due to the absence of any defendants from British Columbia. Furthermore, applying British Columbia law would not serve British Columbia's interests (there being no British Columbia defendant to protect) but would harm Pennsylvania's

interests. See id. Accordingly, the court found a false conflict.[5] See also Reyno v. Piper Aircraft Co., 630 F.2d 149, 167-68 (3d Cir. 1980) ("Scotland would have no interest in *denying* compensation to its residents for the purpose of benefitting a foreign corporation."), rev'd on other grounds, 454 U.S. 235 (1981); Arcila v. Christopher Trucking, 195 F. Supp. 2d 690, 692-694 (E.D. Pa. 2002) (in case involving fatal auto accident that occurred in Pennsylvania, finding false conflict where New Jersey's interest in protecting defendants from large damage recoveries was not impaired by application of Pennsylvania's more generous damages regime where no defendant is from New Jersey, but Pennsylvania's interest in promoting plaintiffs' recoveries and deterring tortious conduct within Pennsylvania would be impaired by application of New Jersey's less generous damages regime).

Defendant's attempts to counter this reasoning are not persuasive, and the cases it cites are inapposite. For example, Defendant quotes Judge Joyner's decision in Aircraft Guaranty Corp. v. Strato-Lift, Inc., 951 F. Supp. 73 (E.D. Pa. 1997) as authority for the proposition that Pennsylvania courts have not expressed an interest in favoring the jurisdiction whose law provides for the greater measure of recovery. In Aircraft Guaranty, the plaintiff alleged breach of contract against the defendant, and sought attorneys' fees under a Texas statute. The defendant argued Texas law did not apply, and because the laws of the competing jurisdictions (Pennsylvania and Connecticut) did not provide for attorneys' fees in contract actions, moved for summary judgment on the plaintiff's claim for attorneys' fees. See id.

In asking Judge Joyner to apply Texas law, the plaintiff argued, *inter alia*, that "under

[5] The Lacey court remanded for further development of the record as to the respective jurisdictions' interests. See 932 F.2d at 188-90. No such further development is required here, as the parties have presented adequate arguments and case law respecting New Jersey's and Pennsylvania's interests in this case.

Pennsylvania's choice of law rules, a court should favor the law of the jurisdiction whose law allows the plaintiff the greater recovery." Id. at 77. Judge Joyner rejected this argument, calling it "groundless." Id. Significantly, the plaintiff was not a Pennsylvania resident but rather was a Delaware corporation with its principal place of business in Texas. See id. at 75. Accordingly, any interest Pennsylvania might have had in supplying its citizen with a greater measure of recovery was not implicated. As noted later in the opinion, Pennsylvania and Connecticut's interest in the case were actually quite the opposite - - to limit the measure of recovery against their corporate citizens. See id. at 78. Therefore, Aircraft Guaranty Corp. is clearly distinguishable from the instant matter.[6] The other potentially relevant case cited by Defendant, Owen J. Roberts School District v. HTE, Inc., is distinguishable for similar reasons. See No. Civ.A.02-7830, 2003 WL 735098, at *3 n.4 (E.D. Pa. Feb. 28, 2003) (concluding Pennsylvania has greater interest in application of its law "because we discern no interest of Florida in protecting a Pennsylvania plaintiff" and because the wrongful conduct at issue occurred entirely in Pennsylvania).

Likewise, nothing in LeJeune supports Defendant's argument. In that case the court ruled that Delaware's less generous liability regime applied to a Pennsylvania plaintiff's claims arising from conduct that occurred in Delaware. However, it did so after finding a "true conflict" existed between the competing laws because both states' interests would be impaired by application of the other's law. See 85 F.3d at 1071-72 ("Applying Delaware law would impair Pennsylvania's interest in protecting its citizen, Mr. LeJeune. . . . If Pennsylvania law were applied, Delaware's interest in

[6] Perhaps recognizing this fact, the plaintiff in Aircraft Guaranty seemed to be arguing that Pennsylvania had expressed a generalized interest in favoring jurisdictions whose laws allow for the greatest recovery for all plaintiffs, as opposed to an interest in enabling Pennsylvania plaintiffs to maximize their recovery, as Plaintiffs argue here. Thus, Aircraft Guaranty is distinguishable for this reason as well.

regulating purposeful economic activity within its borders would be impaired."). It then moved to the next step of the analysis - - a step not yet reached by this Court - - and determined that, in light of each states' contacts in the case, Delaware had the greater interest in having its law applied. 85 F.3d at 1071-72. That the LeJeune court found that Delaware's contacts with the action were weightier than Pennsylvania's says nothing about whether Pennsylvania has an interest in depriving its citizens of recovery in favor of protecting a foreign company from liability. The focus of that question is simply not at issue at this stage of the Court's choice of law analysis.

Next, Defendant contends that Pennsylvania does not recognize the tort of equitable estoppel because it "has expressed the clear policy choice that a plaintiff demonstrate the existence of a bona fide legal right entitling the plaintiff to recovery of damages" and to prevent plaintiffs from "seeking recovery of damages under amorphous theories." Defendant's Response at 15-16. However, even assuming that this is the reason for Pennsylvania's refusal to recognize the tort, such a choice would evince an intent to protect Pennsylvania defendants, not to deprive Pennsylvania plaintiffs of a cause of action. Because there are no Pennsylvania defendants in this case, no such interest is implicated here.

Defendant presents a similar argument as to Plaintiffs' negligent misrepresentation claim, arguing that Pennsylvania's strict standard "acts to limit the individuals who can recover for alleged misrepresentations to those who were foreseeable victims." Id. at 16. Again, this is a defendant-protective choice, and this interest is not implicated in a case involving Pennsylvania plaintiffs and a New Jersey defendant.

As demonstrated by the foregoing, only New Jersey's governmental interests would be impaired by the application of Pennsylvania's law. Accordingly, a false conflict exists, and the Court

must apply New Jersey law to the instant matter.[7] See LeJeune, 85 F.3d at 1071; Lacey, 932 F.2d at 187. An appropriate Order follows.

[7] Because the Court finds a false conflict, it need not reach the second step in the Pennsylvania choice of law analysis: the hybrid significant relationship/government interest test. See Farrell, 1996 WL 211228, at *3.

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SUSAN C. LIEBMAN, DONALD A. BERG, RICHARD GERSON, Trustees Under Deed of Trust Dated May 11, 1984 of Samuel A. Liebman, and HAROLD C. WRIGHT, JR.,	:	
Plaintiffs	:	**CIVIL ACTION**
	:	**NO. 02-2566**
v.	:	
PRUDENTIAL FINANCIAL, INC.,	:	
Defendant	:	

ORDER

AND NOW, this 14th day of November, 2003, upon consideration of Plaintiffs' Motion With Respect to Choice of Law [Doc. # 26], Defendant's Response thereto [Doc. # 27], Plaintiff's Reply [Doc. # 28], and for the reasons set forth in the attached Memorandum Opinion, it is hereby **ORDERED** that Plaintiffs' Motion is **GRANTED**. It is further **ORDERED** that Plaintiffs' claims for equitable estoppel and negligent misrepresentation shall be governed by New Jersey substantive law.

It is so **ORDERED**.

BY THE COURT:

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CYNTHIA M. RUFE, J.