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Multistate Conflict-of-Law Rules: Continuing the Dialogue with Professors Trautman and Sedler

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COLLOQUY ON CONFLICTS

Aaron Twerski and Renee Mayer recently proposed a new multistate solution to those choice-of-law cases arising at the intersection of substance and procedure. They suggest that substantive liability rules frequently represent a balance between preventing fraud and permitting recovery. Each state determines whether justice and judicial economy are best served by permitting recovery and dealing with fraud on a case-by-case basis, or by employing broad prophylactic rules that deny recovery to ensure that the judicial process remains untainted. When a choice-of-law question involves these rules, the conflict can be resolved by recognizing a cause of action and raising the standard of proof to clear and convincing evidence. Professor Twerski and Ms. Mayer contend that this effectuates the concerns of both interested states. In this colloquy, Professors Robert Sedler and Donald Trautman critique this proposal, and Professor Twerski and Ms. Mayer respond.*

* Twerski & Mayer, *Toward a Pragmatic Solution of Choice-of-Law Problems—At the Interface of Substance and Procedure*, 74 NW. U.L. REV. 781 (1979).

The world is composed of territorial states having separate and differing systems of law. Events and transactions occur, and issues arise, that may have a significant relationship to more than one state, making necessary a special body of rules and methods for their ordering and resolution.

RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 1 (1971)