NOT DESIGNATED FOR PUBLICATION

MELANIE RUZEK AND MARK SEILER	*	**NO. 2006-CA-0878**
	*	**COURT OF APPEAL**
VERSUS		
	*	**FOURTH CIRCUIT**
REPUBLIC WESTERN INSURANCE COMPANY, HANOVER INSURANCE COMPANY, CITIZENS INSURANCE COMPANY, ALLSTATE INSURANCE COMPANY, U-HAUL RENTAL COMPANY AND DANA ENSING	*	**STATE OF LOUISIANA**
	* * * * * * *	

APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2005-4665, DIVISION "L-6"
Honorable Kern A. Reese, Judge
* * * * * *
Judge David S. Gorbaty
* * * * * *

(Court composed of Chief Judge Joan Bernard Armstrong, Judge David S. Gorbaty, Judge Leon A. Cannizzaro, Jr.)

CANNIZZARO, J. DISSENTS WITH REASONS

James H. Minge
D. Patrick Keating
JAMES MINGE & ASSOCIATES
1100 Poydras Street
1810 Energy Centre
New Orleans, LA 70163-1810
COUNSEL FOR PLAINTIFF/APPELLANT

Chauntis T. Jenkins
PORTEOUS, HAINKEL & JOHNSON
704 Carondelet Street
New Orleans, LA 70130
COUNSEL FOR DEFENDANT/APPELLEE

AFFIRMED

Plaintiff Melanie Ruzek appeals a summary judgment granted in favor of Allstate Insurance Company. For the following reasons, we affirm the judgment of the trial court.

FACTS AND PROCEDURAL HISTORY:

On April 17, 2004, plaintiff was severely injured while riding as a passenger on a motorcycle that was struck by a U-Haul truck. Mark Seiler, a friend of the plaintiff, owned and was operating the motorcycle, and Dana Ensing, was driving the truck. Ms. Ensing was issued a citation for failure to yield.

Ms. Ruzek filed suit against Dana Ensing, Citizens Insurance Group (Ms. Ensing's insurer providing single limit policy limits of $300,000), Republic Western Insurance Group (U-Haul's insurer providing limits of $10,000), and Allstate Insurance Company (Ms. Ruzek's UM/UIM carrier

providing limits of $100,000/$300,000). Ms. Ruzek settled with Citizens Insurance Group for $293,500, and with Republic Western Insurance Group for $10,000.

The Allstate UM/UIM policy providing coverage to Ms. Ruzek contains a reduction clause, which, if enforceable, entitles Allstate to reduce the coverage available by all amounts paid to her by other insurers.

Allstate filed a motion for summary judgment arguing that the UM/UIM reduction clause contained in the Allstate policy was enforceable and, therefore, it was entitled to judgment as a matter of law because Ms. Ruzek had already received amounts in excess of Allstate's coverage limits. Ms. Ruzek opposed the motion arguing that if the Allstate reduction clause were applied, she would not be fully compensated for her injuries. The trial court granted summary judgment and this appeal followed.

LAW AND DISCUSSION:

Standard of Review:

> Appellate courts review grants of summary judgment *de novo*, using the same criteria that govern the trial court's consideration of whether summary judgment is appropriate, *i.e.*, whether there is a genuine issue of material fact and whether the mover is entitled to judgment as a

> matter of law. *Ocean Energy, Inc. v. Plaquemines Parish Gov't*, 04-0066 (La. 7/6/04), 880 So.2d 1. The movant bears the burden of proof. La. C.C.P. art. 966(C)(2). If the movant meets this initial burden, the burden then shifts to plaintiff to present factual support adequate to establish that he will be able to satisfy the evidentiary burden at trial. *Richard v. Hall*, 03-1488 (La. 4/23/04), 874 So.2d 131, 137. Thereafter, if plaintiff fails to meet this burden, there is no genuine issue of material fact and defendant is entitled to summary judgment as a matter of law. *Id.* This court has recognized that a "genuine issue" is a "triable issue," an issue in which reasonable persons could disagree. *Jones v. Estate of Santiago*, 03-1424 (La. 4/14/04), 870 So.2d 1002, 1006 (citing *Smith v. Our Lady of the Lake Hosp.*, 93-2512 (La. 7/5/94), 639 So.2d 730, 751). Further, this court has defined a "material fact" to be one in which "its existence or nonexistence may be essential to plaintiff's cause of action under the applicable theory of recovery. *Id.*

Champagne v. Ward, 03-3211, pp. 4-5 (La. 1/19/05), 893 So.2d 773, 776-77.

The sole issue for review, applying a conflict of law analysis, is whether Georgia or Louisiana law should be applied to the facts of this case. The issue of whether Louisiana courts are to apply a choice of law analysis or Louisiana law, specifically, La. R.S. 22:1406, to cases such as these was settled by our Supreme Court in *Champagne v. Ward*, *supra*. The Supreme Court held that Louisiana's uninsured motorist law does not automatically apply to an uninsured motorist claim under a policy issued in another state

when a Louisiana resident is involved in the accident. *Champagne* concerned a Louisiana defendant and a Mississippi plaintiff involved in an accident in Louisiana. Plaintiff's UM policy was issued in Mississippi. The Court found that Mississippi had a more substantial interest in the uniform application of its laws governing insurance contracts than Louisiana had in providing an insurance remedy to an out-of-state resident injured while in Louisiana.

The trial court found that because the contract of insurance was issued in Georgia, Ms. Ruzek has maintained sufficient contacts with Georgia, and intends to maintain her residence in Georgia, the State of Georgia has a more substantial interest in the application of its law than Louisiana. After conducting a *de novo* review, we agree with the trial court.

The general rule for determination of the applicable law is found at La. Civ. Code art. 3515, which provides:

> Except as otherwise provided in this Book, an issue in a case having contacts with other states is governed by the law of the state whose policies would be most seriously impaired if its law were not applied to that issue.
>
> That state is determined by evaluating the strength and pertinence of the relevant policies of all involved states in the light of: (1) the relationship of each state to the parties and the dispute; and (2) the policies and needs of the interstate and international systems, including the policies of upholding the justified expectations of parties and of minimizing the adverse

> consequences that might follow from subjecting a party to the law of more than one state.

The Revision Comments explain that art. 3515 is the residual article, and thus, "[I]f any other article in this Book (Book IV, Conflict of Laws) is found to be applicable to a particular case or issue, that article prevails." La. Code Civ. Proc. art. 3515, Revision Comments – 1991 (a).

The more specific article is found in Title VI of Book IV, Conventional Obligations, art. 3537, which provides:

> Except as otherwise provided in this Title, an issue of conventional obligations is governed by the law of the state whose policies would be most seriously impaired if its law were not applied to that issue.
>
> That state is determined by evaluating the strength and pertinence of the relevant policies of the involved states in the light of: (1) the pertinent contacts of each state to the parties and the transaction, **including the place of negotiation, formation, and performance of the contract, the location of the object of the contract, and the place of domicile, habitual residence, or business of the parties**; (2) the nature, type, and purpose of the contract; and (3) the policies referred to in Article 3515, as well as the policies of facilitating the orderly planning of transactions, of promoting multistate commercial intercourse, and of protecting one party from undue imposition by the other. (emphasis added)

Ms. Ruzek argues that this case is distinguishable from *Champagne v. Ward, supra,* because, unlike the plaintiff in that case, she was not

"transitorily" within the borders of Louisiana at the time of the accident. Ms. Ruzek contends that she was a Louisiana resident on the date of the accident. She had moved to Louisiana in early 2002 with her ailing father, who had been living with her in Atlanta. She moved into her parents' home in Metairie at that time. Subsequent to that time, she lived in various locations in and about the New Orleans area. At the time of the accident in question, she was living with Mark Seiler in New Orleans, and continued to live there until May 2005. At the time of the motion hearing, she was living in New Orleans at another address.

Ms. Ruzek owned a 1991 Volvo at the time of the accident, which was garaged in New Orleans. However, the vehicle was registered and licensed in Georgia and was covered by a policy of insurance issued in Georgia. The policy was issued to Ms. Ruzek and her husband. Ms. Ruzek maintained that she and her husband no longer lived together as man and wife, but they remained "best friends." When she visited Atlanta, which she testified she did for two weeks every month, she lived in the house she co-owned with her husband, but stated that he was not always there.

In deposition testimony, Ms. Ruzek stated that she now owns a Jeep, which Allstate contends Ms. Ruzek admitted was covered by the same Allstate policy in question. However, Ms. Ruzek merely agreed that it was

insured by Allstate. Thus, we do not know if it is insured by a policy issued in Louisiana or if it was covered under the continuing policy in Georgia. The deposition transcript indicates that a copy of her driver's license was attached, but it is not contained in the record.

Ms. Ruzek was not employed in Louisiana, either before her accident or since. She testified that she is living off of "savings," which are maintained in a Georgia bank account she co-owns with her husband. There is no evidence of voter registration, either in Louisiana or Georgia.

We find the most telling piece of evidence in deciding which state's law to apply is Ms. Ruzek's response to the question, "[d]o you still have clothing in Atlanta, or are most of your things here?" She answered, "[I]t's my primary residence. It's my home." Ms. Ruzek further testified that she only intended to stay in Louisiana until her future surgeries were completed.

Thus, although Ms. Ruzek has been living in Louisiana "off and on" since 2002, she freely admits that she does not intend to remain in Louisiana. Thus, applying the choice of law analysis to the facts of this case, we must conclude, as did the trial court, that the State of Georgia has a more substantial interest in the application of its law.

Accordingly, we affirm the judgment of the trial court.

AFFIRMED