

STATE OF IDAHO )  
County of KOOTENAI )  
FILED 5/20/2020 )  
AT 1:40 o'clock P.M.  
CLERK, DISTRICT COURT

*Jeanne Hansen*  
Deputy

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI**

**JOHN C. BEEBE and CHERYL BEEBE,  
individually and as husband and wife,**

*Plaintiffs,*

vs.

**NORTH IDAHO DAY SURGERY, LLC, an  
Idaho Limited Liability Company, d/b/a  
Northwest Specialty Hospital; its owner,  
John Stackow, M.D. and unknown  
physicians, surgeons, medical  
assistants, nurses or employees as John  
or Jane Does I-X; and  
INCYTE PATHOLOGY, INC., a  
Washington State for-profit Corporation;  
and INCYTE PATHOLOGY  
PROFESSIONAL, P.S., a Washington  
State Professional Services corporation,  
or employees as John or Jane Does XI-  
XX; and MINIMALLY INVASIVE SURGERY  
NORTHWEST, PA, an Idaho Professional  
Service Corporation, and its  
owners, agents or employees,**

*Defendants.*

Case No. **CV28-19-4048**

**MEMORANDUM DECISION  
AND ORDER DENYING  
DEFENDANTS INCYTE'S  
MOTION FOR APPLICATION  
OF WASHINGTON  
SUBSTANTIVE LAW**

**I. PROCEDURAL HISTORY AND FACTUAL BACKGROUND.**

This matter is before the Court on a Motion for Application of Washington Substantive Law filed by Defendants Incyte Pathology, Inc. and Incyte Pathology Professional, P.S. (collectively Incyte).

This is a medical malpractice action. Second Am. Compl. 2, ¶ 1; 8, ¶ 44-14, ¶93. Plaintiff's John C. Beebe, and Cheryl Beebe (the Beebes) filed their Original Complaint and Demand for Jury Trial on June 4, 2019. The facts of this case revolve around a sentinel lymph node biopsy performed upon John Beebe on June 6, 2018. *Id.* at 4, ¶ 16; 5, ¶ 19.

On June 6, 2018, due to a malignant melanoma, John Beebe underwent partial amputation of his right foot at Northwest Specialty Hospital. *Id.* at 4, ¶¶ 16, 18. Concurrent with that amputation was a procedure to remove his sentinel lymph node from his right groin. *Id.* at 5, ¶ 19. Removal and study (biopsy) of the sentinel lymph node were to "constitute the basis of the medical science which a patient and his care team will use to plan and treat metastatic cancer." *Id.* ¶¶ 20, 21. Sentinel lymph node biopsy is a surgical procedure used to determine whether cancer has spread beyond a primary tumor into the lymphatic system. *Id.* at 7, ¶ 38. The sentinel lymph node specimen was removed (*Id.* at 5, ¶ 23) but was subsequently lost and Beebe "has never been given proper diagnosis or prognosis of his melanoma because the Defendants lost his lymph node specimen." *Id.* at 7, ¶ 37. The important inquiry on Incyte's Motion for Application of Substantive Law is "where" was the specimen lost?

The Beebes claims raise nine causes of action: (1) medical malpractice of Northwest Specialty Hospital (NWSH) and its employees or agents; (2) negligence of NWSH's employees or agents; (3) negligence of NWSH in its inadequate procedures; (4) negligence of NWSH to train or supervise its employees or agents; (5) negligence of NWSH in contracting with defendants Incyte Pathology and Incyte Pathology Professional; (6) negligence of Incyte Pathology and Incyte Pathology Professional; (7) loss of consortium; (8) lack of informed consent by defendants Minimally Invasive

Surgery Northwest (Minimally Invasive Surgery) and Dr. Stackow; and (9) unnecessary surgery performed by Minimally Invasive Surgery and Dr. Stackow. Minimally Invasive Surgery and Dr. Stackow were dismissed by stipulation on December 11, 2019.

Incyte filed its Motion for Application of Washington Substantive Law and memorandum in support May 5, 2020. The Beebes filed a Memorandum in Opposition to Defendant Incyte's Motion for Application of Washington Substantive Law, and a Declaration of Plaintiffs' Counsel in Opposition to Defendant Incyte Pathology's Motion for Application of Washington Substantive Law on May 7, 2020. Incyte filed a Reply Memorandum in Support of Defendant's Motion for Application of Washington Substantive Law on May 15, 2020.

Oral argument on Incyte's motion was held on May 19, 2020. At the conclusion of that hearing, this court took Incyte's Motion for Application of Washington Substantive Law under advisement.

## **II. STANDARD OF REVIEW**

The Idaho Supreme Court has found that "[t]he determination and application of the appropriate choice of law analysis is a question of law over which the Court exercises free review." *Ryals v. State Farm Mut. Auto. Ins. Co.*, 134 Idaho 302, 304, 1 P.3d 803, 805 (2000).

## **III. ANALYSIS**

Incyte argues that "Incyte's principle place of business is Washington, the alleged negligent acts were all alleged to have happened in Washington, and Incyte would justifiably expect to be governed by Washington law since they are licensed and conduct business in Washington." Mem. in Supp. of Def's. Mot. for Application of Washington Substantive Law 4. Incyte goes on to allege that "[t]hese are all facts which are conceded by Plaintiffs in their Second Amended Complaint." *Id.* (citing

Second Amended Compl. for Damages and Jury Trial at 6, ¶¶ 84-93.). Incyte claims, “Washington substantive law is appropriate reading the Claims made against Defendants Incyte.” *Id.* at 4. Additionally, Incyte argues that Washington law should be applied because policy concerns weigh in favor of its application. *Id.* at 4-5. Incyte states that:

Washington law should be applied to protect the justified expectations of Incyte to be governed by Washington law, ensure certainty, predictability, and uniformity of result, and to create ease in determination of the law to be applied. See *Grover*, 137 Idaho at 773, 53 P.3d 1 P.3d 821 [sic 53 P.3d 821 at 824]. Washington law must be applied because “it is a simple policy that the place of the injury should generally govern the choice of law.” *Id.*

*Id.* at 4-5.

The Beebes argue that Incyte is subject to Idaho law because Incyte has contracted with NWSH, “to perform services in Idaho, agreed to be bound by Idaho law in that contract, was negligent in performing the duties required of it in that contract, and the negligent acts occurred in Idaho.” Pls. Mem. in Opp. to Defs’. Mot. for Application of Washington Substantive Law 4. The Beebes argue that:

Incyte cites to *Grover v. Isom*, 137 Idaho 770, 53 P.3d 821 (2002), but in *Grover*, the place of injury was undisputed and not in Idaho. Why should Washington substantive law apply when Incyte denies the specimen ever made it to its lab in Washington? Contrary to Incyte’s arguments, the Beebes clearly allege that Incyte’s negligence occurred in Idaho, and *Grover* does not apply.

*Id.* at 5.

In response to the Beebes’ arguments, Incyte argues that the contract between Incyte and NWSH is “[a] professional services contract, of which Plaintiffs are not a party nor have an interest in,” and “is wholly irrelevant to the question before this Court. Reply Mem. in Supp. of Def’s. Mot. for Application of Washington Substantive Law 2. Additionally, Incyte argues that “[p]laintiffs allege no facts in their Second Amended

Complaint that any action of Defendants Incyte occurred Within the state of Idaho.” *Id.*  
at 3. “A professional services contract does not change this fact.” *Id.*

The Idaho Supreme Court delineated how to evaluate choice of law questions in  
a medical malpractice suit:

Idaho applies the “most significant relation test” as set forth in the  
Restatement (Second) of Conflict of Laws § 145 in determining the  
applicable law. In a tort case the following considerations must be taken  
into account:

- (a) the place where the injury occurred,
- (b) the place where the conduct causing the injury occurred,
- (c) the domicile, residence, nationality, place of incorporation and place of  
business of the parties, and
- (d) the place where the relationship, if any, between the parties is  
centered.

*Seubert Excavators, Inc. v. Anderson Logging Co.*, 126 Idaho 648, 651,  
889 P.2d 82, 85 (1995) (citing *Johnson v. Pischke*, 108 Idaho 397, 400,  
700 P.2d 19, 22 (1985)). “Of these contacts, the most important in  
guiding this Court's past decisions in tort cases has been the place where  
the injury occurred.” *Id.* (citing *Barringer v. State*, 111 Idaho 794, 727  
P.2d 1222 (1986)).

*Grover v. Isom*, 137 Idaho 770, 772–73, 53 P.3d 821, 823–24 (2002). Once the factors  
above are considered, these factors are evaluated in light of the policy concerns listed  
below:

- (a) the needs of the interstate and international systems,
- (b) the relevant policies of the forum,
- (c) the relevant policies of other interested states and the relative interests of  
those states in the determination of the particular issue,
- (d) the protection of justified expectations,
- (e) the basic policies underlying the particular field of law,
- (f) certainty, predictability, and uniformity of result, and
- (g) the ease in the determination and application of the law to be applied.

137 Idaho at 773, 53 P.3d at 824.

In this Case, this Court finds that Idaho substantive law applies by applying the  
facts of the Case to the four factors of the “most significant relationship test.” As to the  
first two of the four factors of that test, this Court finds that Idaho is the place where the

injury occurred and the place where the conduct causing the injury occurred. These are the most important factors. When applying the facts of the case, it is clear that the injury occurred in Idaho, and the place where the conduct causing the injury (failure to secure and account for the sample) occurred in Idaho. Unless the sentinel lymph node bounced out of Incyte's vehicle after it crossed the Idaho-Washington border and before that vehicle had arrived at Incyte's facility, the loss of the sentinel lymph node occurred in Idaho. Regarding the third factor, Idaho is the Beebes' place of domicile and residence (Second Am. Compl. 2, ¶ 2), NWSH is owned by an Idaho Limited Liability Corporation and operated its business in Kootenai County, Idaho (*Id.* at ¶ 3), and Incyte's entities were Washington entities with their principal place of business in Spokane Valley, Washington, just over the Washington-Idaho border (*Id.* at ¶ 4). Regarding the fourth factor, "the place where the relationship, if any, between the parties is centered", as between Beebes and Incyte, that occurred in Idaho. Granted, the testing of John Beebe's sentinel lymph node would have occurred just over the Washington-Idaho border at Incyte's facilities, but this sample was never tested. If the reason John Beebe's sentinel lymph node not being tested was that Incyte failed to pick up the sample from NWSH, or lost that sample on the way to Incyte's vehicle, that occurred in Idaho. Since the most important of these factors is the place where the injury occurred, this Court finds that Idaho law applies.

Despite Incyte's assertions to the contrary, the Beebes do claim in their complaint that Incyte's negligent acts occurred within Idaho. The Beebes claim that "[a]s a direct and proximate result of Defendants incyte Pathology, Inc.; and Incyte Pathology Professional, P.S. failure to account for pathology samples upon pick up, the critical cancer diagnosis, staging, prognosis, and treatment recommendations could not be adequately rendered to BEEBE." *Id.* at 14, ¶ 91. Additionally, the Beebes asserted

that “[a]fter the specimens remained unsecured and undocumented throughout the day, the scheduling nurse carried the open bin of specimens to a locked box at the end of the building and deposited the specimens prepared that day for pick-up by a courier employed by the Defendants Incyte Pathology, Inc., and Incyte Pathology Professional, P.S.” *Id.* at 5, ¶ 26. The Beebes have offered evidence that the Incyte was responsible for the courier pickup in Idaho, by providing to the Court a contract between Incyte and NWSH that reads, “Incyte shall provide secure transportation and tracking of tissue specimens to and from the Hospital and off-campus provider locations.” Decl. of Pls’. Counsel in Opposition to Def. Mot. for Application of Washington Substantive Law Ex. 1, p. 2. The contract also states that “[t]his agreement has been executed and delivered and shall be interpreted, construed, and enforced pursuant to and in accordance with the laws of the state of Idaho, exclusive of choice of law rules.” *Id.* at p. 5.

If Incyte is responsible for the loss of the sentinel lymph node, it essentially had to have occurred in Idaho. The Beebes allege John Beebe’s sentinel lymph node was in fact removed at NWSH, in Idaho, and prepared for standard biopsy specimen. Second Am. Compl. 3 ¶ 13; 4, ¶ 18. “The circulating nurse delivered the specimen to the scheduling nurse, who placed the specimen in an open bin with other specimens collected throughout the day. The bin was neither locked nor secured in any manner.” *Id.* at ¶ 21. “After the specimens remained unsecured and undocumented throughout the day, the scheduling nurse carried the open bin of specimens to a locked box at the end of the building and deposited the specimens prepared that day for pick-up by a courier employed by Defendants Incyte Pathology, Inc., and Incyte Pathology Professional, P.S.” *Id.* at ¶ 22. “Internal video surveillance for Defendants Incyte Pathology, Inc.; and Incyte Pathology Professional, P.S. shows the moment of receipt

of the melanoma specimen. Internal video surveillance for Defendants Incyte Pathology, Inc.; and Incyte Pathology Professional, P.S. shows the absence of receipt of the lymph node specimen.” *Id.* at ¶¶ 27-28. Again, unless the sentinel lymph node bounced out of Incyte’s vehicle after it crossed the Idaho-Washington border and before that vehicle had arrived at Incyte’s facility, the loss of the sentinel lymph node occurred in Idaho.

Additionally, Incyte is incorrect when they state that “An unrelated legal contract, which in no way is relevant to Plaintiffs’ claims against Incyte alleging medical negligence, which outlines the specific duties of each party to that contract is wholly irrelevant to the instant motion.” Reply Mem. in Supp. of Defs.’ Motion For Appl. of Washington Substantive Law 2. The elements of the contract described above are evidence that Incyte’s negligent actions took place within the State of Idaho. Incyte has really offered no evidence that their negligent actions did not take place in Idaho other than stating that Incyte is incorporated in and operate in Washington.

Evaluating these factors in light of the seven policy concerns also clearly shows that Idaho law applies. The needs of the interstate and international systems (a) are not likely implicated in this case. The policy considerations of Idaho, the forum state wanting to hold accountable parties under Idaho law that commit torts in their states (b) is strong, the same could be said for Washington if the tort had occurred there (c) (which it did not). It is a justified expectation (d) that Incyte would expect to be held to account under Idaho law for torts committed in Idaho. The basic policy of the field of law (e) has been set forth in *DeMeyer*, 103 Idaho at 330, 647 P.2d at 786, “The basic policy of negligence law is to allow a person to recover from injury proximately caused by another’s violation of a duty of reasonable care.” Recovery in Idaho, the state in which the Beebes are domiciled, supports this policy. This policy of recovery furthers

certainty, predictability, and uniformity of result (f). And such a policy also aids in the ease in the determination and application of the law to be applied (g).

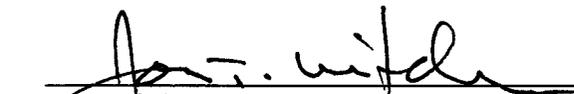
#### IV. CONCLUSION AND ORDER

For the reasons stated above, Incyte's Motion for Application of Washington Substantive Law is denied.. Idaho substantive law will be applied in this case.

For the reasons stated above,

IT IS HEREBY ORDERED Incyte's Motion for Application of Washington Substantive Law is **DENIED**.

Entered this 20<sup>th</sup> day of May, 2020.

  
John T. Mitchell, District Judge

#### Certificate of Service

I certify that on the 20<sup>th</sup> day of May, 2020, a true copy of the foregoing was mailed postage prepaid or was sent by interoffice mail, email or facsimile to each of the following:

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By   
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