

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

DOSHIA DANIELS BURTON, et. al,)
)
 Plaintiffs,)
)
)
 v.)
)
 UNITED STATES v. AMERICA)
)
 Defendant.)

Civil Action No. 05-2214

PRETRIAL ORDER

Upon consideration of the parties' pretrial statement [41], the Plaintiffs' supplement to the parties' pretrial statement [43], Plaintiff's trial brief on choice of law [40], Defendant's trial brief on choice of law [45], Defendant's reply brief on choice of law [46], and, in light of agreements expressed between the parties during the status conference on March 4, 2009, the Court hereby enters the following Pretrial order:

Choice of Law

As the briefs submitted by the parties demonstrate, there is no question that District of Columbia law must apply in this case with respect to all issues of liability. Plaintiffs and Defendant disagree, however, on the question of whether Maryland law should apply with respect to any money damages that may be awarded in the event of a finding of liability against the Defendant.

While the negligent acts or omissions alleged by Plaintiffs' all occurred within the District of Columbia, Plaintiffs' and Plaintiffs' decedent's domicile is alleged to be Maryland. As noted by the parties, Maryland law might enable Plaintiff Doshia Burton to recover for loss of consortium in this case, but District of Columbia law does not allow for such a claim. Accordingly, Plaintiff asserts that District of Columbia law must give way in this instance because of Maryland's strong interest in compensating victims for harm to the marital relationship – which is the essence of a claim for lack of consortium.

The Court agrees with Plaintiff, but only to extent that Plaintiff invokes Maryland law to recover for lack of consortium. As stated by the District of Columbia Court of Appeals in *Stutsman v. Kaiser Foundation Health Plan*, “[A]n action for the loss of consortium is governed by the law of the state where the marriage is domicile.” 546 A.2d 367, 374 (D.C. 1988) (citing *Felch v. Air Florida, Inc.*, 562 F.Supp. 383, 386 (D.D.C. 1983)). Judge Friedman reached the same conclusion in the case of *Long v. Sears Roebuck & Co.*, 877 F.Supp. 8 (D.D.C. 1995). Similar to *Long*, the marriage and the injury to the marital relationship occurred in Maryland in this case. *See id.* at 13. Accordingly, this Court will apply Maryland law with respect to reach plaintiff's loss of consortium.

Plaintiffs overreach, however, in their argument that Maryland law should apply to *all* damage determinations. Money damages with respect to all other claims must be determined in accordance with District of Columbia law. Although Maryland's special interest in the injury to the marital relationship is one recognized by District of Columbia Courts, no similar interests are at stake with respect to other claims at issue in this civil action.

Evidence Objections

The Court has noted both Plaintiffs' and Defendant's objections. None are ripe for consideration at this time. This Court will issue rulings on the evidence when and if it becomes necessary during the trial. Parties are free to renew their objections during the trial, and this Court will make its rulings in the context of the trial presentation and arguments proffered by the parties.

Trial Schedule

The trial will begin on Monday, March 9, 2009 at 10:00 in Courtroom 22A. Trial will continue as necessary, starting at 9:30 each day on March 10th and 11th, as well as, if needed, on March 16th, 17th, and 18th.

Witness Order

Witnesses will testify consistent with the agreement of the parties as expressed during the status conference held by the Court on March 3rd, 2009.

So Ordered.

Signed by Royce C. Lamberth, Chief Judge, March 6, 2009