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2004 Decisions

Opinions of the United  
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for the Third Circuit

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4-27-2004

**Simon v. USA**

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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NO. 02-2945

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LOUIS SIMON; HOWARD ASHER;  
HENRY F. MILLER; SUZANNE PETERSON,  
EXECUTORS OF THE ESTATE  
OF B. KENIN HART, DECEASED\*,

Appellant

v.

UNITED STATES OF AMERICA

\*(Amended in accordance with Clerk's Order dated 8/27/02)

(D.C. Civil No. 01-cv-05671)

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NOS. 02-3996, 02-3997

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MARY SCHALLIOL, AS PERSONAL  
REPRESENTATIVE OF THE ESTATE  
OF DENNIS SCHALLIOL, DECEASED

v.

JOHN FARE, JR., AS PERSONAL  
REPRESENTATIVE OF THE ESTATE  
OF JOHN FARE;  
HART DELAWARE CORPORATION;  
UNITED STATES OF AMERICA

Mary Schalliol,

Appellant in 02-3996

John Fare, Jr.,

Appellant in 02-3997

(D.C. Civil No. 01-cv-00224)

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On Appeal from the United States District Court  
for the Eastern District of Pennsylvania  
District Judge: Honorable Marvin Katz

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Before: SLOVITER, AMBRO, and BECKER, *Circuit Judges*

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**AMENDED ORDER**

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The interlocutory appeal came before us on a certification by the District Court pursuant to 28 U.S.C. §1292(b), which presented us with the question whether Indiana's or D.C.'s choice-of-law rules govern a suit against the United States by the estates of passengers killed in the crash of a small private aircraft.

On August 20, 2003, we filed an opinion, 341 F.3d 193 (3d Cir. 2003), accompanied by a certification of the following questions to the Indiana Supreme Court: (1) whether a true conflict exists between Indiana's and D.C.'s choice-of-law rules; and (2) if there is a true conflict and Indiana's choice-of-law rules therefore control per our

“last significant act” test, how to resolve a split among the *Hubbard* factors in choosing a jurisdiction’s substantive law when one factor points toward Indiana, another toward Pennsylvania, and the third is indeterminate, and what substantive law Indiana would choose under these facts.

On March 31, 2004, the Indiana Supreme Court filed an opinion, No. 94S00-0308-CQ-377, responding to the certified questions.<sup>1</sup>

The questions certified to us by the District Court now having been answered, the case is remanded to the District Court for further proceedings.

BY THE COURT:

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/s/ Edward R. Becker  
Circuit Judge

DATED: 27 April 2004

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<sup>1</sup>We note that the District Court accurately predicted the Indiana Supreme Court’s holding.