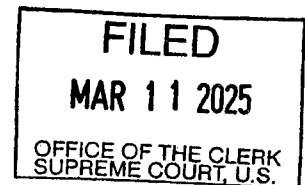


No. 25-93

**In the  
Supreme Court of the United State**

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Ang Jin, Petitioner  
v  
Chen Zhao, Respondent  
Counsel Clifford Law Offices  
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**ORIGINAL**



-----  
**On Petition For Writ Of Certiorari  
To The U.S Court Of Appeals  
For The Seventh Circuit**  
-----

**PETITON FOR WRIT OF CERTIORARI**

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## QUESTIONS PRESENTED

1. Whether the court judgment could circumvent appellants' most important argument: should this case adopt Restatement 2nd which is related to Special representative's fiduciary liability to other beneficiaries, litigant right of beneficiaries and different law application (foreign law) in distribution?
2. Whether Plaintiff was in her capacity to sign Settlement that stipulated distribution law?
3. Whether it could exclude the application of principles of Restatement 2nd if signed should it was signed?
4. Whether Mississippi Court of Appeal's ruling in Shortie vs George can be the guidance to this diversity case?
5. Whether the refusal to hold an evidentiary hearing violates Due Process law?
6. Whether not holding perjurer accountable violates the equal protection rights of law-abiding parties?

## PARTIES TO THE PROCEEDING

The parties to the proceeding in the United State Court of Appeals for the Federal Circuit:

Ang Jin, Petitioner  
 Chen Zhao, the Respondent  
 Jian Zhen Li, the Respondent

## RELATED CASES

### **Federal Court Northern District:**

Order Case No. 19 cv 2170 # 2025, Apr 23, 2024  
 Order Case No. 19 cv 6153 (merged) #19, Jun 28, 2024  
 Order Case No. 19 cv 2170 # 2169, Jun 28, 2024

### **Federal Court of Appeal for 7<sup>th</sup> Circuit:**

Order Case No. 24-2218 # 23, Feb 13, 2025  
 Order Case No. 23-2219 # 24, Feb 13, 2025  
 Order Case No. 24-2218 # 28, Apr 2, 2025  
 Order Case No. 24-2218 # 30, Apr 14, 2025

## TABLE OF CONTENTS

QUESTIONS PRESENTED.....	i
PARTIES TO THE PROCEEDING .....	i
RELATED CASES.....	i
TABLE OF CONTENTS.....	ii
TABLE OF AUTHORITIES.....	iii
PETITION FOR WRIT OF CERTIORARI .....	1
OPINIONS BELOW .....	1
JURISDICTION .....	1
STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED .....	1
INTRODUCTION AND STATEMENT OF THE CASE .....	1
REASONS FOR GRANTING THE WRIT .....	3
Wrong law case cited for distribution law adoption.....	3
The judgement adopted Lex loci delicti approach that has been abandoned by Illinois ....	4
Illinois Wrongful Death Act wrongly used in Settlement Agreement.....	4
No Center of Gravity testing for law application .....	4
The Center of Gravity weighs in China.....	6
Family members are equal in their relationship with the decedent.....	6
The settlement proceeds are not an asset of the estate .....	7
Unenforceability of the Settlement embedded in itself.....	8
Settlement didn't contain distribution contents.....	8
Special representative's fiduciary duty neglected.....	9
Responsibility being shifted from the bearer to the receiver.....	10
The appeal only focused on distribution .....	11
Uniformity of federal court judgement .....	12
I tried to interfere .....	13
Highly suspicious cheating activity neglected.....	13
Evidentiary hearing and confrontation denied .....	14
Against justified expectations .....	14
The difference in culture and tradition is neglected .....	14
Equal protection missing.....	15
My motion to request reissue as precedential disposition of the order was timely .....	15
Logical reasoning analysis ignored.....	15

CONCLUSION .....	15
APPENDIX TABLE OF CONTENTS .....	i
Appendix 1: Case No. 19 cv 2170 # 2050, entered April 23, 2024.....	App. 1
Appendix 2: Case No. 19 cv 6153 # 19, filed 06/28/24 Page ID 109.....	App. 4
Appendix 3: Case No. 19 cv 2170 # 2169, filed 06/28/24 Page ID 7.....	App. 6
Appendix 4: Case No. 24-2218 # 23, filed 02/13/2025 Page 3.....	App. 9
Appendix 5: Case No. 24-2218 # 24, filed 02/13/2025.....	App. 11
Appendix 6: Case No. 24-2218 # 28, filed 04/02/2025 Page 1.....	App. 12
Appendix 7: Case No. 24-2218 # 30, filed 04/14/2025 Page 1.....	App. 13
Appendix 8: Wu's Statement.....	App. 14
Appendix 9: Chinese Laws .....	App. 16
Appendix 10: The excerpt from Shortie v George.....	App. 17

## TABLE OF AUTHORITIES

### Cases

Adrienne C. Bartton v Ford motor 2023 IL App (1st) 211629-U No. 1-21-1629 Order filed Feb 21, 2023 .....	6
Babcock, v Jackson, Court of Appeals of New York Argued January 23, 1963, Decided May 9, 1963.....	2, 4
Clinton Willians v Liberty Mutual. No. 11-60818 January 28, 2014, U.S. Court of Appeal, 5th Circuit .....	5
Guaranty Trust Co. v. York, 326 U.S. 99 (1945) No. 264 Decided June 18, 1945. U.S. Supreme Court ruled .....	5, 6, 12
In Re Estate of Barnet Ill. App. 3d 361 (Ill. App. Ct. 1985) 478 N.E.2d 1046 Decided May 7, 1985.....	7
Ingersoll v. Klein 46 Ill. 2d 42 (Ill. 1970) 262 N.E.2d 593 Decided Mar 24, 1970 No. 42152. ....	4
People v. Davis, 164 Ill.2d 309, 647 N.E.2d 977 (1995) .....	13
Shortie vs George (233 So. 3d 883 the Court of Appeal Mississippi 2017. NO. 2015–CA–00944–COA. May 23, 2017) .....	i, 2, 3, 4, 5, 6, 8, 9, 10, 11
The Quarasan Group, Inc vs Nozani vs Randi Brill, Case No. 20c 2650 entered Oct 7, 2020 .....	12
Townsend v Sears 174 F.3d at 846-47. <i>Id.</i> 879 N.E.2d 893 (Ill. 2007) • 227 Ill. 2d 147 • 316 Ill. Dec. 505 Decided Nov 29, 2007 .....	4, 14
Wilsey v. Eddingfield, 475 U.S. 1130 (1986) .....	12

### **Statutes**

28 U.S.C. § 1254.....	1
28 U.S.C. § 725.....	12
Restatement 2nd for choice-of-law (1970).....	i, 2, 4, 5, 6, 8, 9, 12

### **Constitutional Provisions**

The Fifth Amendment's Due Process Clause requires the U.S. government to practice equal protection.....	1, 12
The Fourteenth Amendment, Section 1: 5.4.6 Additional Requirements of Procedural Due Process [1].....	1, 12

### **Other Authorities**

Chinese Civil Law Chapter II .....	2, 3, 6, 12, 15, App. 9, App. 10, App. 16
Chinese Supreme Court Judicial Interpretation [2004] Case Min Yi Di Zi No. 26. March 22, 2005.....	App. 16
Tort Liability Law.....	App. 16

## PETITION FOR WRIT OF CERTIORARI

Pursuant to 28 U.S.C. § 1254, I petition for a writ of certiorari to review the judgement of the U.S. Court of Appeal for the 7th Circuit Court.

### OPINIONS BELOW

The Court of Appeals for the Seventh Circuit opinions addressing the questions regarding the distribution of proceeds among foreign beneficiaries in Wrongful Death case (App. 9), (App. 11), (App. 12), and (App. 13) are unreported.

The District Court for the Northern District of Illinois Eastern Division opinions addressing the same questions (App. 1), (App. 4), and (App. 6) are unreported.

### JURISDICTION

Pursuant to 28 U.S.C. § 1254(1), this Court has the jurisdiction to review the Orders of cases listed below:

**Federal Court Northern District:**

Case No. 19 cv 2170 # 2050, Apr 23, 2024 (App. 1)

Case No. 19 cv 6153 (merged) # 19, Jun 28, 2024 (App. 4)

Case No. 19 cv 2170 # 2169, Jun 28, 2024 (App. 6)

**Federal Court of Appeal for 7th Circuit:**

Case No. 24-2218 # 23, Feb 13, 2025 (App. 9)

Case No. 24-2218 # 24, Feb 13, 2025 (App. 11)

Case No. 24-2218 # 28, Apr 2, 2025 (App. 12)

Case No. 24-2218 # 30, Apr 14, 2025 (App. 13)

### STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

The Fourteenth Amendment, Section 1: 5.4.6 Additional Requirements of Procedural Due Process [1]; The Fifth Amendment's Due Process Clause requires the U.S. government to practice equal protection.

### INTRODUCTION AND STATEMENT OF THE CASE

This dispute regards the distribution of the proceeds recovered from Wrongful Death lawsuit against Boeing.

I am a Chinese citizen living in California. In Ethiopian Airline Crash on March 9, 2019, I lost my son, Yetao Jin, a 33-year-old Chinese, married and left no child. Right afterwards, I contacted several attorneys in an expectation to sue Boeing but all of them either ignored or refused to take my case because Illinois law only allowed the widow to sue the tortfeasor in a Wrongful Death lawsuit. So, on Oct 19, 2021, I wrote to District Court Judge Alonso to the address shown on the court website, petitioning to join the lawsuit as next of kin but got no response. The mail returned three months later, opened, on Jan 24, 2022, with a sticker saying, "return to sender due to insufficient address unable

to forward". On Jan 25, 2022, once again I, using the fax number shown on the court website, faxed the letter to District Court Judge Alonso via public service at UPS center. As assumed, no response from the court.

During that time, Zhao, the Estate Special Administrator, joined the lawsuit against Boeing and in the end, according to the court, like 142 other families, signed a Settlement Agreement with Boeing. The district court approved the Agreement Order No. 19cv6153, docu 19, June 28, 2024. However, I knew nothing about the contents of the document.

Later, pursuant to Wrongful Death Act 740 ILCS 180/2(b), the Court determined the proportion: 75% to Chen Zhao, 12.5% to Jian Zhen Li, and 12.5% to Ang Jin, See Case No. 19 cv2170 # 2050. I didn't accept.

I insisted that all three beneficiaries had nothing to do with Illinois when the accident happened. The differences in domicile, tradition, culture and nationality of the beneficiaries should be considered when choosing the law (for the distribution). But I agreed to submit the dispute for mediation recommended by the court. With very limited time allowed, I had the documents submitted and pleaded to talk to the Mediator in person, which was ignored. The same result from the Mediator. Then the court order followed and again I refused to accept it. So, the court made the order on April 23, 2024, each parent was allocated 12.5%.

I filed a motion on Jun 4, 2024, for rehearing and request an opportunity to confront the Plaintiff at court. The motion was not granted. No evidentiary hearing was held.

On July 16, 2024, I filed an appeal with the Court of Appeals for 7<sup>th</sup> Circuit (No. 19cv06153 docu 22). In my Appellant Brief, I referred to Mississippi Supreme court case Shortie vs George (233 So. 3d 883 the Court of Appeal Mississippi 2017. NO. 2015-CA-00944-COA. May 23, 2017) and Babcock, v Jackson, Court of Appeals of New York Argued January 23, 1963, Decided May 9, 1963.

The two cases itemized the Center of Gravity principles of Restatement 2nd for choice-of-law (1970), including law for distribution, and liability the special representative to other beneficiaries.

I made several procedural mistakes at first. And yet, thanks to the great policy of the Court of Appeal (Pro Se **only need to present a story that holds together**)<sup>1</sup> regarding Appeals by Pro Se, I was able to get my appeal submitted. I was so grateful.

### **About my appeal and judgment**

In the appeal I explicitly stated that this appeal is not meant against the Agreement Settlement, only focus on the issue of distribution of damages under the principle of Center of Gravity in relationship among beneficiaries stipulated by Restatement. Domicile, cultural, lawful and traditional differences and nationality should be considered in choice of law. I mentioned different laws from tort law should be applied to distribution. Under Chinese Civil Law, wrongful death compensation, which is a recovery from loss to whole family, is not an estate so it can't be handled as in an estate<sup>2</sup> and should be equally

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<sup>1</sup> pleading standards for pro se litigants are relaxed. See *Arnett v. Webster*, 658 F.3d 742, 751 (7th Cir. 2011) (reminding courts to "construe pro se complaints liberally and hold them to a less stringent standard than formal pleadings drafted by lawyers"); see also *Swanson v. Citibank, N.A.*, 614 F.3d 400, 404 (7th Cir. 2010) (explaining after *Iqbal* that the plaintiff need only "give enough details about the subject-matter of the case to present a story that holds together"). *Bell Atlantic Corp. v. Twombly* 550 U.S. 544 (2007), and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009).

<sup>2</sup> Chinese Supreme Court regulations:

"Reply on whether air crash death compensation can be treated as inheritance [2004] Min Yi Di Zi No. 26."

distributed to each next of kin. Special administrator's duty to other beneficiaries ruled in *Shortie v Goerge* should guide this case.

During the appeal, Zhao, through her attorney, submitted clearly a fabricated medical document issued by a Chinese Psychologist Wu Ding. The court ignored my request to cross-examine Zhao and other allegations supported by the evidence I submitted.

The Court affirmed the District Court judgment. The order stated:

"Chen Zhao" possesses the sole right of action or control over the suit; the beneficiaries or heirs have neither a right of action nor any control." *Will v. Nu*, Univ.881 N.E.2d481, 492 (Ill. App. Ct. 2007. If Ang Jin thought Zhao was not adequately representing his beneficiary interests, he needed first to provide proof of her inability as the estate's personal representative to adequately represent his interests. See *Johnson v. Vill. Of Libertyville*, 502 N.E.2d 474,479 (111. App. Ct. 1986). This he failed to do. Regarding the settlement itself, Ang Jin maintains that it should have been governed by Chinese Civil Law because his son lived in China before his death. But the settlement, which Zhao approved in her capacity as the estate's personal representative stipulated that damages would be determined and apportioned under the Illinois Wrongful Death Act, Settlement agreements, with limited exceptions, are enforced just like any other contract, See, e..., *Beverly v, Abbott Lab'us*, 817 F.3d 328,332-33 (7th Cir.2016); *Lynch, Inc. v, Samata Mason Inc.*, 279 F3d 487,489 (7th Cir. 2002). And Ang Jin has not argued that the settlement is unenforceable.

To the extent Ang Jin maintains that the court erred by neglecting the role of Chinese culture in its assessment, we see no reason to disturb the court's decision. As directed under the Act, the court considered Ang Jin's relative dependency on his son and found no reason to question the mediator's division of the settlement proceeds. (Order No 24-2218 #23)"

After I received the non-precedency disposition order dated Feb13, 2025, pursuant to U.S. Rule 32.1 (e), <sup>3</sup> on Mar 31,2025, I filed a timely petition requesting for the opinion and order be reissued as precedential. The court turned it down as **untimely motion**. And the court denied my second petition for the same purpose as duplicate.

## REASONS FOR GRANTING THE WRIT

The court erred on issues listed below:

### **Wrong law case cited for distribution law adoption**

The Order stated "the settlement stipulated that damages would be determined and apportioned under 740 ILCS 180/1<sup>4</sup> and referred to *Williams v Rush*, 899 N.E.2d.1241, 1246 (Ill. App. Ct. 2008).

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"Air crash death compensation is compensation paid to the deceased's immediate relatives based on the death of the deceased. The right holders of air crash death compensation are the deceased's immediate relatives, not the deceased. Therefore, air crash death compensation should not be recognized as inheritance."

<sup>3</sup> "Within sixty (60) days after the court issues a nonprecedential opinion or order, any person may request through motion filed in the case that the opinion or order be reissued as precedential".

<sup>4</sup> ." The court also rejected Ang Jin's argument about Chinese civil law' and cultural norms, explaining that the settlement was controlled by the Illinois Wrongful Death Act, which has been construed to define



Williams v Rush is a non-diversity case that has different legal norms from this diverse one. In Williams, all parties are Illinois while here, all beneficiaries are foreigners.

Will v. Nu, Univ, employed by the Court is also a non-diversity case that can't justify Zhao's sole right of action or control over the suit is right.

The two cases the Order cited are non-diversity cases, disputes among Illinois, so can't justify the law of distribution in this diversity case.

### **The judgement adopted Lex loci delicti approach that has been abandoned by Illinois**

The clauses of the Settlement Agreement itself can't justify the exclusion of this testing for whether foreign law could be employed in solving the dispute because the Lex loci delicti approach that caused disparity in distribution is abandoned and replaced by the method offered by the Restatement 2<sup>nd</sup> (See Ingersoll v. Klein 46 Ill. 2d 42 (Ill. 1970) 262 N.E.2d 593 Decided Mar 24, 1970 No. 42152.: Illinois abandoned the place of the wrong (lex loci delicti) approach".

Mississippi Court of Appeal mentioned a weird phenomenon, "both legislatively ordered, and court sanctioned" Shortie v George (No. 2015-CA-00944-COA 05-23-2017). Otherwise, if States refuse to enforce foreign law when it should, there will be no conflict of laws <sup>5</sup>.

### **Illinois Wrongful Death Act wrongly used in Settlement Agreement.**

The distribution law should be checked with principles of most important relationship under Restatement 2nd rules.

Court of Appeals of New York ruled in Babcock, v Jackson, "The word 'State' will be used in this opinion for convenience as including both foreign countries and the States of this country. Illinois Supreme Court's ruling in Ingersoll v. Klein also supported the notion"<sup>6</sup>.

### **No Center of Gravity testing for law application**

According to Illinois Supreme Court, the court should check the law application for conflict first:

Illinois Supreme Court 's ruling in another personal injury case Townsend v Sears served as a precedent. The judgment stated:

"This approach [lex loci delicti] was criticized, and eventually in most states abandoned". "Indeed, Restatement 2<sup>nd</sup> is by far the most popular among the modern

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"dependency" not merely in economic terms but through notions of loss of society. See , e.g., Williams v Rush-presbyterian St. Luke's Med. Ctr., 899 N.E.2d.1241, 1246 (Ill. App. Ct. 2008)

<sup>5</sup> "Emphasized principles of Restatement 2nd §6, §146 (3) "In our analysis, we are mindful: 907 "States do refuse to enforce foreign law that is particularly obnoxious to them. [Citations.] But obviously the mere fact that foreign and domestic law differ on some point is not enough to invoke the exception. Otherwise in every case of an actual conflict the court of the forum state would choose its own law; there would be no law of conflict of laws." Spinozzi, Townsend v Sears 174 F.3d at 846-47. *Id.* 879 N.E.2d 893 (Ill. 2007) • 227 Ill. 2d 147 • 316 Ill. Dec. 505 Decided Nov 29, 2007.

<sup>6</sup> In Richards v. United States \*49 (1962), 369 U.S. 1, 7 L.Ed.2d 492, 82 S.Ct. 585, the court stated: "Where more than one State has sufficiently substantial contact with the activity in question, the forum State, by analysis of the interest possessed by the States involved, could constitutionally apply to the decision of the case the law of one or another State having such an interest in the multi-state activity. 46 Ill. 2d 42 (Ill. 1970) • 262 N.E.2d 593 Decided Mar 24, 1970.

methodologies, being followed [as of 2004] in 22 states in tort conflicts." E. Scoles, P. Hay, P. Borchers & S. Simonides, *Conflict of Laws* § 2.23, at 98 (4th ed.2004)." Id.

"Section 6 is the cornerstone of the entire Restatement." [227 Ill.2d 159] Scoles, *Conflict of Laws* § 2.14, at 59. Section 6 provides as follows: "(1) A court, subject to constitutional restrictions, will follow a statutory directive of its own state on choice of law. (2) When there is no such directive, the factors relevant to the choice of the applicable rule of law include (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 relevant 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) ease in the determination and application of the law to be applied." Restatement 2nd of Conflict of Laws § 6, at 10 (1971). that "the center of gravity test must be applied". Id.

Restatement 2nd emphasizes applying the law with the most significant relationship to the issue in dispute. If a forum state's law regarding the dispute among foreigners is unavailable, the Restatement 2nd outlines a process for determining which state's law should apply.

Federal Court of Appeals Fifth Circuit ruled in *Clinton v Liberty*: "A federal court sitting in diversity must apply the choice-of-law rules of the state in which it sits (See footnote)<sup>7</sup>.

Mississippi is the state where Federal Fifth Circuit sits. U.S. Supreme Court ruled, "in all cases where a federal court is exercising jurisdiction solely because of the diversity of citizenship of the parties, the outcome of the litigation in the federal court should be substantially the same," See *Guaranty Trust Co. v. York*, 326 U.S. 99 (1945) No. 264 Decided June 18, 1945. U.S. Supreme Court ruled. So, Mississippi Supreme Court Ruling in Diversity case *Shortie v Goerge* should be guidance in this case.

Thus, as stated in *Shortie*, the choice-of-law issue should follow Restatement 2nd regulations on the dispute of distribution among the parties<sup>8</sup>.

Mississippi Supreme Court also ruled on early determination on choice-of-law in *Shortie*:"

"¶ 52. In addition, there is general law that provides that the "[e]arly determination of which state law governs a case is essential for judicial economy, efficiency and fairness to the parties." Bailey, 28 A.3d at 860. The Bailey court also explained that "a choice-of-law issue should be raised as soon as prudently possible to avoid prejudice, surprise, waste and delay." Id. *Shortie v George* 233 So. 3d 883 the Court of Appeal Mississippi 2017. (NO. 2015-CA-00944-COA. 05-23-2017)

<sup>7</sup> A federal court sitting in diversity must apply the choice-of-law rules of the state in which it sits. See *Clinton Williams v Liberty Mutual*. No. 11-60818 January 28, 2014, U.S. Court of Appeal, 5th Circuit.

<sup>8</sup> "Another fundamental concept of Restatement 2nd's methodology is the concept of the "most significant relationship." "While section 6 enunciates the guiding principles of the choice-of law process, the most- [227 Ill.2d 160] significant relationship formula describes the objective of that process: to apply the law of the state that, with regard to the particular issue, has the most significant relationship with the parties and the dispute."

Mississippi Supreme Court statement in *Boardman v. United 470 So. 2d 1024* (Miss. 1985) Decided May 22, 1985, addressed how to test for law application for each question in dispute:

“First, the law of a single state does not necessarily control every issue in a given case. We apply the center of gravity test to each question presented, recognizing that the answer produced in some instances may be that the law of this state applies and on other questions in the same case the substantive law of another state may be enforceable.”

My arguments based on *Shortie*'s precedent were completely ignored.

According to the U.S. Supreme Court ruling in *Guaranty Trust Co. v. York*, when the outcome of judgments of Federal Courts are supposed to be same and they are another courts in the forum state, the judgment of the state should be a guidance to the federal courts, so, the outcome of judgment of this federal court are supposed to be same as in Federal Fifth Circuit Court who would honor the judgments of Mississippi Supreme Court regarding diversity cases as this one.

### **The Center of Gravity weighs in China**

In this case, when the accident happened, our relationship with the decedent and the relationship among the beneficiaries were regulated by Chinese Civil Law. The impact of the distribution among beneficiaries will also be in China. Section 6 (a) “the needs of the interstate and international systems” applies here.

Chinese Civil Law for distribution would allocate proceeds equally among next of kins. (See Appendix 9: Chinese Laws Page: App. 16).

According to Illinois Supreme Court case laws above mentioned, the application of law without testing on Center of Gravity in this case is wrong. Illinois Court of Appeal ruled “Illinois Supreme Court rules have the force of law and must be followed. See ¶ 23 *Adrienne C. Bartton v Ford motor* 2023 IL App (1st) 211629-U No. 1-21-1629 Order filed Feb 21, 2023.”

### **Family members are equal in their relationship with the decedent**

The unproportionate allocation is denied by Illinois Supreme Court ruling in *Simmons*: “family members are equal, spouse can't claim more than parents. The loss of a child is as important as losing a spouse”<sup>9</sup>.

In this case, the judgement is so unfair that it caused unjust enrichment of Plaintiff and violated the justified Expectation of the beneficiaries that protected by law<sup>10</sup>.

Under *Lex loci delicti* approach, distribution results in an inequitable outcome which failed reflecting the damage each beneficiary suffered.

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<sup>9</sup> *Simmons v. University of Chicago Hospital and Clinics*, 162 Ill. 2d 1; 642 N.E.2d 107 (Illinois 1994). The Illinois Supreme Court stated: We disagree and note that the relationship between parent and child is different from that of husband and wife. The parent-child relationship is not replaceable and is not limited to the society of only one child. Every child is unique, and the loss of society a parent suffers upon a child's death cannot be replaced with the society of a child subsequently born.

<sup>10</sup> In the context of the Restatement 2nd of Conflict of Laws, “justified expectations” refers to the principle of protecting the reasonable beliefs and reliance of parties involved in a legal dispute, particularly in contract law. This principle, often used in conjunction with the “most significant relationship” test, guides courts in determining which state's law should apply in a conflict of laws situation.

The distribution under Wrongful Death Act 740 ILCS 180/2(b)<sup>11</sup> focus on Dependency of beneficiaries upon the decedent, not on Loss as regulated by Illinois Supreme court ruling In Re Estate of Barnet.

In In Re Estate of Barnet the plaintiff Patricia Barnes, a widow spouse, request to be granted all proceeds in a wrongful death case. Illinois Court of Appeal ruled: This contention is clearly without merit.<sup>12</sup> In fact, that arrangement derived from Illinois probate estates law that the surviving spouse (without descendants) is entitled to all assets of the estate. No statutes of the Act would show that Zhao, the spouse, should be allocated with such overwhelmingly disproportional difference (favoring spouse six times as much as the parents) in this case.

### **The settlement proceeds are not an asset of the estate**

Even under Illinois jurisdiction, the court still need to determine law application after testing the most important relationships for the dispute, the Court of Appeal Illinois analyze the difference in understanding the proceeds recovered from Wrongful Death case between Illinois and Mississippi (other State or country) which share very similar notion with China in this regard In Re Estate of Barnet,

"1 The term "estate" as used in our probate act refers to all interests in property, real or personal, to which the deceased may be entitled. ( In re Estate of Rudder (1979), 78 Ill. App.3d 517, 519, 397 N.E.2d 556.) A cursory examination of the Michigan Wrongful Death Act reveals that, like our own statute, the Michigan act does not post humously \*365 award damages to the decedent. (See Ill. Rev. Stat. 1983, ch. 70, pars. 1, 2; Mich. Comp. Laws Ann. sec. 600.2922 (West Supp. 1985).) Rather, the purpose of the Michigan statute is to compensate those survivors designated in the Act for damages they suffered as a result of the wrongful death. Thus, the damages recovered under the Michigan statute are not intended as compensation to the decedent or his estate; they belong exclusively to the beneficiaries enumerated in the statute. (See Carder v. Marhoff (E.D. Mich. 1956), 143 F. Supp. 920 (applying Michigan law).) Accordingly, a wrongful-death recovery under the Michigan Act cannot be considered an asset of the estate and, therefore, cannot pass under our intestacy laws to the surviving spouse. Accord, Carder v. Marhoff (E.D. Mich. 1956), 143 F. Supp. 920 (applying Michigan law); cf. Vukovich v. Custer (1952), 347 Ill. App. 547, 107 N.E.2d 426, rev'd on other grounds (1953), 415 Ill. 290, 112 N.E.2d 712 (damages recovered under Illinois Wrongful Death Act are not part of decedent's estate); see also Ill. Rev. Stat. 1983, ch. 70, par. 2 ("every such action shall be for the exclusive benefit of the surviving spouse and next of kin").

The only other Illinois law which could apply to the case at bar would be the provisions of the Illinois Wrongful Death Act pertaining to the distribution of proceeds recovered under the Act. (Ill. Rev. Stat. 1983, ch. 70, par. 2.) Section 2

<sup>11</sup> (b) The amount recovered in any such action shall be distributed by the court in which the cause is heard or, in the case of an agreed settlement, by the circuit court, to each of the surviving spouse and next of kin of such deceased person in the proportion, as determined by the court, that the percentage of dependency of each such person upon the deceased person bears to the sum of **the percentages of dependency of all such persons upon the deceased person.**

<sup>12</sup> "Patricia Barnes implicitly contends that the wrongful-death recovery is an asset of the estate and therefore she, as the surviving spouse, is entitled to all the proceeds under the Illinois law of intestate succession..... This contention is clearly without merit." In Re Estate of Barnet Ill. App. 3d 361 (Ill. App. Ct. 1985) 478 N.E.2d 1046 Decided May 7, 1985.

provides that, in the case of settlement, the circuit court shall distribute the proceeds to the surviving spouse and next of kin in the proportion "that the percentage of dependency of each such person upon the deceased bears to the sum of the percentages of dependency of all such persons upon the deceased person." (Ill. Rev. Stat. 1983, ch. 70, par.)

"2 Indeed, a contrary conclusion would lead to anomalous results. Under Illinois law, damages recoverable for wrongful death are set with reference to the pecuniary loss suffered by the surviving family members as a result of the death. (Ill. Rev. Stat. 1983, ch. 70, par. 2.) Accordingly, damage recovered are distributed to the beneficiaries based upon their economic dependence on the deceased, thereby resulting in an equitable distribution reflecting the damage each beneficiary suffered. However, the Michigan act emphasizes loss of companionship and injury to family relationships as a basis for awarding damages. (Mich. Comp. Laws Ann. sec. 600.2922(2) (West Supp. 1985).) As recently noted by the Michigan Supreme Court in *Crystal v. Hubbard* (1982), 414 Mich. 297, 325-26, 324 N.W.2d 869, \*366 880: "There exists \* \* \* an assumption that some positive relationship exists between almost all relatives. The wrongful death act, with its emphasis on compensating lost companionship, appears designed to compensate for the destruction of family relationships — those implicitly assumed to exist \* \* \* among family members identified as potential intestate takers."

"In summary, we hold: (1) the proceeds are not an asset of the estate and therefore cannot pass under our intestacy laws to the surviving spouse;". *Barnet Ill. App. 3d 361* (Ill. App. Ct. 1985) 478 N.E.2d 1046 Decided May 7, 1985. I.d

In the citation, if Mississippi was replaced with China that has the same understanding about the proceeds recovered from wrongful death case: the loss is suffered by all family members who are supposed to be in good relationship with the decedent, we can come to the conclusion that China's law would apply in this case.

Mississippi Supreme Court provided excellent precedent in detail about how to apply Restatement 2<sup>nd</sup> to law application in Wrongful Death case in *Shortie* that I cited to support my argument in the appeal. Unfortunately, the Court ignored it.

### **Unenforceability of the Settlement embedded in itself**

The above citations inferred why Zhao was not "in her capacity to approve the Settlement regarding distribution law" as the court stated and the distribution law under Illinois Wrongful Death Act is not the right choice for the case.<sup>13</sup>

### **Settlement didn't contain distribution contents**

Besides, the Plaintiff counsel said in his email to me Jun 17, 2024, there are not any regulations about the distribution in the Settlement.

Besides, the court order I received two months later that approved the "Settlement" contains no information about the applicable law for distribution either. Clause 14 mentioned: "A dispute has arisen among the heirs regarding appropriate distribution." (See Appendix 3: Case No. 19 cv 2170 # 2169, filed 06/28/24 Page ID 7 App. 6)

<sup>13</sup> But the settlement, which Zhao approved in her capacity as the estate's personal representative stipulated that damages would be determined and apportioned under the Illinois Wrongful Death Act, Settlement agreements, with limited exceptions, are enforced just like any other contract, See, e..., *Beverly v. Abbott Lab us*, 817 F.3d 328,332-33 (7th Cir.2016); *Lunch, Inc. v. Samata Mason Inc.*, 279 F3d 487,489 (7th Cir. 2002). And Ang Jin has not argued that the settlement is unenforceable.

In fact, I didn't know anything about the Settlement Agreement till almost two months later. The district court Order entered on April 23, 2024. Via an email, Plaintiff counsel Kevin sent me a copy of a Settlement Agreement with Chinese version to sign back. It didn't look like a formal document, more like a draft for negotiation. Even so, it didn't contain any information about the law governing the distribution of proceeds as cited in the judgement. It didn't contain any content about distribution at all.

In his email, Plaintiff attorney Kevin assured, "Again, as you look through the release there is no provision in there about the distribution of the funds in accordance with the recommendations of Judge O'Connell and Judge Alonso". This has nothing to do with that. (citation from email received on Jun 17, 2024, from Kevin D. Durkin). On Jun 21, 2024, I received one more email from Kevin. It read, "I sent the below last Monday, June 17, 2024, to you. I have not heard back from you. Usually, you are responsive. I will make a representation to Boeing and the Court that you are not signing the release absent getting it back from you by the close of business on Monday." I didn't sign it back.

It seemed by then they realized that they had not sent me the Settlement was a fault, only because they had believed I had no "right to know" due to, in his words, "he is not even a party."

More importantly, the activity of sending a Settlement copy to me was a remedial measure, a patch-up that showed the Plaintiff implicitly admitted that 1<sup>st</sup> the statutory beneficiaries had the right to know, not as the court ruled, 2<sup>nd</sup> the Settlement, if any, would not bind me. That explained, in the past five years, how much Plaintiff neglected her fiduciary liability to other beneficiaries and how she shifted her roles at will when necessary. Indirectly it showed why Restatement 2<sup>nd</sup> is so necessary and without it, how could the beneficiaries get equal protection due to wrong application of the Wrongful Death Act as mentioned in the Order.

The court stated, "But in circumstances like these, only the estate's personal representative e.g. Chen Zhao" possesses the sole right of action or control over the suit; the beneficiaries or heirs have neither a right of action nor any control." Will v. Nu, Univ., 881 N.E.2d481, 492 (Il. App. Ct. 2007). And Ang Jin has not argued that the settlement is unenforceable." Order 24-2218 # 93. Now the burden of proof reversed for the unenforceability of the Settlement to the court.

### **Special representative's fiduciary duty neglected**

In *shortie v George*, Mississippi Supreme court stated:

"¶ 49. In *Long*, the supreme court considered many aspects of the wrongful-death case. The court announced certain procedures and guidance for the attorneys that are instructive here:

By our decision today and the procedure announced below, we intend to eliminate the inherent conflict of interest and simplify the decisions to be made by trial courts where more than one heir wishes to participate in the litigation to protect their individual interests. We also address the dilemma faced by counsel who have seemingly been forced into the uncomfortable position of representing a client with conflicts of interest.

The resolution of this case requires only that we address appropriate practice and procedure in wrongful death litigation.

*Long*, 897 So.2d at 171 (¶¶ 46–47). Then, the court said this about the "[d]etermination of wrongful death beneficiaries":

Section 11–7–13 provides that wrongful death litigation may be brought by the personal representative of the deceased or by any one or more of several statutory beneficiaries, for the benefit of all entitled to recover. Unless all persons entitled to recover join in the suit, those who do have a fiduciary obligation to those (who?) do not.” “Those bringing the action, together with their counsel, have a duty to identify the beneficiaries, and they should do so early in the proceedings.” “Where, as here, one of the wrongful death beneficiaries proposes to engage counsel and file a wrongful death suit without participation of the personal representative of the decedent and all other beneficiaries, the beneficiary who files suit does so as the representative of all statutory beneficiaries and must, within a reasonable time following the filing of the complaint, provide reasonable notice (i) to all other wrongful death beneficiaries; (ii) to the personal representative of the decedent if one has been appointed; and (iii) to each person who bears a relationship to the deceased specified in section 11–7–13. Such notice should, at a minimum, include the identity of the plaintiffs and defendants, the nature of the claims against those defendants, the identity of counsel representing the plaintiffs, and a copy of the complaint.” “We recognize that ample dicta, and even some direct authority, exists under our prior case law which justifies the conclusions reached by the trial court here and by the federal court in *Rampy* [ex. rel. *Rampy v. Austin*, 718 SUPP. 556, 561 (S.D. Miss. 1989)]. However, for several reasons, we must reject the proposition that the first heir to reach the courthouse with a lawyer will “control the litigation” to the exclusion of participation by other heirs who wish to join with other counsel of their choosing.”

Zhao didn’t implement her duty to keep me, and Li informed of the contents of the Settlement timely, including percentage of the distribution and get their consent, as requirement shown by Shortie.

Zhao used Li’s very vulnerable position to cover her deeds that violated Li’s benefits as mine. Her representation for Li overthrew the reason Kevin declined to take me as his client in 2019 that only spouse could be the litigant.

### **Responsibility being shifted from the bearer to the receiver**

I was said I didn’t prove Zhao’s inability as a Special Representative referring **Johnson v. Vill. Of Libertyville** and said, “**This he failed to do**”. That is an unreasonable accusation. The Court reversed the duty, shifting from the Administrator to beneficiary, or more accurately from the powerful court and counsel to helpless non-party. From those they should to those they could not. How could I know what Zhao was doing since I was excluded out. I checked for the law application issue only when the Court didn’t do the testing as law requires.

As to the issue itself, the court should prove I was fully given the capability by law to fulfil the supervision of her duty. The Plaintiff got her right as a litigant, an administrator of the case from Illinois law by court, not by the beneficiary, I could only check whether the authorization is right and whether the outcome of the presentation accords to our justified expectations or not, not earlier because “Chen Zhao “possesses the sole right of action or control over the suit”, so according to the same law, being excluded out, we couldn’t even supervise the representation. Laws are good when they are applied as they were designed. Here all the three cases the Order referred were from different scenarios than this one.

And, regarding the duty of the Administrator to the beneficiaries, Mississippi Court of Appeal ruled in Shortie:

“¶ 54. Because we find the "duty to identify the beneficiaries" includes a duty to identify the percentages that the beneficiaries would be entitled to take, we find that Charles was required by Long to bring the choice-of-law issue to trial court's attention "early in the proceedings," and he did not". I.d.

The Plaintiff not only failed to do so but proactively did the opposite, keeping Li from knowing the possibility that different allocations might also be applied to her.

### **The appeal only focused on distribution**

The Agreement is not supposed to contains any terms about distribution. Should it exist, it should be only about compensation, not how to allocate it. it would not bind the uninformed beneficiaries because Special Representative didn't have the authority from the beneficiaries.

The unenforceability of the settlement that stipulated the damages would be determined and apportioned under the Illinois Wrongful Death Act lacks legal base.

Either the Special Representative or Defendant has the right to decide the method of compensation allocation, simply because the victim would not accept the compensation on the premise of accepting the allocation terms stipulated by the tortfeasor. The tortfeasor does not have this right in terms of liability itself. Any attempt to stipulate the allocation terms in the Agreement Settlement will only lead to its failure. "4. There is no causal relationship between the application of the law on the proportion of distribution and the jurisdiction of Illinois law in this case.

The Negotiated Stipulation was reached in accordance with Illinois law on compensation, and there is no word about the distribution of compensation. It is only related to the application of the legal liability of the party who is responsible for personal injury.

No doubt the governing law for distribution is a material factor that might cause disparity.

The order still disregarded it and wrongly construed my intention was to challenge dependency merely for economic terms. It was wrong. I explained the big differences between two cultures, including about the term "Dependency" in Chinese culture. In my Appeal, I devoted a lot of space to explaining the cultural differences between the East and the West, that lead to different laws.

We value contributions to the family (including big family), sacrifice in separation to work far away to support family, including letting go (let children stay with Ex for the kid's sake) in divorce how to infer whether someone love for the loved ones (love what he or she loves), the responsibility for each other (extending to grandparents or to the clan) and a lot more beyond responsibilities compared to Illinois law. All those are about dependency and loss we construed, not merely economic terms as mentioned in the Order.

The Order sated, "the settlement was controlled by the Illinois Wrongful Death Act, which has been construed to define "dependency" not merely in economic terms but through notions of loss of society. I didn't think as the court said. The Settlement relies a great deal on compensation for pain and suffering by family members, and calculated on per victim, regardless of anything other than their biological individual. That means the way compensation evaluated was according to level of the tort that violated the right of life guaranteed by the contract between the defendant and passengers, while the Dependency



defined by Illinois Wrongful Death Act include financial reliance, contribution to the deceased life and impacts caused by the event. In many ways, it shares with Chinese Civil Law. Only here due to diversity case, a choi-of-law issue involved.

I tried to help the court to understand what I wanted to prove, I established the connection between consistent patterns of behavior of all three beneficiaries to constitute a chain of evidence. Laws may change, reasons may change, only logic would not change. My efforts failed. The court disregarded all I said but fully employed the affidavits Plaintiff and Li provided to make the judgement without an evidentiary hearing being held. That is the true violation of the right granted by Equal Protect by Fourteenth Amendment and Due Process by Fifth Amendment of U.S. Constitution.

When Restatement 2<sup>nd</sup> was adopted by most states, it became a part of common law. (See Guaranty Trust Co. v. York)

“In exercising their jurisdiction on the ground of diversity of citizenship, the federal courts, in the long course of their history, have not differentiated in their regard for State law between actions at law and suits in equity. Although § 34 of the Judiciary Act of 1789, 1 Stat. 73, 92, 28 U.S.C. § 725, directed that the “laws of the several States . . . shall be regarded as rules of decision in trials of common law . . .,” **“In essence, the intent of that decision was to insure that, in all cases where a federal court is exercising jurisdiction solely because of the diversity of citizenship of the parties, the outcome of the litigation in the federal court should be substantially the same, so far as legal rules determine the outcome of a litigation, as it would be if tried in a State court”**.

“The Court dispensed with this substantive/procedural distinction and stated that regardless of whether the case was argued in state or federal court, the outcome should be substantially the same. Thus, the Court set forth an **“outcome determinative test”** for deciding whether a piece of state law must be obeyed in federal courts—if the outcome is substantively the same then the federal court can apply its own rules instead of state rules. I.d”

### **Uniformity of federal court judgement**

Based on the uniformity of federal law, the judgments should be consistent because they should honor the law of the state they are sitting in, therefore, when the two states Mississippi and Illinois both adopted Principles of Restatement 2<sup>nd</sup>, the outcome supposed to be “substantially the same”.

The opposite counsel’s failure of implementing fiduciary duty to other beneficiaries as Special Administrator required by the Restatement 2<sup>nd</sup>.

In *Wilsey v. Eddingfield*, 475 U.S. 1130 (1986), U.S. Supreme court affirmed Court of Appeal for seventh Circuit statement about the duty of special administrator.<sup>14</sup>

U.S. District Court Illinois ruled in *The Quarasan Group, Inc vs Nozani vs Randi Brill*, Case No. 20c 2650 entered Oct 7, 2020, “Illinois follows the choice-of-law approach set out in the Restatement 2<sup>nd</sup>.”

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<sup>14</sup> “the (7<sup>th</sup>) Court of Appeals concluded that a special administrator under Illinois law has no personal stake in the proceeds of a wrongful-death action but merely distributes those proceeds to the statutory beneficiaries. Consequently, the statutory beneficiaries and not the special administrator are the real parties in interest whose citizenship is determinative for diversity purposes.

## **I tried to interfere**

I tried to interfere as early as Oct 19, 2021, by writing to the district court Judge Alonso, twice. And I wrote to Kevin many times to complain about the exclusion of my involvement in the case. That showed I didn't believe Zhao would duly represent me.

## **Highly suspicious cheating activity neglected**

The fraudulent document is "sealed" but it would not be protected by the "seal" itself because it is not sealed from being known by court and beneficiaries. They deserve to know the truth.

My request that the Plaintiff's **perjury** to be checked ignored. the Plaintiff submitted a sealed so-called "National Second-Class Psychologist Wu's statement about Zhao's medical treatment as part of the evidence supporting her petition for determination of **Dependency**. Unlike other medical documents submitted, Wu's statement doesn't contain ANY legally required information: details of the evaluation with professional method and treatment, clinic logs, payment history, even no basic info like qualification certificate, business address, contact or credential information and it was submitted through her attorney. It's the craziest affidavit by a "professional" I have ever seen. This is the popular way of cheating in China. And else, Wu's statement part III is a mere restatement of Zhao's false accusation about the relation between me and my son, how much she mentally supported Li after the accident and statement against my accusation that Zhao is indirectly responsible for the death of Yetao who in the last minute changed the flight to avoid being in a family event. It contains so many flaws that must be challenged in front of the judge.

Besides, the papers were deliberately disrupted in such a messy order that the serial page numbers were related to different contents, the Chinese and English versions of different documents in different languages appear on both sides of the same page, to create a completely disorder that it's hard to assort and categorize. I don't think the Court has got the same documents with such a mess.

Wu's credential and business information is supposed to be open to the public online. However, no significant information could be found online, it only shows: the two-person business is of a cluster registration, seven risky pieces of information and three legal cases involved. (See Appendix 8: Wu's Statement Page App. 14)

Zhao bears the legal obligation when she made the oath to tell "only the truth" when she entered the case as a Plaintiff. So, she should know the court was serious about the oath and she must show respect and awe for the court that promised to protect her legal rights with fair treatment in this foreign country. Thus, the Plaintiff must prove the affidavit by Wu with solid evidence, just as other medical documents she submitted, was not forged. Otherwise, it's unfair to the Appellant who have been following all rules with great respect and awe. The Court let her go away without being held accountable.<sup>15</sup> Illinois False Claims Act (IFCA), (740 ILCS 175/3) (from Ch. 127, par. 4103) Sec. 3 regulated False claims are a crime. Illinois Supreme Court ruled in *People v. Davis*, 164 Ill.2d 309, 647 N.E.2d 977 (1995) that false statement should be held countable:

"False statements made in a discovery deposition were "material," though the deposition was never filed in court and the trial judge testified he did not rely on it in making rulings. Allegedly false statements need not be placed before the trier of

<sup>15</sup> it dismissed Zhao's claims "in their entirety with prejudice." See *Law Offices of David Freydyin, P.C. v. Chamara*, 24 F.4th 1122, 1128 (7th Cir.2022).

act to be material." The law only requires that the statements be given under oath or affirmation in any type of matter where the law requires an oath or affirmation; that they be false; that they be material to the issue or point in question; and that the person making the statements believes them not to be true."

That the Plaintiff tried to use fabricated medical documents to show that her health was so much impacted by the tragedy that she had to receive 45 treatments, each lasting 90 minutes. This is evidence that she wanted to prove something that didn't exist.

### **Evidentiary hearing and confrontation denied**

My request to confront the Plaintiff and Li whose affidavit distort the true relationship between I and my son is not granted. Illinois Supreme court ruled in Townsend: the court shouldn't trust Plaintiff's credibility without being challenged.

"We disagree. The circuit court did not hold an evidentiary hearing, weigh the testimony or assess the credibility of witnesses; the record consists solely of documents. Where the circuit court does not hear testimony and bases its decision on documentary evidence, the rationale underlying a deferential standard of review is inapplicable and review is de novo."

"Beyond the requirements of notice and a hearing before an impartial decision maker, (1) due process may also require other procedural protections such as an opportunity for confrontation and cross-examination of witnesses, discovery, a decision based on the record, (2) Thus, the notice of hearing and the opportunity to be heard "must be granted at a meaningful time and in a meaningful manner." I.d.

"We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C). (See Appendix 4: Case No. 24-2218 # 23, filed 02/13/2025 Page 3 App. 9)

The court denied the oral argument and used the forged information provided by Plaintiff and Li to make a conclusion that I am an estranged father. That is actually a result of the popular abuse in China- divorced wife would not let the kid see his father, including grandparents, aunts and cousins, which isolated the boy. It took him ten years to know the facts and started on a difficult journey back home. I provided evidence that I contributed much more than any of the two in my son's life, his less-than-five-year short marriage started to give him so much stress that he, in his words, couldn't bear it any more during our WeChat talk in 2018. So, he, a family guy, was 183 days away on a business trip in a year, a runaway escape.

### **Against justified expectations**

The problem here is that this ruling would push spouses to pick Boeing so legally get the unexpected expectations as justified expectations. That is not supposed to be encouraged by law – unjust enrichment.

### **The difference in culture and tradition is neglected**

Though I repeatedly and clearly stated the understanding of dependency and loss in Chinese society and legal regulation is completely different as from Illinois due to different value rooted in Asian culture, especially the impact of the loss of the boy, only family name carrier for five generations, millions of childless elderly after family plan policy of last century and our contributions to Yetao's short but legendary life. The court ignored them all.

### **Equal protection missing**

The Equal Protection Clause ensures that states treat all individuals within their jurisdiction equally under the law. The law-abiding party was not equally protected if perjurer was not held accountable. The beneficiaries were not equally protected compared to the case laws cited above as under same scenario.

### **My motion to request reissue as precedential disposition of the order was timely**

Federal Circuit Rule 32.1(e) stipulates anyone can request reissue as precedential disposition of the order<sup>16</sup>. I filed it timely, and the court ruled it's untimely (See Appendix 6: Case No. 24-2218 # 28, filed 04/02/2025 Page 1 Page APP 12).

### **Logical reasoning analysis ignored**

In my appeal, I tried to use lawful logic to show why using Illinois law in distribution is fundamentally wrong: "what the damage compensation protects is the victim's right to sue for their loss due to the violation to his life, not to sue for the right to distribute the proceeds of the recovery." The fact that the victim is deceased and cannot dispose of the proceeds does not mean that the victim is obliged to accept the court to exercise her power of disposition on his behalf.

"There is no causal relationship between the application of the law on the proportion of distribution and the jurisdiction of Illinois law. The two regulate different legal relations, not of same category; the legal relationship between the parties and the deceased before the incident and the application of the law on the proportion of distribution have a causal relationship, because this is a hedge of rights and obligations established by the same legal norm. If this Settlement Agreement implies the application of Illinois law on the proportion of distribution, it fundamentally denies the application of Illinois law to this case, indicating that the hedge is reasonable based on the rights and obligations established by two different laws. That would not only be a tear from the unity and identity of jurisdiction but also transform the victim's right to claim into an obligation, namely, the rights obtained before the incident must be given up in order to obtain compensation. If I give up my rights, how can I get compensation? Jurisdiction collapses as a result."

The order gave no comments.

## **CONCLUSION**

The application of foreign law in the distribution of wrongful death diversity cases is justified when those states have significant contacts with the matter in dispute. The center of gravity test, along with the duty to identify beneficiaries with their percentage, supports the choice of the most appropriate law. In this case, Chinese Civil Law should be applied to ensure fair and equitable distribution among the beneficiaries. Plaintiff should be held accountable for perjury.

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<sup>16</sup> FEDERAL CIRCUIT RULE 32.1 (e) Request to Make an Opinion or Order Precedential. **Within sixty (60) days** after the court issues a nonprecedential opinion or order, **any person** may request through motion filed in the case that the opinion or order be reissued as precedential. The request will be considered by the panel that rendered the disposition. The motion must identify any case that person knows to be pending that would be determined or affected by reissuance as precedential. Parties to pending cases having a stake in the outcome of a decision on the motion must be given an opportunity to respond. If the request is granted, the opinion or order may be revised as appropriate.