

Giammittorio, Houghtlin and Liptrot in Texas Lawyer: The Blue Sky Exception's Collision Course with 'Erie'

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Haynes Boone attorneys [Carrington Giammittorio](#), [Morgan Houghtlin](#) and [Matthew Liptrot](#) co-authored an article for *Texas Lawyer* examining the “blue sky exception” in state securities litigation and its growing divide among federal courts. The article explores how courts have approached conflicts-of-law issues in securities cases, challenges the doctrine’s legal foundation and discusses the potential implications for forum selection and securities litigation strategy.

Read an excerpt below.

As every first-year law student learns, the Supreme Court has charged federal district courts sitting in diversity with using the substantive law of the states in which they sit. This includes conflict of laws principles. These principles govern the adjudication of state-law disputes that may have a significant relationship to more than one state—at least in theory. For more than 40 years, federal district courts have quietly carved out an exception to this rule for state securities acts cases. And they have largely done so without bothering to justify this deviation from established Supreme Court precedent. This article traces the adoption and rejection of this so-called “blue sky exception” in different jurisdictions, examines the growing split in its acceptance across the federal circuits, and suggests that it violates the *Erie* doctrine and rests on fundamentally flawed reasoning.

The Election of Remedies Approach: A Judicial History

The blue sky exception began as an attempt to reframe “conflict of laws” questions as simply “election of remedies” issues. The blue sky exception traces its origin to *Lintz v. Carey Manor Ltd* where the Western District of Virginia—drawing heavily on Professor Louis Loss’s “The Conflict of Laws and the Blue Sky Laws,” 71 Harv. L. Rev. 209 (1957)—reasoned that state securities laws are generally adopted both to protect a state’s citizens in securities transactions and to regulate securities activities taking place at least partially within the state. 613 F. Supp. 543, 549-50 (W.D. Va. 1985). Therefore, so long as there is some “territorial nexus,” the concurrent application of multiple states’ blue sky laws would give effect to each state’s legislative goals. The court reasoned this approach would obviate the need for a conflicts-of-law analysis and provide a simplified path for the adjudication of state securities claims, with the only limitation on the application of multiple states’ laws being preventing the plaintiff from multiple recoveries.

The *Lintz* framework quickly gained traction in the Fourth Circuit. In *Simms Investment v. E.F. Hutton & Co.*, the Middle District of North Carolina said explicitly that overlapping blue sky laws “should be viewed more as an election of remedies, rather than a potential conflict of laws problem.” 699 F. Supp. 543, 546 (M.D.N.C. 1988). In doing so, the court relied largely on policy justifications.

Read the full *Texas Lawyer* article [here](#).