

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ALLSTATE INSURANCE COMPANY
and AMERICAN EXPRESS PROPERTY
AND CASUALTY COMPANIES,

Plaintiffs,

No. 97-75917

v.

Hon. John Corbett O'Meara

ASAD ABBAS; SYED RISVI; THRIFTY
RENT A CAR SYSTEMS, INC.; SYED
JAFFERY, JR., Special Administrator of
the ESTATE OF SYED JAFFERY, SR.;
JAMES CUNNINGHAM, Personal
Representative of the ESTATE OF ARDEL
CUNNINGHAM; and DORIS LOVELAND.

Defendants.

**OPINION AND ORDER
GRANTING PLAINTIFF ALLSTATE'S MOTION FOR SUMMARY JUDGMENT,
GRANTING PLAINTIFF AMEX'S MOTION FOR SUMMARY JUDGMENT,
DENYING DEFENDANT THRIFTY'S MOTION FOR SUMMARY JUDGMENT,
AND DENYING AS MOOT
DEFENDANT JAFFERY'S MOTION FOR SUMMARY JUDGMENT**

This matter came before the court on plaintiff Allstate's January 9, 1999 motion for summary judgment; plaintiff AmEx's January 19, 1999 motion for summary judgment; defendant Jaffery's February 8, 1999 motion for summary judgment; and defendant Thrifty's February 16, 1999 motion for summary judgment. Oral argument was heard April 30, 1999. This is a declaratory judgment action to determine which insurance company or companies should pay for injuries sustained in an accident involving a minivan rented from defendant Thrifty Rent A Car Systems, Inc. ("Thrifty").

BACKGROUND FACTS

On August 8, 1997, defendant Syed Risvi entered into a contract to rent a 1997 Plymouth Voyager from defendant Thrifty at its Southfield, Michigan location. At the time the agreement was entered into, defendant Asad Abbas was named as an additional authorized driver on the agreement. The next day Risvi and Abbas used the van to take a number of people to a wedding in Texas. Abbas was driving at approximately 1:00 a.m. through Illinois when he lost control of the vehicle. Syed Jaffery, Sr., a passenger in the van, and Ardel Cunningham, the driver of another vehicle, were killed in the crash; others sustained serious, but not fatal, injuries. At all relevant times defendant Risvi was insured by Allstate; defendant Abbas was insured by AmEx. Risvi is not a defendant in the underlying tort action currently pending in state court in Illinois.

In the complaint, Allstate seeks the following declarations from this court: 1) that Allstate owes neither a defense nor coverage to Asad Abbas under the policy Allstate issued to Syed Risvi, and 2) that Thrifty reimburse Allstate for the \$18,800 in collision coverage Allstate paid by mistake. Allstate and AmEx, Abbas' insurer, both seek a declaration from the court that Thrifty's failure to provide notice to its lessees of its statutory liability limits renders Thrifty liable for more than the limitation provided in Mich. Comp. Laws Ann. § 257.401(3).

LAW AND ANALYSIS

The first issue to be determined by the court is whether to apply the law of Michigan or the law of Illinois to the present action. This is a declaratory action to determine rights pursuant to rental car and insurance contracts, not a tort action to determine negligence in the August 9, 1997 auto accident. The validity and construction of a contract is to be made using the laws of the state in which the contract was executed. Since the rental contract was executed in Michigan

and involved a rental car registered in Michigan, the court must apply Michigan law.

The court will grant plaintiff Allstate's motion for summary judgment based on defendant Thrifty's concession at oral argument that it believed Risvi's Allstate policy did not apply to Abbas. The parties also agreed that Thrifty will reimburse Allstate for the \$18,800 Allstate mistakenly paid.

Defendant Abbas' insurance contract with AmEx provides excess coverage for a vehicle that the insured does not own. "Insurance afforded under this Part for a vehicle you do not own, is excess over any other collectible auto liability insurance." AmEx Ex. H, p.4.

Michigan's No Fault Insurance Act provides that a car rental company is liable for primary coverage involving one of its rental vehicles. The Act states,

The owner or registrant of a motor vehicle required to be registered in this state shall maintain security for payment of benefits under personal protection insurance, property protection insurance, and residual liability insurance. Security shall only be required to be in effect during the period of time the motor vehicle is driven or moved upon a highway.

Mich. Comp. Laws Ann. § 500.3101(1).

Michigan law also provides,

[A] person engaged in the business of leasing motor vehicles who is the lessor of a motor vehicle under a lease providing for the use of the motor vehicle by the lessee for a period of 30 days or less is liable for an injury caused by the negligent operation of the leased motor vehicle only if the injury occurred while the leased motor vehicle was being operated by an authorized driver under the lease agreement or by the lessee's spouse, father, mother, brother, sister, son, daughter, or other immediate family member. Unless the lessor, or his or her agent, was negligent in the leasing of the motor vehicle, the lessor's liability under this subsection is limited to \$20,000.00 because of bodily injury to or death of 1 person in any

1 accident and \$40,000.00 because of bodily injury to or death of 2 or more persons in any 1 accident.

Mich. Comp. Laws Ann. § 257.401(3).

In addition,

A person engaged in the business of leasing motor vehicles as provided under subsection (3) shall notify a lessee that the lessor is liable only up to the maximum amounts provided for in subsection (3), and only if the leased motor vehicle was being operated by the lessee or other authorized driver or by the lessee's spouse, father, mother, brother, sister, son, daughter, or other immediate family member, and that the lessee may be liable to the lessor up to amounts provided for in subsection (3), and to an injured person for amounts awarded in excess of the maximum amounts provided for in subsection (3).

Mich. Comp. Laws Ann. § 256.401(4).

There is no dispute that Thrifty's rental car agreement failed to notify lessees that it was liable only up to \$20,000/\$40,000. Nor is there any dispute that Thrifty's agents failed to inform the lessees about the limitation on liability at the time they rented the van. The question for the court in this case, then, is whether this failure to notify renders Thrifty liable for the entire amount of damages.

AmEx argues that Thrifty, in its failure to notify, was "negligent" as that term is used in Mich. Comp. Laws Ann. § 257.401(3). "It is true that violation of a statute creates a rebuttable presumption of negligence." Cloverleaf Car Co. v. Phillips Petroleum Co., 213 Mich. App. 186 (1995). Thrifty argues that its failure to notify lessees of the limitation should not render its liability unlimited. It argues that the Michigan legislature's use of "negligent" was intended to mean "negligent entrustment." However, if the drafters had intended to limit the rental car companies' liability to negligent entrustment, they could have done so. Because "negligent" is

not limited by the statute, the court finds Thrifty was negligent in failing to notify lessees of the limitation on liability. Thus, Thrifty's liability cannot be limited by Mich. Comp. Laws Ann. § 257.401(3). The court will grant plaintiff AmEx's motion for summary judgment and deny defendant Thrifty's motion for summary judgment.

Defendant Syed Jaffery, Jr., administrator of the estate of Syed Jaffery, Sr., has also moved for summary judgment on the same grounds provided in AmEx's motion. Having granted that motion, the court will deny as moot defendant Jaffery's motion.

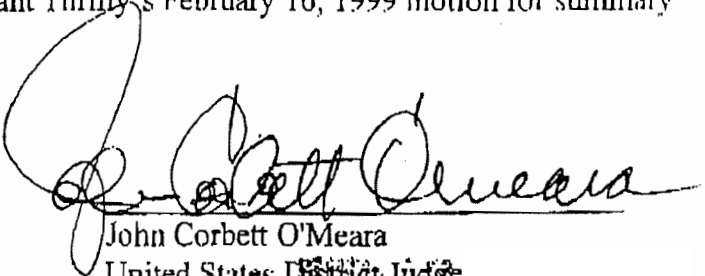
ORDER

It is hereby **ORDERED** that plaintiff Allstate's January 9, 1999 motion for summary judgment is **GRANTED**.

It is further **ORDERED** that plaintiff AmEx's January 19, 1999 motion for summary judgment is **GRANTED**.

It is further **ORDERED** that defendant Jaffery's February 8, 1999 motion for summary judgment is **DENIED AS MOOT**.

It is further **ORDERED** that defendant Thrifty's February 16, 1999 motion for summary judgment is **DENIED**.


John Corbett O'Meara
United States District Judge

Date: 5-6-99