SHORT FORM ORDER

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: **HONORABLE PETER J. KELLY** IAS PART 16
Justice

RUTH HOOD AND ROBERT L. MAY,	INDEX NO. 17339/2005
Plaintiffs,	MOTION DATE October 30, 2007
- against -	
AVIS RENT A CAR SYSTEM, INC., et al.,	MOTION CAL. NO. 14
Defendants.	MOT. SEQ. NUMBER

The following papers numbered 1 to 11 read on this motion by the defendants Avis Rent A Car System, Inc., Avis Rent A Car System, LLC, Avis, Inc. and PV Holding Corp. for summary judgment dismissing the plaintiffs' complaint. The plaintiffs' cross-move for summary judgment on the issue of liability.

	PAPERS NUMBERED
Notice of Motion/Affid(s)-Exhibits.....	1 - 4
Notice of Cross Motion/Affid(s) in Opp.-Exhibits...	5 - 8
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Upon the foregoing papers the motion and cross-motion are determined as follows:

This action arises out of a single car accident that occurred May 22, 2005 in the southbound lanes of Interstate 81 in Pennsylvania. The driver of the vehicle, the defendant Mary Lewis ("Lewis"), who resided in Laurelton, New York, was operating a Ford minivan that she had leased a day earlier from the defendant Avis Rent a Car System, Inc. ("Avis") at their office located at John F. Kennedy International Airport in New York.

The vehicle in question was owned by the defendant PV Holding Corp. ("PV Holding") which listed in the vehicle registration an address in East Boston, Massachusetts. In an affidavit in support of the motion, David Peltz, a vice president of PV Holding, avers that PV Holding "is a Delaware corporation and serves as nominee titleholder for vehicles owned by AESOP Leasing LP. AESOP Leasing LP, leases to Avis Budget Car Rental, LLC and Avis Budget Car Rental LLC subleases to Avis Rent-A-Car System, LLC, vehicles used by (ARACS) in its vehicle rental business."

In addition to Lewis, there were five other occupants in the vehicle at the time of the accident, Ruth Hood ("Hood"), Robert L. May

("May"), Brenda May-Woods ("May-Woods"), Philip Grant and Michael Grant. The police accident report listed as addresses for the passengers as follows: Hood - Alabama; May and May-Wood - New York and Philip Grant and Michael Grant - South Carolina. In the plaintiffs' verified bill of particulars, Hood and May confirm the residences listed in the police accident report. At her deposition, Lewis testified that she and the other occupants of the vehicle were traveling to Alabama to attend her son's funeral.

The defendants Avis and PV Holding move for summary judgment dismissing the plaintiffs' complaint based upon New York's choice/conflict of laws regime (See e.g., Neumeier v Kuehner, 31 NY2d 121). The defendants argue that Pennsylvania law, which, unlike New York law[1], does not recognize an owners' vicarious liability based solely upon permissive use, should apply (See, Solomon v Commonwealth Trust Co., 256 Pa 55). Specifically, the defendants aver "this action requires an application of the third of the rules set forth in Neumeier[, supra] because the parties are domiciled in different jurisdictions with conflicting loss-distribution rules and the locus of the tort is [Pennsylvania], a separate jurisdiction" (Schultz v Boy Scouts of America, Inc., 65 NY2d 189, 201). That rule provides that when the parties "are domiciled in different states[,] . . . [n]ormally, the applicable rule of decision will be that of the state where the accident occurred but not if it can be shown that displacing that normally applicable rule will advance the relevant substantive law purposes without impairing the smooth working of the multistate system or producing great uncertainty for litigants" (Neumeier, supra at 128).

The third Neumeier rule is not inflexible, since the traditional rule of lex loci delicti, the law of the place of the wrong, was expressly abandoned by the Court of Appeals nine years prior to Neumeier in Babcock v Jackson, 12 NY2d 473. In the years since Neumeier, the Court of Appeals has "refined the interest analysis approach in an attempt to bring to it some predictability" (Weisberg v Layne-New York Co., 132 AD2d 550, 551). "Interest analysis became the relevant analytical approach to choice of law in tort actions in New York . . . [and] [u]nder this formulation, the significant contacts [to be considered in the analysis] are, almost exclusively, the parties' domiciles and the locus of the tort" (Schultz v Boy Scouts of America, Inc., supra at 197). Moreover, where, as here, the conflicting laws concern loss-allocation rules like "vicarious liability rules", as opposed to the application of conduct-regulating substantive tort law, "the State's admonitory interest and party reliance are less important" and "the locus jurisdiction has at best a minimal interest" (Schultz v Boy Scouts of America, Inc., supra at 198).

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[1] This action was commenced on August 8, 2005, two days before the effective date of the "Graves Amendment" which bars state law vicarious liability actions commenced on or after August 10, 2005 against owners of motor vehicles "engaged in the trade or business or renting or leasing motor vehicles"(See, 49 USC §30106). Thus, section 388 of the Vehicle and Traffic Law is potentially applicable in this action.

In the present action, it is apparent from the plaintiffs' bill of particulars that Hood is a domiciliary of Alabama and May a domiciliary of New York. As to the defendants, Lewis, the driver of the vehicle, is a New York domiciliary based upon her acknowledgment of her longtime residence in this state at her deposition. Avis, despite being incorporated in Delaware, is, according to previous rulings of the Appellate Division, Second Department, a New York domiciliary based upon the presence of its principal place of business in this state (See, King v Car Rentals, Inc., 29 AD3d 205, 212; DeTellis v Avis Rent A Car Sys., 273 AD2d 268). Although the defendant PV Holding is also a Delaware corporation, and registered the vehicle at an address in Massachusetts, there is no proof in the record where this corporation has its principal place of business. As such, for the purposes of this motion, this corporation's domicile is unestablished.

The Neumeier principles do not favor application of Pennsylvania law in this case. As concerns this accident, none of the parties have any contacts with the State of Pennsylvania "other than the purely adventitious fact that the accident occurred there" and Pennsylvania has absolutely no interest in the application of its loss-allocation rules to this dispute (See, King v Car Rentals, Inc., supra at 218). The movants conveniently only focus their analysis on the Alabama domicile of Hood to establish conflicting domiciles between the parties, when in fact the plaintiff May and the defendants Lewis and Avis, all share New York as a common domicile. Under this circumstance, "[a]nalysis then favors the jurisdiction of common domicile because of its interest in enforcing the decisions of both parties to accept both the benefits and the burdens of identifying with that jurisdiction and to submit themselves to its authority" (Schultz v Boy Scouts of America, Inc., supra at 198). Moreover, that the vehicle was rented in New York indicates that Lewis and Avis, the parties to the rental agreement, could have reasonably expected to be bound by New York's loss allocation rules (See, King v Car Rentals, Inc., supra at 212).

The defendants reliance on Rogers v U-Haul Co., 41 AD2d 834 is misplaced as that case is of questionable precedential value. In the thirty-five years since it was decided, it has never been relied upon by a New York state appellate level court for its holding. In addition, it has been criticized as being founded on "erroneous conclusions of New York Law" (See, White v Smith, 398 F. Supp. 130; see also, Herzog, Conflict of Laws, 1973 Survey of NY Law, 25 Syracuse L. Rev. 11, 32-33 [1974]). More importantly, that case is distinguishable on its facts to the case at the bar. In Rogers, unlike here, it was uncontradicted that all the parties had domiciles in different states. Also, the parties involved in the accident were on a "one-way trip from New York to Tuscaloosa, Alabama". In this case, all indications are that the parties in the vehicle, particularly May and Lewis, intended to return to New York.

Accordingly, the defendant Avis and PV Holding's motion for summary judgment dismissing the plaintiffs' complaint is denied.

The plaintiff's cross-motion for summary judgment on the issue of the liability for the happening of the accident is granted. The

plaintiffs established, prima facie, entitlement to judgment as a matter of law based upon the undisputed proof which indicates that while the defendant Lewis was operating the van in which they were passengers, the motor vehicle left the highway, struck a concrete barrier and flipped over (See, Felberbaum v Weinberger, 40 AD3d 808; Dudley v Ford Credit Titling Trust, 307 AD2d 911; Siegel v Terrusa, 222 AD2d 428). In opposition, the defendant Lewis failed to present a non-negligent explanation for the happening of the accident.

Accordingly, after considering the evidence in a light most favorable to the defendants (Kelly v Media Services Corp, 304 AD2d 717; Krohn v Felix Industries, 302 AD2d 499), the plaintiffs' motion for summary judgment is granted on the issue of liability only.

Dated: January 18, 2007

Peter J. Kelly, J.S.C.