

IN THE SUPREME COURT OF OHIO

KURT HUSKONEN, *et al.* : Case No. 2008-2107
: :
Appellants : On Appeal from the
: : Lorain County Court of Appeals,
vs. : Ninth Appellate District
: :
AVIS RENT-A-CAR SYSTEM, *et al.* : Court of Appeals Case No. 08CA009334
: :
Appellees :

MEMORANDUM IN OPPOSITION TO JURISDICTION OF APPELLEES AVIS RENT-A-CAR-SYSTEM, INC. AND CENDANT CAR RENTAL GROUP, INC.

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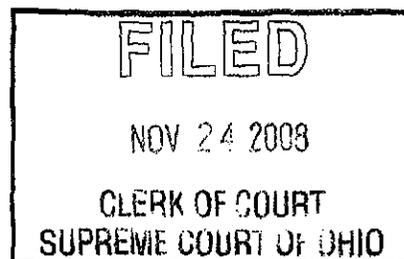


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THIS IS NOT A CASE OF PUBLIC OR GREAT GENERAL INTEREST

This appeal arises from a simple automobile accident case in which an Ohio plaintiff (and his Ohio family) sought damages in an Ohio court for bodily injury suffered and treated in Ohio as a result of an Ohio traffic accident. The lower courts correctly applied this Court's long-standing choice-of-law principles to find that Ohio tort law governed the plaintiffs' right to recover damages. Dissatisfied with that result, the Plaintiffs-Appellants now ask this Court to revisit the issue--not to change the choice-of-law principles used in the lower courts' analyses--but simply to change the outcome. Such an appeal does not present an issue of public or great general interest and should not be accepted for review.

This controversy began when Plaintiff-Appellant Kurt Huskonen ("K. Huskonen"), an Ohio resident, was injured in an auto accident in Lorain County, Ohio which was apparently caused by the negligence of Lamont McCoy ("McCoy"). K. Huskonen and his family (collectively "the Huskonens")¹ asked the Lorain County Court of Common Pleas and the Ninth Appellate District to hold Defendants-Appellees Avis Rent-A-Car System, Inc. and Cendant Car Rental Group, Inc. (collectively "Avis") vicariously liable for McCoy's negligence under now-superseded New York Vehicle and Traffic Law §388 ("Section 388")² because McCoy was operating a vehicle owned by Avis at the time of the accident which had been rented to Roshaulia Dickerson ("Dickerson") in New

¹K. Huskonen's family is comprised of Shelley Huskonen ("S. Huskonen"), Kory W. Huskonen ("K.W. Huskonen") and Kaley A. Huskonen ("K. A. Huskonen"). His family is making derivative claims for the injury to K. Huskonen.

²On August 10, 2005, the Transportation Equity Act of 2005 became effective, which included 49 USC §30106, which outlaws Section 388's application to rental car companies ("Graves Amendment"). *Graham v. Dunkley* (2008), 50 A.D.3d 55, 852 N.Y.S.2d 169; *Infante v. U-Haul Co. of Florida* (2006), 11 Misc.3d 529, 815 N.Y.S.2d 921.

York.³ Ohio law does not impose such vicarious liability, and there is no evidence that Avis was negligent or that it did anything to cause the accident.

Utilizing the choice-of-law principles set forth by this Court, the Trial Court held that Section 388 did *not* apply to the accident and summary judgment was entered for Avis. The Ninth Appellate District, utilizing the same choice-of-law principles, affirmed. *See Huskonen v. Avis Rent-A-Car System, Inc.*, 9th Dist. No. 08CA009334, 2008-Ohio-4652 (Memorandum in Support of Jurisdiction of Plaintiffs Appellants). Nevertheless, the Huskonens continue to argue for application of Section 388. Why? Because unless Section 388 applies, the Huskonens' claims against Avis cannot survive because it is undisputed that Avis was not negligent and did nothing to cause the accident.

This appeal presents no novel legal issues and offers no opportunity to create or clarify an existing rule of law. It is simply about changing the outcome of the lower courts' application of well-established choice-of-law principles. For the reasons that follow, the Huskonens' attempts to make this case into one of public or great general interest should be rejected.

First, there is no question that the lower courts were correct to apply *tort* choice-of-law principles to the Huskonens' vicarious liability claims against Avis. The Huskonens contend: "The precise issue presented is which state's law governs the liability of the rental car company for its *lessee's* negligence." (Emphasis added; Memorandum in Support of Jurisdiction of Plaintiffs Appellants, p. 1). However, there is no issue of a *lessee's* negligence in this case. Dickerson, who rented the Avis vehicle, is not, and never has been, a party to this action. Nor have the Huskonens'

³In addition to McCoy, Jed Hedlund ("Hedlund," also an Ohio resident) and Nationwide Mutual Fire Insurance Company ("Nationwide," an Ohio insurer) were parties below. Hedlund was a passenger in K. Huskonen's vehicle and filed his own complaint which alleged, in part, that K. Huskonen's own negligence was also a cause of the accident. Nationwide is the Huskonens' uninsured/underinsured motorist ("UM/UIM") carrier with limits of \$100,000.00/\$300,000.00. McCoy, Hedlund and Nationwide are not parties to this appeal.

ever alleged that Dickerson was negligent in any way or that her conduct was a cause of the injuries to K. Huskonen. Rather, they have always claimed that it was McCoy's negligence that caused the accident—but McCoy was a stranger to Avis' contract with Dickerson and there is no evidence that either Dickerson or Avis permitted him to operate Avis' rental car.

Nevertheless, the Huskonens insist that the lower courts erred in using *tort* choice of law principles, rather than *contract* choice of law principles, because Section 388 should be considered an issue of contract law. Why? Because under *tort* choice-of-law principles, Ohio law is presumed to govern the accident, while under contract choice-of-law principles the place of contracting is presumed to govern. Therefore, the Huskonens have attempted to recast their claims against Avis as arising out of Avis' rental contract with Dickerson (which was created in New York). They have never provided any New York authority which supports this view. Indeed, the lower courts correctly found that New York legal authorities have universally characterized Section 388 as a part of New York's substantive *tort* law. See *Huskonen*, 2008-Ohio-4652, at ¶¶12-13. Nevertheless, they now argue that this Court should ignore New York's characterization of its own law because such a characterization "subjects contracting parties to ever changing laws depending on where the subject matter of their contract may be given at any time." (Memorandum in Support of Jurisdiction of Plaintiffs Appellants, p. 1). Thus, "[t]his Court should accept jurisdiction . . . and resolve this issue so that parties can *predict* with certainty the law that will govern the rights and obligations arising from a contract or transaction involving subject matter that is in or may be transported to more than one state." (*Id.*, p. 2). However, this argument ignores the fact that "predictability" is already part of the analysis that is required under *any* choice of law analysis—contract or tort. See Restatement of the Law (Second), Conflict of Laws ("Restatement"), §6(f). Thus, even if this Court were inclined

to ignore New York's characterization of its own law in favor of the Huskonens' characterization, it would not change the "predictability" component of this Court's choice-of-law principles.

Second, contrary to the Huskonens' contentions otherwise, there is not any inter-district conflict over the choice-of-law principles applicable to this case. Their sheepish contention that the Ninth Appellate District's decision below "seemingly" conflicts with decisions from the Tenth and Seventh Appellate Districts in *Cooper v. Nationwide Mut. Ins. Co.*, 7th Dist. No. 95 CA 81, 1998 WL 355851, and *Nationwide Mut. Ins. Co. v. Ferrin*, 10th Dist. No. 83AP-1115, 1985 WL 9813, *aff'd* (1986), 21 Ohio St.3d 43, 487 N.E.2d 568, does not survive even cursory scrutiny (Memorandum in Support of Jurisdiction of Plaintiffs Appellants, pp. 6-9).⁴ Both *Cooper* and *Ferrin* were primarily concerned with issues of insurance coverage that implicated contract choice-of-law principles, and therefore do not conflict with the Ninth Appellate District's decision below. Indeed, they applied the same choice-of-law principles used in the lower courts below. These choice-of-law principles have been mandated by this Court in *Morgan v. Biro Mfg. Co., Inc.* (1984), 15 Ohio St.3d 339, 341-342, 474 N.E.2d 286 and *Ohayon v. Safeco Ins. Co. of Illinois*, 91 Ohio St.3d 474, 2001-Ohio-100. *See also, Am. Interstate Ins. Co. v. G&H Serv. Ctr., Inc.*, 112 Ohio St.3d 521, 2007-Ohio-608, ¶¶7-8 (holding that this Court has adopted the entire Restatement with respect to choice-of-law principles). Once this Court has established a rule as a particular principle of law, any conflict between courts of appeal on that principle is of no consequence and not reviewable. *Whipp v. Industr'l. Comm. of Ohio* (1940), 136 Ohio St. 531, 27 N.E.2d 141. Recognizing this, the Huskonens concede that they do not seek to change Ohio choice-of-law principles or to look to some

⁴As noted by the Huskonens, the Ninth Appellate District correctly rejected this argument when it denied their Motion to Certify Conflict to this Court. (*Id.*, p. 4).

other source than the Restatement.⁵ They just seek to change the lower courts' outcome. That outcome was contingent upon the facts of this particular case as applied to the factors utilized under Ohio's choice-of-law principles. Accordingly, there is no basis to accept this appeal due to an alleged inter-district conflict.

Finally, the issue at the heart of this case--extra-territorial application of Section 388 to a rental car company--is an anachronism, and unlikely to repeat itself. Prior to 2005, New York was one of the few states in the nation to impose vicarious liability upon car owners.⁶ Ohio, and the vast majority of states, rejected such extreme law. Accordingly, across the nation, Section 388 has been generally disfavored outside of New York.⁷ Section 388, and the few laws like it, have been found to substantially impair interstate commerce, raise rental car rates in all states and encourage needless litigation. House Report, *supra*. Accordingly, on August 10, 2005, Congress finally enacted the Graves Amendment which invalidated application of Section 388 and laws like it. *Graham*, 852 N.Y.S.2d at 173-176. Thus, this may be one of the last cases anywhere in the nation to address this issue against a rental car company.

⁵The Huskonens agree that this Court "has adopted [the Restatement] to address conflict of law issues." (Memorandum in Support of Jurisdiction of Plaintiffs Appellants, p. 5).

⁶*Graham v. Dunkley* (2008) 50 A.D.3d 55, 852 N.Y.S.2d 169, 172 ("[A]t common law, absent an agency relationship, the owner of a vehicle was not vicariously liable for injuries caused by a driver using the vehicle with the owner's permission . . . New York, Maine, and Rhode Island are now the only states that have statutes purporting to impose vicarious liability for an unlimited amount of damages on car owners, including lessors.").

⁷See House Report 106-774, Part I, Rental Fairness Act of 2000, §2 ("House Report," found at [http://www.congress.gov/cgi-bin/cpquery/R?cp106:FLD010:@1\(hr774\)](http://www.congress.gov/cgi-bin/cpquery/R?cp106:FLD010:@1(hr774))); see also *Figuroa v. Avis Rent-A-Car System, Inc.* (2007), 395 N.J. Super 623, 625, 930 A.2d 472, 477 (holding that plain language of Section 388 and interests of forum state would work together to limit application of Section 388 to New York accidents)

ARGUMENT AGAINST APPELLANTS' PROPOSITIONS OF LAW

APPELLANTS' PROPOSITION OF LAW NO. 1: Contract conflict of law principles require the application of the place where the relationship between a tortfeasor and a potentially liable third party was formed to determine the liability of the third party regardless of where the tortfeasor's negligence occurred.

Proposition of Law No. 1 should be rejected for four reasons.

First, it makes no sense. The Proposition of Law begins by addressing "*contract* conflict of law principles," but ends with tort law concepts: "where the relationship between a *tortfeasor* and a potentially liable third party was formed to determine the liability of the third party regardless of where the tortfeasor's *negligence* occurred." (Emphasis added). It is not clear from this Proposition of Law how "the twain shall meet," or why the contract component of the Proposition of Law is necessary if the tort component is dispositive. Indeed, the language is tantamount to a concession that the lower courts were correct to apply *tort* choice-of-law principles.

Second, the Proposition of Law mischaracterizes the issue at hand. Vicarious liability under Section 388 is a tort concept subject to tort choice-of-law principles. With respect to this issue, this Court should be most influenced by the characterization that New York gives to its own statute. Restatement, §7(3). This characterization is provided both by the plain language of the statute and its interpretation by New York courts.

With respect to the plain language of the statute, Section 388 provides, in pertinent part:

Every owner of a vehicle used or operated in this state shall be liable and responsible for death or injuries to person or property *resulting from negligence in the use or operation of such vehicle*, in the business of such owner or otherwise, by any person using or operating the same with the permission, express or implied, of such owner. (Emphasis added).

See also Kim v. Paccar Fin. Corp. (2006), N.J. Super. 142, 145, 896 A.2d 489, *cert. denied* (2006), 188 N.J. 219, 902 A.2d 1236. Thus, under the plain language of the statute, vicarious liability is

predicated upon: (1) one's status as the owner of a vehicle, (2) permission for a driver to operate the vehicle in New York, and (3) injuries to person or property that result from the permissive driver's negligence. There is no requirement of contractual privity between the owner and the driver. Rather, Section 388 purports to impose vicarious *tort* liability upon vehicle owners simply because of their status as vehicle owners.⁸

With respect to judicial interpretation of Section 388, New York courts have consistently proclaimed Section 388 to be part of New York's *tort* law.⁹ Such authorities should not be surprising as vicarious liability has traditionally been a *tort* law concept based upon special relationships between various persons and entities, e.g. employer/employee, master/servant, principal/agent. *See* 70 Ohio Jur. 3d Negligence §101 (2006). This is not a case in which the Huskonens seek insurance coverage or other *contractual* obligations from Avis. This is a case in which the Huskonens seek to make Avis liable for McCoy's negligence simply because Avis owned the rental vehicle McCoy was operating at the time of the accident. Accordingly, contract choice-of-law principles are not pertinent to whether Section 388 applies in this case.

⁸ *Kline v. Wheels by Kinney, Inc.* (4th Cir. (Va.) 1972), 464 F.2d 184, 186; *Paccar*, 385 N.J. Super. at 148. ("The event giving rise to vicarious liability was not the rental transaction, but the automobile accident").

⁹ *See, e.g., Roper v. Team Fleet Financing Corp.* (2006), 10 Misc.3d 1080(A), 814 N.Y.S.2d 892, 2006 WL 288699, at *** 2-3 (holding that Section 388 is a "loss allocating" rule of tort law); *About v. Budget Rent A Car Corp.* (S.D.N.Y. 1998), 29 F.Supp. 178, 180-182 (analyzing Section 388 as part of New York's tort law); *Heisler v. Toyota Motor Credit Corp.* (S.D.N.Y. 1995), 884 F.Supp. 128, 129-133 (analyzing Section 388 as part of New York's tort law); *Graham v. Dunkley* (2006), 13 Misc.3d 790, 827 N.Y.S.2d 513, 522, *overruled on other grounds by* (2008) 50 A.D.3d 55, 852 N.Y.S.2d 169 (Section 388 "is part of New York State's substantive law of torts" and constitutes "a lawful exercise of the legislature's inalienable power over the substantive law of civil tort actions").

Third, the Proposition of Law contradicts the “significant relationship” test employed by the Restatement (which directs a reviewing court to evaluate a series of “contacts” when determining choice-of-law issues) in favor of a single contact rule (“the law of the place where the relationship between a tortfeasor and a potentially liable third party was formed [governs] the liability of the third party regardless of where the tortfeasor’s negligence occurred”). This approach is directly contrary to that of the Restatement which provides that multiple contacts are to be weighed to determine which state’s law applies to a particular issue. *See Morgan*, 15 Ohio St.3d at 341-342.

Finally, there is no inter-district conflict in Ohio law that will be resolved by this Proposition of Law. As mentioned above, neither *Cooper* nor *Ferrin* support the Huskonens’ contention that such a conflict exists. Rather, because choice-of-law principles utilize “contacts” or “factors” to determine which state’s law has the most significant relationship with the issue being analyzed, cases with different facts can, and do, reach different conclusions regarding choice-of-law outcome.

APPELLANTS’ PROPOSITION OF LAW NO. 2: Alternatively, under a tort conflict of law analysis, the state where the relationship between a tortfeasor and a potentially liable third party was formed has a more significant relationship to the vicarious liability issue than the law of the place of the injury and its law should govern.

Proposition of Law No. 2 should be rejected for three reasons.

First, like Proposition of Law No. 1, Proposition of Law No. 2 contradicts the “significant relationship” test employed by the Restatement (which directs a reviewing court to a series of “contacts” to be weighed when determining choice-of-law issues no matter whether contract or tort choice-of-law principles are at issue) in favor of a single contact rule (“the state where the relationship between a tortfeasor and a potentially liable third party was formed has a more significant relationship to the vicarious liability issue than the law of the place of the injury and its law should govern”). This approach is directly contrary to that of the Restatement which provides

that multiple contacts are to be weighed to determine which state's law applies to a particular issue. *See Morgan*, 15 Ohio St.3d at 341-342 (explaining the relationship between the Restatement §§6, 145-146). Moreover, the Huskonens' insistence that this Court decree that the state where the relationship between a tortfeasor and a vicariously liable party is centered must, *as a matter of law in every case*, be given greater weight than the place of the injury is contrary to §146's presumption that the law of the place of the injury governs unless another state has a more significant relationship to the issue. Additionally, the Huskonens' concern regarding the weight of contacts is already addressed in §145 which provides that "contacts are to be evaluated according to their relative importance with respect to the particular issue." Finally, the Huskonens' assertion that issues of vicarious liability should be treated differently under the Restatement is belied by the Restatement's express treatment of vicarious liability issues in §174, which, states in its entirety: "The law of selected by application of the rule of §145 determines whether one person is liable for the tort of another person." Thus, vicarious liability choice-of-law issues are determined by the same contacts and analysis as other tort choice-of-law principles.¹⁰

Second, the lower courts correctly found that application of the Restatement, as outlined in *Morgan*, leads to the conclusion that Ohio law governs the Huskonens' rights to recover damages from Avis. In this regard, because the accident and injury occurred in Ohio, Ohio law is presumed to govern. In order to overcome this presumption, the Huskonens must establish that New York has a more significant relationship to the accident than Ohio under the factors set forth in §6 as analyzed

¹⁰Ironically, this alternative argument actually further undermines the Huskonens' "contract-view" of Section 388 by clearly identifying vicarious liability as a tort concept under the Restatement.

under the contacts in §145. *Morgan, supra*. However, the §145 contacts in this case are heavily weighted in favor of Ohio as follows.

First, the accident occurred in *Ohio*.

Second, the conduct causing the injury also occurred in *Ohio*.¹¹

Third, the Plaintiffs are all *Ohio* residents. McCoy's residence is unknown (although both Avis and the Huskonens have speculated that he might be from New York).¹² However, New York courts have made clear that the driver is not a party in interest to a vicarious liability claim, and therefore New York does not have an interest in Plaintiffs' claims even if McCoy's residence is in New York.¹³ Avis is incorporated in Delaware with its principal place of business in New Jersey,¹⁴ and Avis transacts business in New York. However, it also transacts throughout the nation, and its vehicles may be rented in any number of states and thereafter operated in any number of states during such rentals. It is not unreasonable for Avis to be subject to Section 388 while its vehicles are being operated in New York, but the fact that a rental originated in New York is of little import to the

¹¹Section 388 does not require any independent negligence by Avis, but instead imposes vicarious liability upon Avis for McCoy's negligence. *Paccar*, 896 A.2d at 493 ("The event giving rise to vicarious liability was not the rental transaction, but the automobile accident.") The rental transaction itself is of minimal significance--particularly where Avis did not rent the vehicle to McCoy (or even permit him to operate it). *Id.*

¹²There is no Civ. R. 56 evidence establishing McCoy's residence in the record, and his whereabouts are unknown.

¹³*See Aboud v. Budget Rent A Car Corp.* (S.D.N.Y. 1998), 29 F.Supp.2d 178, 180; *Roper v. Team Fleet Financing Corp.* (2006), 10 Misc.3d.1080, 814 N.Y.S.2d 892, at ***4 ("Defendant driver's inclusion in this action should play no role in determining what law applies to plaintiffs' vicarious liability claim against defendants"); *Gopysingh v. Santiago* (S.D.N.Y. July 17, 2002), Case No. 00CIV.2951 (JSM), 2002 WL 1586885, at *2 (domicile of driver is irrelevant to vicarious liability claim).

¹⁴*Figueroa v. Avis Rent-A-Car System, Inc.* (2007), 395 N.J. Super 623, 625, 930 A.2d 472.

vehicle's operation in other states. Accordingly, Avis' business contacts do not implicate any compelling New York interests.¹⁵

Finally, the undisputed evidence is that *there is no pertinent relationship between the parties*. In this regard, Avis did not rent its vehicle to McCoy or even permit him to operate the vehicle. Indeed, Avis' rental agreement expressly prohibits people like McCoy from operating its vehicle. The undisputed evidence is that Avis did not know of, did not consent to and expressly prohibited McCoy's operation of its rental vehicle. Accordingly, Avis' relationship with Dickerson is of nominal value to the analysis.¹⁶ The only nominal relationship between the parties is the presence of their vehicles in *Ohio*.¹⁷

When considering these §145 contacts in the context of the §6 factors, it becomes clear that Section 388 is not applicable to the accident:

- With respect to the first §6 factor, the needs of the interstate system weigh against application of Section 388 in this case.¹⁸ As previously explained, New York was one of the few states in the nation to

¹⁵*Roper*, at ***2 (corporation's domicile is the state where it maintains its principal place of business); *Gopysingh*, at *2 (conducting business in New York does not render a corporation domiciled in New York).

¹⁶*Paccar*, 896 A.2d at 493 ("The event giving rise to vicarious liability was not the rental transaction, but the automobile accident."); *Aboud*, 29 F.Supp.2d at 180; *Roper*, 814 N.Y.S.2d 892, at ***4 ("Defendant driver's inclusion in this action should play no role in determining what law applies to plaintiffs' vicarious liability claim against defendants"); *Gopysingh*, at *2 (domicile of driver is irrelevant to vicarious liability claim).

¹⁷*Heisler v. Toyota Motor Credit Corp.*(S.D.N.Y.1995), 884 F.Supp. 128, 131 (assuming that the interest of each state in enforcement is roughly equal, the law of the situs of the tort governs because "that is the only State with which both parties have purposefully associated themselves in a significant way").

¹⁸§6, Comment on Subsection (2), d. provides that "choice of law rules . . . should seek to further harmonious relations between the states and to facilitate commercial intercourse between them."

impose vicarious liability upon car owners—even if they were rental car owners. The Graves Amendment has since outlawed New York’s practice. Thus, the needs of the interstate system are *not* advanced by the application of New York’s now-outlawed, extreme view of vicarious liability to *Ohio* accidents involving *Ohio* plaintiffs in *Ohio* courts.

- With respect to the second §6 factor, the relevant policies of the forum (Ohio) are not advanced by applying Section 388 to this case. New York courts have recognized that states such as Ohio have a strong interest in not having Section 388 applied to accidents within their borders.¹⁹
- With respect to the third §6 factor, New York’s interest in the application of Section 388 has been historically supported by three policy interests: (1) to ensure access by injured persons to a financially responsible insured person against whom to recover for injuries, (2) to discourage owners from lending their vehicles to incompetent or irresponsible drivers, and (3) to assure that New York vendors who furnish medical and hospital care to injured parties are compensated.²⁰ Application of Section 388 would not advance any of these interests in this case.
- With respect to the fourth §6 factor, the Huskonens cannot argue for the application of Section 388 based upon the protection of their justified expectations. They are not from New York, and there is no reasonable basis for them to argue they had a reasonable expectation

¹⁹As explained in *Aboud*:

By adopting vicarious liability law narrower than section 388, the other jurisdictions have expressed an equally strong interest that a car-owner should not bear the expense, either directly or through higher insurance premiums, of an accident caused with an automobile by an unauthorized driver. These jurisdictions have a substantial interest in shielding car owners from such unforeseeable liability.

29 F. Supp.2d at 182. Moreover, because Ohio is the state of the accident, it also has “a substantial interest in applying its law to assure that victims of automobile accidents occurring in that state are treated fairly and uniformly and that some of those victims not be granted extraordinary rights and preferences” because of nominal contacts with New York. *Id.*

²⁰*Paccar*, 896 A.2d at 493-494.

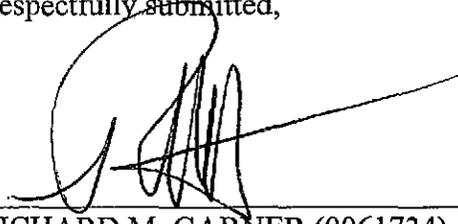
that Avis would be vicariously liable for McCoy's negligence when Ohio rejects such claims.

- With respect to the fifth §6 factor, the Huskonens cannot argue that the basic policies underlying the particular field of law militate in favor of the application of Section 388. As previously stated, the exact opposite is true. Most states historically reject vicarious liability for rental car companies, and the Graves Amendment has superseded the laws of the few remaining holdouts.
- With respect to the sixth §6 factor, the need for certainty, predictability and uniformity of results weighs against the application of Section 388 in this case. It makes no sense to apply an outdated, foreign vicarious liability law to an Ohio accident involving Ohio plaintiffs in an Ohio court where the operator took the vehicle without the permission or authority of the owner. Why should an Ohio court give greater rights to these plaintiffs than other Ohio plaintiffs in Ohio accidents in Ohio courts based upon the fortuity of them being involved in accident with a vehicle from New York?
- Finally, with respect to the final §6 factor, ease in the determination and application of the law to be applied militates in favor the application of Ohio, rather than New York, law. There is no need for this Court to study and learn outdated New York law in order to resolve this case.

CONCLUSION

This Court should decline jurisdiction over this appeal. The Huskonens are not seeking review of a question of public or great general interest, they are simply asking to change the outcome below.

Respectfully submitted,



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CERTIFICATE OF SERVICE

A copy of the foregoing has been forwarded by regular U.S. Mail to the following on this

20 day of November, 2008:

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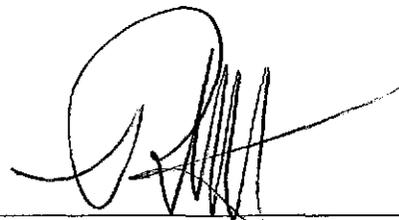
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