

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR KENT COUNTY

UNITED SERVICE AUTOMOBILE )  
ASSOCIATION, ) C.A. No. 05C-01-031 JTV  
)  
Plaintiff, )  
)  
v. )  
)  
AVIS RENT-A-CAR, INC., )  
)  
Defendant. )

*Submitted: July 11, 2005*  
*Decided: November 18, 2005*

Jeffrey A. Young, Esq., Young & McNelis, Dover, Delaware. Attorney for Plaintiff.

Nicholas E. Skiles, Esq., Swartz & Campbell, Wilmington, Delaware. Attorney for Defendant.

*Upon Consideration of Plaintiff's  
Motion For Summary Judgment*  
**DENIED**

*Upon Consideration of Defendant's  
Motion For Summary Judgment*  
**GRANTED**

**VAUGHN, President Judge**

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**OPINION**

On September 8, 2000 Thomas McAllister caused an automobile accident in Wilmington, Delaware. At the time he was driving a vehicle he had rented from Avis Rent-A-Car, Inc. ("Avis") at the Philadelphia Airport. Mr. McAllister's personal vehicles were insured by the plaintiff, United Services Automobile Association ("USAA"). USAA defended McAllister in a claim brought by a party injured in the accident. The claim was settled for \$35,000, which USAA paid. USAA now brings this declaratory judgment action seeking an order that Avis is obligated to reimburse it for the \$35,000 plus legal fees and other costs. Both parties now seek summary judgment.

**FACTS**

In addition to the foregoing, pertinent facts are these: Mr. McAllister's USAA policy did in fact cover him for the liability he incurred from the accident. When the injured party sued Mr. McAllister, USAA demanded that Avis be responsible for defending the action and paying any settlement or verdict. Avis refused. It was only after Avis refused that USAA defended Mr. McAllister and paid the above-mentioned settlement.

The rental agreement signed by Mr. McAllister contained the following provision regarding liability:

18. Liability Insurance. Anyone driving the car as permitted by this agreement will be protected against liability for causing bodily injury or death to others or damaging the property of someone other than the driver and/or the renter up the minimum financial responsibility

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limits required by applicable law. . . . The coverage provided by you [Avis] shall be excess over any applicable insurance available to me [McAllister] or any other driver, from any other source, whether primary, excess, secondary or contingent in any way. . . . You [Avis] can provide coverage under a certificate of self-insurance or an insurance policy, or both, as you choose.

Avis is self-insured as to this claim.

**CONTENTIONS OF THE PARTIES**

The plaintiff contends that under the Delaware Motor Vehicle Financial Responsibility Law, the owner of the vehicle, in this case Avis, has the obligation to provide primary insurance coverage. The plaintiff acknowledges that under 21 *Del. C.* § 2118 and 21 *Del. C.* § 6102, taken together, this primary obligation can be shifted from the car rental company to other coverage available to the renter. The plaintiff contends, however, that in order for a car rental company to shift primary coverage away from itself, it must specifically ask the renter whether he has other available insurance and obtain his confirmation that such insurance exists. If the car rental company does not make such inquiry and obtain such confirmation (and it was not done here), the plaintiff contends, the primary insurance obligation stays with the car rental company. The plaintiff further contends that § 6102 only applies if a car rental company is uninsured. Since Avis is self-insured, it contends, the section does not apply.

The defendant contends that the above-quoted language from the rental agreement shifts primary coverage to USAA.

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**STANDARD OF REVIEW**

Summary judgment should be rendered if the record shows that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.<sup>1</sup> The facts must be viewed in the light most favorable to the non-moving party.<sup>2</sup> Summary judgment may not be granted if the record indicates a material fact is in dispute, or if it seems desirable to inquire more thoroughly into the facts in order to clarify the application of the law to the circumstances.<sup>3</sup> However, when the facts permit a reasonable person to draw but one inference, the question becomes one for decision as a matter of law.<sup>4</sup>

**DISCUSSION**

It has been previously held by this Court that a car rental company may shift the burden of primary responsibility for insuring a rental car from itself to other available liability insurance carried by the renter.<sup>5</sup> As explained in the cases so holding, Delaware law requires that the car rental company insure the vehicle in the appropriate amount, or ensure that the renter carries such insurance. I conclude that

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<sup>1</sup> Superior court Civil Rule 56(c).

<sup>2</sup> *Guy v. Judicial Nominating Comm'n*, 659 A.2d 777, 780 (Del. Super. Ct. 1995); *Figgs v. Bellevue Holding Co.*, 652 A.2d 1084, 1087 (Del. Super. Ct. 1994).

<sup>3</sup> *Ebersole v. Lowengrub*, 180 A.2d 467, 470 (Del. 1962).

<sup>4</sup> *Wooten v. Kiger*, 226 A.2d 238, 239 (Del. 1967).

<sup>5</sup> *Zurich American Insurance Co. v. Alamo Rent-A-Car, Inc.*, 1999 Del. Super. LEXIS 291 at 5; *Donegal Mutual Ins. Co. v. Delaware Cadillac, Inc.*, 1997 Del. Super. Lexis 204 at 8, 9.

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the above-quoted language from the rental agreement in this case satisfies Delaware's legal requirement. Under the terms of the agreement, Avis provides liability coverage. The agreement then provides that Avis' coverage is excess only over any applicable insurance which the renter may carry. Under this agreement, the renter cannot find himself uninsured.

I reject the plaintiff's contention that the car rental company must specifically ask the renter whether he has other available insurance and obtain his confirmation that such insurance exists. As to this contention, the plaintiff relies upon *Miller v. Fidelity*.<sup>6</sup> In that case, it appeared that the renter may be uninsured, or whether other coverage existed may have been in dispute. Comments made by the court in that case must be taken in the factual context presented. In this case, I find no duty on the part of Avis to inquire specifically concerning other applicable insurance. The rental agreement assured that the renter would be covered, either by Avis, or other existing applicable insurance.

I also reject the plaintiff's contention that § 6102 does not apply. The statute requires that a car rental company must insure its rental cars in certain minimum amounts. It further provides that if a car rental company fails to do so, it is jointly and severally liable for damages caused by the renter. If it does provide insurance, it is not jointly and severally liable. Thus the statute applies, that is, it addresses, both situations. The car rental company's ability to shift the primary burden from itself to other available insurance exists only where the car rental company does insure the

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<sup>6</sup> 2002 WL 32067544, Bradley, J. (Del. Super. 103102).

