

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION**

**ESTATE OF MADISON MILLER,  
by and through Rita Miller and Jerame Miller  
as co-personal representatives of the estate,  
CORI MILLER, RITA MILLER,  
JERAME MILLER,**

**Plaintiffs,**

**-vs-**

**Case No. 6:07-cv-1358-Orl-19DAB**

**THRIFTY RENT-A-CAR SYSTEM, INC.,  
JOHN DOE MANUFACTURER,**

**Defendants.**

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**ORDER**

This case comes before the Court on the following:

1. Notice of Designation of *Fabre* Defendants (Doc. No. 106, filed Dec. 1, 2008);
2. Motion of Plaintiffs to Strike the Notice of Designation of *Fabre* Defendants (Doc. No. 108, filed Dec. 5, 2008);
3. Motion of Defendant Thrifty Rent-A-Car System, Inc. to Amend/Correct the Answer to the Complaint (Doc. No. 109, filed Dec. 15, 2008);
4. Response of Plaintiffs to the Motion of Thrifty Rent-A-Car System, Inc. to Amend/Correct the Answer to the Complaint (Doc. No. 110, filed Dec. 15, 2008);
5. Notice of Defendant Thrifty Rent-A-Car System, Inc. of Intent to Raise Applicability of South African Law (Doc. No. 112, filed Dec. 19, 2008);
6. Response of Defendant Thrifty Rent-A-Car System, Inc. to Motion of Plaintiffs to Strike the Notice of Designation of *Fabre* Defendants (Doc. No. 114, filed Dec. 19, 2008); and

7. Consent Motion of Plaintiffs for Leave to File Reply to Defendant's Opposition to Motion to Strike (Doc. No. 117, filed Dec. 23, 2008).

### **Background**

The series of Motions before the Court concerns the intent of Defendant Thrifty Rent-A-Car System, Inc. ("Thrifty"), a car rental service, to raise an affirmative defense to the claim of liability for a car accident that occurred in South Africa. Specifically, Thrifty relies on the Florida Supreme Court's decision in *Fabre v. Marin*, 623 So. 2d 1182 (Fla. 1993), to designate eight parties which it believes are wholly or partially responsible for the negligence alleged. (Doc. No. 106.) In *Fabre*, the Florida Supreme Court concluded that "section 768.81 [of the Florida Statutes] was enacted to replace joint and several liability with a system that requires each party to pay for non-economic damages only in proportion to the percentage of fault by which that defendant contributed to the accident." *Fabre*, 623 So.2d at 1185.

Thrifty's Answer asserts an affirmative defense premised on *Fabre*. (Doc. No. 48 ¶ 11, filed Dec. 27, 2007.) However, Thrifty did not specify the actual *Fabre* defendants in its Answer. (*Id.*) Instead, Thrifty stated it was undertaking a "reasonable investigation and discovery with this affirmative defense as the case proceeds." (*Id.*)

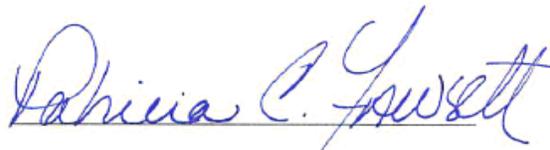
Thrifty, while relying on *Fabre* as an affirmative defense, also contends that South African tort law controls in this case. (Doc. No. 112 at 1-3.) According to Thrifty, "Florida has no significant relationship to this lawsuit." (*Id.* at 2.) Thrifty asserts that it has been advised that "the law of South Africa is significantly different than the law of the state of Florida, particularly with regard to a [w]rongful [d]eath claim." (*Id.*) In particular, Thrifty wishes to avail itself of limitations

that South African law purportedly places on the damages recoverable by parents for the loss of a child. (*Id.*)

The applicability of *Fabre* is a matter of Florida law. However, if South African law controls the issue of damages in this case, as Thrifty contends, it appears unlikely that Florida rules governing the apportionment of liability in a tort case also apply. See *Connell v. Riggins*, 944 So.2d 1174, 1180 (Fla. 1st DCA 2006) (determining that Georgia law governed the issue of fault apportionment in a tort case arising out of a car accident that occurred in Georgia). Accordingly, the Court deems it necessary to decide what law governs this issue before analyzing whether *Fabre* applies to this case.

Based on the foregoing, Defendant Thrifty Rent-A-Car System, Inc. shall submit a supplemental brief **within ten (10) days** which advises the Court of the law that controls the issue of apportionment of liability in this case. If Thrifty asserts that South African law applies, it shall also advise the Court of the proper liability allocation scheme under South African law. Plaintiffs may file a response to Thrifty's brief **within ten (10) days** after it is filed.

**DONE and ORDERED** in Chambers in Orlando, Florida on January 11, 2009.

  
PATRICIA C. FAWSETT, JUDGE  
UNITED STATES DISTRICT COURT

Copies furnished to:

Counsel of Record