IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

JUAN **T.** LIZAMA, Plaintiff, **v.** WILLIAM KINTZ, MARIANAS RENTAL CORPORATION dba NATIONAL RENT-A-CAR, and JOHN DOE NUMBER 1 Defendant.	Civil Action No. **90-609** **DECISION AND ORDER ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

This matter came before the Court on March 2, **1994** on the motion of Defendant Marianas Rental Corporation dba National Rent-A-Car (National) for summary judgment in connection with the automobile collision that caused Plaintiff Juan **T.** Lizama substantial physical injuries.

I. FACTS

On the morning of July 13, **1988,** a barge named the Francis J pulled into Charlie Dock, Saipan, from Korea. Two men, Defendant William Kintz and Defendant John Doe Number 1 had become acquainted while working on the tug boat which had towed the Francis J. According to the deposition testimony of Mr. Kintz, between 8:00 a.m. and 9:00 a.m. on the morning of the accident, he, Mr. Doe and several other fellow crew members drank champagne

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and beer together at Charlie Dock to celebrate their safe voyage. Kintz Deposition at 17. Shortly thereafter, the crew received paychecks for their work. At approximately 9:00 a.m., Mr. Doe indicated that he was going to rent a car and go to the bank to cash his paycheck. Id. at 18. Mr. Doe made a phone call and a rental car from National was delivered to him shortly thereafter. Id. at 19. Mr. Kintz observed that a female representative from National spoke with Mr. Doe for several minutes and finally had Mr. Doe sign the rental car papers. According to Mr. Kintz, Mr. Doe had already consumed an unknown amount of champagne at the time of this conversation. Id. at 54-55. However, Mr. Kintz could not recall whether Mr. Doe was holding an alcoholic beverage during the conversation. Id. The National representative left the dock promptly, leaving the rental car under the control of Mr. Doe.

Approximately thirty minutes later, Mr. Doe drove himself and Mr. Kintz to the bank. Along the way, Mr. Doe expressed concern about his own inebriation. After the bank visit, Mr. Doe repeated his concerns and Mr. Kintz offered to drive the car back to the dock. Despite the fact that Mr. Doe was the only authorized driver of the rental car, Mr. Doe allowed Mr. Kintz to drive the car. It is unclear from the facts whether Mr. Kintz drove directly back toward Charlie Dock or made another stop along the way.

In any case, at approximately 1:30 p.m. in the afternoon, Plaintiff Juan T. Lizama was driving his car south on Beach Road in the Puerto Rico area of Saipan. At the same time, Mr. Kintz was driving the National rental car in the Northbound lane. Mr.

Kintz' vehicle crossed the centerline of t he road and collided with the Plaintiff's vehicle. Mr. Kintz has admitted that at the time of the accident, he had been driving the vehicle without a driver's license[1/] and under the influence of alcohol. Answer of Defendant Kintz at 2. As a result of the accident, the Plaintiff has sustained considerable physical injury.

The rental car was insured by Tokio Marine and Fire Insurance C. Ltd. (Tokio Marine) through its local agent, Pacifica Insurance Underwriters, Inc. (Pacifica). Although Tokio Marine and Pacifica were originally named Defendants in this lawsuit, they have been cleared of liability in this matter pursuant to this Court's *Memorandum* Decision. See *Lizama* V. *Kintz* et *al.*, Civil Action No. 90-609 (Super. Ct. Sept. 24, 1990) (*Lizama* I). Later, Defendant Marianas Tug & Barge, Inc. was also dismissed from the suit by stipulation on January 6, 1992.

According to the Plaintiff's Complaint, National should be liable to the Plaintiff because "[it] has been negligent in placing rental automobiles into the stream of commerce to be driven on the public roadways of Saipan with inadequate insurance coverage, posing a threat to the residents of the island and allowing only for remedies against the operators, while allowing National and its insurers to absolve themselves of liability." Complaint at 8. More specifically, the Plaintiff cites exemptions in National's insurance policy which absolve them of liability when the driver is found to be intoxicated or driving without a valid license. Alternatively, Plaintiff claims that National

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1/ Mr. Kintz later claimed that he was in fact a licensed driver, and that he had merely not carried the driver's license with him on the day of the accident. Kintz Deposition at 57.

negligently rented one of its automobiles to Mr. Doe, who in turn, entrusted the rental car to an intoxicated and unlicensed driver (Mr. Kintz), who in turn negligently caused the accident which injured the Plaintiff.

National has moved for summary judgment arguing that no genuine issues of material fact exist and that National is entitled to judgment as a matter of law because: (1) this Court already addressed the validity of both the intoxicated driver and unlicensed driver exemptions in Judge Hefner's decision in *Lizama* **I;** and (2) the alleged negligent entrustment occurred between Mr. Doe and Mr. Kintz and not between National and Mr. Kintz. In response to National's motion, the Plaintiff has clarified his basis for recovery on the negligent entrustment theory contained in Section **308** of the RESTATEMENT (SECOND) OF TORTS (RESTATEMENT).

II. ISSUES

1. Whether as a matter of law, National could be found liable to Plaintiff for carrying inadequate insurance.

2. Whether summary judgment should be granted in favor of a defendant rental car company if it leased a car to an intoxicated driver who allowed another intoxicated driver to operate the rental car even though the latter was unlicensed and unauthorized by the rental car company, and such unauthorized driver caused the accident which injured the Plaintiff.

III. ANALYSIS

A. Summary Judgment Standard

Summary judgment is entered against a party if, viewing the

facts in the light most favorable to the non-moving party, the Court finds as a matter of law that the moving party is entitled to the relief requested. *Cabrera* v. *Heirs* of *De* Castro, 1 N.M.I. 172, **176 (1990)**. Once the moving party meets its initial burden of showing entitlement to judgment as a matter of law, the burden shifts to the non-moving party to show a genuine dispute of material fact. Id. at **176**.

B. Adequacy of National's Insurance

In his Complaint, Plaintiff alleges that National negligently placed rental automobiles into the stream of commerce by purchasinginadequate insurance coverage. Specifically, Plaintiff has complained about two exclusions contained in National's car insurance policy which relieve the insurance company of liability when the driver of the insured vehicle is unlicensed or intoxicated. See Complaint at **7**. Plaintiff contends that National has acted negligently by placing its rental cars into the stream of commerce with insurance containing these exclusions.

Implicit to Plaintiff's argument is the contention that National had a duty to carry an insurance policy that included coverage for accidents involving unlicensed or legally intoxicated drivers. However, the Plaintiff has cited no authority for this proposition. According to National, *Lizama* **I** effectively determined that the subject exclusions contained in National's insurance policy were satisfactory.

The decision in *Lizama* **I** relieved co-Defendant Tokio Marine and Fire Insurance from liability because the circumstances surrounding the accident between Mr. Kintz and the Plaintiff fell

outside the terms of the insurance policy. During his analysis, Judge Hefner declined to go outside the terms of the insurance policy because only "the terms of the policy determine whether Plaintiff has a valid claim" and because "[t]he legislative intent behind 4 CMC § 7502(e) was beyond peradventure". Lizama I at 7.

Three years after the Lizama I decision, this Court had another opportunity to rule on the legality of a "valid license" exclusion contained in an automobile liability policy in Ada v. *Saipan* Sanko Transportation. Ada, Civil Action No. 92-674, slip op. at 8 (Super Ct. Dec. 30, 1993). Like the Plaintiff in the case at bar, the Plaintiff in Ada raised a public policy argument against such exclusions. Id. The Ada court responded that parties carrying insurance policies with such exclusions could only be breaching a duty if the legislature in that jurisdiction had passed financial responsibility laws outlawing such exclusions. Id. at 9. Such legislation does not yet exist in the C.N.M.I.

At present, the adequacy of an insurance policy depends upon whether it complies with Section 7502 of the Act and has been approved by the Insurance Commissioner. In Lizama I, Judge Hefner reviewed National's auto insurance policy and found no impropriety. The Plaintiff has offered no evidence to suggest that National's auto insurance policy falls below C.N.M.I. standards. Applying the summary judgment standard, the Defendant has shown the Court that it is entitled to judgment on the issue of inadequate insurance as a matter of law, and the Plaintiff simply has not provided the Court with a genuine issue of material fact. Thus, the Court GRANTS Defendant's Motion for Summary Judgment on the issue of inadequate insurance.

C. Negligent Entrustment Theory

The Plaintiff also bases his right to recover damages from National on the negligent entrustment theory articulated in Section **308** of the **RESTATEMENT** which states:

> It is negligence to permit a third person to use a thing or to engage in an activity which is under the control of the actor, if the actor knows or should know that such a person intends or is likely to use the thing or to conduct himself in the activity in such a manner as to create an unreasonable risk of harm to others.

RESTATEMENT at § **308** (emphasis added). The Plaintiff contends that National negligently gave Mr. Doe control of an automobile when it knew or should have known that he was intoxicated. Despite the fact that Mr. Doe was not driving the car at the time of the accident, the Plaintiff claims that his injuries were caused by this negligent entrustment.

National correctly points out that it only entrusted the vehicle to Mr. Doe.[2/] Although Mr. Doe did operate the vehicle, his operation did not cause the Plaintiff's injuries. Rather, the undisputed facts show that the injury proximately resulted from Mr. Kintz' negligent operation of the vehicle while under the influence of alcohol. Although there is some evidence of Mr. Doe's inebriated state, there is no evidence that he exercised any control over the car during the accident. Thus, National has argued that it is not liable under a negligent entrustment theory

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[2/] The Plaintiff's Complaint levels allegations against Mr. Doe but does not include his real name. Although such a practice during the early stages of a lawsuit is standard, the Plaintiff had an obligation to amend his Complaint when he discovered Mr. Doe's real name. From the record, it appears that the Plaintiff has not yet requested a copy of the rental agreement between National and Mr. Doe. The Court presumes that such a document would answer the question: Who is Mr.Doe? Until the Plaintiff follows up on this matter, the Court cannot consider the persona of "Mr. Doe" a party to this lawsuit.

because the person National entrusted with the vehicle, Mr. Doe, did not negligently operate the entrusted vehicle during the accident which resulted in Plaintiff's injuries.

The Plaintiff has directed the Court to *Grabski* v. Finn, 630 F. Supp. 1037, 1044 (E.D.Wis. 1986) for the proposition that a motion for summary judgment is not proper in a lawsuit involving the negligent entrustment of a motor vehicle if there is any evidence that the Defendant knew or should have known that the person entrusted with the vehicle was intoxicated. Id. However, evidence of a driver's intoxication is but one ingredient in an action for negligent entrustment of a motor vehicle.

In fact, the *Grabski* court found that although negligent entrustment is a recognized theory of liability, recovery under this theory is predicated on a finding that the person entrusted is liable for causing injury by negligent use. Id. at 1044; citing Bankert v. *Threshermen's* Mutual Ins. Co., 329 N.W.2d 150, 153 (1982) (negligent entrustment of automobile irrelevant unless person entrusted inflicts injury as a result of his conduct). Thus, it is the careless "use and operation of the vehicle by the entrustee which makes the negligent entrustment relevant at all." Bankert, 329 N.W.2d at 153.

Although there is some evidence of Mr. Doe's inebriated state, there is no evidence that he exercised any control over the car during the accident. Thus, National cannot be liable under a negligent entrustment theory because the person National entrusted with the vehicle, Mr. Doe, did not negligently operate the entrusted vehicle during the accident which resulted in

Plaintiff's injuries. Accordingly, Defendant is entitled to judgment on the issue of negligent entrustment as a matter of law.

D. General Negligence

However, the Court's role does not end here. Although the Plaintiff's Complaint centers around the theory of negligent entrustment, the Court has also construed it as stating a theory of recovery under the general law of negligence. *Taisacan* v. Hattori, Civil Action No. 91-778, slip op. at 8 (N.M.I. Aug 10, 1993) (pleading should be construed liberally so as to do substantial justice); See also Henderson v. Professional Coatings Corp., 819 P.2d 84, 92 (Hawaii 1991) (hereinafter Henderson) (pleading sounding in negligent entrustment construed liberally to include general negligence theory).

The Henderson case involved a factually similar situation wherein a plaintiff injured in a car accident alleged that the defendant acted negligently by loaning a rented automobile to a man who the defendant knew was an alcoholic and would act unreasonably by loaning the car to other people, who in turn would negligently operate the vehicle causing injury to others. Henderson 819 P.2d at 92. In granting the defendant's motion for summary judgment, the Henderson court emphasized that the plaintiff had not come forward with any evidence that the defendant knew that the person he loaned the car to was an alcoholic prone to acting irresponsibly. Without such evidence, the Court concluded that, as a matter of law, the defendant could not reasonably foresee that allowing a person to use the rental car would create an unreasonable risk of harm. Id. at 94.

In its motion for summary judgment, National did not share this Court's liberal interpretation of Plaintiff's complaint as having stated a claim of general negligence. Accordingly, National has not shown entitlement to judgment as a matter of law on the theory of general negligence. In other words, National has yet to show that it neither knew, nor should have known about Mr. Doe's alleged intoxicated state when it rented him a vehicle. Thus, the burden never shifted to Plaintiff to show the existence of a genuine issue of material fact. As a result, while summary judgment is GRANTED with respect to the issues of inadequate insurance and negligent entrustment, the subject litigation is not yet complete. In order to do substantial justice in this matter, the Court will allow the litigation to proceed only under a theory of general negligence. Both parties are to respond accordingly.

IV. CONCLUSION

For the foregoing reasons, National's motion for summary judgment has been converted into a partial summary judgment and is GRANTED with respect to the issues of inadequate insurance and negligent entrustment; however, this action shall remain pending pursuant to the theory of general negligence outlined in this decision.

So ORDERED this 17TH day of October, 1994.

MARTY W.K. TAYLOR, Associate Judge