

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss

SUPERIOR COURT
CIVIL ACTION
NO. 92-00009

HAMPDEN COUNTY
SUPERIOR COURT

BRIAN A. SEMEL, & others¹

FILED

NOV 3 1993

vs.

MASSACHUSETTS INSURERS INSOLVENCY FUND

William J. Marten

CLERK/MAGISTRATE

MEMORANDUM OF DECISION AND ORDER
ON THE PARTIES' CROSS MOTIONS FOR SUMMARY JUDGMENT

On January 7, 1986 plaintiffs were injured in an automobile accident. The plaintiff, Semel was operating the motor vehicle and the plaintiffs, Cox and Pomeroy were passengers. At the time of the accident plaintiff was operating an automobile which he had rented from Rent a Wreck Incorporated. Rent a Wreck is a Connecticut corporation. The automobile was insured under an automobile insurance policy issued by the Integrity Insurance Company. The automobile insurance policy contained underinsured motorist's coverage in the amount of \$10,000. The Integrity Insurance Company was liquidated by the State of New Jersey on March 24, 1987. The defendant, Insolvency Fund became obligated to pay coverage claims of the former Integrity Insurance Company policy holders pursuant to Mass. G.L. c.175(d). The plaintiffs recovered \$20,000 from the Metropolitan Property & Liability Insurance Company. They also recovered \$2,000 in PIP benefits from Integrity. The plaintiffs

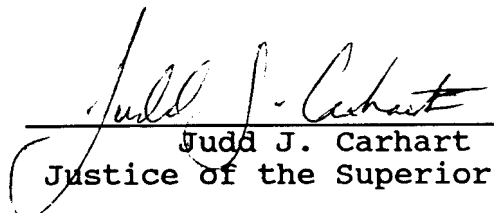
¹Scott E. Cox, Keith Pomeroy, and others similarly situated.

made a claim for underinsurance benefits against the Integrity policy claiming that their damages exceeded the amount of their recovery. The claimants commenced an action against the Massachusetts Insurers Insolvency Fund and the Connecticut Insurance Guaranty Association seeking underinsured motorist's coverage. The Connecticut Insurance Guaranty Association filed a motion to dismiss. The motion was allowed. The defendant has filed a motion for summary judgment and the plaintiffs have filed a cross motion for summary judgment. The issue to be decided in this matter is whether Massachusetts law or Connecticut law governs. By analyzing the contacts with the respective states, it is apparent that Massachusetts law ought to govern this matter. The place of the contracting, the place of the negotiation of the contract, the place of performance and the location of the subject matter of the contract of insurance were all in Massachusetts. The place of incorporation of the defendant corporation is in Connecticut. Since Massachusetts law governs this action, the defendant Massachusetts Insurers Insolvency Fund's motion for summary judgment which rests primarily upon theories of Connecticut statutory law is **DENIED**.

Under Massachusetts law, underinsurance motorist coverage is required with automobile liability policies. See G.L. c. 175, §113L. Liability insurance is also compulsory for rental vehicles. See G.L. c. 90, §32E. Further, the defendant admits in its brief that the car being driven by the plaintiffs at the time of the accident was carrying underinsured motorist coverage up to \$10,000.00.

Under the facts of this case, the plaintiffs are covered under the underinsurance provision of the policy on the defendant Rent A Wreck's vehicle. They are exactly the type of victims contemplated by G.L. c. 175, §113L, the purpose of which is to ensure adequate compensation to victims of automobile accidents involving the negligence of unidentified or underinsured motor vehicle operators. Hartford Insurance Co. v. Hertz Corp., 410 Mass. 279, 285 (1991), citing Surrey v. Lumbermens Mutual Casualty Co., 384 Mass. 171, 177 (1981).

The plaintiffs' Cross Motion for Summary Judgment is therefore allowed, but only with respect to the issue of coverage. This matter should proceed to arbitration, as required by G.L. c. 175, §111D, for determination of issues relating to the extent of defendant's liability. Aetna Casualty and Surety Company v. Poirier, 371 Mass. 257, 259-260 (1976).



Judd J. Carhart
Justice of the Superior Court

Dated: November 3rd, 1993

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss

SUPERIOR COURT
CIVIL ACTION
NO> 92-0009

HAMPDEN COUNTY
SUPERIOR COURT
FILED
FEB 7 1994

BRIAN A. SEMEL, & others¹

William J. Martens
CLERK/MAGISTRATE
vs.

MASSACHUSETTS INSURERS INSOLVENCY FUND

MEMORANDUM AND DECISION ON
DEFENDANT'S MOTION FOR RECONSIDERATION

The defendant has moved for reconsideration of an order allowing plaintiff's cross-motion for summary judgment. The defendant states that the court's decision was based upon an inaccurate recitation of facts. Specifically, the defendant points to the language in the previous order that stated "The place of contracting, the place of negotiation of the contract, the place of performance and the location of the subject matter of the contract of insurance were all in Massachusetts." The stipulated facts, however, were that the place of contracting and the place of negotiation of the insurance contract was Connecticut.²

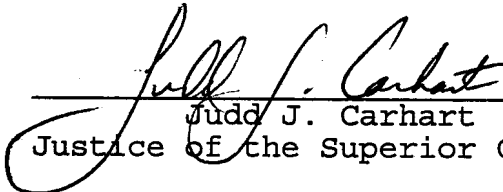
I have reconsidered my previous decision in light of the stipulated facts. I am not persuaded that my decision should be changed. The Restatement Second of Conflict of Laws, §193 provides that the law of the location of the insured risk governs the

¹Scott E. Cox, Keith Pomeroy, and other similarly situated.

²There were eleven locations in Connecticut. There were four locations in Massachusetts.

insurance agreement. In this case, the insured risk was the automobile rental by the plaintiff. Comment f to §193 states that when there are multiple insured risks in several states, the law of the state of the particular risk at issue governs. The relevant insured risk was the automobile rented by the plaintiff. Thus, the fact that most of the defendant's fleet was located in Connecticut should not alter the court's previous ruling.

I have reconsidered the stipulated facts. For the reasons stated in this memorandum, as well as the reasons stated in my previous order, which I find applicable to the stipulated facts, the defendant's motion for reconsideration is DENIED.



Judd J. Carhart
Justice of the Superior Court

Dated: ^{F.R.S.} ~~January~~ / ³¹ 1994