

FILED
DES MOINES, IOWA

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
DAVENPORT DIVISION

00 APR -6 AM 8:16
CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF IOWA

CONSUL GENERAL OF THE
REPUBLIC OF INDONESIA,

Plaintiff,

v.

BILL'S RENTALS, INC.,
COLTON & ASSOCIATES, INC.,
AND DAVID KEVIN MCGRATH,

Defendants.

Civil No. 3-98-CV-90135

MEMORANDUM OPINION AND ORDER

This matter is before the Court on two renewed motions to dismiss, one filed by defendant Bill's Rentals, Inc. ("Bill's Rentals") and one filed jointly by defendants Colton & Associates, Inc. ("Colton & Associates") and David Kevin McGrath ("McGrath"). After the original motions were filed and oral argument heard, the Court granted additional time to conduct discovery on the limited issues of standing and real party in interest. As matters outside the pleadings were submitted to, and considered by, this Court, the renewed motions are converted to motions for summary judgment as required.¹ See Fed. R. Civ. P. 12(b). The motions are considered fully submitted without additional oral argument.

I. Background

On September 2, 1996, twelve Indonesian citizens, all students at the University of Iowa, were returning to Iowa City, Iowa from a weekend sightseeing trip. The rental van they were riding in was owned by, and rented from, Bill's Rentals, located in Iowa City, Iowa. The driver

¹The precise standard for granting summary judgment is well-established and oft-repeated: summary judgment is properly granted when the record, viewed in the light most favorable to the nonmoving party and giving that party the benefit of all reasonable inferences, shows that there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. See Fed. R. Civ. P. 56(c); *Hariston v. McDonnell Douglas Corp.*, 37 F.3d 379, 382 (8th Cir. 1994).

46
COPIES TO COUNSEL
MAILED ON 04-06-2000
BY lab

22 AS 101

of the rented van, one of the students, attempted to enter a rest stop off of Interstate 80 near Ogallala, Nebraska. The driver lost control of the rental van and struck the rear of a tractor-trailer parked on the right shoulder of the exit ramp in a posted "No Parking" zone. The tractor-trailer was being operated by McGrath in the course of his employment for Colton & Associates. Five of the passengers died as a result of the accident and the remaining six passengers sustained injuries.

The Consul General of the Republic of Indonesia, Soejono Soerjoatmodjo, (the "Consul General") invokes the jurisdiction of this Court pursuant to 28 U.S.C. §§ 1332(a)(4), 1603. The complaint alleges eleven counts of negligence against Bill's Rentals under Iowa's owner liability statute, Iowa Code § 321.493, which imputes a driver's negligent behavior to the owner of a vehicle. The complaint specifically alleges five counts of wrongful death, five counts of loss of spousal consortium, and five counts of loss of a child's consortium.

The complaint also alleges eleven counts of negligence against McGrath, imputed to his employer Colton & Associates under Iowa Code § 321.493 and the doctrine of respondent superior. Specifically, the complaint alleges five counts of wrongful death, five counts of loss of spousal consortium, and five counts of loss of a child's consortium. In addition, the Consul General asks for punitive damages as a result of McGrath's reckless and willful behavior.

II. Standing

As a threshold matter, this Court must inquire as to the Consul General's ability to bring this suit in federal court. In order to invoke the power of a federal court, Article III of the United States Constitution requires a party allege an actual "case or controversy." See *O'Shea v. Littleton*, 414 U.S. 488, 493 (1974). At the heart of this requirement is that plaintiff must have standing to bring suit. See *Warth v. Seldin*, 422 U.S. 490, 498-99 (1975). Issues of standing may be raised by a federal court sua sponte. See *U.S. v. Storer Broad. Co.*, 351 U.S. 192, 197 (1956), cited in 6A Charles A. Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice*

and Procedure § 1542.

"The doctrine of standing focuses on whether the plaintiff before the court is the proper party to request adjudication of a particular issue." *United Food and Commercial Workers Int'l Union v. IBP, Inc.*, 857 F.2d 422, 426 (8th Cir. 1988) (citations omitted). Standing requires injury in fact, causation, and redressability. See *Muasolf v. Babbitt*, 85 F.3d 1295, 1301 (8th Cir. 1996) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)). In addition to the constitutional requirements, there are prudential barriers to standing, as well. See *DuPree v. United States*, 559 F.2d 1151, 1153 (9th Cir. 1977). For example, the presence of harm to a party does not permit her to assert the rights of third parties in order to obtain redress for herself.² See *Warth*, 422 U.S. at 509, cited in *DuPree*, 559 F.2d at 1153.

The common law rights of authorized consuls to protect the property interests of nationals of the countries they represent have been generally limited to claims for the restitution of specific property and the representation of their nationals' interests in estate matters. See *DuPree*, 559 F.2d at 1154 (citing *The Anne*, 3 Wheat. 435, L. Ed. 428 (1818); *In re Bedo's Estate*, 207 Misc. 35, 136 N.Y.S. 2d 407 (Surr. Cl. 1955)). The matter before this Court is neither a property nor an estate matter, despite the fact that some of the students died in the accident; the Consul General has filed a tort action in its own name.³ International law does not, therefore, seem to provide a basis for standing.

However, common law rights have in most instances been reinforced or replaced by specific treaties or statutes which may grant standing to a party who otherwise fails to meet the constitutional requirements or prudential limitations. See *DuPree*, 559 F.2d at 1154 (citations

²Thus the fact that the Consul General incurred expenses on behalf of its nationals as a result of the accident cannot form a basis for standing.

³Two of the students, Yayuk Mardiatl and Heru Widiatmo, have filed separate suits in Iowa state court on their own behalf. Additionally, Mr. Widiatmo has filed an action as administrator of the estate of his wife Sundari Widiatmo, who died as a result of the accident.

omitted). International conventions may serve the same function in affording standing. See *DuPre*, 559 F.2d at 1153 (citing *Whitney v. Robertson*, 124 U.S. 190 (1888)). To this end, the Consul General relies on Articles 5(a), (g), and (i) of the Vienna Convention on Consular Relations (the "Convention") to which the United States and Indonesia are parties. Article 5(a) states that consular functions consist of "protecting in the receiving State the interests of the sending State and of its nationals, both individuals and bodies corporate, within the limits permitted by international law." Vienna Convention, 21 U.S.T. 77, 596 U.N.T.S. 261. Article 5(g) states that consular functions also include "safeguarding the interests of nationals, both individuals and bodies corporate, of the sending State in cases of succession *mortis causa*⁴ in the territory of the receiving State, in accordance with the laws and regulations of the receiving state." *Id.* Article 5(i) seems to lend the most support to the Consul General's claim, stating that a consul's functions include:

subject to the practices and procedures obtaining in the receiving State, representing or arranging appropriate representation for nationals of the sending State before the tribunals and other authorities of the receiving State, for the purpose of obtaining, in accordance with the laws and regulations of the receiving State, provisional measures for the preservation of the rights and interests of these nationals, where, because of absence or any other reason, such nationals are unable at the proper time to assume the defence [sic] of their rights and interests.

Vienna Convention, 21 U.S.T. 77, 596 U.N.T.S. 261.

In *DuPre* the Ninth Circuit Court of Appeals held that the Mexican Consul did not have standing to intervene on behalf of three named plaintiffs, Mexican nationals, in a class action in which they alleged they were wrongfully held as alien material witnesses. The *DuPre* Court specifically found that the Convention did not support the Consul's standing in that case because the consular right to represent or arrange appropriate representation for its nationals in the

⁴The Court notes that the instant case is not one of "succession *mortis causa*," defined as the devolution of title to property under the law of descent and distribution in contemplation of approaching death, or even in case of death. See Black's Law Dictionary 220, 1431 (6th ed. 1990).

receiving country is subject to the receiving country's practices and procedures, including principles of standing. See *DuPree*, 559 F.2d at 1155 (citing Vienna Convention, 21 U.S.T. 77, 596 U.N.T.S. 261). This Court, however, finds the instant matter distinguishable from *DuPree*. In this case, because of the deaths of five of the students and because an unspecified number of the injured students have returned to Indonesia because their visas have expired, the Convention seems to grant the Consul General standing by granting him the right to obtain provisional measures for the preservation of the rights and interests of these nationals because of absence or other reason.

III. Real Party in Interest

The consular rights in the Convention are granted "in accordance with the laws and regulations of the receiving State" and "subject to the practices and procedures obtaining in the receiving state," Vienna Convention, 21 U.S.T. 77, 596 U.N.T.S. 261, including Federal Rule of Civil Procedure 17(a). "The question of in whose name the suit must be brought is within the province of federal law." *Garcia v. Hall*, 624 F.2d 150, 152 fn.4 (10th Cir. 1980). Specifically, the Rule states that "[e]very action shall be prosecuted in the name of the real party in interest." Fed. R. Civ. P. 17(a). The real party in interest is a party who, under governing substantive law, possesses the rights sought to be enforced. See *Iowa Public Service Co. v. Medicine Bow Coal Co.*, 556 F.2d 400, 404 (8th Cir. 1977). Governing substantive law is ordinarily state law. See *Iowa Public Service Co.*, 556 F.2d at 404. In this case there is a question as to whether Iowa or Nebraska is the governing state law. Therefore, the Court must first determine which state's law governs in order to finish the Rule 17 inquiry.

"A district court, sitting in diversity, must follow the choice-of-law approach prevailing in the state in which it sits." *Dorman v. Emerson Elec. Co.*, 23 F.3d 1354, 1358 (8th Cir. 1994) (citing *Birnstill v. Home Sav. of Am.*, 907 F.2d 795, 797 (8th Cir. 1990)). In deciding choice of law questions, however, a court must first determine the nature of the causes of action, see

Drinkall v. Used Car Rentals, Inc., 32 F.3d 329, 331 (8th Cir. 1994) (citing *O'Neal v. Kennamer*, 958 F.2d 1044, 1046 (11th Cir. 1992)) because a state may have adopted different choice of law approaches depending on the nature of the claim. The law of the forum state, in this case Iowa, controls this question. See *Drinkall*, 32 F.3d at 331. *Id.* Under the law of the forum state, Iowa, all of Plaintiffs' claims of right sound in tort. Since Iowa case law holds that Plaintiffs' claims of right are torts, if a conflict exists, the Court will apply tort choice of law rules.⁵ The claim for punitive damages is a claim for remedy. See *Lala v. Peoples Bank & Trust Co.*, 420 N.W.2d 804, 807 (Iowa 1988) ("Punitive damages are . . . incidental to the main cause of action and are not recoverable as of right.") (citation omitted). If a conflict exists with regard to this claim, the Court will apply choice of law rules for damages.

Second, a court must decide whether there is any conflict or difference between the state laws regarding the claims presented. See *Phillips v. Marist Soc'y*, 80 F.3d 274, 276 (8th Cir. 1996) ("[B]efore entangling itself in messy issues of conflict of laws a court ought to satisfy itself that there actually is a difference between the relevant laws of the different states.") (quoting *Barron v. Ford Motor Co. of Canada, Ltd.*, 965 F.2d 195, 197 (7th Cir. 1992) (Posner, J.), cert. denied, 506 U.S. 1001 (1992)). In this matter the laws in Iowa and Nebraska differ in several ways. The tort claims alleged against Bill's Rentals would not be cognizable under Nebraska law because Nebraska does not have an ownership liability statute while Iowa does. Also, as to all defendants, the individual torts are treated differently under Nebraska and Iowa law. Wrongful death claims in Nebraska must be brought by the personal representative of the deceased for the exclusive benefit of the next of kin, but if not brought by the personal representative, amendments showing the person bringing suit was subsequently named the personal representative are allowed and relate back to the date the action was filed. See Neb. Rev. Stat. §§ 30-810, 30-809; *Reiser v. Coburn*, 587 N.W.2d 336, 339 (Neb. 1998). In Iowa, a

⁵See *World Plan Executive Council v. Zurich Ins. Co.*, 810 F. Supp. 1042, 1045 (S.D. Iowa 1992).

wrongful death claim may only be brought by the administrator of the estate, and amendments after the expiration of the statute of limitations do not relate back to the filing of the petition. See *In re Estate of Voss*, 553 N.W.2d 878, 881 (Iowa 1996). Claims for loss of spousal consortium in wrongful death actions are recognized in both states, but who has a right to bring the action varies as noted in the wrongful death discussion. See Iowa Code § 613.15; Neb. Rev. St. § 30-810; see, e.g., *Madison v. Colby*, 348 N.W.2d 202 (Iowa 1984); *Maloney v. Kaminski*, 368 N.W.2d 447, 458 (Neb. 1985). And while Nebraska law recognizes claims by parents for loss of consortium as a result of the death of an adult child, see *Williams v. Monarch Transp., Inc.*, 470 N.W.2d 751, 755 (Neb. 1991), Iowa does not, see *In re Estate of Voss*, 553 N.W.2d at 881 (citing *Kulish v. West Side Unlimited Corp.*, 545 N.W.2d 860, 862 (Iowa 1996)). Finally, there is a conflict between the laws of Iowa and Nebraska with regard to the right to pursue punitive damages in a civil action. The Nebraska Constitution prohibits punitive damages, Neb. Const. Art. VII, § 5, *Bruesch v. Union Ins. Co.*, 237 Neb. 44, 58, 464 N.W.2d 769, 777 (1991) (citing *Abel v. Conover*, 170 Neb. 926, 929, 104 N.W.2d 684, 688 (1960)), while Iowa has a long history of allowing them, see generally *Wilson v. IBP, Inc.*, 558 N.W.2d 132 (Iowa 1996), cert. denied, 522 U.S. 810 (1997).⁶

The third step for the Court in the choice of law analysis is to identify the applicable choice of law principles of the forum state, and finally, apply those principles to decide which state's law applies. See *Klaxon Co. v. Stentor Elec. Mfg. Co.*, 313 U.S. 487, 496-97 (1941). This Court thus looks to Iowa to determine its choice of law principles. Iowa has adopted the Restatement's "most significant relationship"⁷ test for resolving conflict of law questions in tort

⁶It should be noted that in Iowa punitive damages "are not recoverable as a matter of right and are only incidental to the main cause of action" *Sebastian v. Wood*, 246 Iowa 94, 66 N.W.2d 841, 844 (1954), cited in *Galtner v. Szark*, 219 N.W.2d 700, 708 (Iowa 1974), and cited in *Rogers v. Pennsylvania Life Ins. Co.*, 539 F. Supp. 879, 885 (S.D. Iowa 1982).

⁷See Restatement (Second) Conflict of Laws, Introduction, § 6 cmt. c, § 145 cmt. 2 (1971).

actions.⁸ See *Veasley v. CRST Int'l, Inc.*, 553 N.W.2d 896, 897 (Iowa 1996); *Goetz v. Wells Ford Mercury, Inc.*, 405 N.W.2d 842, 843 (Iowa 1987). "The theory behind this approach is that rather than focusing on a single factor, 'the court of the forum should apply the policy of the state with the most interest in the litigants and the outcome of the litigation.'" See *Veasley*, 553 N.W.2d at 897 (quoting *Fuerste v. Bemis*, 156 N.W.2d 831, 834 (Iowa 1968)).

The Restatement directs the courts to look first to the statutory choice of law directives of their own state. If there are no applicable directives,⁹ the Restatement suggests courts look to the following general choice of law principles to determine which state has the most interest in the litigants and the outcome:

- (a) the needs of the interstate and international systems,
- (b) the relevant policies of the forum,
- (c) the relevant policies of other interested states and the relative interests of those states in the determination of the particular issue,
- (d) the protection of justified expectations,
- (e) the basic policies underlying the particular field of law,
- (f) certainty, predictability, and uniformity of result, and
- (g) ease in the determination and application of the rule to be applied.

Restatement (Second) Conflict of Laws § 6(2) (1971). In addition, § 145 of the Restatement sets out specific factors to be taken into account in applying the principles of § 6 to tort actions:

- (a) the place where the injury occurred,
- (b) the place where the conduct causing the injury occurred,
- (c) the domicil[e], residence, nationality, place of incorporation and place of business of the parties, and

⁸Conflict of law questions in claims for damages under a tort action are also evaluated using the "most significant relationship" test. See *Cameron v. Hardisty*, 407 N.W.2d 595, 597 (Iowa 1987); Restatement (Second) of Conflicts §§ 145(1), 171 (1971).

⁹This Court found no applicable Iowa directives on the instant matters.

(d) the place where the relationship, if any, between the parties is centered.

Restatement (Second) Conflict of Laws § 145(2) (1971). A court may take into account principles and factors outside of those listed in §§ 6 and 145, and the weight to be given any specific factor or group of factors will vary depending on the particular case. Restatement (Second) Conflict of Laws § 145 cmt. a (1971).

According to § 145, the rights and liabilities are determined by the state that has the most significant relationship to the occurrence and the parties. See Restatement (Second) Conflict of Laws § 145(1) (1971); *Enron Corp. v. Lawyers Title Ins. Co.*, 940 F.2d 307, 312-13 (8th Cir. 1991). In § 171, the Restatement states: "The law selected by application of the rule of § 145 determines the right to [punitive] damages." Restatement (Second) Conflict of Laws § 171, cmt. d (1971). Although the Supreme Court of Iowa has not explicitly adopted § 171, nor has it even addressed the issue of punitive damages in a choice of law context, this Court presumes that the "most significant relationship" test would also apply to claims for damages under the bad faith claim in this action. See *Cameron*, 407 N.W.2d at 597.¹⁰

In reviewing the factors under the "most significant relationship" test, the Court finds that Iowa law should apply to all of plaintiff's claims. While Nebraska has a policy interest in reducing accidents on its highways, Nebraska's lack of an owner liability statute would not allow them to enforce such an interest in this case. On the other hand, Iowa has a policy interest in punishing its own citizens for negligent behavior which causes injury to others of its citizens which can be advanced in this case. Additionally, Iowa's enforcement of its laws does not

¹⁰While Plaintiffs have also brought a claim for punitive damages based on intentional infliction of emotional distress, the Court need not analyze whether Nebraska or Iowa law should be applied to this claim. The Court has already decided that Nebraska law applies to the claim for intentional infliction of emotional distress, and for the reasons set forth in Section V, the claim is dismissed. Thus, there is no remaining controversy with regard to this issue.

interfere with Nebraska's policy as expressed in its lack of an owner liability statute. Because none of the parties are Nebraska citizens or residents, there can be no justified expectations on the part of the defendant companies that they would be free from liability in case a driver of one of their vehicles were involved in an accident. And although the accident occurred in Nebraska, and but for the accident there would be no lawsuit, the relationship between Bill's Rentals and the students centers on Iowa, the place where the rental contract was entered into. In addition, all of the students were residents of Iowa at the time of the accident, McGrath is an Iowa resident, and both defendant companies are incorporated and have their principal place of business in Iowa. The Court therefore finds that both the specific factors under § 145 of the Restatement and the policy considerations under § 6 of the Restatement point to Iowa as the state with the most significant relationship to the tort claims at issue. For similar reasons, the Court finds that Iowa law should apply to the punitive damages claim. Iowa has an interest in using punitive damages to punish and deter reckless and willful acts on the part of Iowa companies and their employee-drivers, especially in a situation that might reoccur, such as this one. The Iowa Supreme Court has held that "[p]unitive damages are awarded as punishment and as a deterrent to the wrongdoer and others." See *Lala*, 420 N.W.2d at 807. While Nebraska has an interest in deterring reckless and willful behavior on its highways, Nebraska does not have the ability to use punitive to accomplish this end. The Court therefore finds that in this action, Iowa law should apply to the incidental claim for punitive damages.

Now that the Court has established Iowa law should apply to plaintiff's claims, the Court returns to the question of who possesses the rights sought to be enforced under governing state law. Iowa law permits the negligence of a driver to be imputed to the owner of a vehicle. See Iowa Code § 321.493. Therefore, defendants Bill's Rentals and Colton & Associates may be

liable for the wrongful death and loss of consortium claims resulting from the accident. In Iowa, the person possessing the right to bring suit for wrongful death is the administrator of the deceased's estate. See *In re Estate of Voss*, 553 N.W.2d at 881. The Consul General is not the administrator of an estate for any of the students. Therefore, the Consul General is not the real party in interest with regard to the wrongful death claims. Additionally, since amendments after the expiration of the statute of limitations do not relate back to the filing of the petition, even if the Consul General were to become administrator of an estate, he could not subsequently bring a wrongful death claim. See *id.* Likewise, the Consul General is not the real party in interest as to the claims for post-death loss of spousal consortium because he is not the administrator of the estates. See Iowa Code § 613.15; *Madison*, 348 N.W.2d at 209. Finally, Iowa does not recognize claims by parents for loss of consortium as a result of the death of an adult child. See *In re Estate of Voss*, 553 N.W.2d at 881 (citing *Kulish*, 545 N.W. 2d at 862).

The final paragraph of Rule 17 states that "[n]o action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest . . ." Fed. R. Civ. P. 17(a). This Court finds that the Consul General has had reasonable time to open estates on behalf of the deceased nationals so as to bring the claims under Iowa law, and has failed to do so. The original motions to dismiss notified the Consul General of the Rule 17(a) issue, there was a hearing in which the real party in interest question was addressed, the parties were given time to conduct discovery on the issue, and the motions to dismiss were refiled. However, this Court, for the reasons below, finds the Consul General has obtained the necessary ratification of four of the real parties in interest as to the negligence claims.

Rule 17(a) reads in part that "an executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in that person's own name without joining the party for whose benefit the action is brought." "Grant of a mere power of attorney, short of an assignment of a claim, does not change the real party in interest." *International Ass'n of Firefighters v. City of Sylacauga*, 436 F. Supp. 482, 488 (N.D. Ala. 1977) (citing *Lewis v. Canadian Pac. Ry. Co.*, 39 F.2d 834 (7th Cir. 1930); *International Allied P. T. Ass'n v. Master P. Union*, 34 F. Supp. 178 (D.N.J. 1940); *Photometric Products Corp. v. Radtke*, 17 F.R.D. 103 (S.D.N.Y. 1954)), cited in *Song v. Kim*, Civ. A. No. 93-19, 1993 WL 526340, at *2 (D.N.J. Dec. 16, 1993) (unreported) (citing *Eaton v. City of Solon*, 598 F. Supp. 1505, 1514 (N.D. Ohio 1984), comparing *Hazarsharian v. Prudential Sav. Ass'n*, 498 F. Supp. 17, 21 (E.D. Pa. 1980)). A mere agent to bring suit is not a real party in interest. See *Archie v. Shell Oil Co.*, 110 F. Supp. 542, 544 (E.D. La. 1953) (citations omitted), *aff'd*, 210 F.2d 653 (5th Cir. 1954), *cert. denied*, 348 U.S. 843 (1954).

The Consul General has produced several documents titled "power of attorney" that would not seem to grant the Consul General the status of real party in interest under the above case law. However, the language in the powers of attorney presented to this Court are comprehensive and specifically state that the Consul General is appointed as the

true and lawful attorney of the undersigned with full power of substitution for the undersigned and in the undersigned's name, place and stead, to represent the undersigned in all matters involving the vehicular accident occurring in the State of Nebraska outside the town of Ogallala (the "Matter") and to execute and deliver or examine any document, instrument or paper required, contemplated by or deemed advisable in connection with foregoing and to take all lawful proceedings by way of legal actions or otherwise required, contemplated by or deemed advisable in connection with the foregoing. . . . Further, the undersigned . . . does hereby ratify and confirm, and agree to ratify and confirm all

whatsoever said attorney-in-fact shall do, or cause to be done, by virtue of this Power of Attorney.

(emphasis added). Such language seems to satisfy the ratification requirement of Rule 17(a). See 6 C Wright, Miller & Kane, *Federal Practice & Procedure* § 1555 (stating proper ratification requires the ratifying party: (1) authorize continuation of the action; and (2) agree to be bound by its result). However, not all of the powers of attorney presented are valid. Two of the powers of attorney, that of Yayuk Mardiaty and Heru Widiatno, were clearly revoked. Of the remaining powers of attorney presented to the Court, two are signed by a Mr. Mursadi, with no first name given, and two are signed by a Donny Rochimadjaja. No student injured in the accident is named Mursadi or Rochimadjaja and no explanation is given as to their relationship to any of the students or as to their rights to bring any action in their own names as a result of the accident. The four remaining powers of attorney are in the names of four students injured in the accident: Sofyan Salam, Heironymous Purwata, Yudho Sasongko, and Emmanuela Catur Rismiati. None of the documents are notarized and one of them is not dated. However, there is testimony by John Miller, attorney for plaintiff, that some of the students did sign powers of attorney at discussions he had with them. There is a genuine issue of material fact as to the validity of the powers of attorney allegedly signed by Sofyan Salam, Heironymous Purwata, Yudho Sasongko, and Emmanuela Catur Rismiati. Therefore, summary judgment is not appropriate as to their claims.

IV. Conclusion

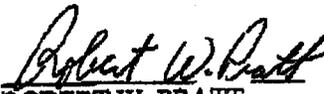
Based on the foregoing, the following is HEREBY ORDERED:

1. Defendant Bill's Rental's motion (no. 32) is hereby GRANTED;
2. Defendants McGrath and Colton & Associate's motion (no. 31) is DENIED IN

PART and GRANTED IN PART;

3. Specifically, counts I-VI, XI-XVII, and XXII are dismissed, and counts VII-X and XVIII-XXI remain;
4. Plaintiff Consul General shall amend its caption to describe plaintiff as:
Consul General of the Republic of Indonesia, for the benefit of Sofyan Salam, Heironymous Purwata, Yudho Sasongko, and Emanuela Catur Rismiati; and
5. In addition, this Court is of the opinion that the question of plaintiff's standing to bring suit is a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from this Order may materially advance the ultimate termination of the litigation as discussed in 28 U.S.C. § 1292(d). Therefore, defendants have ten days from the date of this Order to make application to the Eighth Circuit Court of Appeals on this issue.
See 28 U.S.C. § 1292(d).

Dated this 6th day of April, 2000.


ROBERT W. PRAIT
U.S. DISTRICT JUDGE