

**TRAVEL LAW: DUTY TO WARN OF DANGEROUS
ENVIRONMENTS: THE CASE OF THE CHINESE TICK**

January 17, 2014

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I have been writing about travel law for 38 years including my annually updated law books, *Travel Law*, Law Journal Press and *Litigating International Torts in U.S. Courts*, Thomson Reuters WestLaw, and over 300 legal articles many of which are available at www.nycourts.gov/courts/9jd/taxcertatd.shtml. This article discusses the duty to investigate and the duty to warn travelers of potential dangers which they may face during their vacation.

Travel Information Specialists

Travel agents and Internet travel sellers interact with consumers in face-to-face or computer-to-computer transactions

and their influence may be profound although on occasion the information provided may less than accurate or more, importantly, may fail to reveal important facts about potential dangers in the destination environment which if known may have prevented a horrendous accident from happening [See e.g., Dickerson, *Travel Accidents Abroad 2013: Avoid Dangerous Vacations* available at www.nycourts.gov/courts/9jd/taxcertatd.shtml].

Travel agents and Internet travel sellers are much more than “ticket dispensers”, they are in the business of gathering and disseminating information and are best viewed as information specialists upon whom travelers rely for the provision of accurate and concise information. In fact, many Internet travel sellers compete with each other to convey the most accurate and useful pricing and availability information at any given moment [see e.g., Farecast.com, Farecompare.com, Google.com, Kayak.com, Hipmonk.com, Vayable.com, TheSuitest.com, and Tripshare.com].

Duty To Convey Basic Travel Information

Over the years the Courts have addressed a number of instances in which a travel agent has allegedly failed to provide basic travel information such the need for a visa, the availability and condition of recommended hotels, flights, cruises, and the financial stability and responsibility of tour

operators [See e.g., *Levin v. Kashmir World Travel, Inc.* (travel agent liable for failing to inform traveler of need for visa to enter China); *Josephs v. Fuller* (travel agent fails to investigate conditions at hotel); *Touhey v. Trans National Travel* (travel agent fails to investigate hotel; \$25,000 in general damages awarded against travel agent); *Slade v. Cheung & Risser Enterprises, Ltd.* (travel agent liable for failing to discover that cruiseship was impounded and unable to deliver contracted for cruise of Great Lakes); *Precht1 v. Travel House of Garden City, Ltd.* (travel agent reserves space on non-existent flight); *Trip Tours Ltd. v. Zamani* (travel agent fails to contact air carrier and confirm space as part of package tour); *Pellegrini v. Landmark Travel Group* (traveler lost tour payment because travel agent failed to advise that vouchers were non-refundable); *Barton v. Wonderful World of Travel, Inc.* (hotel closes after booking; travel agent must monitor bookings by contacting supplier prior to departure); *Marcus v. Zenith Travel, Inc.* (after initial deposit travel agent fails to reveal trade press stories of financial instability of tour operator; travel agent has ongoing duty to investigate and report negative information which may effect contract); *McCollum v. Friendly Hills Travel Center* (ongoing duty to reveal obtainable information to traveler regarding travel contact); *Grigsby v. O.K. Travel* ("Travel agents have become a professional segment of today's complex travel

world...travel agents have a duty to use reasonable care in making travel reservations and in confirming them prior to the date of the trip, as well as using reasonable diligence in ascertaining the responsibility of any intervening wholesaler or tour organizer. A travel agent is not a guarantor of a perfect trip, but must use reasonable care in planning the trip and selecting any independent contractors”).

Standard Of Care: Who's Talking

The standard of care in providing needed information to travelers may depend upon who is providing it.

Travel Agents

For example, travel agents [*Travel Law* § 5.05[4][a]] have traditionally had a close face-to-face relationship with travelers and, as a consequence, some jurisdictions such as New York [*Pelegriani supra*], District of Columbia [*Craig v. Eastern Airlines, Inc.*], Illinois [*Nordstrom v. National Travel Association*] (“Viewing travel agents as ‘information specialists’ courts are increasingly willing to characterize those duties of the travel agent as fiduciary in nature”), Louisiana [*Philippe v. Lloyd's Aero Boliviano*], Oklahoma [*Douglas v. Steele*], Arizona

[*Maruer v. Cerkvėnik-Anderson Travel, Inc.* (Travel agents and tour operators are fiduciaries of their customers)], Ohio [*Grigsby, supra*] and New Jersey [*Rodriquez v. Cardona Travel Bureau*] have characterized travel agents and tour operators as fiduciaries with a high standard of care. But compare *Johnson v. Priceline.Com Inc.* ("As Priceline does not owe a fiduciary duty to Plaintiffs, its failure to disclose to...consumers that it generates revenue by reselling hotel reservations to consumers at a higher price than what it paid for those reservations is not unscrupulous, unfair or deceptive").

Tour Escorts

For the same reason (face-to-face communication) tour escorts and guides [*Travel Law* § 5.05[6][b]] may also have a higher responsibility to travelers that rely upon them [See e.g., *Stevenson v. Four Winds Travel, Inc.* ("Four Winds also guarantees that every tour will be escorted by a qualified professional tour director (who) have been carefully selected and trained...Your escorts...are also informative, they know precisely what you will be seeing and doing every day...[T]hey've been there before"); *Lachina v. Pacific Best Tour, Inc.* (tour participant fell into open manhole at Chinese airport; tour operator may be responsible for negligence of tour guide in leading group across tarmac to

open manhole)].

Student Tours

Educational tour operators providing travel services to students [*Travel Law* § 5.04[4][I]] may have a higher standard of care, as well, because of the age of the traveler and the need and promise to supervise the student's well being [See e.g., *Mauer*, supra (during a student tour to Mazatlan one of the students fell to her death while on a train provided by the tour operator; "Molly was the fourth student to die by falling from a moving train on a student tour to Mazatlan organized by [tour operator]. Three other students had died previously, albeit the particular circumstances of each incident varied. The students on Molly's tour were not informed of these prior incidents"); *Knoll v. Cerkvėnik-Anderson Travel, Inc.* (Student on Mazatlan tour "allegedly jumped or fell to his death from the balcony of his hotel room after having abused alcohol... for three days"); *Tongier v. EF Institute For Cultural Exchange, Inc.* (three students and instructor drown in Costa Rica while on educational tour)].

Informal Travel Promoters

Annually, numerous non-profit organizations sponsor group travel by veterans, bar association members, medical professional groups, alumni and students in high school or college [*Travel Law* § 5.07]. Typically, the Informal Travel Promoter [ITP] will interface with a professional travel agent or tour operator to make the actual arrangements. The nature of these relationships run the spectrum from active participation in the planning and organization of the tour to include sharing in the profits to a relatively passive involvement wherein the sponsoring organization, simply, sells a membership list to a tour operator who does all the planning, organization and solicitation functions [See e.g., *Meyer v. Cornell University* (bird watcher drowns during Cornell University Laboratory of Ornithology sponsored bird watching tour of Costa Rica organized by tour operator Voyagers..."Aside from the initial promotion of the trip to Cornell's members, Voyagers was responsible for nearly every aspect of the trip"); *Abercrombie & Kent International, inc. v. Carlson Marketing Group* (group of insurance brokers killed in airplane crash during African safari in Kenya sponsored by employer as incentive program; tour operator liable under Kenyan law and agrees to directed verdict of \$3 million; employer sponsor not a joint venturer with tour operator)].

ITPs may be liable for failing to investigate dangerous environments, failing to warn of dangers and taking proper precautions and failing to properly supervise students. In addition, some courts have found that ITPs may have duties equivalent to those of a surety [See e.g., *Gottesfeld v. Center for Modern Psychoanalytic Studies* (unhappy group of psychiatrists on a 30 days African safari organized by sponsoring organization allege Center was a surety and seek damages)].

The Case Of The Chinese Tick

As discussed in Davenport, *School Liable for illness Contracted on Overseas Field Trip*, Trial Magazine September 2013, The Hotchkiss School in Connecticut offered "a six-week educational trip to China. Although the U.S. Centers for Disease Control and Prevention (CDC) had issued a health alert warning travelers that parts of China carried a risk of tick-borne encephalitis (TBE), Hotchkiss did not tell parents or students about the risk or emphasize the need for precautions. During the trip, the students hiked through rural areas. Chaperones allowed Cara and others to wear shorts and short sleeves and wander off the delineated trails. Several students were bitten by insects. About a week and half later, Cara developed a crushing headache and high fever". Cara was taken to local Chinese hospital, then

to a Beijing hospital "in a semi-comatose state, with all of her limbs contracted and her eyes rolled back". Cara was flown to the U.S. by her parents and eventually the CDC "determined that Cara had gotten TBE from a tick bite during one of the hikes". Cara, eventually, attended college but "what bothers Cara the most is that she is unable to talk...Her communication is also hampered by impaired facial muscles...unable to eat with her mouth closed". In the trial against Hotchkiss the plaintiffs "relied on three documents to prove their case. Both the CDC health advisory and the British health services warned that there was a risk of TBE in several forest regions at the time of the trip. Travax, a site for medical professionals traveling abroad, also warned of a risk of Lyme disease, another tick borne illness, in a report written by the defense's own expert". "The jury awarded \$41.75 million". In an earlier decision the Court found a release unenforceable and void as a matter of public policy [See *Munn v. Hotchkiss School*, 933 F. Supp. 2d 343 (D. Conn. 2013)].

Conclusion

Travel professionals and Informal Travel Promoters should, of course, due extensive due diligence and make themselves aware of dangers lurking in destination environment and communicate that information to travelers.

