

TRAVEL LAW: LIABILITY FOR RENTAL CAR ACCIDENTS ABROAD

April 21, 2014

REVISION #2

By Thomas A. Dickerson

Last week we discussed the questionable business practices of some rental car companies over the last 25 years [*Travel Law: Rental Car Companies: Behaving Badly* (ETN April 23, 2014)] concluding that, perhaps, the Zipcar concept may provide an ethical alternative for consumers. This week we will focus on rental car accidents abroad and the extent to which U.S. rental car companies may be held liable for the negligence and misconduct of their foreign licensees [*Travel Law* §§ 3.04[1],[2]].

Liability And Relationships

A U.S. rental car company may market its services to U.S. citizens traveling abroad. Those services may, however, be provided by foreign rental car companies over which there may be

no jurisdiction, and assuming jurisdiction, the U.S. forum selected may be inconvenient and whose liability for travel accidents may be problematic in that it is governed for foreign law not necessarily as sympathetic as U.S. law may be [see *Sadkin v. Avis Rent A Car System, Inc.* (fatal rental car accident; court applied Bahamian law notwithstanding that it did not recognize strict products liability or breach of warranty claims asserted on behalf of the decedents)].

It is important, therefore, to understand the nature of the relationship between the U.S. company and the foreign rental car provider in order to determine liability. For example, the U.S. company may be a sales representative of several foreign entities [see *Maggio v. Maggiore* ("The Maggiore International Rent-A-Car-System is a loose association of independent foreign rental operators [*Travel Law* § 3.04[1][a], fn 8)], may own a minority interest of a foreign rental car company [see *Bank v. Rebold* ("In or about 1970 Avis expressed an interest in making an investment (\$500,000) ...in early 1973 Avis and D'Ieteren (a Belgium company) formed Locadif (which operates a rental car business) entirely independent of Avis")], may be the sole owner the foreign rental car company [see *Anders v. Puerto Rican Cars, Inc.* (rental car accident in Virgin Islands; "Puerto Rican Cars is a wholly-owned subsidiary of Hertz International Limited which in turn is a wholly-owned subsidiary of the Hertz Corporation");

Banks v. International Rental and Leasing Corp. (rental car accident in Virgin Islands); *Harvey v. Sav-U-Car Rental and Hertz Corporation d/b/a/ Preferred Rentals* (accident in Virgin Islands involving two rental cars)] or the foreign rental car company may be a licensee [see *King v. Car Rentals, Inc.* (rental car accident in Quebec; Car Rentals, Inc., a New Jersey corporation operates "As a licensee of the defendant Avis Rent A Car...a Delaware corporation"); *Ashkenazi v. Hertz Rent A Car* (accident in Acapulco, Mexico in a vehicle rented from a Mexican company, Alquiladora de Vehiculos Automotores, S.A....a licensee of Hertz International Corporation")].

Renting The Brand

Regardless of the nature of the relationship between the U.S. company and foreign rental car company, U.S. consumers are encouraged to rely upon the famous trade of the U.S. company. In *Maggio v. Maggiore* the foreign car companies agreed to identify themselves as part of the Maggiore International Rent-A-Car System in telephone directories, forms, contracts, advertising, signs, logos and uniforms featuring the Maggiore insignia. In *Bank v. Rebold* the consumer was induced to believe that Avis was the only entity responsible for the provision of the contracted for rental car ["the plaintiff knew only Avis"]. Consumers often

decide to purchase travel services delivered by foreign companies by relying on the assumed reliability and integrity of a well known U.S. company's trade name. It is Marketing 101 that whether the name be "Hertz", "Avis" or "Budget" consumers may attribute certain positive qualities to well known brand names. This reliance upon well known trade names may serve as a basis of liability.

Types Of Accidents Abroad

Rental car users may sustain physical injuries including death [see *Durham v. County of Maui* (allegations that "the subject vehicle and its occupant restraint system were defectively designed"); *Chung v. Chrysler Corporation* (students killed in rental car crash in Mexico); *Miller v. Thrifty Rent-A-Car System, Inc.* (death after "she suffered injuries during a car accident in South Africa")], serious physical injuries [see *Amieriro v. Charlies Car Rental, Inc.* (head-on collision in rental car in Puerto Rico); *Anders v. Puerto Rican Cars, Inc.* (allegations that "driver's side seat belt...disengaged and both the front air bags failed to employ")], minor physical injuries [see *Poe v. Budget Rent A Car System, Inc.* (rental car accident in Virgin Island "when the brakes on a [rental] car...[allegedly] failed")] and assaults and shootings [see *Shurben v. Dollar Rent-*

A-Car (British tourists accosted and shot by Miami criminals while driving rental car)].

Apparent Authority

In *Fogel v. Hertz International Ltd* the travelers rented a car from Hertz allegedly after watching TV ads stating the “[b]y day, Hertz is offering low rental rates” and “[r]enting from Hertz also gets you terrific rates at 3,300 fine European hotels”. The Hertz ads also offered a Hertz “800” number for details and information. The rental car was delivered in Rome, Italy. The personnel stationed at the Hertz store were in Hertz uniforms with Hertz logo and the invoice had the Hertz logo with Hertz Italiana [the Italian company that actually owned the rental car provider] in much smaller print. The travelers had an accident in the rental car in Italy and after returning to the U.S. sued Hertz. The court held that Hertz may be liable for the tortious misconduct of the foreign provider, Hertz Italiana, under several theories including apparent authority, estoppel and reliance [see also *Kirkaldy v. Hertz Corporation* (rental car accident; triable issue as to whether Hertz “clothed the car rental agency with apparent authority”): Compare: *Ashkenazi v. Hertz Rent A Car* (“plaintiff does not contend that (Mexican rental car company) was negligent in causing the accident...the

plaintiff's reliance on the doctrine of apparent agency to hold the (U.S. licensor) liable in this case is misplaced"); *Travelja v. Maieliano Tours* (rental car accident on tour; no advertising to support estoppel claims; vouchers identified foreign rental provider as independent contractor); *Miller v. Thrifty Rent-A-Car System, Inc.* (rental car accident in South Africa; "Her family rented the car from a Thrifty Rent-A-Car, Inc...franchise in South Africa operated by a company call SAFY Trust...Thrifty overseas the operations of its licensees to insure proper compliance with trade dress and branding"; Court finds that franchisor not vicariously liable under Florida, Oklahoma or South African law)]. As far as vicarious liability is concerned it should be noted that the Graves Amendment [49 U.S.C. § 30106] has been held by several courts to preempt State laws making rental car companies vicariously liable for injuries sustained in a rental car [see *Palacios v. Aris, Inc.*; *Vanguard Car Rental USA v. Drouin*].

Duty To Warn Of Dangerous Environments

In *Shurben v. Dollar Rent-A-Car* British tourists were accosted and shot by Miami criminals while driving rental car. It was alleged that "Dollar had a duty to warn Shurben of foreseeable criminal conduct...Based on the knowledge it had on

hand, Dollar should have realized that criminals were targeting tourist car renters in certain areas of Miami and that a reasonable rental company in possession of those facts would understand that its customers would be exposed to unreasonable risk of harm if not warned". And in Blum, *Alamo Set To Appeal Wrongful Death Suit* (Travel Weekly (May 22, 2000) it was noted that "Alamo said it continues to believe it holds no responsibility in the shooting death of Tosca Dieperink, who was traveling with her husband and three children in the Miami neighborhood known as Liberty City. The jury decided that Alamo had wrongfully failed to warn of the existence of a high-crime area in Miami where a number of Alamo clients had previously been robbed". The jury verdict was affirmed in *Alamo Rent-A-Car, Inc., v. Dieperink*, 826 So. 2d 368 (2002)]. For a discussion of duties of travel sellers and suppliers to warn of dangers in the destination environment see *Travel Law: Duty To Warn Of Dangerous Environments: The Case Of The Chinese Tick* (ETN) January 29, 2014).

Negligent Entrustment

While on vacation the traveler may be injured in an accident involving a rental car driven by another person. If it can be shown that the driver was incompetent, intoxicated or otherwise

unfit and that the rental car company knew or should have known of the driver's unfitness, then a cause of action against the rental car company may be premised upon the negligent entrustment of a rental car [see *Palacios v. Aris, Inc.* ("the Court concludes that plaintiff has raised genuine issues of material fact as to whether the license was valid, whether *Aris* was negligent in failing to determine whether the purported Israeli license was valid on its face and whether given the lack of a photograph, the license presented belonged to the person who was seeking to rent the vehicle"); *Drinkall v. Used Car Rentals* (rental car company liable for renting vehicle to unlicensed driver; failure to discover unlicensed status); *Sierra v. Steward Ventures, Inc.* ("In Arizona...rental car companies may not entrust a motor vehicle to a person when they know, or should know, is incapable of driving safely...However, this standard of care does not require rental car companies to screen customers for detection of possible impairment"); *Osborn v. Hertz Corp.* ("Under the theory of 'negligent entrustment' liability is imposed on vehicle owner...because of his [or her] own independent negligence and not the negligence of the driver")].

Forum Changes And Choice Of Law

Many rental car cases involving travel accidents abroad

raise issues of jurisdiction, choice of law and whether the U.S. Court selected to hear the traveler's case is convenient [*forum non conveniens*], subjects previously discussed in earlier articles. For example, a lawsuit may be dismissed because the Court has no jurisdiction over the foreign rental car company [see *Kirkaldy v. Hertz Corp.* (no jurisdiction over Maryland rental car company)] or the Court finds that it would be more efficient (location of witnesses and evidence and availability of adequate alternative forum) to have the case heard in the country in which the accident occurred [see *Kermisch v. Avis Rent A Car System, Inc.* (Rumania not adequate alternative forum; motion to dismiss on *forum non conveniens* grounds denied); *Sadkin v. Avis Rent A Car System, Inc.* (*forum non conveniens* motion denied)]. Another frequently litigated issue is which law should apply [see *King v. Car Rentals, Inc.* (accident in Quebec; New Jersey law applied to recovery of non-economic damages); *Harvey v. Sav-U-Car Rental* (analysis of various causes of action under law of the Virgin Islands); *Miller v. Thrifty Rent-A-Car System, Inc.* (franchisor not liable under Florida, Oklahoma or South African law)].

Conclusion

Travelers need to take reasonable precautions when

renting cars to be used overseas including obtaining appropriate insurance to cover any accidents that may occur [see Spano "When Renting Cars Abroad, It's Renter Beware", N.Y. Times Travel Section (August 31, 2010); 2012 Credit Card Auto Rental Insurance Study, www.cardhub.com/edu/rental-car-insurance-credit-card-study ("roughly 20% of consumers always purchase supplemental insurance coverage (PAI) when renting a car...In this study, we will address what type of rental car insurance coverage consumers automatically receive through their credit cards")].

Justice Dickerson been writing about *Travel Law* for 38 years including his annually updated law books, *Travel Law*, Law Journal Press (2014) and *Litigating International Torts in U.S. Courts*, Thomson Reuters WestLaw (2014), and over 300 legal articles many of which are available at www.nycourts.gov/courts/9jd/taxcertatd.shtml.

This Article May Not Be Reproduced Without The Permission Of
Thomas A. Dickerson