Lessor Vicarious Liability

Coming to a state near you

BY COREY TAVEL, ESQ.

Lessors who have been reading *Vehicle Leasing Today* know the dangers of doing business in a state that imposes vicarious liability upon lessors. Simply stated, the lessor is responsible for the negligent acts of a permissive operator. If the operator causes catastrophic damages, the deep-pocket lessor must pay the tab.

While NVLA is actively lobbying the state legislatures that still impose lessor vicarious liability (LVL) upon leasing companies, the exposure caused by LVL remains. Short of leaving the business, there are steps a leasing company can take to manage this risk.

Leasing companies that do not conduct business in an LVL state are still at risk. When a vehicle leased in a non-LVL state is operated in an LVL state and is involved in an accident causing damage, the leasing company is responsible. As an example, since New York remains an LVL state, practically every leasing company in the country may be exposed. New York is not only a major tourist attraction, it is one of the most litigious jurisdictions with some of the highest jury verdicts in the country.

There are, however, some options a leasing company can take to manage the risk of LVL.

Insurance

A leasing company fortunate enough to get insurance coverage for LVL is better off than most leasing companies doing business in LVL states. Make sure the coverage is adequate and does not have exclusions for accidents in LVL states. The cost of coverage will be expensive, but the premium cost can be reduced by implementing higher deductibles.

Contract

All lease contracts should contain strong indemnification language in favor of the leasing company. The contracts should also require the lessee to obtain insurance, and the leasing company should be included as an additional insured on the policy. Unfortunately, it is difficult to require a customer to obtain more than $500,000 in coverage. Higher levels of liability coverage obtained by the lessee help reduce exposure as well as the cost of contingent & excess coverage.

Balloon Payment

As a last resort, consider an alternative to leasing: the balloon payment. Instead of leasing the vehicle and remaining the owner, sell the vehicle to the client with a monthly payment equivalent to the lease payment. The vehicle's title transfers to the customer with the exposure to LVL. At the end of the term, the customer either completes the purchase with a balloon payment/finances the balloon payment, or the customer pays a fee to transfer the title back to the bank, with additional fees for excess mileage and damage. The transfer fee is similar to a disposition fee at the end of the lease.

Read more online!
Vehicle Leasing Today Online at **www.nvla.org.**
Type in the words "Vicarious Liability" in the search box and read how it has been affecting NVLA members over the past two years.

This method of sale is the option recently selected by Ford Motor Company for the State of New York. Balloon payment products eliminate many of the lessor's benefits derived from leasing; they also eliminate the lessor vicarious liability exposure.

Act as an Agent

Instead on taking on the risk, act as an agent for the lender. The lender will be the lessor and takes on the risk. Obviously, this is less lucrative than acting as the lessor. With the risks passing to the funder of such transactions, many such funders have followed the path of Bank of America and left the market.

When Sued, Retain Separate Counsel

Lawsuits are inevitable. However, when a lawsuit is presented, do not allow the insurance company for the lessee/driver to assign the same law firm to represent the driver and the leasing company. Separate counsel, who have an understanding of contractual indemnity and vicarious liability, will help limit the exposure to the leasing company.

Not Just in New York

A recent court decision in the State of Rhode Island has brought a great deal of publicity to the issue of lessor vicarious liability. Chase Auto Finance Corp. was recently found liable in a $28 million verdict because Chase owned title to a leased vehicle that paralyzed a woman in a 1998 auto accident.

Chase Auto Finance Corp. differs from most of the lessors located in LVL states (New York, Connecticut, Rhode Island, Maryland, and the District of Columbia) in that it was fully insured for the risk. Most independent leasing companies are either unable to secure such insurance (contingent & excess coverage), or the cost of such coverage is so exorbitant that it is prohibitive.

NVLA continues to work toward a reasonable change in the current law, but for the time being, LVL is alive and well. Any company involved in the leasing business must be aware of its implications and consider the options to manage the risk.

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