

NVLA Joins Coalition To Fight LVL

There's a Crack in the Armor.

BY COREY TAVEL, Esq.

Lessor vicarious liability is one of the most pressing issues facing leasing companies doing business in those states with unlimited lessor vicarious liability (New York, Rhode Island, Connecticut, Maine and Washington, D.C.). The recent 28 million dollar verdict against Chase in Rhode Island resulted in favorable press for the leasing industry, including an article in *Forbes Magazine* (10/28/02), which presented the issue in the most favorable light to leasing companies.

While the press is positive and most laypersons, when told of the issue, cannot understand how a leasing company is responsible for the acts of a driver, the law continues to remain unfavorable.

Chase has ceased leasing operations in Rhode Island and more companies may follow. Ford is introducing a consumer balloon product in New York in lieu of leasing. GMAC and others continue with zero percent finance programs. These measures may limit or eliminate exposure, but will have a huge financial impact on the industry.

TRIAL LAWYERS

NVLA is active in its lobbying efforts in the vicarious liability states. However, the active and strong Trial Bar is a difficult opponent. The arguments presented by trial lawyers are simple and persuasive. They point out that, despite the claims of financial hardship, leasing companies are still doing business in New York. They also point out that the state will bear the financial responsibility of paying for medical care in catastrophic cases, instead of the deep pockets of the leasing companies.

While the lobbying efforts continue, the industry is fighting the issue in the courts. Ford has been a leader in this fight. Despite the fact that virtually every case comes down against the leasing company, Ford has maintained the fight.

CASE STUDIES

In *Marone v. Chaves*, a recent case in Richmond County, New York, Ford made several persuasive arguments. Some of the arguments were case specific, while others could be applied in any LVL case.

Ford lawyers argued that applying vicarious liability to leasing companies was unconstitutional as it violated the long-term lessors' rights to due process and equal protection. Ford argued that "it is arbitrary, unreasonable and unconstitutional to impose such burdensome, unlimited and uncontrollable liability upon long-term lessors when other

out-of-possession titular owners (i.e. real estate) who hold a security interest are exempt from liability."

The court disagreed, stating that "equal protection does not prevent classification, but does require that classification shall be reasonable, not arbitrary, and that it shall rest upon distinctions having a fair and substantial relation to the object sought to be accomplished by the legislation."

A recent decision in Nassau County, New York, could have a favorable impact on this issue. The case of *County v. Sierra* dealt with the Nassau County Forfeiture Law. The decision, which was unfavorable to leasing companies, did have some favorable language which could be used in the equal protection argument. The Court stated: "This Court does not believe it to be appropriate, nor believe that the appellate courts would countenance, placing the owner/lessor in a position substantially inferior to that of a secured lender."

Using the reasoning of the Nassau County case, leasing companies and secured lenders should be treated equally. The next step would be to apply that reasoning to an equal protection argument and attempt to have the court strike down the statute as it applies to leasing companies as unconstitutional.

The suggestion was made to find a test case before the judge who decided the case in Nassau County, Judge Roberto, who has already found that leasing companies should not be treated "substantially inferior" to secured lenders. Perhaps now the equal protection argument, made to the right judge, will result in a favorable decision. While NVLA recognizes that this fight will be made on an individual basis, identifying the right case is as important as the legal work on the case.

LVL THINK TANK

NVLA has created a coalition, the "LVL Coalition," to focus efforts on changing the law through legislative lobbying and challenging the law in court. The Coalition consists of captive finance companies and their association, the Alliance of Automobile Manufacturers; fleet lessors and their association, the American Automobile Leasing Association; truck lessors and their association, the Truck Renting and Leasing Association; several funding financial institutions, members of the National Vehicle Leasing Association and the Association of Consumer Vehicle Lessors.

The Coalition's mission is to work together to bring about legislative change in the lessor vicarious liability laws of New York, Connecticut and Rhode Island, and implement strate-

gies to bring the LVL issue to a conclusion. The Coalition has held several meetings throughout the country and, with each stop, the "Think Tank" has generated more interest and ideas.

At each stop, a PowerPoint presentation was shown to industry leaders, outlining the financial impact the law has placed upon leasing companies. Specific cases were discussed and new ideas were formulated. We believe that the Trial Bar acts together when prosecuting these cases. They share strategies and exchange judicial opinions, many of which are unpublished, to help defeat any efforts made by the leasing industry to limit the effects of LVL.

As an industry, our lawyers must work cases in conjunction with one

another. An exchange of thoughts and ideas might prove to produce a helpful end result. As leasing companies begin to "put a crack in the armor," we must be cognizant of the fact that other open and outstanding cases may also benefit from the work product and case results already achieved. A losing case may have language in a judicial opinion that could help the next case. Since many of the opinions are not published, the industry needs to create a depository of judicial opinions that our lawyers can use to defend LVL cases.

A legal committee established by the LVL Coalition can act as both the depository of the case law as well as the coordinator of our efforts. The legal

committee should be consulted on all motions and appeals involving LVL. Through this consultation, we can marshal the evidence in the best light, find the best cases to test the law, and guide the cases through the judicial system in an orderly and unified fashion.

Lessor vicarious liability has a devastating effect not only on those companies that do business in LVL states, but on every leasing company that has a client who enters an LVL state. The time to unify is now and NVLA has the tools in place to help.

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This article originally appeared in the First Quarter, Winter 2003 issue of *Vehicle Leasing Today* ©Data Key Communications, Inc. All rights reserved.