



Vicarious Liability Law May Make Leasing Extinct in Some States

Dealers, auto finance companies called upon to take action

by Leonard Bellavia

A recent decision by a Rhode Island Court may have significant impact upon automobile dealers and the car leasing industry as a whole.

The Rhode Island lawsuit, arising out of a fatal automobile accident, resulted in a \$28 million dollar judgment against Chase Manhattan Bank, the financier and owner of the vehicle involved in the fatal accident. The judgment against Chase Manhattan Bank was based upon the Rhode Island "vicarious liability" statute which, in general terms, holds the owner of an automobile liable for the actions of the driver.

As many states have enacted similar vicarious liability statutes, the impact upon the automobile leasing industry and automobile dealers may be devastating. In fact, many manufacturers and their captive finance subsidiaries, including Ford Motor Company and Ford Motor Credit, have indicated to their dealers that they are in the process of reassessing whether the costs and potential liabilities associated with automobile leasing are too risky. As a result, automobile dealers in states such as New York, New Jersey, Florida, California and Connecticut, which are among many that maintain vicarious liability statutes, may not be able to maintain competitive leasing programs for their customers.

The term defined

Essentially, the term vicarious liability describes the legal theory pursuant to which one person is held liable for the actions committed by another, even though the person held responsible is innocent of any wrongdoing. Thus, vicarious liability is an exception to the common law rule that a person is responsible only for his own actions. Typical vicarious liability statutes (such as New York State's Vehicle and Traffic Law § 388 et seq) define an "owner" as a person that has property in or title to the vehicle. This definition of owner thus clearly includes

automotive finance companies (such as GMAC, Ford Motor Credit, etc.) which maintain title ownership to leased vehicles. Therefore, in every automobile accident involving a leased vehicle in a

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facturers like Ford eliminate or significantly restrict the current system for leasing vehicles, this will have a significant and potentially devastating impact on auto dealers.

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When initially enacted, the public policy behind vicarious liability statutes was based upon sound reasoning. Essentially, these statutes attempt to impose upon vehicle owners' good judgment before letting someone else drive their car. The prospect of vicarious liability encouraged and continues to encourage vehicle owners to make sure that they only allow responsible, experienced drivers to use their automobile. This public policy, however, does not apply to lease finance companies and most states recognize the distinction and have carved out exceptions for lease finance companies.

The automobile leasing industry has grown substantially in recent years to the point where it is now a major revenue component for many car dealers. For example, leasing accounts for approximately one half of all revenues generated by auto dealers on Long Island, NY. Obviously, if manu-

Many at risk

Automobile dealers, leasing companies and automotive manufacturers are not the only parties who face potential harm from vicarious liability statutes. These statutes may also be applied in such a manner to hold rental car agencies liable for the actions of their customers. Obviously, any potential liability could have a major economic impact on the automobile rental industry.

While vicarious liability statutes and their impact upon the automotive industry have not yet materially affected car dealers, the impact of vicarious liability statutes is certain to become increasingly more significant in the near future. For example, Ford Motor Credit is in the process of introducing a new financing product in an effort to avoid vicarious liability. Specifically, the new financing product will have many features similar to a lease, but in fact, will be an installment purchase. This product, in essence, will be an installment sale which will call for a balloon payment at the completion of