

IN BRIEF

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FEDERAL LAW, THE “VIRGINIA RULE” AND RENTAL CARS

As you probably already know, on Wednesday, August 11, 2005 President Bush signed into law the Federal Public Transportation Act of 2005. Within the House Conference Notes accompanying this Bill is an amendment to Title 49 [Transportation] of the United States Code. This new law appears at 49 U.S.C. § 30106,¹ and reads, in pertinent part:

Sec. 30106. Rented or leased motor vehicle safety and responsibility

(a) In General. An owner of a motor vehicle that rents or leases the vehicle to a person (or an affiliate of the owner) shall not be liable under the law of any State or political subdivision thereof, by reason of being the owner of the vehicle (or an affiliate of the owner), for harm to persons or property that results or arises out of the use, operation, or possession of the vehicle during the period of the rental or lease, if—

- (1) the owner (or an affiliate of the owner) is engaged in the trade or business of renting or leasing motor vehicles; and
- (2) there is no negligence or criminal wrongdoing on the part of the owner (or an affiliate of the owner).

¹ This provision was part of the Federal Public Transportation Act of 2005, was enacted as 109 P.L. 59, and the provision is formally enrolled at 119 Stat. 1144.

(b) Financial responsibility laws. Nothing in this section supersedes the law of any State or political subdivision thereof—

(1) imposing financial responsibility or insurance standards on the owner of a motor vehicle for the privilege of registering and operating a motor vehicle; or

(2) imposing liability on business entities engaged in the trade or business of renting or leasing motor vehicles for failure to meet the financial responsibility or liability insurance requirements under State law.

As a normative matter, this provision sets the same standard across the county, regardless of the various state laws on the issue. The practical effect of this new legislation, is that absent an independent tort or crime no owner (whether individual owners, corporate owners, leasing companies or rental agencies) can be held vicariously liable for the accidents of those who have rented or leased vehicles from them so long as those owners are engaged in the business of renting or leasing vehicles.

Some states, including Massachusetts among others, have statutes imposing vicarious liability on the company renting a vehicle for the torts of the renter.² This means that, for instance, Hertz Corporation could be held *directly* liable for a motor vehicle accident caused by someone who rented one of their vehicles and sued directly in its own name as a party defendant. The Commonwealth of Virginia does not have such a law, and the rental company cannot be held directly liable except for their own independent torts (such as renting a vehicle to someone who was visibly intoxicated at the time of the rental). As a result of this provision, any state law imposing vicarious liability on any entity engaged in the business of renting motor vehicles is superseded by this provision³ and – as of August 11, 2005 – is a nullity.

Further, the language of 49 U.S.C. §30106(a)(2) indicates that an owner who is negligent in its decision to rent or lease a vehicle, or in engaged in a criminal act in renting a vehicle, remains exposed under any applicable state law. In the situations where Virginia law does provide for vicarious liability against the owner a vehicle, there is still a potential avenue for recovery, unimpeded by this provision. Thus, in any typical vehicular “loaning” situation, where there is negligent entrustment of a motor vehicle, vicarious liability continues. In the circumstance where an employer provides a vehicle for work-related use, the doctrine of *respondeat superior* would still apply (possibly unless the employer was in the business of motor vehicle rentals), unimpeded by this provision. While it is presently impossible to determine how a court will interpret the scope of this section, and whether a court would recognize punitive damages in such a (grossly or recklessly) negligent entrustment or *respondeat superior* suit, it is advisable that all “owners” exercise due diligence prior to renting or leasing a vehicle to avoid additional exposure.

This provision also creates the appearance of some tension with the public policy and statutes of the Commonwealth requiring that all vehicles registered in the Commonwealth are insured to the minimum level required by law. There does not appear to be any actual conflict, although this issue has not been decided by the Courts of the Commonwealth to date. Subsection b of the provision deals with financial responsibility laws, and explicitly leaves those laws unaffected. This is consistent with

² See 29 M.R.S.A. § 1652.

³ The Supremacy Clause of the U.S. Constitution mandates, automatically, this effect. U.S. Const. art. VI, ¶ 2.

Virginia Code § 46.2-108(D), which requires all vehicles registered in the Commonwealth for operation on the roads of the Commonwealth to be insured to the minimum required levels.

In the words of the most recent case on this issue, the Virginia Supreme Court stated,

When read [together as a whole, the Code of Virginia] evinces a clear legislative intent that a company renting a motor vehicle without [an identified] driver in Virginia must assure that the vehicle has the statutory minimum liability insurance coverage. Such intent is in keeping with the long-standing public policy to assure that motor vehicles driven on the highways of Virginia are subject to a minimum level of primary liability insurance in order to provide for the protection and compensation of innocent parties injured in motor vehicle accidents.

USAA Cas. Ins. Co. v. Hertz Corp., 265 Va. 450, at 457 (2003). This particular case, and the public policy behind it, appears to still be good law under the provision under discussion. Thus, the rule that a rental vehicle's insurance policy is the primary liability policy, also affirmed in the USAA decision, probably remains unaffected by the provision. Thus provision does not appear to alter the Commonwealth's public policy of assuring that vehicles operated on the roads carry a minimum level of insurance, nor does it affect the way that the Commonwealth currently maintains those assurances.

Also, it is important to note that this law has no retroactive effect, therefore all suits brought in Virginia under the common law rule on or before August 10, 2005 will be decided under prior Virginia common law. Perhaps the largest impact of this provision will be on choice of law and forum selection issues. Take the instance of a car rented in Maryland (no vicarious liability), is involved in an accident in Virginia (with vicarious liability) and the rental contract has a forum selection clause for New Hampshire (no vicarious liability). Due to the supremacy of federal law, the choice of law issue is rendered moot, as the outcome of that decision for the insurer is the same – no matter which body of state law the case eventually decided under.

This scenario is not a far-fetched as it might seem. The only reported case to date implicating this statute was decided by the U.S. District Court for the District of Maine. Piche v Nugent, (05-82-B-K, September 30, 2005) (Margaret J. Kravchuk, Magistrate Judge). The Piche case involved a California resident, renting a car in Massachusetts, involved in an accident in Maine, with the injured plaintiffs having Canadian citizenship. The Court indicated that the choice of law issues of the case and the forum selection clauses of the contract would all have been mooted by the supremacy of federal law on the issue of vicarious liability imposed on a rental car company under Massachusetts law, had the case been filed after the effective date of the provision. However, as the Piche case was filed before the effective date, the unfortunate Magistrate Judge was required to perform the choice of law and forum selection analysis.

The provision under discussion will have very little impact on cases decided under the laws of the Commonwealth. The provision essentially establishes what could be called the 'Virginia rule' as a nationwide standard.

DECISIONS BY THE SUPREME COURT OF VIRGINIA
REGARDING INSURANCE INDUSTRY ISSUES
OCTOBER 31 – NOVEMBER 4, 2005 SESSION

The following case summaries involve insurance and litigation issues. We have downloaded these summaries directly from the Virginia Supreme Court website. We offer them to you with brief clarifications (in green) where necessary. However, if you would like a more complete legal analysis or the full text of any of these cases, please make your request by return e-mail. If you would like to discuss the ramifications of any of the decisions, please call (804) 378-7600: ext. 3304 for Ray; 3305 for Kevin or 3316 for Mark.

[050002](#) **Garlock Sealing Technologies v. Little** 11/04/2005

In a wrongful death case arising from exposure to asbestos, federal maritime principles apply to plaintiff's cause of action against a manufacturer of products used during the construction and repair of navy vessels situated in navigable waters. The judgment is affirmed.

[050022](#) **Butler v. Southern States Cooperative, Inc.** 11/04/2005

In an action charging assault and battery and infliction of emotional distress by a co-worker who made sexual advances to the plaintiff, the trial court erred in sustaining special pleas in bar by the co-worker and the defendant employer asserting that the incident arose out of and in the course of the employment so as to be barred by the exclusivity provision of the Workers' Compensation Act, Code § 65.2-307. *An alleged sexual assault by a co-worker may "arise from" employment, but in this case it does not "arise from" employment – as the alleged sexual assault was purely personal in nature and the context of being co-workers was irrelevant to the assault.* The judgment of the trial court is reversed and the case is remanded for further proceedings.

[050139](#) **Ola v. YMCA of South Hampton Roads** 11/04/2005

In a personal injury case brought by the parents of a minor who was abducted and sexually assaulted in a bathroom while using the defendant membership-based organization's recreational facilities, the trial court correctly sustained the defendant's special plea of charitable immunity. Substantial evidence supported the court's conclusion that at the time of the minor's injury, defendant was a charitable organization operating in accordance with a charitable purpose and that the minor was a beneficiary of its charitable bounty. The judgment of the trial court is affirmed.

[050155](#) **Doe v. Zwelling** 11/04/2005

In an action to recover damages for professional malpractice of a health care provider who allegedly engaged in an inappropriate and extraprofessional relationship with the plaintiff's wife, the Amended Motion for Judgment presented a combination of claims, some of which are barred by Code § 8.01-220 (commonly referred to as the 'heart balm statute') and others which are not. Thus the trial court erred in dismissing the entire case by sustaining the health care provider's demurrer. The judgment is reversed and the case is remanded.

[050160](#) **Norfolk Southern Rwy. Co. v. Rogers** 11/04/2005

In an action against a railroad under the Federal Employers' Liability Act, expert testimony offered by the plaintiff concerning exposure to unreasonably dangerous levels of silica dust lacked an adequate factual foundation. **The expert did not know the actual concentrations of silica dust the plaintiff was exposed to at any given point in plaintiff's employment. Knowledge of the concentration of silica dust is essential for making an evaluation of the health hazards to exposure.** The remainder of the evidence presented was insufficient as a matter of law on the issue of the defendant's negligence. The judgment of the circuit court is reversed and final judgment is entered for the defendant railroad.

[050206](#) **Oraee v. Breeding** 11/04/2005

In a medical malpractice context, the immunity from civil liability afforded a physician under Code § 8.01-581.18(B) applies only when that physician fails to review, or take action in response to the receipt of, a report containing the results of a laboratory test or examination conducted "not at the request or with the written authorization of a physician." Thus, the judgment of the circuit court refusing to grant immunity to a physician who failed to obtain the results of certain laboratory tests requested by another physician is affirmed. **This decision overrules our prior decision in Auer v. Miller, 270 Va. 172 (2005).**

[050236](#) **Crawford v. Haddock** 11/04/2005

In an interpleader action commenced by a life insurance company for a determination of which of the possible beneficiaries of a Virginia state employee's policy should be paid the death benefits, the trial court did not err in ruling that Code § 51.1-510 bars imposition of a constructive trust on proceeds from a Virginia Retirement System group life insurance policy. The judgment of the trial court is affirmed.

[050312](#) **Calcote v. Fraser Forbes Co.** 11/04/2005

In a Virginia proceeding enforcing a District of Columbia judgment confirming an arbitration award, the trial court erred because it did not enforce the judgment in a manner consistent with the provisions of the award. **The trial court improperly issued its decision on its own interpretation of the contract between the parties, rather than merely enforcing the foreign judgment obtained by way of the arbitration award.** The judgment is reversed and the case is remanded.

[050358](#) **Bussey v. E.S.C. Restaurants, Inc.** 11/04/2005

In a food poisoning case in which plaintiff alleged negligence and breach of implied warranty, the evidence was sufficient to support the jury's verdict for plaintiff and the trial judge erred in setting aside the verdict and entering judgment for the defendant. The judgment is reversed, the jury verdict is reinstated, and final judgment is entered for the plaintiff.

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