

**A Word to the Wise Employer Operating Vehicles in New York State**

**by Roy D. Pinsky**

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An employer that provides a vehicle to an employee may escape vicarious liability if that vehicle is involved in an automobile accident in New York State. To do so, the employer will need a written prohibition limiting the persons that may operate the employer's vehicle.

Owners, lessees and bailees of motor vehicles used or operated in New York State are liable and responsible for death or injuries to persons or property resulting from negligence in the use or operation of such vehicle by any person using or operating the vehicle with the permission, express or implied, of such owner, lessee or bailee. Liability is joint and several.<sup>1</sup>

In February 2003, New York's highest court, in answering a question certified to it by the U.S. Court of Appeals for the Second Circuit, held that a lessee employer is not liable for the personal injuries resulting from the negligent use of a vehicle that it had supplied to one of its employees because the vehicle was operated at the time of the accident by the employee's boyfriend in violation of a provision in the employee's handbook which limited the employer's authorization to use by the employee and her licensed spouse.<sup>2</sup>

The court distinguished the situation between an employer and an employee from that of a typical vehicle lessor and its lessee. In the latter instance, the long established rule had been that language in the lease agreement limiting the persons authorized to operate the vehicle violated public policy as defeating the intention of the statute which had imposed such vicarious liability.<sup>3</sup> In distinguishing the employer/employee relationship, the court noted "as a result of this relationship, it is reasonable for an employer to expect employees to comply with its use restrictions."

Clearly, the prudent employer that allows employees to operate vehicles that are owned by or leased to the employer on the roads in New York State should have a rule in its employee handbook or otherwise that limits persons who are authorized to operate the vehicle. The same could also be said for the geographic area in which the vehicle could be operated or even possibly the purposes for which the vehicle could be

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<sup>1</sup>Vehicle and Traffic Law Sections 128 and 388.

<sup>2</sup>Murdza v. Zimmerman 99 N.Y.2d 375, 756 N.Y.S.2d 505 (February 18, 2003)

<sup>3</sup>Vehicle and Traffic Law Section 388; Motor Veh. Acc. Indem. Corp. vs. Continental Nat'l Am. Group Co 35 N.Y.2d 260, 360 N.Y.S.2d 859, 319 N.E.2d 182 (1974).

operated such as for business only. If the vehicle is then involved in an automobile accident in the State of New York and the employer's operating rules were being violated at the time of the accident, the employer may have a reasonable basis for avoiding liability being imputed to it for the driver's negligence.

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