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Vicarious Liability of Motor Vehicle Lessors in Canada [Ober|Kaler]

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The equipment finance industry breathed a sigh of relief when Federal legislation was enacted in 2005 preempting state laws imposing vicarious liability on lessors of motor vehicles. That relief may have been premature if the leased vehicles are used in Canada (whether or not such use outside the United States is permitted by the lease).

By way of background, the Federal legislation in the United States (known as the "Graves Amendment"), provided that equipment finance companies that rent or lease motor vehicles in the United States are generally protected from vicarious liability as a result of the use, operation or possession of the motor vehicle during the period of rental or lease so long as certain conditions are satisfied. The owner must be engaged in the trade or business of renting or leasing motor vehicles and there is no negligence or criminal wrongdoing on the part of the owner. The Graves Amendment preempts state vicarious liability laws and was enacted in an effort to create uniformity among the states, many of which did not impose vicarious liability on motor vehicle owners. It should be noted that the Graves Amendment does not preempt state financial responsibility laws, so an owner of a motor vehicle must still comply with state statutes imposing minimum insurance or financial responsibility requirements.

It is important for equipment finance companies to know that Canada does not have a similar uniform statute. Instead, each province has its own unique set of vicarious liability laws for motor vehicle owners (and it should be noted that, for this purpose, a motor vehicle owner may include the seller under a conditional sales contract). A few of the provinces have laws that protect motor vehicle owners from vicarious liability much like the Graves Amendment; however, most of the provinces impose vicarious liability on motor vehicle owners under certain circumstances. Some provinces impose vicariously liability on motor vehicle owners for personal injury, but not for property damage. Other provinces take the opposite approach and impose vicariously liability for property damage, but not for personal injury. Many of the provinces that impose vicarious liability have liability caps in place. In some provinces, the caps do not apply to certain types of motor vehicles, such as taxis, buses or limousines. Also, whether vicarious liability is imposed and whether a cap on such liability exists may depend on specific lease provisions (for example, whether the lease contains a purchase option or not) or whether the transaction is structured as a lease or a conditional sale.

In some provinces, the cap on the motor vehicle owner's liability is reduced dollar-for-dollar for any payment made by the renter/lessee or its insurance. For example, if the cap is $1,000,000 and the province allows for a dollar-for-dollar reduction based on payments made by the renter/lessee or its insurance, the motor vehicle owner would have no liability so long as the renter/lessee or its insurance paid $1,000,000 or more. It should be noted that not all provinces allow for a dollar-for-dollar reduction, so in those provinces the motor vehicle owner would be responsible for paying an amount up to the statutory cap (e.g. $1,000,000) regardless of any amounts paid by the renter/lessee or its insurance.

This is an important issue for any equipment finance company that leases motor vehicles because the location of the accident will determine which law applies. Even if there is a provision in the lease prohibiting use of a motor vehicle in Canada, that contractual restriction will not provide any protection to an equipment finance company if the lessee violates the provision and operates the motor vehicle in Canada and an accident occurs.

It is imperative that any equipment finance company leasing or renting motor vehicles or entering into conditional sales contracts for motor vehicles does proper due diligence (both before closing of a transaction and on a continuing basis) to ensure that the motor vehicles are not being operated in Canada unless sufficient safeguards such as higher insurance requirements are put into place. An equipment finance company should also consider maintaining its own liability insurance policy, especially if it knows that any if its motor vehicles will be operated in one or more of the provinces that impose vicarious liability without any cap on liability.

For more information about this topic or assistance, please contact the authors, Alan Mogol and Mike Beattie. This information is not intended as legal advice and is for informational purposes only.