Trial Law TIPS

Roy D. Wasson's
TIP #73

Roy D. Wasson is board certified in Appellate Practice with extensive courtroom experience in more than 750 appeals and thousands of trial court cases, civil, criminal, family and commercial. AV-rated.

Graves Amendment Car Rental Issue Outline for Fallback Arguments

The following is an outline to follow to seek recovery of at least $10,000 in required insurance (or other financial responsibility proceeds) against car rental companies and possibly much more, even though the Supreme Court of Florida has rejected our argument in *Vargas v. Enterprise* that the provisions of § 324.021(9)(b)2 are within the financial responsibility or insurance requirement exceptions to immunity of car rental companies under the Graves Amendment. These arguments were not briefed in Vargas and have not yet been ruled upon by any appellate court in Florida, so they may help you keep your cases against rental car companies alive.

The following are the exceptions to immunity under the Graves Amendment for a non-negligent rental car company:

Wasson & Associates, Chartered
28 West Flagler Street, Suite 600 Miami, FL 33130
(305) 372-5220 roy@wassonandassociates.com

> (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.

49 U.S.C. §30106(b)

As required by Section 324.011 and 324.051, Fla. Stat. (2003), all operators of motor vehicles involved in crashes are required to "show proof of financial ability to respond for damages in future accidents." Section 320.02(5)(b), Fla. Stat. provides that "proof of compliance with financial responsibility requirements [must be made] at the time of registration of any such motor vehicle . . . [or t]he issuing agent shall refuse to register a motor vehicle if such proof of purchase is not provided or if one of the other methods of proving financial responsibility as set forth in S. 324.031 is not met." These are requirements of compliance with Florida's financial responsibility laws as a condition of licensing or registering a motor vehicle that bring Florida law within the exception to federal preemption applicable to "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 purpose of registering and operating a motor vehicle." *See* 49 U.S.C. §30106(b) (2005).

All car rental companies have had cars they own involved in accidents before the accident involving your client. Such prior accidents require the defendant to obtain liability insurance or otherwise comply with financial responsibility requirements on ***all*** vehicles it owns, not just on the car involved in that prior accident. *See* § 324.051(2). Therefore, the rental company was

required to comply with the applicable financial responsibility requirements on the car involved when your client's accident occurred.

The question of how much insurance or other security a rental car company must have in place is very complicated. The starting place for the inquiry should be the first paragraph of § 324.031. The last sentence of that paragraph provides three ways in which a vehicle owner may prove compliance with financial responsibility, provided that the vehicle is not a "for-hire passenger transportation vehicle." I will address those three methods of compliance first, and then return to deal with the situation applicable if a rental car is found to be a "for-hire passenger transportation vehicle."

Under that last sentence of the first paragraph of § 324.031, the amount of financial responsibility a vehicle owner must demonstrate depends on the manner in which the owner satisfies the financial responsibility requirement. Under subsection (1) of that statute, the owner may satisfy its financial responsibility obligation by "holding a motor vehicle liability policy as defined in §§ 324.021(8) and 324.151." The required amount for such a policy is $10,000.

Second, financial responsibility may be demonstrated by posting a bond or a cash deposit. *See* §324.031(2) & (3). If those forms of financial responsibility compliance are exercised, the bond amount must be "equal to the number of vehicles owned times $30,000, to a maximum of $120,000." In addition, "any such person other than a natural person, shall maintain insurance providing coverage in excess of limits of $10,000/$20,000/$10,000 or $30,000 combined single limits, and such excess insurance shall provide minimum limits of $125,000/$250,000/$50,000 or $300,000 combined single limits." *Id*. at (4). In other words, you could have an available bond or certificate of deposit of $120,000, plus excess coverage of $125,000, for a total available of $225,000. I assume that the excess layer would be in between the first $10,000 available from the bond or CD, with the balance from the bond or CD kicking-

WASSON & ASSOCIATES, CHARTERED
28 West Flagler Street, Suite 600 Miami, FL 33130
(305) 372-5220 roy@wassonandassociates.com

in again for damages over $135,000. Of course, you would have the caps established by section 324.021(9)(b) to deal with.

The third way that the owner of a vehicle that is not a "for-hire passenger transportation vehicle" can prove compliance with these financial responsibility requirements is by "[f]urnishing a certificate of self-insurance issued by the department in accordance with s. 324.171." § 324.031(4). One way in which that self-insurance can be maintained by a corporation which owns vehicles is for the owner to "[m]aintain sufficient net worth, as determined annually by the department . . . to be financially responsible for potential losses." There is no set cap on that amount of financial responsibility, as it depends on factors including the amount of "excess insurance carried by the applicant."

The alternative self-insurance method is for the owner to "[p]ossess a net unencumbered worth of at least $40,000 for the first motor vehicle and $20,000 for each additional motor vehicle." Thus, a rental car company that owns 1,000 vehicles would have to demonstrate a net worth of $20,040,000. There is nothing in the statute to indicate that less than the entire amount would be available to a single plaintiff, again being perhaps limited by the caps in section 324.021(9)(b).

Next I will turn to another financial responsibility statute which may apply to a rental company. §§ 324.031 & 324.032, Fla. Stat. apply to "[t]he owner or operator of a taxicab, limousine, jitney, or ***any other for-hire passenger transportation vehicle***." *Id*. (emphasis added). The term "for hire passenger transportation" is not defined in Florida statutes.[1] However, the plain meaning of those words would apply to a short-term rental of a passenger motor vehicle. The rental car is "for hire" in the sense that the renter must pay the lessor a fee to

[1] There is a definition of the similar term "for-hire vehicle" within § 320.01(15)(a), Fla. Stat. That definition would appear to apply to rented vehicles. It "means any motor vehicle, when used for transporting persons or goods for compensation; ***let or rented to another for consideration***." (Emphasis added).

WASSON & ASSOCIATES, CHARTERED
28 West Flagler Street, Suite 600 Miami, FL 33130
(305) 372-5220 roy@wassonandassociates.com

use the vehicle. A rental car constitutes a road vehicle used for "passenger transportation," as opposed to hauling cargo.

The interplay between §§ 324.031 & 324.032 is extremely confusing, but a skillful practitioner could make the argument that the two statutes require a rental car company to provide insurance of at least $125,000/$250,000/$50,000. The first sentence of §324.031 seems to permit the owner of a for hire passenger transportation vehicle to satisfy financial responsibility requirements by purchasing only a $10,000 policy, wherein that statute states that such an owner "may prove financial responsibility by providing satisfactory evidence of holding a motor vehicle liability policy as defined in s. 324.021(8) or s. 324.151, which policy is issued by an insurance carrier which is a member of the Florida Insurance Guaranty Association." On the other hand, subsection (1)(a) of §324.032 seems to increase the insurance requirement for the owner of a for-hire passenger transportation vehicle, by stating that "[n]otwithstanding the provisions of s. 324.031 . . . [such an owner] may prove financial responsibility by furnishing satisfactory evidence of holding a motor vehicle liability policy, but with minimum limits of $125,000/$250,000/$50,000." Thus, §324.032(1)(a) expressly increases the insurance requirement from $10,000 permitted by §324.031(1).

The matter becomes more confusing, however, when subsection (b) of §324.032 is considered. That section provides: "A person who is either the owner or a lessee required to maintain insurance under s. 324.021(9)(b) and who operates limousines, jitneys, or any other for-hire passenger vehicles, other than taxicabs, may prove financial responsibility by furnishing satisfactory evidence of holding a motor vehicle liability policy as defined in s. 324.031." That provision takes us back to the $10,000 insurance requirement referenced in §324.031.

It does not seem to make any sense to require limits of $125,000/$250,000/$50,000 in subsection (1)(a), then permit the owner to choose to only obtain a $10,000 policy under (b). One argument that can be made is that subsection (1)(a) applies to rental cars, because rental cars are "required to maintain

insurance under s. 627.733(1)(b)," as stated in subsection (1)(a). The lower limits under (b) must, therefore, be available only for the owners of a for-hire passenger vehicle that is not required to have insurance under 627.733 and is not a taxicab.

Subsection (2) of §324.032 also permits the owner of more than 300 for-hire passenger transportation vehicles to comply with financial responsibility by obtaining a certificate of self-insurance pursuant to §324.171. As explained above, where self-insurance is obtained, the owner has to establish sufficient net worth "to be financially responsible for potential losses." Thus, there may well be much more in financial responsibility available against a rental car company, even though we have not prevailed in our argument that the limits of §324.021(9)(b) are applicable.

Conclusion

Everyone with cases against rental car companies should move to amend their complaints to plead the foregoing as financial responsibility exceptions to the Graves Amendment that were not addressed in *Vargas*, because even though we lost that case, we have to:

Keep Tryin!

Roy

WASSON & ASSOCIATES, CHARTERED
28 West Flagler Street, Suite 600 Miami, FL 33130
(305) 372-5220 roy@wassonandassociates.com