

TESTIMONY OF SHARON FAULKNER
REGIONAL MANAGER
PREMIER CAR RENTAL COMPANY
BEFORE THE
SENATE COMMERCE, SCIENCE, & TRANSPORTATION COMMITTEE'S
SUBCOMMITTEE ON CONSUMER AFFAIRS
LEGISLATIVE HEARING ON
S. 1130
"THE MOTOR VEHICLE RENTAL FAIRNESS ACT OF 1999"

September 30, 1999

Good morning, Mr. Chairman and members of the Committee. My name is Sharon Faulkner, and I am the regional manager for Premier Car Rental Company in Albany, New York. Premier is a subsidiary of Budget Rent A Car Corporation.

Thank you for inviting me to appear at this hearing today. My testimony is in support of S. 1130, the "Motor Vehicle Rental Fairness Act of 1999." I thank Senator McCain for introducing this important legislation, and urge this Committee to approve this bill in the near future.

Let me be very clear about what this bill would and would not do. This bill would right a wrong by adopting a uniform federal standard that would not hold motor vehicle rental companies liable for damages when the companies in no way caused an accident. The bill would not, however, eliminate the liability of the companies when they are negligent or failed to maintain the vehicle properly.

Let me relay my personal experience to you, which I hope will help the Members of this Committee understand the importance of this bill. For 17 years, until 1997, I was a small business

owner, operating an independent car rental company in upstate New York. The company, Capitaland Car Rental, Inc., was headquartered in Albany. During those years, thanks to the hard work of my employees and the loyalty of our local customers, my company survived two recessions and fierce competition from the larger, nationwide car rental companies.

That situation changed one day in 1997, when I was notified that I and my company were being sued for an accident involving one of our rental cars that had occurred over a year previously. Capitaland had rented a car in 1996 to a female customer who possessed a valid New York driver's license. As part of Capitaland's standard rental agreement, the customer agreed that she would be the only driver of the car. Our customer then loaned the car to her son, an unauthorized driver under the rental agreement. Our renter's son, without her knowledge, drove the car to New York City and was involved in an accident in which a pedestrian was struck in the crosswalk. The injured person sued our customer's son for his negligence in causing the accident.

This lawsuit caught me completely by surprise, because, when I checked our records, I found that the rental vehicle had been returned to Capitaland without any damage. As a result, I had no idea that an accident had occurred or that a person had been injured.

Nevertheless, Capitaland was named as a co-defendant in the lawsuit, which demanded enormous amounts of money to pay medical bills and compensate the injured person for his pain and suffering.

You might wonder how it is that my company was sued for this accident. We rented to a licensed driver. The renter then loaned the car to an unauthorized driver. It was the unauthorized driver -- a person neither I or any of my employees had ever met -- that caused the accident that injured this pedestrian. We were not negligent in any way and could not have prevented the accident from occurring. Thus, we should not have been liable.

However, New York is one of a very small minority of states that hold the companies that rent motor vehicles liable for the negligence of persons driving their vehicles -- whether that person is a customer or not. In these states, a car rental company can be assessed unlimited damages by a court under the legal doctrine of "vicarious liability" if one of its cars is involved in an accident in which the driver of the car was negligent. Simply because we owned the car, New York law held my company liable for the negligence of our renter.

For me, this lawsuit was the final straw. I am a mother with three children and Capitaland was our sole means of support. I found it incredible that I could lose everything I had worked to achieve for 17 years because of an accident for which I was not at fault. In effect, every time I rented a car to a customer, I was putting my family's future on the line in the hope that the customer did not drive the car negligently and cause an accident.

I made the decision to sell my company, the assets of which were purchased by a company that is now Budget Rent A Car. All of my employees were laid off, and another independent car rental company disappeared in New York. And my company is not alone. Capitaland is one of over 300 car rental companies that have closed in New York since 1990.

Unlimited vicarious liability for car rental companies exists in five states (Connecticut, Iowa, Maine, New York, and Rhode Island) and the District of Columbia. One other state, Florida, has limited vicarious liability to a cap of \$900,000 per accident. Forty-four other states have either discarded unlimited vicarious liability or never adopted it in the first place.

Vicarious liability for companies that rent or lease motor vehicles is unfair and contrary to one of our nation's fundamental pillars of justice -- that a person should be held liable only for harm that he or she causes or could have prevented. In the car rental industry, vicarious liability increases rates for all of our customers, not just for customers in the small minority of states that adhere to this unfair and outmoded doctrine.

Vicarious liability undermines competition in the car rental industry. As I have stated, hundreds of companies have disappeared from New York this decade -- leaving the major, nationwide systems as the only car rental option for consumers in the state. In addition, many smaller, growing car rental companies will not do business in vicarious liability states and seek to prohibit their customers from driving into those states. And vicarious liability operates as a legal lottery, enabling trial lawyers to target the so-called "deep pockets" of car rental companies for huge judgments.

I and the other witnesses here today can give you numerous other examples of this unjust and unfair legal doctrine. Single car accidents where the only person at fault was the driver. A car rented in Ohio and driven to New York where an accident occurred and New York's law was applied. Customers loaning their cars to a friend who loans it to a sibling who runs a stop sign and has an accident. All of these situations have resulted in car rental companies being sued and paying tens of

millions of dollars in judgments -- despite the fact that the car rental company was not negligent or at fault for the accident.

Together, these cases result in over \$100 million in judgments and settlements against car rental companies every year -- costs that must be recovered by the companies through the rates they charge every rental customer. In effect, these judgments from this small minority of states results in a tax on all car rental customers everywhere, not just on the citizens of the vicarious liability states.

S. 1130 will put a stop to this legal lottery. This bill will pre-empt state vicarious liability laws that hold companies that rent or lease motor vehicles liable for the negligence of their renters or lessors. Specifically, it prohibits a state from imposing liability on a company solely because the company owns the vehicle involved in an accident.

Let me take a minute to tell you what S. 1130 will not do. It will not shield a car rental company from its own negligence or for failing to maintain the car properly. It will not shield a car rental company from potential liability if it rents a car to a person who is intoxicated and that person causes an accident. That is negligence, and this bill specifically states that it will not prevent any action based upon the negligence of the car rental company. In addition, it will not impact on the requirement that a car rental company insure their vehicles at the level required by state law.

Instead, this bill will prevent the situation I faced in 1997 -- being sued and forced to sell the company that I had worked so hard to make successful.

I urge this Committee to pass S. 1130, as quickly as possible. While it is too late to help my former company, it is not too late to put a stop to this legal lottery in the future.

I would be pleased to answer any questions that my testimony may have raised.