

S. 1130, MOTOR VEHICLE RENTAL FAIRNESS ACT

HEARING

BEFORE THE

SUBCOMMITTEE ON CONSUMER AFFAIRS, FOREIGN
COMMERCE AND TOURISM

OF THE

COMMITTEE ON COMMERCE,
SCIENCE, AND TRANSPORTATION
UNITED STATES SENATE

ONE HUNDRED SIXTH CONGRESS

FIRST SESSION

SEPTEMBER 30, 1999

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ONE HUNDRED SIXTH CONGRESS

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CONTENTS

Hearing held September 30, 1999	Page 1
Statement of Senator Ashcroft	1
Statement of Senator Gorton	20

WITNESSES

Elder, Ken, chief executive officer, Welcome Corporation	12
Prepared statement	13
Faulker, Sharon, area manager, Premier Car Rental Corporation	8
Prepared statement	10
Stewart, Larry S., Association of Trial Lawyers of America	15
Prepared statement	17
Wagner Jr., Raymond T., vice president, Legal and Legislative Affairs, Enter- prise Rent-A-Car Corporation	3
Prepared statement	4

APPENDIX

Statement of Hon. Ernest F. Hollings, U.S. Senator from South Carolina	23
Statement of Hon. Trent Lott, U.S. Senator from Mississippi	23

S. 1130, MOTOR VEHICLE RENTAL FAIRNESS ACT

THURSDAY, SEPTEMBER 30, 1999

U.S. SENATE,
SUBCOMMITTEE ON CONSUMER AFFAIRS, FOREIGN COMMERCE
AND TOURISM
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:35 a.m. in room SR-253, Russell Senate Office Building, Hon. John Ashcroft, chairman of the subcommittee, presiding.

Staff members assigned to this hearing: Robert Taylor, Republican counsel; and Moses Boyd, Democratic senior counsel.

OPENING STATEMENT OF HON. JOHN ASHCROFT, U.S. SENATOR FROM MISSOURI

Senator ASHCROFT. Good morning. Let me thank all of you for being here and let me call this meeting of the Consumer Affairs Subcommittee of the Commerce Committee to order.

I am aware of the fact that we normally wait 10 minutes for full professors while we are in college and sometimes even longer if we are in law school, if our grade is in question, but we I think ought to proceed this morning. There are other Senators who have just recently voted on an item. The vote started at 10, and they have had sometime to both vote and make their way here.

I would just like to get this moving, because the day is a day full of serious challenges. The purpose of this morning's hearing is to review S. 1130, the Motor Vehicle Rental Fairness Act, a bill introduced by Chairman John McCain, several of my colleagues, and by me.

I want to begin by thanking all of our witnesses for their participation in today's hearing. The committee understands that each witness is very busy, and we appreciate your time and your assistance.

S. 1130 seeks to put a halt to an absurd aberration in our legal system. Under the liability laws of a small number of States, companies that rent or lease motor vehicles are held strictly liable if their renters or leasers are negligent or cause an accident. The company does not have to be negligent in any way. The vehicle may operate perfectly, be maintained properly, and still be the occasion of the liability of the company. These States simply hold the company liable because of their ownership of the vehicle. This has been true even if the car has been used by an unauthorized driver.

While most of these cases are settled, since there are no defenses to vicarious liability the outcomes are perverse. Car rental companies are being held responsible for renters who go out and get drunk or use drugs and then cause an accident, for renters who let unauthorized or underage drivers use the car, for renters who fall asleep at the wheel or who are otherwise severely negligent. In many cases, it is a family member of the renter who is injured in an accident and then they turn around and sue the rental car company.

The American judicial system should be based on, in my judgment, general principles that a defendant should be liable for the harm he or she could prevent, not merely because the defendant has a deep pocket.

Vicarious liability laws undermine car rental and leasing competition in these States. They also adversely impact interstate commerce because companies located in nonvicarious States own cars that are driven into vicarious States, subjecting them to unlimited liability. Finally, vicarious liability statutes have driven some smaller rental and leasing companies out of business.

Again, I want to thank our witnesses, and I look forward to their testimony.

Now, at the request of the Ranking Member of the full committee, Senator Hollings, Mr. Stewart, who is here to oppose this bill, will be asked to testify last, because the Ranking Member asked that he come. I do not want anyone to think that I am trying to adversely—but having the last word is something that I know my wife always appreciates having, so maybe, Mr. Stewart, you would understand that that is the reason the sequencing will be as it is.

Mr. STEWART. I appreciate that also, Senator.

Senator ASHCROFT. It is my pleasure, first of all, to introduce to this committee Mr. Raymond Wagner, who is a corporate official—the vice president of legal and legislative affairs at Enterprise Rent-A-Car. Enterprise is a family-owned corporation headquartered in St. Louis, Missouri, and I am delighted to welcome Mr. Wagner to this committee.

I might just take a moment to indicate that Mr. Wagner and I have had a long opportunity to serve together in Government. He served as legal counsel in the Governor's Office of the State of Missouri, and as the Director of the Department of Revenue in the State of Missouri while I was Governor. Upon my retirement as Governor, he went to be the Director of Revenue in the State of Illinois, so I was pleased that our neighbors saw the quality of his work and invited him there, but I wanted our relationship to be clear and open to everyone, and we appreciate the fact that you have come to the committee.

Mr. WAGNER. Thank you, Senator.

Senator ASHCROFT. I have asked that we set a timer so that you all will have the benefit of a mechanical device, which will not interrupt you but alert you to the fact that the time allotted for your testimony has expired, if not the patience of the committee, so please proceed.

**STATEMENT OF RAYMOND T. WAGNER, JR., VICE PRESIDENT
OF LEGAL AND LEGISLATIVE AFFAIRS, ENTERPRISE RENT-
A-CAR CORPORATION**

Mr. WAGNER. Thank you, Mr. Chairman.

Good morning, Mr. Chairman, members of the committee. My name is Ray Wagner, and I am a vice president at Enterprise Rent-A-Car Company. Enterprise, as you have indicated, is a family-owned corporation headquartered in St. Louis, Missouri. I appear before you today on behalf of Enterprise to express our support for Senator McCain's "Motor Vehicle Rental Fairness Act of 1999."

Thank you, Mr. Chairman, for inviting me to present testimony this morning and for your continued strong support for vicarious liability reform here in Congress. I view the current vicarious liability laws from perhaps a unique perspective. Not only am I a vice president at Enterprise, but I am also a circuit court judge in the municipal division in St. Louis County, and I am also an adjunct professor of law at Washington University School of Law.

I am here today to say that the current vicarious liability laws are unfair, and badly in need of reform. The title of this legislation accurately describes its impact. S. 1130 will return the notion of fairness to litigation involving car rental companies in these handful of States which still cling to this unfair doctrine. It is simply not fair to subject car rental companies to unlimited liability for the acts of their renters, and yet that is exactly what the vicarious liability laws in Connecticut, Iowa, Maine, New York, Rhode Island, and the District of Columbia impose.

It is not fair to impose multimillion-dollar judgments on any entity, whether an individual or a corporation, when they have done nothing wrong. It is not fair to force our customers across the Nation to pay higher rental rates for the misguided and outdated vicarious liability laws, which incidentally date back to the days of horse and buggies, when horse and buggy rental operators were presumed to know the personality of their horses.

The laws of these States force car rental companies to charge nonresident renters high rates to cover their losses. In essence, nonresident accident-free renters are forced to subsidize accident-prone renters in vicarious liability States. We would submit this is poor public policy.

It is not fair to deprive consumers of the competition and lower rental rates that smaller operators can offer, but that is exactly what is happening, because literally hundreds of companies have been forced out of business. It is not fair that the only sure way an operator, even one operating outside of a vicarious liability State, can protect itself against such claims is to simply go out of business.

S. 1130 will return uniformity and fairness to the car rental industry and to our customers. Quite simply, it will preempt the laws in a small minority of States which presently hold the car rental companies vicariously liable for the negligence of their customers.

Opponents of this legislation will raise three central arguments against it. First, they will argue that Congress should not preempt State laws as a matter of States's rights and federalism. I would agree with this argument if the impact of these State laws were confined to their borders and their citizens, but this is not the case.

Our customers across the Nation pay for vicarious liability losses through higher rates. A company operating in Virginia cannot stop its customers and vehicles from traveling to New York or the District of Columbia, and as the selection of cases attached to my testimony outlines, creative plaintiff lawyers seek to apply these vicarious liability laws no matter where the accident occurs.

Second, opponents will argue that the bill will somehow lower the standard of care companies will use in the future renting vehicles. They will allege we will feel free to rent to drunk customers, or to not maintain our vehicles because we have no fear of liability. These arguments are simply not true, and I believe that they know this.

S. 1130 expressly states that the bill will not impact claims alleging a company's negligence whether by negligently entrusting their car to a renter, or by failing to maintain the car. If Enterprise, for example, has been negligent in any way, S. 1130 does not shield the company from potential liability, nor should it.

Third, opponents of S. 1130 will argue that the innocent injured persons will go uncompensated if these laws are not preserved. It is, indeed, true that persons are injured every day in vehicle accidents, and that financial resources either through insurance or personal wealth are in many cases insufficient to compensate, but it is also true that our Nation's liability system is based on fault. Compounding a wrong, the original accident, by adding another injustice, holding the car rental company liable, does not make the original wrong right.

My company has been subject to numerous vicarious liability judgments and settlements over the past 10 years. These judgments have cost Enterprise tens of millions of dollars, costs that we simply must pass along to our customers. Collectively, vicarious liability results in well over \$100 million, exclusive of insurance costs and legal fees, for the industry.

In sum, Mr. Chairman, S. 1130 will right an ongoing wrong. These laws, these current laws impact interstate commerce through higher rental rates for all consumers. These laws lessen competition, acting as a barrier to entry into business in vicarious liability States, and these liability laws undermine the fundamental principle of our Nation's liability system that a person should pay damages for harm caused only when he or she is at fault or could have prevented the harm in some way.

Thank you for inviting me to present this testimony today. I urge this committee to pass this bill so that it can be enacted into law by the end of this year. I would be pleased to answer any questions you may have, Senator.

[The prepared statement of Mr. Wagner follows:]

PREPARED STATEMENT OF RAYMOND T. WAGNER, JR., VICE PRESIDENT OF
LEGAL AND LEGISLATIVE AFFAIRS, ENTERPRISE RENT-A-CAR CORPORATION

Good morning, Mr. Chairman and Members of the Committee. My name is Ray Wagner and I am a Vice President at Enterprise Rent-A-Car Company. Enterprise is a family-owned corporation headquartered in St. Louis, Missouri. I appear before you on behalf of Enterprise to express our support for Senator McCain's "Motor Vehicle Rental Fairness Act of 1999" (S. 1130). Thank you, Mr. Chairman, for inviting me to present testimony this morning and for your continued strong support for vicarious liability reform legislation.

I view the current vicarious liability laws from perhaps a unique perspective. Not only am I a vice president at Enterprise, I am also a municipal circuit court judge in St. Louis County and an adjunct professor at the Washington University School of Law in St. Louis. And I am here to say that the current vicarious liability laws are unfair and badly in need of reform.

The title of the legislation under consideration today accurately describes the impact this bill will have when it is enacted. S. 1130 will return the notion of fairness to litigation involving car rental companies in a handful of states that still cling to the unfair doctrine of vicarious liability for companies that rent or lease motor vehicles.

It is not fair to subject car rental companies to unlimited liability for the acts of their renters. And yet that is exactly what the vicarious liability laws in the states of Connecticut, Iowa, Maine, New York, Rhode Island, and the District of Columbia impose on Enterprise and other companies.

It is not fair to impose multi-million dollar judgments on any entity, whether an individual or a corporation, when they have done nothing wrong. Again, that is exactly what the vicarious liability laws of these states do.

It is not fair to force car rental customers across the nation to pay through higher car rental rates for the misguided and outdated vicarious liability laws that exist in only a handful of states. But that is exactly what happens every day, as the laws of these states force car rental companies to charge renters outside of these states higher rates to cover their losses in these vicarious liability states.

It is not fair to deprive consumers the competition and lower rental rates that smaller car rental companies can offer. But that is what has happened because vicarious liability laws have forced many companies out of business.

And it is not fair that the only sure way a car rental company, even one operating outside of vicarious liability states, can protect itself against vicarious liability claims is to go out of business. But that is the only way that a car rental company can make sure it avoids such claims.

S. 1130 will return uniformity and fairness to the car rental industry and to the customers who rent our cars. Quite simply, it will pre-empt the laws in a small minority of states that hold companies that rent or lease motor vehicles liable for the negligence of their customers only because the company owns the vehicle involved in the accident.

Opponents of this legislation will raise three central arguments as to why S. 1130 should not become law. I would like to respond to each argument in turn.

First, opponents will argue that Congress should not pre-empt state laws as a matter of states' rights and federalism. I would agree with this argument if the impact of these states' vicarious liability laws was confined to their borders and their citizens. But, this is not the case. Car rental customers across the nation pay for the vicarious liability losses incurred by car rental companies through higher rates. A car rental company operating in Virginia cannot stop its vehicles from traveling to New York or the District of Columbia. And, as the selection of cases attached to my testimony outlines, creative plaintiffs' lawyers will seek to apply one of these states' vicarious liability laws no matter where an accident occurs.

Second, opponents of S. 1130 will argue that the bill will somehow lower the standard of care car rental companies will use in the future in renting their vehicles. They allege that we will feel free to rent to drunk customers or to not maintain our vehicles in peak condition because we will have no fear of liability. These arguments are pure bunk and they know it. S. 1130 expressly states that the bill will not impact claims alleging a company's negligence, either by negligently entrusting the car to a person or by failing to maintain the car. If Enterprise, for example, has been negligent in any way, S. 1130 does not shield the company from potential liability for an accident. Nor should it.

Third, opponents of S. 1130 will argue that innocent, injured persons will go uncompensated if these states' vicarious liability laws are not preserved. It is indeed true that persons are injured every day in motor vehicle accidents and that financial resources, either through insurance or personal wealth, are in many cases insufficient to compensate these persons. But it also is true that our nation's liability system is based on fault. If a person is not at fault for an accident, then he or she should not be held liable. Compounding a wrong—the original accident—by adding another injustice—holding the car rental company liable—does not make the original wrong right.

My company has been subject to numerous vicarious liability judgments and settlements over the past ten years. These vicarious liability judgments have cost Enterprise tens of millions of dollars—costs that we must pass through to our customers. Together, vicarious liability results in losses by car rental companies of over \$100 million every year, exclusive of insurance costs and legal fees.

In sum, Mr. Chairman, S. 1130 will right an ongoing wrong—holding a car rental company liable for the negligent actions of their renters. Vicarious liability impacts on interstate commerce through higher rental rates for all consumers, not just those in vicarious jurisdictions. Vicarious liability lessens competition in vicarious states by acting as a barrier to entry into business in the vicarious states. And vicarious liability undermines the fundamental principle of our nation's liability system—that a person should pay damages for harm caused only when he or she is at fault or could have prevented the harm in some way. Federal vicarious liability reform is appropriate and long overdue.

Thank you for inviting me to present this testimony today. I urge this Committee to pass this bill so that it can be enacted into law by the end of this year. I would be pleased to answer any questions my testimony may have raised.

SELECTED EXAMPLES OF VICARIOUS LIABILITY

CASES AGAINST CAR RENTAL COMPANIES

Settlements and judgments from vicarious liability claims against car rental companies cost the industry over \$100 million annually. Listed below are selected examples of cases involving vicarious liability and car rental companies.

Fu v. Fu, 733 A.2d 1133 (1999)

In 1993, two friends rented a car in New Jersey from Freedom River, Inc., a Philadelphia licensee of Budget Rent-A-Car Corporation. The rental agreement identified only the two renters as authorized drivers of the car. The car, while being driven by Defendant Hong Fu (the wife of one of the renters and an unauthorized driver under the rental contract), was involved in a single car accident in New York. Plaintiff Li Fu, the sister of the Defendant and the wife of the other renter, was seriously injured in the accident. An arbitrator applied New York law and found the defendant and Freedom River liable for \$3.75 million. This judgment was affirmed by the New Jersey Supreme Court.

Brown v. National Car Rental System, Inc., 707 So.2d 394 (1998)

Renter, a Georgia resident, leased a car from the Georgia office of National. The car was registered in Florida. Renter, in violation of the rental agreement, loaned the car to a friend, also a Georgia resident, who drove the car to Florida. While the unauthorized driver was driving in Florida, he hit a car driven by the plaintiff, a Florida resident. The lawsuit was brought in Georgia, and yet Florida law was applied. On appeal, the court held that National was vicariously liable for plaintiffs injuries under Florida law. National settled the case for \$70,000.

Brown v. Welcome Corporation t/a Thrifty Car Rental, Docket No. 10779/96, Supreme Court of New York for the County of Westchester (1997)

Welcome Corporation, a Thrifty licensee, rented a car to Scott Freeman in Norfolk, Virginia. Freeman was the only authorized driver under the rental contract. Freeman gave the car to an employee, Harrell Davis, to use for business. Frank Dibello, another employee of Freeman, took the car without the permission of either Freeman or Davis and drove it to New York, where he was involved in an accident with Plaintiff. Despite the tortured connection of this accident to Welcome, the company was found vicariously liable for the accident under New York law and settled the case for \$75,000 plus over \$100,000 in defense costs.

Larocca v. Budget Rent-A-Car Corporation, Docket No. 08632/95, Supreme Court of New York for the County of Suffolk (1995)

Budget rented a vehicle to Rosalba Larocca in New York. Larocca gave permission to her son, an unauthorized driver under the rental contract with a suspended New York driver's license, to drive the vehicle. The son lost control of the vehicle on the New Jersey turnpike in a one-car accident. Larocco was a passenger in the vehicle at the time of the accident and suffered injuries. Mother sued son for his negligence, and jury found Budget vicariously liable for the son's negligence under New York law. A jury returned a verdict of \$450,000 against Budget.

McNamara v. Thrifty Canada, Ltd., Civil Action No. 98-CV-507, U.S. District Court, N.D.N.Y. (1999).

Thrifty rented the car to renter in Toronto. Renter was involved in an accident in New York in which the plaintiff, the driver of another car, was injured. The police report on the accident indicated that the renter was driving too fast for the prevailing conditions and following too close. After a three day jury trial, Thrifty was held vicariously liable under New York law and ordered to pay \$1.1 million in damages to plaintiff.

Zafra v. National Car Rental, Inc., Docket No. 126728/95, Supreme Court of New York for the County of Westchester (1995).

In 1995, a 19-year-old, who was an unauthorized driver under the rental contract for a car rented in New York by her mother, was driving in Vermont. She turned around to tell her friends in the back seat to be quiet and the car veered off the road and rolled over. One of the passengers was injured and sued the driver and National. Despite the fact that the accident occurred in Vermont, New York law was applied. National settled the claim for \$985,000. Of particular interest, National was insured for \$1 million, but the insurance company denied the claim because the driver was underage, in violation of the insurance coverage. However, New York prohibits car rental companies from refusing to rent to anyone 18 years of age or older.

Clay et al. v. Alamo Rent-A-Car, Inc., 586 So.2d 394 (1991).

Four British sailors rented a car from Alamo in Fort Lauderdale to drive to Naples. While driving to Naples, the driver of the car fell asleep at the wheel. The car left the road and ended up in a canal. The driver and two passengers were killed; the fourth passenger was seriously injured. Alamo was found vicariously liable for the deaths and injuries due solely to the fact that it owned the vehicle. No negligence for the accident was attributed to Alamo. Alamo was ordered by a jury to pay the plaintiffs \$7.7 million. The jury award was affirmed on appeal.

Nichols v. Value Rent-A-Car, Inc., Case No. 92-20889(21), Circuit Court of the 17th Judicial Circuit in and for Broward County (1992).

In a single vehicle accident, the driver of a passenger van rented from Value lost control of the van after braking on a freeway to avoid a slower moving vehicle. The van rolled over and plaintiff Nichols, who was not wearing a seat belt, was thrown from the van. She sustained injuries to her hands and her head. At trial, Value was not found negligent for her injuries in any way, and yet the jury ordered Value to pay the plaintiff \$2.2 million for her injuries.

Rodriguez v. Dollar Rent A Car Systems, Inc., Case No. 94-10085 CA6, Circuit Court for the 11th Judicial Circuit in and for Dade County (1994).

Plaintiff was speeding in a Dollar rental car when another vehicle ran a stop sign, striking the rental car and causing it to overturn. The injured parties in the rental vehicle received \$800,000 payments from the insurance company that covered the other vehicle. Plaintiffs sued Dollar based on the negligence of the driver of the rental car (she admitted to speeding at the time of the accident). The jury awarded total damages of \$420,000 against Dollar based upon the negligence of the driver and Dollar's ownership of the vehicle.

Watson v. Budget Rent A Car Corporation, Case No. 91/055232, Orange County Circuit Court (1991).

Budget rented a van to a family in Florida. At the time of the accident, the mother of the family was driving the van. The mother lost control of the van in a single-vehicle accident. Her infant son (the plaintiff), who was not restrained in the van, was thrown from the van and suffered severe injuries. Based upon the infant's mother's negligence and Florida's vicarious liability doctrine, Budget settled the case for \$490,000.

Stein v. Thrifty Rent-A-Car, Inc., Case No. 298-6936-TS, Supreme Court of New York for the County of Suffolk (1986).

The renter of a Thrifty car ran a stop sign and collided with Stein's car. Stein was thrown from the vehicle and killed. Stein's estate sued Thrifty based upon New York's vicarious liability statute. At the original trial, the jury found that Stein's death was caused by her failure to wear a seat belt and awarded no damages. In 1992 a New York appellate court reversed the original jury verdict and ordered a new trial on the issue of damages alone. The second trial resulted in a \$1.25 million jury verdict against Thrifty.

Senator ASHCROFT. I thank you for your testimony. I think you get the award for coming closest to a compact 5-minute statement that I have seen. You do not even have to pay a charge for redelivering the car past the deadline.

[Laughter.]

Mr. Wagner: Thank you. I am grateful for that.

Senator ASHCROFT. It is my pleasure now to call upon Ms. Sharon Faulkner, who is the area manager for Premier Car Rental Corporation, located in Albany, New York. Premier is a subsidiary of Budget Rent-A-Car Corporation. Ms. Faulkner.

**STATEMENT OF SHARON FAULKNER, AREA MANAGER,
PREMIER CAR RENTAL CORPORATION**

Ms. FAULKNER. Good morning, Mr. Chairman and members of the committee. My name, as you said, is Sharon Faulkner, and I am the area manager for Premier Car Rental in Albany, New York. 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. In addition, I thank you, Mr. Chairman, for your longstanding commitment to reforming State vicarious liability laws.

Let me tell you about my own personal experience, 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, called Capitaland Car Rental, was headquartered in Albany, and 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.

Well, 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. The renter's son, without my 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 company for the son's 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 us without any damage, no accident report. As a result I had no idea that an accident had ever occurred, or that a person had ever been injured. Nevertheless, my company was named as a co-defendant in the lawsuit, which demanded enormous amounts of money to pay for medical bills and compensate the injured person.

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, and it was the unauthorized driver, a person who neither I nor any of my employees had ever met, that caused the accident that injured this pedestrian. We were not negligent in any way, and we could not have prevented the accident from occurring. Therefore, how could we be considered liable?

However, New York is one of the very small minority of States that hold the companies that rent motor vehicles liable for the neg-

ligence 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 the 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 that was not my fault.

In effect, every time I rented a car to a customer, I realized I was putting my family's future on the line in the hope that the customer did not drive the car negligently and therefore cause an accident, so I made a decision to sell my company, the assets of which were purchased by a company that is now Budget Group Incorporated. All of my employees were laid off, many of them with me for years and years.

Another independent car rental company disappeared in my State, and my company is not alone. Capitaland was only 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, Rhode Island, and the District of Columbia. Vicarious liability for companies that rent or lease motor vehicles is unfair and contrary to 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 the customers, not just the customers in the small minority of States that adhere to this outmoded doctrine. I could give you many examples of this unfair and unjust legal doctrine. Together, these cases result in well 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 a small minority of States results in a tax on the 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 preempt State vicarious liability laws that hold the 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.

Let me take a minute to tell you what the bill will not do. This section will not shield the car rental company from its own negligence or for failing to maintain that car properly. This bill will not shield the 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 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 must insure the vehicles at the level required by State law.

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 you may have.
[The prepared statement of Ms. Faulkner follows:]

PREPARED STATEMENT OF SHARON FAULKNER, AREA MANAGER, PREMIER CAR RENTAL CORPORATION

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 com-

pany 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.

Senator ASHCROFT. Well, you have just nosed out Mr. Wagner for compliance. [Laughter.]

Thank you very much.

Ken Elder is the chief executive officer of the Welcome Corporation, headquartered in Alexandria, Virginia. It is a pleasure to have you here and to welcome you here as a member of the Welcome Corporation.

**STATEMENT OF KEN ELDER, CHIEF EXECUTIVE OFFICER,
WELCOME CORPORATION**

Mr. ELDER. Thank you. Good morning, Mr. Chairman, ladies and gentlemen. I am appearing today on my own behalf to testify in support of S. 1130. I thank Senator McCain for authoring this important legislation and you, Senator Ashcroft, for calling this hearing and being an original cosponsor of the bill. I am most grateful for and appreciate the invitation to be here, and to participate in this process.

To understand the reasons why I support this legislation, let me tell you a little bit about my company. My wife, Judie, and I founded our company in 1970 with 29 cars. In those days, I washed them and she rented them. Through the hard work of many dedicated employees, we now have 35 offices, including offices at seven airports, and we operate an average fleet of about 4,000 vehicles company-wide, with 325 people, including 40 of whom who have been with us for over 10 years. We are really proud of that.

I guess most folks would call Welcome an American success story. It is a small business that has grown and prospered. I consider it a success on a far more personal level, because now my son, who is a junior at William and Mary, is as passionate about the company as am I, and he plans to come to work for the company as soon as he graduates.

But we have been lucky, and every day our success is threatened by unfair laws in a few States, and they risk the future of our company on events that we have no control over. These vicarious laws permit my company to be sued and forced to pay judgments and settlements when we have done nothing wrong.

To date, we have just been lucky. Welcome has not been hit by a multimillion judgment. However, each year my company pays in excess of \$1 million in judgments and settlements from claims that somewhat relate to vicarious liability. For vicarious liability, there is no need to show that we have been negligent in any way. Instead, my company is held liable simply because we own the car. If an accident occurs because we are in any way negligent, S. 1130 offers no protection to us whatsoever, nor should it.

Because of vicarious liability, every time one of Welcome's cars leaves the lot, we are in effect betting the company on the hope that our renter will not cause an accident in a vicarious liability jurisdiction. Some day I will lose this bet, because the odds will eventually catch up with us.

You may have heard the argument that I can insure for my company's exposure to vicarious liability claims, but sir, that is far more easily said than done. I can buy insurance, so long as I do not have a claim. However, if we are ever hit by a multi-million claim, one of the following will happen. Either the judgment itself will bankrupt the company, or insurance will become prohibitively expensive, or it may not even be there at any price, and I cannot and will not operate without any insurance.

Let me give you a couple of examples of some vicarious liability claims my company has faced. These are not the big ones you may hear about from other car rental companies, but they have taken money directly from us.

First of all, we rented a car to an individual in Norfolk, Virginia. He drove the car to Florida, picked up a friend on the way to the beach, 3 days later the renter was involved in a single car accident on a freeway at 5 in the morning. Both the driver and the passenger were legally intoxicated, according to blood tests. Tragically, the driver was killed and the passenger was seriously injured.

The passenger in this car sued us for \$1.1 million under Florida's vicarious liability doctrine. Eventually we settled the case for \$400,000, despite the fact that Welcome had not been negligent in any way.

Another example in 1995 is, we leased a car at the Richmond Airport office. The renter said he was going to use the car in his local business. A month later, we received a report that the car was involved in an accident in New York. The vehicle was driven by Mr. Tim Baker, who was not the same person as the fellow that rented the car, and had no apparent connection with our renter.

A passenger in the car was, indeed, injured, and sued Welcome under the New York vicarious liability statute because we were simply the owner of the car. While some issues remain to be settled in this case, we have already paid out \$55,000, with the potential of many more thousands to come. We are paying for these sums despite the fact that Welcome was not negligent and in fact had no business or contractual relationship with the person who was responsible for the accident.

S. 1130 would protect us from incidents like these, but I want to emphasize this bill would not impact my company's liability if we are negligent in any way.

I strongly urge you to pass S. 1130 as quickly as possible. If you do not, then one morning soon I may wake up to find my fears realized, but if that happens and our family business is taken away from us, I will be able to tell my son, the one that wants to come to work with us in the business, that we did everything we could to change this unjust system.

Thanks again for your invitation to be here, sir. I would be pleased to answer any questions.

[The prepared statement of Mr. Elder follows:]

PREPARED STATEMENT OF KEN ELDER, CHIEF EXECUTIVE OFFICER,
WELCOME CORPORATION

Good morning, Mr. Chairman and Members of the Committee. My name is Ken Elder. I am the Chief Executive Officer of the Welcome Corporation, headquartered in Alexandria, Virginia. Welcome is Thrifty Car Rental's licensee in the Baltimore/Washington area. Our car rental locations also stretch north to Harrisburg, Pennsylvania and as far south as Richmond, Virginia and the Tidewater area.

I am appearing today on my own behalf to testify in support of S. 1130, the "Motor Vehicle Rental Fairness Act of 1999." I thank Senator McCain for authoring this important legislation and you, Senator Ashcroft, for calling this hearing and for being an original co-sponsor of the bill.

In order for you to understand the reasons I support this legislation, you must know something about my company. My wife and I founded Welcome in 1970 with 29 cars. We used to joke that I washed and fueled the cars and she rented them. Through hard work, we have grown since then. Welcome now has 35 rental locations, including operations at seven airports. We operate an average fleet of about 4,000 vehicles company wide and employ 325 workers, including more than 40 who have been with us over 10 years.

Most people would call Welcome an American success story—a small business that has grown and prospered through personal owner involvement and the dedication and commitment of our employees. I consider it a success on a far more per-

sonal level. My son, now a junior at William & Mary, is as passionate about the company as I am and plans to work for Welcome after graduation.

I am proud to say that our company is a success. But every day, this success is threatened by an unfair law that risks the future of our company on events over which we have absolutely no control.

The reason for this threat is the laws in a small minority of states that hold Welcome liable for the negligence of our renters. These so-called “vicarious liability” laws permit my company to be sued and forced to pay judgments and settlements when we have done nothing wrong. To date, I have been very lucky. Despite the fact that many of the cars we rent regularly travel into Washington, D.C., Florida, and New York—all vicarious liability jurisdictions—Welcome has not been hit with a multi-million dollar judgment. However, each year, my company pays a total of over \$1 million in judgments and settlements from claims relating to vicarious liability.

Vicarious liability laws hold car rental companies liable for the negligence of their renters solely because the company owns the vehicle involved in the accident. A plaintiff need not show that Welcome did anything wrong; that we negligently entrusted one of our cars to an unlicensed driver or to someone under the influence; or, that we failed to maintain the vehicle properly. I take great pride in the quality of our rental fleet. If an accident occurs because we have failed to maintain the car properly, we should be responsible and be sued for our negligence.

But that is not the case here. For vicarious liability, there is no need to show that we have been negligent in any way. Instead, my company is held liable simply because we own the car.

As a result, every time one of Welcome’s cars leaves our lots, we are in effect betting the company on the hope that our renter will not cause an accident in a vicarious liability jurisdiction. Someday, I fear that I am going to lose this bet because the odds eventually catch up with everyone.

Vicarious liability may make some sense when it is applied to individuals. Perhaps society should discourage individuals from lending their personal cars to family members or friends for fear of being held liable for someone else’s negligence. That is not for me to decide. However, in the commercial context—such as the car rental industry—where lending cars is the very nature of the business activity involved, it does not make sense. An individual can avoid vicarious liability by not lending his or her car to someone else. The only way my company can avoid vicarious liability is to stop renting cars. In other words, to go out of business.

Some may argue that I can insure against my company’s exposure to vicarious liability claims. But that is more easily said than done. Currently, Welcome self-insures for all claims up to \$100,000. We carry an additional insurance policy that covers claims between \$100,000 and \$5 million. That policy currently costs my company \$225,000 per year and we have an excellent claims history. Please understand, if we were hit with a large vicarious judgment, our premiums will skyrocket even higher, if insurance is available to us at all. Just like your premiums would if you make a claim against your personal auto insurance.

As I stated above, without ever accessing our insurance policy, we pay over \$1 million every year in vicarious liability claims. And if a claim is ever made against my company for more than \$5 million, as has happened to larger car rental companies in recent years, then I might as well simply lock the door and turn over the keys because the company I worked so hard to create for almost 30 years will be bankrupt.

Let me give you a couple of examples of the vicarious liability claims my company has faced. While these claims do not involve the multi-million dollar payments you will hear about from other car rental companies, these cases have taken money directly out of my pocket.

First, Welcome rented a car to an individual in Norfolk, Virginia. The renter drove the car to Florida and picked up a friend on the way to the beach. Three days later, the renter was involved in a single car accident on a freeway at 5:00 in the morning. Both the driver and his passenger were legally intoxicated, according to blood tests. The driver was killed in the accident and his passenger was seriously injured.

The passenger in this car sued Welcome for \$1.1 million under Florida’s vicarious liability doctrine. Eventually, we settled this case for \$400,000, despite the fact that Welcome had not been negligent in any way and there was no evidence that the car did not operate perfectly.

Second, in 1995, a renter leased a Welcome car at the Richmond airport, stating that he was going to use the car in his local business. One month later, we received a report that the car was involved in an accident in New York. The vehicle was being driven by Mr. Tim Baker, who was not the same person who rented the car

and had no apparent connection to our renter. A passenger in the car was injured and sued Welcome under New York's vicarious liability statute because we were the owner of the vehicle. While some issues remain to be settled in this case, Welcome already has paid out over \$55,000 in claims to date on this case with many more thousands of dollars potentially to come in the future. We are paying these sums despite the fact that Welcome was not negligent and in fact had no business or contractual relationship to the person responsible for the accident.

These cases represent a miscarriage of justice and they should be stopped. S. 1130 would accomplish this goal. Simply stated, S. 1130 would pre-empt state laws that hold my company liable for the negligence of our renters solely because we own the vehicle involved in the accident. This bill would not impact my company's potential liability if we are negligent in any way. If we entrust a car to an unqualified driver or fail to maintain the car properly and either of these negligent acts leads to an accident, this bill would not shield my company from liability. Nor should it. However, if the only action we are "guilty" of is owning a quality car that we rent to a qualified, licensed driver, then S. 1130 would not hold us liable for that driver's negligence.

I strongly urge you to pass S. 1130 as quickly as possible. Vicarious liability reform has been passed by both the House and the Senate in the past as part of more sweeping product liability reform legislation. This Committee approved legislation in 1996 that contained a provision on vicarious liability reform. I ask you to move this bill in this session of Congress and work for its enactment this year.

If you do not, then one morning soon I may wake up to find my fears realized and the company I have worked 30 years to create will be forced into bankruptcy by a vicarious liability judgment. But, if that happens, and our family business is taken away from us, at least I will be able to tell my son—the one who wants to join me at Welcome—that I have done everything in my power to change this unjust system.

Thank you again for your invitation to testify at this hearing today. I would be pleased to answer any questions my testimony may have raised.

Senator ASHCROFT. Thank you very much. We will move now to Mr. Larry Stewart, who is a partner with Stewart Tilghman Fox & Bianchi, which is located in Miami, Florida. He is here today to speak on behalf of the Association of Trial Lawyers of America.

STATEMENT OF LARRY S. STEWART, ASSOCIATION OF TRIAL LAWYERS OF AMERICA

Mr. STEWART. Thank you, Mr. Chairman, members of the committee. I appreciate this opportunity to be here to urge that S. 1130 not become law, because it would single out one industry for special protection on a subject that is uniquely a matter of State's rights, and that would be tantamount to congressional regulation of State insurance laws.

States have the right to regulate insurance. It is guaranteed by the McCarran-Ferguson Act. Indeed, this bill recognizes the authority of States to impose financial responsibility on car rental agencies.

Vicarious liability is another form of financial responsibility. It is not unique to the car rental agency business. It is a principle of law that has existed since the founding of the union and that is applied in almost every industry and throughout America.

As far as car rental companies are concerned, States which impose vicarious liability on the car rental companies, the owners of the vehicles—and it is not just five; there are 12 States that impose some form of vicarious liability on the companies—have made a policy decision that if the driver of the vehicle is uninsured, or underinsured, the owner can be held responsible. In so doing, those laws encourage the owners to have insurance.

In effect, as between the owner and the injured party, those States have made the choice that it is better as a matter of funda-

mental fairness for the owner to be liable, which can be protected by insurance, than to risk the State having to pick up the tab for the care and treatment of the accident victims.

The promoters of this bill, which I would respectfully submit should be perhaps retitled as a car rental company protection act, while acknowledging State's rights to regulate financial responsibility, say that they do not want too much responsibility imposed upon them.

Every special interest would like to have immunity from lawsuits, but there is no demonstrable need here. While \$100 million is a lot of money, to put it in perspective, it amounts to less than 1 cent of every dollar of revenue that the car rental companies receive. As a matter of fact, it is minuscule. It is only seven-tenths of a penny of every \$1 that is received, and this from an industry that is making millions of dollars in America. There is simply no reason for any company that has taken reasonable steps and acquired insurance to go out of business.

Moreover, this liability is something that car rental companies could protect themselves from. If they are held responsible, they have a right to sue the drivers to recover what they have paid out, and if they make sure that the drivers have insurance, they would be protecting not only themselves, but also the public, but in the rush to rent as many cars as possible, no company inquires about driver insurance.

They know that in a certain number of cases bad things will happen. People are unfamiliar with the cars, and with the roads they drive on. People let others drive the cars. People do unpredictable things in cars, and accidents will hurt and kill members of the public.

They know in some States if a driver is uninsured, or underinsured, they will be held liable, and that they will not be able to effectively recover from the driver if the driver does not have insurance, but no company cares enough to ask if the driver is insured.

As far as the companies know, every renter that they put on the road is a potential uninsured or underinsured driver, and the reason that they do not make inquiry is that if they did, it would drastically reduce the number of rentals and income that they receive.

But more important than that, this has already been factored into the rates that the companies charge the public, and what they are charged by their insurance companies, so it is worth the risk that occasionally they might have to step up and pay damages in the 12 States that impose vicarious liability.

Under those circumstances, it should not be surprising that some States have made the policy decision that they have. Washington should not be in the business of telling states how to deal with these insurance-driven issues, not for the car rental agencies, industry, or for any other industry.

On the other hand, if we are going to plunge into these insurance-driven issues, let's not just put our toe in the water and federally regulate one industry. Let us treat this as an amendment to the McCarran-Ferguson Act, and let us open up the entire issue of Federal regulation of insurance.

I urge that we not take this piecemeal step to protect one single industry, and that this legislation not receive the approval of Congress.

I would be happy to answer any questions. Thank you.
[The prepared statement of Mr. Stewart follows:]

PREPARED STATEMENT OF LARRY S. STEWART, ASSOCIATION OF
TRIAL LAWYERS OF AMERICA

Mr. Chairman and members of the Commerce Committee, my name is Larry Stewart, and I am a practicing attorney from Miami, Florida. I have practiced law for 35 years and am currently a partner with the firm of Stewart Tilghman Fox and Bianchi P.A. I also had the honor of serving as President of the Association of Trial Lawyers of America (ATLA) from 1994 to 1995. Mr. Chairman, thank you for the opportunity to present ATLA's views in opposition to S. 1130, the "Motor Vehicle Rental Fairness Act."

The Association of Trial Lawyers of America opposes this bill for several reasons, including our long standing belief that people who have been injured should have a real opportunity to be compensated for that harm. Vicarious liability laws are one means to help ensure that is the case. This bill would abolish that principle in the several states which have applied it to car rental agencies. We are also concerned that Congress is once again seeking to limit the rights of the states to enact liability laws as they see fit. That this effort comes in the midst of other legislative initiatives to federalize all state class actions, create a federal statute of repose, federalize no-fault auto insurance, and alter long standing state laws on punitive damages and joint and several liability makes the situation all the more alarming in a Congress sworn to return power to the states.

The principle of vicarious liability—the legal doctrine that one entity may be held liable for the actions of another, based on their relationship to each other—is deeply rooted in anglo-saxon jurisprudence. Where state courts and legislatures have adopted this principle, they have done so not only to ensure that injured parties are compensated for the harm they have suffered, but also to spread the risks and costs of doing business across a broader community. These vicarious liability laws also encourage renters and lessors of cars, and other merchants, to monitor their products and services more carefully, thereby ensuring safer products in the marketplace. This bill chooses to protect a thriving car rental industry rather than preserve the long standing principle of vicarious liability. As such, this legislation not only derogates state prerogatives, but does so on behalf of special interests.

THE "MOTOR VEHICLE RENTAL FAIRNESS ACT" IS ONLY FAIR TO THRIVING CAR RENTAL
AGENCIES

Let's be clear. The "Motor Vehicle Fairness Act" is only "fair" to the thriving car rental businesses. Many of these businesses had billions of dollars in revenues in the past few years. Surely, they do not need this legislation in order to flourish. They are merely trying to limit their financial liability so they may reap additional profits. But, for the individuals who are injured by drivers of rented or leased cars, including the drivers themselves, this bill would curtail possible avenues of recovery. When rental car drivers are injured or injure others, they may seek recovery from a number of possible defendants, including the rental agency and the manufacturer of the automobile. This is not unlike the situation that exists in most other industries, where the businesses are held vicariously liable for the acts of others. There is no rationale or moral basis to single out car rental companies for special immunities. That would not only be wrong but the wrong is compounded by the fact that there is no demonstrable need for such protection from Congress. The current system is working and there is no documented evidence to support a federal override of current state laws governing this area of tort law. Indeed, this proposed bill recognizes that states have the authority to impose financial responsibility laws on car rental businesses. Vicarious liability is in essence another form of financial responsibility. States that decide it is in their best interest or good public policy to impose such responsibility should not be prevented from doing so.

VICARIOUS LIABILITY LAWS WERE ESTABLISHED TO PROTECT THE INJURED AND TO
ENSURE THE SAFEST POSSIBLE PRODUCTS ARE AVAILABLE IN THE UNITED STATES

The courts established the principle of vicarious liability primarily to ensure injured parties recover damages for the harm they have suffered. But vicarious liability laws serve the additional purposes of spreading the risks and costs of doing busi-

ness throughout a broader community, and of encouraging the sellers or renters of products to monitor those products closely to ensure the safest products possible are available to American families.

This bill would gut this fundamental principle for one industry by prohibiting states from holding any car rental agency liable for the harm resulting from a driver's negligent operation of a operation of a rented or leased motor vehicle they own. Those states which have established vicarious liability laws for car rental agencies clearly believe there are strong policy reasons to hold these agencies responsible for any harm involving their vehicles. Holding businesses accountable via vicarious liability is one way of making sure that profit-making businesses shoulder the risks they create. It also ensures that innocent victims injured by the business's activities are compensated for their injuries, and it creates an incentive for businesses to decrease the amount of risk to which the larger community is exposed. Ultimately, this legislation would weaken car rental companies' responsibility to the community at large, and thereby reduce safety on the roads for all of us.

S.1130 IS YET ANOTHER EXAMPLE OF CONGRESS SEEKING TO DICTATE STATE POLICIES

This bill is also another example of the federal government seeking to dictate how the states should behave. Currently, only 12 states, either through statute or common law, allow for the determination of vicarious liability in cases involving rented or leased cars, but virtually all states impose some form of financial responsibility on car rental businesses, although the precise terms may vary. Congress should allow those 12 states to continue with their ongoing policies and practices. Those states which have vicarious liability laws for car rental agencies recognize that car rental companies enjoy a profit-making enterprise within their borders that places potentially high-risk drivers on their roads.

These companies are putting people behind the wheel of unfamiliar cars, often in unfamiliar places. In addition, the people who rent the cars do not have pride of ownership in the vehicle; therefore, they may engage in behaviors that they would not normally do in their own car. States like California, Florida, and New York, which have large populations, large tourism industries and the largest rental car markets, have either enacted legislation or follow common law principles to make car rental companies vicariously liable. If a company wants to profit from renting cars in their states, thereby creating more potential risks and accidents, then they should help bear the cost of the risk they create.

New York embodies the rationale of why states hold car rental companies financially responsible via vicarious liability. The New York Court of Appeals noted that New York's vicarious liability legislation was designed to "ensure access by injured persons to a financially responsible insured person against whom to recover for injuries." The New York Law Revision Commission noted that the legislation was intended to regulate the conduct of automobile owners by "discourag[ing] owners from lending their vehicles to incompetent or irresponsible drivers."¹ California, Connecticut, Idaho, Iowa, Nevada, Maine, Michigan, Minnesota and Rhode Island have all codified vicarious liability statutes, in addition to the other jurisdictions that follow common law principles. These states have decided that vicarious liability is the best way to handle the risks created by car rental companies. Their judgment is prudent, sound, and should be respected.

For more than 200 years, civil liability under tort and contract law have been the sovereign domain of the states. Measures that would preempt our state-based liability system, like S. 1130, are contrary to values expressed by lawmakers on both sides of the aisle. Particularly since 1995, I was under the impression that a central mission of the Congressional leadership was to work assiduously to give more authority back to the states. If that is correct, then I find it baffling, to say the least, that this Committee is conducting a hearing on federal legislation which would clearly extinguish states' rights. It is particularly curious behavior when one considers that another Senate Committee is poised to take action on Senator Thompson's bill, S. 1214, the "Federalism Accountability Act of 1999," that is designed to restrain federal intervention into the traditional domains of state law and authority.

The agenda behind S. 1130 is unambiguous: the proponents of this legislation seek to unilaterally take power away from the states on an issue that historically has been left to the states, that is, the regulation of automobile liability. ATLA believes that extinguishing state liability laws that work to protect our families is a measure that is at best ill conceived, and at worst unconscionable.

¹*Haggerty v Cedeno* 653 A.2d 1166 (1995) (quoting the New York Law Revision Commission at 593 (1958))

WHY CAR RENTAL COMPANIES SHOULD BE HELD RESPONSIBLE VIA VICARIOUS LIABILITY

The policy rationale underlying vicarious liability for car rental companies is justified and effective. Car rental companies are the experts on their own businesses. Therefore, they are in a best position to anticipate the risks of renting cars to a variety of drivers and to plan for those risks. In addition, the major car agencies appear to be able to bear the consequences for the risks they create. According to the Auto Rental News 1997 Fact Book, there were 1.6 million rental cars in service at last count. Total revenues for all rental car companies reached \$14.6 billion in 1996, which was an 18.7 percent increase from 1985. Hertz's year end revenue was \$4.2 billion dollars last year. Avis had revenues of \$2.3 billion. Budget was at \$1.2 billion. Alamo generated \$201 million in revenue last year. According to the Wall Street Journal, profits for the top eight companies was \$245 million dollars in 1996.² Do not let these companies tell you they are facing egregious accident and litigation costs. The entire industry had only \$100 million in accident costs in 1996.³ To put this in perspective, their accident cost is .7 cents of a dollar, not even a penny of their revenue. Clearly, these car rental agencies are managing the risks they face in states with vicarious liability laws.

Yet, car rental companies are motivated to find the most cost effective methods in dealing with liability issues. In fact, their efficiency in dealing with liability issues has brought us to this Hearing Room today. After all, the most cost efficient way for these companies to deal with liability issues is to eliminate them altogether. But as a matter of fairness, car rental companies should not continue to profit from the business without being held responsible for accidents being caused by their lessees. Companies like Hertz, Avis, Alamo, and Budget, and countless other large and small profitable car rental concerns continue to impose risks on "individually random but collectively predictable victims of the activity,"⁴ namely the people injured by under-insured lessees.

Vicarious liability gives car rental companies incentives to conduct their businesses with the safety of others in mind. For example, they prevent drivers under the age of 25 years from renting their vehicles. They don't rent to customers without credit cards. They ask for your driver's license. They run a DMV check on your driving record. Prohibiting vicarious liability statutes would eliminate one of the remaining incentives car rental agencies have to continue to work toward decreasing the dangers they are imposing on the public at large. Do not let these companies walk away from their responsibilities.

There are numerous examples of how vicarious liability helps compensate innocent victims of accidents that involve rental cars, but I would like to leave you with just one. Two married couples rented a vehicle from Budget Rent-A-Car for a trip to Cornell University in Ithaca, New York. The rental contract named both couples as the parties allowed to drive the car. Unfortunately, there was an accident. One of the wives was driving when her view became distorted due to rain and fog. Due to *her unfamiliarity with the vehicle*, she could not find the windshield wiper. She lost control of the car, veered across two lanes of traffic, rolled over, and hit an embankment. The wife who was a passenger, a cardiologist, suffered a severe traumatic brain injury and will never remember her medical training or be independent again.⁵

Let me pose this question as my concluding remarks. Who is better positioned to cope with the risk? The wife who has suffered traumatic brain injuries because she happened to have the unfortunate luck of traveling in a rented car that was unfamiliar to the driver? Or Budget, who has to deal with the risk of accidents every day and who profits from putting drivers on the road every day? For those states with vicarious liability laws for auto rental agencies, we believe that system is more equitable and fair than the system S. 1130 would create. The Motor Vehicle Rental Fairness Act protects companies that profit from risk-creating activities at the expense of innocent victims. Do not let innocent victims go uncompensated to protect the thriving car rental industry.

Last Congress, as time was running out on the Second Session, these same rental car companies tried an end run around any real legislative scrutiny and attempted to have this same type of legislation buried in the massive Omnibus Appropriations bill. They were stopped dead in their tracks. Of course, that might not stop them from making a second try in the next three weeks.

²Lisa Miller, *Car Rental Companies are Jacking Up the Prices*, *Wall Street Journal*, Feb. 4, 1997 at B6.

³*Auto Rental News*, Sept./Oct. 1996.

⁴Harry J. Steiner, *Moral Argument and Social Vision in the Courts* 71 (1987)

⁵*Su v. Hong Fu and Freedom River d/b/a Budget Rent-a-Car*, 733 A.2d 1133 (NJ 1999).

Nevertheless, today, at least, the sunlight of public scrutiny is being directed on this special interest legislation that would gut state rights and potentially expose our communities to more reckless behavior on the roads. Mr. Chairman, I very much appreciate having the opportunity to discuss the nature of this legislation and why it should be strongly opposed. Thank you.

Senator ASHCROFT. Thank you very much.

I am pleased to note the presence of the Senator from Washington here, and would ask if he had any comments, or chose to question the witnesses.

**STATEMENT OF HON. SLADE GORTON,
U.S. SENATOR FROM WASHINGTON**

Senator GORTON. I think it is time, Mr. Chairman, for you to be able to ask questions. As you know, I am a cosponsor of this bill, which was one element in the broader product liability legislation that has been considered a number of times, and once at least got as far as a veto by the President.

While I was listening to this last testimony, I was also reading the staff memo we have here, and I am tickled by the one-liner that I suspect you read as well, and the line is, Justice Benjamin Cardozo, considered one of the leading jurists in the development of tort law, described the vicarious liability doctrine in the following manner: "The whole doctrine is foolishly antiquated, unjust, and ought to be abolished, but I suppose we shall have to leave the change to the clumsy process of legislation." He wrote those words in 1928. We are still at the clumsy process 71 years later.

Senator ASHCROFT. I would make a comment on that if I thought I could add to it. [Laughter.]

Well, let me begin by asking a question. Is there any practice, Mr. Wagner, that is taken by car rental companies to ascertain the identity of people to whom they rent? Are there any requirements?

Mr. Stewart suggests that car rental companies are solely interested in volume, and that they do not check things. Are there things that are done?

Mr. WAGNER. Senator, thank you for asking that question. I believe that Mr. Stewart painted the industry with a very broad brush when he made that comment, and certainly I would call upon Mr. Elder or others to make comments as well, but Enterprise Rent-A-Car does, in fact, take precautions in entering into rental agreements with customers.

We typically check to ensure that there is a driver's license, an valid driver's license. We do inquire about insurance, as I understand the practice, and in fact we even go so far as to offer insurance-related type products for those individuals who may have an interest.

Senator ASHCROFT. Do people have to be a specific age in order to rent from Enterprise?

Mr. WAGNER. The laws on that question vary. In some States we are required—New York specifically, we are required to rent to customers 18 years or older, and in other States we have as a matter of policy determined that we will rent to them if they are over 21 years old, and the industry varies on that, but we typically do rent to anybody who is a licensed driver at least 18 years of age or older.

Senator ASHCROFT. Are there any jurisdictions which you rent to people who are 16 years of age?

Mr. WAGNER. Not to my knowledge. Generally speaking, that is not the practice of the industry. Mr. Elder may be able to comment on that.

Senator ASHCROFT. Mr. Elder, do you have a comment?

Mr. ELDER. I do not know of anyone who rents to youngsters that are 16 years old, unless there's a State law that requires it some place. We certainly do not in Washington.

Senator ASHCROFT. Why don't you rent to 16-year-olds?

Mr. ELDER. Well, the same reason that my son had to pay an awful lot of money to buy insurance when he first got his driver's license. Youngsters are particularly prone to accidents, and we just do not feel comfortable turning them loose in our car to go out and hurt someone.

Senator ASHCROFT. Wait a second. Mr. Stewart indicates all you care about is the volume of cars that you rent. Now you are telling me that you care about something else, that you care about whether or not there are accidents, and it is reflected in your policy, so you have a policy not to rent to people who are just 16 years old?

Mr. ELDER. That is correct, absolutely. We do rent to people who are 21. The one thing that we do do as well is, if someone comes in and rents a car, and there is an additional renter, we have to make sure that additional renter or additional driver is qualified on the very same basis as the primary renter of the car just to make sure that we are not putting a car out for someone that is apt to go out and have an accident.

If it is someone who did not have a driver's license, and we just took a name, then I think we would be responsible, and should be liable for anything that happens, but we qualify additional drivers, 21-year-olds, the same way we would qualify anyone else.

Senator ASHCROFT. How much competition is there in the industry? Is there? And Ms. Faulkner, you work now for Premier, and you previously had Capitaland.

Ms. FAULKNER. Capitaland was a small independent. I work for Budget Group, Incorporated, in a division called Premier, which does local rentals.

Competition is relatively strong throughout most States, not as strong in the various States, and certainly not strong in New York at all.

There are 25 independent rental car companies left in the State of New York. All of the rest are national chains such as Hertz, Avis, National, and Budget, and Enterprise, and they maintain a presence in New York.

Senator ASHCROFT. Is there price competition among these firms?

Ms. FAULKNER. Price competition in New York is not that high. The rates are just simply high in New York to compensate for additional expenses that we have in that State, so we do not have to fight for price.

One comment, though, about not asking people if they have insurance. We do ask in New York if you have insurance coverage. We do list your insurance.

We even try to get your policy number, but we are primary in that State, and it is against the law to refuse to rent to someone

without insurance. You have to rent to that person. It is discriminatory. Many people in the city of New York do not own a car, therefore they do not have insurance, so I cannot turn them down on that basis.

Senator ASHCROFT. Senator Gorton, do you have questions you would like to ask?

Senator GORTON. No, thank you.

Senator ASHCROFT. Well, let me thank all of you for coming and presenting your testimony today. I am grateful for the opportunity to hear from you about this important issue.

I had hoped that Senator Hollings would be here. We had rearranged the schedule of testimony. I now am told that Senator Hollings is not going to be able to come. I want to thank you, Mr. Stewart, for letting us adjust your sequence of appearance in that respect, and thank you all for being here.

With that, this hearing is concluded.

[Whereupon, at 11:10 a.m., the subcommittee adjourned.]

APPENDIX

PREPARED STATEMENT OF HON. ERNEST F. HOLLINGS,
U.S. SENATOR FROM SOUTH CAROLINA

My position on this legislation—S. 1130—will come as a surprise to no one: I am opposed to its passage.

This bill is merely another attempt to overturn state tort law. As I have noted previously, those, including members of Congress and outside interests, who seek to use the power of Congress to overturn the states jurisdiction of tort law should factually demonstrate a compelling reason for such action. Based on my review of the research, and the testimony that has been submitted for today's hearing, this standard has not been met by the supporters of the legislation before the committee.

Currently, only five states hold automobile rental and leasing companies to any form of significant vicarious liability. This is hardly sufficient to justify federal preemption of state law. Moreover, there is no evidence that automobile rental and leasing companies are being burdened and hindered by liability suits. If they were, it would be reflected in their insurance premiums. However, data obtained from the Congressional Research Service (CRS) shows that insurance costs for one of the largest companies in the industry—the Hertz corporation—amount to only 3% of annual revenues. The CRS data also demonstrates that the automobile rental industry is doing exceptionally well financially, producing annual revenues of approximately \$15 billion.

As the members of this committee are aware, I have been a longtime opponent of federal legislation designed to overturn state tort law and curtail American citizens' constitutional right to civil redress for wrongs done to them in the marketplace. I believe that like all provisions of the Constitution and the Bill of Rights, the right of civil redress is a precious right, and that, as such, Congress must act with severe caution and restraint regarding legislation designed to reduce the protections afforded by this right. As I indicated above, based on the factual record before the committee, I am unconvinced of the case that has been made by the supporters of S. 1130 on the need for the legislation. I thank the Chairman for this opportunity to present my views.

STATEMENT OF HON. TRENT LOTT, U.S. SENATOR FROM MISSISSIPPI

Mr. LOTT. Mr. Chairman, I am pleased to offer my strong support for S. 1130, the "Motor Vehicle Rental Fairness Act of 1999." I am a co-sponsor of this legislation, and I want to thank Senator McCain and Senator Ashcroft for their efforts in sponsoring this legislation and moving it ahead in the Senate.

I have been committed to tort reform during my entire tenure in Congress, and I believe that this legislation presents an excellent opportunity to further address this issue. This legislation specifically addresses the problem of vicarious liability for companies that rent or lease motor vehicles. The reforms that this legislation would bring about have been considered by this Committee in each of the last two Congresses and included in legislation passed by this Committee in 1996 and 1997. In 1996, the full Senate endorsed legislation which would have implemented vicarious liability reform.

Mr. Chairman, it is time that vicarious liability reform be enacted into law with the passage of S. 1130 during the 106th Congress. Vicarious liability for car rental companies is especially unfair for the small businesses that are impacted by the application of this legal principle. Small businesses are particularly vulnerable to the devastating potential of vicarious liability laws. It is my understanding that there will be testimony today from a former small business owner in New York who was driven out of business by a judgment in a case when there was absolutely no negligence on the part of the business. This case is clearly an example of the inability of a small business to weather an unjust liability verdict. Small businesses operate on very tight budgets and profit margins, and usually cannot afford to self-insure

in this type of situation. It is clear that the practice of certain states of holding car rental companies vicariously liable is having a negative effect on interstate commerce, and it is the Constitutional duty of Congress to act in this area.

I am proud to support this legislation, and I am eager to see it move forward. I am confident that Senator McCain and Senator Ashcroft will ensure that this bill makes its way quickly through the legislative process, and I look forward to this legislation becoming law in the near future.

