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DEFINING THE SCOPE OF DUTY OF CARE OWED BY TRAVEL MANAGEMENT COMPANIES AND OTHER TRAVEL AGENTS TO CLIENTS

Presented By:

Jerry Hamilton - *Hamilton, Miller & Birthisel LLP*

JERRY HAMILTON
PARTNER
HAMILTON, MILLER & BIRTHISEL, LLP



- Founding managing shareholder of Hamilton, Miller & Birthisel, LLP, a Martindale Hubbell AV rated law firm.
- Has dedicated his practice to litigation, including, admiralty and maritime claims, hospitality law claims, transportation, medical and professional malpractice defense, personal injury defense, property and casualty, commercial litigation, products liability, and mass torts

I. Duty to Warn or Investigate

■ A. Duties Owed

- 1) Travel companies must warn travelers of known, specific dangers if those dangers are not open and obvious.
- 2) A travel agent has a duty to warn customers about dangers that it should have been aware of in the exercise of due care.

I. Duty to Warn or Investigate

■ A. Duties Owed

- 3) A travel agent must disclose to the traveler: material information that is reasonably obtainable, unless that information is obvious and apparent to the traveler.
- 4) A travel agent must exercise reasonable care in securing passage on an appropriate carrier and lodging with an innkeeper.

I. Duty to Warn or Investigate

■ B. Where No Duty is Owed

■ i. *Generally:*

- 1) If a travel agent or its employees are not negligent, courts refuse to impose liability for a tourist's injuries.
- 2) A travel agent is not an insurer, and is not required to warn of or protect against every potential incident that may occur on the trips it books.

I. Duty to Warn or Investigate

■ B. Where No Duty is Owed

■ ii. *Specifically:*

- 1) Travel agents have no duty to warn of dangers that are equally observable to both the travel agent and the customer.
- 2) Travel companies have no duty to actually inspect or investigate an independent service supplier's instrumentalities to ensure traveler safety.

I. Duty to Warn or Investigate

■ B. Where No Duty is Owed

■ ii. *Specifically:*

- 3) Unless the traveler specifically requests it, travel companies have no duty to investigate the safety of booked destinations.
- 4) Travel companies have no duty to give travelers general safety precautions.

I. Duty to Warn or Investigate

■ B. Where No Duty is Owed

■ ii. *Specifically:*

- 5) “Puffing” in advertisements does not create any contractual warranties between the travel agent and its client.
- 6) Travel companies are not assumed to insure a traveler’s safety from his own negligence or the negligence of others.

I. Duty to Warn or Investigate

■ B. Where No Duty is Owed

■ ii. *Specifically:*

- 7) Travel companies with no particular connection to a location have no duty to warn their clients of any dangers posed by nearby third parties.
- 8) Travel agents are not liable for losses resulting from the unforeseeable criminal acts of third parties.

II. Standard of Care Owed

- 1) Travel agents do *not* have to meet the heightened standard of care that common carriers are held to in the exercise of their duties.
- 2) Travel agents must exercise good faith and reasonable skill in executing their agreements with customers.

III. Contractual Liability Disclaimers

- **1) Contractual limitations of liability are binding upon tour participants**
 - This applies even if the traveler is not the person who purchased the tickets containing the limitation clause.
 - Disclaimers are binding, even if the traveler does not sign them.
 - Mere possession of a ticket containing a liability disclaimer is enough notice to a traveler.

III. Contractual Liability Disclaimers

- 2) Travel agencies can disclaim the negligence of others, as long as doing so is not against public policy.
- 3) If the disclaimer clearly and unequivocally states the intent to limit liability, then travel companies can disclaim their own negligence.
 - Such disclaimers will not apply to the minor children of injured parties.

III. Contractual Liability Disclaimers

- 4) An effective disclaimer precludes the enforcement of any warranties between a travel agent and its client.
- 5) Travel companies can use disclaimers to waive their liability for negligent selection.

IV. Third-Party Negligence

- **1) Travel companies are not responsible for the negligence of third parties whose activities the company neither operates nor controls.**
- **2) “Apparent Agency”:** If a travel agent acts in a way that would lead clients to believe that a third party is an employee of the agent, then it can be responsible for that party’s negligence.

V. Negligent Selection

■ A. Duties Owed

- 1) Travel agents will have breached their duty if: customers specifically complain about the conditions of the accommodations arranged; the agents fail to make specific inquiries into those complaints; and then continue to arrange those accommodations for future customers, despite those complaints.

V. Negligent Selection

■ A. Duties Owed

- 2) A travel company has a duty to possess some basic knowledge about the quality of the accommodations it books for its clients.
 - A travel company can rely on the general reputation of its independent service suppliers and on positive feedback from prior clients without breaching this duty, so long as it has no knowledge of past problems.

V. Negligent Selection

- **B. Where No Duty is Owed**
 - **When a travel agent has no knowledge of prior incidents, it has no duty to make specific inquiries about particular aspects of an independent contractor's business.**

VI. Forum Selection Clauses

- **Clauses limiting where a traveler can bring suit are almost always enforced.**

VII. Products Liability

- **“Strict liability” for a defective product does not extend to vacation packages and the like because they are not products, they are services.**

VIII. Premises Liability

■ A. Duties Owed

- If a travel company is the owner and/or occupier of the location where the tourist's accident occur, then it has a duty to:
 - 1) Warn of dangers it has actual or constructive knowledge about; *if*
 - 2) Those dangers are not readily discoverable to tourists

VIII. Premises Liability

- **B. Where No Duty is Owed**
 - If the travel company is not the owner or occupier of the location where the tourist's accident occurred, then the company does not have a duty to: warn of hazards, repair those hazards, or maintain the premises.