

Bill Aims to Ease Lawsuits v. Foreigners

By Ciaran McEvoy, Daily Journal Staff Writer

Service of process on far-flung defendants can be onerous, burdensome and expensive, but even veteran plaintiffs' lawyer Christopher B. Dolan was surprised when he got a bill for a yak rental to serve a lawsuit on a defendant in Tibet.

"The server had to ride the animal into the mountains," Dolan said.

Dolan, president of the Consumer Attorneys of California, is sponsoring a bill that would allow California residents injured locally by foreign nationals driving rental cars to serve lawsuits on rental car companies rather than having to track down the defendants. Dolan calls the legislation "the yak bill."

The law is designed to grease the service of process wheels, Dolan said.

Currently, the Hague Service Convention of 1965 dictates the provisions for serving lawsuits on foreign nationals. Not all countries have signed on to the convention. The lawsuits often must be translated into a foreign language and an overseas service processor must be located.

If passed, the bill would require rental car companies who provide third-party insurance coverage to the non-resident car renter, to accept service of process on behalf of the car renter or other authorized driver who caused the injury, according to the bill.

Plaintiffs must keep the maximum amount sought within the policy limit, the bill states.

"It's just a bill that takes care of a little quirk in the law and it should make everyone's lives easier," said Brian S. Kabateck, of Kabateck Brown Kellner in Los Angeles. He added that the current law requires plaintiffs to track down the defendants, resulting in hundreds or thousands of dollars in investigative fees.

Two major rental car companies - Avis and Hertz - oppose the bill, arguing California law automatically authorizes a renter's spouse or co-worker to drive the rental car whether or not they have been identified to the rental car company. As a result, rental car companies do not always have the names and addresses of authorized drivers.

"There is no precedent for a business who happens to have a temporary commercial relationship with somebody to be deemed by law to be their agent of service of process without that person's consent," said Gordon E. Hart of Paul, Hastings, Janofsky & Walker in San Francisco, who represents Avis.

Avis also is concerned it will be exposed to potential liability if they fail to locate the defendant, whose address could be out of date, Hart said, adding his client believed the law was "unnecessary and unfair."

Dolan said other rental car companies have taken a "neutral" response to the bill and aren't actively opposing it.

The bill would require rental car companies to include the service of process provision in their contracts with their customers thus avoiding potential constitutional and due process concerns, legal experts have said.

"That would not be problematic," said Trey Childress, a professor at Pepperdine University School of Law. "The key is it's contractual."

"My question is why is the Legislature concerned with this?" Childress added. "Yes, service is a bit of a hassle, but the way this gets taken care of is people get served or they waive service."

The bill's proponents have found at least one unlikely ally. State Sen. Tom Harman a Republican from Huntington Beach reportedly said his own experience trying to serve a lawsuit on a foreign national led him to support reform of the process.

The bill is out of committee and is on the floor of the California State Legislature, where - if passed - it awaits the signature (or veto) of Gov. Arnold Schwarzenegger.

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