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Constitutional Law--Guest Statute Held Unconstitutional as Denial of Equal Protection

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RECENT DEVELOPMENTS

CONSTITUTIONAL LAW—GUEST STATUTE HELD UNCONSTITUTIONAL AS DENIAL OF EQUAL PROTECTION. *Thompson v. Hagan*, 95 Idaho ——, 523 P.2d 1365 (1974).

The Idaho Supreme Court has ruled that the automobile guest statute of Idaho violates the equal protection guarantees of both the Idaho and Federal Constitutions. In *Thompson v. Hagan*[1] the court struck down a guest statute which was enacted in 1931.[2] By declaring the statute unconstitutional, Idaho joins three other states which have recently found their guest statutes to be a denial of equal protection.[3] Several weeks after *Thompson* was announced the same Idaho court declared the airplane guest statute[4] unconstitutional, again on the basis that it denied equal protection of the law.[5]

The *Thompson* decision illustrates the direct and final solution to the plague of guest statutes which have produced much critical comment[6] and various methods of judicial evasion.[7] The most notable judicial means of avoiding the effect of guest statutes has been the adoption

1. 95 Idaho —, 523 P.2d 1365 (1974).
2. IDAHO CODE § 49-1401 (1949).
   Liability of motor owner to guest.—No person transported by the owner or operator of a motor vehicle as his guest without payment for such transportation shall have a cause for damages against such owner or operator for injuries, death or loss, in case of accident, unless such accident shall have been intentional on the part of the said owner or operator or caused by his intoxication or gross negligence.
3. Brown v. Merlo, 8 Cal. 3d 855, 506 P.2d 212, 106 Cal. Rptr. 388 (1973); Henry v. Bauder, 213 Kan. 751, 518 P.2d 362 (1974); Johnson v. Hassett, 217 N.W.2d 771 (N.D. 1974).
4. IDAHO CODE § 21-212 (1949).
5. Messmer v. Kerr, — Idaho —, 524 P.2d 536 (1974).
6. A few of the many available commentaries are: Comment, *Review of the Past, Preview of the Future: The Viability of Automobile Guest Statutes*, 42 U. CIN. L. REV. 709 (1973); Comment, *The Case Against the Guest Statute*, 7 WM. & MARY L. REV. 321 (1966).
7. Leflar, *Choice-Influencing Considerations in Conflicts Law*, 41 N.Y.U.L. REV. 267 (1966); Ehrenzweig, *Guest Statutes in the Conflict of Laws*, 69 YALE L.J. 595 (1960).

by numerous states of the significant contacts or relationship doctrine in conflicts of law.[8] By abandoning the traditional lex loci delicti concept, which required the forum to apply the law of the place of the tort, many states merely frustrated the effect of guest statutes without dealing directly with the problem. The significant contacts doctrine allows the forum to apply the law of the jurisdiction which has the most significant contacts with the parties. The significant contacts approach complicated the problems of the injured plaintiff. His opportunity for recovery was now dependent not only on the absence of a guest statute but also on the choice of law rule followed by the forum state and the court's determination of which state had significant contacts with the plaintiff.

Oklahoma provides an excellent illustration of a jurisdiction which has been caught in the guest statute dilemma. Oklahoma has no guest statute but instead follows the common law rule allowing an automobile guest to recover upon a showing of ordinary negligence of the host. Even so, the Oklahoma court in *Derryberry v. Derryberry*[9] denied recovery to the plaintiff because of the lex loci doctrine of conflicts. Since the place of the tortious injury was Texas where a guest statute was in effect the *Derryberry* court applied the texas statute. In July, 1974, Oklahoma in *Brickner v. Gooden*[10] rejected the lex loci rule of conflicts and adopted the significant relationship rule to allow recovery of an airplane guest injured in Mexico. The court found that, because the parties were residents of Oklahoma, the journey originated and was to terminate in Oklahoma, and the airplane was registered and hangared in Oklahoma, the most significant relationship to the occurrence was not with Mexico but with Oklahoma, and therefore the substantive law of Oklahoma should apply. Though the court specifically overruled all cases contrary to *Brickner*,[11] an Oklahoma resident cannot be certain that he will recover when he is an injured guest because the tests for significant contacts involve consideration of several variables besides residency. Predictability in a guest cause of action will be available only when other states follow the lead of *Thompson* and directly attack the problems created by the guest statutes.

Thompson is typical of the factual circumstances which surround

8. For a listing of states and the conflicts rule presently in force see Annot., 29 A.L.R.3d 603 and the 1973 Supplement.

9. 358 P.2d 819 (Okla. 1961); *accord*, Gill v. Hays, 188 Okla. 434, 108 P.2d 117 (1940).

10. 525 P.2d 632 (Okla. 1974).

11. 525 P.2d at 637.

most litigation concerning guest statutes. Chad Thompson was the driver of an automobile in which Harvey Adams, a guest passenger, was injured when the automobile left the road. In response to Adams' action for injuries suffered in the mishap, Thompson filed a motion for summary judgment alleging that Adams was a guest and therefore barred from recovery by the Idaho guest statute. Both guest and host apparently were residents of Idaho where the accident occurred so that no conflict of laws question was at issue. Judge Hagan of the Idaho district court denied the motion for summary judgment and found the guest statute unconstitutional. The case reached the Supreme Court of Idaho on request for a writ of mandate ordering Judge Hagan to apply the guest statute. The supreme court denied the writ stating that under the "restrained review" test the equal protection clause of the fourteenth amendment barred the guest classification.[12] The "restrained review" doctrine prohibits the states from according different treatment "to persons placed by a statute into different classes on the basis of criteria wholly unrelated to the objective of that statute."[13] The court concluded that the denial of an action by the automobile guest against the negligent driver bears no rational relationship to the "objectives sought to be advanced by the guest statute."[14] Therefore the guest classification was a denial of equal protection.

The three basic arguments which most frequently have been advanced as justification for the enforcement of guest statutes were examined and rejected by the court. The first of these justifications—that denial of an action by a guest against his negligent host promotes hospitality—was found to be an anachronism due to the general use of liability insurance. "The explanation may have had validity in 1931 when the guest statute was first enacted, but today, the widespread incidence of liability insurance has destroyed the basis for this argument."[15] Because the statute now functions as a protection for the insurance company and does not promote hospitality no reasonable relationship exists between the promotion of hospitality and the denial of a guest's cause of action against his negligent host.

The second justification for the existence of a guest statute centered on the fear that collusive lawsuits would be encouraged as a means to recover against the host's insurance company. The court

12. 523 P.2d at 1367.
13. Royster Guano Co. v. Virginia, 253 U.S. 412, 415 (1920).
14. 523 P.2d at 1367.
15. 523 P.2d at 1368.

reasoned that the guest statute did not lessen the opportunity for collusion. A nefarious guest could just as easily allege the gross negligence required by the guest statute as he could the ordinary negligence sufficient in the absence of the statute. Also, because the statute denied all guests recovery and did not protect those who had not engaged in fraud the court found it overinclusive. Again, no reasonable relationship was found to exist between the desire to prevent collusion and the guest statute.

The third justification advanced in Thompson for preventing a recovery by the automobile guest was that the guest statute "is a legislative means of bringing the duty owed by the automobile host to his guest into parity with the duty owed by a landowner to a licensee."[16] The court found that there are factual distinctions between an automobile host-guest situation and a landowner-licensee situation, that the two situations involve different duties, and that there is no apparent need for the duties of automobile hosts and landowners to be the same. Thus, the court found the establishment of parity was not a purpose of the statute, was not accomplished by it, and so did not justify the unequal classification of guests.

Guest statutes acquired judicial approval in the United States Supreme Court decision of *Silver v. Silver*.[17] By upholding the Connecticut guest statute despite attack on the basis of a denial of equal protection the Supreme Court gave support to statutes which were subsequently applied.[18] It was not until New York in *Babcock v. Jackson*[19] abandoned the conflicts of law doctrine of lex loci delicti that the reign of guest statutes came under serious threat. In decisions prior to *Babcock*, New York followed the traditional choice of law and applied the substantive law of the place of injury.[20] The *Babcock* court reasoned that, where the guest and host were New York residents, the automobile was licensed in New York, and the journey had originated and was to terminate in New York, the guest's ability to recover should be determined by New York law and not the law of Ontario where the accident occurred. The *Babcock* court found that New York's policy was to allow recovery by a deserving automobile guest and that the pol-

16. 523 P.2d at 1369.
17. 280 U.S. 117 (1929).
18. *See, e.g.*, Goldberg v. Musim, 162 Colo. 461, —, 427 P.2d 698, 703 (1967).
19. 12 N.Y.2d 473, 191 N.E.2d 279, 240 N.Y.S.2d 743 (1963).
20. Kaufman v. American Youth, 5 N.Y.2d 1016, 158 N.E.2d 128, 185 N.Y.S.2d 268 (1959). *But see* Kilberg v. Northeast Airlines Inc., 9 N.Y.2d 34, 172 N.E.2d 526, 211 N.Y.S.2d 133 (1961).

icy of Ontario to deny guest recovery was not thwarted by applying New York law. Ontario is interested in preventing fraud by its own residents and has no interest in the residents of New York. "Whether New York defendants are imposed upon or their insurers defrauded by a New York plaintiff is scarcely a valid legislative concern of Ontario simply because the accident occurred there, any more so than if the accident had happened in some other jurisdiction."[21] This policy to circumvent the laws of other jurisdictions which deny recovery to New York residents was more directly stated in *MacKendrick v. Newport News Shipbuilding and Dry Dock Co.* when the court said that New York's policy was "to protect New York domiciliaries, whenever possible, from denial of a recovery in another jurisdiction."[22]

While *Babcock* provided the impetus for other jurisdictions to reject the place of injury doctrine[23] and to grant a more equitable protection to automobile guests, it further complicated the plight of the unwary guest by requiring him to be cautious of his place of domicile and that of his host if he had failed to select his place of injury. Application of the significant relationship doctrine defeated the recovery of an automobile guest in the case of *Fuerste v. Bemis.*[24] In *Fuerste* the Iowa court applied the Iowa guest statute and denied the plaintiff guest recovery even though the accident occurred in Wisconsin, which follows the common law rule granting recovery when ordinary negligence is shown. The result of attacking guest statutes indirectly by changing conflicts rules was to add unpredictability and forum shopping to guest litigation.

The rationale employed in *Thompson* to strike the guest statute has not been followed in all courts which recently have dealt with the question. In the case of *Tisko v. Harrison* the Texas Court of Civil Appeals rejected the constitutional attack on guest statutes stating that "Courts should accept legislative classifications as valid unless invidious discrimination is clearly demonstrated."[25] The *Tisko* court concluded that because legislatures are incapable of drawing a guest statute so narrowly as to prevent only actual collusive guest suits, because the Texas statute was not designed to discourage ingratitude, because

21. 12 N.Y.2d 473, 483, 191 N.E.2d 279, 284, 240 N.Y.S.2d 743, 750 (1963).
22. 59 Misc. 2d 994, 302 N.Y.S.2d 124 (Sup. Ct., Trial Term, New York County, 1969).
23. *See* First Nat'l Bank v. Rostek, — Colo. —, 514 P.2d 314, 319 (1973).
24. — Iowa —, 156 N.W.2d 831 (1968); Dym v. Gordan, 16 N.Y.2d 120, 209 N.E. 2d 792, 262 N.Y.S.2d 463 (1965). *But see* Tooker v. Lopez, 24 N.Y.2d 569, 249 N.E.2d 394, 301 N.Y.S.2d 519 (1969).
25. 500 S.W.2d 565 (Tex. Civ. App. 1973).