

Goldberg



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Major J. P. Donato
File: B-232352
Date: March 7, 1989

DIGEST

Direct payment may be made to car rental company on behalf of military member who rented the car where the car was damaged by another member operating it recklessly, and for personal business, but the government also should collect any amounts it pays the company from the member who caused the damage.

DECISION

This advance decision responds to a series of questions concerning the liability for damages to a car properly rented from Avis by Marine Corps Major J. P. Donato, where the damages occurred while the car was being driven by another Marine on other than official business.^{1/} We conclude that the government properly may pay Avis directly for the damage, but then should pursue reimbursement for the payment from the driver.

Major Donato and five other Marines were ordered to perform temporary additional duty travel. As the senior officer, Major Donato received verbal authorization, later confirmed by a modification to his original orders, to rent a car during the temporary additional duty period.

Major Donato rented a car on August 30, 1987, and, in doing so, ~~declined~~ the Collision Damage Waiver contained in the rental agreement. Under the agreement, then, the government ~~would pay~~ for any damage to the car in view of the ~~declination~~;

Later that evening, Major Donato left the car keys with two enlisted men so that they could leave the hotel for dinner. Shortly after midnight, a second officer traveling with the

^{1/}The Per Diem, Travel and Transportation Allowance Committee has assigned PDTATC Control No. 88-11 to this case

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group requested the car keys from the enlisted men for the asserted purpose of finding a place to eat. This officer was unable to find an open restaurant and, instead, purchased a 12-pack of beer; after consuming some of the beer and while attempting to return the car to a parking place in front of the hotel, the officer ran the car through the hotel wall causing serious damage to the vehicle. The officer was arrested and eventually pled guilty of careless and reckless driving. Marine Corps authorities have determined that the officer was outside the scope of his employment and not in the line of duty with regard to this accident.

The car rental agency has filed a claim against Major Donat for the full amount of the damage, \$7,800, on the basis that it had no liability under the rental agreement in light of the cause of the accident. Major Donato, in turn, submitted a supplemental travel voucher for that amount requesting that the rental agency be paid directly on his behalf.

At the time of the incident that gave rise to the rental agency's claim, Avis and the Military Traffic Management Command (MTMC) had an agreement providing special privilege to all federal employees, including military members. Under this agreement, Avis initially assumed liability for all collision damage, including damage that otherwise would have been subject to a deductible. The agreement further provided that "the renter will be responsible for the full amount of damages if he violates any of the terms of the rental agreement; if he abuses the vehicle, drives it recklessly or while under the influence of alcohol and drugs."

The materials we have received from the Per Diem, Travel and Transportation Allowance Committee do not indicate an awareness of the MTMC-Avis agreement. Instead, the questions posed are premised on the view that the terms of the rental agreement signed by Major Donato control liability. Under both documents, the rental agency is not liable for damages that result from abuse of the vehicle, reckless driving, or driving while under the influence of alcohol or drugs.

The first question presented is whether direct payment may be made to Avis.

The determination of whether the government can pay Avis directly turns, in the first instance, on whether Major Donato, the authorized renter, should be relieved of liability even though the damage occurred while the car was being used for other than official purposes. In this

respect, the Joint Federal Travel Regulations (JFTR) predicate government liability for a deductible amount (which may be discharged by reimbursement to the member or direct payment to the rental agency) on damage to the rented vehicle occurring in the course of official business. 1 JFTR para. U3415C2b. Our previous decisions likewise have focused on the vehicle's use at the time damage occurred to determine the issue of "official business." See 65 Comp. Gen. 253 (1986); B-220779, Apr. 30, 1986; B-209951, June 7, 1983.

Neither the JFTR nor our decisions address the question of liability on the part of the person responsible for the use of the car where, as here, that person properly gave control of it to another authorized driver^{2/} who then acted in a manner that violated the rental contract. In such circumstances, we do not think the fact that the vehicle was damaged while being used on other than official business should be reason for the government to refuse to compensate the car rental company on behalf of the renter/innocent party.

The remaining questions for our consideration are whether the government disbursing officer, before settling the claim, should determine whether Major Donato's private insurance carrier made any payments to Avis, and whether the government should take steps to recover any amounts paid to Avis from the officer who caused the damage. We see no reason not to coordinate payment to Avis with Major Donato's insurance carrier, although we note there is nothing in the record to suggest that the carrier has been involved to date. Further, since the damage ultimately is the responsibility of the individual whose negligence, outside the scope of his duties, caused it, any amounts paid to Avis then should be collected from him. In this regard, the material submitted by the Committee reflects that the driver in fact has submitted a claim to his own insurance carrier, disposition of which apparently has been withheld pending this response.


for Comptroller General
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^{2/} Major Donato clearly was acting properly in giving the car to other members of his party so that they could go to a restaurant for dinner. See 65 Comp. Gen. 253 (1986).