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USING TRAVEL AGENTS

BY RICHARD HARTZMAN

Retail travel agents are not a highly regulated industry group, yet, legally, a certain code of conduct does apply to them.

When using an agent to make your meeting or conference arrangements, you should be aware of the basic legal standards that he or she must uphold.

Like wholesalers and tour operators, travel agents are middlemen—parties who sell the services of airlines, hotels, cruise lines and other travel suppliers. As a general rule, travel agents are unregulated, unlicensed and operate on the principle of *caveat emptor*—let the buyer beware.

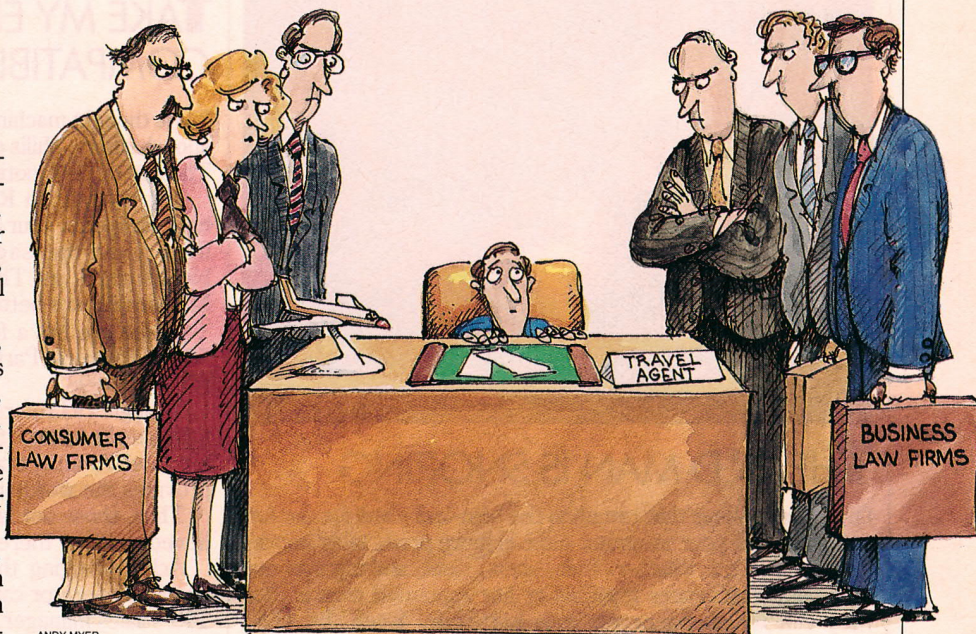
Perhaps for this reason, more fraud, negligence and illegality have been linked with them and other middlemen than with other professionals in the travel industry. The resulting problems have spawned a sea of litigation and created considerable controversy.

Arrayed on one side are lawyers who defend middlemen and offer advice on how to avoid liability and prevent problems. On the other, are lawyers who represent consumers who have suffered losses or injuries in connection with travel services provided by middlemen. The latter are forever seeking novel means of gaining favorable verdicts, but they also play a positive role in developing higher standards within the travel industry.

Emerging from the steady clash of these opposing sides and the mass of resulting litigation is a short list of well-defined duties that travel agents must fulfill when servicing clients. The scope of these obligations, which are defined mainly in court decisions, varies somewhat from state to state. In addition, the degree of responsibility can depend upon whether an agent acts on behalf of both the traveler and supplier or for only one of the parties. Someone serving as the agent of another, has greater responsibilities than a mere broker would have.

The following three categories of travel agents' duties are drawn from Thomas Dickerson's book, *Travel Law*.

(1) *The travel agent has a duty to confirm reservations.* A basic travel agent function is to make and confirm reservations, whether for transportation, hotel



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or cruise accommodations, and to verify the availability of contracted travel services.

If a hotel fails to provide accommodations because of a conscious overbooking policy, the travel agent who booked the hotel can be liable for failing to investigate. If a cruise ship dishonors reservations because it has been impounded, the travel agent may be liable for not having determined the ship's availability. If an airline has a history of overselling flights, a travel agency can be liable for denial of passage, if it knew or should have known of this practice.

(2) *The travel agent has a duty to provide necessary information.* As a professional, the travel agent is expected, within reason, to be aware of, and provide necessary information which can make the difference between a satisfying and a ruined travel experience.

Failure by an agent to inform travelers of the need for visas can lead to liability if a trip, as a consequence, is aborted. If a traveler relies on an agent's recommendations for accommodations, and the latter turn out to be totally unacceptable, the travel agency will be liable for damages, provided that any reasonable agent would have known *not* to make such recommendations. Moreover, a travel agency may have a duty to warn of destination hazards about which it knows or should know. An ongoing epidemic or

the potential for civil disturbances could fall into the "hazard" class.

(3) *The travel agent has a duty to determine the responsibility and financial stability of suppliers.* Agents are expected to investigate the reliability and financial stability of suppliers that they recommend to clients. Failure to do so can lead to liability if a supplier either folds because of insolvency or has a reputation for being unreliable.

Travel agents may include disclaimers of liability in their contracts with clients. This, of course, is a matter for negotiation. And, depending on the circumstances, a disclaimer clause may be disregarded by a court when a client suffers damages.

When a planned event goes awry, fault can lie with a travel agent, a supplier, the client, or any combination of these. It often takes a lawyer to untangle the web of responsibilities and determine who might be legally liable.

But remember, there is a difference between legitimate lawsuits and nuisance cases. The former serve not only to redress injuries, but help to maintain standards in the travel industry. The latter only hurt the industry and should be avoided. ■

Richard Hartzman is a member of the bar in New York and Colorado. He practices law in New York City and writes for *M&C* on a variety of subjects. Your law-related questions and experiences as a meeting planner are welcome.