

U.S. Senate Committee on
Commerce, Science & Transportation

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Subcommittee on Consumer Protection, Product Safety & Insurance

Hon. Mark Pryor, Chairman

Statement of Ethan Ruby Supporting
Repeal of the Graves Amendment

September 28, 2010

Mr. Chairman:

My name is Ethan Ruby. On November 29, 2000 I was a pedestrian walking across a street in New York City within the marked pedestrian crosswalk with the right-of-way when a rental car owned by Budget Rent-A-Car ran a red light and struck a van in that intersection that had the right of way. In the ensuing collision the van careened into the crosswalk and struck me which resulted in my being immediately and irreparably paralyzed. I was then 25 years old.

Fortunately for me, because I live in New York whose law held rental car companies as vehicle owners responsible for injuries caused by their negligent drivers--before the Graves Amendment became law--, I was able to win compensation from Budget-Rent-A-Car and have a fighting chance to make the best of my compromised life.

I am here today to ask that Congress repeal the Graves Amendment.

I speak on behalf of tomorrow's accident victims who will suffer catastrophic injuries but lack the financial capacity to restore and improve the quality of their lives if commercial rental car companies are insulated from liability for the negligence of those who rent their vehicles. If the Graves Amendment is not repealed many of those victims are likely to lack access to essential medical care, replace their lost earnings potential, and provide them with reasonable compensation for their suffering.

In my case you should know that the driver of the rented car had warrants out for his arrest for unpaid speeding tickets when he commandeered the Budget car he was driving. To the best of my knowledge nothing was done by Budget to check the validity of renters' driving records prior to entrusting their vehicle to them or even to determine whether their driver's licenses were in good standing. All a driver had to do was present a driver's license to a rental car agency's desk clerk and a credit card and he or she would be given a car. No questions were asked as to whether the driver had any other insurance in effect that would provide automobile liability protection to an innocent

victim of an accident. Drivers were furthermore given the option of purchasing or declining automobile liability insurance coverage through the rental car company.

Let me describe for you what Budget Rent-A-Car's driver did to me and what my life has been like in the nearly ten years since my accident.

In the aftermath of the accident I was taken by ambulance to a local hospital in New York where I received emergency care and underwent major surgery to stabilize my condition. It was immediately clear that I would never walk again. I sustained an irreversible spinal cord injury. I could not move my legs, was in intense pain, and was more prepared to die than to live. Not only was I paralyzed, I lost control of my bladder and bowel function. Normal sexual function and capacity was also lost. Nothing has changed. Nothing will change.

Months of incredibly difficult and arduous rehabilitation followed my emergency and intensive care in the hospital. The struggle to gain the strength and ability just to learn to sit upright using my head to balance me (as I had lost all control of my body from the chest down) and then to learn and be able to move from a stable chair or bed into a wheelchair was a monumental challenge. A wheelchair was going to be my way of moving from place to place for the rest of my life. For those who are able to walk normally it may be hard to imagine the effort it takes to learn how to transition from walking to a wheelchair. Also, once you are confined to a wheelchair you find that life does not accommodate you and there are constant, seemingly insurmountable obstacles to overcome to adapt to your new condition.

The cost of my medical and rehabilitation care was astronomical. Once my limited private and personal medical insurance was exhausted I was forced to use savings to meet many of the expenses and I relied on my family for as much help as they were able to provide. Future medical, surgical and rehabilitation care will likewise be very costly.

My doctors predicted medical complications as I go through life. They are right. I must be diligent to avoid infection and the cascade of problems they cause.

Before the accident I was strong, healthy, athletic, running my own securities day trading business and making a good living. The future looked bright.

Thankfully, I had a team of dedicated lawyers led by Marc S. Moller and David C. Cook of Kreindler & Kreindler who prepared my case and represented me in a lengthy and hard fought trial against Budget Rent-A-Car. After years of litigation, just prior to jury selection Budget conceded liability leaving the quantum of damages to be determined by the jury. The jury returned a substantial verdict in December 2004. With minor adjustment after the defendant sought a reduction in the verdict, it was upheld on appeal. (Attached to the statement are two opinions for the trial and Appellate Court in my case and the brief which explains our position in detail.) One of the elements of damages we sought was money to harvest sperm to be available for in vitro fertilization

were I able to marry. I now share the joy of a young son 20 months old with my beautiful wife who I married after I was injured and progressed to my present level of recovery.

I was lucky!

My ordeal has brought me into contact with many spinal cord injury victims who I try to encourage to make the best of their lives despite their circumstances. Their lives are incredibly hard. I know from the experiences they have shared with me that the quality of their lives is directly influenced by the amount of money they have, or lack, to gain the best medical care possible and to make the adjustments that will make their lives livable. Without the money to obtain adequate care and replace lost income spinal cord accident victims' lives are victimized twice: first by the accident that caused the injury and second with, painful certainly, that they will not have the financial resources to reach the highest level of recovery their condition allows nor experience any realistic enjoyable quality of life.

The reason the Graves Amendment has such a draconian and unfair impact is that it shifts the burden of loss from the profit-making rental car companies and their insurers who have the capacity to protect their economic interest to the potential victims of their negligent drivers. It simply is unfair to make the innocent victims of accidents protect rental car company coffers. Moreover, to the extent that victims then need help, any limited relief most likely has to come from the state. Taxpayers ultimately foot the bill if victims cannot. That is what the Graves Amendment has done.

The Graves Amendment should be repealed.

Ethan Ruby