
JOURNAL

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Editorial Statement

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3. Camp, *op. cit.*, p. 144.
4. Charles D. Russell, "Kidnapping as a Terrorist Tactic," in Brian Jenkins (ed.), *Terrorism and Personal Protection*, Butterworths, 1984.
5. Richard Thaler and Sherwin Rosen, "The Value of Saving a Life: Evidence from the Labor Market," in N. Terleckyj (ed.), *Household Production and Consumption*, National Bureau of Economic Research, New York, 1976.
6. *Ibid.*, p. 292. This figure is in 1967 dollars paid to workers earning less than the average industrial wage.
For specific examples of such behavior, see Susanna Purnell and Eleanor Wainstein, *The Problems of U.S. Businesses Operating Abroad in Terrorist Environments*, The Rand Corporation, R-2842-DOC, 1981, pp. 27-29; "Chronology," pp. 64-80.
7. If we consider the top five managers of a company to be at risk, our assumed figure of 6,500 people implies a target pool of about 1,300 companies. There were 1,500 members in the Argentina Chamber of Commerce, Industry, and Production in 1969-78.
8. Purnell and Wainstein, *op. cit.*, pp. 64-80.
9. "Foreigners in Argentina Growing Wary," *The New York Times*, August 8, 1973; "Coping with Terrorism in Argentina," *Business Week*, March 9, 1974, p. 40.
10. "Argentine Policies Please U.S. Business," *The New York Times*, December 9, 1979.
11. John Savage, "Terrorists vs. Bodyguards," *Top Security*, Vol. 3, No. 10, February 1978, p. 305.
12. Russell, *op. cit.*
13. *Wall Street Journal*, "In Argentina Business is Thriving—At Least for All the Kidnappers," June 13, 1973.
14. Risks International, *Quarterly Risk Assessment*, April-June, 1984.
15. Roger M. Williams, "Executive Kidnapping—The Rise of a Grim New Business," *Saturday Review*, January 5, 1980, p. 16.
16. These figures were provided by William L. Pope, Senior Vice President of John Burnham and Company, insurance brokers. These rates are not directly comparable to the rates cited above for the narrower type of insurance which just covered a few individuals. The rate *per person covered* of the broader policies would be a tiny percentage of that for the older policies.
17. "Parade Magazine," *The Washington Post*, January 8, 1978, p. 13.
18. Omitted from this average is the \$14.2 million paid for the return of Victor Samuelson, Esso oil refinery general manager.
19. Vittorio Pisano, "The Italian Experience," in Jenkins (ed.), *op. cit.*
20. See, for example, "Business Fights Terrorism on its Own," *The New York Times*, November 19, 1979; "Insurance Against Terrorism a New Defense," *Security World*, (quoting Risks International), October 1981, p. 21.
21. "The London Line: Kidnap Insurance," *Business Insurance*, December 12, 1983.
22. "Aetna Enters Competitive K & R Mart," *Journal of Commerce*, December 15, 1983, p. 7.
23. Roger M. Williams, "Executive Kidnapping—The Rise of a Grim New Business," *Saturday Review*, January 5, 1980, p. 18.

Terrorism and Corporate Liability

Sam Passow

WHILE AN American executive may be kidnapped in a foreign country, it is an incident fraught with local implications—especially its effects on the corporate pocketbook. Of the past seven kidnap cases involving executives of U.S. corporations based overseas, litigation against the corporation has taken place in six. Yet often, one of the least considered aspects of an international abduction is the corporate liability before, during and after an incident.

The probabilities of a lawsuit against the corporation by the kidnapped victim or his family are very high whether or not the rescue of the victim is successful, as it is always possible to retrospectively criticize the negotiations of the corporation and/or its agents.

According to Joseph W. Lucca, staff counsel for the Bristol-Myers Company, there are a number of important lessons multinational corporations can learn from some of the more celebrated cases of kidnapped executives.

The assumption that a corporation can best protect itself against suits by victims of kidnappings by giving employees sufficient control over their security and advising them in advance of the potential dangers of the assignment was affirmed by a *U.S. District Court, Southern District of New York* in the 1980 case of *Gustavo G. Curtis & Vera Curtis v. Beatrice Foods Company*.

Curtis, the Chief Executive Officer of Industrias Gran Colombia, S.A., a wholly-owned Colombian subsidiary of Beatrice Foods Company, was kidnapped on a highway in Bogota in September 1976 and held for \$5 million ransom—a sum far in excess of his own or the local company's means. After seven months of captivity, Beatrice Foods secured his release with a ransom payment of \$430,000. Curtis sued Beatrice Foods for \$200 million in damages claiming the firm had been negligent in handling the kidnapping. The case was not only dismissed, but the appeal was also denied.

In his ruling, Judge Milton Pollack observed that

Curtis failed to assure his own safety by tightening security around himself, despite having "the authority to take whatever actions he thought necessary . . . moreover, (he) had some prior training in how to deal with such situations." In fact, Curtis was warned by the U.S. Embassy in early 1976 that he was a potential target, and in 1975, he attended a security conference arranged by Beatrice Foods.

The notion that a corporation has a responsibility to share with the spouse of a kidnapped victim the true nature of the victim's plight and the full extent of the actions it is taking to secure the release of the victim while the crisis is in progress despite the potential security risk can be concluded from two cases: *Donna Niehous v. Owens-Illinois, Court of Common Pleas, Lucas County, Ohio, April 1979*; and *Bevens v. Goodyear Tire & Rubber Company, Summit County, Probate Court, Akron Ohio, May 1982*.

The first of these two cases involved William Niehous, a Vice President and General Manager of Owens-Illinois, Venezuela, who was taken from his home in 1976 and held in captivity for 40 months in a series of jungle huts before his fortuitous rescue by police. Prior to his release, his wife filed a \$4 million suit against the company, claiming mishandling of ransom negotiations. However, while the suit was withdrawn after Niehous was rescued, one preeminent conclusion to emerge from the case is that the spouse of a victim can sufficiently lose confidence in the corporation so as to construe any setback as bungled action by the corporation.

In the so-called Bevens case, the family of Clifford Bevens, a Goodyear executive who was killed in Guatemala in August 1981 during an attempted rescue after eight months in captivity, succeeded in obtaining a \$1.25 million settlement from Goodyear under a wrongful death claim. Since the case was settled, there is no court record. However, it is obvious that the plaintiff, whether justified or not,

analyzed the actions taken by Goodyear in retrospect and sued. In fact, Mrs. Bevens' attorneys engaged a consultant to evaluate the actions taken by Goodyear. The consultant was asked to comment on what would be the normal course of action for a company to follow in a situation like this. While it is not known what the consultant reported, it would certainly be a cause of concern for any corporation to have every moment during a kidnapping negotiation analyzed in retrospect.

Finally, there are precedents for the "business judgment" rule of law as set by the Supreme Court of the State of New York in October 1981 in the rather unusual case of *Flick (Stockholder) v. Exxon Corporation*. In this suit, shareholders of the company alleged that the officers of the company had no right to pay \$14.2 million in ransom for the release of Victor Samuelson, General Manager of a refinery in Argentina who was abducted in December 1973 and held for five months. With this ruling, the courts have clearly told corporations that they need have no fear of shareholder challenges to decisions made in crisis situations. The court showed great deference when asked by shareholders to second-guess a corporate Board's view of what is good for the corporation. However, this conclusion presupposes that corporate officers acted in good faith, which in the context of a terrorist incident means the absence of collusion by which the corporate officers would profit personally from the ransom payment.

"Analyzing these cases will bring home the realism of the policies and procedures we all preach about and recommend to our Chief Executive Officers and other top people," says Lucca. Adding, "I don't think any CED worth his salt will fail to pay attention to a lawsuit. In fact, I'm convinced they have a greater understanding of lessons of lawsuits than do the lawyers themselves."

NOTE: Mr. Passow is a freelance writer in New York who specializes in writing about corporate responses to terrorism and white-collar crime.