

THE WALL STREET JOURNAL

Who's Liable When an Employee Is Kidnapped?

When an American executive is kidnapped in a foreign country, it is an incident fraught with implications for the corporate pocketbook. Of the past seven kidnap cases involving U.S. corporate executives based overseas, litigation 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 chances of a lawsuit against the corporation by the kidnap victim or his

Moreover, (he) had had some prior training in how to deal with such situations." In fact, Mr. Curtis had been warned by the U.S. Embassy in early 1976 that he was a potential target, and in 1975 he had attended a security conference arranged by Beatrice Foods.

The notion that a corporation has a responsibility, while the crisis is in progress, to share with the spouse of a kidnap victim the true nature of the victim's plight and the full extent of the actions it is taking to secure the victim's release despite the potential security risk. This can be concluded from two cases, *Donna Niehous vs. Owens-Illinois*, in the Court of Common Pleas, Lucas County, Ohio, April 1979; and *Bevens vs. Goodyear Tire & Rubber Co.*, in 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 in Venezuela, who was taken from his home in 1976 and held in captivity 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 However, while the suit was withdrawn after Mr. Niehous was rescued, one clear conclusion that emerged from the case is that the spouse of a victim can sufficiently lose confidence in the corporation so as to construe any setback or failure as bungled action by the corporation.

In the Bevens case, the family of Clifford Bevens, who was killed in Guatemala in August 1981 during an attempted rescue after eight months in captivity, managed to get a \$1.25 million settlement from Goodyear under a wrongful death claim. As 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's 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 difficult for any corporation to have every movement during a kidnapping negotiation analyzed in retrospect.

Finally, the precedence for the "business judgment" rule of law was set by a Supreme Court of New York state in October 1981 in the case of *Flick [Stockholder] vs. Exxon Corp.* In this suit, shareholders alleged that the company's officers 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 its ruling, the court clearly told corporations that they need have no fear of shareholder challenges to decisions made in crisis situations.

"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 Bristol-Myers's Mr. Lucca. "I don't think any CEO worth his salt will fail to pay attention to a lawsuit. In fact, I'm convinced they have a greater . . . understanding of the lessons of lawsuits than do lawyers themselves."

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

Manager's Journal

by Sam Passow

family are very high whether or not the victim is rescued, as it is always possible in hindsight to criticize the negotiations of the corporation and/or its agents.

According to Joseph W. Lucca, staff counsel for Bristol-Myers Co., there are a number of important lessons multinational corporations can learn from these cases:

- The assumption that a corporation can best protect itself against suits by kidnap victims by giving employees sufficient control over their security and advising them in advance of the potential dangers of their assignment. This was affirmed by a federal court in New York in the 1980 case of *Gustavo G. Curtis and Vera Curtis vs. Beatrice Foods Co.*

Mr. Curtis, the chief executive officer of Industrias Gran Colombia S.A., a wholly owned Colombian subsidiary of Beatrice Foods, 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. Mr. Curtis sued Beatrice Foods for \$200 million in damages, claiming the company had been negligent in handling the kidnapping. The case was not only dismissed, the appeal also was denied.

In his ruling, Judge Milton Pollack observed that Mr. Curtis failed to assure his own safety by means of tightened security despite having "the authority to take whatever actions he thought necessary. . . .

Notable & Quotable

Ali Wardhana, Indonesia's minister for the economy, at a symposium in Davos, Switzerland:

A world governed by comparative advantage—whether or not that is reflected in trade policies—calls for a business response that evaluates each opportunity and each situation on a case-by-case basis. Low labor costs or cheap resources are not, independently and of themselves, sufficient reason for an investment decision. It is the overall climate, the political stability, the sound economic management that sets the tone. To put it more plainly, what is the benefit of a low labor-cost investment situation that produces tremendous profits if the base producing those profits is not secure, or if the profits cannot be freely remitted? So the overall investment environment should be studied, not just the narrower issues of resource and labor costs, availability of tax incentives and the like.