



# CAR RENTAL SHOW

APRIL 7-8, 2014 / RIO ALL-SUITE HOTEL & CASINO / LAS VEGAS



BRING IT TO YOU BY





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Leslie Pujo  
Attorney



# CAR RENTAL SHOW

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# LAW & ORDER

SUV: SPORT UTILITY VEHICLES

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# LAW & ORDER

## SUV: SPORT UTILITY VEHICLES

In the Legal System, Rental Car Companies are protected by two separate, yet equally important groups.

The Drafters of the agreements governing the terms of a rental transaction, and the Counter Agents who interact with the customers.

These are their stories...



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# “Holiday Traveler Blues”



January 31, 2014 – 8:00 PM

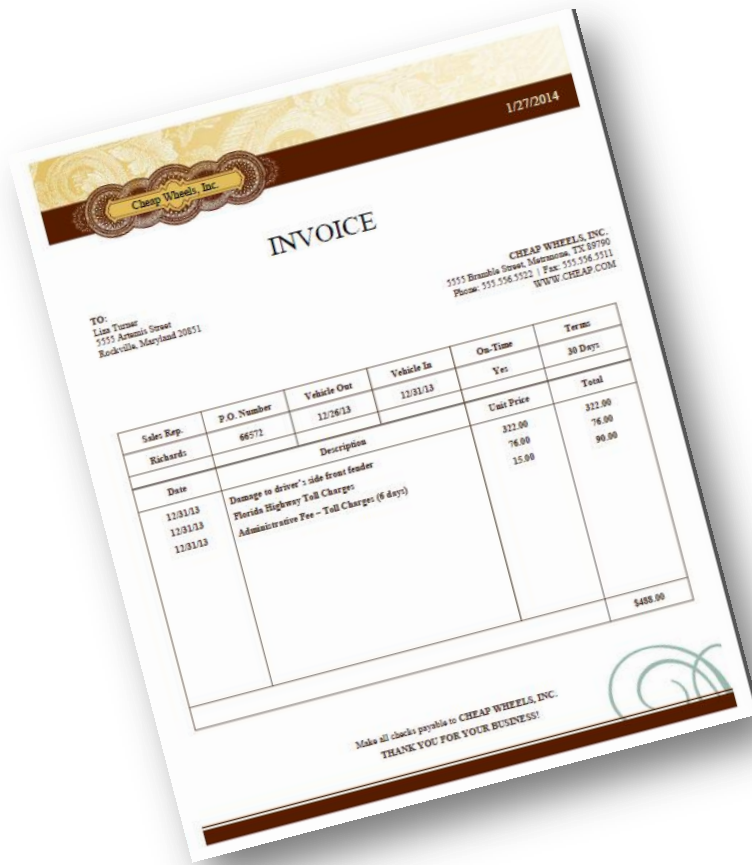
Taylor Residence, Rockville, Maryland

*Relaxing after a long day...*



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**January 31, 2014 – 9:00 PM**

Taylor Residence, Rockville, Maryland

*After finally opening the mail... An unexpected invoice.*



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# 2013-14 Developments



- I. Reservation Confirmations
- II. Splitting the Rental and Counter Practices
- III. Electronic Signature Pads
- IV. Rental Agreement Drafting
  1. Incorporation by Reference
  2. State-Required Disclosures
- V. Credit Card Practices and Damage Authorization



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# Act I: Reservation Confirmations



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**December 26, 2013 – 7:00 AM**

Taylor Residence, Rockville, Maryland

*Rental car reservations confirmed. Luggage packed. Travel Day.*



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**December 26, 2013 – 7:50 PM**

Ft. Lauderdale Airport, Florida

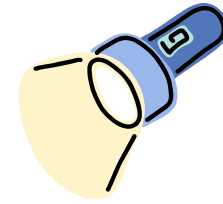
*Delayed flights. Arrival at destination. No Cars Available!*



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# Spot the Issues



- Is a Reservation Confirmation a binding agreement?
- Is the reservation prepaid/guaranteed or is the confirmation an *acknowledgment* of the reservation?
- Does the final Rental Agreement include additional taxes and surcharges not referenced in the reservation confirmation?

*McKinnon v. Dollar Thrifty Auto. Group, Inc.*, No. 12-4457(SC), 2013 U.S. Dist. LEXIS 93882 (N.D. Cal. 2013)



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# Practice Tips



- Reservations should be “subject to availability”
- All reservation confirmations (including prepaid or guaranteed) should indicate that the reservation is “subject to additional taxes, charges and fees and meeting our qualifications at the time of rental”
  - Driver’s license
  - Credit
  - Condition of Driver



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# Act II: Splitting the Rental & Counter Practices



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**December 26, 2013 – 9:55 PM**

Buck's-Cheap Wheels Rental Office Counter

*Commotion from another renter who forgot his driver's license*



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# Renting to a Group or Splitting the Rental

- One individual without a facially valid driver's license as renter
- Renter's friend with a facially valid driver's license as authorized driver

*What Can Go Wrong?*



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# Practice Tips



- A rental company is required only to inspect driver's license, photo and/or signature and determine whether the license is "facially valid"
- Avoid "split" rentals – where one party is the renter, and the other party is the driver (with the exception of disabled renters)
- Ensure that employees are properly trained and follow company procedures – no "side agreements"

*Jennings v. U-Haul Int'l*, 2013 U.S. Dist. LEXIS 70548, No. 11-CV-1888-MMA(WMC), (S.D. Cal. 2013)



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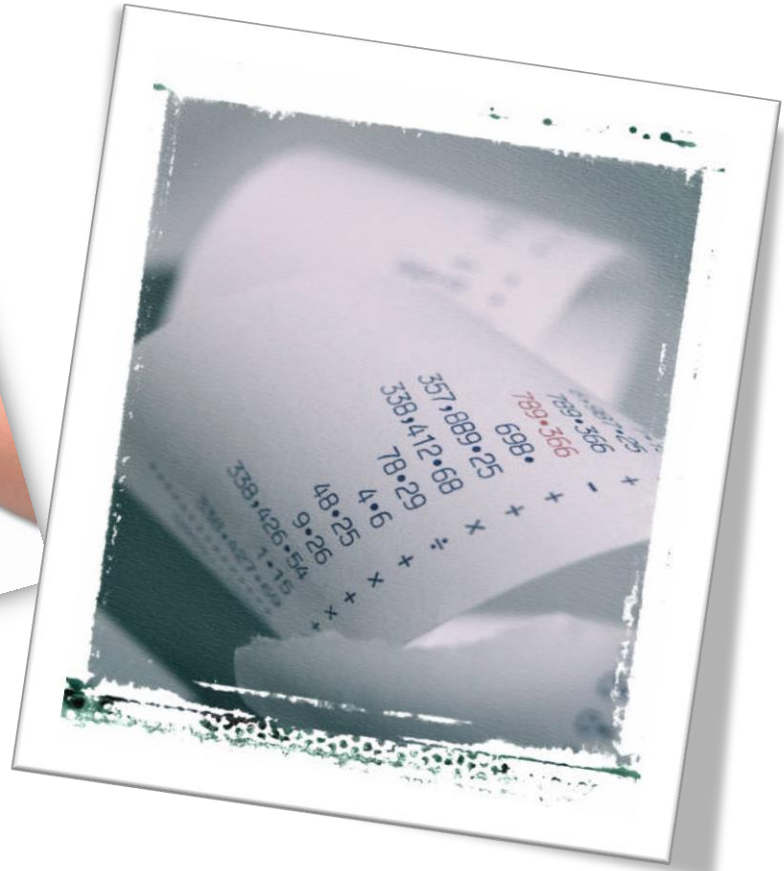


# Act III: Electronic Signature Pads



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**December 26, 2013 – 9:55 PM**

Buck's-Cheap Wheels Rental Office Counter

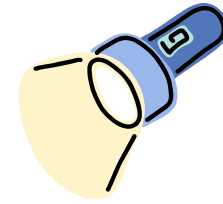
*Rental Agreements. Receipts. Electronic Signature Pads.*



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# Spot the Issues



- Is an electronic signature valid to create a binding agreement?
- Are the terms of the optional products and additional charges incurred by the renter clearly disclosed on the electronic signature pad?

*McKinnon v. Dollar Thrifty Auto. Group, Inc.*, No. 12-4457(SC), 2013 U.S. Dist. LEXIS 93882 (N.D. Cal. 2013)



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OPTIONS SELECTION:  
LOSS DAMAGE WAIVER  
-- 15 DYS @ 23.99 = \$359.85

TOTAL OPTIONAL CHARGES  
ACCEPTED = \$359.85

AGREE

HELP ME

*McKinnon v. Dollar Thrifty Auto. Group, Inc.*, No. 12-4457(SC),  
2013 U.S. Dist. LEXIS 93882 (N.D. Cal. 2013)



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MY ESTIMATED CHARGES ARE \$944.32  
RETURNING AT TULSA INT'L APO ON  
4/13/2012 AT 12:30 pm

WEEKLY 2 @ 147.56 = \$295.12  
EXTRADAY 1 @ 20.69 = \$20.69

TOTAL TIME & MILEAGE = \$315.81  
TOTAL OPTIONAL ITEMS: = \$359.85  
TOTAL TAXES AND FEES = \$268.66  
TOTAL CHARGES: = \$944.32

AGREE

HELP ME

*McKinnon v. Dollar Thrifty Auto. Group, Inc.*, No. 12-4457(SC),  
2013 U.S. Dist. LEXIS 93882 (N.D. Cal. 2013)



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# Practice Tips



- Ensure that the electronic signature pad complies with the Uniform Electronic Transactions Act (UETA), the Electronic Signatures in Global and National Commerce Act (ESIGN), and state law requirements, including
  - “An electronic sound, symbol, or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record.”
  - Date/time stamp of signature (to authenticate)
  - Give consumer the right to decline an electronic signature transaction
  - No alterations of documents after signing
  - Make available electronic records to all parties
- Review total charges and optional product selections with the renter, identify all parts of the rental agreement at the close of the transaction and have renters initial the total estimated charges
- Ensure that there is a manual copy of terms and conditions and other pre-printed forms for renters to review before they sign a rental agreement



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# Act IV: Rental Agreement Drafting



## SCENE ONE: INCORPORATION BY REFERENCE



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**December 26, 2013 – 10:35 PM**

Buck's-Cheap Wheels Rental Office Counter

“Upgrade” to Hot-Rod. New, Unsigned Agreement and Jacket.



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# Rental Agreement Signature Block

“This Rental Agreement is between the Renter and the company identified above (‘Rental Company’). By signature below, Renter acknowledges that Renter has read and agrees to the terms and conditions of this Rental Agreement and the separate rental jacket, which is incorporated herein.”



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# Spot the Issues



- Which Rental Agreement Controls?
- Does the Rental Agreement include:
  - A. The document titled, “Rental Agreement”?
  - B. The document referred to as “rental jacket”?
  - C. Both A and B?
  - D. None of the above?



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# Incorporation by Reference (Another Look)

“I acknowledge that I have received and agree to the terms and conditions of this Rental Contract and the Rental Contract Addendum.”

- Separate documents clearly identified
- Separate document described so that identity “ascertained beyond doubt”
- Certain that the parties had knowledge and assented to incorporated document so that incorporation will not result in hardship or surprise

*State ex rel. U-Haul Co. v. Zakaib*, 752 S.E.2d (W. Va. 2013)

Compare:

- *Lucas v. Hertz*, 875 F. Supp. 2d 991 (N.D. Cal. 2012)  
(clear references; called out to other party; terms were known or easily available)
- *Erickson v. J.C. Bromac Corp.*, No. CV-12-59-BLG-RFC, 2013 U.S. Dist. LEXIS 34090 (D. Mont. 2013) (“Insurance & Damage Waiver Addendum’ is at least a component of the rental contract...”)



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# Practice Tips



- Take care to ensure that cross-reference provisions in multi-part agreements are clear and consistent
- When using multi-part agreements, ensure that each document is clearly identified as part of the “Agreement” or “Contract”
- Give the renter the opportunity to review pre-printed forms that don’t require separate signature **before** asking him to sign anything
- If you need to re-do an agreement, ensure that the original agreement is closed/invalidated, and that the renter has a copy of the final, binding agreement



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# Act IV:

## Rental Agreement Drafting



## SCENE TWO: STATE-REQUIRED DISCLOSURES



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**December 26, 2013 – 10:35 PM**  
Buck's-Cheap Wheels Rental Office Counter  
The Small Print.



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# Rental Agreement Disclosures

The valid and collectible liability insurance and personal injury protection insurance of any authorized rental or leasing driver is primary for the limits of liability and personal injury coverage required by ss.324.021(7) and 627.736, Florida Statutes.

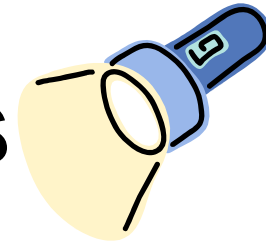
*(in 8.5 pt text on page 3 of the Rental Agreement)*



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# Spot The Issues



- Is the liability shifting language enforceable?
- What about **FONT** size?

*St. Paul Fire & Marine Ins. Co. v. Hertz Corp.*, 31 Mass. L. Rep. 603 (Mass. Super. Ct. 2013)



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# Practice Tips



- Familiarize yourself with your state's rental agreement requirements
- Confirm that state-required language meets all font and signature requirements
- If the state does not specify a font size – use 8 pt. font for most text and 10-pt bold (or other distinctive font) for state-required disclosures
- **AVOID OVERUSE OF BOLD-FACE OR ALL CAPS TYPE**
- Include state-required disclosures on the first page of the rental agreement if possible – even if the state doesn't specify location of the disclosure
- Pay attention to punctuation



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# Act V: Credit Card Practices & Damage Authorization



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**December 26, 2013 – 10:45 PM**

Parking Lot - Buck's-Cheap Wheels

*No Damage Inspection. "You're Good to Go!"*



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**December 31, 2013 – 12:30 PM**

Buck's-Cheap Wheels Rental Return Lot – Ft. Lauderdale Airport

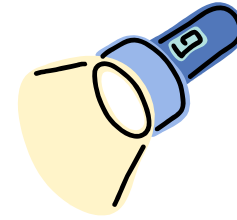
*Additional \$52 Charge? Dented Car. Flight to Catch!*



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# Spot The Issues



- Was the additional \$52 charge and its purpose disclosed to Liza at the time of rental?
- Was it permissible to charge Liza's debit card for the additional \$52 after rejecting that card for the rental?
- How do the rental agent's pre- and post-rental damage inspection representations affect the company's claims?

*Capital One Bank U.S.A. v. Roman*, No. A-6382-11T2, 2013 N.J. Super. Unpub. LEXIS 1761 (N.J. Super. Ct. App. Div. 2013)



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# Practice Tips



- Remember that some states:
  - Limit the amount of a deposit or reserve
  - Prohibit damage deposits
  - Prohibit requiring a credit card as a condition of rental
- Do not process a credit card or debit card reserve or payment without disclosing the amount to the renter and obtaining the renter's consent.
- Let the renter know that processing the release of a hold or return of funds may take as long as 15-21 days, depending upon the financial institutions' policy.
- Prepare an incident report to document facts in situations like Liza's experience with the other renter.
- Do not process a credit/debit card charge for damages, unless the renter has agreed to pay for the damages



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# Outtakes!



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**December 26, 2013 – 9:25 PM**

Buck's-Cheap Wheels Rental Office Counter

*Commotion at the Rental Counter! Tag-Tracker or No Tag-Tracker?*



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# Tag Tracker

- **Rental Jacket Terms & Conditions** require payment of: “all amounts due for sales, use, excise and other taxes; parking/moving violations, traffic fines, toll evasion penalties or a toll evasion charge for any tolls bypassed by you during the rental (“Citations”) plus a \$15 administrative fee for toll Citations.”
- **Rental Agreement:** “YOU ARE LIABLE FOR PAYMENT OF ALL TRAFFIC AND VEHICLE VIOLATIONS PLUS A \$25 ADMIN FEE PER VIOLATION. . . ALL TOLL FINES (INCLUDING THE USE OF ALL CASHLESS TOLL ROADS WITHOUT PURCHASE OF THE TAG TRACKER OPTION) ARE SUBJECT TO AN ADMIN FEE OF \$15 PER VIOLATION/OCCURRENCE. YOU AUTHORIZE US TO RELEASE YOUR BILLING/RENTAL INFORMATION TO TAG TRACKER, INC. TO PROCESS AND BILL YOUR CREDIT CARD FOR THE ABOVE-MENTIONED CHARGES.”



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# Tag Tracker – The Issues

- What are the terms of Tag Tracker?
  - Daily fee – even if toll not used?
  - Admin fees
  - Do fees apply if there is no toll evasion fee?

*Readick v. Avis Budget Group, Inc.*, No. 12 Civ. 3988 (PGG), 2013 U.S. Dist. LEXIS 94611 (S.D.N.Y. 2013) and *Bandler v. Majestic Car Rental Group, Inc.*, 83 A.3d 575 (Vt. 2013)



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# Practice Tips



- Disclose the relationship between the rental company and third party vendors, including whether rental and credit card information will be shared with the third party – preferably on the front page of the agreement and signature block
- Ensure that vendor contracts are accurately described in the rental agreement, including: (a) daily admin/convenience fee for service; (b) whether fee is payable even if tolls aren't incurred on a day; (c) toll rate payable (e.g., electronic or cash); (d) consequences for declining the service.
- Consider permitting third-party vendors to independently contract with renters
- Sometimes the rental company wins! (*Bandler v. Majestic Car Rental*)



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# *Questions?*



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