

THE GLOBAL MARKETPLACE FOR THE CAR RENTAL INDUSTRY



INTERNATIONAL CAR RENTAL SHOW

APRIL 13-14, 2015
BALLY'S LAS VEGAS

• CELEBRATING 20 YEARS •



BROUGHT TO YOU BY

Auto Rental
NEWS

IN CONJUNCTION WITH

ACRA
AMERICAN CAR RENTAL ASSOCIATION



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Handling a Legal Claim Against You

- Introduction
 - Recent Key Cases
 - General Risk Management
- Class Action Litigation
- Negligent Entrustment



Risk Management Tips

- Review Rental Agreement, Counter Practices, and Marketing Materials
- Know Your State Rental Law
- Keep Current on General Legal Developments
 - Data Security and Privacy
 - Target settlement March 2015
 - Unsolicited Fax (*Ballard RN Center v. Kohl's*, 2014 Ill. App. (1st) 131543-U)
 - Americans with Disabilities Act
 - Website Accessibility



But . . . Stuff Happens

- Two Common Types of Claims Against Rental Companies
 - Class Actions
 - Negligent Entrustment



Class Actions

- Definition and Purpose
- Types of Claims
- Risk Management
- How to Handle a Claim



Class Actions – Definition and Purpose

- Lawsuit filed by a representative on behalf of a group (“class”) of parties with similar claims
 - Often individual claims are so small that individuals may not pursue legal remedies
 - Intended to promote efficiency by consolidating similar claims
- Class size can range from 20 to hundreds of thousands
- Liability can be multiplied by the class size
- Defendants may be responsible for plaintiffs’ attorneys’ fees and other costs



Class Action – Types of Claims

- General Consumer Protection Statutes
 - Finding of intent not necessary
 - Ignorance of law no excuse
- Particular Statutory Requirements
 - State Rental Law
 - In some states (like CA), state rental law may be the basis of an unfair competition or other consumer protection claim (*See McKinnon v. Dollar Thrifty Automotive Group*, 2013 U.S. Dist. LEXIS 93882 (D. Cal. 2013))
 - Privacy Laws
 - Telephone Consumer Protection Act
 - Americans with Disabilities Act
 - Website accessibility
- Fraud/Misrepresentation



Rental Agreements

“The [NFL] rules of a simple catch read like a rental car contract.”

Kevin Clark, “When a Catch is Not a Catch,” *Wall Street Journal*, January 12, 2015 at B8 (discussing ruling on Dez Bryant’s non-catch during Dallas v. Green Bay January playoff game).



Class Actions – Types of Claims

- General Consumer Protection Issues
 - Impermissible Fees
 - *Bayol v. Zipcar* (late fees)
 - *Pauley v. Hertz* (administrative fees in connection with processing parking tickets)



Class Actions – Types of Claims

- General Consumer Protection Issues
 - Sales Practices and False Advertising
 - *Friedman v. Dollar Thrifty Automotive Group* (electronic signature pads)
 - *Schwartz v. Avis* (website disclosure of fees)
 - *Swanson v. U-Haul*, 2014 Ill. App. Unpub. LEXIS 789 (disclosure of gasoline policy – case decided on procedural grounds)
 - *Cohen v. Hertz*, 2013 U.S. Dist. LEXIS 188479 (S.D. N.Y. 2013) (action on behalf of ABA members claiming Hertz misapplied taxes and falsely advertised member discount – Court granted Hertz motion to dismiss!)



Class Actions – Car Sharing Issues

- *Bayol v. Zipcar* (late fees may be impermissible liquidated damages under California law)
- *Blay v. Zipcar*, 716 F. Supp. 2d, (D. Mass. 2010) and *Reed v. ZipCar*, 883 F. Supp. 2d 329 (D. Mass. 2012) (late fees were permissible under Massachusetts law because they could have been avoided)
- State law matters!



Class Action – Risk Management

- Review of general tips
 - Review rental agreement, counter practice and marketing materials (including websites)
 - Know your state rental law
 - Keep current on legal developments
 - Training!
- Arbitration provision and class waiver?



Class Actions – Handling the Claim if Filed

- Don't panic
- Retain experienced counsel
- Assess the practices that gave rise to the claim
 - Are the factual allegations correct?
- Consider, with the assistance of counsel, a change in practices if there is a problem
- Preserve evidence and conduct appropriate interviews
- If there is any press coverage, consider the use of a PR firm
- If the case is filed in state court, consider removing it to federal court
- Consider early settlement of claims



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Negligent Entrustment

- Definition
- Risk Management
- How to Handle a Claim if Filed



Negligent Entrustment - Definition

An injured party must establish that:

- At the time of rental, the rental company:
 - Knew or should have known (“in the exercise of reasonable care”) that the renter was a “careless, incompetent, inexperienced, or intoxicated driver”) *Eaton v. Shelton*
 - there is actual or constructive knowledge that the person to whom the vehicle is loaned is incompetent to operate the vehicle (*Osborn v. Hertz*, 1988 Cal App. LEXIS 1007 (Cal. Ct. App. 1988); *Greely v. Cunningham*, 116 Conn. 515, 520 (Conn. 1933))
- The injury was caused by the renter’s incompetence



Sample Jury Instruction

Negligent Entrustment

Plaintiff claims that he/she was harmed because Rental Car Company negligently permitted Renter to use Rental Car Company 's vehicle. To establish this claim, Plaintiff must prove all of the following:

1. That Renter was negligent in operating the vehicle;
2. That Rental Car Company owned the vehicle operated by Renter;
3. That Rental Car Company knew, or should have known, that Renter was incompetent or unfit to drive the vehicle;
4. That Rental Car Company permitted Renter to drive the vehicle; and
5. That Renter's incompetence or unfitness to drive was a substantial factor in causing harm to Plaintiff.



Sample Jury Instruction

Negligent Entrustment

Negligence is the failure to use reasonable care to prevent harm to oneself or to others.

A person can be negligent by acting or by failing to act. A person is negligent if he or she does something that a reasonably careful person would not do in the same situation or fails to do something that a reasonably careful person would do in the same situation.

You must decide how a reasonably careful person would have acted in this matter.



Negligent Entrustment

- Potential Negligent Entrustment
 - Intoxication at time of rental
 - Renter with substance abuse problem known to rental company
 - Renter with history of reckless driving known to rental company



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Negligent Entrustment

- No Negligent Entrustment
 - Failure to research the renter's driving record
 - Failure to recognize the signs of habitual drug use (when renter was not under the influence at the time of rental)
 - Renting to an individual whose license had been suspended, but who had not yet received notification of the suspension
 - Renting to an individual who is under age 25, in violation of the Rental Company's policy
 - Failure to administer a driving test or to ensure that the driver is capable of actually operating the vehicle
 - Renting to an individual from an area known to have high crime rate



Negligent Entrustment - Risk Management

- Review Procedures
- Role of Training



Graves Amendment

- Graves Amendment (49 U.S.C.S. § 30106)
“An owner of a motor vehicle that rents or leases the vehicle to a person ... shall not be liable ... by reason of being the owner of the vehicle ... for harm to persons or property that results or arises out of the use, operation, or possession of the vehicle during the period of the rental or lease, if-- (1) the owner (or an affiliate of the owner)... is engaged in the trade or business of renting or leasing motor vehicles; and (2) there is no negligence or criminal wrongdoing on the part of the owner ... ”



Car Sharing Issues

- *Moreau v Josaphat*, 2013 N.Y. Misc. LEXIS 5182 (N.Y. Sup. Ct., Kings County Oct. 28, 2013)
Zip Car protected by Graves Amendment



Negligent Entrustment – How to Handle a Claim if Filed

- Investigation
- Assessment of Risk
- Discovery
- Motions
- Trial



Conclusion

1. Review Contracts and Procedures
2. Review Contracts and Procedures
3. Review Contracts and Procedures
4. Stay current
5. Stay current
6. Stay current



Questions?

