

International Car Rental Show

Auto Dealer Day: Dealership Rental and Loaner Operations

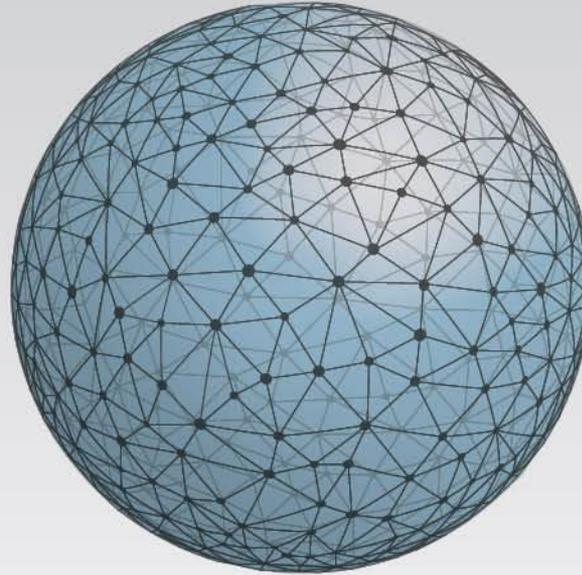
April 19, 2016

THE GLOBAL MARKETPLACE
FOR THE CAR RENTAL INDUSTRY



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NEWS

IN CONJUNCTION WITH
ACRA
AMERICAN CAR RENTAL ASSOCIATION



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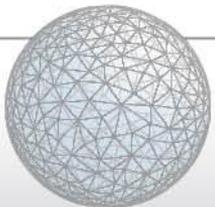


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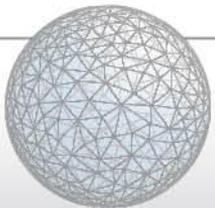
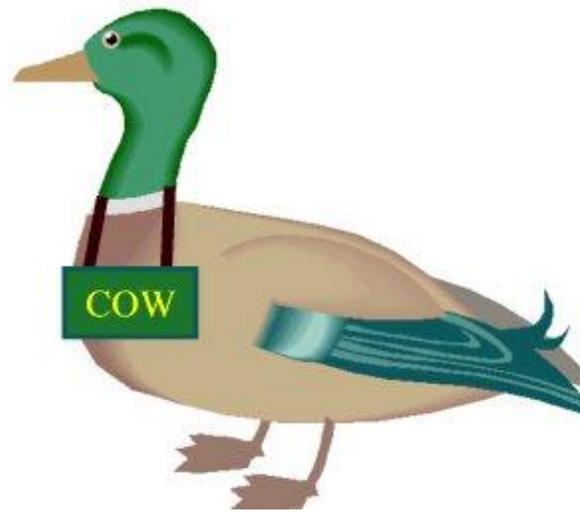
Outline

- Loaner/Rental Car Overview
- Legal Issues
 - Vicarious Liability
 - Graves Amendment
 - Negligent Entrustment
 - Legal Considerations for Loaner Car
 - Recall Act
- Best Practices



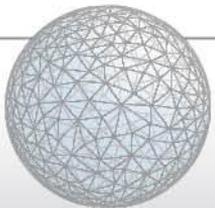
Is it a Loaner or a Rental?

- Why it could matter
- Courts will look beyond labels



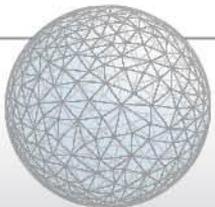
Vicarious Liability (California)

- Vicarious liability attaches to a person who is free from fault but is required, by operation of law, to bear the consequences of the actions of another who was at fault.



Vicarious Liability (New York)

- Vicarious liability is an exception to the general common law rule that a person is responsible only for his or actions and that the plaintiff can therefore sue only the person who inflicted the harm.



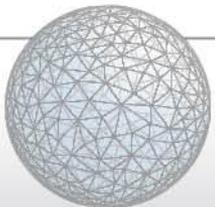
Graves Amendment

- 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 –

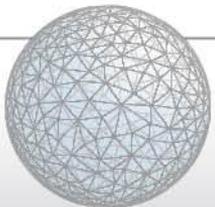
(1) the owner (or an affiliate of the owner)... is engaged in the trade or business of renting or leasing motor vehicles; and (2) there is no negligence or criminal wrongdoing on the part of the owner ... ”



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



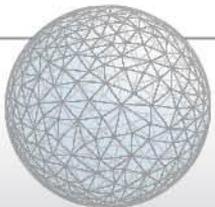
Sample Jury Instruction

Negligent Entrustment



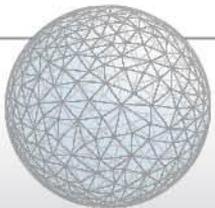
Plaintiff claims that he/she was harmed because Rental Car Company negligently permitted Renter to use Rental Car Company's vehicle. To establish this claim, Plaintiff must prove all of the following:

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.



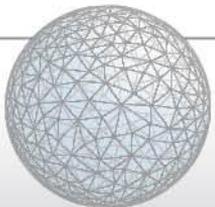
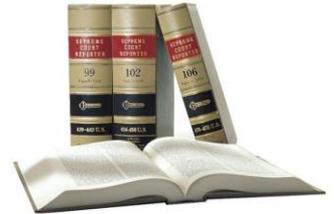
Negligent Entrustment

- 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



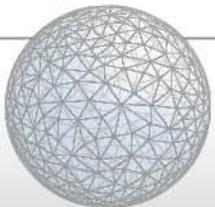
Negligent Entrustment

- 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



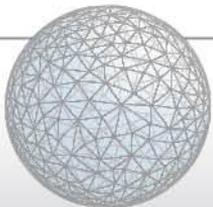
Loaner Cars

- Loaner Cars Subject to Rental Car Laws?
- Loaner Cars Subject to Graves Amendment?



Safe Rental Car Act of 2015

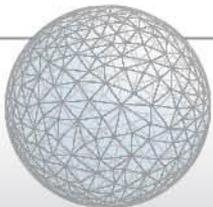
- Effective Date: June 1, 2016
- Applicability:
 - “Covered Rental Vehicles”
 - 10,000 pounds GVWR or less
 - Part of a motor vehicle fleet of 35 or more motor vehicles that are used for rental purposes by a rental company
 - Rented without a driver for initial term of less than 4 months



Safe Rental Car Act of 2015



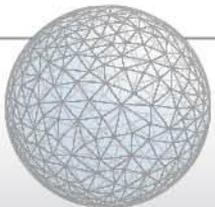
- Basic Requirements of Safe Rental Car Act:
 - After receiving notice (electronic or first-class mail) of a NHTSA-approved safety-related recall, a rental company may not rent, sell or lease affected vehicles **in its possession** at time of notice, until the defect has been remedied
 - must comply within 24 hours (if fleet less than 5,000)
 - must comply within 48 hours (if fleet over than 5,000)



Safe Rental Car Act of 2015

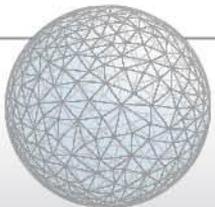


- “Interim Remedy” Exception to the “Do Not Rent” Rule:
 - If a safety-related recall notice indicates that a manufacturer has developed an “interim remedy” or temporary fix to the defect (but not a permanent remedy), the rental company may continue to rent (but not sell or lease) the vehicles after completion of the “interim remedy.” As soon as a permanent remedy is available, the “do not rent” requirements will apply.



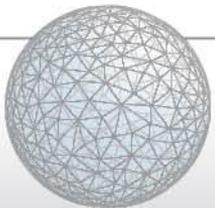
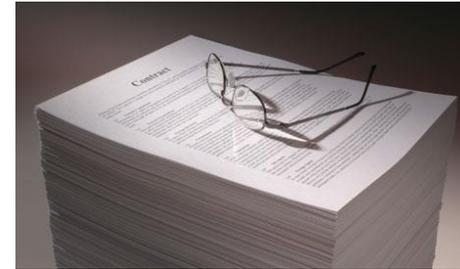
Safe Rental Car Act of 2015

- Penalties for Non-Compliance
 - Currently, up to \$5,000 civil fine per violation (maximum of \$35 million for series of violations)



Best Practices

- Business Decision
- Written Agreement
- Interaction with Customer
- Employee Training
- Written Policies and Procedures



Contact



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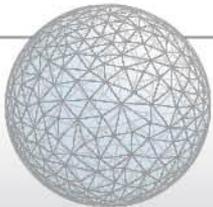
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