



# INTERNATIONAL CAR RENTAL SHOW

## YOUR MARKETPLACE.

MARCH 27-29, 2017 / BALLY'S LAS VEGAS



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NEWS

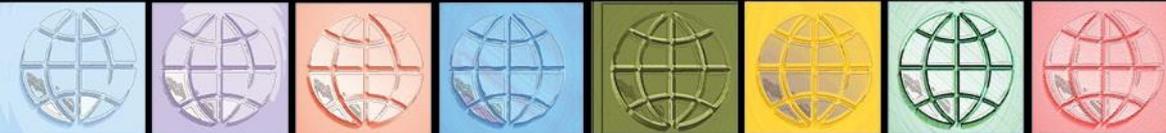
IN CONJUNCTION WITH  
**ACRA**  
AMERICAN CAR RENTAL ASSOCIATION

Wednesday, March 29  
9:35am - 10:30am

# Protecting Your Fleet from Problem Renters

Presenter:  
Steve Haney  
Haney Law Group, PLLC

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# PRESERVATION 101

**FLEET PROTECTION: CHALLENGES IN THE RENTAL PROCESS AND SUBROGATION**

March 29, 2017

Steven A. Haney, Sr.  
Haney Law Group, P.C.  
Detroit, Michigan

- ***2000-2005 – Jackson County Prosecutor’s Office – Jackson, MI***
  - Drug and Gun Prosecutor in the largest county in State of Michigan – Over 200 jury trial drug convictions
  - Michigan State Police Drug Forfeiture Prosecutor
- ***2005-2007 – Michigan Attorney General’s Office***
  - Lead Assistant Attorney General Organized Crime Division
  - Gubernatorial appointed Lead Attorney Auto Theft Division
  - Prosecuted the Largest Racketeering case in Michigan history
- ***2007-Present – Haney Law Group, PLLC – Detroit, MI***
  - Successfully defended one of the largest Racketeering cases in Michigan history
  - Subrogation specialist mid-west independent car rental operators
  - People of State of Michigan v. Maher Waad – Court of Appeals

# BRAND REPUTATION

## RENTAL CAR TO BE SEARCHED IN MURDER PROBE

NORTH ATTLEBOROUGH, Mass. -- Investigators plan to execute a search warrant on an **Enterprise rental car** registered to New England Patriots tight end Aaron Hernandez on Wednesday, sources told ABC News, two days after a man's body was found near the car about a mile from his home.

- Over 856,000 results for key words “Aaron Hernandez Enterprise Rental Car Murder.”
- Every major news network globally referenced the fact that Aaron Hernandez used the vehicle rented from Enterprise Rent-A-Car to allegedly commit the murder of Odin Lloyd
- One rental gone wrong can lead to month of bad publicity for the company brand – minimize the odds by giving regard to each rental and customer

# CHERNOBYL

Detective Tells Jurors Keys To Aaron Hernandez's Rental Car Found In Victim's



# Rental Car Allegedly Used in Child's Kidnapping Found in Philly

NBC10 has an exclusive look at the rental car police say three men used to kidnap a toddler from his Upper Dublin home on Tuesday.



# DRUG TRAFFICKING IN THE RENTAL INDUSTRY



People of the State of Michigan vs. One 2004  
Nissan Altima and \$255,456 US Currency

# WHY RENTAL CARS?

- Avoid detection -
  - Tags will not reveal the identity of the criminal – no traceable identifiers – address or name
- Drug Dealing
  - Use of the rental vehicle will offer a shield from State and Federal Drug Forfeiture actions
  - Concept of an Innocent Owner
  - Cash rentals
  - Inconspicuous vehicle profile absent identification vehicle is a rental (carjacking tourists)
  - No hot pursuit policy being universally employed – Abandon with no traceability

# CASH CUSTOMERS

## Risks

- Inability to access a credit card, or even a secured bank card
- Transient, unstable work and residential history
- Likelihood to allow non-permissive use thereby vitiating any insurance coverage – i.e. not a covered loss
- More likely to trigger SIU insurance investigations and consequence(s) of contractual non-cooperation – delay payment
- Conversions – Police disfavor and do not treat criminally – i.e. no “hot sheet”
- Demographic challenges and exposure to thefts and partial strips – Challenges of rim/tire claims and undercarriage damage(s)
- False Identification and Fraudulently presented Insurance information
- NICB flagging and consequence of insurance SIU identification – High frequency of claim activity – partial strips and thefts -

# MITIGATION

- Verify insurance coverages with agent
- Verify employment history - one year minimum employment history
- Verify residency - Utility bills, bank statements, Government ID
- GPS for all fleet to assure prompt recovery of any converted vehicles – NICB red flat finding own stolen cars
- Increase minimum age requirement(s)
- Internally designate each cash rental to an assigned Loss Control representative for daily monitoring of the GPS location of the vehicle. If vehicle not at primary residence of the customer, likely vehicle has been rented for a relative, or domestic partner, which will vitiate any insurance coverages (i.e. non-permissive use)

# **SUBROGATION: PROTECTING THE FLEET AND AVOIDING CLAIM DENIALS**

## **INVENTORY OUT/INVENTORY IN**

10% of all rental car claims are disputed to have occurred by the customer. A proper check out process can assist in the subsequent subrogation process when the denial arises;

- Ultimately, the insurance company will have a “duty to defend” its policyholder and an initialized Rental Agreement notating an undamaged rental vehicle at the time of rental will greatly assist the insurance adjuster’s approval of the property damage claim
- Additionally, if the matter is litigated, a proper outgoing and incoming inventory is critical to satisfy the rental car company’s (Plaintiff’s) burden of proof in Court. Without a properly executed Rental Agreement, such burden will not be satisfied and the rental car company will be forced to absorb the loss

# CONTRACTUAL NON-COOPERATION



- The Claims/Subrogation process necessarily **REQUIRES** the cooperation of the renter/insured. If the renter/insured does not cooperate with the insurance carrier's claim investigation, **YOUR** claim will be denied based on the contractual non-cooperation of the renter/insured
- Contractual Cooperation is a legal requirement of the renter/insured. Numerous claims are denied based on this contractual provision

# PERMISSIVE

# USE/RESIDENT

# RELATIVES



Unlike coverage for a designated scheduled vehicle, the insurance contract **does not provide for permissive use of the utilization of rental vehicles, or cover losses for resident relatives.** This is often unknown to Operators, who may bear substantial subrogation and legal costs, when the insurance company has a defensible denial and the renter give the keys to an unauthorized driver

The regrettable reality is that in instances of non-permissive use, your subrogation claim will not be deemed a covered loss and you will be faced with the costs associated with obtaining a money judgment against a potentially uncollectable renter.

# MATERIAL MISREPRESENTATION AND FRAUD



-If the renter/insured offers **any** misrepresentation of a material fact during the claim investigative process, such misrepresentations will be imputed upon the car rental company and the property damage claim will be denied

-The reality of the renter's cooperation and ability to factually represent a covered loss to an insurance representative should be strongly considered at the point of rental

# THE TURNIP



-Though a claim denial does not eliminate the renter's liability for the property damage, a defensible denial places the Operator in the position of pursuing the renter solely for the damage to the vehicle often resulting in a pointless, unrecoverable money judgment

**- YOU CANNOT GET BLOOD OUT OF A TURNIP -**

Instead of wasting time and financial resources for a money judgment, locate a collection attorney in your jurisdiction, who will accept such cases on a contingency fee basis only. There is no point in hiring counsel and paying hourly fees for an unlikely recovery

# LOSS OF USE/DIMINISHED VALUE/ADMINISTRATIVE FEES

- State specific case law will carry the day if such gravy can accompany the potatoes
- Frame damage, dirty car fax's....certain arguments can be offered for the reasonableness of a Diminished Value claim. Certain losses will result in the diminished value of a motor vehicle. Insurance companies will always push back at these “additional charges.”
- Loss of Use often will require the Operator to show proof of a fully utilized fleet and no other comparable vehicle being available to suitably replace the one being repaired. Other states offer more liberal interpretations
- SOLUTION - MAKE IT CONTRACTUAL - Simple fix....make these “additional charges” contractual, so if the insurance company refuses to pay, which they will, you can emphasize to the adjuster that the charges will then be the contractual responsibility of their policyholder
- Often for the sake of customer service, the insurance company will pay these costs, or partially pay these costs, so the policyholder will not take exception with its carrier
- Operator must balance the benefit of these fees vs. the working relationship of the insurance carrier and the impression such recovery may have upon the customer base

# POST CLAIM DENIAL ACTION - SUE OR COLLECTIONS?

- Litigation is expensive....National subrogation/recovery companies can assist in your claim handling with a systematic approach
- Local counsel possesses the ability to sue the insurance company's policyholder (the renter), which may prompt payment
- DO NOT PAY LOCAL COUNSEL HOURLY FEES - Only hire a contingency firm on a negotiated fee basis (15-25%) of total recovery
- Collection agencies are only effective for the renter who cares about his/her credit score A \$1,500 collection account for a renter with a 400 credit score does not even present a nuisance, let alone a motivation to pay your uncovered loss