

INVESTIGATING THE RENTER:

ARE YOU RESPONSIBLE FOR VERIFYING LICENSES WITH THE DMV?

Technology has enhanced rental car companies' ability to verify the status of a customer's license, and with it, has opened the door for potential negligent entrustment cases. What is your duty in light of recent case law?

BY WESLEY HURST

Does a rental car company have a legal duty to check online DMV records before renting a car to a customer? If there is such a duty, rental car companies could be placed in the position of deciding whether a licensed driver is eligible to rent a car or not.

For example, can a renter with two speeding tickets rent a car? What about three? How about a 5-year-old DUI? Based on cases from around the country and confirmed by recent decisions in California, the answer continues to be that *there is no duty*. As technology develops, though, this conclusion will continue to be tested in negligent entrustment cases.

A typical negligent entrustment claim will involve an allegation by an injured party, such as a passenger, pedestrian or occupant of another vehicle, that the rental car company should not have rented the vehicle to a particular customer. Occasionally after the accident, the fact that the renter had a poor driving record or a suspended license will be discovered. In such circumstances, attorneys for plaintiffs of the injured party will argue that the failure to conduct an investigation of the renter's driving record constitutes negligence on the part of the car rental company.

This article will provide an overview of the current law on negligent entrustment — not to be confused with non-negligent vicarious lia-

bility, which is covered by the Graves Amendment — and then will identify some steps to reduce the risk of claims. (For a Supreme Court decision regarding a recent challenge to the Graves Amendment, see *RentAlert*, page 32.)

Investigation of the Renter

As with many areas of the law, technological developments can create issues for the courts. In this regard, there are services that provide — with various limits — some level of electronic access to state DMV records.

Whether these advances alter the basic issue of whether there is a duty to conduct an investigation, and then presumably an independent assessment of the driver's record, has been addressed by some courts. As noted, these cases arise in the context of a renter with a poor driving record or a suspended license.

Valid License with Poor Driving Record

With respect to a renter with a valid driver's license but with a checkered driving record, a 2010 California appellate court decision confirmed that a rental car company does not in fact have an obligation to investigate the prospective renter's driving record.

The case, *Flores v. Enterprise Rent-A-Car Co.*, confirmed that a car rental company can

exercise its own independent guidelines as to whether a driver should be allowed to rent a car. This ruling still holds true even with the claimed availability of services that provide electronic reports on the renter's DMV record.

Moreover, a California appellate court decision in the 1988 case of *Osborn v. Hertz Corp.* noted that when a state determines a driver can continue to hold a license, it is not for a rental car company to impose a different standard for the rental of a vehicle. In other words, if the DMV says someone can drive, why should a rental car company have to conduct its own assessment?

Facially Valid but Suspended License

Renting a car to a customer who gives a facially valid but suspended license presents a somewhat different issue.

Most states provide the steps that a rental car company needs to follow in completing a rental. Generally, such as in California, Nevada and Mississippi, the rental car company must visually inspect the renter's license, compare the signature on the license to that of the customer at the counter and, finally, must keep some record of the transaction.

The challenge, of course, is when custom-



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ers do not disclose the fact that although they are presenting a facially valid license, the license has in fact been suspended by their state's DMV. In this scenario, is the rental car company obligated to conduct some further investigation beyond what is outlined by the state's statute?

A federal district court in California in 2005 touched on this issue. In *Snyder v. Enterprise Rent-A-Car*, a claim involving a driver that rented a car with a facially valid but suspended license, the court — in an attempt to construe the California Vehicle Code — concluded that even though the rental car company had complied with the applicable statute, plaintiffs were entitled to a presumption of negligence because the license was in fact suspended.

Although not explicit, the court seemed to conclude that by only following the statute — without further action — subjected the rental car company to a rebuttable claim of negligence, if the renter in fact had a suspended license. The consequences of such a rule could be dramatic: It is in essence, an obligation imposed by a court, rather than the legislature, onto the rental car company for it to conduct an independent investigation on the status of a license beyond the

state's requirement.

The following year, however, the California Supreme Court in a somewhat different context concluded otherwise. In *Philadelphia Indemnity Insurance Co. v. Montes-Harris*, the renter presented a facially valid Arizona driver's license and purchased supplemental liability insurance. However, the renter's license had been suspended by his state.

The renter was involved in a car accident, causing injuries to a number of people, and a lawsuit was filed. The insurance company providing the supplemental insurance, Philadelphia Indemnity, filed a separate lawsuit seeking to invalidate the policy because, it argued, the renter misrepresented that he was licensed.

The issue in *Philadelphia Indemnity's* lawsuit was whether the insurer had a duty to investigate promptly the details of the transaction and the background of the insured. The insurer argued that it did not have a separate duty to investigate the background and status of the renter in the context of rental car transactions.

The parties injured by the renter argued that the insurer had a duty to investigate promptly, and by failing to do so, the insurer was not entitled to try to invalidate the insurance policy. The California Supreme Court concluded that if a renter presents a facially valid driver's license and is verified pursuant to the state's applicable vehicle code, the excess insurer has no obligation to conduct a further inquiry regarding the status or validity of the renter's driver's license.

As well, the Supreme Court said that the rental car company was considered "in compliance" with the state's driver's license verification process for the transaction. The Supreme Court went on to note that because the California Legislature does not require DMV license checks or other specific investigation, the court would not impose such an obligation on excess insurers — which could potentially be extended and applied to rental car companies as well.

Other states agree there is no duty to investigate. A Mississippi court found in 2007 that a rental car company had no duty to investigate the validity/suspension status of a customer's license in the case of *Cousin v. Enterprise Leasing Co.-South Central Inc.* The court stated that the Mississippi Legislature could require more detailed license checking, but does not.

Similarly, a Massachusetts court found in

2005 that despite plaintiff's allegations of the availability of technology to verify licenses in the case of *Nunez v. A & M Rentals Inc.*, no license verification was required beyond viewing a facially valid license because the Legislature had chosen not to speak on the issue.

Even with the development of electronic access to records, for the most part, courts are not imposing a duty on rental car companies to conduct an independent investigation on their customers.

Reducing Risk

It is, of course, impossible to completely eliminate claims, but the following steps can and should be implemented to minimize some of the risk:

- Set training and procedures in place regarding license checking so that your rental car company can ensure, and provide evidence of, compliance with the applicable state statute. As well, include specific written training materials on how to inspect licenses, compare the signatures and keep records, and anything else that should be included per the applicable state statutes. Written protocols help in defending claims.

- Preserve the evidence of employee training, such as copies of written policies or other evidence that the topics were reviewed in formal or on-the-job training. Having employees acknowledge receipt of the written materials helps to confirm the training was provided.

- Always follow-up on a claim with a prompt, internal investigation. As soon as you receive notice of a negligent entrustment claim, the employees involved in the rental should be interviewed and the rental contract reviewed and preserved. Employees' memories regarding the rental and compliance with procedures fade with time. Interviews by counsel or company claims representatives could be critical in preserving evidence of compliance with statutory requirements.

Overall, a rental car company faced with a claim will have its defense better positioned if it can demonstrate that its employees were trained on and complied with the requirements of the state's applicable statutes on license verification. ■

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