When Rental Car Companies Add To The Carnage

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1. Car Rental is a Big Business with Big Responsibilities.

Automobile companies don't just sell and lease cars, they also distribute them through rental chains. Each of the major U.S. auto manufacturers has its special outlet. Hertz is an indirect, wholly-owned subsidiary of Ford Motor Company. Avis rents primarily General Motors vehicles. Thrifty trades almost exclusively in vehicles from DaimlerChrysler Corporation.

In an automobile product liability action, rental companies are often treated as if — absent some evidence of negligent entrustment — their liability is limited to $15,000 under the permissive user statute. That is a shortsighted view.

The Legislature recognized the critical role auto rental companies play in keeping defective vehicles out of the stream of commerce by imposing special duties of care on the industry. While car rental entities are generally not considered liable for strict products liability, they are subject to claims for direct negligence where they know, or reasonably should know that a vehicle is unsafe, either through design, manufacture or maintenance. As consumer attorneys, it is important to understand the ins and outs of these independent duties.

2. Rental Cars must be Safe and Sound.

Vehicle Code § 24010 sets forth the standard in clear, concise terms:

(a) No person engaged in the rental of any vehicle, for periods of 30 days or less, shall rent, lease or otherwise allow the operation of such vehicle unless all the following requirements are met:

(3) The vehicle is mechanically sound and safe to operate within the meaning of Section 24002. Section 24002 of the Vehicle Code says: (a) It is unlawful to operate any vehicle or combination of vehicles which is in an unsafe condition, or which is not safely loaded, and which presents an immediate safety hazard.

Though it has never been construed by an appellate panel in a published decision, Section 24010 is plain on its face. The obvious intent is that any car rental agency whose business is short term rentals has an independent duty to ensure that those vehicles are not only in good repair, but are safe to drive as well.

Instances where an accident involving a rental vehicle occurs because of a maintenance problem present relatively simple cases, since vehicle owners have a general, non-delegable duty to adequately maintain their vehicles. See, Maloney v. Rath (1968) 69 Cal.2d 442, 448, 71 Cal.Rptr. 897 (motorist's duty to maintain automobile brakes in compliance with provisions of Vehicle Code was non-delegable).

Where the analysis becomes more complex is where the rental company has not independently contributed to the unsafe nature of vehicle by an affirmative relating to maintenance, yet still places that vehicle into the stream of commerce resulting in injury.

> Given the duty imposed by Vehicle Code section 24010, consumer attorneys analyzing rental car company liability in a product setting need to consider the nature of the offending defect and whether the rental company reasonably knew or should have known about it. The BAJI 3.11 standard is useful in conducting this analysis, since the relevant inquiry is whether a rental car company of ordinary prudence "in the same situation and possessed of the same knowledge [] would have foreseen or anticipated that someone might have been injured by or as a result of [its] action or inaction." Where the evidence shows that a rental car company knew or reasonably should have known of a defect that caused injury, direct negligence should be alleged under section 24010.
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> It is important to recognize that a failure to meet the section 24010 standard that causes a consumer to be injured by a defective vehicle is negligence per se, since "[t]he failure of a person to exercise due care is presumed if . . . [they] violated a statute, ordinance, or regulation of a public entity [and] the violation proximately caused death or injury to person or property." (Evid. Code § 669(a)(1,2).) The presumption is rebuttable, affecting the burden of proof. (Id. at § 669(b); see also, BAJI 3.45.)

In other words, section 24010 creates an effective equivalent to strict products liability for a rental car company even though that entity will argue it is outside of the stream of commerce and so not liable under conventional product liability theories.

3. Analyzing and Arguing the Safe Vehicle Duty

The key to analyzing a car rental company's liability for renting an unsafe vehicle is establishing how a reasonable rental operation should act in fulfilling its statutory duty to rent only safe vehicles. The means of establishing proof is a discovery plan focused on how the rental car company inspects, prepares and approves vehicles for use in its rental fleet.

Most automobile manufacturers publish new vehicle preparation guidelines to instruct service personnel at dealerships and rental companies on how to prepare a new automobile or truck for use. It becomes important during discovery to obtain the guidelines and depose mechanics and other rental company personnel responsible for readying vehicles for rental. Likewise, owner manuals and maintenance guides can provide useful insights into whether a maintenance issue contributed towards an accident causing injury.

Many service organizations have checklists of items that are intended to be filled out so as to provide a record of what was performed during a vehicle inspection, preparation or repair. Discovery should seek to determine whether such checklists exist at the subject rental car company, whether or not the checklists were followed and whether or not they were preserved.

A failure by a rental company to follow manufacturer guidelines or internal standards can constitute evidence of negligence in and of itself. See, e.g., Dillenbeck v. City of Los Angeles (1968) 69 Cal.App.2d 472, 480, 72 Cal.Rptr. 321. So, by way of example, in a product liability action involving a vehicle with a known defect, where that condition is a substantial cause of the accident, it should be argued that the rental company failed in its duty to rent a safe vehicle.

Evidence that pre-rental inspection fell below the company's own internal standards or that vehicle preparation either did not meet or cannot be shown to meet the manufacturer’s specifications is also valuable evidence showing that the rental company failed in its statutory duty to rent only safe vehicles. Inadequate or non-existent inspection records can likewise

support an argument that the rental car company failed in its duty of care, since inspection and maintenance record keeping is an important part of assuring the safety of any vehicle.

In addition, any discovery plan should include an investigation into National Highway Traffic Safety Administration (NHTSA) technical service bulletins, safety studies or other such resources to determine just what known safety problems the subject vehicle presents. For example, NHTSA has twice published cautionary warnings to users of 15-passenger vans because of a rollover risk "that increases dramatically as the number of occupants increases from fewer than five to more than ten," and has stated that such vans "be operated [only] by trained, experienced drivers. (NHTSA 27-02, Apr. 15, 2002.) Where a rental company has rented such a vehicle to an inexperienced driver and a rollover accident occurs, there is a strong argument for a breach of duty tied to the NHTSA warning alone.

An expert consultant should be able to help you understand how a failure to follow procedure or heed a NHTSA advisory amounts to negligent rental of an unsafe vehicle under Section 24010.

4. Establishing Links between Manufacturers and Car Rental Companies.

Where the major rental companies — Hertz, Avis and Thrifty — are concerned, a consumer attorney should research public corporate filings such as 10K annual reports for evidence that the entities are actually involved in a joint venture with their vehicle supply partners to assist in accessing the rental marketplace, stimulate demand for branded vehicles and keep production lines flowing by providing an economic need for additional production.

Discovery in this area should be extended to any vehicle supply agreements or other contractual ties between rental company and vehicle manufacturer, as these documents can be expected to support the reasonable inference of a joint venture and/or partnership by virtue of exclusive advertising and promotion ties, favorable financing, credit and depreciation terms and other factors. Where a car rental company is established as a joint venturer and partner with an automobile manufacturer, the rental company has imputed knowledge of any defects that the manufacturer knew about as a matter of law. See, BAJI 13.40; Orlopp v. Willardson Co. (1965) 232 Cal.App.2d 750, 754, 43 Cal.Rptr. 125; Engineering Services Corp. v. Longridge (1957) 153 Cal.App.2d 404, 409-411, 314 P.2d 563.

5. Rental Car Franchises and Vicarious Liability.

Though some rental car companies own and operate their own rental outlets, it is common for such companies to operate on a franchise model. In the later instance, independent franchisees act as the retail rental outlets while the corporate franchisor acts as wholesaler, negotiating vehicle supply agreements, creating marketing plans and managing the rental process.

An independent franchisee will generally maintain limited insurance resources in the event of its own negligent acts. Where a rental vehicle causes a catastrophic injury or death, the franchisor is generally a proper defendant under the principles of actual or ostensible agency.

Discovery should be conducted to demonstrate that the franchisor controls the entire scope of the rental process through its licensee/franchise agreements and any operations manuals that might be published by the entity. Usually, the franchisor is intimately involved in regulating how the franchisee conducts business, dictating everything from the rental agreement forms, to employee uniforms to the color of the paint on the walls of the rental agency.

Substantial control by the franchisor of the franchisee's daily rental operations gives rise to an agency relationship that, in turn, will arguably impose vicarious liability as an actual agent for any negligence of the franchisee in negligently preparing a new vehicle for rental, negligently maintaining a rental vehicle or renting a vehicle where design or latent defect renders it unsafe. See, Nichols v. Arthur Murray, Inc. (1967) 248 Cal.App.2d 610, 613, 56 Cal.Rptr. 728.

In the alternative, the franchisee will arguably be liable under the principles of ostensible agency under the three-prong test that: (1) the person dealing with the agent must do so with belief in the agency authority and this belief must be a reasonable one; (2) such belief must be generated by some act or neglect of the principal sought to be charged; and (3) the third person, in relying on the agent's apparent authority must not themself be guilty of negligence. Seneris v. Haas (1955) 45 Cal.2d 811, 830, 291 P2d 915.

Since the consumer who rented the vehicle in the first instance will invariably testify that they believed they were renting from Hertz or Avis or Thrifty and that they never knew that the actual renter was an independent franchisee, the ostensible agency argument is strong where the rental agency is not actually owned by the franchisor rental car company.

6. Conclusion.

Car rental companies should not be overlooked where a defective rental vehicle causes injury or death. The Legislature has declared that such companies are responsible for ensuring that the public may depend upon rental vehicles as being safe and mechanically sound.

A car rental company is responsible for its own negligence in renting unsafe vehicles, and where it violates the statutory duties imposed by Vehicle Code § 24010, may be held liable under a negligence per se theory.

Given these legal realities, a consumer attorney faced with a product liability case involving a rental vehicle causing injury should always pay close attention to the car rental company in their at-fault analysis.

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