

# CLASS LESSONS: LEARNING FROM CLASS ACTIONS

**Rental car companies should consider lessons learned from past class-action lawsuits and how they apply to changing technology.**

ON JUNE 25, 2014, A NEW JERSEY FEDERAL COURT APPROVED A SETTLEMENT of more than \$11 million plus attorneys' fees and costs to settle class actions involving toll and administrative fees charged to renters who used electronic toll payment systems. (*Doberty and Simonsen v. Hertz Corp., et al.*)

Since rental companies (RACs) have long been targets of class actions, what lessons can we learn from *Doberty* and other cases?

A class action is a lawsuit filed by a representative on behalf of a group ("class") of parties with similar claims. Depending upon the claim, class size can range from 20 to hundreds of thousands. Liability can be multiplied by the class size, and the defendants may be responsible for the plaintiffs' attorneys' fees and other costs.

Two categories, strict compliance and consumer protection, are instructive.

## STRICT COMPLIANCE CASES

Strict compliance cases are based on a range of federal and state laws, such as privacy, civil rights/anti-discrimination and state vehicle rental laws, which impose liability even if the defendant is unaware of the law or its requirements. Recent examples include:

**Website accessibility:** A number of class actions allege the denial of website access to the visually impaired. These cases typically allege that visually impaired persons are denied full access to a website if the site does not allow access via keyboards and software that vocalizes the website information. Claims are made under federal Americans with Disabilities Act (ADA) and various state acts, and some also identify website standards published under the Web Content Accessibility Guidelines 2.0.

**Text messaging:** The Federal Telephone Consumer Protection Act (TCPA) protects U.S. consumers from unsolicited text messages. A potential claim arises when a business receives a customer's cell phone number for texting important information. Potential exposure arises when a business then uses that cell number to text a solicitation or advertisement. That practice potentially violates the TCPA, as well as various state statutes and regulations, and has given rise to numerous class action claims.

With strict compliance cases, remember that ignorance of the law is no excuse. Pay attention to legal developments in "hot" areas like state rental law, privacy and the ADA through newsletters such as *Auto Rental News* Reporter and additional resources from your advisers and industry groups.

Follow high-profile cases in other industries (such as cases related to the Target data security breach in late 2013). They may

provide guidance on complying with laws affecting all businesses.

Review your marketing materials for compliance.

## CONSUMER PROTECTION CASES

Changing technology has added new wrinkles to cases alleging violations of consumer protection laws by RACs, but the basic claims remain the same.

Consumer protection cases involving fees generally claim that an RAC charged an improper fee and/or inadequately disclosed the fee. Recent cases involve electronic toll payment systems (*Doberty*), fuel and refueling fees (use of fuel gauges, requirement to produce a receipt showing refueling and disclosure of fuel rates) and late fees.

Consumer protection cases involving sales practices typically allege that the RAC forced customers to purchase optional products, such as SLI or LDW, or provided inadequate disclosure. In one recent case, class representatives claimed that an RAC used electronic signature pads to "trick" customers into purchasing LDW.

With these cases, draft disclosures carefully — punctuation counts! Train frontline employees fully on optional products. Remember that "optional" means "at the renter's option."

Fees that the renter can avoid by alternative behavior (such as late fees) generally are permissible, unless prohibited or limited by state rental law.

Ensure that fees are related to your services or expenses. **AFN**

## IF YOU'RE NAMED IN A CLASS ACTION:

- Don't panic. With careful analysis and a proactive approach, you'll get through it.
- 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 press coverage, consider using a PR firm.
- Retain experienced counsel.
- If the case is filed in state court, consider transferring it to federal court.
- Consider early settlement of claims.

## ABOUT THE AUTHORS

Wesley D. Hurst is an attorney in the Los Angeles office of Polsinelli with substantial experience in rental car company litigation and representation. He can be reached at [whurst@polsinelli.com](mailto:whurst@polsinelli.com).

Leslie J. Pujó is an attorney and owner of LaPlaca Pujó in Rockville, Md., with substantial experience in vehicle rental law. She can be reached at [lpuj@laplacapujó.com](mailto:lpuj@laplacapujó.com).