

# AUTO RENTAL NEWS<sup>®</sup>

The Magazine of the Car and Truck Rental Industry



## He's **BACK**— Sandy Miller Teams with Tom McDonnell to Reinvent **U-SAVE**

Why You Need to Care About  
**Company Culture**

**Four Steps to Limit  
Your Exposure  
After a Customer Accident**

**THE DIMINISHING  
CLARITY OF  
Diminished-Value  
Claims Policy**

(l-r) Tom McDonnell,  
Sandy Miller

How to  
Overcome Customer  
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# Limiting Your Exposure **After** an Accident



PHOTO: CATHY STEPHENS

***Taking photos, gathering written statements and obtaining a detailed appraisal can dramatically strengthen your defense against potential litigation.***

**By Corey Tavel and Jay Young**

**A**s defense counsel involved in personal injury litigation, we often wish we had the opportunity to talk to our clients *before* the accident. As Benjamin Franklin said, “An ounce of prevention is worth a pound of cure.”

At times, our more proactive clients ask for advice on how to prevent accidents and limit exposure. But unlike most other businesses, an automobile rental company has a somewhat limited ability to reduce the potential for litigation. This is indeed unfortunate. All the planning, preparation and safety classes in the world cannot control the third party that operates your vehicle. The renter is not an employee of the rental company and is not under your control.



Instead, customers are in control of a potentially dangerous instrumentality. If the vehicle is rented or operated in a vicarious liability state, the rental company can bear the risk of the actions of the uncontrolled operator. While these risks are great, there are still steps a rental company can take after an accident to limit exposure.

tle to no damage to the vehicle is often the key piece of evidence in defending these types of cases. While a Polaroid photograph is better than nothing, the better the quality of the photograph, the better its use in litigation.

As previously mentioned, minor impact accidents should not be ignored. When the case comes up for trial years later, your attorney will

in the other involved vehicles. This will help prevent fraudulent claims.

In addition, consider asking the renter whether he or she had any problems with the operation of the vehicle. We often encounter allegations of brake failure once litigation is commenced. The ability to reduce these claims is important, especially in non-vicarious liability states where a defective vehicle claim is a method to foist liability on the owner of the rental vehicle.

**Witness Statements** — If possible, any passengers in the vehicle should fill out witness statement forms. The time to get the statement is the day of the return, before the passenger has consulted an attorney and considered litigation. At the time of the return, the passenger is more likely to be forthright and helpful. The witness statement form should include a space to identify any injuries sustained.

**An appraisal** — It goes without saying that repairing the vehicle and getting it back into service is a priority. However, it is important to obtain a detailed appraisal with additional photographs. Make sure the appraiser tests the brakes since the renter may claim brake failure. Thereafter, all repair records for the vehicle should be maintained and safeguarded.

Finally, report all claims to your insurance carrier, since the claims department must aggressively defend the claims. The earlier claims examiners have a case, the better chance they have to prevent claimants from building up their medical treatment.

The potential for litigation is real. We all know it is a cost of doing business. However, with rising insurance rates and the difficulty that many companies have in securing insurance, it is time to fight this cost head-on. If you have a case that goes to trial, your attorney will have a much better chance of winning if armed with documentary evidence, clear photographs and thorough witness statements. Over time, these steps will help to decrease what has become an unforeseen tax on the industry. ■

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*It's important to obtain a detailed appraisal with additional photographs. Make sure the appraiser tests the brakes since the customer may claim brake failure later.*

When the car is returned following an accident, a detailed procedure to gather information and evidence is imperative. Memories fade over time, and vehicles are repaired within days. However, the life of a lawsuit is often years. Therefore, the time to gather information is the day of the accident, when memories are fresh and the damage is evident.

You need to assume that every accident will result in a lawsuit, no matter how minor the damage. In fact, the less significant collisions, resulting in little or no property damage, are the types of accidents in which a solid post-accident investigation will greatly reduce the value of potential lawsuits.

After a vehicle is returned with damage or the renter reports the vehicle was involved in an accident, consider obtaining:

**Photographs** — Whenever a vehicle is returned with a reported accident, you should take photographs of the vehicle. If possible, at least one of the photographs should show the driver pointing to the damage, holding that day's newspaper. A photograph that shows lit-

be grateful that you have photographs that depict the damage. Without the photographs, the plaintiff will generally testify to a major impact. However, a photograph showing a small dent will deflate the claim and bolster your defense that the injuries, if any, could not be related to the accident.

In addition to taking photographs of vehicles involved in accidents, the claims-conscious operator should consider taking digital photographs of every vehicle upon its return. The use of digital photography will not result in a significant expense and will allow you to defend your company in cases involving unreported accidents.

**Driver Statements** — The next step is to prepare an accident report while the driver and witnesses (passengers) are still on the premises. The contemporaneous taking of the report will preserve the memories of these persons for future use.

The accident report form should include a space for the driver to list all of the passengers in the car, as well as the number of passengers

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