

**EMPLOYERS CAN PROTECT THEMSELVES FROM LEGAL LIABILITY FROM
USE BY NON-EMPLOYEES OF COMPANY CARS; RENTAL AND LEASING
COMPANIES FACE DIFFERENT CHALLENGES**

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Can a company that leases a car for one of its employees forbid others to drive the car? If someone else drives the car, will the employer – the company that leased the vehicle -- be responsible for the accident?

One fine day, Victor Anderson rented a car from Discount Rent-a-Car (Discount) for the ultimate purpose of driving the Sills family to a funeral. However, duty called at work and Anderson, after renting the car, found that he could not attend the event. He authorized his friend Ronald Sills to drive the family instead.

The rental agreement Anderson had signed contained a clause that made it quite clear that Mr. Anderson, the renter, was permitted to allow adult members of his family to drive the rental car, he was not allowed to permit anybody else to drive the car without the express permission of Discount. Needless to say, Anderson did not contact Discount to obtain its permission before allowing Sills (not an adult member of his family) to use the car that day.

As fate would have it (for without fate, there would be no lawsuits) Sills had an accident while driving the rental car causing injury to a passenger in the car, one Hazel McMillan. McMillan sued Sills, the driver, and Discount, the owner. Discount's insurance company, Continental Insurance, provided insurance coverage to Discount, assigning it a lawyer to defend it in the McMillan lawsuit. However Continental refused to provide insurance company to Sills, taking the position that Sills did not have Discount's permission to drive the rental vehicle since Sills' use of the car was in violation of the private rental agreement between Discount and Anderson.

The issue that eventually confronted the New York State Court of Appeals, the state's highest court, when the case reach it in 1974 was a simple one: were the restrictions in the car rental agreement enforceable? Can a car rental company restrict a renter's ability to allow others to drive the rental car?

The outcome of the case would have a significant impact on the ability of the injured person to recover money damages. If the restriction in the lease were upheld, Discount (and other car rental companies) would be able to establish that the use of the car by others (in breach of the lease) was a "non-permissive" use. New York Vehicle and Traffic Law Section 388 provides that an owner of a car who gives permission, express or implied, to a driver to use the car is responsible for any negligence caused by that driver. Consent is presumed under the statute but the presumption can be rebutted. If the driver was "non permissive," the owner (Discount, in this case) would not be responsible and thus there would be fewer assets available to compensate the injured victim.

The Court of Appeals ruled against Continental and Discount's position, holding that the restrictions in the rental agreement violated public policy. "Daily, car rental agencies rent large numbers of vehicles to the general public for profit. They are not in the same position as the

private car owner who loans his car to a friend or relative for a limited purpose and, unlike the short span of a friendly individual loan, restrictions in rental agreements affect the use of a large number of vehicles, these arrangements sometimes continuing over long periods of time.” Continental’s lease restrictions violate the public policy of this State. A slight deviation from such a restrictive lease could render an injured victim devoid of adequate protection.

The Court went on to hold that the lessor and Continental knew or should have known that the probabilities of the car coming into the hands of another person were exceedingly great and in these circumstances they are to be charged with constructive consent. Any other interpretation, the Court said, would be placing an unreasonable limitation on the "permission" contemplated by the Vehicle and Traffic law. This decision has led to other rental company lease restrictions being ruled unenforceable, including restrictions dealing with the age of permissive drivers.

Fast-forward to February 18, 2003 when the same Court faced similar question in *Murdza v. Peterson Trust*. In this case, a van owned by Peterson Trust (a leasing company) was leased to Brown & Williamson Tobacco Company. Under New York law, Brown & Williamson was considered an owner because those who enter into lease agreements (greater than 30 days) are considered “owners” under the Vehicle & Traffic Law.

Brown & Williamson provided the car to one of its sales representatives, Margaret. Margaret’s boyfriend Robert was using the van, although there was a real question as to whether she had given him permission. As fate would have it (and you understand what “fate” does in these cases already), Robert had an accident, running down a pedestrian, one Stanley Murdza. Similar to the Discount lease in the 1974 case that tried to restrict the “permissive users,” Brown & Williamson also wanted to limit the “permissive users”. They did so under an employee handbook provision that restricted use of company cars to the employee and her or his licensed spouse.

Did the employee handbook restriction rebut the presumption of consent that the Vehicle and Traffic law recognized? In other words, could an employer be free from a finding of legal responsibility as a vehicle owner by restricting permission in an employee handbook. If such a restriction were valid and enforceable, would that restriction also apply to free the leasing company from responsibility as an owner?

The Court of Appeals reviewed its almost 30-year old *Continental* decision and commented that the “linchpin” of its holding was a finding of “constructive consent”. That is, legal responsibility as an owner of a vehicle, under the Vehicle and Traffic Law provision is based on a strong presumption of consent. While Discount, in that case, did not give “actual” consent, by virtue of its car rental business, it was giving “constructive” consent to anyone its renter allowed to use the car. It found, however, that when considering permission given by an employer for use of a company car, the same rules did not apply.

Brown & Williamson, the Court held, “stands in a very different position than a car rental agency, which rent large numbers of vehicles to the general public for profit. “While it is foreseeable that a rented vehicle would come into the hands of any number of operators by the very nature of the ... lease,” allowing an employee to use a company car presents a different “set of expectations”. The employment relationship and the frequent contact between employer and employee “demand compliance with restrictions on vehicle operation placed on the employee”.

As a result of this relationship, the Court found it “reasonable for an employer to expect employees to comply with its use restrictions”. Accordingly, an employer may restrict those who can use company cars and, at the same time, limiting its legal responsibility for the use of those cars. Thus, even if Margaret, the employee had consented to her boyfriend’s use of the van, Brown & Williamsons’ employee handbook explicitly restricted those who may operate its vehicles. The presumption of permission was rebutted and Brown & Williamson would not be responsible for the accident as the owner of the vehicle.

Of course, the holding in *Continental* led to a different result for Peterson Trust. As a company that regularly leases vans, it fell “squarely within the public policy considerations” announced by the Court in that earlier decision. As such, the leasing company could not benefit from restrictions adopted by their lessee, restrictions which the leasing company could not itself use to limit its ownership liability under section 388.

Since there was a real question about whether Margaret had given Robert permission to use the van, the Court sent that issue back for a finding of fact. If Robert did have permission to use the van, Peterson Trust would be held responsible, just as Discount was found liable three decades earlier.

The counseling point is clear. Employers can restrict the use of company cars – whether they be owned or leased -- by clear communications with their employees. If done right, an employer can be free from responsibility if a driver, who was not given permission by the employer, has an accident. Car rental agencies and leasing companies will be held to have given permission to anyone driving the car with the permission of the person to whom the vehicle is leased.