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Ownership liability: Are dealerships at risk?

Dealership rental and lease vehicles could pose liability

Ownership liability represents a risk of loss to motor vehicle dealers in states where laws address this liability. This article discusses ownership liability laws, potential legal defenses, and loss control ideas that dealers may be able to apply to their operations. Zurich recommends dealerships discuss this issue and the concepts outlined in this article with their trusted legal counsel in order to competently implement a plan appropriate to their business.

What is ownership liability?

Ownership liability laws are state laws that make the owner of a motor vehicle liable for any damage caused (bodily injury and property damage) in an accident by any permissive user of the auto. Twelve states (Minnesota, North Dakota, Connecticut, Maine, New York, Iowa, Florida, Rhode Island, Michigan, California, North Carolina and Tennessee) and the District of Columbia have ownership liability laws of some type. Because legislation continues to be developed and passed, dealerships should seek advice as to ownership liability status in the states where they do business. Some laws place a cap on an owner's liability, while others do not.

How does the Graves Amendment protect against ownership liability?

The Graves Amendment is a 2005 federal statute found at 49 U.S. Code §30106. The Graves Amendment provides a legal defense against ownership liability for an owner of a motor vehicle. It also provides defense against an owner's affiliate that rents or leases the vehicle to a person if the owner or its affiliate is engaged in the trade or business of renting or leasing motor vehicles and there is no negligence or criminal wrongdoing by the owner or its affiliate.

It's important to understand that the Graves Amendment does not supersede state laws requiring owners to be financially responsible for the operation of the owned motor vehicles. A vehicle owner may escape ownership liability (but cannot escape insurance requirements) if it can provide proof that:

a. the vehicle was rented or leased to a person by the owner;

b. the owner is engaged in the trade or business of renting or leasing motor vehicles; and

c. the owner was not negligent and did not commit criminal wrongdoing.

Are there loss control opportunities?

A dealership providing courtesy rentals to its service customers in a state with an ownership liability law does have a risk of liability which can be unlimited in some states. That is, unless the dealership can provide proof as outlined above. Two of the three requirements are typically easy to prove. Dealerships regularly engage in the trade or business of leasing autos, and as long as there is no claim that inadequate maintenance caused the accident, proving any negligence should be straightforward. The first requirement listed above could be controversial. Did the dealership rent or lease one of its own cars to its customer for no direct rental charge?

Because the customer did not pay the dealership directly for the use of the car, one trial court in New York said the car was not "rented," despite having signed a rental agreement. The New York dealership was held vicariously liable for the customer's negligent driving. In an opposite holding, however, the 4th District Court of Appeals of Florida found a dealership did rent a replacement car to an employee whose car was in the repair shop, even without a written rental agreement and no direct payment for the rental. Without clear guidance from the courts, how should a dealership conduct its operations to minimize its liability risks?

With only one appellate court ruling so far on the question of whether a courtesy "loaner" is a rental under the Graves Amendment, it is too early to tell whether dealers will reduce their exposure by taking loss control measures. The language of the Graves Amendment is the only other guidance today. The word "rents" in the federal law is traditionally considered different from "borrows" or "loans" (words not used in the federal statute) in one way: a rental transaction confers a benefit to each party, involving some form of consideration.

What measures could potentially be taken by a dealership?

Zurich offers the following as guidance on possible measures a dealership could put in place to minimize its risk of liability:

- Dealership personnel should speak about the service loaner as a "rental" rather than a loaner.
- Before releasing the courtesy rental, ask the customer to sign a "rental agreement."
- In the rental agreement, set out what constitutes payment ("consideration") for the rental, such as payment by the customer for service work, the dealership earning warranty reimbursement for warranty work done, the dealership's opportunity to work on the vehicle, reimbursement by the franchisor for the daily use of the service rental vehicle, and the customer's loyalty.
- Dealership management should articulate for the court how the courtesy rental helps bring money into the dealership (providing a profit motive rather than gratuitous motive).
- Consider charging a nominal rate for the use of the replacement vehicle.

The guidance above should be discussed between the dealership and its legal counsel in an effort to present a consistent picture that everyone involved in this transaction – the customer, the dealership, and the service department – considered it a rental.

Conclusion

It's important to understand that these steps cannot guarantee success in court. Until case law is clarified in all 12 ownership liability states and the District of Columbia, there remains a risk that customer service vehicle rentals can subject a dealer to public liability for the negligence of its driving customers. Consistency in labeling the transaction a "rental" is one step that can be considered by a dealership and its legal advisors to possibly provide the dealer with a successful defense against ownership liability laws.

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