



Latest Developments in Credit Hire Litigation

The credit hire world, it seems, is never far from controversy. The latest news in this area suggests that this pattern is set to continue.

Right from the dawn of the industry to present day, insurers have been looking for increasingly inventive ways to challenge credit hire claims. For the most part the Courts have seemed reluctant to accede to these arguments. However, in cases where claimants have not been impecunious and thus, in theory, able to afford to hire a replacement vehicle out of their own pocket, insurers have enjoyed a good deal of success challenging the rates of hire presented by the various credit hire companies.

By presenting case-specific surveys of high street hire companies' 'spot hire' rates to the Courts in the form of a witness statement, insurers have regularly achieved considerable reductions in claims for the cost of credit hire. These surveys were frequently, although by no means exclusively, provided by a company called Autofocus.

Within the last month it has emerged that the credit hire company Accident Exchange is set to launch a challenge to some of the surveys compiled by Autofocus. In a report to the Stock Exchange dated 17th September 2009 Accident Exchange stated that *'Following a rapid investigation which commenced on 27 August 2009, the Board has obtained a substantial amount of direct evidence which supports the conclusion that some of the evidence submitted on behalf of defendant insurers in order to challenge the Group's hire charges is, at best, factually incorrect and, at worst, dishonest.'*

It is further stated in the report that *'The results of the investigation have now been filed with the Court in a number of cases which involve the recovery of hire charges from the insurers of the 'at fault' driver. These results also give rise to a separate action for damages currently being formulated against Autofocus...The Group is now also in the process of taking more formal steps in the High Court to secure pre-action disclosure from Autofocus as part of an action for damages. The action may be extended to a number of individuals employed by Autofocus.'*



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Autofocus has issued a statement saying that it '*rejects the allegations in the strongest possible terms and intends to defend itself and its reputation*'.

There is an immediate practical problem for the Courts that arises in those cases where Autofocus reports have been obtained. Should the Court rely on the Autofocus evidence before it, given that these very serious allegations made by Accident Exchange are currently unproven, may never be proved and may not, in any event, be relevant to the particular case under consideration? Or should the Court deal with the matter in some other way in order to avoid the possibility of future applications to appeal or re-open decisions relying on Autofocus evidence in the event that Accident Exchange's allegations are made out?

Pending the outcome of any High Court proceedings, the most practical solutions may be either to stay those cases with Autofocus reports or for parties wishing to challenge the rate of hire to seek permission to obtain alternative rates evidence. My own experience is that the Courts are currently sympathetic to the latter application.

What happens with any High Court proceedings remains to be seen. What is certain is that those who sagely prophesied that credit hire cases would dry up once the decision in Clark v Ardington was handed down have been proved decidedly wrong: credit hire litigation looks set to continue well into the future.

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November 2009

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