

CENTER FOR AUTO SAFETY

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PETITION FOR INVESTIGATION AND LEGAL ACTION TO CHANGE ENTERPRISE HOLDING'S PRACTICES IN RENTING TO CONSUMERS RECALLED VEHICLES WITH UNREPAIRED SAFETY DEFECTS

August 9, 2010

The Center for Auto Safety, Consumers for Auto Reliability and Safety (“CARS”), and Carol S. Houck petition the Federal Trade Commission, pursuant to 16 C.F.R. § 2.1, to investigate and take appropriate legal action regarding the practices of Enterprise Holdings, Inc. in renting to consumers vehicles that have been recalled for repair of safety defects¹ without having caused the repair of the safety defects.

Petitioners

Petitioner Center for Auto Safety is a non-profit consumer advocacy organization founded by Ralph Nader and Consumers Union in 1970 to provide a voice for consumers on auto safety and quality in Washington, D.C. and across the country. The Center advocates for auto safety before the Department of Transportation and the Federal Trade Commission and in the Courts. The Center has been designated as a consumer representative by the Federal Trade Commission in Trade Regulation Rulemakings, and filed the petition that led to the Budget consent order on renting vehicles with outstanding safety recalls. *In the Matter of Budget Rent A Car Corporation*, 113 F.T.C. 1109 (1990). The Center is most known for its work on airbags, lemon laws, and recalls of defective vehicles, including the Ford Pinto. The Center frequently testifies before Congress, including four times within the past six months on issues related to Toyota Sudden Acceleration.

Petitioner Consumers for Auto Reliability and Safety is a national, award winning, non-profit auto safety and consumer education and advocacy organization dedicated to preventing motor vehicle-related fatalities, injuries, and economic losses. CARS has worked to enact legislation to protect the public and successfully petitioned the National Highway Traffic Safety Administration (“NHTSA”) for promulgation of regulations to improve protections for consumers. The United States Congress has repeatedly invited the President of CARS to testify on behalf of American consumers regarding auto safety practices and policies.

¹ Safety recalls are issued pursuant to the National Traffic and Motor Vehicle Safety Act, 49 U.S.C. §§ 30101 *et seq.*, and the regulations promulgated thereunder, 49 C.F.R. §§ 501 *et seq.*

Petitioner Carol S. Houck was a plaintiff, along with Charles Houck, in a wrongful death action against Enterprise Rent-A-Car and its subsidiary Enterprise Rent-A-Car of San Francisco.² *Houck v. Enterprise Rent-A-Car*, No. HG052220018 (Alameda County, CA Sup. Ct. judgment June 9, 2010). The case arose from the 2004 deaths of their two daughters, Raechel and Jacqueline, ages 24 and 20, respectively. The sisters rented a PT Cruiser from Enterprise that, unbeknownst to them, was the subject of a safety recall for risk of underhood fires. While traveling through Monterey County, the car caught fire, causing it to collide with a semi-trailer truck, killing the girls instantly. After five years of litigation, and one month before trial on the merits, Enterprise admitted to 100 percent liability in the deaths of Raechel and Jacqueline Houck. Trial was held on the issue of damages only and a verdict was rendered for \$15 million. Ms. Houck has dedicated herself to ensuring that others will not have the tragic fate of her daughters.

Facts

Enterprise Holdings is a privately held company formed in 2009 as part of a reorganization after Enterprise Rent-A-Car acquired Vanguard Automotive and its Alamo and National rental car brands in 2007. It is North America's largest provider of rental cars with more than a third of all airport business in the U.S. and Canada through its Enterprise, Alamo, and National brands. Worldwide, it has 7600 locations and operates a fleet of 1.1 million vehicles.

The relevant facts regarding Enterprise's acts and practices have been brought to light because of the *Houck* case, summarized above and discussed in the articles and press release in Attachment A. Approximately one month before the tragic October 10, 2004 crash, Enterprise had received a safety recall notice from Chrysler Corporation³ that the 2004 PT Cruiser eventually rented by the Houck sisters, and other 2001-2005 PT Cruisers, were being recalled because their power steering hoses may contact the transaxle differential cover and rub through, resulting in loss of power steering fluid that could cause underhood fires. Enterprise did not cause the vehicle to be inspected and repaired per the recall before renting it to Raechel Houck. The attorneys representing Charles and Carol Houck were prepared to prove at trial that the defect for which this PT Cruiser was recalled, a leaking power steering hose, had started a fire and impaired the steering, causing Raechel Houck to lose control of the car. Enterprise's last minute admission of liability obviated the need to prove this at trial.

The attorneys for the Houcks were also prepared to prove at trial that the Houck sisters were the fourth party to which Enterprise rented this PT Cruiser after having

² Chrysler Corporation was originally a defendant as well, but was dismissed eventually because of its bankruptcy.

³ This letter and other pertinent documents from the recall are in Attachment B. This recall, like nearly all auto safety recalls, was initiated voluntarily by the manufacturer, though it was influenced by NHTSA, which had opened a preliminary investigation on the problem. See the ODI Resume in Attachment B.

received the recall notice. Far from being told that the vehicle was recalled but unrepaired, the Houck sisters were told that this PT Cruiser, apparently the last vehicle on the rental lot, was a “free upgrade.”⁴ Consistent with this, Mark Matias, the Area Manager of Enterprise Car Rental of San Francisco at the time of the Houck tragedy, executed a declaration⁵ indicating it wasn’t uncommon for vehicles with pending safety recalls to be rented to customers. He did say that Enterprise had procedures for handling vehicles flagged with a pending “priority recall” in Enterprise’s computer system, but those procedures were merely to write “recall” on a post-it note and place it on the keys.⁶ “There is nothing in place that keeps an employee from renting that car. The computer system doesn’t lock up. There is nothing to prevent an employee from taking those keys, and renting that vehicle out to the next customer,” Mr. Matias noted.⁷ The reason that actually happens, he explained, is because overbooking of available cars is a common practice. “But then of course, you run short on vehicles, and if all you have are recalled vehicles on the lot, you rent them out. It was a given. The whole company did it. Enterprise’s corporate offices looked the other way regarding this fact.”⁸

The above begs the questions whether and how Enterprise has changed its practices regarding recalled vehicles since the Houck tragedy. Those questions can only be answered definitively by conducting the investigation requested by this petition, but the relevant publicly available information doesn’t even come close to putting them to rest. For example, Thomas Giesecking, Enterprise’s Assistant Vice President of Service Operations, made clear in a 2007 deposition in the *Houck* case⁹ that Enterprise’s computer system only flagged pending safety recalls at the end, not the beginning of a rental,¹⁰ ensuring that at least one party would rent a recalled vehicle before it could be repaired. When Mr. Giesecking was asked whether there were any plans for changing this way that recall notices come up in the rental system and whether, at that time, vehicles subject to a safety recall were still being rented to consumers, his answer to both questions was that he didn’t know.¹¹

Moving to the present, Enterprise put out two statements in the wake of the *Houck* verdict. One was an official statement released to the media, and the second has been identified as an email that Pamela Nicholson, Enterprise’s President and Chief Operating Officer, sent to all employees in the U.S. and Canada.¹² The statements note improvements in Enterprise’s electronic systems and that the company has added more than 100 company-owned service facilities, which apparently can perform recall repairs in addition to routine maintenance work, but they stop far short of saying that all vehicles that are the subject of safety recalls will be inspected and repaired before being rented to consumers. Instead, both statements put the onus on auto manufacturers and NHTSA to state in the recall notices when vehicles should be “grounded” before repairs,¹³ though

⁴ See the Press Release in Attachment A.

⁵ The Matias Declaration is Attachment C to this petition.

⁶ Matias Declaration, p. 3

⁷ *Id.*

⁸ *Id.* at pp. 2-3.

⁹ The Giesecking Deposition Transcript is Attachment D to this petition

¹⁰ Giesecking Deposition Transcript at pp. 50-56.

¹¹ *Id.* at pp. 36, 56

¹² The statements are included in Attachment E to this petition.

¹³ Enterprise ignores that it receives the same letter as individual owners and that its considerations as a fleet owner should be much different than those of an owner with a single vehicle.

they also say that Enterprise independently reviews all recalls as well. The official statement, but not Ms. Nicholson's, goes on to say that "recalls involving the risk of sudden loss of control, airbag failures or fire hazards will be grounded until repaired."¹⁴ The statement provides no elaboration on the details of this apparent policy of discriminating between safety recalls. Enterprise also gave no indication that it is disclosing, to renters of recalled vehicles it has decided don't merit grounding, that the vehicles they are renting are subject to a safety recall but not yet repaired.

Enterprise's Acts and Practices are Deceptive in Violation of the Federal Trade Commission Act

The Commission is already on record taking the position that acts and practices similar to Enterprise's violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a). In 1990, in response to a petition from the Center for Auto Safety, the Commission entered a consent order with Budget Rent A Car dealing with Budget's having rented unrepaired recalled vehicles. *In the Matter of Budget Rent A Car Corporation*, 113 F.T.C. 1109 (1990). The complaint issued with the order emphasized that Budget's failure to disclose to some renters that the autos they rented were subject to recall notices but had not been inspected or repaired was an omission of material information in violation of Section 5(a). Enterprise's practices are similarly deceptive for failing to disclose material information, but petitioners also believe that some of Enterprise's business practices and representations are made false or misleading by its practice of renting vehicles with pending safety recalls that have not been performed.

Companies like Enterprise that rent new autos obtained from the manufacturers foster the impression that the autos they rent are relatively safe and problem free, much as new car dealers foster a similar impression for the vehicles they sell. Indeed, in a recent press release, Enterprise vice president of leisure business development Steve Short claimed, "[o]ur special weekend rates make it easy for cost-conscious consumers to enjoy the security, comfort, and reliability of new model Enterprise rental cars for the weekend, saving wear and tear and mileage on their own vehicles."¹⁵ It is misleading, at best, for Mr. Short to highlight the security and reliability of Enterprise's new models when some of those vehicles have unrepaired safety defects.

Enterprise also attempts to set itself apart from other car rental companies by emphasizing its customer service, having gone so far as to trademark its "[w]e'll pick you up" slogan. Its website trumpets its "Culture of Customer Service" and that it has been "recognized numerous times for its customer service." As part of that customer service message, John Murphy, vice president of airport operations for Alamo, Enterprise, and National, claimed in a recent press release that "[p]roviding clean, well-maintained cars for our car rental customers is priority number one for us."¹⁶ A vehicle that has been recalled but not repaired is, most assuredly, not well-maintained, however, and

¹⁴ Enterprise Statement in Attachment E

¹⁵ "Enterprise Rent-A-Car Makes Spring Travel Special With Weekend Rates as Low as \$9.99 per Day," Enterprise Holdings Press Release, March 16, 2010.

¹⁶ "Enterprise Holdings Hosts Third Annual Clean Car Championship for Alamo, Enterprise and National brands," Enterprise Holdings Press Release, May 17, 2010.

Enterprise's practice of renting such vehicles makes Mr. Murphy's claim and Enterprise's message of customer service false or misleading.

In short, not only is it deceptive for Enterprise to fail to disclose its practice of renting recalled but unrepaired vehicles, it is deceptive for Enterprise to have such a practice to begin with.

The Remedy for Enterprise's Practices is to Remove Recalled Vehicles from Rental Service Until They Are Repaired

While the Commission's 1990 *Budget* consent order is a useful reference in this matter, petitioners do not believe the remedy in the *Budget* order should be duplicated with Enterprise. The *Budget* order was the product of an era that was much different in information technology, among other ways. The *Budget* order gave the company the choice of adopting a policy of disclosing to prospective renters that a particular vehicle was subject to a recall but unrepaired, or adopting a policy of repairing recalled vehicles within a reasonable period of time (defined as 120 days after receipt of the recall notice). Petitioners maintain that Enterprise should not be given the option of adopting just a disclosure policy because disclosure alone is inadequate to address Enterprise's apparently longstanding practice of renting cars with unrepaired safety defects which is antithetical to its claimed business model and representations. The repair policy alternative in the Budget order is also inadequate because it does not address removing the vehicles from rental service and gives too long a period to accomplish repairs.

Petitioners believe the appropriate remedy in this matter is a simple one: once Enterprise receives the official notice of the recall, the affected vehicles should be immediately parked until fixed. This is the same duty that new car dealers have been assigned by the federal Motor Vehicle Safety Act, 49 U.S.C. § 30120(i), and is appropriate for Enterprise under the circumstances. Enterprise has already proved itself capable of living up to this remedy when it publicized in early February 2010 that it had removed from its fleet 83 percent of the affected Toyota vehicles within days of Toyota announcing its intent to recall them for the sticking accelerator problem¹⁷ and before Toyota had provided the official notification letter to owners. Enterprise will have much more time to prepare for most recalls than it did with the frenzied Toyota situation. Enterprise can monitor, through NHTSA and its contacts with manufacturers, the reports of intent to initiate a recall that manufacturers file with NHTSA pursuant to 49 C.F.R. § 573. These reports precede, often by weeks or months, the notification letters that go out to owners pursuant to 49 C.F. R. § 577. Enterprise can use that time to prepare for the recall and perhaps even to repair the vehicles in question before the recall notice is received.

Conclusion

¹⁷ "Enterprise Holdings Removes 83 Percent of Recalled Toyotas and Pontiac Vibes from Alamo Rent A Car, Enterprise Rent-A-Car and National Car Rental Locations," Enterprise Holdings Press Release, February 2, 2010.

For the reasons given above, the Commission should commence the requested investigation and take appropriate legal action to remedy Enterprise's deceptive trade practices. Staff should feel free to contact petitioner Center for Auto Safety regarding questions or further information on these matters.

Respectfully submitted,

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Counsel for Petitioners