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June 11, 2015

Brian Maas, President  
California New Car Dealers Association  
1517 L Street  
Sacramento, CA 95814

Re: AB 287 *Houck v. Enterprise Rent-A-Car, et al.*

Dear Mr. Maas:

We represented Cally and Chuck Houck against Enterprise Rent-A-Car after their two daughters died as a result of Enterprise having rented them a vehicle which was under a safety recall. Enterprise (eventually) admitted its own liability. That liability was based on the existence of an illegal act, i.e., the failure to exercise due care causing injury, which incurs civil, legal liability. The argument you are trying to make, i.e., that "illegal" means "criminal," was advanced 12 years ago by the auto dealers and was specifically and expressly rejected by the Second District Court of Appeals. In *Celardo v. GNI Automobile Dealers Health & Welfare Trust* (2003) 318 F.3d 142, the court resolved the issue as follows:

"While [the plaintiff] would have us hold that 'illegal' means 'criminal,' this interpretation contravenes the plain, common-sense meaning of 'illegal.' (citation) The dictionary definition of 'illegal' is 'contrary to or violating a law or rule or regulation or something else (as an established custom) having the force of law. Traffic infractions prohibited by [the state's traffic code] may reasonably be encompassed by this definition even if they are not considered crimes...."

As demonstrated by the *Houck* case, it is illegal in California to rent a vehicle which is under a recall because this act constitutes negligence which, if causative of harm, incurs legal liability. Thus, when you say "no laws currently exist to protect consumers who buy recalled used vehicles," your statement is factually inaccurate. It is simply incorrect for you to say that the Houcks "got a civil recovery for [Enterprise] engaging in behavior the jury felt was inappropriate, that doesn't mean it's illegal." There is no liability, civil or criminal, based upon "inappropriate" behavior—only for illegal behavior.

Accordingly, it is equally inaccurate for you to characterize the bill you support as constituting an incremental step forward in protection in an area where no protection currently exists. If AB287 had been in effect at the time that the Houck sisters died, there is no question that Enterprise would not have admitted liability. It would have not have done so because you would have given them a powerful tool to defend against our charges of civil, negligence liability.

Brian Mass, President  
California New Car Dealers Association  
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As held by the California Supreme Court in *Ramirez v. Plough, Inc.* (1993) 6 Cal.4th 539:

“There is some room in tort law for a defense of statutory compliance. Where the evidence shows no unusual circumstances, but only the ordinary situation contemplated by the statute or administrative rule, then the minimum standard prescribed by the legislation or regulation may be accepted by the triers of fact, or by the court as a matter of law, as sufficient for the occasion.”

This would prove disastrous for the Houcks’ ability to vindicate their daughters’ deaths. Moreover, the court in *Howard v. Omni Hotels Management Corp.* (2012) 203 Cal.App.4th 403, reaffirmed the rule that, “any evidence of compliance with industry standards, while not a complete defense, is not irrelevant, but instead properly should be taken into account....Also, expert evidence about compliance with industry standards can be considered on the issue of defective design, in light of all other relevant circumstances, even if such compliance is not a complete defense.” Accordingly, if AB 287 is the law in California, evidence that the car dealer complied with the minimal requirements of AB 287 would constitute evidence devastating the plaintiffs’ claim of civil negligence. In fact, the potential power of such evidence to defeat plaintiffs’ injury claims is so evident that it can be inferred that the bill’s support from the California New Car Dealers Association is motivated by the intent to weaken existing tort law which would otherwise serve to hold its members accountable for negligence.

Very truly yours,

GRASSINI, WRINKLE & JOHNSON



LAWRENCE P. GRASSINI



ROLAND WRINKLE