IN THE SUPREME COURT OF MISSISSIPPI
NO. 2007-IA-02275-SCT

ENTERPRISE LEASING COMPANY – SOUTH CENTRAL, INC. — APPELLANT

v.

WILLIAM H. BARDIN — APPELLEE

APPEAL FROM THE CIRCUIT COURT
OF HINDS COUNTY, MISSISSIPPI

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# BRIEF OF APPELLANT

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## CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of this Court may evaluate possible disqualification or recusal.

William H. Bardin, plaintiff/appellee.

C. Eiland Harris, counsel for William H. Bardin.

Osie Singleton, co-defendant.

Enterprise Leasing Company-South Central, Inc., defendant/appellant.

James G. Wyly and Thear J. Lemoine, Phelps Dunbar LLP, Gulfport, Mississippi, counsel for Enterprise.

Fred L. Banks, Jr. and Luther T. Munford, Phelps Dunbar LLP, Jackson, Mississippi, counsel for Enterprise.

SO CERTIFIED, this the 25 day of July, 2008.

LUTHER T. MUNFORD

## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

### FEDERAL CASES



### STATE CASES

**STATE STATUTES**



**MISCELLANEOUS**

## INTRODUCTION

Car insurance typically covers claims arising not only out of the owner's operation of the car, but also out of its operation by those who drive with the owner's permission. It is common for owners of insured or self-insured cars to allow persons to use them who have not individually purchased their own insurance, such as friends, employees, or those who rent cars.

But the circuit court, Hon. Winston Kidd, held here that it may be negligence for an owner of a car covered by insurance to allow someone to drive a car who does not have his own individually purchased insurance.

The court denied summary judgment sought by Enterprise Leasing Company - South Central, Inc. ("Enterprise") even though the sole allegation of negligence against Enterprise is that it rented a car to a driver who did not have his own individually purchased insurance who then, allegedly, caused an accident which injured the plaintiff. That is the only thing the plaintiff says Enterprise did wrong. The court said the case could go to a jury even though Enterprise had provided coverage for the use of its vehicles in the amounts required by the state motor vehicle responsibility laws. Enterprise maintains financial responsibility on its vehicles in Mississippi as a certified self-insurer.

The circuit court's holding has no foundation in case law or common practice and is violative of the statute prescribing the duties of rental car companies. If correct, it would impose liability on anyone who lends or rents a car

to another person without first determining that the person has their own individually purchased insurance. This would be an improper invasion of the province of the legislative branch. It would also require many drivers who do not own cars to purchase insurance which duplicates the insurance they are afforded by the owner's policy. As such it would impose an increased and unnecessary burden upon the young and the poor with no corresponding benefit to the public. This Court should reverse the circuit court and enter judgment for Enterprise.

## STATEMENT OF THE ISSUES

1. Whether a rental car company whose self-insurance satisfies the requirements of state financial responsibility laws has a legal duty not to rent a car to a driver who has no personal car insurance?

2. If so, could the breach of such a duty be the proximate cause of an accident caused by the driver's subsequent negligence?

## STATEMENT OF THE CASE

**Course of proceedings and disposition in the court below.**

After a car accident, William H. Bardin sued the other driver, Osie Singleton, and the company that had rented a car to Singleton, Enterprise Leasing Company-South Central, Inc. Enterprise moved for summary judgment. The Circuit Court of Hinds County, Hon. Winston Kidd, denied summary judgment on the ground that an issue of material fact existed, CP 1:47, RE. 2, and denied rehearing CP 1:85, RE. 3.

This Court granted this interlocutory appeal to resolve a controlling issue in the case.

**Statement of the facts**

Enterprise rented a 2001 Buick to Osie Singleton.[1] At the time of the rental, Singleton held a valid Mississippi driver's license. CP 1:6, 15.

After a car accident with Singleton, Bardin sued Singleton and Enterprise to recover for his injuries.[2] He alleged Enterprise had negligently entrusted the car to Singleton. His sole claim is that Enterprise was at fault for allowing Singleton to drive "without mandatory and adequate insurance coverage."[3] Bardin claimed Singleton should not have been allowed to rent the car if Singleton did not have his own insurance coverage.[4]

When it moved for summary judgment, Enterprise proved that the rental vehicle driven by Singleton was covered under Enterprise's self-insurance filing even if Singleton did not have his own insurance. It is undisputed that Enterprise satisfied Mississippi's Minimum Financial Responsibility Laws through its status as a self-insurer. Because Enterprise was qualified to be a self-insurer[5] the car rented from Enterprise by Singleton had the coverage required by statute. See

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[1] CP 1:12-14, RE. 4, 5.
[2] CP 1:12, RE. 4.
[3] CP 1:12-13, RE. 4. See CP 1:103.
[4] CP 1:42.
[5] See MISS. CODE ANN. §63-15-53; CP 1:3; CP 41, RE. 6.

MISS. CODE ANN. §§63-15-3(j) and 63-15-43(2)(b) (bodily injury limits of $10,000 per person and $20,000 per accident, with property damage limits of $5,000).[6]

## SUMMARY OF THE ARGUMENT

The courts that have considered the question have held that a rental car company, or other car owner, is not liable for negligent entrustment simply because the owner rented or entrusted the car to a person who did not have their own individual liability insurance.

The Mississippi legislature has addressed the relationship between the ability to drive and the purchase of insurance. It allows a licensed driver to drive without insurance. Even after an accident, a driver can drive if the car owner has purchased insurance. The driver, or operator, does not have to purchase the insurance.

This is because there is no necessary connection between who buys the insurance and who is competent to drive. An incompetent could buy insurance. A competent person has no reason to buy insurance if the insurance is provided by others. This is true not only for those who rent cars, but also for others who use cars they do not own, especially family members and employees.

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[6] MISS. CODE ANN. §§ 63-15-3, 43 were amended by §§ 1 and 4 of Mississippi Laws 2005, Ch. 483. These amendments increased the minimum financial responsibility limits as to policies issued or renewed with an effective date on or after January 1, 2006, to split limits of $25,000/$50,000/$25,000. These amendments do not apply to this case.

That is sufficient to decide this case. But if the Court should wish to go further, it should also hold that the breach of a duty to require insurance cannot be the proximate cause of an accident.

## ARGUMENT

### I. A rental car company has no legal duty to refuse to rent a car to a driver who has not purchased his own liability insurance, and who must rely on the company's coverage to satisfy financial responsibility laws.

Generally, the negligence of a lessee in exclusive control of a rented automobile cannot be imputed to the company who rented him the automobile. But an exception exists if the rental company negligently entrusts the car to a renter whom the company knows or should know is reckless or incompetent. See *Dixie Drive It Yourself System Jackson Co., Inc. v. Matthews*, 212 Miss. 190, 201-03, 54 So.2d 263, 266-67 (Miss. 1951) (company liable where car rented to customer known to drink and who had been drinking); *Savage v. LaGrange*, 815 So.2d 485, 492-493 (Miss. Ct. App. 2002) (parent liable to accident victim for negligent entrustment of car to driver with a history of drug abuse); Restatement (Second) of Torts § 390 ("Chattel for Use by Person Known to Be Incompetent"). *See also Laurel Yamaha, Inc. v. Freeman*, 956 So.2d 897, 904-905 (Miss. 2007) (seller of motorcycle not liable for sale to driver known not to have proper license).

Bardin does not claim that Enterprise knew anything reckless about Singleton. He admits that Singleton was "duly licensed" and that Enterprise

satisfied its duty to determine that. See MISS. CODE ANN. § 63-1-67; *Cousin v. Enterprise Leasing Company-South Cent., Inc.*, 948 So.2d 1287 (Miss. 2007).

Rather Bardin's claim here is that a jury issue exists as to whether Enterprise should have known that Singleton was reckless simply because he did not have his own individually-purchased liability insurance.

Whether Enterprise owed a legal duty to Bardin not to rent a car to Singleton when Singleton did not have his own insurance is a question of law for this Court to decide de novo on these undisputed facts. *Brown ex rel. Ford v. J.J. Ferguson Sand & Gravel Co.*, 858 So.2d 129, 131 (Miss. 2003) (road contractor had no legal duty to keep third party off of closed road); *Fair v. Town of Friars Point*, 930 So.2d 467, 471 (Miss. Ct. App. 2006) (summary judgment granted; city had no legal duty to incarcerate tortfeasor after he paid his fine).

### A. The courts that have considered the question have held, as a matter of law, that the common law of negligent entrustment does not require a car rental company to refuse to rent a car to a driver who has not purchased his own liability insurance.

The courts that have considered the question have rejected the claim Bardin makes here. They have done so for two main reasons.

First, if a legislature allows licensed drivers to drive without purchasing insurance, it is not for the courts to impose such a requirement. See pp. 9-10, *infra*.

Second, there is no necessary connection between financial responsibility, as indicated by the purchase of insurance, and the ability to drive a car safely. In fact

an argument could be made that uninsured drivers would have a greater incentive to drive safely because they risk full personal liability if an accident should occur. See pp. 10-11, *infra.*

In 1994, a Louisiana Court of Appeal said it could find no authority that would support creating such a duty:

> Plaintiff can cite no authority giving rise to a duty on the part of [Snappy Car Rental] to inquire into the status of [the renter's] insurance and we can find none.

*Collette v. Ledet*, 640 So.2d 757, 760 (La. Ct. App. 3rd Cir. 1994).

This echoed a California court's conclusion in 1989:

> We have been cited no case from any jurisdiction supporting plaintiff's theory of liability nor are we aware of any. (See Annot., Rental Agency's Liability for Negligent Entrustment of Vehicle . . . 78 A.L.R.3d 1170).

*Osborn v. Hertz Corp.*, 252 Cal. Rptr. 613, 617 (Cal. Ct. App. 3rd Dist. 1988).

Nor have counsel for Enterprise in this case been able to find any authority to support the circuit court's denial of summary judgment here. Notably, the ALR annotation cited by the California court still does not list any such case.

Listed by jurisdiction, the cases which Enterprise counsel have found are as follows:

**California.** *Osborn v. Hertz Corp*, 252 Cal. Rptr. 613, 617-18 (Cal. Ct. App. 3rd Dist. 1989) (summary judgment granted; legislature has decided when driver insurance is required); *Altman v. Morris Plan Co.*, 130 Cal. Rptr. 397, 402-

403 (Cal. Ct. App. 1st Dist. 1976) (summary judgment granted; lender who retained title not liable for allowing uninsured driver to purchase and drive car without public liability insurance); *Skerlec v. Wells Fargo Bank*, 96 Cal. Rptr. 434, 437 (Cal. Ct. App. 1st Dist. 1971) (demurrer sustained; lender bank not liable for lending uninsured driver money to purchase car; "[o]ne is not incompetent to drive merely because he does not have liability insurance . . .").

**Colorado.** *Liebelt v. Bob Penkhus Volvo-Mazda, Inc.*, 961 P.2d 1147, 1149 (Colo. Ct. App. 1998) (summary judgment granted; seller under conditional sales contract had no duty to inquire whether purchaser had liability insurance).

**Delaware.** *O'Brien v. Delaware Olds, Inc.*, 833 F.Supp. 447, 449 (D. Del. 1993) (instruction on negligent entrustment denied; allowing a person "who had been cited for an insurance violation to drive a company vehicle does not [evidence] reckless disregard").

**Louisiana.** *Cenance v. Tassin*, 869 So.2d 913, 917 (La. Ct. App. 4th Cir. 2004) (rental car company had no duty to verify whether lessee had liability insurance; summary judgment granted); *Collette v. Ledet*, 640 So.2d 757, 760 (La. Ct. App. 3rd Cir. 1994) (judgment as a matter of law; car rental company not required to determine whether renter had liability insurance; lack of insurance not evidence of incompetence); *see also Joseph v. Dickerson*, 754 So.2d 912, 916 (La. 2000) (parent had no legal duty to refuse to entrust automobile to child not covered by his insurance policy).

**Nebraska.** *Danler v. Rosen Auto Leasing, Inc.*, 609 N.W.2d 27, 31-32 (Neb. 2000) (lessor's demurrer sustained; lessor not liable to third party even though lessor knew that lessee allowed her insurance to lapse).

**Texas.** *Goodyear Tire and Rubber Co. v. Mayes*, 236 S.W.3d 754, 758 (Tex. 2007) (affirming summary judgment; employer who entrusted truck to employee not liable even though it knew employee had been cited for driving without liability insurance); *Houston Cab Co. v. Fields*, ___ S.W.3d ___, 2007 WL 5011586, *2-4 (Tex. Ct. App. – Beaumont 2008) (reversing jury verdict; cab company not liable for leasing cab to driver previously cited for insurance violation).

### B. The Mississippi Legislature has not required all drivers to have liability insurance and, when financial responsibility is required, an owner can provide coverage for a driver.

Where a state legislature has determined who can drive and when insurance is or is not required, courts have refused to supplant that legislation by making conflicting common law rules. *See Danler, supra,* 609 N.W.2d at 32 (if legislature had wanted to impose duty, it could have done so); *Osborn, supra*, 252 Cal. Rptr. at 618 (whether persons who cannot afford their own insurance should be prevented from renting cars is a decision for the legislature to make).

All Mississippi requires is that a driver have a license. A driver does not have to purchase liability insurance to drive, unless and until that driver has an accident. MISS. CODE. ANN. § 63-15-11 (Supp. 2007). Even then, it is sufficient

for the owner to provide the insurance or otherwise demonstrate financial responsibility. See *id.* at § 63-15-11(4) (financial responsibility requirements do not apply "to such operator or owner if such owner had in effect at the time of such accident a liability policy with respect to the motor vehicle involved in such accident").

Because the Mississippi legislature allows driving without insurance, this Court should not prohibit rental car owners from renting cars to drivers, or "operators," who do not have their own personal insurance. This is particularly true where, as here, the rental car owner provides coverage that is sufficient to satisfy the state financial responsibility laws.

### C. There is no necessary connection between the possession of personal liability insurance and driver competence.

There may be many reasons why a driver does not have his own personal liability insurance that would cover his use of a rental car. The driver may have insurance, but it may not cover use of a rental car. The driver may be an employee, or family member, or other person who does not own a car and only drives cars insured by others.

The California Court of Appeal has recognized that the failure to possess personal liability insurance is not and cannot be a sign of driver incompetence:

> One is not incompetent to drive merely because he does not have liability insurance or because, in event a judgment later were rendered against him, he would then be unable or unwilling to give the required security and

> would suffer the penalty of suspension of his license. If it were so, the Department of Motor Vehicles should not issue an operator's license to such person.

*Skerlec, supra*, 96 Cal. Rptr. at 437. *See also Osborn, supra*, 252 Cal. Rptr at 618 (court should not impose "severe hardship on countless responsible citizens" who depend on rental cars).

Car owners often entrust cars to persons who do not have their own personal liability policies. The owner's policy usually covers the "permissive user." This is true for parents, for friends, and for companies who own their own cars. Car rental companies are but another example. Because there is no connection between driver competence and the individual purchase of insurance, they are not negligent in doing so. There is frequently no need for the driver to purchase separate insurance. Even if that were not true, courts should not discriminate against those who, perhaps because they do not own a car, do not have their own personal insurance. In fact, those who drive without insurance have a strong incentive to be more careful, because they will have to pay out of their own pocket if they cause an accident.

## II. If reached, the driver's insurance status cannot be the proximate cause of an accident.

Even where rental car companies have breached statutory insurance requirements, courts have held that they are not liable to accident victims because such a breach was not a proximate cause of the accident.

For example, in *Scott v. Joe Thomson Auto Rental & Leasing, Inc.*, 571 S.E.2d 475 (Ga. Ct. App. 2002), the car lessor insured the car itself but violated a Georgia statutory requirement that the lessee also purchase "spot" insurance. The court said that the company's failure to sell the renter "spot" insurance "did not cause the accident which injured [the plaintiff]." *Id.* at 477. The purpose of the statute, it said, was to protect the public. Because the insurance that the company provided served that purpose, it was not liable to the accident victim. *See also Orose v. Hodge Drive-It-Yourself Co.*, 9 N.E.2d 671, 674 (Ohio 1937) (violation of municipal ordinance requiring purchase of insurance did not cause accident because ordinance "was not a safety but an indemnity measure").

## CONCLUSION

This Court should not create a duty that other courts have rejected, that runs contrary to Mississippi's financial responsibility laws, and which would irrationally presume that drivers who do not purchase their own individual insurance are incompetent.

Instead, it should reverse the judgment below and enter judgment here for Enterprise.

This the 25th day of July, 2008.

Respectfully submitted,

BY: _____

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## CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the above and foregoing document was served via U.S. Mail, postage prepaid, to the following counsel of record:

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This the 25 day of July, 2008.

LUTHER T. MUNFORD

## CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the Brief of Appellant has been served via U.S. Mail, postage prepaid, on the following:

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Honorable Winston L. Kidd
Hinds County Circuit Court
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This the 4th day of August, 2008.

LUTHER T. MUNFORD