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Copley & Maden
By Craig Budsworth

For those practitioners in credit hire you are no doubt glad to hear that the Court of Appeal have handed down their decision on intervention in the cases of **Copley v Lawn and Maden vHaller [2009] EWCA Civ 580; [2009] WLR (D) 200.**

For those who are uninitiated, intervention is where the defendant's insurer offers the claimant a 'free' car whilst their own is off the road rather than the claimant using a hire vehicle. Before this Court of Appeal decision, the matter had already been considered by the lower courts on the cases of **Evans v TNT LTL 20/4/2007** and **Steadman v TNT LTL 8/7/2008**. In the first case the court decided that whilst the offer to the claimant was that of a 'free' car there was still a cost to the defendant and this was highlighted in the defendant's offer letter explaining the cost to them as £29 per day. The claimant did not accept the offer and the court reflected on the decision in [Dimond v Lovell \(2002\) 1 AC 384 HL](#) as to the recoverability of hire rates. As the defendant's offer letter had stated the rate the defendant could provide a replacement vehicle for, then this was the amount that the claimant could recover. However, in the Steadman case, the court decided that the vehicle was 'free' to the claimant and as such the claimant could not recover anything. Thus the need for a case to be taken to the appeal courts, hence Copley and Maden.

Whilst the main issues in Copley and Maden are the same, one of the slight differences was that Mrs Copley was already in a hire vehicle when the offer was rejected and Captain Maden's hire had not yet started. Firstly, Mrs Copley had received a cold telephone call from the insurer, which in paragraph 9 of the judgment Longmore LJ found this practice to be inappropriate and should be discontinued forthwith, then both had received offer letters sent by the insurer. Whilst this has implications in relation to hire, this has far bigger implications on third party capture issues that bodies, such as the Motor Accident Solicitors Society, are vigorously campaigning against.

Turning to the letters, neither of them provided for any figure as mentioned in the Evans case just that the defendant's insurer could provide a 'free' car to the claimants.

Mrs Copley passed this letter to her solicitors, who took 4 months to tender any advice on it, and Captain Maden sent the letter on to his insurer. What is interesting is that both the claimant's were put in touch with the hire company through their own insurer and so perceived the hire vehicle to also be free. In the judgment Longmore LJ states that "it is positively unreasonable to expect Mrs Copley to take the initiative, without advice, of cancelling an agreement she has already made just so she can get a different 'free' car from the 'free' car she already has." Whilst the facts of this case relate to hire cars that are provided through an insurance policy linked to the hire company, the same hire company in *Borley v Reed* LTL 12/12/2005 won on the issue of enforceability when the defendant argued that the agreement was unenforceable when the hire company explained to the claimant, prior to the claimant signing the terms and conditions, that charges are claimed from the person at fault, or from their insurer. Thus the hire was not as part of an insurance policy but very much giving the perception that the hire charges are 'free', because the claimant does not have to pay any money up front and knows that it is recoverable from the defendant or their insurer, and so I believe that the ruling in *Copley and Maden* will apply irrespective of whether or not the claimant has been put into contact with the hire company by their own insurer or not.

The Court of Appeal considered all these points and came to the conclusion that because the claimants could not properly consider the defendant's offer it was perfectly reasonable that the offer was never accepted and thus the hire car company recovered in full. The court then gave obiter comments on what steps could be taken in the future and ultimately, from a defendant's point view, this is making sure their offer letter states the daily rate it costs them. Further, that any offer letter is a lot more claimant friendly than that used by the insurer in *Copley and Maden*.

Insurers will no doubt now tailor their offer letters as Longmore LJ states that "if *the insurer* could genuinely obtain hire cars more cheaply than the claimant's could, it might be unreasonable to use the services of *the hire company* and a mitigation argument might get off the ground". Therefore any solicitor who ignores any correctly constructed offer in the future faces every likelihood that a court would reduce the hire charges and a claimant could be left with unrecoverable charges that he may well look to his solicitor to pay under a negligence claim.

In practice, solicitors need to be aware of offers of a replacement car quoting a specific daily rate, possibly by amending initial letters to defendant insurers to ask for copies of any letters that have been sent directly to the claimant and ask the claimant to forward on any letter received. However, do not be distracted away from whether or not the offer is a genuine offer of a like for like replacement and so checks should be made as to whether the vehicle on offer is the same with similar named drivers, etc. If you are satisfied that the offer is genuine, and the rate is lower than the one being charged by the hire company, then the first steps are to check to see if the credit hire company can reach an agreement as to rates. If they can then remember to agree the same payments terms as would be paid to the defendant's hire company. If not, then ensure

that any disruption to your client is minimal including when the defendant's hire vehicle is delivered to your client and that the credit hire vehicle should not be collected until after the defendant's has been delivered. Again, consider agreeing a time to pay the hire charges already incurred.

Maybe this will now be the end of the credit hire arguments but I suspect this is just another battle in what seems to be a never ending war especially as I have now heard that a petition has been submitted to the House of Lords to appeal this judgment, despite the fact that the Court of Appeal had said that leave would not be allowed.

Craig Budsworth:

Craig joined Glaisyers in 1998 and qualified as a Fellow of the Institute of Legal Executives in 2007, becoming a Partner in 2009.

Craig now heads up the Road Traffic Accident department and specialises in the recoverability of credit hire and credit repairs. Craig was short listed for Legal Executive of the year in 2008 and is a trainer for the Motor Accident Solicitors Society.