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## **Never a dull moment – Comments by Craig Budsworth**

With the current controversy in the credit hire market regarding spot hire rate validation, Daniel Dunkley reported in Post Magazine on the far-reaching and damaging impact and outcome this could have. Craig Budsworth, Head of Road Traffic Accidents and a Partner at Glaisyers, has commented on these issues:

Having read the recent developments in the Post Magazine on documentation issues in respect of hire claims, it seems that the defendant side are completely overlooking the fact that the common reason for the issuing of proceedings is the complete lack of response from insurers. The hire companies mentioned are parties to the Association of British Insurers, General Terms Agreement (ABI GTA) where the rates are agreed between them and the majority of insurers. The rate only increases to a commercial rate, that includes credit charges, if the insurer does not pay the hire invoice within 90 days. If the insurers could get their house in order then the number of claims being issued on would reduce and this argument over rates would lessen.

Interestingly, I note the comment from Antony Hughes about Forum of Injury Lawyers speaking to the Motor Accident Solicitors Society about standardising evidence in relation to credit hire claims. I believe that it would be very difficult to standardise such evidence as it is dependant on the claimant's location in the country, their need for a certain type of vehicle and the availability of that hire vehicle on the day in question, which of course is what Autofocus have been trying to provide in the first place and hence the current struggles. Maybe, one way to resolve this would be to use agreed amounts under the ABI GTA as the spot rate. From experience of hiring a spot rate vehicle, I found the rate to be about equal to the 30-60 day rate. Therefore, if the claim is not paid for within this first 30 day period, which would give the insurer a discount against the average spot rate, it should stay at the 30-60 rate only for the hirer who has the funds to pay for hire themselves. If the hirer is impecunious, then the law, as already laid down in *Lagden v O'Connor*, provides for the Claimant to produce copies of his bank statements to show he had no money and in which case, the commercial rate of the hire company is then

recoverable. If this happens then there will be less onus on the defendant to show that the claimant had an alternative, as per paragraph 34 of Lagden, and it would be much easier for the courts to establish an amount and of course drive down litigation costs because the defendants would not need to provide a report that the claimant would then seek to discredit. There are no doubt many reasons why this would not be acceptable to either insurers or hire companies, or indeed it would be against anti-competition law, so perhaps insurers should employ someone to check rates everyday with every hire company, otherwise the hire companies could employ someone to check rates every day but this is obviously an impossibility and unless some common ground can be sought this argument is potentially never ending and individual to every case.

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.

