

Large Claims Lessons Learned



Line of Business: Commercial Umbrella

Topic: Vicarious Liability and Customer Test Drives

Claim scenario

A customer test-driving a truck turned left at an intersection with no traffic lights or stop signs, in front of a motorcycle that had the right of way. The passenger and salesperson in the truck instructed the driver to stop, but the driver continued to turn, resulting in a collision with the motorcycle. The motorcyclist was forced to brake suddenly and, attempting to avoid a collision, laid the bike down and slid under the truck while still on his vehicle. The customer then stopped the truck, but had driven over the motorcyclist, who was stuck under the truck's rear, passenger-side wheel.

Injuries from this accident resulted in the amputation of both of the cyclists' legs, as well as a shattered elbow, bilateral wrist fractures and a significant shoulder injury. He filed a lawsuit against the customer driving the truck and the dealership. An insured salesperson from the dealership was in the truck, accompanying the customer on the test drive at the time of the accident. The suit argued the dealership was vicariously liable for the customer's reckless driving and the plaintiff's lawyers claimed negligent entrustment of the vehicle.

Financial impact:

This claim may have a financial impact of up to **\$1,600,000**.



Lessons learned

1. Vicarious liability is real. Dealerships can be held liable for actions of customers during test drives, especially if an employee is present.
2. Allowing a customer to drive without adequate screening or clear communication of expectations increases negligent entrustment risk and can lead to claims that the dealership failed to act responsibly.
3. Clear communication is important. Verbal instructions alone may not be enough to prevent unsafe actions during test drives.
4. Test drive protocols matter. Lack of a formal, enforced test drive procedure exposes both customers and staff to significant harm.
5. Staff must be trained to recognize and mitigate risky situations during test drives.
6. Proper documentation of test drive agreements and customer licensing is crucial for risk management.



Actions needed to prevent this type of loss

- Implement and enforce a test drive policy. Only allow test drives after verifying a valid driver's license and insurance. Require customers to sign a test drive agreement outlining expectations and responsibilities.
- Train sales staff on intervention protocols. Equip employees with the authority and training to stop a test drive if unsafe behavior is observed.
- Designate safe, low-traffic routes for test drives. Avoid routes with complex intersections, left turns, limited visibility, limited traffic control or high pedestrian/motorcycle activity.
- Document customer information and consent. Use waivers or acknowledgment forms that outline test drive expectations and responsibilities.
- Regularly train staff on safe test drive procedures and how to intervene if a customer behaves recklessly.
- Review and update insurance coverage. Ensure your dealership's policy includes coverage for vicarious liability and test drive incidents.



Loss prevention/risk management resources

Zurich offers a wide range of tools and services to help dealerships reduce liability and improve operational safety, including but not limited to:

- **Risk Management and Loss Prevention for Auto Dealerships:** Zurich's support includes driver safety tools, MVR reviews and dealership walkthroughs.
- **Automotive Resource Hub:** Access articles, webinars and tools on dealership safety, liability, and customer interaction risks.
- **Claims Services for Auto Dealerships:** Learn how Zurich supports dealerships in managing and mitigating claims, including those involving test drives.

By strengthening test drive policies, focusing on employee training, and leveraging Zurich's dedicated safety resources, dealerships can significantly reduce the risk of costly incidents and associated liabilities.

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