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Jury clears Hertz in lawsuit over insurance dispute

By: George Flynn

The plaintiff claimed damages of less than \$18. The legal bill to bring it to trial was more than \$450,000. The jury ruled the amount due was ...nothing, on both counts.

Late Tuesday, the jury found the Hertz Corp. had not deceived Alan Siebenmorgan when it sold him \$17.90 in renter's supplemental liability insurance coverage, even though it was not then licensed to sell the insurance. It also found he was not entitled to recover legal fees.

The unusually high attorney fees and equally unusual case involved far more than pressing Siebenmorgan's individual claim. Plaintiff attorney Larry Veselka sought class-action status when he sued Hertz in July 1996, alleging it violated state laws as an unlicensed seller of insurance. Without state regulation, Hertz was charging excessive amounts, the suit said.

Since then, Hertz and every other major car rental company agreed to a Texas Department of Insurance consent order requiring them to refund nearly \$13 million to customers in overcharges the last four years.

The past violations also spawned a law by the last Legislature allowing the special insurance sales by rental companies. In part because of that consent order and refunds, state District Judge Scott Brister denied class-action status in the Siebenmorgan case. However, it was a test on whether consumers deserved more in refunds.

"We are proud of what we have accomplished," Veselka said after the verdict. "We believe there will be better consumer enforcement by the TDI, and that the refunds and the effort were very good for Texas consumers." Veselka said post-trial motions and other legal moves will seek to reactivate the effort for class-action certification. He noted that Hertz, for the first time, admitted wrongdoing in selling the unlicensed insurance and charging the \$8.95 daily rate.

Hertz attorneys Geoffrey Harrison and Eric J. Mayer scoffed at Veselka's contentions, noting jurors took less than one hour to reject the allegations.

"The verdict is complete and total vindication of Hertz," Harrison said. He said the plaintiff had "absolutely no basis" to claim his case triggered the later refunds and state orders.

"That is a grab for glory by the plaintiff's attorneys, who lost the only case they tried in this matter," Harrison said.

Veselka said problems came in rulings excluding some evidence including the background on the extensive fight for class certification and the testimony of a former Georgia state insurance commissioner who believed Hertz should have refunded all its revenues from the unregulated insurance sales.

The defense called former Texas Supreme Court Justice Bob Gammage, who said the case was "ridiculous" and the fees excessive. He said Siebenmorgan should have complained first to Hertz or then the commission. Veselka said that approach might have gotten the plaintiff his \$17.90, but would have enabled Hertz to continue gouging consumers.

Harrison said the verdict sends a message that people "ought to at least pick up the phone and try to resolve their differences before running down to the courthouse to sue."

Hertz relied on an Insurance Department analysis for the consent order, which said the insurance rate should have been about \$1.50 less a day.

The plaintiff's expert, a former Insurance Department staffer, said Hertz had it been regulated as an insurer should have charged no more than about \$2.50 daily.

Hertz said it relied on an insurance broker and other specialists for advice and was told licensing was not needed because the coverage went through a licensed insurance carrier.