

EXPERT WITNESS REPORT OF MARK LACEK

Prepared by Mark Lacek

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Client

Kherkher Garcia LLP

Kevin C. Haynes

RE: JAMS Arbitration NO.1310024646

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I was contacted by Kevin Haynes of the Kherkher Garcia Law Firm to review information provided to me and to offer my expert opinion on the repossession procedures and circumstances resulting in the repossession on May 02, 2019 of a 2005 Lincoln Navigator VIN# 5LMFU27595LJ12046.

QUALIFICATIONS AND WORK EXPERIENCE

My qualifications for undertaking this assignment are listed in the attached curriculum vitae.

In summary, I am currently the owner of Commercial Asset Solutions, a licensed, insured, certified and compliant commercial repossession agency. I currently work in the field repossessing mortgaged collateral.

I am a Certified Asset Recovery Specialist and Certified Commercial Recovery Agent.

I have authored several publications on the topic of locating and repossessing assets.

I am a contributing editor the nation's largest towing publication, American Towman magazine.

I am the founding owner and publisher of the Professional Repossessor Magazine (PRM). PRM was a monthly industry publication for the repossession industry from January 1997 to June 2004.

I have taught numerous repossession seminars throughout the nation focused on training in repossessions and industry standards.

I have provided training seminars in many states including Texas on repossession industry standards and procedures.

I presented at the annual Tow Expo in Dallas Texas. Part of my Dallas Texas presentation was avoiding lawsuits by following repossession industry standards.

I have appeared on American Towman TV and discussed the importance of training and certification.

I have written and published the Certified Commercial Recovery Agent training manual offered online by the Recovery industry services company (RISC).

I have personally repossessed over 10,000 accounts in the field. I have been accepted as an expert witness for the repossession industry and have testified twice at trial as an expert witness as well as offering deposition testimony on repossession industry standards.

I have worked in the repossession industry for over 40 years and well experienced in repossession industry standards.

I have worked repossessing automobiles for Great Lakes Auto Recovery, Florida Vehicles Recovery, ACA & Associates and have owned my own agency in Florida since 1989 repossessing commercial and consumer collateral.

I have held several board positions on the Florida Association of Licensed Recovery Agents including Past President, President, and Vice President.

Past member of the National Fraud Investigators, and a past member of Time Finance Adjusters.

I am occasionally called upon to answer questions from readers. I was called upon by the former director of licensing John Russi of the State of Florida's Division of Licensing as a consultant in the preparation and creation of the current laws regarding Florida repossession activity. States across America have used the State of Florida repossession law under Chapter 493 as a template for repossession regulation. In addition to owning and running my own repossession company, I also consult with other agencies and companies to train on repossession and industry standards. As a consultant, I review a company's policies and procedures in conducting repossessions. I look for deviations of industry standards and assess risk and potential liability. I advise on how to maintain professional standards.

SUMMARY OF ACTIONS DURING THE REPOSSESSION

The vehicle was repossessed from 7404 South Gessner Houston Texas 77036. The registered owner of the vehicle at the time of the repossession was Albert Nduli.

The repossession company repossessing the car was Harris County Impound who was under contract to conduct repossession services for TitleMax of Texas.

On 05/02/2019 Oscar Lee Harrison Jr was employed as a reposessor for a Texas based repossession firm called Harris County Impound. Harrison was in possession of a repossession assignment forwarded from TitleMax of Texas for a 2005 Lincoln Navigator owned by Albert Nduli.

At approximately 0720 hrs, in his own words Harrison spotted the navigator and entered the parking area at 7404 S. Gessner. In a recorded statement provided by law enforcement investigating this case, Harrison in his own words said he backed up to it, hooked to it and strapped it down. Harrison said in his recorded statement to Investigator Bill Brooks a guy came up screaming and upset. Harrison stated he had a conversation with the guy saying "we talked a little bit and I explained what was going on". Harrison stated the guy was screaming in another language and at his family and started heading towards the house. Harrison stated he decided to leave and he pulled into the street when he heard a knock on the tow-truck door and the door opened up and the guy appeared and disappeared. Harrison said the guy yanked the door open while the guy was standing on the running board of the tow-truck. Harrison said the guy then fell off of the truck as Harrison proceeded forward until the truck went through the traffic light. Harrison then stated the guy was

on the ground and started to get up. Harrison said he then called his office as he continued to proceed forward. Harrison said he was told by his office to continue to bring the vehicle to the company yard. Harrison stated he told his office on the phone call it was going to be a hostile situation. Harrison then said in his own words he then contacted 911 and told the 911 operator he was conducting a repossession and a guy jumped on the truck and fell off and that he was concerned the guy might be hurt and to send someone to check on him.

Harrison stated in his own words when he was back at the company impound yard with the repossessed vehicle; he received a call from police dispatch and was told to return to the scene which he did. Towards the end of the recorded conversation, Harrison said in his own words, the guy came out when "we were about to leave".

SUPPORTING MATERIAL

For supporting material on certification and training, I have chosen three of the nation's leading repossession certification & training platforms. The three presented here teach and provide training on accepted and applicable repossession industry standards. Below I will list excerpts from the above mentioned sources for reference purposes to support my opinions.

1. The C.A.R.S repossession certification manual.

Created by Joe Taylor and the Recovery Industry Services Company (RISC).

The C.A.R.S training & certification manual has been the certification manual used by repossessors and repossession agencies for many years. The purpose of the certification program is to train repossessors, staff and others on acceptable

standards of repossessing collateral secured by a perfected lien. The C.A.R.S training manual is available in all 50 States and has been referred to in courts and in depositions as "the Bible" for repossessing mortgaged collateral. In this report I will be referring to the C.A.R.S certification program.

2. The Eagle Group XX Field Agent Compliance Training (FACT) 2020 edition.

Created by Ron Brown and The Eagle Group. The primary purpose of the Field Agent Compliance Training (FACT) is to develop a uniform program the purpose of which is to educate and train personnel who work in the field and who in the course of their duties, come in contact with consumers and third parties. This program was developed by Eagle Group XX member agencies with a dual purpose, the first purpose is to insure field agents are properly trained to perform their duties in a compliant, safe and legal manner and the second purpose is to insure the consumers and the third parties the agents come into contact with are treated professionally, fairly, and the consumer's privacy rights are protected. FACT was created to train in the areas of confrontational avoidance, dealing with irate consumers, trespass and breach of peace.

ON SITE AWARENESS SECTIION of F.A.C.T

With the sight and sound observations SEARCH the agent should be able to EVALUATE the perimeter situation and make the decision to EXECUTE or back off and wait for another time or another place.

UNDER THE PERSONAL CONTACT SECTION of F.A.C.T

During the course of the recovery process the agent would desire the best scenario where the mortgaged property is located and recovered with no personal contact with any person. Some courts have ruled that even a perception of threat of violence can be construed as a Breach of Peace. It is also imperative that a field agent knows what constitutes Breach of Peace as the moment the peace is breached the agent loses all rights to self help repossession under the uniform commercial code.

INCLUDED IN THE BREACH OF PEACE SECTION...Although the law varies somewhat from state to state, the general rule is that secured lenders also breach the peace if they: (1) repossess the collateral despite the consumer's objections; or (2) trespass in order to gain possession of the collateral.

3. FIELD RECOVERY SPECIALIST OPERATIONS MANUAL PUBLISHED BY MATRIX EDUCATIONAL SYSTEMS

Providing professional training curriculums for Asset and Collateral Recovery Specialists since 1999

On page 11. Scenario #1: The collateral is located debtor's driveway and the FRS is in the process of hooking the collateral to his tow truck when the debtor runs out of the residence shouting to the FRS, "You can't take my car"! The FRS should immediately show the debtor his identification card, introduce his self and follow Example # 2 above. This is a situation where the FRS's communications skills are critical to a successful recovery.

However, if the debtor persists in refusing to allow the collateral to be taken, the FRS must leave the collateral for another day. To continue the recovery process under these circumstances invites a potential charge of Breach of Peace and/or other criminal charges, and litigation against the FRS, the recovery agency owner, the client and the insurer and is cause for immediate dismissal from employment.

Scenario # 2 "The FRS has hooked the collateral to his tow truck and is pulling out of the debtor's driveway when the debtor runs out of the residence and jumps into the collateral or on the back of the tow truck.

The FRS must immediately stop, exit from the tow truck and again, follow Example # 2 above. If the FRS does not stop, serious injury, or death could result with devastating consequences to all parties involved. If the debtor refuses to exit the collateral or tow truck and allow the collateral to be taken, the FRS should contact local law enforcement and request they send an officer to the scene. "

FROM CARS MANUAL...

Some courts consider that violence, or the threat of violence is not required for a breach of the peace to exist and that a verbal objection is sufficient to stop the repossession, as a recovery agent you have the clear duty to retreat and adhere to the adage "another time, another place".

The Eagle Group XX Field Agent Compliance Training guide (FACT), created by Ron Brown, and his Eagle XX group organization and

has trained in repossession seminars for many years. The F.A.C.T training guide states clearly... "If the consumer becomes aware of the recovery agent's intrusion and objects to the agent being on their property, the agent must leave or they would be considered trespassing". The FACT guide has been used as a training guide on applicable repossession industry standards for many years.

The C.A.R.S certification teaches and instructs the reposessor to always retreat when approached by any individual objecting to the repossession using verbal and/or non-verbal demands.

The F.A.C.T Field Agent Training guide mentions in the personal contact section III, courts have ruled that even a perception of threat of violence can be construed as a Breach of Peace. The F.A.C.T training reads "it is also imperative that a field agent knows what constitutes Breach of Peace as the moment the peace is breached the agent loses all rights to self help repossession under the uniform commercial code." And "the general rule is that secured lenders also breach the peace if they repossess the collateral despite the consumer's objections".

In all three of the leading repossession industry training guides it is stated..

"It is extremely important that an agent understands when there is any type of confrontation from any party and there is any impending chance of violence that the agent involved has a statutory duty to retreat."

Applicable repossession industry standards require "If the consumer refuses to surrender the property and requests the

agent leave the premises the agent must promptly retreat and discontinue any further attempts to repossess the collateral.

Bullet points in the Eagle Group XX training also include a section titled.. If possible, AVOID ANY TYPE OF CONFRONTATION WITH ANYONE.

DO NOT...

1. Continue efforts to recover the collateral after you have been told to leave the premises.
2. Attempt to take the vehicle over the consumer's or any third-party protest.
3. Identify yourself as a recovery agent to any third party.
4. Attempt to take the vehicle over the consumer's or any third-party protest.

Eagle Group XX training states in section IV...

Post Recovery Responsibilities . Getting vehicle directly to the secured storage facility should be the agent's primary goal once a vehicle has been recovered. Even though the general consensus is that repossession is complete when the recovery agent has dominion and control and has removed the collateral from the debtor's premises the safety factor appears when the vehicle is secured on your property. The recovered vehicle should be taken directly to the storage facility with only necessary and/or required stops to insure the vehicle is secure.

Eagle Group training guidelines list Accident Procedures

Perform a Safety Check In the event of an accident the agent's first obligation is to insure all people involved safety by checking visually and verbally to see if everyone is alert and physically okay. If anyone seems groggy or unsure of his or her response or if there are any visible injuries the agent should call 911 for medical assistance. Many injuries can't be seen, and the shock of an accident can delay symptoms. To ensure the safety of everyone involved, it's better to be safe than sorry.

Eagle Group training guidelines define Breach of Peace as The black-letter law definition of breach of peace is conduct or speech that violates the public order, disturbs the public tranquility, or has the potential to provoke violence or is likely to incite immediate public turbulence, or leads to or is likely to lead to an immediate loss of public order and tranquility. Breach of the peace further includes any violation of any law enacted to preserve peace and good order.

The lenders duty to refrain from breaching the peace is non-delegable. The term non-delegable means that lenders are responsible for their repossession agent's conduct even if the recovery agent is an employee of a recovery agency rather than an actual employee of the lender.

Review of Depositions

Josephine Mali Testimony

On page 58 line 17-23 the wife of the debtor stated Albert said "Stop Stop". The witness testified that during the time the reposessor was attempting to lift the car with the tow truck, the witness is testifying she and the deceased both told the reposessor Oscar Harrison to stop two times.

Comment on Josephine Mali deposition

Applicable repossession industry standards require, when there is an objection from the debtor or any third party at the scene of the repossession, the agent has a duty to discontinue all repossession attempts and retreat.

Oscar Harrison Testimony #1

On page 50, Harrison is asked..."have you ever gotten any specific training at any time in your whole life about how to interact with, and techniques on how to deal with people from whom you're repossessing things? Harrison answered "NO".

On page 62, and on page 75, Harrison testified he received no additional certifications regarding tow truck operations at employers prior to being hired at Harris County Impound.

COMMENTS

Training and certification on the operational procedures of the tow truck as well as repossession certification is an industry standard in the day to day responsibilities of a reposessor as well as operating a tow truck.

On page 95 Harrison is asked... Did Harris County Impound ever provide you any training about the situation where the person whose vehicle it is believes that you're not taking it appropriately? Harrison answered "No".

On page 118 Harrison is asked... "Did you ever receive any training from Harris County Impound about what you're supposed to do if somebody whose vehicle you just repossessed tries to sort of run after the vehicle, or get on top of it or get on top of your tow truck? Harrison answered "No, sir."

On page 120 Harrison is asked...Did Harris County Impound, ever train you what you're supposed to do if somebody whose vehicle you're repossessing says, please don't, or insists that you don't repossess their vehicle? Harrison answered "No."

On page 121 Harrison is asked... 'Have you ever heard the word retreat at any time in your career, whether it's training, on hands-on experience, either context licensing, either context, as a repo driver in the State of Texas? Harrison answered "Not, not as a repo driver."

On page 122 Harrison is asked... Have you ever heard the term retreat as it pertains to your work as a professional repo

driver in the State of Texas, whether it's from training, your own experience, a licensing process, anything else. Harrison answered "I don't recall how you're using that word. Because in the repo business we don't use the word retreat. Not to my knowledge."

Oscar Harrison Testimony #2

On page 170 Harrison is asked... "and you're also aware that if a debtor interrupts the repossession and objects to it, you're supposed to stop doing it, right? Harrison answered "No, sir."

On page 208 Harrison is asked... "If the debtor asks you to leave, the only thing to do is leave because breach of the peace is broken. Did I read that right? Do you agree with that? Harrison answered "Yes, sir."

On page 264 Harrison was asked... "so he objected to you taking the vehicle?" Harrison answered. "Right". Harrison was asked..."but you still took it, didn't you?" Harrison answered "Yes."

On page 268 Harrison testified he told the insurance investigator he saw Mr. Nduli on the running board. In Harrison's own words "He was there for about one or two seconds, and I was slowing down in the process after I noticed he was there."

Applicable repossession industry standards require, when there is an objection from the debtor or any third party at the scene of the repossession, the agent has a duty to discontinue all repossession attempts and retreat.

In his own words Harrison testified Albert Nduli objected to the repossession, but Harrison continued in the repossession efforts.

Transcript of Estaban Diaz

Estaban Diaz was the helper in the tow truck during the Nduli repossession.

In the recorded transcript Diaz states Nduli opened the driver's side door of the tow truck. In Diaz's own words on page 2 of the transcription "yes he opened the door. As soon as he opened the door he fell".

Deposition of Robin Heaslet.

On page 244 Heaslet is asked...Did you ever train Mr. Harrison about what to do if he is still parked on the premises where the repo's taking place and the debtor comes out and starts yelling or expressing that they're upset? Heaslet answered "No, sir."

On page 184 Heaslet is asked if she as a company had ever "looked at Mr. Harrison's driving background. Heaslet answered "no sir".

On page 85 Heaslet is asked if she or her company is a member of any repossession associations. Heaslet answered "No sir".

On page 85 Heaslet was asked if her drivers were skill tested on policies regarding a hostile debtor. Heaslet answered "it was assumed common knowledge on how to handle a hostile debtor.

On page 109 Heaslet is asked "Did the company try to make sure it was meeting industry standards. Heaslet answered "No, sir," John (her father) has run his company for the way he wants as long as he's, as he knows the -- the laws and regulations. He runs his company the way he wants, "not due to industry standards."

On Page 103 Heaslet was asked "I assume that you didn't require any of your drivers to have any certifications regarding towing and towing safety back then" Heaslet answered "No, sir."

On page 121 Heaslet was asked "Did HCI have any policies and procedures regarding how to handle a hostile debtor" Heaslet answered "yes" if there was a breach of peace to leave the property and then come back at a later time.

On page 125 Heaslet is asked "you've never been educated on how to safely conduct repossession operations at least as of May 4th 2019? Heaslet answered "Correct".

On page 141-142 Heaslet was asked Okay. . .What have you trained your HCI drivers their duty is to retreat in the face of a breach of the peace? Heaslet answered "There's no training. Other than conversation. There's no -- yeah. When you're saying training is what I said, there's understanding conversation,

which is they understand that if there's a breach of peace, then they have to leave.

On page 173 Heaslet is asked about dropping the car during protest. "Okay. So, we can agree that if there's a problem, you're supposed to drop the car and retreat. Heaslet answers "yes".

Heaslet testifies the TitleMax repossessed vehicles are taken directly to the TitleMax auction location where an inventory of personal belongings are inventoried and left in the vehicle as per TitleMax instructions.

Comment on Robin Heaslet deposition

Robin Heaslet managed Harris County Impound Heaslet testifies during the deposition as to not training, checking driving records or checking for certification. Heaslet also testifies not belonging to any repossession associations. Heaslet also testifies to not caring about repossession industry standards and states on page 198, when asked if Harrison should have been hired after six driving convictions, Heaslet answered "Not with this record no."

Deposition of Jose Urbaez

On page 136 Urbaez is asked.. "If TitleMax initiates a recovery using a forwarder, do the companies that the forwarder assigns the job to, do they have to be approved vendors also?" Urbaez answered "No, If a vendor is within the network of a forwarder, then the forwarder would, would take care of approving that vendor to be within their network.

On page 141 Urbaez is asked... Does TitleMax of Texas, Inc., when it's not using a direct assignment but it's using a forwarding company to initiate a repossession, does it in any way evaluate the tow companies that the forwarding company is using for competence, safety, regulatory compliance, things of that? Urbaez answers "No".

On page 175 Urbaez is asked... 'So if you're a lien holder, you've got a duty not to breach the peace if you are involved in self-help repossession of the collateral that the lien, right? Urbaez answers "That is correct".

On page 178 Urbaez is asked... "And so did TitleMax of Texas, Inc therefore, have the duty not to breach the peace during the self-help repossession of Mr. Nduli's vehicle on May 2nd, 2019? Urbaez answers "Yes".

On page 185 Urbaez testifies... It is our understanding that specifically in Texas there actually is quite a bit of training that is required of all repossession drivers or tow truck drivers. On a yearly basis, I believe it's TDLR, the governmental body with oversight over tow truck drivers in the state of Texas provides a license which expires. Part of the yearly review of a recovery is that we must obtain a new unexpired version of that TDLR to show that they are still registered with the State.

On page 187 Urbaez is asked... You agree it's important to be proactive and not reactive when it comes to complying with the Dodd-Frank vendor requirements, right. Urbaez answered "Compliance is definitely important and why a practical approach

would be best at times, reaction is always better than no reaction.

On page 187 Urbaez is asked...So what does TitleMax of Texas do from a proactive standpoint to make sure its educating its own employees regarding the Dodd-Frank requirements as outlined in the addendum to the that TitleMax requires Urbaez answered..."As part of the agreement to contract, the vendors are attesting that they will comply with items. Beyond that, they are, there is no proactive approach that I'm aware of where we would train someone else's employees on particulars of the addendum.

Comments on Jose Urbaez deposition

At no time during the Urbaez deposition did the witness provide any testimony the agents who are on the street repossessing collateral for TitleMax have been trained regarding applicable repossession industry standards pertaining to the self help repossession process and protecting the public from non certified and untrained individuals.

Video of repossession of Nduli collateral.

The video of the tow truck when first entering the parking area of the Nduli vehicle at time of 07;12;40 shows the tow truck backing up with the tow truck beacon lights flashing. At multiple points in the video, Nduli can be seen interacting with Harrison and the helper.

On the Video, a person with a white shirt was seen moving at the driver side door of the tow truck as it was preparing to turn on to the street.

The video shows the helper directing Harrison back and under the Nduli car with hand signals. This effort to repossess the TitleMax collateral shows Harrison did not have the training necessary to hook up and repossess a vehicle.

Photos of Nduli vehicle.

The passenger side of the rear tire was flat and partially off of the rim. This is referred to as a broken bead. A broken bead often occurs when the lifting device sometimes called the "L-arm" is improperly postured underneath the rear of a vehicle about to be towed. The "L-arm" forces itself into the tire and pops the tire off of the rim. Usually a loud noise will occur as the tire pressure is released or the tire is punctured. The towing unit will need to be repositioned in order to safely tow the vehicle.

The self loader wheel lift with L-Arms was invented to speed up the process of hooking up to and removing a vehicle. The self-loader tow unit allows the car to be removed quickly. A reasonably trained reposessor can hook up to and remove a car in less than 30 seconds.

Looking at the video of the Nduli repossession clearly shows the tow unit was a self loader to unit.

A reasonably trained and certified reposessor would have backed into, lifted and removed the Nduli car in less than 60 seconds.

The video shows the helper directing Harrison back and under the Nduli car with hand signals. This effort to repossess the TitleMax collateral shows Harrison did not have the training necessary to hook up and repossess a vehicle.

Comments

Proof of industry standards are stated in multiple repossession certification courses, written procedures and policy. After carefully reviewing the information and documents provided to me, I have concluded that Harris County Impound acted against repossession industry standards when they repossessed the plaintiff's automobile.

During the self help repossession process, a reposessor must follow guidelines set by both the law governing the self help repossession process as well as practices and procedures set forth by repossession industry standards. Many States do not require a reposessor's license to conduct repossession activity.

Texas has towing standards whereas the TDLR administers testing and requirements to tow vehicles. There are many differences between a tow and a repossession. There are inherent risks associated with the self help repossession process. In addition, there are numerous federal and state laws that impact the repossession process.

The C.A.R.S certification manual explains statistics clearly shows that comprehensive professional certification programs including continuing education courses are the most effective ways to address the professional competency of those who service repossession assignments and manage those inherent risks.

Because many States, such as Texas do not require licensure, State and National repossession associations provide

certification as well as continuing education materials. Repossession organizations including Allied Finance Adjusters (AFA) American Recovery Association (ARA) and the California Association of Licensed Repossessors (CALR) meet every year in Texas to promote training.

Membership in any or all of these repossession associations provide the repossession agency owner, managers and employees who perform repossessions the opportunity to better educate themselves thru certification as well as continuing education. Training and education sessions and seminars are available at quarterly and yearly association functions.

These recovery associations are open to repossession agencies and also clients to inform those who both assign as well as receive recovery assignments the facts regarding applicable repossession industry standards.

Opinions

Repossessor Oscar Harrison breached standard of care when he did not retreat when Albert Nduli and his wife both told him to stop. At the moment Harrison was told to stop, a breach of the peace occurred. Harrison had a duty to retreat when the debtor objected to the repossession.

Oscar Harrison breached the standard of care if there was damage to the Nduli vehicle when he failed to hook the vehicle properly during the repossession attempt. A self loader tow truck is designed to help the reposessor lift and remove the auto in less than one minute. As seen in the video of his actions during the repossession attempt, Harrison put the beacon flashing lights on as he attempted to back into the Nduli vehicle which brought attention to his actions. Harrison then needed the actions of his helper to guide him during backing up effort. Proper training on relevant industry standards would have provided Harrison with the training and knowledge to hook up to and repossess the Lincoln Navigator in less than 60 seconds without exiting the cab of the tow truck. Harrison was negligent when he failed to follow relevant industry by hooking up and leaving the scene immediately. Harrison did not follow accepted industry standards when he chose to stay at the scene of the repossession to take photos and conduct an onsite condition report. A reasonably trained reposessor would have known to leave the scene as soon as possible before a confrontation with the debtor would occur. A professionally trained reposessor would have taken the repossessed vehicle to a safe location to complete the property inventory and vehicle condition report.

Oscar Harrison breached the standard of care when he failed to immediately bring the HCI owned tow truck to a complete stop when he noticed Albert Nduli at the side door of the tow truck. At all times from when the breach of the peace began, Harrison should have stopped the repossession attempt. Harrison should have unhooked the vehicle and attempted the recovery effort at another time or another place.

Harris County Impound (HCI) failed to protect the public when they did not train or certify Oscar Harrison on professional industry standards prior to sending Harrison to repossess the Albert Nduli Lincoln Navigator.

HCI breached the standard of care when they failed to check the drivers license history of Oscar Harrison before placing him in a tow truck and sending him out onto the public streets to perform repossessions.

HCI failed to educate Harrison on the meaning of retreating when the debtor objects to the repossession.

HCI failed to seek out training for themselves and their employees by not attending repossession industry conferences or joining the Texas Repossession Association which is located just a few miles from their office in Houston Texas. The Texas Association as well as the yearly repossession conference in Dallas put on seminars, training, certification as well as safety awareness. Highlighted at the yearly conference are sessions on relevant industry standards, professional courses on repossession and towing safety.

HCI does not follow applicable repossession industry standards when the personal property inside of a repossessed vehicle is left at the TitleMax designated location. It is the responsibility of the reposessor and repossession agency to take custody and control of personal property located inside of a repossessed vehicle. Applicable industry standards are to remove the personal property, inventory the property and place the property in safe storage. The debtor then contacts the repossession company and makes an appointment to pick up those personal belongings. This industry standard was created to protect the consumers property from theft. Protecting the personal belongings inside of a repossessed vehicle is another step in minimizing anger from a debtor when the debtor sees that a repossession company protected his/her belongings.

TitleMax failed to properly check if individuals and companies conducting repossessions on TitleMax liens had any training on relevant repossession industry standards.

No documentation has been provided for my review to show TitleMax employees have been properly trained, instructed or certified to protect the public from untrained or non-certified persons performing self-help repossessions.

No documents have been provided showing TitleMax management or their employees have ever attended any repossession industry association conference. The last Yearly repossession "summit" in Dallas Texas had over 30 clients in attendance.

TitleMax failed to protect the public when they authorized HCI to send an untrained individual to repossess the Albert Nduli auto which resulted in the death of the consumer.

TitleMax failed to protect the public by not having a proactive approach in training their management and staff on the laws pertaining to breach of the peace. The TitleMax executive Jose Urbaez commented "a reaction is better than no reaction" when asked if TitleMax has a proactive plan to laws pertaining to the self help repossession process.

TitleMax has not provided documentation showing they made any effort to make sure their vendors follow compliance policy and procedures required by TitleMax.

CONCLUSION

I have offered many examples of the failure of Oscar Harrison, HCI and TitleMax to follow relevant repossession industry standards. Excerpts from the three sources of training and certification I have included in this report clearly indicate the duty to retreat when the debtor objects to the repossession. Excerpts from the three training guidelines clearly indicate a duty to retreat if there becomes an impending chance of violence. Excerpts from all three of the training guides show that a breach of the peace did occur as soon as Albert Nduli and his wife verbally objected to the repossession. Applicable standards are to err on the side of caution and return at another time. The term "wait for another time, another place" is a relevant industry standard.

This is a case where TitleMax, and Harris County Impound failed to protect the public from an untrained, non-certified and unqualified person when he was sent out to repossess the Albert Nduli Lincoln Navigator. Oscar Harrison had multiple traffic citations which if his driving record had been checked, he would not have been hired as stated by HCI manager Robin Haeslet.

TitleMax failed to verify the credentials of its vendors who are sent to repossess mortgaged collateral on their behalf. With an abundance of certified recovery agents trained on applicable industry standards working the City of Houston Texas every night, HCI & TitleMax chose to send Oscar Harrison to the Albert Nduli residence.

I have received no documentation showing HCI, TitleMax and Oscar Harrison received any training on the applicable repossession industry standards regarding the self help repossession process. TitleMax representative Jose Urbaz and HCI representative Robin Heaslet sent Oscar Harrison into the streets to conduct repossessions without any knowledge of the repossession process.

Documents Reviewed

1. Holland & Knight Demand For Arbitration
2. Holland & Knight Notice Of Claim and Tender of Defense
3. Law Office of Omar Khawaja Letter of Representation pages NCP 000123-NCP000143
4. Letter from Law office of Omar Khawaja pages NCP000049-NCP000062
5. Claimants First Amended Demand For Arbitration pages 1-14
6. Second Notice of Claim and Tender of Defense pages NCP 000248-NCP000292
7. Email from John P. Langenderfer formal request for Indemnification
8. TMX Compliance Policies NCP000316-NCP 000320
9. Agent Agreement TitleMax & NCP Finance pages NCP 000043-NCP 000047
10. TitleMax application of Albert Nduli
11. Agreements for Recovery Services between Harris County Impound & TitleMax of Texas.
12. Texas Department of Transportation Police Officers Report
13. Texas Department of Public Safety Abstract Driving Record of Oscar Harrison pages MALI 000064- MALI 000078
14. TitleMax Payment & Call History pages 000152-000156
15. Harris County Forensic Scene Investigator Report ML-1450
16. Texas TDLR Case Report #TOW20190013029
17. Texas TDLR Notice of Violation sent to Harris County Impound
18. Notice of Alleged Violation from Texas TDLR to Harris County Impound.
19. Settlement Agreement between Harris County Impound & Texas TDLR of fine and probation.
20. Harris County Autopsy Report of Albert Lileo Nduli Case # ML19-1450

21. TitleMax Paid Receipt & Payment History to Albert Nduli marked PAID as of 05/02/2019
22. TitleMax Client Application of Albert Nduli
23. Deposition & exhibits of Oscar Harrison #1 and #2
24. Deposition & exhibits of Josephine Mali
25. Deposition & exhibits of Robin Heaslet
26. Deposition & exhibits of Jose Urbaez #1 and #2
27. Transcript of Estaban Diaz
28. Video of 05/02/2019 repossession of Nudli Vehicle & dash cam video from bus.
29. 138 Photos of Nudli Lincoln Navigator
30. C.A.R.S training Manual
31. Eagle Group XX Field Agent Compliance Training (FACT) 2020 edition Docs.
32. Field Recovery Specialist Operations Manual by Matrix Educational Systems.
33. Harris County Seizures General Policies pages HCI 0194-HCI0197.
34. Claimants responses to interrogatories.
35. First amended demand for arbitration.
36. Plate Locate Documents.

REPOSSESSION EXPERT WITNESS MARK LACEK FOUR YEAR
HISTORY

As of 04/19/2021. This is a list of cases I have been hired in the past four years as an expert witness and have been paid to review, consult, write report and/or to provide courtroom and/or deposition testimony. Cases I am currently working which have not been finalized are not listed.

Gloria Rogers vs. Dallas County Adjusters
Dallas County Texas, Case # DC-14-11374
Client, Winocour Law

Jimmy Harris v. GM Financial
Eastern District Of Wisconsin Milwaukee
Case # 16-cv-451
Client, DeLadurantey Law

Robert Pecina v Lithia Chrysler
District Court 117th Judicial Nueces County Texas
Case # 2016-DCV-1852-b
Client, Attorney Denny Barre, Law firm of Anderson, Lehrman,
Barre

Bednarz v. Wisconsin Title Loan
Eastern District Of Wisconsin Milwaukee
Case # 15-CV-458
Client, DeLadurantey Law Office

Droge v. Zane Investigations
District Court Clark County Nevada

Case # A-15-724188-C

Client, Stovall & Associates Law

Jasmine Dickerson v. Bulldog Towing & Recovery

Case # 19-cv-841

Eastern District of Wisconsin

Client, DeLadurantey Law Office

Sandra Willis v. Nissan Motor Acceptance

Case # 18-cv-1256

Eastern District Of Wisconsin

Client, DeLadurantey Law Office

Allen v. Exeter Finance

Case # 18-cv-1529

Eastern District of Wisconsin

Client, DeLadurantey Law Office

Robert Jones v. Capital One

Case # 18-cv-717

Western District of Wisconsin

Client, DeLadurantey Law Office

Blanca Mendez v. Asset Recovery Specialist

Case # 18-cv-68

Wisconsin Iowa County

Client, DeLadurantey Law Office

Evensen v. Heights Finance

Case # 2017-cv-18

State of Wisconsin County Ashland

Client, DeLadurantey Law Office

Ryan Tomashaski v. Select Recovery

Case # 18-cv-1536

Eastern District Milwaukee Wisconsin

Client, DeLadurantey Law Office

Brian Bodar v. Wells Fargo Bank

Case # 18-cv-1015

Western District Wisconsin

Client, DeLadurantey Law Office

Briana Beck v. Capital One Auto Finance

Case # 18-cv-1673

Eastern District of Wisconsin

Client, DeLadurantey Law Office

Alice Folgate V. Wells Fargo Dealer Services

Case # 18-cv-472

Western District of Wisconsin

Client, DeLadurantey Law Office

McKenzi Manning v. 121 Financial Credit

US Middle District Of Florida Jacksonville Division

Case # 17-cv-00757-MMH-PDB

Client, Sami R Achem Law

Stephan and Nancy Russell v. Santander Consumer USA

US District Court Eastern District Of Wisconsin

Case # 19-cv-119 Client, DeLadurantey Law Office

With regard to the documents sent to me by the Kherkher Garcia law firm regarding the above referenced case. My review and expert report are based solely on the factual accuracy of those materials provided to me. I reserve the right to alter, change, add or delete comments in this report as new and/or previously non-reviewed materials may be provided to me for review.

This report has been prepared by Mark Lacek

Mark Lacek Repossession Expert Witness