IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

Paige Campbell Boyle and Diana L. Day, on behalf of Herself and all others Similarly situated,	:	
	:	August Term, 1998
Plaintiffs,	:	
vs.	:	
	:	No. 0840
U-Haul International, Inc. U-Haul Company Of Pennsylvania, Inc.	:	
Defendants.	:	

ORDER AND MEMORANDUM

AND NOW, this day of 2004, upon consideration of Plaintiffs' Motion for Class Certification, all responses in opposition, the respective memoranda, all matters of record, and in accordance with the contemporaneous Memorandum Opinion, it hereby is **ORDERED** and **DECREED** as follows:

1. Plaintiffs Motion for Class Certification is **GRANTED IN PART DENIED IN PART.**

2. A Class is hereby certified and defined as follows:

    i. All persons who were charged for a second "rental" as a result of renting U-haul trucks, vans, or other similar equipment for personal use (collectively "moving equipment") within the Commonwealth of Pennsylvania who

were charged for an additional rental “term” for returning the vehicle after the designated rental time but within the same day during the period August 7, 1992 through the present; and,

ii. All class members defined in A above who were charged for CDW, “safe move”, or similar coverage for an additional rental term. Excluded from the extra term class and the coverage class are defendant’s their parents, subsidiaries and affiliates, directors and officers of defendants, and members of such person’s immediate families.

3. Plaintiffs herein are the class representatives for the Class.

4. Plaintiffs counsel is appointed as counsel for the Class.

5. Certification is denied as to all other Classes.

6. The parties shall submit proposals for a notification procedure and proposed forms of notice for class members within thirty days from the date of this Order.

BY THE COURT:

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	Defendants.	

MEMORANDUM OPINION

Presently before this court is plaintiffs' motion for class certification arising from Plaintiff's local rental of a U-Haul truck pursuant to defendant's highly advertised rates of $19.95, $29.95, and $39.95 for local truck rental. Pursuant to Pennsylvania Rule of Civil Procedure 1710 (a), this court accompanies its Order with the following Findings of Fact, Conclusions of Law, and discussion.

FINDINGS OF FACT

1. Plaintiff, Paige C. Boyle, is a resident of Haverford, Pennsylvania. She is a graduate of the Academy of Notre Dame and Villanova University, and received a masters degree from the University of Pennsylvania. She has worked in advertising and marketing. N.T. Vol. III at 34-35.

2. U-Haul® Centers in Pennsylvania are owned and staffed by defendant, U-Haul Co. of Pennsylvania, which is a wholly owned subsidiary of U-Haul International. Ex. D-33 (Shoen trial deposition at 29; N.T. Vol. I at 85.) Pennsylvania is divided into five Marketing Companies (North Philadelphia, South Philadelphia, Harrisburg, Northeast Pennsylvania and Pittsburgh N.T. Vol. II at 73.) The Marketing Companies contract with Independent Dealers to rent U-Haul moving equipment, including In-Town trucks. (N.T. Vol. II at 35.) U-Haul moving equipment is rented in Pennsylvania by either U-Haul Centers or Independent Dealers, but not by U-Haul International.

3. Defendant U-Haul International, Inc. and U-Haul Company of Pennsylvania, Inc. have a policy of prominently displaying advertising of a flat rate rental on the thousands of rental vehicles traveling the highways and of positioning those trucks at prominent visible locations on their lots.
4. Defendants promulgate a training tape which is widely distributed instructing U-Haul phone personnel in proper techniques and procedures to be employed when potential customers call to inquire about U-Haul Rentals. This video tape is narrated by the Chairman of the Board of U-Haul International and includes a Customer Service Guide which is intended to lead the U-Haul phone representative to a proper rental agreement. The video states that the U-Haul telephone operator is required to use the guide every time.

5. Included in the Customer Service Guide script for “closing” the sale is the requirement that the U-Haul representative specifically ask “about how many hours” the potential customer intends to use the rental vehicle. Within one taped scenario the customer responds “Oh, I don’t know maybe six or seven hours”. In another scenario a potential customer responds “for a few hours”. And in a third scenario the potential customer responds “for about eight hours”.
6. The video recommends that the successful telephone conversation end with the U-Haul representative obtaining a credit card number and permission to place a deposit to hold the vehicle on the credit card.
7. For in town rentals, which are widely advertised on every truck and through common advertisements in all significant yellow phone books, no promotional brochures or description of terms or rates are mailed to the customer following a telephone reservation.
8. At the location to pickup the vehicle, U-Haul policy is to have a cardboard stand display which says that the advertised rates are for an undefined rental period. Only when the rental contract is completed is it provided to the customer (Marked D-20 at the certification hearing). This rental contract is supplemented by a “contract addendum” consisting of form language printed on the credit card receipt.
9. Defendant claims that D-20 and the addendum constitute the entirety of the contract for rental.

10. This action arises from a $29.95 extra charge assessed to Plaintiff Boyle on Saturday, May 2, 1998, because she returned a local rented U-Haul pickup truck one hour and fifty-two minutes beyond the time she had estimated she needed the vehicle in the initial phone conversation.

11. U-Haul Centers and Independent Dealers have unfettered discretion to charge an extra term whenever a vehicle is returned after its scheduled return time.

12. Plaintiff Boyle was over charged $29.95 for a second “rental term” and a second CDW protection when she returned an In-Town pickup truck rented from the Overbrook U-Haul center under two hours after her scheduled return time.

13. Plaintiffs seek class certification of a claim of breech of the implied duty of good faith and fair dealing under common law and by statute (13 P.S. 1203.) These claims require the existence of a contractual relationship which is conceded and inconsistent actions with the objectives of the contractual relationship or actions calculated to frustrate the objective of the contractual relationship or actions taken in bad faith in the performance of the contractual relationship.

14. Defendant’s policy, without advising the renter, is that the unconsidered estimate of time provided in the initial telephone conversation, variously described in the video as “I don’t know maybe six or seven hours,” “for a few hours” or “for about eight hours” were part of the binding contract

designated the rental period for which the advertised rates applied. Defendants policy is that any return beyond this rental period subjects the renter to an additional rental period at the same rate.

15. While personal automobile coverage may cover a rental automobile and many major credit cards provide an insurance coverage benefit for automobile rentals these protections do not apply to truck rentals. The renter of a U-Haul vehicle is not advised of this fact until the time of pick up when they are told that they may either purchase collision damage waiver (CDW) for $10.00 or place an additional security deposit in the amount of $1,000.00.

16. Plaintiffs claim the significant and pervasive advertising of U-Haul's 1995 $29.95 and $39.95 in local rental rates are misleading and intended to mislead since these rates are intended to be understood as and in fact are understood as daily rates.

17. At one Philadelphia rental location in a three month period 64 individuals were charged for an additional rental period due to the "late" return of the vehicle.

18. The rental contract including the addendum is devoid of any language that stipulates that a "late" return subjects the renter to an additional payment equal to the initial rental rate.

19. Likewise, nothing in the rental contract or addendum indicates any term or period for the collision damage waiver or informs the renter that if an additional rental period is required, an additional collision damage waiver

coverage will also be charged.

20. Nothing in the “In Town Rental” document or the “Rental Contract Addendum” indicates any standard by which an additional charge will be imposed if the vehicle is later than the “rental due” time.

21. The documents do contain the language: “By signing below. I acknowledge that I have received agreed to and understand the terms and condition in the Rental Contract and document holder and have read and understood the appropriate user’s guide”.

22. Plaintiff Boyle was not given any contract documents until after this “addendum” had been signed.

23. At Page 3 the contract contains the only reference to the return of equipment. Paragraph 5 says: “Customer will return the equipment to U-Haul at the time agreed and within the allowed mileage stated. A fee will be charged for any days or mileage over those stated in the contract.” Thus, the sole reference to any additional fees for the “late” return of a vehicle in any contract document refers to a fee to be charged for “days” over.

24. Counsel for defendant contends that paragraph 5 has no applicability to in-town rentals and is applicable only to one way rental agreements.

25. If this contention is accepted, despite a lack of any testimony of record on this question, then the rental agreement fails to contain any language specifying that the times indicated on the deposit receipt is more than a request or suggestion. No language specifies any extra charges.

26. Nothing in the contract documents obligates the renter to pay for a late return.
27. Nothing in the contract documents states or implies in anyway that any late return charge will be double the quoted rental rate.
28. If paragraph 5 is deemed to apply to in town rentals as well as one-way rentals, then paragraph 5 explicitly authorizes an extra charge only if the vehicle is held by the renter more than the number of days stated in the contract.
29. Exhibit D-22, designated as “Rental Contract Addendum,” is the credit card payment signed at the conclusion of plaintiff’s rental with the phrase “under protest” handwritten upon it, this document demonstrates that the vehicle was returned on the same day as rented.
30. Likewise, the Contract (D-20) is devoid of any temporal term for the collision damage waiver. Defense counsel claims that the knowledge that the collision damage waiver is for a “rental period” and not for a day is found in the words of paragraph 6 which reads “customer will pay for any loss or damage and customers deposits will be applied for equipment damages when optional safe move/safe two or CDW protection is not purchased.”
31. Nothing in those words either contractually obligates or advises the renter that the collision damage waiver is applicable for any specific period of time or that if the vehicle is returned “late” an additional collision damage waiver will be charged.

32. No document provided to plaintiff in this case contains the term rental period.
33. There is no term or period whatsoever designated for the duration of the CDW purchase and likewise nothing to indicate -that in the event the vehicle is returned after the designated time an entirely new CDW will be charged and is involuntary if selected initially.
34. Rental period is defendant's internal term intentionally not defined for the customer at any relevant time.
35. The clear intent by defendant's advertising is to convey the impression that the rental rate is on a daily basis.
36. Although Plaintiff was quoted the rate of $19.95 and required to accept collision damage waiver in the amount of $10.00 for a total base rental of $29.95 plus tax, she was charged an entire second $19.95 and an additional $10.00 for returning the vehicle 1 hour and 52 minutes late. These charges resulted because she had said she expected to have the vehicle approximately five hours and expected to go a distance of 30 miles when actually the trip was 108.8 miles.
37. The plaintiff was thus required to expend $59.90 rather than $29.95 which she had expected and had been quoted on the phone.
38. The evidence demonstrates that there is a common practice to lock in for U-Haul internal purposes the rental period ending at the ad hoc time the renter initially advises and a further policy not to provide expertise or experience in determining the length of time truly required by the renter or

to analyze the time required for the purposes intended, or to advise the renter of the significance of the time indicated.

39. There is a common pattern and practice of charging for an extra “rental period” despite the absolute failure of any contractual terms to define the rental period, the clear implication in extensive advertising that the vehicle can be rented for a set rate for an entire day and the failure of any contract document to establish any rate for “overage” due to failure to return the equipment at the designated time.

40. This Court conducted a class certification hearing from February 25 to 27, 2004.

41. This case has a long and tortuous history including five amended complaints, five sets of preliminary objections, numerous permutations of alleged grounds of action, a motion to withdraw the action which was ultimately itself withdrawn and a class certification hearing finally held six years after filing.

42. During the certification hearing, plaintiffs presented testimony of the following witnesses: Joe Shoen, Chairman of the Board and President of UHI (N.T. Vol. I at 70-189); John C. Taylor, Executive Vice President of UHI (N.T. Vol. II at 1-125); and Paige Boyle, the plaintiff (N.T. Vol. II at 125-130; N.T. Vol. III at 4-60).

43. Plaintiffs also moved into evidence 22 documents and a videotape. N.T. Vol. III at 64.

44. Defendants moved into evidence 20 documents, a videotape and the deposition transcripts of Joe Shoen (discovery and hearing); John Taylor, Vaughn Russell, a representative of Republic Western Insurance Company (Exhibit D-6); Anthony D. Harris, the U-Haul Center General Manager who handled the Boyle transaction (Exhibit D-7); Charles Garuffe, an Independent Dealer selected by plaintiffs for deposition (Exhibit D-8); Steven Atlass, plaintiff Boyle's husband (Exhibit D-10); John P. Kennedy, a purported class member (Exhibit D-27); and Marianna Schenk, another purported class member (Exhibit D-28).

45. The class definition being requested was not finally determined until the certification hearing had concluded when plaintiff filed a new "Notice of Amended Class Definition."

46. The claims being presented were not definitively established until after the certification hearing, when Plaintiff withdrew all claims except those raised in the Count II and count IV of the Fifth Amended Complaint in its brief.

47. Plaintiffs filed this class action on behalf of the following proposed classes:

> Class I - All persons who were charged in the Commonwealth of Pennsylvania for an extra rental "term" or an extra "safemove" charge when they returned a U-Haul vehicle within 24 hours from the pickup time following a local rental during the period of August 7, 1992 to the present except for employees of the defendants subsidiaries or affiliates, directors and officers of defendants or members of any such persons' immediate families.

48. In the fifth amended complaint, Class Count II presents a claim for violation of the Unfair Trade Practices Consumer Protection Law (UTPCPL).

49. Accordingly the following class is certified:

iii. All persons who were charged for a second “rental” as a result of renting U-haul trucks, vans, or other similar equipment for personal use (collectively “moving equipment”) within the Commonwealth of Pennsylvania who were charged for an additional rental “term” for returning the vehicle after the designated rental time but within the same day during the period August 7, 1992 through the present; and,

iv. All class members defined in A above who were charged for CDW, “safe move”, or similar coverage for an additional rental term. Excluded from the extra term class and the coverage class are defendant’s their parents, subsidiaries and affiliates, directors and officers of defendants, and members of such person’s immediate families.

DISCUSSION

The sole issue before this court is whether the prerequisites for certification as stated in Pa. R. C. P. 1702 are satisfied. The purpose behind class action suits is "to provide a means by which the claims of many individuals could be resolved at one time, thereby eliminating the possibility of repetitious litigation and providing small claimants with a method to seek compensation for claims that would otherwise be too small to litigate". DiLucido v. Terminix Intern, Inc., 450 Pa. Super. 393, 397, 676 A.2d 1237, 1239 (Pa. Super. 1996). For a suit to proceed as a class action, Rule 1702 of the Pennsylvania Rules of Civil Procedure requires that five criteria be met:

> (1) the class is so numerous that joinder of all members is impracticable;
> (2) there are questions of law or fact common to the class;
> (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class;
> (4) the representative parties will fairly and adequately assert and protect the interests of the class under the criteria set forth in Rule 1709;
> (5) a class action provides a fair and efficient method for adjudication of the controversy under the criteria set forth in Rule 1708.

Rule 1708 of the Pennsylvania Rules of Civil Procedure requires:

> In determining whether a class action is a fair and efficient method of adjudicating the controversy, the court shall consider among other matters the criteria set forth [below]
>
> a) Where monetary recovery alone is sought, the court shall consider
>
> (1) whether common questions of law or fact predominate over any question affecting only individual members;
> (2) the size of the class and the difficulties likely to be encountered in the management of the action as a class action;
> (3) whether the prosecution of separate actions by or against individual members of the class would create a risk of
> (i) inconsistent or varying adjudications with respect to individual members of the class which would confront the party opposing the class with incompatible standards of conduct;
> (ii) adjudications with respect to individual members of the class which would as a

practical matter be dispositive of the interests of other members not parties to the adjudications or substantially impair or impede their ability to protect their interests;
(4) the extent and nature of any litigation already commenced by or against members of the class involving any of the same issues;
(5) whether the particular forum is appropriate for the litigation of the claims of the entire class;
(6) whether in view of the complexities of the issues or the expenses of litigation the separate claims of individual class members are insufficient in amount to support separate actions;
(7) whether it is likely that the amount which may be recovered by individual class members will be so small in relation to the expense and effort of administering the action as not to justify a class action.

(b) Where equitable or declaratory relief alone is sought, the court shall consider

(1) the criteria set forth in subsections (1) through (5) of subdivision (a), and
(2) whether the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making final equitable or declaratory relief appropriate with respect to the class.

(c) Where both monetary and other relief is sought, the court shall consider all the criteria in both subdivisions (a) and (b).

The burden of showing each of the elements in Rule 1702 is initially on the moving party. This burden "is not heavy and is thus consistent with the policy that decisions in favor of maintaining a class action should be liberally made." Cambanis v. Nationwide Ins. Co., 348 Pa. Super. 41, 45, 501 A.2d 635, 637 (Pa. Super. 1985). The moving party need only present evidence sufficient to make out a prima facie case "from which the court can conclude that the five class certification requirements are met." Debbs v. Chrysler Corp., 2002 Pa. Super. 326, 810 A.2d 137,153-154 (2002)(quoting Janicik v. Prudential Ins. Co., 305 Pa. Super. 120, 451 A.2d 451, 455 (Pa. Super. 1982) . In other contexts, the *prima facie* burden has been construed to mean "some evidence," "a colorable claim," "substantial evidence," or evidence that creates a rebuttable presumption that requires the opponent to rebut demonstrated elements. In

the criminal law context, "the *prima facie* standard requires evidence of the existence of each and every element." Commonwealth v. Martin, 727 A.2d 1136, 1142 (Pa. Super. 1999), *alloc. denied*, 560 Pa. 722, 745 A.2d 1220 (1999). However, "The weight and credibility of the evidence are not factors at this stage." Commonwealth v. Marti, 779 A.2d 1177, 1180 (Pa. Super. 2001).

In the family law context, the term "'*prima facie* right to custody' means only that the party has a colorable claim to custody of the child." McDonel v. Sohn, 762 A.2d 1101, 1107 (Pa. Super. 2000). Similarly, in the context of employment law, the Commonwealth Court has opined that a *prima facie* case can be established by "substantial evidence" requiring the opposing party to affirmatively rebut that evidence. *See, e.g.,* Williamsburg Community School District v. Com., Pennsylvania Human Rights Comm., 512 A.2d 1339 (Pa. Commw. 1986).

Courts have consistently interpreted the phrase "substantial evidence" to mean "more than a mere scintilla," but evidence "which a reasonable mind might accept as adequate to support a conclusion." SSEN, Inc., v. Borough Council of Eddystone, 810 A.2d 200, 207 (Pa. Commw. 2002). In Grakelow v. Nash, 98 Pa. Super. 316 (Pa. Super. 1929), a tax case, the Superior Court said: "To ordain that a certain act or acts shall be *prima facie* evidence of a fact means merely that from proof of the act or acts, a rebuttable presumption of the fact shall be made;…it attributes a specified value to certain evidence but does not make it conclusive proof of the fact in question."

Class certification is a mixed question of fact and law. Debbs v. Chrysler Corp., 2002 Pa. Super. 326, 810 A.2d,154 (Pa. Super. 2002). The court must consider all the relevant testimony, depositions and other evidence pursuant to Rule 1707 (c). In

determining whether the prerequisites of Rule 1702 have been met, the court is only to decide who shall be the parties to the action and nothing more. The merits of the action and the plaintiffs' right to recover are excluded from consideration. 1977 Explanatory Comment to Pa. R. Civ. P. 1707. Where evidence conflicts, doubt should be resolved in favor of class certification. In making a certification decision, "courts in class certification proceedings regularly and properly employ reasonable inferences, presumptions, and judicial notice." Janicik, 451 A.2d at 454,455.

Accordingly, this court must refrain from ruling on plaintiff's ultimate right to achieve any recovery, the credibility of the witnesses and the substantive merits of defenses raised.

"The burden of proof to establish the five prerequisites to class certification lies with the class proponent; however, since the hearing on class certification is akin to a preliminary hearing, it is not a heavy burden." Professional Flooring Co. v. Bushar Corp., 61 Pa. D&C 4th 147, 153, 2003 WL 21802073 (Pa. Com. Pl. Montgo. Cty. Apr. 14, 2003), citing Debbs v. Chrysler Corp., 810 A.2d 137, 153-54 (Pa. Super. 2002); Janicik v. Prudential Inc. Co. of America, 451 A.2d 451, 455 (Pa. Super. 1982). *See also* Baldassari v. Suburban Cable TV Co., 808 A.2d 184, 189 (Pa. Super. 2002); Cambanis v. Nationwide Insurance Co., 501 A.2d 635 (Pa. Super. 1985). The *prima facie* burden of proof standard at the class certification stage is met by a qualitative "substantial evidence" test.

Our Superior Court has instructed that it is a strong and oft-repeated policy of this Commonwealth that, decisions applying the rules for class certification should be made liberally and in favor of maintaining a class action. Weismer by Weismer v. Beech-Nut Nutrition Corp., 615 A.2d 428, 431 (Pa. Super. 1992). *See also* Janicik, 451 A.2d at

454, *citing and quoting* Esplin v. Hirschi, 402 F.2d 94, 101 (10th Cir. 1968) ("in a doubtful case . . . any error should be committed in favor of allowing the class action").

Likewise, the Commonwealth Court has held that "in doubtful cases any error should be committed in favor of allowing class certification." Foust v. Septa, 756 A.2d 112, 118 (Pa. Commw. 2000). This philosophy is further supported by the consideration that "[t]he court may alter, modify, or revoke the certification if later developments in the litigation reveal that some prerequisite to certification is not satisfied." Janicik, 451 A.2d at 454

Within this context, the court will examine the requisite factors for class certification.

I. Numerosity

To be eligible for certification, Appellant must demonstrate that the class is "so numerous that joinder of all members is impracticable." Pa.R.C.P. 1702(1). A class is sufficiently numerous when "the number of potential individual plaintiffs would pose a grave imposition on the resources of the court and an unnecessary drain on the energies and resources of the litigants should plaintiffs sue individually." Temple University v. Pa. Dept. of Public Welfare, 30 Pa.Cmwlth. 595, 374 A.2d 991, 996 (1977) (123 members sufficient); [FN4] ABC Sewer Cleaning Co. v. Bell of Pa., 293 Pa.Super. 219, 438 A.2d 616 (1981) (250 members sufficient); Ablin, Inc. v. Bell Tel. Co. of Pa., 291 Pa.Super. 40, 435 A.2d 208 (1981) (204 plaintiffs sufficiently numerous). Appellant need not plead or prove the actual number of class members, so long as he is able to "define the class with some precision" and provide "sufficient indicia to the court that more members exist than it would be practicable to join." Janicik, 451 A.2d at 456.

In one sampled location in Pennsylvania sixty-four individuals were charged with an additional rental period in just a three month period. Over the period involved this court concludes that thousands if not tens of thousands of renters were charged extra.

The plaintiffs have satisfied the numerosity requirement for class certification of th proposed classes.

II. Commonality

The second prerequisite for class certification is that "there are questions of law or fact common to the class." Pa. R. Civ. P. 1702(2). Common questions exist "if the class members' legal grievances arise out of the 'same practice or course of conduct on the part of the class opponent." Janicik, supra. 133, 451 A.2d at 457. Thus, it is necessary to establish that "the facts surrounding each plaintiff's claim must be substantially the same so that proof as to one claimant would be proof as to all." Weismer by Weismer v. Beechnut Nutrition Corp., 419 Pa. Super. 403, 615 A.2d 428 (Pa. Super. 1992)). However, where the challenged conduct affects the potential class members in divergent ways, commonality may not exist. Janicik , supra. 457 fn. 5

"While the existence of individual questions is not necessarily fatal, it is essential that there be a predominance of common issues shared by all class members which can be justly resolved in a single proceeding." D'Amelio v. Blue Cross of Lehigh Valley, 347 Pa. Super. 338, 487 A.2d 995, 997 (Pa. Super. 1985). In examining the commonality of the class' claims, a court should focus on the cause of injury and not the amount of alleged damages. "Once a common source of liability has been clearly identified, varying amounts of damages among the plaintiffs will not preclude class certification." See Weismer by Weismer v. Beech-Nut Nutrition Corp., 419 Pa. Super.

403, 409, 615 A.2d 428, 431 (Pa.Super.). Where there exists intervening and possibly superseding causes of damage however, liability cannot be determined on a class-wide basis. Cook v. Highland Water and Sewer Authority, 108 Pa. Cmwlth. 222, 231, 530 A.2d 499, 504 (Pa. Cmwlth.1987).

Plaintiffs argue that questions of law and fact common to the class exist. Defendants claim that individual issues of law and fact exist and predominate. After reviewing the class action complaint filed in this matter along with the deposition testimony, in court testimony, and all other documents, exhibits and the argument of counsel, this court finds that individual issues of law and fact exist and predominate as it pertains to all the claims presented under the UTPCPL and therefore the commonality requirement is not satisfied. The court finds that only the other claims do satisfy the commonality requirement of Rule 1702 (a)(2). These claims all derive from common corporate policies and common contractual language. Accordingly, plaintiffs have sustained their burden of demonstrating that common issues of fact and law exist to satisfy the requirement of commonality as it pertains to the class claims certified**.**

A. UTPCPL Claims present Individual Questions of Fact

The facts surrounding all claims under the UTPCPL demonstrates that proof as to one claimant would not be proof as to all. A myriad of individual reliance inquiries exist.

The nature of the individualized decisions is dispositive of each individual claim and this determination is case, fact, and individual specific.

I. UPTCPL

Plaintiffs' claims under the UTPCPL fails to satisfy the commonality requirement.

To recover under the UTPCPL, plaintiffs must prove reliance. See Skurnowicz v. Lucci, 798 A.2d 788 (Pa. Super. 2002). A private UTPCPL plaintiff must show that he or she sustained injury as a result of a defendant's unlawful act. Weinberg v. Sun Co.Inc. , 565 Pa. 612, 777 A.2d 442, 446 (Pa. 2001). Because reliance is an integral element of any UTPCPL claim, it is an inappropriate vehicle upon which to predicate a class action. In Debbs v. Chrysler Corp., 810 A.2d 137, 156 (Pa. Super. 2002), the Superior said:

"The UTPCPL was addressed by our Supreme Court in Weinberg, *supra.* There, the Court held that a plaintiff bringing a private action under the UTPCPL must establish the common-law elements of reliance and causation with respect to all subsections of the UTPCPL. Weinberg, 777 A.2d at 446. Our Supreme Court stated: "the UTPCPL's underlying foundation is fraud prevention. Nothing in the legislative history suggests that the legislature ever intended statutory language directed against consumer fraud to do away with the traditional common law elements of reliance and causation."

"Both fraud and UTPCPL claims were at issue in Basile, *supra.* There, the plaintiffs brought a class action against H & R Block as well as Mellon Bank alleging that the defendants failed to disclose that tax refunds under H & R Block's "Rapid Refund" program were actually short-term, high interest loans. Basile, 729 A.2d at 577. The plaintiffs alleged, *inter alia,* fraud and violations of the UTPCPL. *Id.* at 578.

This Court reasoned that, as to the UTPCPL claims, the plaintiffs must show detrimental reliance. The Court noted that "an action under the UTPCPL may not be amenable to class certification due to discrepancies in the respective levels of reliance displayed by individual class members." *Id.* at 584, *citing* DiLucido, 676 A.2d at 1241.

The Court held that the plaintiffs need not show individualized detrimental reliance with respect to H & R Block, because H & R Block's fiduciary relationship with the plaintiffs established detrimental reliance as a matter of law. Id. On the other hand, Mellon Bank had no such fiduciary relationship with the plaintiffs. Id. at 585. Therefore, the Court concluded that:

[The plaintiffs] may not assert the reliance inherent in such a relationship to establish this requirement. Rather, because Plaintiffs' claims against Mellon, unlike those against Block, assert conduct outside the confines of an agency relationship, Plaintiffs must establish reliance as a matter of fact on the basis of the testimony of individual class members. Because such a showing would vary between class members, Plaintiffs' claims against Mellon are not appropriate for treatment as a class action.

Id. at 585."

Our Supreme Court's directions in Klemow and Weinberg, as well as our own Court's directions in *Basile* and DiLucido, guide us here. In order to prove both common-law fraud and a violation of the UTPCPL, the plaintiffs must show that they suffered harm as a result of detrimental reliance on Chrysler's fraudulent conduct. *See,* Klemow, 352 A.2d at 16 (cause of action for fraud includes a showing that the plaintiff acted in reliance on defendant's misrepresentations and, as such, is not generally appropriately resolved in a plaintiff class action); Weinberg, 777 A.2d at 446 (to sustain a private action under the UTPCPL, plaintiffs must show that they suffered "an ascertainable loss as a result of the defendant's prohibited action"). This Court has excused proof of individual detrimental reliance where the defendant has a fiduciary

relationship with the plaintiffs. Basile, 729 A.2d at 585. Because no fiduciary relationship has been demonstrated between the class and Chrysler to excuse proof of individualized reliance, the individual questions involving reliance and causation would remain a significant barrier to class certification."

The Pennsylvania Supreme Court recently remarked that the causation requirement found in all private UTPCPL actions presented "questions of fact applicable to each individual private plaintiff that would be 'numerous and extensive'". Weinberg v. Sun Co., 565 Pa. 612, 777 A.2d 442, 446 Pa. Super. 2001).

Since numerous individual issues exist, defendants' liability as to each plaintiff under the UTPCPL must be resolved on a case-by-case basis. Indeed plaintiffs claim that hundreds if not thousands of such individual fraudulent transactions have occurred during the relevant time period. Accordingly, plaintiff's UTCPL claim lacks factual commonality. With respect to the claim for violations under the UTPCPL, this court finds that the plaintiffs have failed to satisfy their burden to demonstrate commonality.

III. Typicality[1]

The third step in the certification test requires the plaintiff to show that the class action parties' claims and defenses are typical of the entire class. The purpose behind this requirement is to determine whether the class representatives' overall position on the common issues is sufficiently aligned with that of the absent class members, to ensure that pursuit of their interests will advance those of the proposed class members.

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1 It is not necessary for this court to consider the remaining requirements for certification as it pertains to the UTPCPL claim since plaintiff failed to establish the requirements of Pa. R. Civ. P. 1702.

DiLucido v. Terminix Intern, Inc., 450 Pa. Super. 393, 404, 676 A.2d 1237, 1242 (Pa. Super. 1996). Plaintiff's claims herein are typical of the classes certified. Plaintiffs were charged for an extra term rental and an extra CDW charge equal to the original charges because the vehicle rented was returned beyond the time estimated, precisely the claim presented on a class basis.

IV. Adequacy of Representation

For the class to be certified, this court must also conclude that the plaintiffs "will fairly and adequately assert and protect the interests of the class." Pa. R. Civ. P. 1702 (4). In determining whether the representative parties will fairly and adequately represent the interests of the class, the court shall consider the following:

> "(1) whether the attorney for the representative parties will adequately represent the interests of the class,
> (2) Whether the representative parties have a conflict of interest in the maintenance of the class action, and
> (3) Whether the representative parties have or can acquire financial resources to assure that the interests of the class will not be harmed." Rule 1709.

"Until the contrary is demonstrated, courts will assume that members of the bar are skilled in their profession." Janicik, 305 Pa. Super. at 136, 451 A.2d at 458. Here, defendants do not challenge plaintiffs' counsels' skill and therefore, the court presumes that counsel is skilled in their profession.

"Courts have generally presumed that no conflict of interest exists unless otherwise demonstrated, and have relied upon the adversary system and the court's supervisory powers to expose and mitigate any conflict." Janicik, 305 Pa. Super. at 136, 451 A.2d at 458.

While one may question why plaintiff's counsel have allowed this case to linger

for over six years, making it one of, if not the, oldest civil case in Philadelphia County, and why five amended complaints were necessary without even then determining the perameters of the claims being presented, and while one may further question why this matter was moved to be withdrawn and then that motion itself withdrawn, the only direct observation this court has had with plaintiff's counsel occurred at the certification hearing which was presented professionally and competently. According this court finds that plaintiffs counsel are adequate and that no conflict of interest exists.

V. Fair and Efficient Method of Adjudication

The final criteria under Pa. R. Civ. P. 1702 is a determination of whether a class action provides a fair and efficient method for adjudication of the controversy under the criteria set forth in Rule 1708.

1. Predominance of Common Questions of Law and Fact

The most important requirement in determining whether a class should be certified under 1702 (a) (5) and 1708 (a) (1) is whether common questions of law and fact predominate over any question affecting only individual members. In addition to the existence of common questions of law and fact, plaintiffs must also establish that the common issues predominate. The analysis of predominance under Rule 1708 (a) (1) is closely related to that of commonality under Rule 1702(2). Janick, supra. 451 A.2d at 461. The court adopts and incorporates its analysis of commonality and concludes that the requirement of predominance as it pertains to the classes certified is satisfied.

2. The Existence of Serious Management Difficulties

Under Pa. R. Civ. P. 1708 (2), a court must also consider the size of the class and the difficulties likely to be encountered in the management of the action as a

class action. While a court must consider the potential difficulties in managing the class action, any such difficulties generally are not accorded much weight. Problems of administration alone ordinarily should not justify the denial of an otherwise appropriate class action for to do so would contradict the policies underlying this device. Yaffe v. Powers, 454 F.2d 1362 (1st Cir. 1972). Rather, the court should rely on the ingenuity and aid of counsel and upon its plenary authority to control the action to solve whatever management problems the litigation may bring. Id (citing Buchanan v. Brentwood Federal Sav. and Loan Ass'n, 457 Pa. 135, 320 A.2d 117, 131 (Pa. 1974)).

Defendants argue that class treatment would not be fair and reasonable since the proposed classes are permeated with individual fact issues which render class treatment unmanageable. Defendants also argue that the individual plaintiffs' have a strong interest in controlling their own claims. Class Action procedure is appropriate for these claims. Whatever management problems remain, this court will rely upon the ingenuity and aid of counsel and upon the courts plenary authority to control the action. Janicik, 305 Pa. Super. at 142, 451 A.2d 462.

3. Potential for Inconsistent Adjudications

Pennsylvania Rule 1708 (a) (3) also requires a court to evaluate whether the prosecution of separate actions by or against individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class. In considering the separate effect of actions, the precedential effect of a decision is to be considered as well as the parties' circumstances and respective ability to pursue separate actions. Janicik, 305 Pa. Super. at 143, 415 A.2d at 462.

Here, the claim certified is suitable to class treatment. This case would benefit

from class certification since each Plaintiffs' potential recovery is not sufficient to support separate actions and the expense of litigating this claim is substantial. The testimony is that when plaintiff herein complained of the additional charge and wrote "under protest" next to the credit card signature the U-Haul employee said; "Everyone complains but nobody does anything about it." This is precisely the situation for which class action litigation was designed. Given the prospect of limited damages and the expense of proving the claim, a class action is the only means similarly situated plaintiffs may recover anything. Moreover, there is a large risk of inconsistent adjudications if litigated individually. As a certified class one case will determine liability uniformly.

4. Extent and Nature of any Preexisting Litigation and the Appropriateness of this Forum

Under Pa. R. Civ. P. 1708 (a) (4), (a) (5), and (a) (6) a court should consider the extent and nature of any litigation already commenced by or against members of the class involving any of the same issues, the appropriateness of the chosen forum and whether the amounts recoverable justify a class action. The Court has been advised of no prior litigation pending on this issue. This court finds that this forum is appropriate to litigate the claim.

Rule 1708 also requires the court to consider the amount of damages sought by the individual plaintiffs in determining the fairness and efficiency of a class action. Thus, a court must analyze whether in view of the complexities of the issues or the expenses of litigation the separate claims of individual class members are

insufficient in amount to support separate amounts.' Pa. R. Civ. P. 1708 (a) (6). Alternatively, the rules require that the court analyze whether it is likely that the amounts which may be recovered by individual class members will be so small in relation to the expense and effort of the administering the action as not to justify a class a action. Pa. R. Civ. P. 1708 (a)(7). This criteria is rarely used to disqualify an otherwise valid class action claim. See Kelly v. County of Allegheny, 519 Pa. 213, 215, 546 A.2d 608, 609 (Pa.1988)(Trial court erred in refusing to certify a class on the grounds that the class members' average claim was too small in comparison to the expenses incurred.). However, in Klusman v. Bucks County Court of Common Pleas, (128 Pa. Cmwlth. 616, 546 A.2d 526) the Court said: "Where the issue of damages does not lend itself to a mechanical calculation, but requires separate mini-trials of a large number of individual claims, courts have found that the staggering problem of logistics make the damage aspect of the case predominate and renders the class unmanageable as a class action. State of Alabama v. Blue Bird Body Co., Inc., 573 F.2d 309 (5th Cir. 1978)."

"To verify that each of the 108,107 claims suffered actual damages, would present an administrative nightmare because of the overwhelming number of transactions between parties that would be required to be examined. Mekani v. Miller Brewing Co., 93 F.R.D. 506 (E.D.Mich. 1982). Petitioners argue these determinations go to the merits. This evaluation of the question of manageability, though ultimately involved with the merits, must be examined in order to determine the efficiency of the class action. In re Industrial Gas Litigation, 100 F.R.D. 280 (N.D.ILL.1983). We recognize that numerous courts have certified classes of large numbers with small amounts of potential recovery. "The court therein refused to certify a class whose

average recovery would have been $3.55.

Herein, the separate claims of the individual plaintiffs are insufficient in amount to support separate claims or their likely recovery, but sufficient to warrant class action status. There is no reason presented to believe that the class and recovery herein are unmanageable and as a percentage of the rental rate the claimed overpayment is 100%. Determination of the amount of each class members loss is not unmanageable.

5. Appropriateness of Equitable or Declaratory Relief

Since plaintiffs do not seek equitable or declaratory relief it is not necessary to consider the criteria set forth in Pa. R. Civ. P. 1708 (b)

Accordingly, having weighed all Rule 1702 requirements, this court finds that a class action is a fair and efficient method for adjudicating plaintiffs' two claims and this court makes the following conclusions of law.

CONCLUSIONS OF LAW

1. The class is sufficiently numerous that joinder of all its members would be impracticable.
2. There are questions of law and fact common to the Class with respect to the claims for extra charges.
3. Individual questions of fact exist as it pertains to claims for violation of the UTPCPL claims.
4. Plaintiff's claims are typical of the class claims.
5. The representatives will fairly and adequately represent the class; and

6. A class action provide a fair and efficient method of adjudication.

CONCLUSION

For these reasons, this court grants in part and denies in part Plaintiffs' Motion for Class Certification as follows:

1. A Class is hereby certified and defined as follows:

   - All persons who were charged for a second "rental" as a result of renting U-haul trucks, vans, or other similar equipment for personal use (collectively "moving equipment") within the Commonwealth of Pennsylvania who were charged for an additional rental "term" for returning the vehicle after the designated rental time but within the same day during the period August 7, 1992 through the present; and,
   - All class members defined in A above who were charged for CDW, "safe move", or similar coverage for an additional rental term. Excluded from the extra term class and the coverage class are defendant's their parents, subsidiaries and affiliates, directors and officers of defendants, and members of such person's immediate families.

2. Plaintiffs herein are the class representatives for the Class.
3. Plaintiffs counsels are appointed as counsel for the Class.
4. The parties shall submit proposals for a notification procedure and proposed

forms of notice for class members within thirty days from the date of this Order. A contemporaneous order consistent with this Opinion is filed.

BY THE COURT:

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Mark I. Bernstein, J.