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Baby, You Can't Drive My Car: Negligent Entrustment Liability Remains Intact

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On the opening track to the Beatles' seminal *Rubber Soul*, John Lennon proudly proclaims his status as a rock star and tells his girlfriend, "baby, you can drive my car." We don't know anything about to whom Lennon was signing. But what if she was bad driver? Suppose she had speeding tickets, a history of drunk driving, or a habit of texting behind the wheel. As his lawyer, should you tell the rock icon to let this girl drive his car? Not if you know about the doctrine called negligent entrustment.

Simply put, negligent entrustment stands for the principle that you should never turn over your keys to someone you know (or should know) is a bad driver. The doctrine was first established over 60 years ago in the case of *Perin v. Peuler*, 373 Mich. 531 (1964).

In *Perin*, the defendant made much to do about the fact that Michigan passed the owner-liability statute (now at MCL 257.401) that made vehicle owners vicariously liable for the acts of permissive drivers. *Id.* at 534. The defendant argued that this statute abrogated common law rule of negligent entrustment. The court rejected this argument: "That the common-law duty of the owner or lender of a motor vehicle to refrain from placing it in the hands of a known unfit or incompetent driver for operation on our public highways, stands unimpaired by Michigan's 55-year-old owner-liability statute." *Id.* at 535. Thus, the court held that a plaintiff may pursue both owner liability and negligent entrustment theories in the same case. *Id.* at 538.

The Michigan Court of Appeals recently analyzed the continued applicability of *Perin*. In the case of *Modzelewski-Shekoski v Bindig* (unpublished opinion, issued September 18, 2014, Docket No. 314830), the court held that negligent entrustment remains a viable claim, even when a defendant admits to vicarious liability.

In *Bindig*, the plaintiff's decedent was killed when his bicycle was struck by defendant Bindig, who was operating a truck owned by his employer, Allied Excavation. The plaintiff alleged negligence against Bindig, owner liability against Allied, vicarious liability against Allied, and negligent entrustment/supervision against Allied. The jury apportioned 20 percent negligence to Allied, 50 percent to Bindig, and 30 percent to plaintiff's decedent.

On appeal, the defendants argued that the plaintiff should not have been allowed to pursue a negligent entrustment claim because the defendant had admitted vicarious liability. *Id.* Relying on *Perin*, the Court of Appeals rejected this argument.

On June 30, 2015, the Michigan Supreme Court denied leave to appeal in *Binding*. The Court said “*we are not persuaded that the questions presented should be reviewed by this Court.*” This order laid ended any question about the *Perin* doctrine. Simply put, those who choose to allow bad drivers to operate vehicles are liable for that decision in the event of injury.

So, if he were alive today and cared about Michigan auto law, John Lennon might consider changing his lyrics: “Baby, you can drive my car — but only if you’re a good driver.”