

It Doesn't Hertz So Bad Anymore: Company Drops 'Take It Back' Libel Suit

Sue Reisinger
Corporate Counsel
December 02, 2009

The folks at [Hertz Global Holdings Inc.](#) have made a U-turn and dropped the company's lawsuit against the small research firm that had warned the car rental company was one of 20 U.S. companies "likely to go bankrupt or suffer severe financial distress."

Hertz spokesman Richard Broome cited two key reasons that convinced Hertz to dismiss its libel suit against Los Angeles-based [Audit Integrity Inc.](#) First, Audit Integrity had acknowledged that Hertz's risk exposure was low, he says.

And second, Broome explains, since filing the suit the company has had several pieces of good financial news—including \$70 million in third quarter profit, while [Standard & Poor's](#) has increased Hertz's credit rating outlook to "positive." So, Broome says, "we felt we didn't need further vindication in court."

The suit was over a research report that Audit Integrity released in mid-September, listing the nation's largest car rental company as one of several that could go bankrupt over the coming 12 months.

Two weeks later after the report came out, Hertz general counsel Jeffrey Zimmerman wrote a letter to the chief executive of Audit Integrity, accusing the firm of reaching "incomplete and misleading conclusions" in the report. Audit Integrity stood by its work.

Zimmerman copied the letter to the GCs of the other 19 companies, including Louis Briskman at [CBS Corporation](#), Jennifer Vogel at Continental Airlines Inc., Thomas Cody at Macy's Inc., Patrick Donnelly at Sirius XM Radio Inc., and Charles Wunsch at Sprint Nextel Corporation. He encouraged the other 19 to join Hertz "in protecting the investing public."

Then, on September 25, Zimmerman and Hertz sued Audit Integrity for defamation and trade libel in the Superior Court of New Jersey, where Hertz is based. The suit also sought undetermined financial damages, a retraction and an apology, and attorneys' fees and costs. [The suit is: *Hertz Global Holdings Inc. v. Audit Integrity Inc.* Superior Court of New Jersey (Bergen County).]

But then Audit Integrity set up a speed bump. In an October 7 press release the research firm accused Hertz of "blatant attempts to induce 19 companies to consider filing lawsuits" against Audit Integrity. And it asked the Securities and Exchange Commission to investigate Hertz.

In his [letter to the SEC \(pdf\)](#), Audit Integrity Chairman and founder James Kaplan wrote that Hertz was trying "to silence [his firm] for calling attention to the company's real and material financial risk." Kaplan said Zimmerman's letter intimated that other lawsuits were forthcoming from the other 19 GCs. The letter, "may also indicate possible attempts at collusion or improper discussions" among the general counsel, Kaplan wrote.

Besides the SEC threat, the libel suit had problems from the beginning, according to Paul LiCalsi, a partner and First Amendment lawyer in the New York office of Mitchell Silberberg & Knupp. Expressions of opinion, LiCalsi explains, are generally not actionable when based on publicly available records, as the research report was.

And because Hertz's annual financial report for 2008 contained 24 pages of risk factors, LiCalsi says, "The discovery in this case would probably have been excruciating for Hertz and hold its finances under a microscope."

LiCalsi admits that Hertz had to know going in that the case would be difficult. "Considering the publicity they were able to get when they filed their lawsuit, one has to wonder if it was primarily an effort to get their story out," he suggests. Part of that story is that Hertz had a profitable third quarter after several quarters of losses.

"That's not true," counters Hertz's Broome. "We felt we had a good case going in."

Whatever the reason, Hertz quietly put the brakes on the suit on November 15.

In a statement, Jack Zwingli, CEO of Audit Integrity, said, "The lawsuit was completely without foundation, and we look forward to continuing our efforts to provide objective, insightful research."

Copyright 2009. Incisive Media US Properties, LLC. All rights reserved. *Corporate Counsel Online*