

**IN THE CIRCUIT COURT OF CASS COUNTY, MISSOURI**

PAUL LERO and	)	
CAROLYN LERO,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 09CA-CV00669
	)	
ADAM P. MACE, et. al	)	
	)	
Defendants.	)	

**PLAINTIFFS’ TRIAL BRIEF ON NEGLIGENT ENTRUSTMENT**

COME NOW plaintiffs and respectfully submit this trial brief on the elements of negligent entrustment.

The Missouri Supreme Court in Evans v. Allen Auto Rental and Truck Leasing, Inc., 555 W.W.2d 325 (Mo. S.C. 1977) held that there are four necessary elements to the tort of negligent entrustment:

- (1) that the trustee is incompetent by reason of age, inexperience, habitual recklessness or otherwise;
- (2) that the entrustor knew or had reason to know of the trustee’s incompetence;
- (3) that there was an entrustment of the chattel; and
- (4) that the negligence of the entrustor concurred with the conduct of the trustee as a proximate cause of the harm to plaintiff.

To prove the first element of negligent entrustment, it must be proved that the trustee was incompetent by reason of age, inexperience, or habitual recklessness. Here Plaintiff alleges that trustee was incompetent to drive due to habitual recklessness. “The possession of a valid driver’s license is not proof that one is competent to drive.” LeClave v. Hardy 73 S.W.3d 637 (Mo. App. E.D. 2002). “Missouri, with other states, recognizes that a history of traffic violations is powerful evidence that a driver is incompetent.” Id. at 641.

To prove the second element of negligent entrustment Plaintiff must prove the entrustor knew or had reason to know of the trustee's incompetence. In LeClave v. Hardy , the entrustor knew that trustee was specifically excluded from entrustor's insurance coverage. Id. at 645. This was used to demonstrate that entrustor knew or should have known of the risk in entrusting his vehicle to trustee.

To prove the third element of negligent entrustment, the Plaintiff must prove that actual entrustment of the vehicle from entrustor to trustee. Actual entrustment can be either express or implied.

Express entrustment occurs when words or acts, such as handing over the vehicle keys, create entrustment. Implied entrustment "may be based on a course of conduct, the relationship between the parties, or lack of objection that indicates existence of consent". Id. at 646. This can occur when the entrustor leaves the keys in the vehicle ignition or customarily allows trustee to drive the vehicle.

An entrustor expressly denying permission to the trustee to use the vehicle does not necessarily prove a lack of entrustment if there is sufficient indirect evidence for a jury to find that there was implied permission. Id. at 646.

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**Signature of this document certifies that it was served to the persons named below on the date and in the manner indicated:**

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