

San Diego Airport Fights Fees In Hertz Suit Against Port

By **Philip Rosenstein**

Law360 (August 6, 2018, 8:26 PM EDT) -- The San Diego airport authority has intervened in a case brought by Hertz and Enterprise against the city's Port District, asking the Superior Court of California to invalidate a user fee on car rental companies, block the port from charging any additional fees on airport property and compel the port to return all fees collected on its property.

Hertz Corp. and Enterprise Rent-A-Car Co. filed a complaint June 8 in the state Superior Court, challenging the \$3.50-per-rental-car transaction fee imposed by the Port of San Diego in April to raise funds for a parking lot. Because the rental car lots are on airport property, the San Diego County Regional Airport Authority found it necessary to intervene in the case and express its concern over the legality of the fee.

Following the filing of its answer of intervenor on July 24, the authority met with leaders of the Port of San Diego on Friday and expressed hope an agreement could be reached.

"As a result of the rental car companies' lawsuit, a court will be deciding an issue that is central to the airport's financial well-being — who can collect fees on the airport," authority board Chairman April Boling said in a statement Friday. "Therefore, it was necessary for the airport authority to intervene in the lawsuit to simply get a seat at the table."

Boling added that had they not intervened in the case, they would have lost the legal ability to question any fees imposed by the port in the future, including fees on taxis, shuttles or ride-sharing companies.

While stating the airport agreed with the port's plan to build a parking lot on the Chula Vista Bayfront that would bring "clear economic benefits" to the region, Boling outlined two troubling concerns for the authority board.

Boling acknowledged that a similar fee was collected by the port between 1999 and 2006, but in 2003, the airport authority was created, and control over collecting revenue on the leasehold was transferred. Furthermore, in 2016, the rental car lots were consolidated into the airport's property, giving the authority the power of collection on those establishments.

These concerns from the airport authority joined the claims made by Enterprise and Hertz. They noted in their complaint that the fee is illegal and is, in fact, a special tax that would require a two-thirds approval by voters in the Port District.

"The port's attempt to adopt a new 'tax' disguised as a 'fee' without submitting the charge to a public vote presents an issue of widespread public concern," the rental car companies' complaint said. "A prompt determination of the validity of the charge is therefore essential, not only to protect the rights on ... the car rental companies and their customers, and voters in the Port District, but also to prevent the enactment of widespread illegal taxes throughout the state of California."

In a Wednesday release from the airport authority, the port was chastised for not consulting or notifying the authority of plans to impose the fee before it was approved.

Counsel for the San Diego airport authority and the car rental companies declined to comment

Monday.

Counsel for the Port of San Diego did not respond to requests for comment Monday.

The San Diego County Regional Airport Authority is represented by Mark C. Zebrowski of Morrison & Foerster LLP and Amy Gonzalez of the San Diego County Regional Airport Authority.

The San Diego Unified Port District is represented by Thomas A. Russell, Ellen F. Gross and Simon M. Kann of the San Diego Unified Port District Office of the General Counsel and Michael G. Colantuono, John L. Jones, II and Aleks R. Giragosian of Colantuono Highsmith & Whatley PC.

The car rental companies are represented by Mardiros H. Dakessian, Zareh A. Jaltorossian and Ruben Sislyan of Dakessian Law Ltd. and Douglas W. Sullivan and Joshua Thomas Foust of Crowell & Moring LLP.

The case is Enterprise Rent-A-Car Co. of Los Angeles LLC et al. v. San Diego Unified Port District, case number 2018-28276, in the Superior Court of California County of San Diego.

--Editing by Neil Cohen.

Update: This story has been updated to reflect that counsel declined to comment.