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LETTER OF COMMENT NO. 124

VIA E-MAIL

August 8, 2008

Mr. Russell G. Golden
Technical Director
File Reference No. 1600-100
Financial Accounting Standards Board of
the Financial Accounting Foundation
401 Merritt 7
P.O. Box 5116
Norwalk, Connecticut 06856-5116

Re: Proposed Statement of Financial Accounting Standards – Disclosure of Certain Loss Contingencies – an amendment of FASB Statements No. 5 and 141(R)

Dear Mr. Golden:

Enterprise Rent-A-Car Company ("Enterprise" or "we") appreciates the opportunity to respond to the Financial Accounting Standards Board ("FASB" or the "Board") regarding the Proposed Statement of Financial Accounting Standards, Disclosure of Certain Loss Contingencies, an amendment of FASB Statements No. 5 and 141(R) (the "Proposed Statement"). Enterprise is the largest provider of rental vehicles in North America, operating under the Enterprise Rent-A-Car, National Car Rental and Alamo Rent-A-Car brand names. We are a privately held company with operations in the United States, Canada, the United Kingdom, Ireland, Germany, Asia Pacific, Latin America, and the Caribbean.

The Board stated the reason for issuing the Proposed Statement was "Investors and other users of financial information have expressed concerns that disclosures about loss contingencies under the existing guidance in FASB Statement No. 5, Accounting for Contingencies, do not provide adequate information to assist users of financial statements in assessing the likelihood, timing, and amount of future cash flows associated with loss contingencies." We respectfully disagree with the opinion that a majority of investors and other financial statement users (collectively referred to as "Investors") do not believe the existing FASB Statement No. 5, Accounting for Contingencies ("FASB No. 5") guidance is adequate. Although our financial statements are not available to the public, our statements are required to be distributed to certain Investors, at a minimum annually, due to various contractual relationships. We have not encountered any situation in which an Investor raised a concern regarding the sufficiency of our disclosures surrounding loss contingencies.

FASB No. 5 has been in existence for three decades and represents an excellent example of a principle-based accounting standard. We believe the FASB No. 5 model of accounting for

contingencies, specifically litigation, is sufficient and capable of high quality application and audit. Litigation is inherently unpredictable and constantly evolving and does not readily lend itself to estimation. As a result, assessments of potential litigation outcomes are highly subjective and difficult to provide with any degree of precision. FASB No. 5 contemplated the dynamic and transitory nature of the litigation environment as it required disclosure of items that are at least "reasonably possible" or "probable." These criteria acknowledge litigation only comes into focus over a lengthy process of discovery and the relevant factors for making the determination frequently change and often bear no resemblance to those presented in the initial filing. Within the framework of FASB No. 5, management is allowed judgment when determining the timing and extent of disclosures to provide regarding contingencies. As subsequently discussed, we believe that expanding disclosure requirements and the number of issues requiring disclosure will lead to Investor confusion. Also, Investor's decisions regarding the likelihood, timing, and amount of future cash flows associated with loss contingencies will be based upon their limited view of the issue, which may not be sufficient to make an accurate assessment. We have difficulty imagining this expanded information being useful to an investor and in fact, believe the information will be more advantageous to a company's adversaries and expose a company to further litigation risk.

Under paragraph 6 of the Proposed Statement, a company would be required to disclose contingencies expected to be resolved within the next year, which could have a "severe impact." We feel this will likely cause a company to disclose frivolous cases where the company believes it has nominal, if any, exposure. Furthermore, under the Proposed Statement, disclosure would be required even if a potential claimant has not indicated awareness of a potential claim, but a company believes the contingency will be resolved within the next year and could have a severe impact. By making this information available, a company would be further exposed to frivolous litigation. Given we are a privately held company; we do have some ability to restrict the distribution of our financial records. However, considering our competitors' financial records are available to the public, a potential claimant could leverage from information disclosed by our competitors to file a claim against Enterprise, minimizing the benefit of our filing status as it pertains to frivolous litigation. We believe disclosures related to frivolous litigation will serve only to add confusion to Investors and inhibit them from focusing on the contingencies a company deems important and of significant risk.

The requirements of the Proposed Statement appear to contradict the Securities Exchange Commission ("SEC") goal of clarity and certainty regarding disclosures. A company is in a much better position to assess risk and disclose claims that are reasonably possible as required by FASB No. 5. Also, the increase in disclosures will inevitably result in increased expenses to a company, whether its takes the form of increased outside and inside legal and reporting costs to draft the incremental disclosures, increased legal costs related to a company defending frivolous litigation, or settlement costs due to a company electing to settle frivolous litigation as opposed to continuing to incur costs to defend. Additionally, the increase in disclosures could potentially strain a company's relationship with their auditors as the auditors will likely require increased documentation to support a company's disclosure. However, the information may be deemed privileged advice and not available to be shared without violating the attorney-client privilege. Lastly, a company may conclude resolution for an unasserted claim within one year is likely due to a statute of limitations defense. If the

company was required to disclose the contingency that could jeopardize a company's defense and cause the claim to be filed against the company. As subsequently discussed, this would be a clear example of where a company would argue that disclosure of this contingency would be prejudicial.

Considering assessments of contingencies are highly subjective and difficult to provide with any degree of precision, we believe the expanded qualitative and quantitative disclosure requirements in paragraph 7 of the Proposed Statement will be difficult to implement and provide little, if any, value to a company's Investors. A company's assessment will be based on a number of factors, including an interpretation of facts, analysis of applicable law, application of the law to the known facts, the expected litigation strategy of the adversary, the company's assessment of the court or jury, and many other factors. Under the Proposed Statement, a company will be required to disclose information surrounding contingencies even though sufficient information may not exist to make a reasonable estimate. As a result, Investors will be inundated with information, a majority of which they will be able to place little or no reliance upon. This will only prevent Investors from focusing on the key risks of a company and their progress. Also, a company would likely be exposed to increased litigation if actual results differ materially from estimates disclosed. Given a contingency's significant movements from inception to settlement, the probability of results differing from the disclosed estimates is high.

Furthermore, despite the minimal utility of these disclosures to Investors, the disclosures will allow adversaries to gain a significant one-sided advantage, essentially, providing a roadmap to a company's defense. However, the Proposed Statement will not provide the same advantage to a company, as a majority of a company's litigation relates to class action lawsuits or similar cases presented on behalf of individuals. Finally, as previously mentioned these incremental disclosures will come at great cost to the company and also strain a company's relationship with their auditors. Not only will the information likely be deemed privileged advice and not available to be shared without violating the attorney-client privilege, but the line between what represents a change in facts and circumstances versus a correction of an error will be blurred under the Proposed Statement and will be difficult for the auditors to conclude.

We acknowledge the Proposed Statement provides exceptions for prejudicial information and allows aggregation with the intention to prevent a company from disclosing information that could be detrimental to their position. However, the Board has already communicated the expectation is that the prejudicial exception will be "rarely" used. Furthermore, even in application of this exception, a company is not absolved from disclosing many of the requirements under paragraph 7 of the Proposed Statement, which in most cases will include information that would be deemed prejudicial, essentially rendering the exception useless. Lastly, due to the dissimilarities between contingencies, it is improbable that the aggregation exception will be able to be effectively used to minimize the disclosure of prejudicial information. In practice, application of the prejudicial exception likely will result in either vague, non-descript disclosure or if certain companies are currently refraining from disclosing items under FASB No. 5 criteria, they may liberally apply the prejudicial exception to continue omitting disclosure. Under either scenario, the impact to the Investor will be increased confusion and will not address the Investor's concerns the Proposed

Statement is intended to resolve. As a result, we feel the prejudicial exception provides minimal utility to a company and will not prevent substantial harm to a company's litigation posture.

Lastly, as drafted, differences exist between the disclosure requirements of the Proposed Statement and the current standard under International Financial Reporting Standards 37, *Provisions, Contingent Liabilities and Contingent Assets.* With the impending convergence of global accounting and reporting standards, we believe it would be a mistake for the two standard-setting bodies not to be in agreement before any final decisions are made.

We firmly believe a balancing approach is required when determining the appropriateness of contingencies to disclose. An example of this balance is in the SEC Interpretation, Management's Discussion and Analysis of Financial Condition and Results of Operations; Certain Investment Company Disclosures. In this Interpretation, the SEC recognized the information wanted by investors needs to be balanced against the risk that premature disclosure of negotiations may jeopardize completion of the transaction. As a result, the SEC disclosure rules permit a company engaged in undisclosed preliminary merger negotiations to omit disclosures of the transaction where premature disclosure would jeopardize the completion of the transaction. We feel that FASB No. 5 as currently written provides a good balance of disclosure in line with the SEC's philosophy.

In conclusion, we feel the framework and criteria outlined in FASB No. 5 has worked well historically and remains an excellent example of principle based accounting. The requirements are well understood by all relevant parties (i.e. counsel, management, and auditors) and allow for timely and appropriate disclosures of contingencies that provide valuable information to Investors. As opposed to assisting Investors in assessing the likelihood, timing, and amount of future cash flows associated with loss contingencies, we believe the Proposed Statement will only lead to confusion and uncertainty regarding a company's litigation exposure. Furthermore, the requirements of the Proposed Statement will be costly for the company to implement and impair a company's litigation posture as well as expose a company to increased litigation.

Thank you for your consideration.

Respectfully,

Steven J. Brackney

Senior Vice President and Corporate

Controller