On Sunday, March 19th, I rented a Kia Rio from East Coast Car Rentals and was provided with an unsafe, poorly maintained and defective vehicle. The CV joint failed while I was driving and I was left stranded in the roadway for two hours before getting it towed back to the rental company. Now, East Coast Car Rentals is attempting to hold me liable for the incident and charged $5,500 to my credit card. I argue that I should not have to pay this charge since this company is attempting to enforce a number of unfair contract terms that grossly violate my rights as a consumer.

I realized soon after I started driving the vehicle that it was not in great condition. The car rode very rough and did not accelerate smoothly. I also heard several occasional noises, but nothing that gave me any reason to believe there were any major defects or that the vehicle was unsafe to drive. This would have required expert diagnosis. Having done some more research since then, I have been able to identify one of the noises I heard as a symptom of a failing CV joint, which turns out to be a very serious problem. I noticed the sound became louder and more frequent immediately before the incident, which resulted in the failure of the front left CV joint.

At approximately 12:30 pm, while I was driving down ANZAC Parade in Kensington, the front left passenger wheel gave out. I had just slowed down due to a clump of traffic and was traveling at approximately 30-35 KMH, when suddenly I felt something break. I immediately lost control of the car, bounced into the air and skidded to a stop. When I got out, the front left wheel was twisted sideways and had become separated at the CV joint. There was no damage to the body of the vehicle nor was there damage to any property. The car was not drivable and I was unable to clear it from the roadway.

I contacted the rental office. They told me they would get back to me shortly. Twenty minutes later, I called again and was told the same thing. Each time, I spoke to a different person who was completely unaware that I had had an incident and was in need of assistance. This process continued for two hours, during which time I was left stranded, blocking traffic on a major roadway, having no idea what to do. Finally, after two hours, I got through to an employee who gave me the name of a tow truck company, but told me I would have to pay for the towing costs. This is despite the fact that that section 5a of their rental contract guarantees that “free roadside assistance is provided for inherent mechanical faults” with the vehicle.

When I got back to the rental office I was told I was also to pay for the damage. I was still dazed from the ordeal and likely suffering from whiplash due to the way the car bounced around. Without getting any chance to regain my composure, get a medical check-up, or think things through, the rental staff talked me into authorizing a $5500 charge on my credit card. They claimed it was part of the rental agreement I’d signed that I was to pay for any damage to the vehicle, even if I had not caused it, and that if the costs of repair turned out to be less than this, they would refund me the difference. I was told this was standard practice.

I was initially told it would take up to 7 business days for the company to get back to me about the cause of the incident and received an e-mail the next day stating the same. I felt this was an exceptionally long amount of time, I would expect in the event of such a major incident it would take 2-3 days at most. I wrote an e-mail to the company telling them I felt I had been provided with an unsafe vehicle and that I was disputing the charge on my credit card. They told me they were reviewing my case and would get back to me.

Two weeks later I had still not heard anything back and sent another, more firmly worded e-mail, and was once again told they were reviewing my case and would get back to me. Two weeks later still, nearly a month after the incident, I still had not heard anything back and the company was still refusing to remove the charge. I sent them another e-mail, having done some research on Australian Consumer Law, and informed them their actions were illegal and that I would be taking legal action if the charge was not dropped.

After this email, the company changed tactics and attempted to dispute my description of the events and claim the suspension had failed due to a “major, immediate impact.” They claimed my description of events was “unlikely.” I then received another email containing a “report”: a short paragraph from somebody claiming to have inspected the vehicle. The report goes out of its way to attempt to deny there was any mechanical failure and tries to suggest there was a large impact. It seems to be primarily focused on absolving the company of blame, rather than providing a clear assessment of what happened. I am providing a copy of my email correspondence to verify this chain of events.

I then filed a complaint with New South Wales Fair Trading. I am sending a copy of the response I received, which was essentially a summary of their conservation with the claims manager. The claims manager claimed, falsely, that the rental staff had called the tow truck to retrieve the car, which they did not. He also claimed they had sent me an email informing me of the results of a second and third inspection, which at that time they had not. But perhaps most alarmingly, the claims manager reiterated what the rental staff had told me at the time: that it was the company’s policy to charge me for any damage to the vehicle that occurred while it was in my possession, regardless of the circumstances or who was at fault. He essentially admitted that they charged me first with the intent to later “investigate” my claim that there was a mechanical failure.

East Coast Car Rentals has grossly violated my rights as guaranteed under Australian Consumer Law. For starters, the ACL clearly states that all goods provided must be, amongst other things, “safe, durable and free from defects.” The rental car they provided failed to live up to these guarantees. Furthermore, the company’s policy of charging consumers for any damage to the vehicle while it was in their possession regardless of circumstances or who was at fault, which they stated to me at the time of the incident and reiterated to NSW Fair Trading, was determined to be an unfair contract term by a federal court in April of last year in a case brought by the ACCC against Europcar.

Car rental companies do not have the right to hold consumers liable for events beyond their control, particularly from mechanical failures due to the company’s failure to properly inspect and maintain its vehicles. They do not have the right to charge first and ask questions later. This policy enables companies like East Coast Car Rentals to charge consumers and, at a later point in time, claim they believe the consumer damaged the vehicle and retain the money, which is exactly what they did in my case. Furthermore, ACCC guidelines on rental car companies specifically refer to the following as an example of an unfair term and condition:

(a) consumer returns a rental car with some damage, and the business automatically charges them the maximum damage payment allowable under the contract without taking reasonable and timely steps to work out what the repairs will cost. The rental car company's standard form contract seeks to permit the business to charge the consumer the full amount while damage is being assessed; then later to refund the difference between that full charge and the actual repair costs, once these are known.

The ACCC document states any rental company with similar contract terms “will not be able to enforce them in the event of a dispute.” I am submitting a copy of the ACCC document I have consulted as part of this complaint. This passage is under “unfair contract terms” on page 6.

I do not trust any assessment made by anyone acting on behalf of East Coast Car Rentals as to the cause of the incident and firmly believe any inspection carried out by this company is biased and intended to place blame on the consumer rather than the company. The only evidence they have been able to provide to back up their claim that I am responsible for causing damage to the vehicle is an inarticulate, poorly written paragraph from a company employee, plus a handful of photos, taken at weird angels, none of which show the full damage or the whole vehicle itself. The photos fail to back up their claim, but they do show excessive wear on the undercarriage of the vehicle, including widespread dirt stains and even possible rust stains and corrosion. My car back in the U.S. is 16 years old, but I know from the few times I have looked underneath that its undercarriage is significantly cleaner and less worn than the one in these photos. This is further evidence that the vehicle I rented was not properly maintained.

I have no doubt I was provided with an unsafe, defective vehicle. However, even if what the company is claiming were true and I had caused damage to the vehicle, I had the right to know exactly what was damaged and how much the repairs would cost at the time I was charged. The company’s policy of charging me the maximum damage payment I was liable for and working out the cost of the repairs later, with the intent to refund the difference, which the rental staff stated as part of their policy and reiterated to NSW Fair Trading, is another unfair contract term regardless of who or what was responsible for causing the damage.

I am hoping this case will not turn into a debate about the cause of the damage; as such a debate will likely involve a lengthy and confusing conversation about car mechanics, a subject in which none of us are experts. I am prepared to have that debate if necessary as I have done some research to try and figure out for myself what happened, since I knew I would not get a clear answer from the rental company. However, I argue that this transaction should be considered void due to the unfair terms and conditions the company has attempted to enforce, several of which have already been determined unfair by a federal court. Furthermore, since this company has not been transparent about its inspection process, never gave me the opportunity to see for myself what had happened to the vehicle or ensure it was inspected by a neutral third party, and has failed to access this incident in a proper or timely manner, any claims they make about me causing damage to the vehicle are baseless and unsubstantiated.

 In my opinion, any inspection carried out a month after the incident would inevitably be inconclusive. The fact that it took a month for the company to carry out a preliminary inspection in the first place proves that they have not allocated enough resources to properly inspect and maintain their vehicles prior to renting them out to consumers. Therefore, any pre-existing mechanical problems would have gone undetected.

I am also prepared to argue, if necessary, that the company’s claim that a major impact caused the control arm and CV joint, two of the sturdiest parts of the undercarriage, to fail while leaving all other components in tact is impossible. CV joint failure, in particular, is usually due to mechanical problems as it is a very sturdy and flexible part of the undercarriage and is generally shielded from most impacts since it located directly behind the wheel. Since CV joints contain a lubricant fluid, if it had been in good condition when it failed, that fluid would have leaked out onto the ground. But when the incident occurred, there was no fluid leakage, just some minor splatter marks. This means most the fluid would have already leaked out due to a pre-existing tear in the CV boot, causing the joint to wear out and eventually fail. One of the photos sent to me by the company shows a photo of the CV joint, covered in the remnants of the lubricating grease that had not leaked or splattered out. The photo clearly shows a large tear running most of the way around the boot itself, proving that the boot was indeed torn. It would have been almost impossible for an impact to cause this type of major tear in the rubber boot covering. My recollection of a clicking sound which grew louder and more persistent immediately before the incident, and the car’s inability to accelerate smoothly, are symptoms which are consistent with a failing CV joint. I have attached some articles from car maintenance websites, written by car experts, explaining how CV joints work and have underlined the passages that back up these claims. As I said before, I am hoping I will not have to partake in such a discussion about car mechanics to refute the company’s claims I caused damage to the vehicle, but I am prepared to do so.

I have also just received an e-mail from the company finalizing the results of the inspection. They sent me this report six weeks after the date when they said the vehicle would be inspected and assessed. Now they are saying the repair costs exceeded $5,500 so they will not issue a refund. There are no additional reports speculating on the cause of the damage, just a list of damage and repairs. The list includes repairs to the fender and door, neither of which sustained any damage. Any photo taken immediately after the incident (unfortunately I was not able to take any since I lost my phone after the incident, but the rental staff did take photos as soon as I returned with the vehicle) would clearly show there was no damage to any exterior part of the vehicle. This is proof that this company is attempting to run up unnecessary costs and stick me with the bill to get more money from me.

Again, I argue that the fact that this company has applied several unfair terms and conditions in the manner they have charged me and attempted to hold me liable and failed to assess this incident in a transparent and timely manner is reason enough that I should not have to pay this $5500 charge and I am filing this complaint to have this charge removed. Furthermore, the company’s failure to provide me with free roadside assistance as promised in section 5a of their rental agreement constitutes a breach of their rental contract. I should not have been made to call a tow truck company myself and pay for the retrieval myself. The fact that they did not honor this part of their contract at a time when there was no evidence that I had caused damage, and then, a month later, told me that, since they had just concluded that I damaged the vehicle and was therefore not covered by their guarantee of free roadside assistance, demonstrates that the company is reneging on the guarantee made in its rental agreement by attempting to pass all blame and financial burdens from itself to its customers. Therefore, in addition to having the $5500 charge dismissed, I am also asking that the company should refund me for the $275 towing cost.