WHITE PAPER

Avoiding negligent entrustment: Limiting your liability on the roads

wheels

Introduction:
What is negligent entrustment?

Most companies have a deep understanding of the risks that are closely associated with their major lines of business, and have processes in place to mitigate those risks. For an automobile manufacturer, this could entail rigorous quality checks on new vehicle models before they are made available for sale, so as to avoid the considerable costs and PR concerns often associated with vehicle recalls. For a construction company, this may mean maintaining documented safety procedures and conducting regular emergency drills at its worksites to prevent employee injuries and workman's compensation claims. Because such risks directly apply to the core day-to-day operations of these businesses, they are often at the forefront of the companies' risk management strategies.

But for many organizations, it is more difficult to account for the risks that apply to their businesses in less obvious ways. A company's vehicle fleet, for example, is often viewed as an operational means-to-an-end and typically isn't a major topic of daily consideration outside of the fleet department. Yet the way a company's drivers handle themselves on the road can have a very profound impact on the company's liability, particularly when it comes to something known as negligent entrustment.

For companies with employees who use automobiles to conduct corporate business, negligent entrustment claims most often arise if an unlicensed, incompetent or reckless driver was involved in an accident while negligently driving a vehicle owned by a company and/or used for company business, and the company either knew or could reasonably have known that the driver was unsafe.

It is important to note that a company's liability may even extend to employees who use their own personal vehicles to conduct any kind of company business. If a driver is involved in an accident while using his or her personal car to do something as simple as visiting the post office to mail some contracts, picking up lunch for a meeting, or heading to the airport to catch a plane to a business conference, the driver's company could be held responsible.

What are some examples of negligent entrustment?

Below are some examples—based on real-life situations—of organizations that were found to have committed negligent entrustment:

According to the National Safety Council, auto accidents are the number one cause of death in the workplace.

Situation: In the case of *Gomez v. Xerox*, a woman was leaving evening services at her local church when she was struck by a drunk driver. The driver was operating his company vehicle while under the influence of alcohol at the time of the accident, and had a history of DUI convictions. The victim, who was the primary source of income for a large family, died from her injuries about two weeks later.

Result: After a lengthy trial that generated plenty of bad publicity, the company was found to be guilty of negligent entrustment, and was forced to pay the victim's family $5 million in damages.

Situation: In the case of *Brooks v. Hancock*, a 19-year-old student was turning left at an intersection when a pickup truck traveling in the opposite direction struck his car and killed him. The student's mother sued the company that owned the truck, alleging that the company had negligently entrusted the vehicle to the driver, who had a history of several motor vehicle citations.

Result: The jury awarded the plaintiffs $2.75 million.

Situation: In Texas a driver, who was operating his company-provided vehicle above the posted speed limit, disregarded a red light and collided violently with the rear end of a minivan. The driver of the minivan, a father of four children, was killed. The investigation into the accident revealed that the driver who caused the crash had a history of reckless driving both before and after being hired, and even had his license suspended for several months. The suit contended that by failing to investigate the driver's record before allowing him to use the company vehicle, the company had committed negligent entrustment.

Result: The family of the victim settled with the company out of court for $3.85 million.

What can your company do to reduce its exposure to negligent entrustment?

Negligent entrustment investigations typically focus on two main issues: 1) whether the company has established sound vehicle safety policies; and 2) whether the company has appropriately enforced those policies. This usually means that in order to avoid liability, an employer is required to not only have a documented and enforced vehicle safety policy, but also to take meaningful steps to determine if a potential driver has an unsafe driving record (e.g. accumulation of speeding tickets, DUI conviction, suspended license, etc.) that may indicate that he or she is a potential risk on the roads.

Therefore, it is incumbent on any organization with a vehicle fleet to ensure that it takes the following steps:

- Establish and consistently enforce a formal fleet safety policy. The safety policy should include provisions that specifically address distracted driving, speeding, drowsy/impaired driving, seat belt usage and more.
- Clearly communicate your safety policy to your drivers, and provide a way for drivers to “officially” acknowledge that they understand and agree to adhere to the safety policy.
- At least once a year, run motor vehicle record (MVR) checks on all drivers that operate a company-owned or personal vehicle for company business. Review MVR results in detail and establish a “risk scoring” system based on the results.
- Provide regular driver safety training courses, particularly for drivers whose risk scores are out of line with your established parameters.

Be prepared to reinforce your safety policy frequently, and be sure to apply it across your entire fleet without exception in order to ensure its effectiveness. While there’s no way to guarantee that you will never incur a negligent entrustment accident, establishing and enforcing a solid safety and risk management policy will go a long way towards limiting your liability if an accident does occur.

Conclusion: The time is now to make sure you are protected

The costs of developing and implementing a safety and risk program are minimal when compared to the emotional and financial costs of negligent entrustment.

Best-in-class companies routinely conduct fleet safety audits in partnership with their fleet management and/or safety provider. Working with a fleet management company that also provides safety services allows for an even higher level of access to consolidated, comprehensive vehicle information that makes it easier for you to monitor and mitigate potential risk.

With new roadway safety legislation continuously being evaluated and implemented by state and federal agencies, as well as emerging technologies hitting the market to improve driver safety, it is more important than ever to ensure that your fleet is dedicated to safe driving. Doing so will help protect your drivers from injury and your company from negligent entrustment.

To learn more about negligent entrustment for your organization, please contact a member of your Wheels Account Team or e-mail us at info@wheels.com.