



# Fleet Safety...what you don't know can hurt you





- What's the big deal, we're not a trucking company?
- To answer that question, one needs to know some facts and understand our legal system.



- According to the National Safety Council, there were 39,000 motor vehicle fatalities in 2008.
- The estimated cost of crash related **deaths** in 2008?
- \$237.2 Billion...
- (that used to be a lot of money!)



- In the 1970's alcohol was a factor in 60% of all traffic fatalities
- Today that percentage has dropped to 40%
- According to the Harvard Center for Risk Analysis, cell phones are a factor in 20% of all traffic fatalities and 636,000 crashes every year.



Its been said of our legal system that it's the worst there is.....

and that's true

except for all the rest





## What is negligence?

- When a person or entity owes a legal duty
- Breaches that duty
- Causes harm to body or property of another and that breach of duty is the proximate cause of that harm



- The standard of care that is often used is the “prudent man theory”...
- What would a reasonable person do in similar circumstances



## OK.....then what is gross negligence?

- A wanton and reckless disregard for duties owed and a similar disregard for the likely consequences of such actions.



- The good news is that auto liability policies are designed to cover bodily injury and property damage for which you are legally liable...
- Including your ordinary and gross negligence



- What is **reasonable** to expect of owners and operators of vehicles?
- Who defines **reasonable**?



## Reasonable?

- Our insurance carrier will tell me when I have a bad driver.
- My broker runs them every year and they will let me know if there is a problem.
- If my driver has a valid driver's license, he can't be that bad, can he?
- She's not a professional driver really, she's a manager/marketing professional. The vehicle comes with the job. The criteria should be more forgiving...
- That person makes me a lot of money...I can't take the car away!



# Negligent Entrustment

- What is Negligent entrustment?
- Why should it be important to my company?
- What should I do about it?



## What is Negligent entrustment?

- Negligent entrustment is a cause of action in tort law that arises where one party is held liable for negligence because they negligently provided another party with a dangerous instrumentality, and the entrusted party caused injury to a third party with that instrumentality. The cause of action most frequently arises where one person allows another to drive their motorized vehicle.



## So what, I have insurance...

- Actual damage awards for ordinary and gross negligence are often covered by insurance but punitive damages are not in most states.
- Punitive damages are awarded by juries and court systems to punish the wrongdoer and insuring such is viewed as working against this public policy.



## What is incompetent?

- **The driver will generally be judged to be incompetent if ANY of the following are true:**
  - Your driver was not qualified to drive a vehicle safely at the time he or she was hired.
  - Your driver has a history of accidents and traffic violations.
  - Your driver lacks skills for the type of vehicle or driving involved.



## Why is this important?

- There is an increasing frequency of Negligent Entrustment claims across the U.S.
- There is a growing trend to include Punitive Damages which are typically not insurable, as a matter of public policy.
- Accidents involving Negligent Entrustment usually involve serious crashes with loss of life, serious bodily injury, or other dramatic consequences (\$\$\$)



## Why is this important?

- “Driver failed to stop at red traffic light, hit four vehicles, 12 injured, including 5-year-old with brain damage and fatality to 37-year-old who was pregnant; fetus died. Driver had six prior accidents known by the company’s management. The incident resulted in a settlement of \$11,000,000.”



## Why is this important?

- “Driver crossed median, collided head-on with another vehicle causing severe bodily injury to the other driver. The injured driver’s wife filed suit based on evidence of negligent hiring, including several prior serious traffic violations. The parties eventually settled for \$7.8 million.”



## Why is this important?

- Alicia Bustos was a passenger in the back seat of a Buick when her car was hit by a Ford F150, whose driver was using a cell phone at the time of the crash, leaving her severely injured and ventilator-dependent. Following the accident she sued the driver of the Ford and the driver's employer. A Miami jury awarded Bustos and her husband \$20.98 million; the lawsuit was later settled for \$16.1 million. *Bustos v. Leiva*, No. 01-13370 CA 30 (Miami-Dade Co., Fla., Cir. Ct.).



# Why is this important?

The insured **was** a well servicing contractor. It had been raining heavily all day so the owner takes the crew to a bar for some “team building”. After several hours and multiple pitchers of beer the crew departs in company vehicles. Two employees race side by side on a two lane road and collide with a car load of teenagers on a curve. Three fatalities and one severe brain injury. Auto policy limit loss, Umbrella policy limit loss, court grants punitive damage award



## Why is this important?

- How defensible are your acts or omissions?





# What is acceptable/reasonable?

## Common MVR Criteria

- No Major violations within the past five (5) years
- No more than three (3) Minor violations within the past three (3) years



# Common mvr criteria

- **Major violations are defined as convictions for any of the following:**
- Drag racing or speed contest
- Fleeing or attempting to elude a police officer
- Reckless Driving
- Driving under the influence of alcohol or narcotics (DWI or DUI)
- Refusal to take alcohol test
- Open Alcohol container
- Using a motor vehicle in the commission of a felony
- Leaving the scene of an accident
- Speed in excess of 25 mph over the posted speed limit



- **Minor violations are defined as convictions for any of the following:**
- Failure to yield
- Speeding less than 25 mph over posted speed limit
- Illegal passing
- Improper turn
- Other moving violations not considered Major
- Defective Equipment—it is well known that defective equipment convictions on an MVR are nearly always speeding tickets that are pleaded down to this category.



### Driving Record History

Type	Viol/Sus	Conv/Rei	Description	Code	Pts
VIOL	06/22/2009	06/29/2009	SPEEDING - 10-19 OVER LIMIT		02
			COURT: ADAMS CO ISSUING AGY: CSP/ADAMS 1D		
VIOL	06/30/2008	08/14/2008	VIOLATION OF RED SIGNAL LIGHT		04
			COURT: AURORA MUN ISSUING AGY: AURORA PD		
VIOL	06/03/2008	06/10/2008	SPEEDING - 10-19 OVER LIMIT		02
			COURT: AURORA MUN ISSUING AGY: AURORA PD		
VIOL	07/12/2007	08/02/2007	SPEEDING - 10-19 OVER LIMIT		02
			COURT: LARIMER CO F ISSUING AGY: CSP/FT COLLINS 3C		
VIOL	12/30/2005	01/09/2006	SPEEDING - 10-19 OVER LIMIT		02
			COURT: JACKSON CO ISSUING AGY: CSP/JACKSON 6B		
REVO	07/16/2004		REVOKE 2 ALCOHOL - VIO DATE		
			ELIGIBLE FOR REINSTATE: 07/15/2005		
REIN		07/15/2005	REINSTATED		
VIOL	07/08/2004	12/02/2004	DRIVING IMPAIRED BY ALCOHOL		08
			COURT: LARIMER CO F ISSUING AGY: CSP/LARIMER 3C		
ADMI	07/08/2004		ECS ARREST ADMIN CONVICTION TEST: FAILED BAC ARREST-DT: 07/08/2004		
			ARRESTING AGENCY: CSP/LARIMER 3C		
REVO	07/16/2004		REVOKE PER SE .08 MULTIPLE		
			ELIGIBLE FOR REINSTATE: 07/15/2005		
REIN		07/15/2005	REINSTATED		
VIOL	07/27/2003	09/08/2003	TOO FAST FOR CONDITIONS		03
			COURT: DENVER CO		



### Driving Record History

Type	Viol/Sus	Conv/Rei	Description	Code	Pts
VIOL	02/07/2009	03/09/2009	CARELESS DRIVING		04
			COURT: THORNTON MUN ACCIDENT: YES ISSUING AGY: THORNTON PD		
ACCI	02/07/2009		ACCIDENT ACCIDENT ASSOCIATED WITH PRECEDING VIOLATION(S)		
VIOL	07/24/2008	08/11/2008	DEFECTIVE OR UNSAFE VEHICLE		02
			COURT: ADAMS CO ISSUING AGY: ADAMS SO		
VIOL	04/14/2008	05/16/2008	DEFECTIVE OR UNSAFE VEHICLE		02
			COURT: THORNTON MUN		
			ISSUING AGY: THORNTON PD		
VIOL	12/09/2006	12/18/2006	DEFECTIVE OR UNSAFE VEHICLE		02
			COURT: DACONO MUN ISSUING AGY: DACONO PD		



## Will this really work?

- I took the company car away and he now drives his own vehicle. That solves the problem, doesn't it?
- What about his own liability limits?
- Is he really covered? Remember, insurance is a contract of good faith...
- Is there a business use endorsement?



- This isn't only a vehicle and liability exposure. Some of the worst worker's compensation claims we have ever seen have come from automobile accidents.
- Try \$14 million and \$7.5 million on for size.



## Other tools?

- Samba Fleetwatch  
[www.samba.biz](http://www.samba.biz)
  
- Drive Cam  
[www.drivecam.com](http://www.drivecam.com)



**Don't let this be you.....**





## What should I do?

- Have a written driver safety procedure.
- Evaluate and review all people who will drive company vehicles or their own vehicles on company business.
- Review driving records periodically.
- Formalize driver review and training.
- Enforce disciplinary standards.
- Conduct post-accident reviews.
- Implement a substance abuse program
- Have a cell phone policy
- Require the use of seatbelts



## Now What?

- Talk with your company management to gauge interest and commitment.
- Follow the ANSI Z15.1-2006 Standard
- Know that the standard of care will change over time. It's different now than it was a generation ago.



# Questions?