

# RiskTopics

## Negligent Entrustment

As telematics in company owned vehicles become more the norm, employers must understand the risk of negligent entrustment.

### Introduction

According to the Free Dictionary, negligent entrustment is defined as “The act of leaving an object, such as an automobile or firearm, with another whom the lender knows or should know could use the object to harm others due to such factors as youth or inexperience.”<sup>1</sup>

Negligent entrustment claims arise when an unlicensed, incompetent, or reckless driver causes damages while driving a motor vehicle owned by someone else. A party injured by such a driver must generally prove five components of this tort:

- (1) that the owner entrusted the vehicle to the driver;
- (2) that the driver was unlicensed, incompetent, or reckless;
- (3) that the owner knew or should have known that the driver was unlicensed, incompetent, or reckless;
- (4) that the driver was negligent in the operation of the vehicle; and
- (5) that the driver's Negligence resulted in damages<sup>2</sup>

If a plaintiff proves these elements, an owner may be liable for the full amount of damages caused by the driver. In some instances, the plaintiff may also recover Punitive Damages from the owner, particularly if the owner acted recklessly in entrusting the vehicle to the driver<sup>3</sup>.

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<sup>1</sup> “Negligent Entrustment.” The Free Dictionary, Farlex, [legal-dictionary.thefreedictionary.com/Negligent+entrustment](http://legal-dictionary.thefreedictionary.com/Negligent+entrustment). Accessed 8/28/2018.

<sup>2</sup> *Amaya v. Potter*, 94 S.W.3d 856 [Tex. App. 2002]

<sup>3</sup> *Allstate Ins. Co. v. Wade*, 579 S.E.2d 180 [Va. 2003]

## Discussion

What does this mean for employers? In the event of an accident, vehicle telematics data and driver qualification records and human resources policies and procedures will be discoverable.

The company may be held liable if:

- the company has been receiving telematics data that shows negligent activity on the part of its drivers and has not acted on it
- the company has policies in place that state that MVR's will be reviewed against a set criteria and drivers failing to meet the criteria will be disqualified AND drivers continue to drive for the company even though they fail to meet the criteria.
- the driver has a suspended license and the company knows or should have known that the license was suspended.

Most insurance policies don't cover punitive damages. Beyond punitive damages, however, a negligent entrustment judgment could easily exceed your automobile liability/umbrella liability policy limits.

A 2018 court case handed down a judgment of more than \$100 million against an oil services company. The oil services company had strict policies regarding employee selection and MVR reviews, but didn't enforce them. At the time of the incident, the driver had multiple violations which would have precluded their operation of a company vehicle under company policy. These violations would have been revealed, if routine MVR checks had been run and analyzed. In this case, the company failed to take the most basic steps required to ensure those driving on their behalf met their minimum requirements.<sup>4</sup>

## Guidance

What can business owners do to avoid negligent entrustment?

- On the written job application, require the applicant to report:
  - all driving violations or accidents for the past 5 years
  - all states they have held a driver's license in for the previous 5 years
  - Any aliases ever used
- Obtain an authorization to obtain an initial and periodic MVR's, if hired. MVR's should be run on each state where the employee has held a valid driver's license.
- Have applicants and employees provide proof of a valid driver's license. Inspect and keep a copy in the driver or personnel file.
- Establish criteria to evaluate MVR's (i.e., determine what constitutes an acceptable driving record.) All drivers should be informed of the policy and acknowledge their understanding of it. Management should follow the criteria fairly and consistently. See the Zurich Risk Topic "Motor vehicle record criteria" for additional guidance.

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<sup>4</sup> "Texas Jury Nails Frac Company with \$101 Million Verdict." Oil & Gas 360, 23 July 2018, [www.oilandgas360.com/texas-jury-nails-frac-company-with-101-million-verdict/](http://www.oilandgas360.com/texas-jury-nails-frac-company-with-101-million-verdict/)

- Check MVR's at least annually for all employees authorized to operate a vehicle for the company, whether company owned or otherwise. This review of MVR's needs to be completed by the company, not by a broker or insurance agent. Third parties are not permitted to share the information obtained on the MVR. Any company that allows others to perform their due diligence puts themselves at risk.
- If telematics data is collected, download weekly reports from the telematics provider. Formally document at-risk driving behaviors derived from the telematics alerts, as well as the intervention completed with the driver. A driver intervention form example that can be used for this documentation is included in Appendix A.
- Establish a written fleet plan that addresses:
  - Prohibited Actions
  - Cell Phone Policy
  - Drug and alcohol use
  - Seat Belt usage
  - Required Licenses
  - Company owned vehicles/driver agreements
  - Personal vehicles on company business
  - Permitted users and use
  - Offering assistance
  - Distracted and Defensive Driving
  - Company and personal policy
  - Inspection and maintenance
  - Garaging and storage
  - Accident scene procedures
  - Driver recruitment, selection and assessment
  - Driver training and orientation
  - Driver eligibility
  - Telematics
  - Coaching and disciplinary action system
  - Reward/incentive programs
- Provide all drivers with annual training that reviews all the policies listed above, as well as the tenets of defensive driving.
- Require drivers to sign an acknowledgement form, as part of the annual fleet training program. The acknowledgement should indicate that the employee has reviewed, understands and agree to comply with the policies.
- Most importantly, perform the necessary checks to ensure employees are in compliance with the policies. Consistently enforce the rules and document any progressive discipline or interventions.
- Negligent entrustment can also extend to those driving personal vehicles on company business. Be sure to apply the same policies to those using personal vehicles.

## Conclusion

Written policies are only meaningful if they are fairly and consistently enforced. While many companies do not consider themselves to be transportation companies, they need to consider how much their employees are on the road in company vehicles travelling. Records of driver qualification and telematics data will be discoverable in the event of an accident. Protect yourself by having guidelines and following them.

Link to Zurich Fleet toolkit

[Zurich Fleet Toolkit](#)

# Appendices

## Appendix A

Driver intervention record	
Indicate the intervention type:	
<input type="checkbox"/> Verbal	
<input type="checkbox"/> Written/training	
<input type="checkbox"/> Revocation of driving privileges	
Intervention and action plan	
Part one: Employee	
Employee's action plan to resolve the noted safety issue. Specifically, the plan must be filled out by you and state what you intend to do to prevent future occurrences	
<hr/>	
Part two: Supervisor	
Supervisor's action plan to resolve the noted safety issue. Specifically, the plan must be filled out by the manager and state what the manager intends to provide for the employee (e.g. training, information, etc.)	
<hr/>	
Certification	
Employee:	Date:
Supervisor:	Date:

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