



# Risk Insights

"Addressing Today's Property and Casualty Issues"

2007

## Need More Information?

For further information regarding the risks of employee cell phone use while driving and company liability, please contact:

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## Employee Cell Phone Use While Driving: What is Your Company's Liability?

According to the Cellular Telecommunications & Internet Association, cell phone use has grown from 7.5 million users in 1991 to over 167 million in 2004. In keeping with this trend, conducting business on a cell phone while driving also has become a commonplace practice. While employers may be aware the obvious benefits of allowing employees to use cell phones to conduct business while driving, they may be unaware of their liability risks.

While it appears that the use of cell phones leads to more accidents, there are mixed results from studies concerning driver distractions due to cell phone use. For example, in August 2003, the AAA Foundation for Traffic Safety found that the most potentially dangerous activity while driving was "reaching or leaning" — cell phone use placed a distant ninth on the list of distracting activities. Regardless, there are a growing number of lawsuits involving employer liability for traffic accidents caused by employees talking on cell phones while on the job.

### Case Studies

Cell phone use risks fall into two categories: claims by third persons and claims by employees. Third-party claims are the result of a plaintiff attempting to sue both the employee and employer under a theory of *respondeat superior*. This means an employer may be indirectly liable if an accident occurred from cell phone use while an employee was acting "within the scope of employment." Making a business call or looking for directions to the next appointment are typically considered to be within the scope of employment. Recent third-party claims case studies include:

- § In 2000, a lawyer struck and killed a 15-year-old girl in Virginia. The attorney, who was returning from a work meeting, was allegedly talking on her cell phone with a client at the time of the accident. The deceased's family is seeking \$30 million in damages.
- § In 2001, a Miami jury found an Arkansas lumber company liable for more than \$20 million in damages after one of its employees struck another car, gravely injuring a passenger. The employee was using his cell phone for a sales call when the accident occurred. The company settled the case for \$16.1 million.
- § In 2001, an appeals court ordered the State of Hawaii to pay \$1.5 million in damages after the teacher, employed by the state, had just completed a cell phone call while hitting a pedestrian while driving to work. Based on vicarious liability, the state was found 20 percent liable for the plaintiff's injuries.
- § A 1999, a stockbroker in Pennsylvania struck and killed a motorcyclist on his way to a non-business-related event. Although the stockbroker's employer believed it could defeat the plaintiff's vicarious liability claim because it fell outside of the scope of employment, the plaintiff also alleged that the firm was itself negligent when it encouraged employees to use cell phones without training them on the potential risks. The employer settled the case for \$500,000.

In addition to third-party claims resulting from accidents, employers increasingly face claims by employees for health problems allegedly stemming from cell phone use. Although the science appears contradictory and inconclusive, some employees contend that the radio frequency radiation emitted during cell phone usage may lead to various forms of brain cancer or other illnesses. Employees who use cell phones while on the job have begun to file Workers' Compensation claims and lawsuits based on this theory.

## Minimizing Employer Liability

While there is no guaranteed defense to liability, developing an appropriate employee cell phone use policy, training employees about the dangers of talking on a cell phone while driving, and enforcing policies with signed written acknowledgments from employees when they are issued cell phones and related equipment all can help to limit an employer's potential liability.

Considering that several states currently ban the use of hand held cell phones while driving, and many states have taken an increasingly active role in addressing the relationship between driver cell phone use and traffic safety, employers should require employees to observe all applicable laws regarding cell phone use while driving. While state laws do not directly address employer liability, they have the potential to increase employer exposure for cell phone-related accidents. For more information about state requirements, access the Governor's Highway Safety Association Web site at: [www.statehighwaysafety.org](http://www.statehighwaysafety.org).

In addition to updating your company Cell Phone/Hand Held Use Policy and training program, employers should also review their insurance policies. To help you assess your company's risk of employee cell phone use, contact Raymond Armstrong at the Sylvia Group to review your unique liability risks and for assistance in developing a comprehensive Cell Phone Use Policy.

*This Sylvia & Company Insurance Agency, Inc. Risk Insights is not intended to be exhaustive nor should any discussion or opinions be constructed as legal advice. Readers should contact legal counsel or an insurance professional for appropriate advice.*



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