

Negligent Entrustment and Fleet Operations

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Negligent Entrustment Doctrine

The Doctrine of Negligent Entrustment has been in existence for decades with infrequent use. However, recently the introduction of this into court cases involving commercial fleet accidents has seen a dramatic increase. The Doctrine was set forth in Section 308 of Restatement of Torts in 1965 and is as follows:

“It is negligence to permit a third person to use a thing or to engage in an activity which is under the control of the actor, if the actor knows or should know that such person intends or is likely to use the thing or to conduct himself in the activity in such a manner as to create an unreasonable risk of harm to others.”

The principle of Negligent Entrustment is not founded upon negligence of the party using the instrumentality or “thing”. Rather, the negligence is applied to the provider of the “thing” for allowing it to be used by another person who is incapable of using it safely. A company has a “Duty Owed” to the general public to assure the instrumentality is being properly and safely used by those to whom it is given.

Negligent Entrustment and Commercial Fleets

The Doctrine of Negligent Entrustment is now being successfully used in accidents involving commercial fleets. The instrumentality (thing) being supplied is the vehicle. A vehicle can be considered dangerous due to the damage it may cause if not operated properly.

The incompetence occurs when the driver demonstrates an inability to drive in a competent or safe manner. Examples of an incompetent driver can include: inadequate training, a lack of experience, inexperience with the type of vehicle, a poor driving record, a history of accidents, previous motor vehicle violations or a suspended or improper license.

The negligent entrustment occurs when the company provides a company vehicle to an employee without properly screening, training or monitoring the abilities of the driver or other signs of incompetence. This demonstrates negligence and a failure to meet the “Duty Owed” to the public in assuring the vehicle is only provided to competent drivers.

The use of Negligent Entrustment Doctrine in vehicle accidents has resulted in significant industry settlements:

- \$11,000,000 settlement involving a truck driver failing to stop at a traffic light and striking four other vehicles. The driver had six prior accidents.
- \$7,800,000 settlement involving an automobile that crossed the median and struck another vehicle head-on. The driver had several prior traffic violations.
- \$2,600,000 settlement in which the driver did nothing wrong to cause the accident. However, the driver had a suspended license and his company was found negligent for not restricting him from driving. Undisclosed punitive damages were also imposed.

In these cases, the previous poor driving records were used to demonstrate incompetence of the driver. The lack of either knowing of this record or failing to take action constituted negligence on the part of the company.

Punitive damages, not commonly covered by insurance, can also be awarded under the Doctrine of Negligent Entrustment. This occurs when it can be demonstrated that the company willfully or wantonly ignored its “Duty Owed” to the public.

Non-Owned Vehicles

Negligent Entrustment does not only relate to employees driving company vehicles, it may also apply to employees driving their own vehicles on company business. The Doctrine of Negligent Entrustment states: “... *to permit the use of a dangerous instrumentality*” is also a negligent act. Thus, allowing employees who may be considered incompetent to use their own vehicles on company business can also be considered negligent.

Controls

Procedures that can be implemented to defend against Negligent Entrustment include the policies and programs of a formal fleet safety management program. This includes:

- Company Fleet Policy Including a Safety Program
- Company Policies on the Use of All Vehicles
- Formal Documented Hiring Procedures and Driver Standards
- Driver Training and Orientation
- Vehicle Inspection Program
- Documented Vehicle Maintenance Procedures
- Accident Investigations
- Motor Vehicle Record (MVR) Program



The Motor Vehicle Record Program is the most critical element in relation to Negligent Entrustment. The MVR of a driver will provide evidence regarding the driver's skills, past driving history and can easily be used to demonstrate potential driver incompetence.

Formal procedures must be in place for ordering MVR's on all prospective drivers prior to allowing them to drive and for all existing drivers at least annually. Documented standards must be developed for evaluating driving records and taking corrective actions which may be anything from additional training to the suspension of driving duties. These procedures must be applied consistently and fairly with all drivers. Complete documentation is a key.

Conclusion

The Negligent Entrustment Doctrine does expand the avenues of recovery for plaintiffs. However, it also provides definition and structure to the legal process which allows fleet managers to develop specific controls to reduce the exposure.

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