



# School of Risk Control Excellence



## Negligent Entrustment & Non-owned Auto Exposures

**Terry Smith, CNA Risk Control Consulting  
Director**

**Janna Bennett, CNA HealthPro Risk Control  
Consultant**



## Disclaimer

The information, examples and suggestions presented in this material have been developed from sources believed to be reliable, but they should not be construed as legal or other professional advice. CNA accepts no responsibility for the accuracy or completeness of this material and recommends the consultation with competent legal counsel and/or other professional advisors before applying this material in any particular factual situations. This material, and the examples provided herein, are for illustrative purposes only and is not intended to constitute a contract. Any similarity to actual individuals, entities, places or situations is unintentional and purely coincidental. Please remember that only the relevant insurance policy can provide the actual terms, coverages, amounts, conditions and exclusions for an insured. All products and services may not be available in all states and may be subject to change without notice. CNA is a registered trademark of CNA Financial Corporation. Copyright © 2013 CNA. All rights reserved.

# Learning Objectives

At the end of this course, participants should be able to:

- Identify negligent entrustment exposures and methods that can be used to avoid negligent entrustment claims.
- Identify non-owned auto exposures in your **company and know how to control them.**

# Definition Vehicle Negligent Entrustment

Issues regarding negligent entrustment of vehicles can arise in various situations. For example:

- The company permits someone to use a company vehicle, their own vehicle, or any vehicle on behalf of the company for company business.
  - There is something in the driver's background that creates a risk of harm to others.
  - The company knew or should have known of this risk.

# If you have any of the following you have Non-Owned Auto Exposure

- Sales people who drive their own vehicle.
- Someone who goes to the bank for the company on their way home.
- Someone goes to buy supplies or run an errand for the company.
- When management asks an employee to do anything for the company that requires the employee to use their vehicle.

# If you have any of the following you have Non-Owned Auto Exposure *(Continued...)*

- Any employee reimbursed to drive their vehicle to attend business meetings, visit customers, pick up supplies or parts.
- Volunteers that use their own vehicle when working for your organization.

# Negligent Entrustment Alleged

When considering the risks of loss associated with the negligent entrustment of vehicles, your company needs to review:

- Company policies.
- Company actual practices.

You also need to ask this question:

- *“Do our policies and the actual practices match?”*

# Vehicle Driver Requirements (non-CDL)

- MVR reviewed before driving and annually
- Valid driver's license
- Application
- Reference check
- Proof of adequate insurance
- Drug and alcohol test



# Controlling Negligent Entrustment Exposure

**Have a consistent driver selection process including at a minimum:**

- MVR reviews with established criteria
  - Drug tests for all drivers
  - Required completion of safe driver training and orientation to organizational policies
- Hold managers accountable to follow selection process.**

# Controlling Negligent Entrustment Exposure *(continued)*

Communicate to all employees the company's policy on:

- MVRs and how violations affect their continued performance of duties
- Distracted driving (cell phones, texting, and other distracting devices)
- Driver training when hired, on-going and post accident
- Lessons learned applied to future staff orientation and training sessions
- Requirement to report all accidents or violations
- Established and consistently enforced disciplinary standards

## Establish Criteria for MVR Checks

- Check MVRs on all newly hired drivers before they drive on company business
- Check MVRs at least annually thereafter
- Set criteria for an acceptable Motor Vehicle Record.
- Anyone with a driving record that does not meet acceptable criteria must not be allowed to drive a vehicle on behalf of the company.
- Drivers with 2 moving Type B violations or one driving accident in a 3 year period are placed on warning from a company monitoring standpoint
- MVRs are pulled more frequently for those drivers on warning status
  - At least once every six months

# Motor Vehicle Record Violations

## Type A Violations

- Driving under influence of alcohol or drugs
- Refusing to take a substance test
- Driving with an open container (alcohol)
- Reckless / Careless driving
- Speeding: In excess of 14 mph over posted limit
- Hit and run
- Fleeing or evading police or roadblock
- Resisting arrest
- Racing / speed contest
- Driving with license suspended or revoked
- Vehicular assault
- Homicide or manslaughter or using vehicle in connection with a felony

## Type B Violations

### Moving violations that include:

- Speeding: 1-14 mph over posted limit
- Improper lane change
- Failure to yield
- Failure to obey traffic signal or sign
- Accidents
- Having license suspended in past related to moving violations



# Motor Vehicle Record Violations: *(continued...)*

## Suggested Criteria

### Type A Violations

- Do not allow anyone to drive for your company if they have received a class 'A' violation within the past 5 years

### Type B Violations

Drivers with:

- three or more type 'B' violations in the past three years should not be allowed to drive.
- two or more at fault accidents in the past three years should not be allowed to drive.
- two 'B' violations or one at fault accident in the past three years should be put on warning. Their MVR should be reviewed at least once every six months.

# Non-owned Vehicle Controls

- Review Motor Vehicle Record (MVR) before they drive and at least annually
- Require proof of liability insurance
- Include company as a named insured on personal auto policies of individuals who routinely drive on company business
- Regularly inspect the vehicle used for company business to ensure proper maintenance and that it is safe to operate
- Verify clients are aware that their insurance coverage would be primary in the event caregiver has an accident while driving client's vehicle. Ensure they maintain full coverage.

# Non-owned Vehicle Proof of Auto Liability Insurance

- If someone driving their own vehicle for company business has an at-fault accident, the company may have to pay for damages that exceed the limits of the vehicle owner's auto liability coverage.
- CNA suggests that employees carry auto liability insurance with at least \$300,000 combined single limits.
- Keep proof of employee's auto liability insurance coverage on file.

# Non-owned Vehicle Inspections

- Regularly inspect the vehicle used for company business.
- The condition and appearance of the vehicle is a reflection on your company.
- You need to know the vehicle is maintained in a safe condition to be driven on the road.



# Non-owned Vehicle Accident Example

1. An employee of XYZ Companion Care is transporting a client to a physician's appointment in his own vehicle. He pulls into the path of a motorcycle. The rider of the motorcycle is killed.
2. Subsequently, it was learned that 18 months earlier, the employee had been arrested for driving under the influence of alcohol, and his license had been revoked.
3. Employee had not disclosed the arrest as was required by company policy.
4. XYZ Management had not reviewed his MVR during that time and was unaware of the arrest or the revoked license.

# Non-owned Vehicle Accident Example

- An employee was operating his personal auto in the course and scope of employment when he crossed the center line resulting in a head on collision:
  - Client who was being transported in caregiver's vehicle was killed. Client was a semi-retired physician who still maintained a substantial income.
  - Other driver incurred a fractured leg and significant damage to his auto.
  - Caregiver entered a plea of guilty to charges of failure to drive in right half of roadway and negligent driving.
  - Employee and company were sued for wrongful death of client and for bodily and property damages the other driver incurred along with lost wages and pain and suffering.

# Conclusion

You should now be able to:

- Identify vehicle negligent entrustment exposures and steps you can take in your company to avoid negligent entrustment claims.
- Recognize if you have any Non-owned Auto exposures in your company and understand how to reduce and control this exposure.

# Questions