



# HIDDEN PERILS OF INSURANCE CUTS

## REDUCING VEHICLE COVERAGE CAN BE VERY EXPENSIVE

By Jim Parrie, CPE, Ph.D.

**A**s the effects of the current recession continue to hit the framing industry, countless business owners are searching their profit and loss statements and their checkbooks for expenses to cut. Most owners have been slashing inventories and dead wood employees. I have seen numerous budgets in delivery trim overhead, and liability insurance. Cutting costs should be done when both the real and hidden costs are taken into account. What follows are a few observations on what you should be on the lookout for as you try to reduce vehicle insurance costs so that you avoid potential legal landmines.

### *Vehicular Perils*

Company owners and managers often struggle with the burden of vehicular liability insurance for delivery drivers. The cost of insurance to cover delivery vehicles can be staggering. When you add workman's comp, fuel charges, and maintenance, it can be a real burden. Cutting delivery vehicle expenses is a decision that should not be taken lightly. There are the usual factors that most owners consider when analyzing costs and liabilities for delivery. However, there are also hidden challenges that can literally break the bank, and these include potential litigation from employees and the general public.

In a striving to be more efficient, do you issue cell phones or two-way radios to your delivery drivers for them to use to contact you, customers, or other business-related entities? Do you allow your delivery drivers to have cell phones on them when operating your vehicles? Do you allow them to use their iPods (MP3 players) when driving company vehicles, including forklifts?

According to an auto insurance survey, one-fifth of experienced adult drivers in the U.S. send text messages while driving. Another study of dangerous driver behavior

released in January 2007 by Nationwide Mutual Insurance found that, of 1,200 surveyed drivers, 73 percent talked on cell phones while driving. Also, in 2002 the Harvard Center for Risk Analysis calculated that 2,600 people died each year as a result of using cell phones while driving. They estimated that another 330,000 are injured. Drivers of today often try to multi-task as they drive; they use cell phones, laptops, surf the web and more—all while behind the wheel.

In the old days, all you did was hit a drive thru, grab a burger and a Coke, and then hit the road. Today, people are reading e-mails and conducting conference calls while operating motor vehicles. Even though your delivery drivers may not be holding conference calls at the same time as driving your trucks, it is safe to assume they are making personal calls, possibly sending and reading text messages, and perhaps doing even more. There are daily stories about drivers who are watching DVDs and live television while they drive, or they are playing video games as their children sit in the back seat. What makes you think your drivers are any different than other members of the general public? If you think your drivers do not occasionally surf the web, text, or make personal calls on their cell phones while driving, you may be in for a rude awakening.

If one of your drivers is involved in an accident while talking on a cell phone when driving a company vehicle, then your company will probably be held financially liable. In recent months there have been significant commuter train accidents due to train operators texting and/or using cell phones while operating a train. The operators who survived will apparently be held criminally responsible. The municipal authorities that hired these drivers are also involved in lengthy and costly litigation.

If you do not have a written company policy for your

drivers, one that you enforce, you may be playing with fire. If you supply or encourage the use of cell phones while operating a company vehicle, your company could be held legally liable if an accident occurs. Check with legal counsel about your local and state laws regarding use of cell phones and other two-way communications in your delivery vehicles.

Many major corporations have adopted policies banning employees from using cell phones while driving on company time. UPS does not provide drivers with phones and forbids them from talking on their own phones while steering. Drivers should pull over to safe place when making and receiving cell phone calls. It is never safe to text while driving any type of motor vehicle.

You may want to consider the following when developing your cell phone policy:

**Put everything in writing**—Your policy should be put in writing, and all employees should sign this document annually. They should sign that they have read and understand the cell phone policy and the potential disciplinary consequences of violating it. In addition, you may want to consider mentioning the policy at least two times per year in your monthly crew meetings (and there should be a signature sheet for all in attendance to sign). You may also want to include banning the use of DVD players, streaming video, web surfing and the use of gaming devices in your company policy.

If you permit cell phone use, then employees should be instructed and trained in the proper usage of cell phones while driving. They should be educated about the dangers of driving and talking on cell phones. Employees should also be made aware of state and local laws regarding the use of cell phones. Management and legal counsel should review your cell phone policy periodically. It is important that the policy is enforced as much as possible at all times.

**Ban cell phone, iPod, and portable electronic entertainment**—Clearly instruct employees who are using company vehicles and/or company cell phones in writing that they are prohibited from using the phone at any time while driving. If they are using their own vehicles and/or cell phones, they should be instructed that they are not to use the cell phone for company business while driving. In your written policy you should consider including the correct use or non-use of

these electronic devices while operating forklifts and any other heavy equipment.

Post warning stickers on employer-owned cell phones and in all employer owned vehicles—If use is prohibited, then the warning can state that fact; otherwise, warnings could point out the danger of cell phone use while driving. If you are not going to reimburse employees for cell phone use, they should sign that they understand the company cell phone policy.

**Pull off the road before making or receiving a phone call**—If cell phone use is not completely prohibited, then employees can be required to pull off the road and stop driving before making or receiving a phone call.

Require the use of hands-free headsets or devices—If using a cell phone is allowed during driving, the use of a hands-free headset or device that insures hands on wheel and eyes on road should be required. You may consider providing inexpensive hands-free devices for your employees.

**Ban texting and web browsing**—There is no good reason for a delivery driver, forklift operator, or any other person using company vehicles to be texting or browsing the web while operating a vehicle. This should be standard in all company vehicle policies. Penalties could be put in place that requires suspension and/or termination of any employee caught texting or browsing the web while operating a motor vehicle. You may also want to include banning the use of DVD players and portable gaming devices while operating motorized vehicles and heavy equipment. Check with legal counsel before executing this policy, but such a policy should be considered.

**Inform customers of your cell phone policy**—Customers, especially delivery customers, can be informed that your company has a cell phone policy that is enforced because your company puts employee and public safety first.

**Personal calls can be prohibited**—Personal calls on personal phones can be prohibited while employees are driving on company time.

**Employees will be held liable**—State clearly that employees who are charged with traffic violations involving the use of a cell phone while driving will be solely responsible for all liabilities that result from such actions.



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## ***Incidental Vehicular Liability***

How often do you ask a staff member to do you a favor and pick up lunch for you? Or grab a Starbucks for you? There have been several court cases in which an employer has been held liable for damages because the employer had asked an employee to do a favor and the employee was involved in an accident. Even if employees are on their way to the office from home and you ask them to stop and pick up a sheet of matboard on their way in, you may be held liable for any accidents that occur. As you look to trim costs, keep in mind that more and more companies are asking employees to use their personal vehicles for deliveries and/or pick-ups. By asking employees to use their personal vehicles for company use, the company could be assuming a degree of legal responsibility for the driver and the vehicle.

In many areas of the country, attorneys currently run television ads seeking lawsuits for auto-related injuries. You may have seen ads that sounded like this: "Have you been in an auto accident? Then get a check." Or "If you have received a recent auto injury settlement and you think you deserved more, then call me and get a check!"

These types of ads have spurred a new industry that is costing businesses millions of dollars in higher insurance costs and legal fees. "Dollar collars" as they are known in the legal industry is the standard fare for some nefarious attorneys. Dollar collars refer to foam neck braces used by patients that are suffering from whiplash, but these collars

are used by individuals faking injuries so they can file lawsuits. There are unscrupulous people who will file a false claim with equally unsavory attorneys. An attorney sends a "client" to a charlatan orthopedist or chiropractor who then bills the insurance company or defendant for office visits that do not occur. You know the scam. Don't fall prey to the sharks that are swimming out there looking for unsuspecting victims.

Do you send your drivers or employees to make a rush delivery or pick-up of materials? Several court cases have held employers liable because employees were speeding or driving in a reckless manner because their employers told them that the task had to be done in a rush. These drivers have hit pedestrians, other vehicles, and even buildings. In some cases, significant bodily injury and even death occurred. In certain instances employers were held liable because the court ruled that employees felt their jobs were on the line if they do not meet the deadline. Whether an employee's job was in actually danger or not did not matter. What mattered is what they "felt."

You need to be clear in what you tell your employees about "rush" orders, and you need to have clear written policies about the use of personal vehicles for company business. Employees should feel free from retribution to tell their superiors that they feel a particular request may endanger them, the public, or equipment. Always teach, preach, and encourage safety.

## ***Smart Decisions***

Many production-framing businesses cannot survive without delivery drivers. An added help for many framing companies has been the installation of global position system units in delivery vehicles. The price of these systems has plummeted, and a GPS system can tell you if your driver veers from his route or spends too much time at a destination. It will also tell you if your driver is speeding, which can be invaluable when terminating an employee and can help protect you in litigation. These systems can also help you plan the most efficient route and thereby reduce fuel costs. UPS has used GPS for years, leading it to change its city truck routes to prefer right-hand turns over left-hand turns to reduce the chance for accidents.

In the current recession, many production framing business owners are searching for expense items to cut. Some have cut insurance limits and deductibles, realizing that they are assuming additional risk. Insurance is the transfer of risk, and that has an associated cost. Before cutting coverage, make sure you understand all the potential costs and make sure that risk is something you can afford. ■

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Jim Parrie, Ph.D., CPF, a 30-year veteran of the framing industry, has owned and operated small frame shops, galleries, and wholesale operations to high volume OEM facilities. Currently, he owns Millennial Technologies & Consulting International, a consulting firm to high volume framers, retail chains, and manufacturers throughout the world.



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