

## DISTRACTED DRIVING: DEVELOPING AND ENFORCING A POLICY FROM A BUSINESS PERSPECTIVE

We are in the age of information and connectivity. We can instantly access nearly limitless amounts of information via a device that fits in the palms of our hands, and we can almost always be reached by phone, text or email. The availability of unlimited instant information has led to improvements in business and productivity but has also been identified as a major safety concern while driving. When cellular telephones were first introduced, their use was limited mainly due to costly service plans and limited areas of reception. Unlimited plans and extended service areas have led to a surge in cell phone use. When email and text messaging became available on phones in the late 1990s, usage jumped dramatically and continues to climb. In June of 2011, more than **196 billion** text messages were sent or received in the U.S. This is **up 50%** from just two years earlier.<sup>1</sup>

The dangers of using a wireless device while operating a motor vehicle have been known for some time and yet many drivers still engage in this dangerous behavior. The 2009 AAA Foundation for Traffic Safety Index reported that 95% of the drivers surveyed said that texting while driving was unacceptable. Of those same 95%, 18% admitted to still doing so.<sup>2</sup> Many people originally saw this as a problem with younger drivers only. Recent studies show, however, that drivers between the ages of 30-39 are the group with the highest proportion of fatal crashes caused by distracted driving.<sup>3</sup>

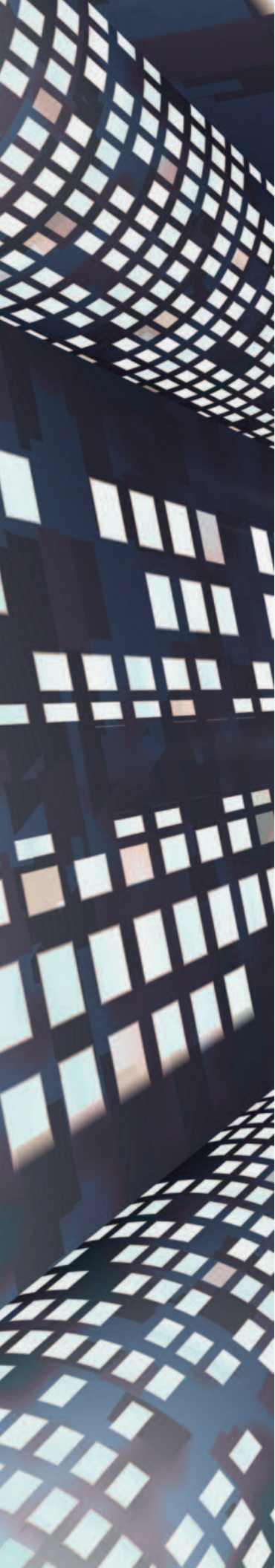
## BUSINESS MATTERS

When businesses realized that a wireless device could make their staff more productive during a time that was generally seen as unproductive, an explosion of company-issued wireless devices occurred. In 2009 it was estimated that U.S. companies spent over \$59 billion on company-issued cell phones for their employees.<sup>4</sup> With the proliferation of company-issued wireless devices, some risk managers and safety directors quickly recognized the exposure that their company may have from this new situation. While distracted driving accidents related to the use of wireless devices go back more than a decade, as the technology evolved (from talking to texting) and the number of such devices increased exponentially, the frequency of such accidents also exploded. Some accidents have caused multiple fatalities and/or severe maiming with verdicts approaching \$25 million.

As cases worked their way through the courts and the size of the judgments became larger and larger, many companies, believing they had to do something to address this exposure, mandated the use of hands-free devices and created formal cell phone use policies in the form of a stand-alone document or simple additions to vehicle safety policies already in place.

**This issue of *You Should Know* is one in a series of brief articles designed to keep our clients abreast of significant breaking news in the claim and loss control areas that could affect their operations or exposures. Additional information about this and other topics can be obtained from your Regional Strategic Outcomes Practice Associate.**





Many companies felt that the use of hands-free devices would help alleviate their liability in such incidents, but with the rise in texting, the limitations of hands-free devices have become readily apparent. Some recent studies conducted by the Insurance Institute for Highway Safety suggest that drivers who use hands-free devices are only marginally safer than drivers who hold a phone. The study suggests that users often engage in other activities while on a hands-free call, such as taking notes, smoking or eating, and are often not as attentive to their speed or lane position.<sup>5</sup> Another recent court case involved a driver who **was using a hands-free device** resulted in a verdict of over \$20 million dollars.

This worries many companies that have had formal usage policies in place for some time and have mandated the use of hands-free. The courts are now saying that just having the written policy is not enough, the policy must be well written to address all aspects of distracted driving. The courts are also telling us that companies need to have some type of enforcement mechanism in place to ensure that their staff is/are compliant. Also, the courts do not see a difference in using a hands-free device and handling the wireless device. This last item has forced many employers to rethink the conditions that have been placed on use of wireless devices while driving, and to simply ban the use of wireless devices altogether while driving.

## GOVERNMENT INVOLVEMENT

In November of 2011 the Federal Motor Carrier Safety Administration published a final rule that imposed sweeping changes on the ways commercial motor vehicle operators are allowed to use handheld devices. The new rule also established some significant fines for **both the vehicle operator and the employer** if the driver was found to be in violation. Some of the other significant highlights of the new rule include:

- No driver shall use a wireless device while operating a commercial motor vehicle.
- No commercial carrier should require or allow their drivers to use a wireless device while operating a commercial motor vehicle.
- If a driver is convicted of violating the rule two times in a three-year period, they can lose their license for up to 60 days; up to 120 days for a third conviction.
- Individual drivers can be fined up to \$2,750 for a violation.
- Businesses can be fined up to \$11,000 for their commercial drivers who violate this rule.

While the Federal Motor Carrier Safety Administration rules only apply to commercial vehicles and drivers, many states are now considering similar rules, penalties and fines for non-commercial drivers.

The Occupational Safety and Health Administration (OSHA) along with the Department of Transportation have also recently created a distracted driving initiative.<sup>6</sup> The OSHA and DOT initiative is focused on employers prohibiting texting while operating motor vehicles and follows an executive order signed by President Obama that prohibits federal workers from texting while driving.<sup>7</sup> The announcement of the initiative clearly states that requiring texting while driving or not prohibiting it is a violation of the OSHA act of 1970, and employers will be cited for lack of enforcement.



## WHAT SHOULD A BUSINESS DO?

It is important to create a formal wireless device use policy and to document that you have trained your staff on the elements of the policy. When developing or reviewing a wireless device use policy, some best practices to consider include:

- Reevaluate policies that were written in the past. Many were written before the advent of the smart phone and simply address talking on a phone while driving. An up-to-date policy will cover all communication aspects of the new phones that are available.
- Create a stand-alone policy so the message does not get lost in another larger policy.
- Make the policy simple, short and easy to understand. A long or convoluted policy that discusses other topics makes relaying the expectations harder to communicate.
- A policy should not contain conditions on when a wireless device can and cannot be used while operating a motor vehicle. Many employers are simply stating that a driver is not allowed to use a wireless device whenever they are operating a motor vehicle. It is also common for a policy to state that a vehicle must be off of an active roadway and in park before a driver is allowed to communicate on or even touch a wireless device.
- Hold your drivers accountable if they fail to adhere to the policy. Document the violations and follow through with disciplinary actions according to your company policy.
- Investigate technologies that will help to limit or track use of wireless devices while operating vehicles. Technologies available include applications for smart phones that automatically “bounce” calls and messages while the vehicle is in movement and in-cab electronic devices that can sense device use, track it and warn staff that they are in violation of company policy.
- Retrain your staff on the policy on a regular basis. Document the training.

## CONTACT

For additional information contact your Willis Client Advocate® or:

### David Barry

National Technical Director  
Casualty Risk Control  
Strategic Outcomes Practice  
+1 913 498 4424

[david.barry@willis.com](mailto:david.barry@willis.com)

For information on other claim and loss prevention issues or to read prior editions of *You Should Know* or other *Strategic Outcomes Practice* publications, please visit our site on [willis.com](http://willis.com).

*The observations, comments and suggestions we have made in this publication are advisory and are not intended nor should they be taken as legal advice. Please contact your own legal adviser for an analysis of your specific facts and circumstances.*

- 
- <sup>1</sup> <http://www.ctia.org/advocacy/research/index.cfm/aid/10323>
  - <sup>2</sup> <http://www.aaafoundation.org/multimedia/distracteddrivingfacts.cfm>
  - <sup>3</sup> <http://www.distraction.gov/research/PDF-Files/Distracted-Driving-2009.pdf>
  - <sup>4</sup> <http://online.wsj.com/article/SB124473141538306335.html>
  - <sup>5</sup> <http://http://www.distraction.gov/research/PDF-Files/Driver-Distraction-Commercial-Vehicle-Operations.pdf>
  - <sup>6</sup> <http://www.osha.gov/distracted-driving/initiative.html>
  - <sup>7</sup> [http://www.whitehouse.gov/sites/default/files/other/other/Federal\\_Leadership\\_On\\_Reducing\\_Text\\_Messaging\\_While\\_Driving.pdf](http://www.whitehouse.gov/sites/default/files/other/other/Federal_Leadership_On_Reducing_Text_Messaging_While_Driving.pdf)