

CELL PHONE LIABILITY

Under the doctrine of vicarious responsibility, employers **may** be held legally accountable for the negligent acts of employees committed in the course of employment.

Employers may be held liable for an accident by someone if they supply the phone, or if they encourage the driver to use it, whether or not the call is related to business.

There are two main reasons that businesses should be concerned about employees and cell phone liability:

1. An employee could be injured or killed in an accident in part because of cell phone usage while driving. It is an unsafe activity and increases the risk of injury or death.

2. If the employee is engaged in company business while on the phone and involved in an accident then the employer may be liable, and face significant financial repercussions.

Since 1999 there have been numerous legal cases demonstrating employer liability for accidents involving employees using cell phones during crashes.

We discussed a number of them in our earlier article, including the [Smith Barney case](#) in Pennsylvania, the [Dykes Industries case](#) in Little Rock, the [Cooley Godward case](#) in Virginia, and the [case from Hawaii](#) involving a state employee who hit a tourist from New Jersey.

Here are two more recent cases that may be of interest:

- In Miami-Dade County, Florida a jury awarded a 78-year-old woman and her husband \$20.98 million for the injuries that she suffered in a car crash that left her on a ventilator for live. The plaintiff sued the driver and the driver's employer. The woman's attorneys successfully argued that the defendant driver was so distracted that he made no attempt to stop and slammed into the rear of the woman's car. After subpoenaing the employee driver's cell phone records they proved that he had been on the cell phone talking at the time. The case settled for \$16.1 million five days after the verdict. (*Bustos v. Leiva et al.*)
- In the *Beers Skanska* case in Georgia a construction company agreed to a \$4.75 million dollar settlement because an employee reaching over to a mounted, hands-free cell phone began punching in star 99 to retrieve a message as he slammed into a stationary sedan. This caused a chain reaction crash that left a man badly injured. In court the company claimed that the defendant was commuting to his job and was "not on the clock" at the time of the accident. "The cell phone was a tool provided by the company" was the statement made by the suing lawyer.

Employers may be targeted on some occasions because plaintiffs will go after the deepest pockets they can find, and multiple defendants are often named in lawsuits.

Not all juries find employer's liable but, without a policy in place and clear warnings of the dangers and risks of using cell phones while driving, employers may face a more hostile and less sympathetic jury than otherwise.

Clearly, cell phone use while driving is a risk to employees and those they share the road with. Employers who ignore this fact will increase the liability risk they face as a result.

While studies need to be used with caution, plaintiff's bar uses some studies that show using a cell phone while driving is nearly the equivalent of driving legally drunk.