

Driver Distractions

...don't drive "inTEXTicated"

When was the last time you talked on your cell phone while driving, or ate behind the wheel? If you are like most drivers on the road today, you are doing it regularly and putting yourself and others at risk.

THE DANGERS OF MULTI-TASKING AT THE WHEEL

While there may be little you can do to control another person's driving, there is plenty you can do to reduce your own driver distractions. To minimize your risks while driving, avoid:

- Talking on a cell phone
- Distraction from passengers
- Tending to smoking materials
- Adjusting the radio or looking for CDs
- Eating
- Reading directions or looking at a map
- Looking for information in a file or notepad
- Jotting down notes or information



While many drivers' attention may be diverted as a result of multi-tasking behind the wheel, nothing tops the cell phone as a common driver distraction. Originally, cell phones were touted as aids in emergency situations – to call for road service or report a late arrival. Today, however, many drivers use their cell phones to turn their cars into mobile offices, to catch up with friends and loved ones, or simply to squeeze more "productive" time into their day.

Cell phone use is especially dangerous because drivers typically cannot divide their attention between the road and their conversation. If you must talk on your phone while driving, researchers say hands-free cell phones might at least help you keep your hands on the wheel, but may still keep your mind from focusing on the road.

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DEFENSIVE DRIVING

In addition to avoiding distractions, you'll also want to give driving your full attention by driving defensively to minimize your risk of an auto accident. Driving defensively means you are aware of the drivers around you and make adjustments to your driving accordingly. Did you know you can be charged with "driving with undue care and attention" for using a cell phone while driving. This is classified as a major offence!

EMPLOYER LIABILITY

We have all heard the statistics (and it's no surprise!) — driving while talking on a cell phone increases the likelihood of a car accident even if you use a "hands-free" set. At the same time, your employees have cell phones, iPhones, BlackBerries® and other personal data assistants (PDAs), which you know they use while commuting to and from work or while out and about on business. What's worse, they may use these devices for company business, such as participating in conference calls or calling customers while driving.

The issue of employers' vicarious liability associated with cell phone use by employees has not yet been decided by Canadian courts. However, recent cases demonstrate that employers may be held liable for damages sustained as a result of the unlawful actions of employees perpetrated in the course of their duties. Employers beware — you face significant risks under Canadian law if you allow this behavior to continue.

FACT: Employers can be vicariously liable for the acts of their employees when an employee is driving on work time or talking on a cell phone for work purposes. Employers can also be directly liable when they have provided cars or cell phones to employees and are aware that employees make work-related calls while driving.

FACT: Employers have a duty to take reasonable steps to protect the health and safety of employees. It's possible that a court could determine that an employer failed to take steps to protect the health and safety of its employees if it didn't warn them about the dangers of talking on cell phones while driving or, worse yet, actively encouraged employees to have phone conversations while driving. A good example of such a risk would be participating in a conference call with an employee while he or she is driving and an accident occurs.



CASE STUDY

This photo depicts a truck accident that occurred in BANFF NATIONAL PARK - Alberta, Canada on July 20, 2004. The tractor and trailer left the roadway on a left curve in the roadway after the driver reached for his cell phone. After travelling across the shoulder adjacent to the roadway, the unit rolled in a jack-knifed profile coming to rest against a rock embankment next to a mainline railway.

The driver survived the incident and actually returned to the scene several hours later after release and treatment at a local hospital.

The cargo consisted of fresh cherries and peaches and was totally destroyed after being contaminated

by diesel fuel. The tractor portion of the unit was less than one month old having left the Kenworth assembly line on June 30, 2004.

MINIMIZING EMPLOYER LIABILITY

While the concept of vicarious liability is not new in Canadian law, the issue of employers' vicarious liability stemming from cell phone use by employees has not yet arisen. However, based on the Canadian decisions regarding employer's liability and the emergent trends in U.S. courts, it should be assumed liability will flow to Canadian employers where it can be shown that injuries sustained by a plaintiff are due to an employee's use of a cell phone in the course of his or her employment.

There is no guaranteed defense to liability, but employers should immediately develop an appropriate employee cell phone use policy, train employees about the dangers of talking on a cell phone while driving, and enforce policies with signed written acknowledgments from employees when they are issued cell phones and related equipment - all can help to limit an employer's potential liability.



MURPHY'S LAWS OF CONSTRUCTION

MURPHY'S FIRST LAW OF CONSTRUCTION:
Power tools will fail at the most inconvenient time possible.

MURPHY'S SECOND LAW OF CONSTRUCTION:
When taking something apart to fix a minor malfunction, you will cause a major malfunction.

MURPHY'S THIRD LAW OF CONSTRUCTION:
The more planning you do for a project, the more confusion there is when something goes wrong.



MURPHY'S FOURTH LAW OF CONSTRUCTION:
An easier way to perform a job becomes obvious as soon as the job is completed.

- ANNOUNCEMENT -



Lloyd Sadd is pleased to welcome **DEREK DICK**, who has joined our team as resident Claims Advocate. Derek has 24 years of multi-line claims adjusting experience and has worked extensively as an independent adjuster servicing various national and international insurers. He has specialized in the adjustment of catastrophic commercial losses with significant business interruption exposures, and has adjusted many heavy equipment/transportation, crime, oil & gas, construction property, and liability losses. In addition to obtaining his CIP designation, Derek has also been accredited for property and automobile/equipment damage appraisals through Vale Tech in Fresno, CA.

In this role, Derek will be leading our claims management initiatives. He will act exclusively on behalf of our clients to improve claim-handling timelines, reduce additional legal costs, minimize interruptions, and ensure the most satisfactory resolution of claims – thus reducing our clients' Total Cost of Risk.





Not the bandit you're expecting.

Written by Patty Fischer

Employee Dishonesty is an increasing concern in today's society. With concerns about the economy and the future, employees may take risks to secure themselves financially at your expense.

Typically it's the person you least suspect who commits the crimes; often its managers and long-term trusted employees. Losses pertaining to employee dishonesty are much larger than you would think, with the median loss for occupational fraud being \$159,000. It is estimated the typical organization loses 5% of its annual revenue to fraud; for an organization with \$10,000,000 in revenue, that equals \$500,000. It takes an employer, on average, eighteen months to catch an employee's dishonest acts. Most employee theft comes to the attention of the employer either by another employee or it's revealed by accident.

"But there is no access to cash ...". One of the biggest misconceptions regarding crime losses is employees are stealing cash from their employers. The fact is **nobody steals cash anymore**; instead, they will access the bank account or steal inventory.

COMMON ELEMENTS OF EMPLOYEE DISHONESTY LOSSES:

- Involves employee held in high regard
- Employee denies allegations of fraud
- Controls lag behind company's growth
- Lack of understanding: why employees steal, what employees steal or how employees steal

The most common type of employee fraud is **asset misappropriation**. It involves the theft or misuse of an organization's assets. This could include skimming revenue before it's recorded in the books, cheque tampering, stealing inventory, billing/expense reimbursement, or payroll schemes.

EXAMPLES:

Diverting money to personal bank account: An employee purposely overpaid payroll taxes and directed the cheques paid to reimburse the overpayment to be sent to his attention. This employee opened a bank account in a name similar enough to that of his employer and was able to deposit the cheques received for the payroll tax overpayments. The amount of loss claimed was \$3,000,000.

Fraudulent Payroll: The payroll clerk kept terminated employees on the payroll for one extra pay period and instructed the automatic deposit to divert to two bank accounts under the payroll clerk's control. Pay stubs were retained by payroll clerk to avoid detection of this fraud. \$130,000 was misappropriated within a one year period.

Inflating Invoices: Three employees were involved in a scheme that included inflating invoices for materials supplied and work performed on a large project. The loss claimed was approximately \$2,000,000.

False Invoices: Employees of a construction contractor conspired with non-employees to submit fake invoices. The amount of the loss was \$600,000.

Personal Purchases from Approved Vendors: Employee requisitioned purchase orders for computers and other personal items from an approved vendor. The invoices were altered to match legitimate purchase orders; therefore, cheques were issued by accounts payable. Claim amount was \$120,000.

Forgery – An internal accountant of the Insured issued cheques payable to his stepfather. He then forged the company's authorized signatories on the cheques and deposited them into his personal account. The Insured suffered a \$2,300,000 loss.

WHAT CAN I DO TO PROTECT MY ORGANIZATION?

Pressure + Perceived Opportunity + Rationalization
= **FRAUD**

Have specific procedures in place to protect the organization to reduce opportunities for dishonesty:

- Avoid at all costs allowing the finances of a business to be handled and controlled by a single individual. Separation of duties is critical, and no employee should be responsible for both recording and processing a transaction.
- Reconciliation of bank statement by 2nd set of eyes: The monthly bank statement should be given -- unopened -- to a specified individual who can then check it for any unusual transactions.
- Review of expense claims documentation
- Make sure all cheques, purchase orders, and invoices are numbered consecutively, and regularly check for missing documents.
- Use a "for deposit only" stamp on all incoming cheques to prevent an employee from cashing them.
- Require all outgoing cheques above a nominal amount to have two signatures. Never sign a blank check. Sign every payroll check personally. Avoid using a signature stamp.
- Personally look into customer complaints that they have not received credit for payments.

BE AWARE OF THE WORKPLACE ENVIRONMENT:

- A positive work environment has been shown to deter employee fraud and theft. Open lines of communication, positive employee recognition, and fair employment practices will assist in the reduction of occupational fraud.
- Studies show the more employees believe they will be caught, the less likely they are to steal. Be clear with employees that your company has zero tolerance for employee theft of any sort. Write and distribute a company policy that outlines exactly what constitutes stealing.
- Most incidents of employee theft are revealed by coworkers, but many still are hesitant to report these incidents to their employers. Set up a system whereby employees may report employee theft anonymously. You may also want to consider offering rewards for informants while keeping their identity confidential.
- Be alert to disgruntled or stressed employees, or those who have indicated they are having financial difficulties. Also look for any unexplained significant rises in an employee's living standards.

INSURANCE

- Get an insurance policy that covers a reasonable limit for employee theft and computer fraud. We suggest 5% of your annual revenue as the absolute minimum. It will be there as a safety net in case your fraud prevention tactics don't work.



Stalled, Delayed and Suspended Projects

The typical construction work schedule can be interrupted for a variety of reasons – weather delays, material shortage, project financing or the sequencing of the work. The length of delay can be very different depending on the cause. The Course of Construction (COC) insurance policy wording specifically addresses how the policy will react when there is a cessation of work at a project site. A typical Course of Construction policy will state:

This Policy ceases to insure the project:

(a) on the commencement of use or occupancy of any part or section of the project unless such use or occupancy is for:

(i) construction purposes;

(ii) office or habitational purposes;

(iii) installing, testing or storing equipment or machinery;

(b) when left unattended for more than 30 consecutive days or when construction activity has ceased for more than 30 consecutive days;

(c) the expiration of this insurance;

whichever first occurs.

If your delays encroach on these time limits, communication with us is critical. We need to understand what is happening on the project and obtain coverage permission from the insurance company.

A delay driven by the GC or the Owner is of the same concern to the insurance company. It is important that you let us know if any of your projects fall into this delay period and that we work with you to ensure continuous coverage extensions from the underwriter.

WE WILL NEED TO KNOW:

- Nature of the suspension and interruption
- Expected duration of the suspension and interruption
- Stage and status of the project
- Construction values to date
- Security provisions undertaken given the suspension and interruption

If you have any questions or concerns about these topics, or any insurance matter, please contact your Lloyd Sadd Account Executive today.

