



BURR ALERT

Employee Impaired Driving and a Million Dollar Verdict: Employer Best Practices for Employee Vehicle Use

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If your employees use business vehicles or personal vehicles for work, you should take heed of Great American Alliance Ins. Co. v. Anderson, 2017 U.S. App. LEXIS 2277 (11th Cir. Feb. 8, 2017), involving approximately \$1 million in damages arising from an employee's impaired driving in violation of company policy. This article discusses Great American Alliance Ins. Co. v. Anderson and best practices for employers who permit employee vehicle use for work.

GREAT AMERICAN ALLIANCE INS. CO. V. ANDERSON

Looper Cabinet Co., Inc. ("LCC"), a Georgia company, hired Brian Hensley to perform services related to cabinet installation. LCC permitted Hensley to drive a company vehicle for both work and personal purposes, including to and from his father's lake house. LLC policies prohibited employees from working or operating motor vehicles under the influence, and banned alcoholic beverages on company property. Nevertheless, after drinking four beers, Mr. Hensley drove his company vehicle from the lake house and, tragically, an accident resulted leaving a motorcyclist severely injured. A jury found Mr. Hensley liable and awarded the motorcyclist approximately \$1 million in damages. The employer's insurance company, Great American Alliance Insurance Company, filed a suit in the United States District Court for the Southern District of Georgia alleging that the driver was not a permissive user under the insurance policy because he violated company policy by driving while intoxicated. Ultimately, the U.S. Court of Appeals for the Eleventh Circuit, reversing the trial court, held that under Georgia law the employee did not exceed the scope of his permission to use the vehicle, leaving the employer's insurer responsible for the approximately \$1 million in damages. The Court concluded that it was of no consequence under the insurance policy that the employee was intoxicated in violation of company policy because he was using a company vehicle for an approved purpose (driving to and from the lake house) and, thus, it was within the scope of LLC's permission, as contemplated in the insurance policy.

TAKE AWAYS

Great American Alliance Ins. Co. v. Anderson ("GAAIC case") is unique because the insurance carrier was responsible, under Georgia law, for the harm caused by the intoxicated employee's

vehicle usage. Nevertheless, it raises important concerns for employers about employee vehicle usage. Employer liability for employee vehicle usage can arise in various circumstances, but will primarily arise from injuries or accidents caused by employees acting within the scope of their employment. While this can take various forms, it could include accidents caused by employee negligence during work or from the performance of non-work tasks with the employer's permission. Prudent employers who permit employee vehicle use should take the following steps to protect themselves:

- Ensure employee drivers have necessary driving licenses, successful driving history, and adequate insurance coverage, in both amount and scope of coverage.
- Have clear company policies establishing permissible driving. For example, it is often advisable to prohibit personal use of company vehicles. Indeed, critical to the holding in the GAAIC case was that the employee was given permission to use the vehicle for driving to and from the lake house.
- Have clear policies requiring employees to obey all traffic laws at all times, including, but not limited to, prohibiting texting while driving and driving under the influence of alcohol or drugs. In the GAAIC case, the employer was dropped from the lawsuit and, while the case does not explain why, the company's strong policies forbidding driving under the influence likely played a role.
- Train employees on driving policies and audit to ensure compliance. Even the best policies lose their effectiveness if they are not followed.
- Have counsel review your vehicle insurance policy to ensure it properly protects your company. Accidents are, unfortunately, inevitable and adding appropriate coverage to a business auto policy may be an employer's best option to limit financial exposure. Further, as made clear in the GAAIC case, the insurance policy's wording is critical, and the Court suggested the case could have turned differently had the insurance policy not included a permissive use clause but, rather, had disclaimed coverage for violations of company policies.

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