

Colorado Vicarious Liability Laws

Legal View

By Jeffrey R. Kelley, Esq.

Usually, the negligence of one of the drivers involved in an accident determines who is responsible for injuries and damages of the other driver. However, in certain circumstances, someone not driving or not even present at the accident could be liable. Such cases usually involve an employer, a parent, or entrustment of a vehicle to someone who should not have been driving. If one of these situations apply, you or your business may be liable for the negligence of someone else, and therefore, “vicariously” liable for such acts. Although this sounds surprising, it is quite common, and fortunately, there may be insurance coverage that could apply.

Employer/Employee - Vicarious Liability

In Colorado, employers are responsible for the negligence of their employees when committed while the employee is performing job duties. Under theories of "vicarious liability," or "imputed negligence," an employer can be liable if the negligence occurred during the course and scope of their employment. For example, if you are an employer and your employee runs a red light and hits another car while driving the company car during work hours, the employer will be responsible for the damages caused by the employee. As this is an anticipated situation, the employer's insurance policy will pay the claim. If, however, the employee was on a “frolic and detour” when the accident happens, the company insurance carrier may decline the claim. This situation could occur if an employee uses the company vehicle for personal use unbeknownst to the employer and causes injury. Sometimes this type of situation occurs after work hours, or even during work hours. For example, if the employee uses the company vehicle to drive home for lunch, or any other non-company business.

Negligent Entrustment – Letting Someone Drive Your Car

In Colorado, if you allow someone to drive your car with knowledge of their bad driving habits or youthful inexperience, you could be on the hook for damages they cause while using your car. No special relationship like that of an employer/employee is required, just giving permission to such person is all that's required. Negligent entrustment of the family car to a minor child knowing the child is incompetent, reckless, and/or inexperienced, may result in unintended liability to the owner of the car. The “family purpose doctrine,” can also impose liability on the owner of the car (mom or dad) if purchased and maintained for general family use. The owner can therefore be liable for the negligent driving by *any* family member using the car.

Some very common, but unexpected entrustment liability situations can arise. We already know someone who has a bad driving record, and is unlicensed or inexperienced, may cause vicarious liability for the owner. Lending your car to someone who is intoxicated, or likely to be, will certainly result in vicarious liability. Lending a vehicle to someone whose advanced age makes them unfit to drive (for example, an elderly driver with particularly slow reaction

times) can also constitute negligent entrustment. Likewise, lending a car to a driver who suffers from an illness that affects his or her driving, for example, a person prone to falling asleep at the wheel, could constitute negligent entrustment.

Protect yourself, family or business with the knowledge these situations can cause liability. Clear rules and protocol in use of family and company vehicles can reduce risk of unexpected claims. Discussing these various scenarios with your insurance agent and making sure you have the right coverage will go a long way to peace of mind in the event the unexpected happens to you.

Do you have a legal question? Send your inquiry to attorney Jeff Kelley (Jeff@klfpc.com). Appointments for in person legal counsel are available in both Black Hawk and Denver offices.

Note: While every effort has been made to ensure the accuracy of this information, it is not intended to provide legal advice as individual situations will differ and require full analysis by an attorney.