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There seems to always be a risk *de jure* for our consideration. Currently, most of us are focused on the credit crunch, the volatility of the stock market, the rise and fall of gas prices, or what to expect from a new President. Bombarded with press regarding new risks to evaluate and confront, it is understandable that we are sometimes distracted from reviewing approaches to fundamental and constant risks—risk management blocking and tackling. This fact leads to one of many fundamental risk management questions every manager and business owner should answer.

Do you have a risk management strategy to address your business's exposure to automobile accident liability? If your business intensively uses vehicles, you likely have automobile insurance under which the business is a named insured. Such a business may also obtain driving records and proof of licensing for company employed drivers, implement a procedure to evaluate the driving risk posed by any potential new hire, and have written policies to govern driving protocol. Maybe your business does not operate vehicles in its principal activities, such as a trucking company. Maybe your business does not even make local deliveries or send workers, by automobile, to jobsites. Maybe your business does not own a single vehicle. Does that mean you do not need a plan?

Consider these facts. As a general rule, the law will hold an employer responsible for any damage its employee or agent wrongfully causes while engaged in an errand or mission for the employer. Any vehicle owner may also have liability for entrusting a dangerous driver with his vehicle. Almost every business, at least on occasion, sends an employee on an errand or mission, requiring the employee to use either a company owned vehicle, a vehicle owned by that employee, or a rental car picked up at an airport during a business trip. If that were not the case, few post office boxes would ever be checked, few office supplies would ever be bought, few snacks would make their way to the break room, and few meetings or jobs would be accomplished outside the primary

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office or shop. Most commercial general liability insurance policies, the type of general liability policies businesses buy for basic liability coverage, however, specifically exclude coverage for bodily injury or property damage arising from operation of a motor vehicle.

Even if satisfied that your employees operate motor vehicles on missions for your business, that your business may be responsible for damage employees cause behind the wheel and that your general liability policy may not cover you, you may still question the practical risk. According to the National Transportation Safety Administration, the United States experienced 5,987,000 property damaging automobile crashes, resulting in 2,491,000 injuries and 41,059 deaths in 2007. More than half of these reported fatalities occurred on weekdays, rather than weekends. Most people can, from their own car purchasing and repairing experience, easily appreciate the significant property damage price tag associated with automobile accidents. The cost of bodily injury caused by your employee's vehicular mishap may be far more serious and difficult to comprehend. The foundation for that damage calculation begins with healthcare costs, which are escalating rapidly. You must add to that the wages lost by the injured party while recuperating, a relatively unquantifiable sum for pain and suffering, exposure to punitive damages and, possibly, something for legal expenses. In risk management terms, incidents resulting in exposure to liability are relatively frequent and can be quite costly.

Evaluating insurance products, including those your

business has, those it may purchase and those owned privately by driving employees, is a good place to start planning. You may benefit from a thorough discussion with a competent insurance agent, in which hard questions must be asked.



Assuring you have insurance coverage for liability to persons injured by your employees may be the focus of your insurance evaluation, but should not be the end. You may also consider whether damage done to the car your employee is driving in an accident will be covered; or will that answer changes if the car is a rental. In light of insurance products already purchased, you may want to determine if employees should buy or reject the insurance products offered at the rental car kiosk in the airport. It will be important to consider

who is insured under any policies, and under what circumstances coverage may be lost or excluded. It is also important to consider the amount of liability coverage to purchase.

Beyond addressing insurance needs, you may consider adopting policies or practices to limit the potential for an accident occurring. Any such policies must be formulated thoughtfully. An overly ambitious policy may produce more liability than it avoids. A policy that is too cumbersome or difficult to implement within your particular operations will not be followed. If a policy imposes duties that do not otherwise exist in the law, breaking that self-imposed rule may create new liabilities. Even if an unimplemented policy is not the basis for liability, it may convert a simple car accident into a much more scandalous occurrence. Despite the need

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for caution, however, the implementation of policies to avoid accidents just makes sense..

Depending on your operations, you may consider only authorizing certain employees to drive on company errands, for instance. In addition to making accidents less likely, the formulation and consistent implementation of appropriate policies may even make your business more likeable and less susceptible to a large judgment if it one day appears in a courtroom in defense of auto accident liability

Very often it is not the exotic occurrence or the new or unpredictable problem that causes loss. Often the obvious risk, which everyone assumes is well addressed, becomes the source of the most frustration. While no

single automobile risk management plan will fit every business, the need to evaluate the risk and implement some plan is virtually universal.



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debt that is extraordinarily expensive to service every year, along with the associated problems of Social Security, Medicare, and Medicaid? Eventually, surpluses have to return to whittle away this debt. What we need now more than anything is calm, clear, honest discussion and leadership of these issues, done in a manner that the ordinary citizen who is not involved in the complex and arcane world of High Finance can understand the issues

and the choices we will need to make. The kind of discussion and leadership that will get us through the immediate crisis and the larger, looming crisis will require the minimizing of useless posturing and demonizing opposing viewpoints and a responsible, adult, and honest approach to the national dialogue. If we as a country are ultimately unable to do this, the extent of this disaster simply cannot be measured.



KARL B. FRIEDMAN a senior member of the law firm, is involved in structuring financial, real estate, personal property, and other types of funding transactions, providing collateral and security and selecting investment entities for such activities and in workouts for clients with financial problems. He is involved in estate planning and administration. Friedman is the recipient of the highest rating attainable by *Martindale-Hubbell*, a reflection of having achieved preeminent status in the areas of professional skill and integrity. He served as an organizing director of the American National Bank of Birmingham and as a special assistant to the Attorney General of the State of Alabama. He received his law degree from the University of Alabama. Friedman has recently authored and published a novel, *The Professor*. Friedman was the Commencement speaker at the 2006 Graduation Ceremonies of the UAB School of Optometry.



CHARLES R. DRIGGARS practices in the areas of Litigation, Civil Trial Practice, Appellate Practice, Environmental Litigation & Counseling, and Toxic Torts. He tries cases in federal and state court, handles appeals before all state appellate courts and the 11th Circuit Court of Appeals, represents businesses and organizations before environmental regulatory authorities (federal, state and local), counsels clients regarding environmental and medical waste law pertaining to industrial, business, and health care facilities, and counsels clients regarding non-competition law in Alabama and other states. Driggars is a recipient of the highest rating attainable by *Martindale-Hubbell*, a reflection of having achieved preeminent status in the areas of professional skill and integrity. He is the author of "Search of the Lawyer's Office: Court Sanctioned Threat to Confidential Communications," 32 *Alabama Law Review* 92, 1980 and editor of *The Counselor*, a quarterly newsletter of Sirote & Permutt. He is a member of the Birmingham Chamber of Commerce Environmental Economics Committee.