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TRUCKING LITIGATION UPDATE

November 2006

CELL PHONES: A SOURCE OF CORPORATE LIABILITY

Dear Trucking Industry Professional:

Accidents caused by drivers using cell phones and other related devices have become an increasing source of liability against corporate defendants. A number of prominent studies have established that the use of cell phones while driving significantly increases the risk of an accident. One study indicated that the distraction caused by cell phone usage can impair reaction time more than drivers who are legally intoxicated. Moreover, the general public is firmly convinced that cell phone usage while driving is hazardous and probably contributes to many accidents.

There has also been an increase in jury verdicts against corporate defendants whose employees cause accidents while using a cell phone. These verdicts have ranged from \$500,000.00 to \$21 million and have uninjured situations where the employer of the driver was held liable based on Respondent Superior principles. Therefore, it is clear that cell phone usage by employees who drive as part of their job duties can be a significant source of liability for employers.

Employers can try to limit this risk by adopting a cell phone usage policy. This at least provides the employer with the opportunity to claim that an employee who causes an accident by violating this policy has acted outside the course and scope of employment. Some companies have decided to ban the use of all wireless devices while driving on company time or when using company vehicles. Other companies have adopted policies that require hands free devices or headsets, although there are some studies that suggest that there is no difference between the distraction caused between hands free and traditional devices.

A company cell phone usage policy should require employees to safely stop before making or receiving calls or checking messages. It should also prohibit personal calls, note taking while driving, dialing or finding numbers unless the car is safely stopped.

Of course it is not only corporate employees who use cell phones while behind the wheel. A thorough investigation of accidents should also include determining whether the adverse driver was using a cell phone at the time of the accident. Thus, a Request for Production should seek the opposing driver's cell phone records and it should be part of routine procedure to determine if the driver was utilizing a cell phone either at or immediately before the time of the accident. Thus, cell phone usage can also be used as a defensive tactic as well.

Nevertheless, it is apparent that as technology advances drivers will become subjected to an ever expanding series of potential distractions, which can cause or contribute to the cause of

accidents. Therefore, companies should enact prudent policies to regulate the cell phone usage of their employees to try to minimize the risk of liability that can result from using of cell phones and other similar devices while driving.

For more information about this subject or any legal issues relating to the trucking industry, please contact M. David Frock or Collis A. Broussard, Jr. of Frock & Broussard, P.C. Mr. Frock is Board Certified in Personal Injury Trial Law and Civil Trial Law by the Texas Board of Legal Specialization and as a Civil Trial Advocate by the National Board of Trial Advocacy.

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ABOUT THE FIRM

For the past fifteen years the law firm of Frock & Broussard, P.C. has practiced civil litigation, trial and appellate law in both state and federal court in Texas. Our firm is exclusively engaged in the defense of trucking companies and is involved in transportation related litigation throughout the State of Texas. We are approved as panel counsel by a variety of insurance companies and serve as counsel to many prominent, self-insured trucking companies. Our practice is state wide and specifically tailored to the representation of transportation related clientele.

Frock & Broussard, P.C. has developed an extensive practice related to commercial vehicle accidents and the legal issues which are unique to the trucking industry. We are members of many professional organizations, including the Trucking Industry Defense Association, American Trucking Association, Texas Motor Transportation Association, Houston Safety Council and the Transportation Law Committee of The Defense Research Institute. In addition, Frock & Broussard, P.C. has been instrumental in the development of a rapid response team, which is available for on site accident investigation. The members of our firm can be reached on a twenty-four hour basis to investigate an accident anywhere in Texas. Furthermore, we have the capability to enlist the assistance of qualified accident reconstructions experts, investigators and adjusters, when required.

Frock & Broussard, P.C. is committed to providing highly professional representation to its clients at a fair and competitive fee. We have the flexibility to establish a close personal working relationship with our clientele and be particularly responsive to their individual needs. Frock & Broussard, P.C. is available to assist the transportation industry whenever the need may arise.

Exclusive Legal Counsel to the Trucking Industry