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Texting and Driving: The Dangers and Legal Ramifications

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The Danger Posed by Texting While Driving

Most drivers are aware that texting while driving has the potential to create a very dangerous situation. Indeed, driving studies have shown that those who text while driving are as much as 23 times more likely to be involved in an accident than someone driving without distraction. Austin, M., *Texting While Driving: How Dangerous Is It?* Car And Driver (June 2013). Similar to drunk driving, texting while driving causes drivers to lose focus and become inattentive to the roadway. Most are surprised to learn, though, that texting while driving has repeatedly been shown to pose *an even greater risk of danger than drunk driving*; the reaction times for those texting while driving are significantly worse than the reaction times of intoxicated drivers. *Id.* This fact is not known to many people, but it actually

Articles



In this Newsletter

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Dangers and Legal
Ramifications**

makes sense—consider that an intoxicated driver typically looks at traffic ahead and tries to drive carefully. When a driver is texting, however, his/her attention is pulled entirely from the roadway. In just five seconds spent looking down at a cell phone, a driver traveling at 55 mph covers a distance of more than a football field. And although texting while driving is becoming more widely recognized as dangerous, it is also a practice that is still growing more common as people use their cell phones more frequently. *Driver Electronic Device Use in 2014*, NHTSA Traffic Safety Facts Research Note (Sept. 2015).

Legal Consequences of Texting and Driving in Pennsylvania and New Jersey

Despite the greater danger, though, the legal consequences drivers face for texting are not currently as severe as for drunk driving. First, the criminal consequences drivers face for drunk driving remain more serious. A first-time DUI offender in Pennsylvania, for example, must pay a fine of \$300, undergo a mandatory minimum of 6 months' probation, and complete an alcohol highway safety school program. 75 Pa. C.S. §3804. Similarly, in New Jersey, the first offense for drunk driving requires payment of a fine between \$250-\$400, a detainment period of at least 12 hours, and other state-mandated programming. N.J.S.A. § 39:4-50. Meanwhile, those who text while driving face minimal consequences in comparison. In Pennsylvania, texting and driving results in just a fine of \$50.00. 75 Pa. C.S. §3316. In New Jersey, a first-time texting and driving offense imposes only a fine of \$200-\$400 (though fines increase upon repeated offenses). N.J.S.A. § 39:4-97.3.

Civil consequences from texting while driving also are not as serious as those imposed for drunk driving. Drunk drivers and texting drivers can both be held liable for an injured person's compensatory damages if they are found to be negligent in the operation of their motor vehicle. However, in a civil action resulting from an accident, many states permit an award of punitive damages in cases where an injury is caused by a drunk driver.

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Punitive damages are a type of money damages designed to penalize reckless conduct and deter similar conduct from occurring again in the future. Generally, the standard for imposing punitive damages requires that: 1) the wrongdoer was aware of the risk of harm he/she posed; and 2) despite awareness of the risk, the wrongdoer acted in conscious disregard of that risk. Punitive damages are unique because in most instances, the driver's auto insurance will not cover the cost. This means the driver must pay out-of-pocket whatever amount of punitive damages the fact-finder, typically a jury, deems appropriate.

Courts in Pennsylvania and New Jersey often permit an award of punitive damages in instances where a person is injured as a result of someone else's drunk driving. However, these states have not yet imposed punitive damages on a driver who caused an accident as a result of being distracted from texting. This issue is still being litigated, though, and courts have left open the possibility of allowing punitive damages in texting cases. As the scientific studies showing a higher risk posed by texting and driving than by drunk driving become more widely known and more accepted in the legal community, it is anticipated the courts will permit the recovery of punitive damages from drivers who cause an accident while texting. As an individual, you can reduce the chances of a punitive damages claim being brought against you by putting your phone away when driving, and driving without distractions.

Implications for Employers

In addition to imposing punitive damages upon the drivers themselves, what happens when that driver is on-the-clock at work and the employee gets into an accident due to being distracted while texting? It is easy to foresee that courts across the country will soon be asked whether employers may also face punitive damage claims for an employee's texting or distracted driving related accident.

In a 2013 Lackawanna County, Pennsylvania decision, it was alleged

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that an employee's distracted driving was the cause of an accident. Specifically, the plaintiff contended that the employee was looking down at his phone for GPS directions at the time of the accident. The plaintiff sued both the employee and employer, and brought punitive damages claims based on the employee's failure to drive safely and the employer's alleged failure to adequately train the employee on how to drive safely. The court dismissed the punitive damage claim against the employer, however, after reviewing the training the employer had provided, which included both video and live driving instructions, and a driver's test for the employee to complete with an instructor. *Rockwell v. Knott*, No. 12 CV 1114, 2013 WL 10215759 (Lackawanna Co. 2013). But the fact that punitive damages against the employer were even considered by the court represents a significant shift in the law.

Going forward, to avoid punitive damages claims, employers should be mindful of the policies they adopt and safety training they provide, especially where employees are required to drive a vehicle during their employment.

Given the likelihood the employees, as individuals, will face punitive damages claims in the future due to distracted driving or texting-related accidents, employers should prepare for the same possibility. Providing proper training measures, especially for those employees who drive "on the clock," and implementing policies prohibiting the use of cell phones while driving, will assist an employer in its efforts to avoid punitive damage claims based on its employees' actions.

If you have any questions about the subject matter of this article, please contact Joseph Bouvier at 215-629-1600.

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