



LOSS CONTROL

DISTRACTED DRIVING

Violations of Laws against Distracted Driving Negatively Impact Defense of Civil Lawsuits and Increase Exposure for Civil Verdicts

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For the past several years, distracted driving involving the use of cell phones and other electronic devices has commanded the attention of federal and state legislators, agencies and, more recently, civil and criminal courts. According to data from the National Highway Traffic Safety Administration (NHTSA), more than 3,000 people were killed in 2010 as a result of distracted-driving accidents, accounting for one in 10 traffic fatalities, with an additional half-million injured.¹ It is in the best interests of all employers that have employees who drive company vehicles or who drive as part of their job responsibilities to establish rules against this conduct and to enforce those rules through legitimate disciplinary actions.

Text messaging while driving raises the most concerns as studies show it to be one of the most – if not the most – dangerous form of driver distraction. A 2006 study by the NHTSA reported that driver distraction and inattention while driving may be involved in 78 percent of light-vehicle crashes.² Furthermore, a September 2009 study by the Federal Motor Carrier Safety Administration,³ which explored the impact of “texting” on driver distraction, concluded that persons who text message while driving are 23.2 times more likely to be involved in a safety-critical event compared with the baseline, or almost 6 times more likely than if they were reading a book or a newspaper while driving.⁴ Texting while driving also had the longest duration of “eyes off road” (4.6 seconds over a 6-second interval).⁵ Another factor to consider is the frequency of distraction – while the drivers in the 2009 study texted infrequently, the frequency of the safety-critical events are likely to increase as more drivers adopt texting and other new communication and social media technology.

With cellular device communications on the rise, the U.S. Department of Transportation (USDOT) is leading the effort to stop texting and cell phone use behind the wheel. Since 2009, USDOT has launched a variety of creative campaigns to raise awareness about the dangers of distracted driving with the important message that “One Text or Call Could Wreck It All.”⁶ In 2010, the Federal Motor Carrier Safety Administration (FMCSA) banned texting by commercial drivers.⁷ In October 2012, USDOT gave \$550,000 to Connecticut and Massachusetts for pilot projects to develop “high-visibility anti-texting enforcement programs,” which includes stationing police spotters on highway overpasses looking for motorists who text-message while driving.⁸ USDOT further announced availability of funding authorized in the amount of \$17.525 million for fiscal year 2013 to provide grants to states for enacting and enforcing distracted-driving laws.⁹

In addition, 39 states, the District of Columbia, and Guam ban text messaging for all drivers. Twelve of these laws were enacted in 2010 alone.¹⁰

Civil Verdicts

Significant civil verdicts have been awarded by courts in civil matters involving distracted driving. Employers have been held liable for damages arising from the actions of their employed drivers in company-owned vehicles.

- In a widely publicized case against The Coca-Cola Company, a Texas jury awarded \$21 million to a 37-year-old woman in May 2012 arising from serious injuries incurred after her car was struck by a company car driven by a sales representative who was talking on a cell phone while driving. In addition to the driver’s negligence, the jury cited Coca-Cola’s own gross negligence in failing to implement a sufficiently stringent cell phone policy in the face of its knowledge regarding the dangers of injury and death from cognitively impaired drivers using cell phones.¹¹
- A Missouri jury awarded \$18 million in damages in 2009 to a plaintiff who sustained serious brain injuries that left him in a permanent vegetative state after being struck by an 18-wheel truck driven by an employee of Holmes Transport, Inc. At trial, the federal judge found that at the time of the accident, the truck driver was checking text messages. Holmes Transport was found to be liable under a theory of vicarious responsibility.¹²
- In 2008, International Paper reached a settlement to pay \$5.2 million because of a 2006 accident in which an employee on a phone hit another driver, whose arm had to be amputated.¹³

DISTRACTED DRIVING - *continued*

Criminal Prosecutions

It should be noted that there have been a number of criminal prosecutions for accidents caused by distracted driving in several jurisdictions.

- In May 2012, a 16-year-old was given five years of probation arising from the death of a 55-year-old woman after the teenager pleaded guilty to second-degree involuntary manslaughter, third-degree assault, and violating a 2009 Missouri law prohibiting motorists 21 years of age or younger from text messaging while driving.¹⁴
- On June 6, 2012, a Massachusetts teenager was sentenced to two and a half years of jail time for the February 2011 head-on crash that took the life of a 55-year-old father of three and seriously injured his girlfriend. The teenager's car crossed the road's center line and crashed head-on into the other vehicle. Prosecutors presented evidence that the then-17-year-old high school student sent 193 text messages the day of the crash, including some just a minute or so before impact and dozens more after it. A jury convicted him of motor vehicle homicide and negligent operation while texting. He was among the first people convicted under a Massachusetts law that took effect in September 2010 that created the criminal charge of texting while driving negligently and causing injury.¹⁵
- In July 2012, a jury found a 21-year-old Wisconsin woman guilty of "homicide by texting while driving." The deceased was standing behind his disabled car when he was struck by her minivan. Despite the urgings of the Department of Corrections and the victim's family, she was sentenced to a year in prison and two years of extended supervision after her release.¹⁶

Impact of a Guilty Plea / Conviction on a Civil Case

These are just some examples of the recent trend. It must be remembered that prosecutors in criminal actions have to meet a greater burden of proof (beyond a reasonable doubt) than plaintiffs' lawyers in civil cases (a preponderance of the evidence).

Therefore, once there is a guilty plea in a criminal prosecution or a conviction after trial, the responsibility of a driver for the accident becomes admissible in a civil case. This reduces questions of liability with respect to the guilty driver and could adversely affect settlements and jury verdicts. Once a driver is convicted of a law against distracted driving, the defense of any related civil lawsuit is negatively impacted because there are no questions of fact concerning responsibility for the accident and, as a result, exposure for civil verdicts is increased. Consider the reaction of a jury to a question of loss of control of a vehicle if there is no clear reason for the cause as opposed to clear proof that the driver was texting before the collision.

Increased Exposure

As governments and all concerned seek to solve these safety issues, companies that employ unsafe drivers will face increased exposure for civil damages, including punitive awards. Companies would be well advised to adopt strong rules in their employee manuals prohibiting distracted driving, enforcing violations of those rules and educating employees about the dangers and the consequences of distracted driving. The loss of employment for violation of the rules, although harsh, may provide the necessary motivation to prevent the practice.

The [following chart](#) presents a recent summary of state laws concerning distracted driving published by the Governors Highway Safety Association and reproduced with their permission.¹⁷

Footnotes

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