



## Distracted Driving in the Courts: Not Just a Criminal Matter

### **Issue Brief 10: Distracted Driving in the Courts: Not Just a Criminal Matter (November 2015)**

This Brief was produced by the Traffic Resource Center for Judges, an initiative of the National Center for State Courts (NCSC). The Traffic Resource Center is a cooperative effort between the Department of Transportation and the National Center for State Courts (NCSC) to establish a resource for judges, court administrators, court clerks, and other court staff on issues related to traffic adjudication.



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While the issue of distracted driving most frequently arises in court in the context of criminal charges or civil suits against the distracted driver, there are a number of other ways that distracted driving enters the courtroom. Three reoccurring ways are 1) Product liability cases brought by victims of distracted driving against cell phone companies and GPS manufacturers in which they allege that the defendant's product is responsible for the distraction that caused the accident; 2) Negligence suits brought by victims of distracted driving against third parties in which they allege that the third party played a contributory role in the distraction by, for example, calling or texting the driver who was responsible for the accident; and 3) Employment actions whereby plaintiffs challenge employment termination and/or loss of unemployment benefits as a result of their distracted driving. Distracted driving cases also come up in traffic court when, for example, defendants challenge citations.



## Product Liability Cases

Though unsuccessful, a number of product liability suits have been brought against third parties whose products, plaintiffs contend, were responsible for the distracted driving at issue. In twin decisions, *Bailey v. Estate of Jett* (2011 U.S. Dist. LEXIS 9284, 2011 WL 336133 (W.D.N.C. Jan. 31, 2011)) and *Durkee v. C.H. Robinson Worldwide, Inc.*, (765 F. Supp. 2d 742 (W.D.N.C. 2011)) the U.S. District Court for the Western District of North Carolina dismissed suits against the manufacturer and seller of a texting system.<sup>1</sup> The court held that the companies were not liable to individuals harmed as the result of a traffic accident caused by a truck driver who was allegedly distracted by the texting system, as the accident was caused by the driver's inattention and not any element of the design or manufacture of the texting system. Plaintiffs alleged that the driver of a tractor trailer failed to slow his vehicle because he was distracted by, among other things, a texting system inside the truck which allowed him to receive text messages while driving. As a result, he crashed the truck into a stopped car, causing a chain reaction in which five cars collided, and resulted in numerous injuries and at least one death. The plaintiffs claimed that the device was designed defectively because it could be viewed while the truck driver was driving and it distracted the driver immediately before the accident that injured them. The court, however, held that just because using the system could result in a driver negligently operating a motor vehicle did not create any duty on the part of the manufacturer or seller to protect third parties from unforeseeable harm arising from a driver's negligent use of the product. The court concluded that the law in North Carolina does not impose a duty on the manufacturer of a product to design it in such a manner that the user thereof is incapable of being distracted by its use while driving.<sup>2</sup> And as no additional factors were alleged that could have indicated to the manufacturer or seller that the trucker would drive negligently due to the system, merely selling it did not create a duty to prevent unforeseeable harm to others arising from its negligent use.

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<sup>1</sup> The manufacturer and seller were part of larger suits that involved the truck driver as well as other defendants.

<sup>2</sup> The court was concerned that allowing product liability lawsuits in such cases would cause a proliferation of suits against manufacturers of ordinary devices anytime a driver carelessly used the product.



In state court, a similar suit was brought against Hertz Corporation after a driver using a navigation system installed in her rental car failed to yield at a red light and rear ended another car. In *Trent J. Ford v. Hertz Corp.* (2012 Cal. App. Unpub. LEXIS 2778 (Cal. App. 4th Dist. Apr. 13, 2012)), the plaintiff brought a negligence claim and strict liability claims (based on a theory of product design defect and on a theory of product warning defect) against Hertz, claiming that the corporation was responsible because 1) the navigation system did not automatically become disabled upon the motion of the rental car, and 2) the Hertz defendants failed to warn the driver that using the navigation system might distract her while driving and distracted driving might cause an accident. The trial court held that in light of statutes permitting the use of a GPS device for navigation while driving, the Hertz defendants did not owe a duty to install a navigation system in the rental car which became disabled upon movement of the car. As to the products liability claims, the court found that the plaintiff failed to state a claim for strict liability based on product design defect or failure to warn. The operability of the navigation system while driving did not constitute a product design defect, and the Hertz defendants were not strictly liable for failing to warn the driver that distracted driving, whether by using the navigation system or otherwise, might result in her causing a traffic accident, as that risk was not one unknown to a reasonable person or inherent in the navigation system itself. The trial court sustained Hertz's demurrer to those claims, and the Court of Appeals affirmed.

At least two other state courts, in Oklahoma and Indiana, have declined to hold cell phone manufacturers liable for failing to design their products to prevent harm caused when drivers are distracted by use of the phones. (*Estate of Doyle v. Sprint/Nextel Corp.*, 248 P.3d 947 (Okla. Civ. App. 2010); *Williams v. Cingular Wireless*, 809 N.E.2d 473 (Ind. Ct. App.), appeal denied, 822 N.E.2d 976 (Ind. 2004).)

### **Third Party Liability**

A number of cases have also arisen where a plaintiff seeks to hold a third party responsible for the accident by alleging that their actions, i.e. calling or texting the driver,



contributed to the driver's distraction at the time of the accident. These suits have met with mixed success.

*Buchanan v. Vowell* (926 N.E.2d 515 (Ind. Ct. App. 2010)) involved a negligence suit against a mother and daughter, who were in two different vehicles at the time the daughter's car struck and severely injured a pedestrian. Prior to the accident, the mother and daughter had been together drinking at a bar. When they left the bar, the mother followed the daughter in her own car, and the two engaged in a phone conversation as they drove. On the way home, the daughter struck a pedestrian, severely injuring him, and the mother and daughter then conspired to leave the scene of the accident. The pedestrian brought suit against both the daughter and the mother, alleging that they engaged in negligent activity together which was the proximate cause of his injuries. Specifically, he alleged that the mother gratuitously undertook to control her daughter's driving (which necessarily impacted third parties on the road), acted in concert with the daughter, and negligently distracted the intoxicated daughter by talking to her on the phone. The trial court dismissed the complaint, but the Court of Appeals, relying on Restatement (Second) of Torts § 876, reversed, holding that if the mother encouraged the tortuous activity and the pedestrian's injuries were the result of that activity, she may be held jointly liable for the injuries.

In *Kubert v. Best* (75 A.3d 1214 (N.J. App. Div. 2013)) the court undertook the question of whether an individual texting the driver of a motor vehicle can be liable to persons injured because the driver was distracted by the text. The driver of the car was exchanging text messages with a friend at the time his car struck a motorcycle and seriously injured the two riders. The riders sued the driver and settled with him, but they also sued the woman the driver was texting with at the time, alleging that she aided and abetted the driver's unlawful use of his cell phone. After analyzing whether a remote texter could be liable to individuals injured by the distracted driver, the court held that the sender of a text message can potentially be liable if an accident is caused by texting, but only if the sender knew or had special reason to know that



the recipient would view the text while driving and thus be distracted.<sup>3</sup> In this case, however, they found that the plaintiffs presented insufficient evidence to prove that the woman had such knowledge when she texted the driver immediately before the accident/that she actively encouraged him to text her while he was driving.

## **Employment Actions**

The issue of distracted driving has also arisen in the context of employment actions, including claims that dismissal for distracted driving was a pretext for discrimination and claims for unemployment benefits.

*Jones v. Jackson-Madison County Gen. Hosp. Dist.* (2013 U.S. Dist. LEXIS 94831, 2013 WL 3336724 (W.D. Tenn. Jan. 2, 2013)) involved a suit by a recently dismissed EMT against her employer, alleging gender discrimination, age discrimination, and a hostile work environment. Jones, who had previously been warned and suspended for unsafe driving practices (using a cell phone while operating an ambulance) and was on probation for making an unauthorized stop during a different call, was terminated by the hospital after three coworkers observed her stopped at an intersection, with oncoming traffic in motion, apparently distracted and looking at an object in her hands, which was originally surmised to be a cell phone but may have been a map book (though she was looking at it for purposes unrelated to her job). The Hospital's EMS Policy required, among other things, that ambulance operators operate the vehicles "in a safe manner at all times," and it is undisputed that the EMT was aware of the policy. The EMT was discharged for repeated violations of hospital rules, and the hospital upheld the termination on the grounds that she was distracted behind the wheel of an emergency vehicle in traffic. The

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<sup>3</sup> One should not be held liable for sending a text or other wireless transmission to a driver simply because the recipient *may* use his cell phone unlawfully and become distracted while driving. The driver is responsible for obeying the law. However, when a texter knows or has special reason to know that the intended recipient is driving and is likely to read the text message while driving, the texter has a duty to users of the public roads to refrain from sending the driver a text at that time.



court held that “Although Jones differs with her employer as to whether her actions constituted unsafe operation of the ambulance in violation of Hospital policy, unless evidence of discrimination is shown, which it was not here, it is not appropriate for the Court to second guess the personnel decisions of an employer. In short, no evidence has been proffered by the Plaintiff that would support an inference that the Defendant’s stated reason for her firing was a pretext for age discrimination.” The court accordingly dismissed the suit against the hospital.

Distracted driving may have consequences beyond dismissal from one’s job; it may affect one’s ability to claim unemployment benefits. In *Vasquez v. Safe-Way Bus Co.* (2014 Minn. App. Unpub. LEXIS 1124 (Minn. Ct. App. Oct. 20, 2014)) a school bus driver who was dismissed after failing to silence the ringer on his cellular phone before driving a school bus (two days after being told that he must do so to comply with his employer’s cellular-phone policy and that he risked termination if he did not comply), was held ineligible for unemployment compensation benefits under Minn. Stat. § 268.095, subd. 4(1) (2012) because of his misconduct.

The driver, who had previously been warned about talking on his cell phone while driving the school bus, was instructed to keep his phone on silent while driving, and was informed he would be terminated if it happened again, was discharged after another employee reported that he had used his cell phone while driving. The driver applied for unemployment benefits, however, the Minnesota Department of Employment and Economic Development (DEED), and later an unemployment-law judge (ULJ) found him ineligible for unemployment benefits because he had committed employee misconduct by violating the company’s no-use policy regarding cell phones. The purpose of the company’s no-use policy was to prevent distracted driving, and that policy was constantly reiterated in training manuals, meetings and posted signs. The bus driver concedes that he knew of the policy, and had been recently warned that he should remember to silence his phone before he started his bus route, but that he had not remembered to do so. The failure to silence the ringer on his cell phone before driving a school bus for his employer constitutes employment misconduct—forgetfulness and



unintentionality are not excuses—and he was therefore ineligible to receive unemployment benefits. The Court of Appeals affirmed.

In another case where dismissal for employment misconduct resulted in ineligibility for employment benefits, *McAllister v. Veolia Es Midwest LLC* (2014 Minn. App. Unpub. LEXIS 363; 2014 WL 1516868 (Minn. Ct. App. Apr. 21, 2014)), the Court of Appeals affirmed the unemployment law judge’s decision, holding that the claimant was discharged for three instances of employment misconduct—eating while driving (for which he was issued a written warning), not wearing a seatbelt and holding a cell phone and a cigarette while driving (for which he received a second and final written warning and a suspension), and failure to stop at a stop sign and looking at route sheets while driving— and was not entitled to unemployment benefits under Minn. Stat. § 268.095, subd. 6(a) (2012). They found that his dismissal was solely the result of his violations of the employer’s policies, and was not retaliation for filing an age-discrimination complaint.

## **Traffic Court**

Finally, distracted driving allegations may also appear in traffic court. For example, in *People v. Spriggs* (224 Cal. App. 4th 150 (Cal. App. 5th Dist. 2014)), the case came before the Court of Appeal after a traffic commissioner found the defendant guilty of using his cell phone while driving, in violation of California Vehicle Code section 23123, and the appellate division of the Fresno County Superior Court, California affirmed.

The defendant was spotted holding his cell phone by a California Highway Patrol officer, who pulled him over and gave him a citation for violating Vehicle Code section 23123, subdivision (a), which prohibits drivers from “using a wireless telephone unless that telephone is specifically designed and configured to allow hands-free listening and talking, and is used in that manner while driving.” The defendant contended that he did not violate the statute because he was not talking on the telephone—he was checking a map application while stopped in traffic. The Court of Appeal agreed with the defendant that his use was not a violation of the statute. Relying on the statute’s language, its legislative history, and subsequent



legislative enactments, they concluded that the statute does not prohibit all hand-held uses of a cellular phone; it prohibits a driver only from holding a wireless telephone while conversing on it. Accordingly, they found that the defendant did not violate the statute when he held his cell phone in his hand and looked at a map application while driving, and therefore reversed his conviction.

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