Cell Phone Usage And Motor Vehicle Accident Litigation

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ABSTRACT

Over the last thirty years, cell phones have changed the way we live, including the way too many of us drive. This article will examine the role that cell phones have come to play in motor vehicle accident litigation. Although it will focus primarily upon Pennsylvania law, precedent from other states will occasionally be referenced, as some issues are relatively novel. Indeed, Pennsylvania's appellate courts have yet to make any precedential civil rulings concerning cell phone use in the context of personal injury/motor vehicle lawsuits. The goal of this article is to educate attorneys as to the current state of the law, but, as well, to emphasize the extent to which unsafe cell phone use has become commonplace. The author hopes that readers will recognize the danger involved and make a pledge to observe cell phone safety.

I. INTRODUCTION AND OVERVIEW

Prior to 1973, few could imagine making a phone call while standing outside, unencumbered by a box of some sort wired into the wall, but on April 3, 1973, the first mobile phone call was made by Motorola employee Martin Cooper on a phone that weighed 2.2 pounds and had a battery life of about 20 minutes.[2] In 1983, Motorola released for sale the DynaTAC 8000x, the first mobile phone available to consumers,

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2. John Pletz, *Motorola cellphone inventor wins engineering's top honor*, https://www.chicagobusiness.com/article/20130220/BLOGS11/130229975/motorola-s-marty-cooper-inventor-of-cellphone-wins-national-academy-of-engineering-prize.

a two-and-a-half pound monster with a purchase price: $3,995.[3] By 2008, there were 270 million cell phone subscribers in the U.S.[4]; today, 94% of all Americans have a cell phone[5]—with the current U.S. census at roughly 330 million,[6] that's over 310 million phones.

As cell phone use increased, so, too, did cell phone use while driving. There is no dispute that cell phone use while driving dramatically increases the risk of motor vehicle accidents and injuries. According to the National Safety Council, cell phone use while driving leads to 1.6 million crashes annually; 1 out of every 4 traffic crashes that occur in the U.S. are caused by cell phone usage; drivers talking on the phone while behind the wheel are 2.2 times more likely to crash; and drivers are 12.2 times more likely to crash while dialing a phone.[7]

In 2015, distracted drivers accounted for 5% of all traffic fatalities in Pennsylvania;[8] in 2017, there were more than 15,600 crashes involving a distracted driver in the Commonwealth, and from 2013 through 2017, there were 317 fatalities as the result of crashes involving a distracted driver.[9]

The trend seems to be that general allegations of cell phone use will be sufficient to support a claim of recklessness and/or punitive damages.

II. CELL PHONE USE LEGISLATION

By 2000, at least three Pennsylvania municipalities (Hilltown, Lebanon and Conshohocken) had already banned the use of cell phones by all operators while driving.[10] Then, in 2014, the General Assembly enacted a distracted driving law, 75 Pa.C.S. §1621,[11] which makes it illegal for the operator of a commercial vehicle to use a handheld mobile telephone while driving except in an emergency situation. In 2009, the City of Philadelphia prohibited cell phone use while driving,[12] and, in 2010, Erie,[13] Harrisburg,[14] Wilkes-Barre,[15] Allentown[16] and Bethlehem[17] followed suit. Importantly, these laws made it illegal not only to text while driving but also to make a phone call using a handheld device. However, Allentown's ordinance was voided in 2011 by the Lehigh County Court of Common Pleas on the basis that:

> The (state) legislature can certainly pass a statute specifically covering the use of cell phones while driving, and any other matters concerning distracted driving,

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3. Peter Ha, *Motorola DynaTAC 8000x*, http://content.time.com/time/specials/packages/article/0,28804,2023689_2023708_2023656,00.html.
4. Matt Richtel, "Drivers and Legislators Dismiss Cellphone Risks," New York times (July 18, 2009), https://www.nytimes.com/2009/07/19/technology/19distracted.html.
5. https://mobilecoach.com/8-surprising-cell-phone-statistics (Nov. 30, 2018).
6. U.S. and World Population Clock, https://www.census.gov/popclock/.
7. TeenSafe, 100 Distracted Driving Facts & Statistics for 2018 (Dec. 26, 2018), https://teensafe.com/100-distracted-driving-facts-statistics-for-2018/.
8. https://www.penndot.gov/TravelInPA/Safety/Pages/Crash-Facts-and-Statistics.aspx.
9. S. Res. 78, Pa. Senate (2019) (designating the month of April 2019 as "Distracted Driving Awareness Month" in Pennsylvania).
10. https://www.nytimes.com/2000/03/26/nyregion/a-mother-s-battle-to-hang-up-the-phone.html.
11. 75 Pa.C.S. §1621.
12. Philadelphia, Pa., Traffic Code §12-1132 (2011) (approved April 29, 2009).
13. Erie, Pa, Ordinance no. 19-2010 (2010) (amending a previous ordinance enacted in 2009).
14. https://www.youtube.com/watch?v=UiAoI2w0NsM.
15. Wilkes-Barre, Pa., Code of Ordinances §29-7 (Supp. 2010).
16. A.P., *Allentown bans cell phone use while driving*, https://www.lehighvalleylive.com/allentown/2010/03/allentown_bans_cell_phone_use.html.
17. Express Times-Staff, *Hang up and drive: Bethlehem cell phone ban begins today*, https://www.lehighvalleylive.com/bethlehem/2010/06/hang_up_and_drive_bethlehem_ce.html.

> but has yet to do so. . . .Until such time, (the city's cell phone ban) is pre-empted by state law, and is therefore invalid.[18]

It wasn't long before the Pennsylvania Legislature—like those in so many states[19]—weighed in, passing 75 Pa.C.S. §3316, "Prohibiting text-based communications," which made it a crime to send, read, or write text communications on a cell phone while driving. Those who violate this law are guilty of a summary offense and must pay a $50 penalty. The law is less stringent than the local ordinances it superseded and only prohibits texting while a vehicle is moving. Importantly, it does not prohibit the user from looking up a phone number, dialing, or talking on the phone, or even reading emails or the internet.

Since the enactment of statewide bans on texting beginning in 2001 when New York enacted the first of such laws, two questions have emerged: One, are the laws effective in curtailing cell phone use by drivers, and two, are hands-free devices really any safer than non-hands-free phones? To date, studies on these questions have yielded inconclusive and inconsistent results.[20] But, one thing is certain: Allegations of cell phone use have begun to play a critical role in motor vehicle litigation, both with regard to liability and damages.

III. MOTOR VEHICLE ACCIDENT LITIGATION IN THE CELL PHONE ERA

A. Theories of Liability

Plaintiffs routinely include allegations of cell phone use, whether there is evidence that the defendant was actually using a cell phone or not. In fact, some complaints tacitly admit that there is no such evidence, asserting that a defendant "may have been distracted either generally or as the result of using his cell phone."[21] Plaintiffs may also include allegations that a defendant has violated the provisions of 75 Pa. Cons. Stat. Ann. §3316.[22]

Occasionally, plaintiffs assert a negligence *per se* cause of action based upon an alleged violation of §3316. In order to prove a claim based on negligence *per se*, a plaintiff must establish, *inter alia*, that: the purpose of the statute must be, at least in part, to protect the interest of a group of individuals, as opposed to the public generally.[23] It would appear that Pennsylvania's cell phone statute would not provide a

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18. *Commonwealth* v. *Steiner*, PICS Case No. 11-1052 (Lehigh Cnty. May 4, 2011, Anthony, J.).

19. By 2018, most states had enacted some legislation to control or curtail cell phone use while driving. Currently, 45 states ban texting while driving; three have no statewide bans but some municipalities limit cell phone use, while only two states (South Carolina and Montana) have no laws addressing this issue. Ten states permit the use of cell phones for the purpose of phone calls only where calls are made using hands-free technology. Thirty-six states prohibit minors from any cell phone use while driving, and sixteen do not allow school bus operators to use a cell phone when the vehicle is in operation. http://www.ncsl.org/research/transportation/cellular-phone-use-and-texting-while-driving-laws.aspx.

20. *Cf.* Ferdinand, Menachemi, Sen, Blackburn, Morrisey, Nelson, "Impact of Texting Laws on Motor Vehicular Fatalities in the United States," Am. J. of Public Health (Aug. 2014); https://www.insurancejournal.com/magazines/mag-features/2019/01/07/513761.htm; http://www.cnn.com/2010/US/01/29/cellphone.study/index.html; https://www.motherjones.com/crime-justice/2013/11/texting-while-driving-bans-dont-make-a-difference/; https://www.nsc.org/road-safety/tools-resources/infographics/hands-free-is-not-risk-free; https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4001674/.

21. *See, e.g.*, *Needham* v. *Kubrick*, No. GD-16-021304 (Allegheny C.P. Feb. 16, 2017).

22. *See, e.g.*, *Vitale* v. *Mirshahzadeh*, No. GD-17-003324 (Allegheny C.P.); *Smith* v. *Likar Roofing Co., Inc.*, No. GD-17-001049 (Allegheny C.P.); *Jefferson* v. *Cordetsky*, No. GD-16-010762 (Allegheny C.P.).

23. *Wagner* v. *Anzon, Inc.*, 684 A.2d 570, 574 (Pa. Super. 1996), *appeal denied*, 700 A.2d 443 (Pa. 1997); *Congini by Congini* v. *Portersville Valve Co.*, 470 A.2d 515, 517-18 (Pa. 1983).

basis for a negligence *per se* claim because it is not narrowly tailored to protect a specific group of individuals but, rather is intended to apply to the general public.

The only case that appears to have considered whether §3316 provides the basis for a negligence *per se* cause of action is *Henderson* v. *Palmer* (Lawrence C.P., Oct. 7, 2019)[24] in which the court struck such a claim without prejudice and with leave to amend. In that case, the plaintiff, who had been hit from behind, asserted claims of recklessness and negligence *per se* based upon violation of 75 Pa.C.S. §§3316, 3361[25] and 3714.[26] The plaintiff alleged that the defendant was using a cell phone while driving, was distracted as he approached the plaintiff's vehicle, was not paying proper attention to the roadway, was driving at a speed that was unreasonable under the circumstances, and could not stop his vehicle in time to avoid a collision.

The defendant filed preliminary objections challenging the *specificity* of the allegations (as opposed to the *viability* of the claims asserted). The court sustained the defendant's preliminary objections to the negligence *per se* claims, stating:

> Plaintiff has not provided any factual allegations demonstrating specific conduct to set forth violations of those statutes. For example, Plaintiff has not averred any facts to establish how and why Defendant's rate of speed was unreasonable under the circumstances and road conditions on the day at issue. Moreover, Plaintiff has not provided any facts to support an allegation Defendant operated his vehicle with a careless disregard for the safety of other people or property as is required to establish he was liable for Careless Driving.[27]

Importantly, the court tacitly assumed that all three sections of the Motor Vehicle Code provided grounds for a negligence *per se* cause of action, notwithstanding Pennsylvania decisional law such as *Drew* v. *Work*, in which the Superior Court found that a jury charge on negligence *per se* based upon a violation of the careless driving statute would be improper given that said statute "merely recites general negligence principles and a charge related thereto would serve no purpose other than to confuse the jury."[28]

An emerging theory of liability could potentially encompass an entirely new group of defendants—those who send texts to drivers who end up causing an accident because they were reading said texts. At least one court has suggested that such liability may exist: In *Kubert* v. *Best*, plaintiffs were seriously injured when a vehicle driven by the defendant crossed the center line and struck their vehicle; it was later determined that the defendant was reading a text message at the time.[29] The plaintiffs then joined the party who sent the text messages as an additional defendant. Although it was ultimately determined that there was not enough evidence to retain the sender as a party, the court, relying upon §303 of the Restatement (Second) of Torts[30] stated, "a person sending text messages has a duty not to text someone who is driving if the texter knows, or has special reason to know, the recipient will view the text while driving."[31]

Several years later, the Supreme Court of Genesee County, New York, declined to adopt the theory of "sender liability" first articulated in *Kubert*, finding that the con-

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24. *Henderson* v. *Palmer*, No. 10035 of 2019 (Lawrence C.P. October 7, 2019).
25. Relating to driving vehicle at safe speed.
26. Relating to careless driving.
27. *Henderson, supra* note 24, at 7.
28. *Drew* v. *Work*, 95 A.3d 324, 338 (Pa. Super. 2014).
29. *Kubert* v. *Best*, 75 A.3d 1214 (N.J. Super. App. Div. 2013).
30. "An act is negligent if the actor intends it to affect, or realizes or should realize that it is likely to affect, the conduct of another, a third person, or an animal in such a manner as to create an unreasonable risk of harm to the other."
31. *Kubert, supra* note 29, at 1221.

cept of duty was not so broad as to include the sender of a text, suggesting that such an expansion of the concept of duty was for the legislature to decide.[32]

Kubert did find a more receptive audience in the Common Pleas Court of Lawrence County, Pennsylvania. In *Gallatin* v. *Gargiulo*, the plaintiff, Dan Gallatin, was negotiating his motorcycle around a turn when he was struck from behind by defendant Laura Gargiulo.[33] Plaintiff's motorcycle was pinned under the defendant's vehicle, and he was dragged 100 feet and later died. At the time of the accident, Ms. Gargiulo was texting either with her husband or with her paramour, Timothy Fend. Mr. Gallatin's estate sued Ms. Gargiulo, Mr. Gargiulo, Mr. Fend, and Gargiulo's landscaping business; in addition to asserting claims based upon violation of 75 Pa.C.S. §3316 and setting forth a demand for punitive damages, plaintiff asserted liability against Mr. Gargiulo and Mr. Fend as senders of texts read by Ms. Gargiulo as she operated her vehicle. The court ultimately overruled Mr. Fend's and Mr. Gargiulo's preliminary objections based upon the "sender" theory of liability, relying on *Kubert*, 75 Pa.C.S. §3316, and §876 of the Restatement (Second) of Torts[34] and stating:

> The Court is well aware that the averments do not indicate that numerous text messages were sent, and that it is quite possible that Defendant Fend may not have in fact known or should have known that Defendant Laura E. Gargiulo was operating a motor vehicle at the time of the text messaging. . . . However, it must be remembered that this case is now simply at the preliminary objection stage, and all averments should be considered in the light most favorable to the Plaintiff. Section 876 of the Restatement (Second) of Torts provides that a third party can be liable if he/she encourages another in violating a duty.
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> The New Jersey case of *Kubert, supra*, although not binding on the Court here, suggests that the sender of a text message can be liable for sending a text message while the recipient is operating a motor vehicle if the sender knew or had reason to know the recipient was driving. In reflecting upon Section 876 of the Restatement and *Kubert*, and in considering the averments in the light most favorable to the Plaintiff as the law requires, the Court concludes that Defendant Fend should remain a party in this case at this time, and Plaintiff may explore through discovery whether Defendant Fend violated a duty owed to third person.[35]

In one of the more creative pieces of litigation, a plaintiff sued a cell phone provider for injuries sustained when he was struck by a driver who was using a cell phone at the time of the accident. The court in *Williams* v. *Cingular Wireless*, dismissed the case for failure to state a claim, noting initially that the cell phone carrier had owed no duty to the plaintiff given that he was not a customer of the company, had no contractual relationship with the company, and was not party to the contract between the company and the other driver.[36]

By far the most heavily litigated issue in motor vehicle accidents where cell phone usage is alleged concerns whether an allegation of cell phone use is sufficient to

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32. *Vega* v. *Crane*, 49 N.Y.S.3d 264, 266 (N.Y. Sup. Ct. 2017).
33. *Gallatin* v. *Gargiulo*, No. 10401 of 2015 C.A. (Lawrence C.P. March 9, 2016).
34. Section 876, Persons Acting in Concert, reads as follows:

    For harm resulting to a third person from the tortious conduct of another, one is subject to liability if he

    (a) does a tortious act in concert with the other or pursuant to a common design with him, or

    (b) knows that the other's conduct constitutes a breach of duty and gives substantial assistance or encouragement to the other so to conduct himself, or

    (c) gives substantial assistance to the other in accomplishing a tortious result and his own conduct, separately considered, constitutes a breach of duty to the third person.
35. *Gallatin, supra* note 33, at *8-*9.
36. *Williams* v. *Cingular Wireless*, 809 N.E.2d 473 (Ind. Ct. App. 2004).

support an averment of reckless, willful, wanton, intentional, or grossly negligent behavior and/or a demand for punitive damages. A cursory review of Pennsylvania's common pleas courts suggests that while courts were more likely to answer that question in the negative in the early days of this type of litigation, since the enactment of 75 Pa.C.S. §3316, they have been far less likely to dismiss such claims.

In 2012, Northampton County issued one of the first opinions on whether and when an allegation of cell phone use while driving gave rise to a claim for punitive damages. In *Xander* v. *Kiss*,[37] the plaintiff alleged that the defendant, who was speaking on his cell phone at the time, had crossed into her lane of travel, struck her vehicle, and caused her to sustain injuries. The defendant filed preliminary objections to the plaintiff's demand for punitive damages. In sustaining the preliminary objections, the court first recognized punitive damages are only available when the act giving rise to actual damages is "committed with a view to oppress or is done in contempt of plaintiffs' rights" and that "[a]dditional evidence must demonstrate willful, malicious, wanton, reckless or oppressive conduct." The court then stated that plaintiff's allegations of wrongdoing fell "short of establishing the Defendant's evil motive or reckless indifference to her rights" and found no additional indicia of recklessness. *Xander*, however, turned out to be the last time that Northampton County would sustain preliminary objections to claims for punitive damages where cell phone use by a defendant driver was alleged, in part because plaintiffs were careful to include "other indicia of reckless or oppressive conduct."[38]

Prior to the enactment of 75 Pa.C.S. §3316, courts in other Pennsylvania counties were more likely to sustain challenges to claims for punitive damages based upon allegations of cell phone use.[39] Since §3316 was put into place, however, courts have been more likely to overrule these types of preliminary objections,[40] although there have certainly been outliers such as *Manning* v. *Barber*, (Cumberland C.P. June 21, 2018).[41] Decided well after the enactment of §3316 and by a panel of three judges, this case roundly rejected plaintiffs' claims of recklessness and demand for punitive damages despite pleadings that were far more specific than many which other courts found sufficient to support such claims. The underlying accident occurred when the defendant, who was looking at or texting on her smartphone, rear-ended the plaintiffs' vehicle, which was stopped at a red light.

Recognizing the standard necessary to assert a claim for punitive damages and that "there is a lack of Pennsylvania appellate case law in the context of distracted driving cases where the tortfeasor is distracted by the use of a cellular phone at the

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37. *Xander* v. *Kiss*, 2012 Pa.D&C. Dec. LEXIS 1 (Northampton C.P. Jan. 11, 2012).

38. *See, e.g., Figueroa* v. *Ferraira*, No. C-48-CV-2017-00833 (Northampton C.P., June 8, 2017); *Thompson* v. *Fox*, 2017 Pa.D&C. Dec. LEXIS 1989 (Northampton C.P. Feb. 22, 2017); *Lopez* v. *Wilson*, 2017 Pa. Dist. & Cnty. Dec. LEXIS 1987 (Northampton C.P., Jan. 20, 2017, Murray, J.); *Ramos* v. *Frasca*, No. C-48-CV-2016-01166 (Northampton C.P., Aug. 5, 2016); *Paszkowski* v. *Kleintop*, No. C-48-CV-2014-11600 (Northampton C.P., December 11, 2015); *Verba* v. *Hartman*, No. C-48-CV-2011-08972 (Northampton C.P., Jan. 25, 2012).

39. *Leonard* v. *Schlabach*, No. A.D. 2012-172 (Crawford C.P. July 16, 2012); *Linehan* v. *Jaludi*, No. 1865-2008-Civil (Pike C.P. Jan. 14, 2010); *Good* v. *Whitt*, 104 Berks 62 (Berks C.P. Oct. 20, 2011; and *Pertinen* v. *Swick*, 2002 WL 1008462 (N.D. Ill. 2002).

40. *Comi* v. *Munoz*, No. 11630-2019 (Erie C.P. Sep. 30, 2019); *Miller v. Repasch*, No. 517 Civil 2019 (Monroe C.P. April 17, 2019); *Ehler* v. *Old Dominion Freight Line*, No. 2018-00307 (Lebanon C.P. Aug. 30, 2018); *Alvarez* v. *Trans Bridge Lines*, No. 2014-c-1621 (Lehigh C.P. Aug. 25, 2014); *Gugliotti* v. *O'Rourke*, No. 2012-CV-15133 (Luzerne C.P. May 27, 2014); *Kondash* v. *Latimer*, No. CV-2009-8600 (Lackawanna C.P. Nov. 19, 2012).

41. *Manning* v. *Barber*, No. 17-7915 (Cumberland C.P. June 21, 2018). *See, also: Revta* v. *Comonie*, No. 2015 CV 1679 (Lackawanna C.P. July 2, 2015); *Pietrulewicz* v. *Gil*, 2014 Pa. Dist. & Cnty. Dec. LEXIS 966 (Lehigh C.P. June 6, 2014, Reichley, J.); *Sondej* v. *Post*, No. A.D. 2014 -10083 (Butler C.P. May 16, 2014); *Rockwell* v. *Knott*, 32 Pa.D.&C. 5th 157 (Lackawanna C.P. Aug. 13, 2013, Nealon, J); *Platukis* v. *Pocono Segway Tours, LLC*, 2013 Pa.D.&C. Dec. LEXIS 276 (Monroe C.P. Apr. 8, 2013, Zulik, J.).

time of the accident," the court concluded that "the mere use of a cell phone absent additional 'indicia of recklessness' will not be enough to sustain a claim for punitive damages" and that "the additional allegations are simply boilerplate allegations that the Defendant was inattentive and going too fast, all of which amounts to a classic negligence claim."[42]

Allegheny County has mostly overruled preliminary objections to complaints asserting reckless behavior and/or demands for punitive damages based upon cell phone use, often without opinion, even when the language of the complaint is less than certain. *See, e.g., Needham* v. *Kubrick* (Allegheny C.P. February 16, 2017)[43] (overruling defendant's preliminary objections to claims of recklessness and demand for punitive damages based upon allegation that defendant "may have been distracted either generally or as the result of using his cell phone").[44]

Judge Friedman of Allegheny County is responsible for most of the orders sustaining preliminary objections to demands for punitive damages; those cases appear to involve situations where the alleged cell phone use was not found to be necessarily distracting, as in *Smith* v. *Delaney* (Allegheny C.P. Nov. 17, 2014, Friedman, J.).[45] In *Coffman* v. *Jones* (Allegheny C.P. Dec. 15, 2013), Judge Wettick likewise found that the allegation that the defendant was talking, speaking, or looking at her cell phone did not warrant a claim for punitive damages, "it appearing that plaintiff does not allege that defendant was using a device that required [defendant's] eyes to be distracted from the road."[46]

Lawrence County has consistently overruled all challenges to demands for punitive damages where cell phone use is averred, perhaps because all cases have arisen since the enactment of §3316,[47] while Lancaster County[48] and Philadelphia County[49] have been more of a mixed bag, sustaining about as many challenges to allegations of recklessness and pleas for punitive damages as they overrule.

The two opinions from the Eastern District of Pennsylvania that have considered this issue have split: In *Pennington* v. *King* (E.D. Pa. 2009), the court denied a motion

42. *Manning, supra* note 41, at 3, 5.

43. *Needham* v. *Kubrick*, No. GD-16-021304 (Allegheny C.P. Feb. 16, 2017).

44. *And see Bayani* v. *Barton*, No. GD-15-015627 (Allegheny C.P. May 8, 2018); *Gray-Puit* v. *Svidron*, No. GD-17-014202 (Allegheny C.P. March 28, 2018); *Hruby* v. *Cerrone*, No. GD-17-001555 (Allegheny C.P. March 27, 2018); *Bolea* v. *West*, No. GD-17-017087 (Allegheny C.P. March 1, 2018); *Fisher* v. *Bishop*, No. GD-17-013260 (Allegheny C.P. Dec. 4, 2017); *Lovell* v. *Alito*, No. GD-17-009538 (Allegheny C.P. Sep. 29, 2917); *Brestensky* v. *Monroe Muffler*, No. GD-17-001397 (Allegheny C.P. June 27, 2017); *Clawson* v. *Longo*, No. GD-14-018958 (Allegheny C.P. Jan. 13, 2015); *Darrah* v. *Dayton*, No. GD-14-007654 (Allegheny C.P. Aug. 21, 2014); *Ray.* v. *Kollinger*, No. GD-13-004767 (Allegheny C.P., Jan. 14, 2014); *Murdock* v. *Mathur*, No. GD-11-009708 (Allegheny C.P. Nov. 21, 2011); *Ober* v. *Amsdell*, No, GD-11-010567 (Allegheny C.P. Oct.r 13, 2011); *Deringer* v. *Li*, No. GD-10-19081 (Allegheny C.P. Dec. 16, 2010).

45. *Smith* v. *Delaney*, 2014 Pa. Dist. & Cnty. Dec. LEXIS 5679 (Allegheny C.P. Nov. 17, 2014, Friedman, J.). Accord: *Avery* v. *Spadafora*, GD 13-022334 (Allegheny C.P. June 16, 2014, Friedman, J.); *Samaniego* v. *Rodgers*, No. GD 2011-019955 (Allegheny C.P. Dec. 2, 2011, Friedman, J.).

46. *Coffman* v. *Jones*, 2013 Pa.D.&C. Dec. LEXIS 19689 (Allegheny C.P. Dec. 15, 2013).

47. *See, e.g., Henderson* v. *Palmer*, No. 10035 of 2019, C.A. (Lawrence C.P. Oct. 7, 2019); *Robinson* v. *Marrett*, No. 10672 OF 2018, C.A. (Lawrence C.P. Dec. 20, 2018); *Gallatin* v. *Gargiul*o, No. 10401 of 2015 C.A. (Lawrence C.P. March 9, 2016).

48. *See, e.g., Bomberger* v. *Hoffer*, No. CI-17-10609 (Lancaster C.P. Aug. 16, 2018); *Metlzer* v. *Herr*, No. CI-17-10709 (Lancaster C.P. August 6, 2018); *Morgan* v. *Mousa*, 2017 Pa.D.&C. Dec. LEXIS 7202 (Lancaster C.P. March 8, 2017); *Ebersole* v. *Baum*, 2015 Pa. Dist. & Cnty. Dec. LEXIS 3779 (Lancaster C.P. Aug. 25, 2015); *Smith* v. *Gehr*, No. CI-15-04367 (Lancaster C.P. Dec. 17, 2015); *Cassimatis* v. *Neifert*, No. CI-12-03433 (Lancaster C.P. May 22, 2013).

49. *Ali* v. *Marinucci*, No. 190805000 (Philadelphia C.P. Oct. 24, 2019); *Roman* v. *Hercules*, No. 190400759 (Philadelphia C.P. July 3, 2019); *Vasquez* v. *Tarpley*, No. 181000691 (Philadelphia C.P. May 1, 2019); *Abusaad* v. *Stretton*, No. 190202560 (Philadelphia C.P. April 24, 2019); *Bellacicco* v. *Penske Truck Leasing*, No. 170104867 (Philadelphia C.P. May 12, 2017); *Wasser* v. *Tru Green*, No. 120101995 (Philadelphia C.P. April 18, 2012).

for partial summary judgment as to the plaintiff's demand for punitive damages based upon proof that the defendant "was distracted by his cellular phone conversation and was operating his tractor-trailer in a wildly erratic manner so as to prevent [plaintiff] from passing him."[50] In *Piester* v. *Hickey*, (E.D. Pa. Mar. 20, 2012), the court dismissed a claim for punitive damages where it was alleged that the defendant looked down at his cell phone immediately prior to rear-ending the plaintiff's vehicle.[51] Meanwhile, precedent from other jurisdictions seems to suggest that allegations of cell phone use likely give rise to a claim for punitive damages.[52]

In many instances in which courts overruled preliminary objections to demands for punitive damages based upon cell phone use allegations, the orders have suggested that such issues may be revisited on a motion for summary judgment,[53] and in some cases, such proceedings have been successful. In *Rockwell* v. *Knott, supra*, for example, the defendant driver sought partial summary judgment as to plaintiff's demand for punitive damages based upon his allegation that the defendant had been looking down at a GPS device at the time of the accident. The defendant disputed the plaintiff's characterization, saying that he had only glanced at the GPS before proceeding with his trip. In considering the motion, the court first acknowledged a lack of authority from Pennsylvania's appellate courts on the "the viability of a punitive damages claim predicated upon a motorist's use of an interactive wireless communications device or GPS application at the time of an accident,"[54] but recognized the many common pleas court opinions that had explored this, and similar issues, as well as §3316, which "only bans text messaging while driving and does not prohibit a motorist from engaging in cell phone conversations while driving."[55]

The court went on to explore how a GPS is typically used by a driver and analyzed the deposition testimony to conclude that defendant's conduct had not been reckless:

> Even when viewed in the light most favorable to Rockwell, the record reflects that as the final approaching vehicle entered the intersection from the opposite direction, Knott looked at the GPS to ensure that he was at the correct intersection. Knott then "glanced back up" at the street sign for Washington Street, looked forward in the direction of oncoming traffic, and proceeded to take his foot off the brake as he began his left turn. Reasonable minds could not differ that such conduct by Knott does not constitute reckless, distracted driving.[56]

In *Gunsallus* v. *Smith* (C.P. Centre Co. April 7, 2015 Kistler, J.), moreover, the court also granted defendant driver's motion for summary judgment on the plaintiff's claim for punitive damages in an action where the plaintiff alleged that the defendant was speeding immediately prior to the accident on an unfamiliar road and driving only with his non-dominant hand while talking on his cell phone. The court held that, although additional circumstances alleged "may have created a situation that was not the most ideal, taken together, they do not rise to the level of outra-

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50. *Pennington* v. *King*, 2009 U.S. Dist. LEXIS 12779, (E.D. Pa. 2009).
51. *Piester* v. *Hickey*, 2012 U.S. Dist. LEXIS 37308 (E.D. Pa. Mar. 20, 2012).
52. *McLane* v. *Rich Transport, Inc.*, 2012 U.S. Dist. LEXIS 111885 (E.D. Ark. 2012); *Laney* v. *Schneiger National Carrier, Inc.*, 2011 WL 1667434 (N.D. Okla. 2011); *Gaddis* v. *Hegler*, 2011 WL 2111801 (S.D. Miss. 2011); *Hoskins* v. *King*, 676 F.Supp.2d 441 (D.S.C. 2009); *Lindsey* v. *Clinch County Glass Inc.*, 718 S.E.2d 806 (GA. Ct. App. 2011); *Howell* v. *Kusters*, 2010 WL 877510 (Del. Super. 2010). *But see Sipler* v. *Trans Am Trucking, Inc.*, 2010 U.S. Dist. LEXIS 126047 (D.N.J. 2010); *Westray* v. *Wright*, 834 N.E.2d 173 (Ind. 2005).
53. *See Deringer* v. *Li*, No. GD-10-19081 (Allegheny C.P. Dec. 16, 2010).
54. *Id*. at 14.
55. *Rockwell, supra* note 41, at 21.
56. *Id*. at 21-2, and 23-4.

geous or reckless conduct," noting further that talking on a cell phone while driving is "conduct which is permitted under Pennsylvania law."[57]

On the other hand, in *Hilliard* v. *Panezich*, for example, the defendant driver, who was alleged to have been under the influence of marijuana and looking down at his cell phone at the time of the accident, sought partial summary judgment as to the plaintiff's punitive damages claims. In denying that motion, the court first noted that Pennsylvania appellate courts had not yet articulated the standards for permitting an award of punitive damages in claims involving distracted driving and cell phones. The court went on to note that many Pennsylvania common pleas court decisions had required a showing of recklessness beyond mere cell phone use in order to support a claim for punitive damages, concluding that such a showing had been made, given proof that the defendant had been driving while under the influence, had been speeding, and had failed to observe a stop sign.[58]

In *Paszkowski* v. *Kleintop*, moreover, the court denied the defendant's motion to dismiss the plaintiff's demand for punitive damages, finding that the dispute presented questions for the jury. Acknowledging initially the holding of *Xander*, (i.e., that there must be indicia of recklessness beyond mere cell phone use), the court quickly distinguished the act of talking on a cell phone and engaging in texting activity.[59] The court went on to note the evidence that the defendant sent two texts prior to the subject incident, although there was no evidence as to their relation in time to the accident. There was also evidence that at the time of the accident, defendant was knowingly driving her husband's vehicle with the driver's seat in such a position as to preclude her from fully seeing over the hood of the vehicle, consistently seeing the traffic in front of her, or seeing the red light ahead of her at the intersection where the crash occurred, facts that the court suggested could constitute recklessness sufficient to support a claim for punitive damages. Given questions of fact to be resolved by the jury, the court denied the defendant's motion for summary judgment.[60]

B. Proof of Negligence

In the early 2000s, there was some support for the idea that simply using a cell phone while driving was no big deal. For example, the court in *Morgenstern* v. *Knight* found:

> We are unwilling to so pronounce, that the use of a cell phone while driving an automobile which is involved in an accident, without more, creates an issue of fact as to whether the cell phone user is guilty of contributory negligence.[61]

In more recent years, however, cases in which allegations of cell phone use are made more often than not result in a verdict against the cell phone user.[62] Thus, in *Harmon*

57. *Gunsallus* v. *Smith*, No. 2013-3765 (C.P. Centre Co. Apr. 7, 2015 Kistler, J.).

58. *Hilliard* v. *Panezich*, No. 1988 of 2015 (C.P. Lawrence Co. Dec. 1, 2017 Cox, J.).

59. *Paszkowski* v. *Kleintop*, No, C-0048-2014-11600 (Northampton C.P. Aug. 1, 2016).

60. *And see Garcia-Rada* v. *Hillus*, No. 161203006 (Philadelphia C.P. April 26, 2018) (whether defendant was using cell phone and whether distracted driving contributed to accident was a question for the jury, whereby motion for partial summary judgment as to plaintiff's punitive damages claim would be denied).

61. *Morgenstern* v. *Knight*, 134 P.3d 897, 898 (2006 Okla. Civ. App. Div. 1), *cert. denied*, (Mar. 28, 2006).

62. *But see Beachler* v. *Heming*, No. CI-06-11346 (Lancaster C.P. December 08, 2011) (defense verdict in case where plaintiff, a sanitation worker, was injured when struck by a car as she was walking across the roadway to retrieve a recycling bin; evidence at trial showed that the defendant driver had just finished a phone call immediately prior to the incident and did not see the flashing lights on the recycling truck; despite allegations that the plaintiff was speeding, the jury found in favor of the defendant).

v. *Sneberger* (Phil. C.P., Jan. 26, 2011),[63] the defendant was found liable where she was found to be looking at her cell phone when she swerved into the lane that the plaintiff was entering.[64]

While cell phone use is generally asserted against a defendant as proof of negligence, it can also be charged as an affirmative defense or to show comparative negligence. In *Wilkerson* v. *Kansas City Southern Ry.*, for example, the plaintiff brought a wrongful death action when her decedent was killed after her vehicle was struck by a train. At trial, however, the railroad defendant offered evidence that before pulling onto the tracks, the decedent was talking and laughing on her car phone and was driving slowly and never looked or stopped before she drove onto the track in front of the train. Ultimately, the court found that decedent's inattention was the legal cause of accident, and a verdict was rendered in favor of the defendant.[65]

C. Evidentiary Issues

The admissibility of evidence concerning a party's cell phone use at the time of an accident is a relatively new area of law but one that promises to grow. Most courts considering the issue have determined that evidence that a driver was using a cell phone at or immediately prior to an accident is probative as to issues of causation and negligence.[66] In *Knecht* v. *Balanescu*, the plaintiff sought to preclude evidence that he was using his cell phone at the time of the accident. The trial court denied the motion, stating that "the behavior and actions of Plaintiff in the minutes leading up to the accident is highly probative and any danger or risk of prejudice is greatly outweighed by the probative value of the evidence."[67]

In *Prescott* v. *R&L Transfer, Inc.*, moreover, the court denied the defendant's motion *in limine* to preclude evidence of his cell phone use at the time of the accident on the ground that such phone calls violated his employer's safety policy; additionally, because the police accident report and the defendant's cell phone records established that the defendant was on the phone when the accident took place, evidence of the defendant's cell phone use was relevant to the issue of negligence and causation. The court further determined that the probative value of this evidence outweighed any potential prejudice.[68] Importantly, however, cell phone records may also be used to rebut an allegation of cell phone use at the time of an accident.[69] But, when a defendant has admitted liability, evidence as to his or her cell phone use at or just prior to the accident will generally be precluded as irrelevant.[70]

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63. *Harmon* v. *Sneberger*, No. 090701189 (Phila. C.P. Jan. 26, 2011).

64. *See also Jacoby* v. *Van Geldren*, No. 3:08-cv-00145-KRG (W.D. Pa. Sep. 14, 2010); *Beltran* v. *Vick*, No. 070101760 (Phila. C.P. April 15, 2008); *Urroz* v. *Muniz*, No. 060103399 (Philadelphia C.P. May 14, 2007).

65. *Wilkerson* v. *Kansas City Southern Ry.*, 772 So. 2d 268 (La. Ct. App. 2d Cir. 2000), *writ denied*, 786 So. 2d 105 (La. 2001), *See also Prego* v. *Falcioni*, 2006 WL 463189 (Conn. Super. Ct. 2006); *Phibbs* v. *Odell*, 121 Wash. App. 1008, 2004 WL 811750 (Div. 3 2004); *McCormick* v. *Allstate Ins. Co.*, 870 So. 2d 547 (La. Ct. App. 3d Cir. 2004); *Perkins* v. *Allstate Indem. Ins. Co.*, 821 So. 2d 647 (La. Ct. App. 2d Cir. 2002).

66. *See, e.g., Windt* v. *Becerril*, 2018 Colo. Dist. LEXIS 28 (D. Colo. March 18, 2018), in which the court denied defendant's motion in limine to preclude evidence of cell phone use at time of motor vehicle accident.

67. *Knecht* v. *Balanescu*, 2017 U.S. Dist. LEXIS 178874 (M.D. Pa. Oct. 30, 2017), at 44-45.

68. *Prescott* v. *R&L Transfer, Inc.*, 2015 U.S. Dist. LEXIS 191471 (W.D. Pa. April 28, 2015). *See also O'Toole* v. *Carr*, 345 N.J. Super. 559, 566, 786 A.2d 121 (App. Div. 2001), *aff'd*, 175 N.J. 421, 815 A.2d 471 (2003); *Williams* v. *Cingular Wireless*, 809 N.E.2d 473, 478 (Ind. Ct. App. 2004); *Commonwealth* v. *McGrath*, 60 Mass. App. Ct. 685, 805 N.E.2d 508, 514 (Mass. App. Ct. 2004) *Butts* v. *United States*, 822 A.2d 407, 419 (App. D.C. 2003).

69. *See, e.g., Cole* v. *Oregon Driver and Motor Vehicle Serv. Branch (DMV)*, 336 Ore. 565, 87 P.3d 1120, 1134 (Ore. 2004); *Bonds* v. *Emerson*, 94 S.W.3d 491, 492 n.2 (Tenn. Ct. App. 2002).

70. *See, e.g., Devine* v. *Lawrence*, No. CI-12-14966 (Lancaster C.P. May 9, 2016) *Urban* v. *Wagner*, 2002 Mont. Dist. LEXIS 1828 (First Judicial District Court of Montana, Lewis and Clark County, Jan. 10, 2002).

Some courts have held that cell phone records may be used to *circumstantially* prove cell phone use—and, therefore, distracted driving. In *Scianni* v. *Suriano*,[71] the court permitted the plaintiff to introduce the defendant's cell phone records which showed a phone call beginning at 2:37 p.m. and concluding at 2:39 p.m., one minute prior to the earliest estimated time of the accident, holding that "the close proximity in time—as little as one minute—between the end of the plaintiff's third cell phone call and the estimated time of impact renders the billing record probative under the liberal definition of relevancy."[72]

At least two Pennsylvania cases provide guidance as to how cell phone records can make or break a plaintiff's case at trial. In *Biancheri* v. *Reinford*,[73] the plaintiff attempted to make a left-hand turn across two lanes of traffic and was struck by a vehicle in the far right lane that had been partially hidden by a city bus. The plaintiff argued that the defendant was negligent by, *inter alia*, talking on her cell phone at the time of the accident, which occurred between 3:00 p.m. and 3:19 p.m. At trial, the plaintiff presented defendant's cell phone records, which revealed that:

> between the hours of 1:26 to 4:34 p.m., there were inbound and outbound calls from [defendant's] cell phone, many recorded as lasting one to two minutes . . . [Testimony from the cell phone carrier representative indicated] that the inbound calls to appellee's phone could have gone to voicemail without that being indicated on appellee's cell phone records [and that] calls lasting just a few seconds could be recorded as one minute calls.[74]

The defendant also testified that she was not using her cell phone at the time of the accident. The jury returned a verdict in favor of the defendant. In denying the plaintiff's motion for post-trial relief, the trial court declined to find that the jury's verdict was against the weight of the evidence, stating that there had been no evidence that the defendant had operated her vehicle negligently or in disregard for the safety of others, or that she had disregarded traffic signals, or that she was traveling at an excessive rate of speed. The court also noted that there was no evidence that any phone calls reflected on the defendant's cell phone records were not made using a hands-free device. Thus, merely providing a driver's cell phone records, without evidence as to whether those records indicate a phone call made or accepted (as opposed to a call that went directly to voicemail), or whether the driver had hands-free capabilities while driving, may not establish that a driver was using a cell phone at the time of an accident.[75]

As of this writing, there is only one, non-precedential, panel decision of the Superior Court touching on evidentiary issues in a motor vehicle accident involving use of a cell phone. In *Gilley* v. *Woloszyn*,[76] it was the plaintiff's cell phone records which in part led to a defense verdict. At trial, the plaintiff testified that she had not

71. *Scianni* v. *Suriano*, 2007 NJ Super Unpub LEXIS 1070 (App Div. Feb. 20, 2007), relying upon *Hiscott* v. *Peters*, 324 Ill. App. 3d 114, 257 Ill. Dec. 847, 754 N.E.2d 839 (2d Dist. 2001). The appeals court found that cell phone records of one of two motor vehicle accident defendants showing a one minute cell phone call from 1:14 p.m. to 1:15 p.m. were improperly excluded at trial where the accident was reported to police at 1:20 p.m., given that all clocks are not synchronized and that it might have taken five minutes for the accident to be reported.

72. Accord, *Miller* v. *Lewis*, 40 Misc. 3d 490, (Supreme Court of N.Y. March 20, 2013). *But see TXI Transp. Co.* v. *Hughes*, 224 S.W.3d 870 (Tex. App. Fort Worth 2007), *petition for review filed*, (July 9, 2007).

73. *Biancheri* v. *Reinford*, 2012 Phila. Ct. Com. Pl. LEXIS 314 (Philadelphia C.P. September 23, 2012).

74. *Id*. at 7.

75. *And see Dionicio* v. *Homes*, 2002 WL 1614113 (Cal. App. 4th Dist. 2002) (noting that admission of defendant driver's cell phone records showing **no activity** during the time period when accident occurred was, at worst, harmless error given driver's testimony that he was not on the phone).

76. *Gilley* v. *Woloszyn*, 2017 Pa. Super. Unpub. LEXIS 1168 (Pa. Super. Mar. 29, 2017).

been on her cell phone at the time of the accident. But she had previously signed a form indicating that the accident had occurred at 10:02 a.m., and the cell phone records revealed that she had a two-minute cell phone call that began at 10:01 a.m. (There were several other problems with her testimony). The jury returned a verdict attributing 60% negligence to the plaintiff, and she appealed. In a 2-1, non-precedential decision, a Superior Court panel affirmed, the majority reasoning in part:

> [W]e conclude that the evidence supports Appellee's theory that Appellant's car was stopped in a roadway, with no cars in front of her, while she was talking on her cell phone with her assistant. . . . Thus, there is sufficient evidence to support the jury's conclusion that Appellant was acting negligently, and that her contributory negligence was sixty-percent the cause of the accident.[77]

In some cases, parties to motor vehicle litigation have attempted to utilize experts to establish the role of cell phone use as a causative factor. The types of experts offered, and the results, have varied. There appears to be only one reported case in Pennsylvania. In *Cheatham* v. *Kratsa*,[78] the plaintiff claimed to have been struck by the defendant as he attempted a left-hand turn and also alleged that the defendant was on her cell phone at the time of the accident. The court permitted plaintiff to offer the testimony of a research psychology expert that a driver engaged in a phone conversation has a slower reaction time than a drunk driver, due to the cognitive focus expended in the conversation. The jury found the plaintiff to be 75% negligent, and a defense verdict was entered.[79]

D. Verdicts

Reported jury verdicts do not appear to reflect punitive damage awards in cases where the defendant driver was found to have been using a cell phone at or immediately prior to an accident, nor does cell phone use appear to markedly increase verdict value. Allegheny and Philadelphia counties have supplied most of the Pennsylvania jury verdicts from 2006 through 2019; those twenty-two verdicts range from $800 to $12.1 million (the high being an outlier), with an average of award of $662,537. Not including the $12.1 million verdict, the average is a more predictable $117,896.[80]

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77. *Id. And see Malinoski* v. *Fairbanks*, No. GD-07-002774 (Allegheny C.P. February 06, 2008) (using cell phone records to show defendant on phone at time of accident); *Kubeck* v. *Foell*, 02-52902 (Delaware C.P. Nov.14, 2006) (same).

78. In *Cheatham* v. *Kratsa*, No. GD-06-005788 (Allegheny C.P. May 03, 2007).

79. For cases from other jurisdictions, *see: Windt* v. *Becerril*, 2018 Colo. Dist. LEXIS 28 (D. Colo. Mar. 18, 2018); *Graves* v. *Toyota Motor Corporation*, No. 2:09cv169KS-MTP (S.D. Miss. February 24, 2012); *Hennes* v. *J.C. Fodale Energy Services, LLC*, No. 2015-CI-12710 (Texas District Court – Bexar County, Nov. 20, 2017); *Gonzalez* v. *Vela*, No. 2014-DCL-07648 (Texas District Court – Cameron County, June 10, 2016); *Southard* v. *Belanger*, 966 F.Supp. 2d 727 (W.D. Ky. Aug. 19, 2013); *Roger* v. *Mumme*, No. 2012-DCV-1731-G (Texas District Court – Nueces County, Apr. 26, 2013); *Mistich* v. *Parrish*, No. 2008-CI-18279 (Texas District Court – Bexar County, August 23, 2012).

80. *Ware* v. *Thompson*, CP Phila., 2019 PA Jury Verdicts Rev. Lexis 33 ($23,728); *Ahn* v. *Pennelli*, CP Mont., 2019 PA Jury Verdicts Rev. Lexis 119 ($18,000); *Avery* v. *Spadafora*, CP Alleg., 2018 PA Jury Verdicts Rev. Lexis 239 ($18,500); *Carter* v. *Suever*, CP Mont., 2017 PA Jury Verdicts Rev. Lexis 181 ($3,000); *Demi* v. *Christy*, CP Alleg. 2016 PA Jury Verdicts Rev. Lexis 370 ($10,000); *Bowlus* v. *Callahan*, CP Alleg. 2016 PA Jury Verdicts Rev. 271 ($778); *Sieger.* v. *Riccardi*, CP Bucks, 2015 PA Jury Verdicts Rev. 89 ($350,000); *MacPhee* v. *Sandberg*, CP Bucks, 2015 PA Jury Verdicts Rev. Lexis 225 ($40,000); *Nielsen* v. *Schirra*, CP Alleg., 2013 PA Jury Verdicts Rev. Lexis 366 ($14,000); *Eberly* v. *Smith*, CP Mont., 2014 PA Jury Verdicts Rev. Lexis 90 ($3,881); *Jones* v. *Meyers*, CP Alleg., 2014 PA Jury Verdicts Rev. Lexis 124 ($5,500); *Elliot* v. *Quinn*, CP Phil., 2013 PA Jury Verdicts Rev. Lexis 422 ($250,000); *Harmon* v. *Sneberger*, CP Phil., 2011 PA Jury Verdicts Rev. Lexis 30 ($5,506); *Mee* v. *Fabrizio*, CP Phila., 2011 PA Jury Verdicts Rev. 198894 ($12.1 million); *Jacoby* v. *Van Geldren*, W.D.PA., 2010 PA Jury Verdicts Rev. Lexis 36200 ($750,000); *Robinson* v. *Johnson*, CP Phil., 2010 PA Jury Verdicts Rev. Lexis 35545 ($6,028); *Greer* v. *Benvignati*, CP Phil., 2010 PA Jury Verdicts Rev. Lexis 36239

IV. CONCLUSION

There is no question that cell phones are here to stay—and with each new generation, our smartphones get even smarter, give us even more features and conveniences, and occupy us to an even greater extent. It's hard to escape the tug of the smartphone, and, because so many of us lead increasingly jam-packed lives, it's even harder to give up the opportunity to "catch up" on things as we drive from here to there in the course of the day. After all, what else are we doing? Why not multi-task during the soccer-pick up or the school carpool?

It is true that hands-free devices tend to be safer, but they can still be a distraction. Starting or ending a call requires slightly more attention than the simple act of talking, and let's face it—when that text pings in (unless your car will can read it to you), who can resist one little peek?

If the foregoing article has done nothing else, it has likely demonstrated that allegations of cell phone use are becoming as common an averment of negligence as "failing to maintain a proper lookout," and the trend seems to be that such allegations will be sufficient to support a claim for punitive damages. While it does not appear that cell phone use has been the basis for any punitive damages awards as of yet (because most of the cases that have been litigated to verdict appear to have involved talking, as opposed to texting), one imagines that the day is not far off.

As litigators, we can educate ourselves as to how to prepare to prosecute and defend motor vehicle lawsuits where cell phone use is alleged. As people, we can try to make our roadways a little less dangerous for everyone. Safe travels, all.

($10,000); *Beltram* v. *Vick*, CP Phil., 2008 PA Jury Verdicts Rev. Lexis 34834 ($300,000); *Malinoski* v. *Fairbanks*, CP Alleg., 2008 PA Jury Verdicts Rev. Lexis 30731 ($521,322); *Urroz* v. *Muniz*, CP Phil., 2007 PA Jury Verdicts Rev. Lexis 40201 ($43,571); *Duret* v. *Mogilewski*, CP Phil., 2006 PA Jury Verdicts Rev. Lexis 42573 ($85,000); *Kubeck* v. *Foell*, CP Del., 2006 PA Jury Verdicts Rev. Lexis 43826 ($250,000).