

## Driving While Distracted Proves Costly

September 20, 2010

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**As seen in the September 17th issue of [Business Lexington](#).**

In recent years, hand-held communication devices have gone from a convenience to a necessity. As these devices have become more affordable and sophisticated, users have enjoyed the ability to communicate via text message and email from virtually anywhere. Among professionals, the use of hand-held communication devices has become the norm.

Unfortunately however, the popularity of these advanced cell phones has led to the proliferation of accidents resulting from their use while driving. It should come as no surprise that a person is more likely to be involved in an accident while reading or sending a text message or email. What may be surprising is just how dangerous cell phone use while driving actually is. According to the National Highway Traffic Safety Administration (NHTSA), driver distraction is the leading factor in most crashes. Nearly 80 percent of crashes and 65 percent of near-crashes involve some form of distraction. In Kentucky in 2009, there were over 57,000 crashes resulting in over 16,000 injuries and 217 fatalities due to distracted driving. Further, in 2009, the United States Court of Appeals for the Sixth Circuit cited studies which had found that text messaging increased a driver's risk of collision by 23 times.

In response to the danger posed by the use of cell phones while driving, a number of states have passed laws prohibiting such use. Kentucky joined this list on April 15, 2010, when Governor Steve Beshear signed HB 415 into law. HB 415 creates new traffic regulations that restrict the use of hand-held communication devices while driving. According to the law, no person may write, send or read text-based communications (including text messages, instant messages and emails) while operating a motor vehicle. A few exceptions allow texting and emailing while driving under certain circumstances, such as the reporting of crimes or the summoning of emergency law enforcement and medical assistance. Further, drivers under 18 years of age may not operate a motor vehicle while using a personal communication device at all. Thus, while the law would not prohibit drivers over 18 from talking on a cell phone while operating a motor vehicle, it would ban such activity for those under 18. This law went into effect on July 15, 2010, but officers will not begin to issue fines for its violation until January 1, 2011. Until that date, violators will receive a courtesy warning. After January 1, however, persons who violate this law will be fined \$25 for the first offense and \$50, plus court costs, for each subsequent offense.

In addition to the prohibitive penalties imposed by the new law, state tort law also provides compensation for the victims of accidents caused by negligent activity, which certainly would include cell phone use while driving. While the intent of the tort system is to make injured parties whole, the financial – not to mention emotional – costs it imposes on negligent drivers can be more significant than any law enforcement fine. A well-known Texas lawsuit clearly illustrates the price paid by both distracted drivers and their victims. In November of 2007, 21-year-old Megan Small was killed when a car driven by Jason Reed Vestal drifted into her lane and struck her car. Small's family sued Vestal, and their attorneys uncovered evidence showing that Vestal had sent or received text messages in the time leading up to the accident and had probably been responding to one when the accident occurred. The case recently was tried to a jury, which found Vestal at

fault and awarded the Smalls \$21.8 million in damages, a county record for personal injury and wrongful death verdicts. Perhaps unsurprisingly, lawyers representing auto accident victims now frequently request the telephone records of defendant drivers. At least one attorney specifically advertises his services to persons harmed by the use of cell phones while driving and it is doubtful that he is the only attorney doing so.

Although cell phones have facilitated the transmission of information, their use while driving has created a public safety hazard that, according to some reports, is at least comparable to, if not more severe than, that posed by drunken driving. States have responded to this threat by passing laws seeking to minimize these dangers. Personal injury attorneys now actively target distracted drivers, and juries have little sympathy for those who injure others because they are using a cell phone while driving. Given the personal and economic risks posed by distracted driving, it simply makes no sense to engage in this behavior. Drivers should think twice before using their cell phones to read or send messages while driving.