

"DWD" Driving While Distracted: The New DUI

As of December 2008, there were 271 million cell phones in use in the United States, representing 84 percent of the country's population. In recent months, we have seen increased media reports about the significant amount of chatting, texting and emailing that is occurring while driving, resulting in distracted drivers and dangerous accidents. The National Highway Traffic Safety Administration estimates that driving while distracted contributes to one in every four car crashes. By some estimates, in as many as half of all crashes (there were six million last year), cell phone use was involved.

Various sources of research on distracted driving reveal some surprising facts:

- Using a cell phone while driving, whether handheld or hands-free, delays a driver's reactions as much as having a blood alcohol concentration at the legal limit of .08 percent.
- Using a cell phone while driving reduces the amount of brain activity associated with driving by 37 percent.
- The phenomenon known as 'inattention blindness' is a cognitive preoccupation with a conversation that occurs even without the need to hold the phone, which results in a slower reaction time and limits the driver's ability to detect changes in conditions.
- 26 percent of American teens admit to texting while driving and 48 percent of teens aged 12-17 say they have been a passenger in a car while the driver was texting.
- Nearly 6,000 people died in 2008 in crashes involving a distracted driver, and more than half a million were injured.

The widespread awareness of this problem has prompted government concern, and states are now addressing the issue legislatively. Some states and municipalities have acted to ban texting while driving and/or driving with a handheld device, while six states – including Florida – have laws that

prohibit local jurisdictions from enacting restrictions. In other states, localities are allowed to ban cell phone use or texting while driving. In October 2009, President Obama issued an order banning all 4.5 million federal employees from texting while driving.

DWD LIABILITY AND PUNITIVE DAMAGES

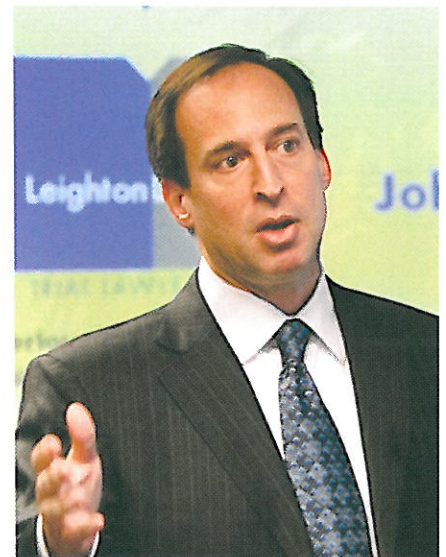
It took many years and a great deal of common law development before drunk driving gave rise to a claim for punitive damages. Over time, legislatures and courts recognized that the voluntary intoxication combined with driving a deadly instrumentality like a car or truck was tantamount to an intentional act. The conduct has been universally recognized as being so grossly negligent such that the imposition of punitive damages is appropriate both as a means to punish the wrongdoer and deter others from committing such acts.

If a driver texting or using a cell phone is as impaired as a drunk driver, as some studies have concluded, it stands to reason that the knowing and voluntary act of texting while driving should also give rise to punitive damages. In many jurisdictions punitive damages are available to victims of drunk driving. The victims of voluntarily distracted drivers, where provable, should be similarly afforded the same remedy.

Another means of creating a deterrence to the use of handheld devices and texting while driving is to hold employers liable for such behavior when committed in the course and scope of employment. Under the doctrine of respondeat superior, the employer may be held liable for the negligent act of its employee while the employee is furthering the employer's business. Moreover, direct negligence may exist for entrusting or encouraging

employees to utilize handheld devices while operating vehicles.

For many high-risk activities, it is only through the civil justice system that true social change will occur. DWD may be one of those activities. Because it is too easy, too accessible, and our world has become too multi-tasking oriented, societal change may require litigation and economic disincentives. The ability to obtain punitive damages, and hold responsible those who benefit, condone or encourage DWD, is the lynchpin of making this change. Punitive damages are just one tool that the practitioner needs to use to obtain fair justice and reduce the frequency of risky behavior by vehicle operators. ¹



By John Elliott Leighton
Leighton Law, P.A.
1401 Brickell Ave.
Suite 900
Miami, FL 33131
888-395-0001
www.LeightonLaw.com