

# New Jersey Becomes First State to Impose Distracting Driving Liability on Text Senders

by Carmen Dellutri

New Jersey is the first state in the country to impose personal injury liability on the sender of a text message. A state appeals court recently ruled that there are some situations in which a “remote texter” has a duty not to text someone who they know is behind the wheel.

As we previously discussed on this [Florida Injury Blog](#), David and Linda Kubert both suffered severe injuries when Kyle Best swerved onto the wrong side of the road and struck the couple on their motorcycle. The teen admitted he had glanced at his cell phone just before the accident.

While the lawsuit initially only named Best, it was later amended to include the teen who was texting him at the time of the crash. The lawsuit alleged that Shannon Colonna aided and abetted Best’s negligence by texting him when she knew or should have known he was driving. The Kuberts settled their claim with Best, but pursued their lawsuit against Colonna.

The Appellate Division of the New Jersey Superior Court rejected the argument that a sender of text messages never has a duty to avoid texting to a person driving a vehicle. “We conclude that 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,” the court held.

As further explained in the opinion, “The sender should be able to assume that the recipient will read a text message only when it is safe and legal to do so, that is, when not operating a vehicle. However, if the sender knows that the recipient is both driving and will read the text immediately, then the sender has taken a foreseeable risk in sending a text at that time. The sender has knowingly engaged in distracting conduct, and it is not unfair also to hold the sender responsible for the distraction.”

Nonetheless, the New Jersey court did hold Colonna liable for the crash. It concluded that the plaintiffs failed to introduce sufficient evidence that Colonna knew Best would read the text messages when she texted him immediately before the accident.

“Even if a reasonable inference can be drawn that she sent messages requiring responses, the act of sending such messages, by itself, is not active encouragement that the recipient read the text and respond immediately, that is, while driving and in violation of the law,” the court explained.

The case is likely to be appealed to the New Jersey Supreme Court. However, it still sets the stage for other courts to consider whether to expand liability for texting and driving accidents.