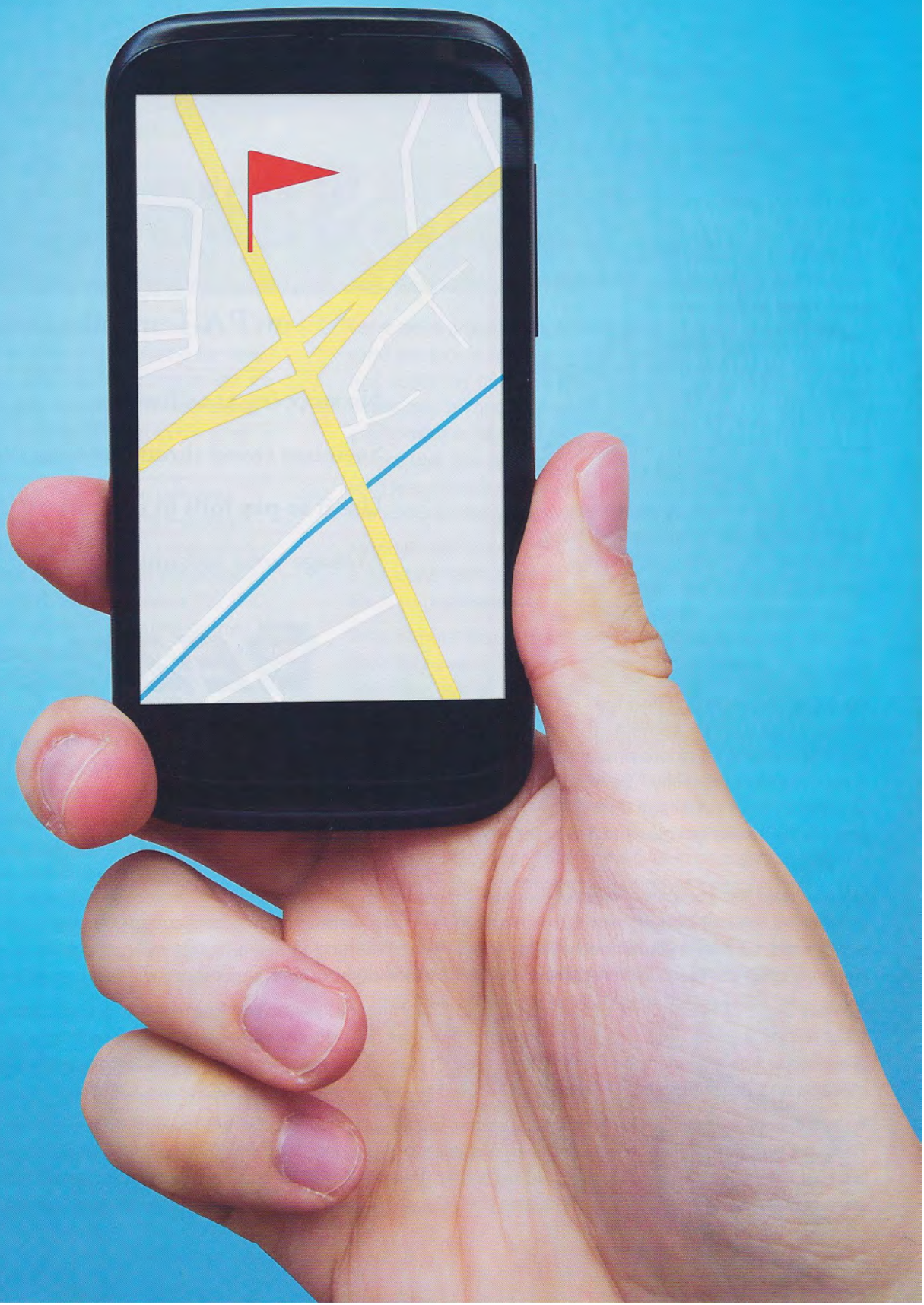


Pennsylvania: Punitive Damages and the Handheld GPS

By Gary N. Stewart



Judge Terrance R. Nealon of the Court of Common Pleas of Lackawanna County, (Scranton) Pennsylvania recently issued a 20-page opinion granting our Motion for Partial Summary Judgment and dismissing claims of punitive damages against a driver and his employer for the use of a handheld GPS at an intersectional accident in *Steven Rockwell v. Glenn Knott and New Prime, Inc.*, C.C.P. No: 12-CV-1114.

In the lengthy opinion, Judge Nealon outlines and describes the case law from jurisdictions across the United States and notes that this presented a “novel issue of apparent first impression in [Pennsylvania].”

He noted that “a motorist arguably may engage in recklessly indifferent conduct, and thereby be potentially liable for punitive damages, if he completely diverts his or her attention from the roadway to observe a low positioned GPS device and nevertheless continues to travel on the roadway until he collides with another vehicle.”

The Court also noted “if the GPS device is affixed to the dashboard or windshield of a vehicle, such that the operator maintains peripheral vision of the roadway, a motorist’s split second glimpse at its screen is akin to a momentary glance at a speedometer or side or rearview mirror, and does not constitute reckless indifference or wanton misconduct. However, if a driver completely diverts his or her attention from the roadway to view a GPS device which is not located on the dashboard or windshield, and continues to travel in his or her vehicle without any view of the roadway or other traffic, he may be deemed reckless.”

In our case, the driver was operating a company passenger van escorting a truck driver to a local bus station. When they arrived at the purported location, it was discovered that the bus station had been moved to another part of town. The driver—who did not have a commercial driver’s license—found the new location on his handheld smartphone and requested directions. He then placed it in the cup holder between the seats and began his route. According to his testimony, he arrived at the intersection and glanced at the GPS to make sure that the street on which he was supposed to turn left was in fact the correct street. According to his testimony, he was not looking at the GPS when he began his left turn, but he did not see an approaching motorcycle. The collision ensued and litigation was commenced.

In Pennsylvania, punitive damages are appropriate when an individual’s actions are of such an outrageous nature as to demonstrate intentional, willful, wanton or reckless conduct. Wanton misconduct or reckless indifference “means that the actor has intentionally done an act of an unreasonable character, and in disregard of a risk known to him or so obvious that he must be

taken to have been aware of it, and so great as to make it highly probable that harm would follow.” Further, in Pennsylvania, a punitive damages claim must be supported by evidence sufficient to establish that a defendant had a subjective appreciation of the risk of harm to which the plaintiff was exposed and that he acted or failed to act, as the case may be, in conscious disregard of that risk.

Judge Nealon outlined Pennsylvania cases where claims for punitive damages have been permitted. These included situations where a driver was intoxicated; a truck was allowed to go out on the road when the load was not properly distributed because the loading rack was broken, and the truck then did not brake when traveling downhill in excess of the speed limit, while it had limited visibility due to the mirrors being obscured, and the driver failed to use his turn signals; a driver drove at an excessive speed and failed to stop at a stop sign while operating a vehicle in a construction zone; a truck was intentionally driven onto a plaintiff’s property and into a home after the driver lost control of his truck due to brake failure; and a driver admitted she was having trouble staying awake and continued to drive.

In addition, Judge Nealon examined and compared other Pennsylvania decisions that decided that a punitive damages claim against a defendant who was speaking on his cellular phone could proceed *only* if there was “some *additional indicia of recklessness* besides the mere use of a cellphone.” Cellphone usage alone does not give rise to a claim for punitive damages in Pennsylvania.

Section 3316(a) of the Pennsylvania Vehicle Code, 75 Pa.C.S., only bans text messaging while driving and does not prohibit a motorist from engaging in cell phone conversations while driving.

Judge Nealon also explored the approaches of other jurisdictions when analyzing punitive damage claims against motorists who have allegedly caused accidents while speaking on cell phones. Some courts agree that cell phone usage alone is not sufficient to support an award of punitive damages (Alaska), but some have concluded that the use of a cell phone in *combination* with a violation of a vehicle code provision or a recognized rule of the road does create a triable issue of fact regarding the recovery of punitive damages (Arkansas, Mississippi, Oklahoma, Delaware and South Carolina). It appears that there are more jurisdictions that allow the claim for punitive damages to remain when cell phone usage combined with another act is involved, than the rule from Alaska.

Furthermore in 2010, a federal judge from the District of New Jersey in *Sipler v. TransAm Trucking, Inc.* dismissed a claim for punitive damages against the tractor-trailer driver who was talking on his *hands-free*

cell phone at the time of the collision which was not prohibited by company rule. Gary N. Stewart and Brian A. McCall of Rawle & Henderson defended the *Sipler v. TransAm Trucking, Inc.* matter. The federal judge wrote, in an opinion "Not For Publication," that "[w]hile such conduct may be negligent, it does not show wanton and willful disregard of Plaintiffs' safety because [the driver] testified that it did not occur to him that he should not be using a hands-free cell phone while driving." It is important to recognize that on July 18, 2012, the New Jersey Legislature enacted a law which states [p]roof that the defendant was operating a hand-held wireless telephone while driving a motor vehicle...may give rise to an inference that the defendant was driving recklessly.

Essentially, it appears that a claim for punitive damages may be permitted in numerous jurisdictions, including Pennsylvania for the use of a *handheld* GPS and possibly even the use of a handheld cell phone when other additional facts are plead and/or proven. Drivers, whether in a commercial vehicle or passenger vehicle, should not use these handheld devices and should also be instructed by their employers in the permissible practice. In either type of vehicle, a GPS should be mounted so that the driver does not have to completely divert his attention from the roadway. In fact, Judge Nealon found that the position of the GPS device, the extent of the driver's distraction and the distance traveled by the vehicle during the period of diversion are important factors in determining whether the motorist is charged with outrageous conduct.

It should be noted that all GPS devices "are not created equal." It is critical for commercial operators to use the right navigation system when operating a truck or bus. A typical GPS may not provide low bridge heights, commercial vehicle road restrictions or hazmat routes, thus resulting in a bigger problem than simply getting lost. Some are specifically designed for commercial truck and bus driver use and the Federal Motor Carrier Safety Administration provides a website that can provide further guidance in this regard. Please visit www.fmcsa.dot.gov.

In conclusion, drivers should be taught and warned to avoid all distractions and "keep their eyes on the road" in order to be safer and avoid an accident where claims of punitive damage can be justified. One might expect that the next step will be criminal penalties for such distractions.



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Kline's Services, Inc., Achieves Safety Milestone

On Friday, August 2, Kline's Services, Inc. worked the 365th day recordable injury and illness free. This achievement is a result of Kline's Services' commitment to employee safety and implementation of a "Best in Class" safety program. Carley Smith, Kline's Services safety director, stated, "Safety is Kline's #1 core value. It's a culture born from a series of guidelines that govern the activities of our employees, subcontractors and vendors – the catalyst that drives everything we do."

Being savvy about safety and trained to recognize occupational hazards has become part of Kline's Services culture. "We have established a very strong safety culture, and it's reinforced by strong support from our management team," said Dave Kline, president of Kline's Services. "Every employee knows and follows the belief that safety is everyone's responsibility; that in itself motivates our team to take care of one another and make sure everyone goes home healthy at the end of the work day."

Kline's Services celebrated the milestone with an all employee luncheon co-sponsored by Engle-Hambright & Davies insurance brokers. Gary Seiber, EHD commercial account executive, spoke at the luncheon to congratulate employees for their teamwork and commitment to helping change the safety culture at Kline's. "A company's safety culture is a commitment in which words are meaningless and actions are everything – it's empowering employees to step up when they see an unsafe act or situation," he said.

For more information, please visit <http://www.KlinesServices.com>