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PENNSYLVANIA

DISTRACTED DRIVING

Pokémon Go is the latest cellphone game craze, and it is taking distracted driving to new levels. Like many other states, Pennsylvania has a law banning texting while driving. As it is currently written, however, that law only applies to texting—or similar forms of text-based communicating. This law should be extended to ban playing cellphone games while driving, which, given the policy behind the law, would not require much effort.

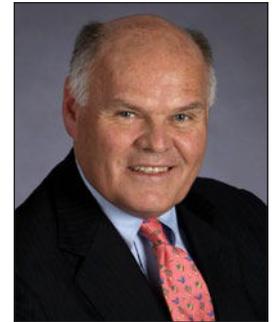
Pokémon Go uses GPS-enabled cellphones to superimpose a virtual map onto real-world surroundings. Players are encouraged to wander around their surroundings, and are rewarded by collecting cartoon characters. Players collect characters either by finding and capturing them “in the wild” in various locations or by “hatching” the character by traveling a certain distance.

Recognizing that many players may be tempted to play Pokémon Go while driving, the game does attempt to dissuade this behavior. The game uses the phone’s GPS system to calculate a player’s speed. When the player’s speed is over 10 miles per hour, the game will present a screen warning the player that the game is not meant to be played while driving. The game will also not count any distance traveled at a speed faster than 10 miles per hour toward the hatching of a character. However, Pokémon Go does not otherwise prevent a player from capturing a cartoon character “in the wild” while he is driving.

Despite these safety features and the game’s emphasis on walking, many Pokémon Go players have confessed to playing while driving. A recent study looked at a 10-day period, shortly after the game was released in 2016, from July 10 to 19. The study found that many drivers and pedestrians were distracted because they were playing while driving or walking.

The researchers discovered numerous players photographing themselves and posting images and status updates to various social media websites. On one website in particular—Twitter—the researchers found 4,000 tweets indicating that players were playing Pokémon Go while driving. Those 4,000 tweets made up 18% of all tweets created from July 10 to July 19. Researchers also found that 14 motor vehicle accidents during that timeframe were attributable to playing Pokémon Go while driving. One of the accidents involved a player driving his car into a tree and another involved a player sideswiping a police car.

Distracted driving is a major concern, especially for young drivers. The American Automobile Association estimates that distracted driving is a primary factor in 59% of all vehicle accidents involving young drivers. Among these young drivers (aged 16–24), the leading cause of death is motor vehicle accidents. These statistics will certainly not diminish with games as popular as Pokémon Go targeting these same young drivers, many of whom are already playing while driving.



Charles A. Buechel, Jr.



John J. Heurich, Jr.

A recently filed lawsuit against Apple for encouraging distracted driving with its FaceTime app further illustrates the dangers of distracted driving. The dispute focuses on a fatal accident that occurred on December 24, 2014, which resulted in the tragic death of a five-year-old girl. The driver who caused the fatal accident was using FaceTime when he slammed into the back of another vehicle carrying the five-year old girl. The girl was killed.

Similar to the Pokémon Go developers, Apple realized that iPhone users may be tempted to use FaceTime while driving. As early as December 2008, Apple filed a patent application—which was later issued by the United States Patent and Trademark Office in April 2014—for its FaceTime app that would prohibit the ability of drivers to use the application while driving. However, unlike the Pokémon Go developers, Apple has not yet implemented this feature for FaceTime. The app does not warn users about using FaceTime while driving.

Pennsylvania's anti-texting law, if it is extended as it should be, can be one of several effective means to curb such distracted driving. As with many other states, Pennsylvania has a law prohibiting texting while driving. Under the law, it is a summary offense for the driver of a vehicle to use a cellphone "to send, read or write a text-based communication" while driving. The law further says that it is not a violation for the driver to read, select or enter a phone number or name for the purpose of making a telephone call. Finally, the law is limited only to making text-based communications, which it defines as any form of written communication, such as a text message, e-mail or instant message.

Unfortunately, as it is currently written, Pennsylvania's anti-texting law does not prohibit drivers from video calling or playing cellphone games while driving. The law only applies to distractions created by using a cellphone for communicating

via text-based messages while driving. Under the Pennsylvania law, drivers are free to distract themselves by video calling other people. In fact, Pennsylvania's law specifically carves out an exception for placing telephone calls, which would almost certainly include video calling.

Drivers in Pennsylvania are also free to play cellphone games while driving. Oddly enough, under the law, a driver could play a game like Pokémon Go while driving. That same driver could not, however, use Twitter while driving to send a message about the new Pokémon character that he or she caught. Given the recent lawsuit against Apple and the Pokémon Go statistics above, video calling or playing cellphone games while driving is no less distracting than texting while driving.

Pennsylvania's law can easily be extended to cover various non-text related forms of distracted driving. The policy behind the law is to encourage safe driving by eliminating distractions and thereby creating a safer driver. Obviously, a less distracted driver is a safer driver than a distracted driver. And, a driver engaged in a video call or playing a cellphone game is no less distracted and unsafe a driver than one who is texting. Cellphone apps that permit video calling and games that encourage and incentivize players for traveling in the real world are already distracting enough.

The Pokémon Go study discussed above found that from July 10–19, 4% of all tweets indicated that a pedestrian was distracted, with many stating that they were almost hit by cars. Such games can certainly be no less distracting for drivers. Because such games incentivize real-world wandering, many players may decide that driving instead of walking will allow them to cover more ground. The end result will be an increase in distracted and unsafe driving.

Charles A. Buechel, Jr., is a partner in our Pittsburgh office. He focuses his practice in the areas of insurance coverage, medical professional liability, construction, casualty and premises liability, product liability, maritime, and environmental torts. A member of the Academy of Trial Lawyers of Allegheny County, Charlie is a frequent lecturer and author on personal injury law, among other specialty topics. He has been an Associate Opinion Editor and has served as the editor of the *Jury Verdicts* project of the *Pittsburgh Legal Journal*. He earned his J.D. from Loyola University School of Law and his B.S. degree from Villanova University. He is admitted to practice in Pennsylvania, as well as the U.S. District Court for the Western District of Pennsylvania and the U.S. Court of Appeals for the Third Circuit.

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John J. Heurich, Jr., is an associate in our Pittsburgh office. He focuses his practice in the areas of insurance coverage, medical professional liability, construction, casualty and premises liability, product liability, and environmental torts. John earned his J.D. from Duquesne University School of Law in 2013. He received a Pro Bono Certificate of Recognition and a Certificate of Distinction in Clinical Work for his service with the Veterans Clinic at Duquesne University. In the Summer of 2011 he attended the Duquesne University School of Law and Universität zu Köln in Cologne, Germany, receiving instruction in European Public Law, Corporate Governance, and Intellectual Property. John earned his B.S. in Neuroscience and Psychology from Allegheny College in 2009. John is admitted to practice in Pennsylvania, as well as the U.S. District Court for the Western District of Pennsylvania.

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OF COUNSEL

Rawle & Henderson LLP is pleased to announce that **Suzanne Curran Murphy** and **Lisa L. Prince** have been named Of Counsel to the Firm in our Philadelphia office, effective January 1, 2017.

Suzanne Curran Murphy concentrates her practice in the areas of premises liability, construction litigation and school bus/commercial motor vehicle litigation. Suzanne received her B.A. from Loyola College in 1989 and J.D. from Widener University School of Law in 1993. She served as a judicial law clerk for the Honorable Frank X. O'Brien, Court of Common Pleas in Philadelphia, Pennsylvania. She is admitted to practice in the state courts of Pennsylvania and New Jersey as well as the U.S. District Court for the District of New Jersey and the U.S. District Court for the Eastern District of Pennsylvania. She has argued successfully before the Pennsylvania Superior Court. Suzanne is an active participant in the University of Pennsylvania Law School's Quaker Classic Mock Trial Tournament.



Suzanne Curran Murphy

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Lisa L. Prince focuses her practice in the areas of premises liability, product liability, commercial motor vehicle and construction law matters. She received her B.A. from Emory University in 1994 and J.D. from Widener University School of Law in 1997. While attending law school, Lisa served on the staff of the *Widener Law Review* and participated in the Moot Court Honor Society, where she competed for the National Championship. In addition, she was awarded a Constitutional Law Fellowship. Lisa is admitted to practice in the state courts of Pennsylvania as well as the U.S. District Court for the Eastern District of Pennsylvania. In addition to her practice, she has served as an associate professor at Manor College teaching legal/medical writing in the paralegal and legal nurse practitioner programs and volunteers on behalf of the Support Center for Child Advocates.



Lisa L. Prince

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Kathlyn C. Gorman has joined our Philadelphia office as Of Counsel to the firm. Kate concentrates her law practice in the areas of workers' compensation, insurance coverage, commercial motor vehicle matters and employment relations. Kate has represented a wide range of clients, including state agencies, municipalities, big box retail companies, food service/restaurant chains, goods/food manufacturing plants, trucking companies, national companies, small local businesses, insurance carriers, self-insureds, captives and third-party administrators.



Kate Gorman

She earned her J.D. from Widener University in 1991 and her B.A. from the University of New Hampshire in 1983. Kate is admitted to practice in Pennsylvania, New York, Connecticut and North Carolina, as well as the U.S. District Court, Eastern District of North Carolina. She has been rated AV Preeminent by Martindale-Hubbell. Prior to joining Rawle & Henderson LLP, Kate served as a partner for nearly 20 years with a North Carolina workers' compensation defense law firm.

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SALVATION ARMY TOY DRIVE

Rawle & Henderson LLP participated in the Salvation Army's 2016 Toy Drive to benefit underprivileged children across Greater Philadelphia. Pictured above l-r: **Kimberly A. House**, **Kenneth R. O'Neil, Jr.**, **Partner Tara Gill Nalencz**, **Partner William J. Carr**, **Joseph A. Gorman**, **Erin E. Lamb**, **Mary Ann Capriotti** and **Nicholas C. Campellone**, members of the firm's Catastrophic Loss Group, get ready to donate toys, games and stuffed stockings to the Salvation Army.



SUPPORT CENTER FOR CHILD ADVOCATES



Brett A. Wolfson

Brett A. Wolfson participated in the **Philadelphia Support Center for Child Advocates' 2016 Toy Drive**. He was a volunteer driver and helped deliver toys and gifts to local children. This year's campaign delivered gifts to more than 1,500 children in more than 600 households and institutions. Rawle & Henderson has assisted the Support Center since 1977 as an advocate for victims of child abuse and neglect in the city. Brett is a partner in our Philadelphia office. He focuses his practice on catastrophic injury and/or death cases involving products, construction/industrial/workplace, commercial motor vehicle, medical professional and premises liability. He earned his J.D. from Rutgers University School of Law and his B.A. in Philosophy from West Chester University.

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IN MEMORIAM

It is with deep sadness that Rawle & Henderson LLP announces the passing of our associate attorney **Nicholas C. Campellone**. Mr. Campellone passed away on Sunday, January 1, 2017, at the Hospital of the University of Pennsylvania. He was 30.

Mr. Campellone received his law degree from the Villanova University School of Law in 2011. While attending law school, he served as teaching assistant for Advanced Trial Practice and as a member of Villanova Law School's Civil Justice Clinic. He also received the Dorothy Day Award for Pro Bono Service. In addition, he served as a certified legal intern for the Montgomery County District Attorney's Office and the Philadelphia District Attorney's Office. After graduation, Mr. Campellone served as a judicial law clerk for the Honorable Juan R. Sanchez, United States District Court for the Eastern District of Pennsylvania. He earned his B.A. in Sociology and Philosophy from Gettysburg College in 2008. He participated in the Study Abroad Program, attending the University of Wollongong in New South Wales, Australia, in 2007.



Beloved son of Johanna (Dale) and Scott Goodwin, Mr. Campellone will be sadly missed by his girlfriend and soulmate, Emily Vitale and his paternal grandmother, Dorothy Goodwin. He will also be missed by several aunts, uncles, cousins, extended family and friends, and all of us here at Rawle & Henderson LLP.