



TIMOTHY J. ABEEL | EDITOR
tabeel@rawle.com

Commercial Motor Vehicle Section:

PARTNERS

Timothy J. Abeel
Cynthia M. Certo
Delia A. Clark
Jon M. Dumont
Robert A. Fitch
Nigel A. Greene
Gary N. Stewart

OF COUNSEL

James R. Callan
Diane B. Carvell
Dawn L. Jennings

PHILADELPHIA
(215) 575-4200

NEW YORK
(212) 323-7070

NEW JERSEY
(856) 596-4800

HARRISBURG
(717) 234-7700

DELAWARE
(302) 778-1200

PITTSBURGH
(412) 261-5700

www.rawle.com

PENNSYLVANIA PUNITIVE DAMAGES Handheld GPS



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 see 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.

*Steven Rockwell v. Glenn Knott and New Prime, Inc.,
C.C.P. No: 12-CV-1114*

Gary N. Stewart is a partner in the Commercial Motor Vehicle Section in our Harrisburg office. Gary is admitted to practice in Pennsylvania, New Jersey, Massachusetts, Connecticut, Vermont and Rhode Island as well as before the U.S. District Courts for the Eastern, Middle and Western Districts of Pennsylvania, the District of New Jersey, the District of Massachusetts, the District of Rhode Island, the District of Connecticut and the U.S. Court of Appeals for the First and Third Circuits.

Gary can be reached at (717) 234-7730; gstewart@rawle.com

AMERICAN COLLEGE OF TRANSPORTATION ATTORNEYS



Timothy J. Abeel



Timothy J. Abeel, chair of the firm's Commercial Motor Vehicle Section, attended the **2013 American College of Transportation Attorneys (ACTA) annual meeting** in Chicago, Illinois in August. Mr. Abeel is a founding member of the ACTA, a nonprofit association composed of 25 nationally known transportation attorneys who have extensive experience defending the trucking industry with regulatory and litigation issues. ACTA provides motor carriers with assistance at no expense on a variety of issues that affect the trucking industry on a regular basis. The ACTA annual meeting included roundtable discussions on topics including traumatic brain injury, motor carrier insurance forms and broker issues, preparation of motor carrier witnesses, broker liability, evidence/spoilation issues, worker classification, and on-board technology.

Tim has defended transportation companies in the state and federal courts of Pennsylvania, New York, New Jersey and Delaware for more than 30 years. He was one of the founders of the Trucking Industry Defense Association (TIDA) and he served as President of TIDA in 2000-2001. From 1994 to 2003, he was a member of the TIDA Board of Directors. His clients include some of the largest transportation companies and insurers of commercial motor vehicles in the United States. He is a member of the firm's Executive Committee.

AMERICAN INN OF COURT



Diane B. Carvell

Diane B. Carvell, Of Counsel in our Harrisburg office, was recently selected to become a Barrister of the **Honorable William W. Lipsitt American Inn of Court** in Dauphin County, Pennsylvania. The Inn of Court's membership consists of judges and lawyers who help one another by discussing ethical matters related to the practice of law. Ms. Carvell will participate in programs on civil and criminal litigation practice designed to improve the skills, professionalism and ethics of the bench and bar. The Inn of Court is named after Judge Lipsitt, who served on the Dauphin County Court of Common Pleas for 20 years and then as Senior Judge until he retired in 2002.

Ms. Carvell received her law degree in 1996 from Dickinson School of Law, where she was the recipient of the Golub Foundation Graduate Scholarship and the Sandor Yelon Award. In addition, she was a member of the *Dickinson Journal of International Law*. She graduated, *magna cum laude*, from Elmira College in 1993, where she was Phi Beta Kappa and the recipient of the Iris Leadership award. Diane brings her experience and ability to the defense of commercial motor vehicles and general civil litigation. She is admitted to practice in the state courts of Pennsylvania and New York as well as the U.S. District Courts for the Eastern, Middle and Western Districts of Pennsylvania, the Northern, Southern, Eastern, and Western Districts of New York, and the U.S. Court of Appeals for the Third Circuit.