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TRANSPORTATION LAW UPDATE



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Technology in Trucking Cases



Kevin L. Hall

Two recent decisions involving the use of technology likely foreshadow the nature of evidence in motor vehicle accident cases.

Punitive Damages and Cell Phones

Simmons v. Lantry, No. 5:2013cv02160, Philadelphia Court of Common Pleas, June 6, 2014

A trial judge in the Philadelphia Court of Common Pleas recently permitted a plaintiff involved in an accident with a tractor trailer to introduce evidence that the driver of the tractor trailer was on his cell phone at the time of the accident in order to seek punitive damages.

While there was previously no Pennsylvania case that had admitted such evidence, the Court relied upon federal court decisions that permitted the evidence, particularly where the defendant was a tractor trailer driver. Plaintiffs obtained the cell phone records by subpoena sent to the truck driver's cell phone service provider. The records indicated that the driver may have been on the cell phone at the approximate time of the accident. The truck driver's employer had a policy that drivers were not permitted to be on their cell phone while driving and employees who violated that policy were provided a warning, followed by a suspension.

Plaintiffs claimed that the tractor trailer driver was distracted due to the cell phone, and such distraction constituted negligent, careless, and reckless conduct sufficient to sustain a jury award for punitive damages.

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Speed of Vehicle from a Car's "Black Box" Admissible Evidence

Commonwealth v. Safka, No. 1312 WDA 2012, Pennsylvania Superior Court, June 25, 2014

In another recent Pennsylvania case, an appellate court ruled that the speed information obtained from an "event data recorder," or EDR, was admissible to show the speed of the vehicle before an accident.

The Court determined that EDR information was not "novel scientific" evidence, but rather had been in use by automobile manufacturers for at least 20 years. Although the technology was originally employed to study air bag deployment, the National Transportation Safety Board has recommended that EDRs be installed on all newly manufactured cars. While normally the vehicle information is only temporarily stored on an EDR, in the event of an accident, information such as speed is recorded as permanent memory to be retrieved after the impact.

In permitting the evidence to be introduced to establish the speed of the vehicle, Pennsylvania follows in the footsteps of Florida, Illinois, Massachusetts, and New Jersey.

As these two cases make clear, and as the Court noted in the EDR case, "as technology has advanced, so too have the methods by which investigators can determine responsibility and culpability."

In order to assist in investigation of the evidence, and explain that evidence in preparation for trial, we recommend ensuring that experts qualified in their field are assisted by competent counsel to thoroughly review technological evidence for irregularities. If the evidence has the potential to be prejudicial to a defendant, we also recommend filing motions in limine to prohibit that evidence from the jury.

Kevin L. Hall is an associate in our Harrisburg office. He focuses his practice on the defense of motor carriers and their insurers. Kevin received his J.D. from the Pennsylvania State University, Dickinson School of Law in 2011 and his B.A., *magna cum laude*, from LaSalle University in 2008.

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