

Cellphone Usage While Driving is Alone Insufficient to Sustain a Punitive Damages Claim, But for How Long?

In the recent trial court case of *Manning v. Barber*, No. 17-7915 (C.C.P. Cumb. Co. 2018), the Court sustained the defendant's preliminary objections striking the plaintiffs' punitive damages claim based on the allegation the defendant acted recklessly in looking and/or texting on her phone while driving. This case is part of an ever-developing case law on cell phone usage while driving and suggests that, at least for the time being, Pennsylvania still requires some "other indicia of recklessness" beyond the mere allegation of cell phone usage for a plaintiff to successfully support a claim for punitive damages. While the Court ruled in the defendant's favor in this case, the big question is for how long "other indicia of recklessness" will be necessary before cell phone usage alone is sufficient for a plaintiff to allege recklessness and make a claim for punitive damages.

In *Manning*, the plaintiffs' vehicle was stopped at a red light when it was rear-ended by a vehicle that was itself rear-ended by the defendant's vehicle. Plaintiffs alleged in their complaint that the defendant was distracted while driving because she was looking/texting on her phone at the time of the accident. Plaintiffs claimed therefore the defendant acted recklessly and they were entitled to punitive damages.

Punitive damages may be awarded for outrageous conduct or when a defendant shows reckless indifference to the rights of others. *Kirkbride v. Lisbon Contractors, Inc.*, 555 A.2d 800, 803 (Pa. 1989).

Defendant filed preliminary objections in accordance with Section 1028(a)(2) of the Pennsylvania Rules of Civil Procedure arguing "failure of a pleading to conform to law or rule of court". Pa.R.C.P. 1028(a)(2). Specifically, the defendant argued that cell phone usage alone, absent other indicia of recklessness, was insufficient to support the plaintiffs' claim for punitive damages. Defendant argued the plaintiffs only alleged facts, which if were found to be true, constituted negligence on the defendant's part, not recklessness.

The Court in sustaining the defendant's preliminary objections noted "there is a lack of Pennsylvania appellate case law in the context of distracted driving cases where the tortfeasor is distracted by the use of a cellular phone at the time of the accident." *Manning*, pg. 3. Without direction from the appellate courts and with plaintiffs' sole claim of defendant's recklessness based on the belief defendant was using her cell phone while driving, the trial court ruled the plaintiffs failed to sustain a claim for punitive damages. The Court did note that other cases throughout the Commonwealth support the proposition that with allegations of a defendant's cell phone use and additional allegations of recklessness, a plaintiff's punitive damages claim could proceed. See *Hilliard v. Panezich*, 10988 of 2015 (C.C.P. Lawrence Co. 2017) (denying a defendant's motion for summary judgment to dismiss the plaintiff's punitive damages claim as in addition to the defendant's "distracted driving" from using a cell phone, the defendant was also allegedly intoxicated, drove over the speed limit and failed to stop at a stop sign). In this instance, however, the Court held that the plaintiffs' allegations in their complaint, which primarily focused on the defendant driving too fast and being inattentive, were consistent with allegations of a classic negligence claim, not supportive of a claim for recklessness on the defendant's part.

Comment: The *Manning* decision supports that the Commonwealth of Pennsylvania still requires some "indicia of recklessness" beyond the mere allegation of a defendant's cell phone use while driving to support a claim for punitive damages. At least for the time being, allegations of recklessness and punitive damages claims when the only basis for such allegations is the belief a defendant was using a cell phone while driving can be challenged and stricken in the preliminary stages of litigation. Ultimately though, the trend in the courts is moving towards a reality where punitive damage claims can withstand preliminary objections

and summary judgment motions upon mere allegations by a plaintiff that a defendant was texting, calling or otherwise using a cell phone while driving. Evidence of this trend can even be seen in the Judges' ruling in *Manning*, where they acknowledged that there is a potential policy argument that texting while driving per se constitutes recklessness, albeit as a trial court the Judges declined to address the policy issue and make new law.