

PUBLICATION

Texters, Beware: New Jersey Court Opens Door to Liability of Senders of Text Messages

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If a driver who was distracted by viewing or responding to a text message causes an accident, could the individual who sent the text be liable to a third party who was damaged by the accident? A New Jersey appellate court has answered in the affirmative in a recent case, *Kubert v. Best*, No. A-1128-12T4 (N.J. Super. Ct. App. Div. Aug. 27, 2013), involving a young driver who crossed the road's center-line and struck a motorcycle immediately after receiving a text from his friend. The court stated: "We conclude that a person sending text messages has a duty not to text someone who is driving if the texter knows, or has special reason to know, the recipient will view the text while driving." In the current case, the court affirmed the trial court's grant of summary judgment in favor of the driver's friend, finding that the plaintiffs failed to present sufficient evidence to prove that she had the requisite knowledge. The court rejected the plaintiffs' argument that the driver's friend had an independent duty not to send texts to a person she knew was driving. The general knowledge that a text recipient is driving is not enough; the texter must know that the driver will immediately view the text.

Interestingly, the court compared the duty of a remote texter to the duty of a passenger in a car to prevent a visibly intoxicated driver from driving. Under New Jersey law, the passenger owes such a duty under two circumstances: 1) there is a special relationship, such as employer-employee or parent-child, that gives the passenger control over the driver's conduct; or 2) the passenger actively encouraged the driver to drink and drive. The court found in the current case that the driver and his friend did not have a special relationship by which she could control his conduct, nor did she actively encourage him to text her while driving.

The court's emphasis on the import of a special relationship between the texting parties makes this an interesting ruling for employers who may send texts to employees when they know that they are driving.