

Punitive Damages are Potentially Recoverable for Crash Involving Cellphone Usage

Purdy v. Metcalf

Arizona Court of Appeals | November 8, 2021

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The Arizona Court of Appeals recently held that a court may consider a driver's cellphone usage while operating a commercial truck as part of a "series of events of deliberate bad faith or breaches of duty" that warrant punitive damages.

Hernandez, a residential garbage truck driver, ran a red light and collided with another vehicle, killing its driver and severely injuring its passenger. The driver's daughter and the passenger sued Hernandez and his employer for wrongful death, alleging a number of theories of negligence and seeking punitive damages.

The truck was equipped with driving controls on both sides of the cab and Hernandez was driving on the right side. During discovery, plaintiffs learned that the company had a policy that a driver operating a truck from the right side of the cab could not exceed 15 mph. Hernandez was driving approximately 51 mph for the 8.5 seconds leading up to the accident. Experts also opined that Hernandez had been using cruise control, although affidavits from the company explained that the company's trucks could only use cruise control between 19 and 25 mph.

Hernandez had two cellphones: a personal phone and one issued by his employer. The data from both phones had been deleted by the time discovery occurred, but experts determined that there had been substantial data transfers from both cellphones at the time of the collision. Hernandez had also made a call that might have begun before the crash. During his deposition, Hernandez invoked his Fifth Amendment right and refused to answer any questions related to his cellphone use.

Defendants moved for partial summary judgment on the issue of punitive damages. The court granted the motion finding that Hernandez's invocation of his Fifth Amendment right was not enough by itself to show that he had the requisite "evil mind" for punitive damages because it did not prove that he was distracted or acted intentionally or recklessly. Plaintiffs sought special action relief from the court of appeals.

The court of appeals reversed, finding sufficient evidence in the record from which a jury could award punitive damages and issues of fact that should have precluded summary judgment. Although cellphone use on its own is insufficient to support an award of punitive damages, here the record contained sufficient evidence from which a jury could find that the driver consciously pursued a course of conduct knowing that it created substantial risk of significant harm to others. First, there was factual dispute over the timing of the phone call and whether the data transfers meant Hernandez had been actively using the phones. [The court admonished the employer, a sophisticated corporate entity, for failing to preserve the data and noted that it should not be "rewarded" with summary judgment as a result.] In addition, Hernandez was a professional driver; he was driving a commercial vehicle; he had a history of driving violations; he ran a red light; he was driving in excess of both the speed limit and company policy; he potentially was using cruise control in violation of company policy; and data had been deleted from both of his phones. From these circumstances, said the court, a reasonable jury could find Hernandez had pursued a course of conduct that created a substantial risk of significant harm to others. The court vacated the grant of defendants' motion for partial summary judgment and remanded the case for further proceedings.

Currently pending before the Arizona Supreme Court is another punitive damage case that will address whether a punitive damage claim requires evidence of evil hand and evil mind, or only evil mind. Watch our law alerts for updates.

[View this Law Alert and download the Court's opinion on our website.](#)

ABOUT THE AUTHORS



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