

# VIRGINIA LAWYERS WEEKLY

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## VERDICTS & SETTLEMENTS

### Third party texting liability at issue in wrongful death case

#### \$1,000,000 Settlement

In March 2013, the 30-year-old decedent, a Virginia resident, was lawfully operating his motorcycle with the right of way on a Maryland roadway, traveling at about 40 to 45 miles per hour (below the posted 50 mile per hour speed limit). At the same time and place, the defendant driver was operating a car owned by her mother, the co-defendant. She was attempting to cross over multiple travel lanes while simultaneously sending and reading text messages to and from her mother. The defendant driver pulled directly into the motorcyclist's path, giving him no opportunity to avoid collision. The victim was thrown from his motorcycle, landing 16 feet away from the crash location. He was pronounced dead at the hospital. The defendant driver was arrested in October 2013 and charged with negligent manslaughter-auto, criminally negligent manslaughter/vehicle, reckless driving, negligent driving, driver failing to yield the right of way, and driver writing/sending/reading a text/electronic message while operating a motor vehicle. All but the negligent driving charges were dropped.

A wrongful death suit was filed by the decedent's estate, as well as on behalf of his minor daughter. The case also consisted of negligent entrustment claims against the defendant driver's mother, who was also the vehicle owner, and a third party texting liability claim alleging that the driver's mother was negligent for texting her daughter while the daughter was driving, with knowledge that she



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would likely read the text.

Liability against the defendant driver was both clear and aggravated. Plaintiffs maintained that liability for negligent entrustment with respect to the defendant vehicle owner was also clear. The defendant owner was aware that the defendant driver, her own daughter, was arrested in late 2011 on a litany of charges when she was 18 years old. These charges included negligent driving of a vehicle in careless and imprudent manner endangering property, life and person; exceeding the maximum speed: driving 97 miles per hour in a posted 55 mile per hour zone; driving a motor vehicle with alcohol in blood in violation of restriction; and driver consuming alcoholic beverage in passenger area of motor vehicle on highway. Plaintiffs argued that the defendant owner was fully aware of her daughter's inability to handle the basic responsibility that comes with the privilege of driving an automobile. Despite this, not only did she provide her daughter with a vehicle to drive, but she also was actively texting with her daughter when she knew her daughter was driving.

The defendant vehicle owner filed a motion to dismiss multiple claims

**Type of action:** Wrongful death – auto accident; negligent entrustment, third party texting liability

**Date resolved:** Oct. 31, 2014

**Special damages:** Medical bills - \$1,892; funeral and burial expenses - \$ 13,566; lost wages/loss of earning capacity - \$418,920

**Verdict or settlement:** Settlement

**Amount:** \$1,000,000

**Attorney for plaintiff:** Jonathan E. Halperin and Andrew Lucchetti, Glen Allen

**Attorney for defendant:** Thomas Talbott, Rockville, Maryland

against her on the basis that there was no established cause of action for third party texting liability. Plaintiff's counsel argued in a brief that this was not a novel claim, but merely a novel set of facts to which the ordinary definition of negligence could be applied. The court summarily denied defendant's motion to dismiss, despite the fact that only one state in the United States has upheld a similar claim at the appellate level.

Following the completion of party and most lay witness depositions, an unsuccessful court-ordered mediation was held in late October 2014. Shortly thereafter, the parties settled all claims for \$1,000,000. The parties agreed to keep all names and locations associated with this claim confidential.

[14-T-179]