

# Criminal Ramifications of Distracted Driving

Matt Heffron

Brown & Brown, PC, LLO

# Wisconsin, 2010:

- Driver stayed out late partying before he took off in the early-morning hours on the day before the crash, December 15. (Drinking "hard stuff" at the tavern.) Uncertain how much he took of his 10-hour rest.
- Eventually fell asleep at the wheel, 2 a.m., December 16.
- Drove his semi onto the shoulder of Interstate 94 and lost control when he pulled back onto the highway, overturning it on the highway, blocking both lanes.
- Fatality.
- A charter bus, filled with 44 students, teachers and chaperones from Chippewa Falls High School, plowed into the semi-trailer. Three deaths, all adults.

# North Carolina, 2010

- Truck driver slammed into the rear of a string of cars which was stopped due to an earlier accident.
- Truck's speedometer revealed the truck was traveling at 70 mph.
- Driver fatigue reportedly contributed.
- Five fatalities.
- Driver reportedly faces a five year prison term.

# Missouri, 2011

- Accident U.S. 67 near Barney's gas station about a mile north of St. Francois State Park. The three victims were all pronounced dead at the scene.
- Electronic control module showed driver had been exceeding the posted speed limit of 65 mph prior to the crash by going about 72 mph.
- New York City truck driver.

# New Jersey, 2012

- Driver ran a red light and struck auto, in which a man was killed and his wife and young daughter seriously injured .
- The truck driver may have been sleep deprived and under the influence of methamphetamines.

# Nebraska, 2011

- Confusing intersection, under construction.
- Truck driver coasted slowly into the intersection and was broadsided by a motorcycle.
- No fatigue (day trip); no distractions; one of the safest drivers in a national company.
- Motorcyclist's wife riding as a passenger died at the scene.
- Three independent witnesses said the light facing the motorcyclist's cross-lane of traffic was green.
- Truck driver and two laborers riding in the cab of his moving van said their light was green.
- Sarpy County.

# Nebraska, 2011

- Truck driver turned left in front of oncoming car.
- Driver should have had time to stop, yet hit the tail of the trailer, which was blocking both lanes.
- Intersection involving numerous serious truck-auto accidents.
- Grandmother died and mother seriously injured.
- Prosecutor willing to listen.

# Takeaway No. 1:

Every fatality now invites the complications of a criminal case.

Especially if there are exacerbating factors: tractor-trailer, traffic violation, fatigue ... knowing distraction.



# Takeaway No. 2

- The criminal case will skew the civil case:
  - a. Experts: expedited reports; presented first by inexperienced criminal defense attorney.
  - b. All witnesses: potential for multiple sworn statements.
  - c. Collateral estoppel?
  - d. What if driver pleads to a lesser charge? Credibility of driver.
  - e. Refrain from admitting liability in the civil case.

# Takeaway No. 3 (What to do)

- Early intervention in the criminal case.
- a. Someone on behalf of the driver/trucking company (preferably a defense attorney) should initiate immediate, regular contact with law enforcement.
- b. Face-to-face meeting.
- c. Write a respectful letter after the prosecutor's case is understood.
- d. Hardball?

# Takeaway No. 4 (What to do)

- Early decision about hiring a criminal defense attorney
  - a. Err in favor of paying for the criminal defense attorney.
  - b. Pay the price for someone good.
  - c. Make sure he/she will work with your trucking defense attorney.
  - d. Probable conflict of interest for civil trucking defense lawyer.