

[Products Liability Law Daily Wrap Up, CAUSATION—ELECTRONIC PRODUCTS—5th Cir.: Driver's compulsion to text could not be cause of car crash under Texas law, \(Dec. 19, 2018\)](#)

Products Liability Law Daily Wrap Up

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By Nicholas Kaster, J.D.

An automobile driver's neurobiological response to a smartphone notification could not be a cause in fact of a car crash under Texas law, the U.S. Court of Appeals for the Fifth Circuit ruled, affirming a Texas federal trial court's decision and reasoning that to regard a smartphone's effect on a user as a substantial factor in his or her tortious acts would be an innovation of state law that courts are not permitted to make. Declining to consider "neurobiological compulsion" a substantial factor under Texas law, the appellate panel thus concluded that the driver's iPhone 5 could not be a cause in fact of the alleged injuries that resulted from her distracted driving (*Meador v. Apple, Inc.*, December 18, 2018, Higginson, S.).

A woman was driving her pick-up truck when she received a text message on her iPhone 5, manufactured by Apple, Inc. She looked down to read the text, after which she turned her attention back to the road, but it was too late to avoid colliding with a vehicle carrying two adults and a child. The adults died, while the child survived and was rendered a paraplegic. The driver was convicted on two counts of criminally negligent homicide.

In 2008, Apple had secured a patent covering lock-out mechanisms for driver handheld computing devices. However, Apple did not implement any version of a lock-out mechanism on the iPhone 5, which the driver had been using at the time of the accident.

Lawsuit and proceedings. Representatives of the accident victims sued Apple in federal court, asserting claims for general negligence and strict products liability under Texas common law. Asserting that the accident was caused by Apple's failure to implement the patent on the iPhone 5 and by Apple's failure to warn iPhone 5 users about the risks of distracted driving, the representatives alleged that receipt of a text message triggers in the recipient "an unconscious and automatic, neurobiological compulsion to engage in texting behavior." They supported this allegation with various studies and reports, including a proposed expert report.

The trial court dismissed the complaint with prejudice [see *Products Liability Law Daily's* August 18, 2017 [analysis](#)] and the current appeal ensued. Because jurisdiction over the claims was based on diversity of citizenship, the appellate applied the substantive law of the forum state, i.e., Texas.

Causation. The appellants argued that the smartphone device and the driver's negligence were concurrent causes of the accident. However, the panel noted that such issues arise when more than one legally recognized cause is present. Thus, the panel was required to determine first whether Texas law would recognize a smartphone's effect on its user as a cause of the accident at all.

Noting that no Texas case has addressed whether a smartphone manufacturer should be liable for a user's torts because the neurobiological response induced by the phone is a substantial factor in her tortious acts, the panel remarked that no U.S. court has made such a holding and that numerous courts have declined to do so. As such, the panel concluded that no authority indicates that Texas courts would recognize a person's induced responses to her smartphone as a substantial factor in her tortious acts and, therefore, would hold the phone's manufacturer responsible for those acts. Acceptance of this theory of causation would work a "substantial innovation" in Texas law, the appeals court observed.

The closest analogy offered by Texas law is dram shop liability (the liability of commercial purveyors of alcohol for the subsequent torts or injuries of the intoxicated customers they served), the panel said, adding that under

dram shop laws, a person remains liable for her own negligent acts but the incapacitating qualities of the product, which contribute to the person's negligence, can subject the seller to liability as well.

To the extent there is a meritorious analogy between smartphone manufacturers and dram shops, it is for the state to explore and not the court, the panel said. With the state not yet speaking directly to this issue, the panel noted that the debilitating effects of alcohol have been recognized much longer than the effects of smartphones, and that the proper regulation of the former has been debated much longer than the latter. Moreover, the development of law that has occurred places the onus of distracted driving on the driver alone.

Therefore, the panel could not conclude that Texas law would regard a smartphone's effect on a user as a substantial factor in his or her tortious acts. To say otherwise would be an innovation of state law that the court was not permitted to make. Because the panel declined to consider "neurobiological compulsion" a substantial factor under Texas law, it concluded that the iPhone 5 could not be a cause in fact of the injuries in the instant case. Accordingly, the panel affirmed the trial court's dismissal of the claims.

The case is No. [17-40968](#).

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