

Company Bans Cellphones After Distracted Driving Case

BY KATE HALLORAN

Vernon and Ruby O'Tuel were returning to their home in South Carolina after an outing. As Vernon was about to turn the car into their driveway, Greg Bowman, driving a tractor-trailer for Unifi Manufacturing, rear-ended the O'Tuels' pickup truck.

Ruby sustained minor injuries, but Vernon suffered serious back injuries that required two surgeries: a cervical fusion, which resulted in lasting pain and a limited range of motion, and a lumbar reduction surgery. Vernon's injuries caused permanent damage and required lifestyle changes—although he can do many of the activities he enjoyed before the crash, he can't do them at the same level or without pain.

The O'Tuels sued Bowman and Unifi, a textile manufacturer in North Carolina that has a fleet of 70 tractor-trailers operating in 13 states. The plaintiffs alleged that Bowman was using his cellphone at the time of the crash and that Unifi was responsible for his actions. Although the company had a policy limiting cellphone use to two minutes, it did not train drivers on that policy or enforce it with any meaningful effort. Bowman denied that the crash was his fault, claiming that the O'Tuels had stopped in the middle of the road without their headlights or turn signal on.

Douglas Jennings and David Yarborough, both of Charleston, S.C., and Doug Jennings and Mason King, both of Bennettsville, S.C., represented the



O'Tuel v. Unifi Mfg. Inc.

No. 4:2015cv02200
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plaintiffs. Douglas Jennings said, "This truck driver—after slamming into our clients as they were pulling into their driveway—made up a false story that Unifi supported even though there was no physical evidence to support it. Bowman said that he couldn't see the plaintiffs because it was dusk and that they came out of nowhere . . . that they were completely stopped in the middle of the road, and they created a hazard by not having their headlights activated."

But black-box data from the tractor-trailer and the pickup truck disproved Bowman's story. The

attorneys hired an accident reconstruction engineer to do a full-scale reconstruction of the crash. "The plaintiffs were going the speed limit, had a normal deceleration just like you would when turning into a driveway, the headlights were activated, and the turn signal was on," Jennings said. "The truck driver failed to notice the plaintiffs' vehicle because he was distracted by a lengthy cellphone conversation and fatigue."

Despite Unifi's two-minute limit, cellphone records showed that on the day of the crash, Bowman spent about seven hours on the phone while driving—with calls lasting as long as 111 minutes—and that he was on an 11-minute call at the time of the crash.

After being confronted with those records, Bowman argued that even though they showed an 11-minute call leading into the crash, he was not actively talking to anyone at the time of the collision. He claimed that his phone line was connected to another driver, but that the other driver had left his hands-free headset in his truck while filling out paperwork at a stop, and Bowman was waiting for him to get back in the truck.

There also was ample evidence that Bowman and Unifi's other drivers routinely conducted long phone calls with each other throughout the work day, often with multiple drivers connected at one time through three-way calling. "Unifi claimed at trial that they didn't know all of their drivers were breaking

the two-minute rule, but it really wouldn't have been that hard for them to figure out if they had just looked. The rampant cellphone abuse was immediately clear to us after comparing the driver logs to the cellphone records," Jennings said.

Unifi also did little to enforce its two-minute policy. "Not only did they not enforce it, but when they were put under oath, their own safety people said they really didn't believe in the rule," Yarborough said. "Essentially, it was just one of those 'put-it-on-paper' type of rules."

Federal regulations ban truck drivers from texting on the road and require them to use a hands-free device to talk while driving, but they do not place any time limit on phone calls. Jennings and Yarborough agreed that a complete ban on truck drivers using cellphones while driving is the safest standard, and several motor carriers already do this.

"[Truck drivers] get paid to do one thing: transport cargo from point A to point B and to do it safely," Yarborough said. "It's inattention blindness when you're on the phone because you're off in la-la land when you're supposed to be concentrating on the road in front of you. Because of the size and power of those vehicles, it's extremely dangerous to the public."

Jennings and Yarborough conducted pretrial focus groups and research to help themselves and the jurors understand how dangerous distracted driving is—particularly when it occurs behind the wheel of a 60,000-pound tractor-trailer. Cellphone use while driving is common, so they learned that it was crucial to distinguish between the danger presented by using one while driving a personal vehicle and while driving a truck with a heavy load.

South Carolina's CDL manual explains that a 60,000-pound vehicle going 55 mph travels 80.7 feet per

second. "The safety training materials indicate that when you go to answer or make a phone call, it takes an average of 3.8 seconds. During that time, the truck driver loses focus on the road and travels about 306 feet. That's essentially the length of a football field," Jennings said.

Even after nearly two years of litigation, Unifi refused to make any changes to its cellphone policy, and the attorneys used that refusal to empower the jury. Under cross-examination, Unifi's safety director testified that he was waiting for the trial's outcome to decide whether any changes needed to be made, despite knowing that cellphone use is dangerous and that Unifi's drivers were regularly violating its policy.

Vernon incurred \$174,000 in past medical expenses, and experts projected \$165,000 for future care. He also was

assigned about a 20 percent impairment rating after the crash. The parties settled just before closing argument for \$3.75 million. But the O'Tuels wanted to ensure that this wouldn't happen to anyone else. As part of the settlement, Unifi agreed to change its policy to completely ban its drivers from using cellphones while driving.

"We have a unique opportunity, as plaintiff lawyers, to obtain significant recoveries for our clients," Jennings said. "But more important, we can force companies to change the way they operate to eliminate dangerous conduct from continuing in the future. We were able to make the roads safer by using the civil justice system to take cellphones out of the hands of 70 truck drivers who share our public roadways with our families and friends." 

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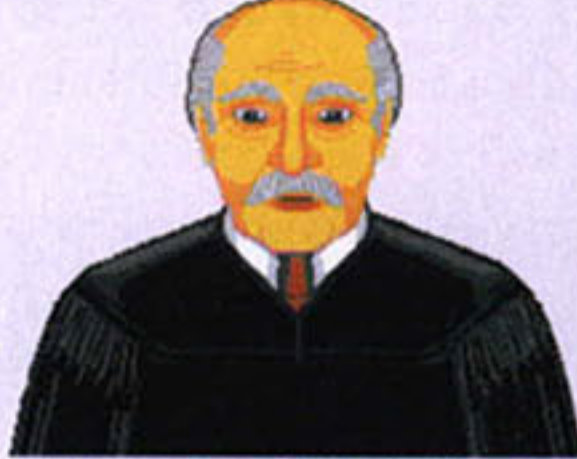
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