Distracted Driving Lawsuits: Apple's Responsibility or an Attempt to Limit Drivers' Personal Responsibility?

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n December 23, 2016 in Santa Clara, California, in *Modisette v. Apple, Inc.*, 16CV304364, the family of a five-year-old girl killed in a car crash on Christmas Eve 2014 filed a lawsuit against Apple alleging that Apple's FaceTime application distracted a driver and caused the death of Moriah Modisette. Like the majority of distracted driver accidents, this one could have been prevented. On the one hand, the driver could have waited until he stopped driving before using the FaceTime application. On the other hand, Apple could have designed a lock-out feature or warned FaceTime users of the dangers of driving while FaceTiming.

In *Modisette v. Apple, Inc.*, the court must decide whether a smartphone manufacturer like Apple has a duty to protect the public and FaceTime users by preventing the use of the application while driving. FaceTime is a factory-installed video communication service similar to Skype and Google Hangouts that allows Apple device users to conduct one-on-one video calls. Ultimately, this case raises an important question: Should a smartphone manufacturer be liable for injuries caused by distracted drivers using a phone application, and if so, are distracted drivers a superseding intervening cause?

Plaintiffs allege that Apple's iPhone was defective because Apple failed to install and implement the safer alternative design for which it sought a patent in December 2008, which was later issued in April 2014. The alternative design would “lock out” a driver's ability to FaceTime while driving. In addition, Plaintiffs allege that Apple failed to warn drivers that FaceTiming while driving was likely to be dangerous. Plaintiffs further allege that the conduct of the driver is "inextricably intertwined" with Apple's failure to implement the patented lock out feature, and as a result, Apple allegedly failed to exercise reasonable care.

This is not the first time Apple has been involved in a products liability lawsuit arising out of an accident caused by a distracted driver. In 2015, in *Meador v. Apple, Inc.* (2016) WL 4425527 (E.D.Tex.), Apple was sued for a 2013 crash involving a driver distracted by checking her text messages. The question raised in *Meador* is similar to the Modisette's case: Does a smartphone manufacturer have a duty to prevent drivers from using the device while driving? On August 16, 2016, in a pretrial report and recommendation, United States Magistrate Judge K. Nicole Mitchell recommended that the case be dismissed with prejudice because a “real risk of injury did not materialize until [the driver] neglected her duty to safely operate her vehicle by diverting her attention to the roadway.” *Meador v. Apple, Inc*. (E.D. Tex., Aug. 16, 2016) WL 7665863, at 4. Thus, Judge Mitchell opined that Apple's failure to lock out the driver did “nothing more than create the condition that made Plaintiffs' injuries possible.” *Id.* As a result of Judge Mitchell's recommendation, the *Meador* case has been stayed pending an order from the District Judge on Apple's Motion to Dismiss.

In a similar case involving text messages against a network provider in Oklahoma, in *Estate of Doyle v. Sprint/Nextel Corp.*, (Okla. Civ. App. 2010) 248 P.3d 947, the Oklahoma court of appeals affirmed the trial court's granting of Sprint's motion to dismiss. The court held that “the purchase and use of a cellular phone or cellular service are not inherently dangerous acts, nor is it foreseeable that the sale and subsequent use of such a phone would cause an accident. Even if using a cell phone while driving is foreseeable, it is not necessarily foreseeable that it will cause a collision or unreasonably endanger a particular class of persons.[citation omitted] It is not reasonable to anticipate injury every time a person uses a cellular phone while driving.” *Estate of Doyle v. Sprint/Nextel Corp.*, at 951.

Although the *Modisette* case was recently filed, the outcome will have rippling effects. The court will ultimately have to

decide whether FaceTiming while driving was an inherent danger in the purchase of an iPhone that Apple should be responsible for. Should plaintiffs be successful, the case will likely invite waves of future lawsuits against application developers and manufacturers of cars, navigation systems, radios, and of any device that could have prevented a distracted driver, but failed to do so.

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