

# STEWART, McARDLE, SORICE, WHALEN FARRELL, FINOLI & CAVANAUGH, LLC

Telephone  
(724) 836-0321

229 S. Maple Avenue  
Greensburg, Pennsylvania 15601

Facsimile  
(724) 836-0224

## *Pennsylvania Legal Update*

Fall 2013

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### Use of GPS Device Could Trigger Punitive Damages

A Pennsylvania county trial judge has acknowledged that a driver who gets in an accident while using a GPS device may be found liable for reckless indifference and obliged to pay punitive damages, but only if the injured plaintiff can prove that the driver had completely diverted his or her attention away from the road at a critical time.

In the case before the judge, a driver of a van owned by the driver's employer stopped at an intersection in order to make a left-hand turn. While waiting for traffic to clear, the van driver looked at a global positioning system (GPS) device. As a motorcyclist entered the intersection, traveling toward the van, the van driver accelerated into his planned left turn. The motorcycle struck the van, and the motorcyclist was injured.

The motorcyclist claimed that the van driver had been "fidgeting" with his GPS device for a substantial time and had had his eyes off the road for a substantial time. The van driver disagreed, claiming that he had used a GPS application on his cell phone to find his destination and had placed the phone in the lower center console of his van, with the screen angled toward him as he drove. The van driver admit-

ted glancing down at the cell phone as he waited to make the turn but denied having his eyes off the road when he made the turn.

The injured motorcyclist countered that the van driver's employer prohibited its employee drivers from using GPS devices and that

the employer had failed to monitor its employees and to educate them about the dangers of using GPS devices while driving.

The judge recognized that the case presented a "novel issue of

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### Asbestos Litigation

#### Cancer Patient Sues Twice

Exposure to asbestos can cause a myriad of illnesses, often manifesting many years after the exposure. Pulmonary asbestosis is a nonmalignant asbestos-related lung disease; those who suffer from it are considered to be at a heightened risk for lung cancers. Certain lung cancers are recognized as related to asbestos exposure. Mesothelioma is a rare disease caused by asbestos exposure and characterized by tumors in the membranes that line the lungs, abdomen, and heart. By 1989, the federal government had banned most commercial use of asbestos in the United States. But considerable use

and manufacturing of asbestos through the 20th century, and its use in ships, buildings, and the automotive industry, led to high rates of asbestos diseases, particularly among people who worked in industries such as building, repairs, and manufacturing, where asbestos was widely used. Asbestos-injury litigation cases make up a large docket that occupies a considerable amount of time for Pennsylvania courts.

As asbestos liability law has developed over the past 40 years, Pennsylvania law has recognized that one person can bring separate lawsuits if he or she suffers from

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## Property Law: Easements in Pennsylvania

An easement is a limited right to use the property of another. Common easements include driveways, private roads, and utility rights-of-way for electric, water, or communication lines. Most easements are contained in deeds; some can arise simply due to the passage of time. A "prescriptive" easement arises when, for 21 consecutive years, one landowner uses the land of another in an "open, notorious

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*A "prescriptive" easement arises when, for 21 consecutive years, one landowner uses the land of another in an "open, notorious and uninterrupted" manner.*

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and uninterrupted" manner. If your neighbors run their cable line across your property, then after 21 uninterrupted years they have established the right to do so. If you live on a private road and let it become a shortcut for a neighbor who isn't entitled to use the road, then after 21 years she will be entitled to.

In a significant Pennsylvania easement case, a Pennsylvania homeowner tried to stop his neighbor from developing property. The homeowner claimed that because the roots and branches of his trees would be disturbed by the neighbor's development plans, the development must be halted by the court. Arguing that 21 years of uninterrupted growth of roots and branches had created a prescriptive easement

for the continued growth of the trees, the homeowner expected that his neighbor's rights to develop his property should be limited.

Any development that undermined the trees, damaged their roots, or required the removal of branches was unfair, the homeowner insisted, since the roots and branches of his trees had encroached on the neighbor's land for more than 21 years. Now, the homeowner claimed, he had an absolute right to have the health, location, and condition of his trees

remain unchanged since a 21-year encroachment on his neighbor's land had given him the right to permit his trees to continue the encroachment.

Noting that Pennsylvania's streets, yards, sidewalks, and neighborhoods are full of unruly trees, the branches and roots of which cross property lines heedlessly, the Pennsylvania Superior Court declined to extend the law of prescriptive easements to tree

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## Homeowners Insurance Coverage

Just about every homeowner carries insurance for losses from fire and other causes. But many insured homeowners don't realize that their insurance policies include "vacancy clauses." Such clauses suspend or restrict some insurance coverage if the home is vacant or unoccupied for 60 or more consecutive days before the occurrence of the loss. Pennsylvania's "snow birds," who winter in warmer climates, are at distinct risk for denial of their homeowners insurance coverage due to the operation of vacancy clauses.

If a homeowner takes an extended trip, temporarily relocates, or even dies, a vacancy may exist under the terms of the policy. If fire damage occurs, pipes freeze, or other insured losses occur during such a vacancy, the insurance company may be entitled to deny all coverage, even if the homeowner

made the premium payments on time.

In a recent case, a Pennsylvania woman's heirs challenged an insurance company's denial of fire insurance coverage. The heirs had paid the annual premium on the woman's existing homeowners insurance shortly after her death. But before the heirs could sell the house and settle the estate, the house was damaged by a fire that occurred 36 days after they had paid the annual fire insurance premium.

In the course of investigating the claim, the insurance company discovered that the house had been vacant for more than 60 days before the fire. The heirs argued that their premium payment marked a renewal of the policy and that only 36 days had run on the new policy before the fire. The court acknow-

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## Asbestos Litigation

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more than one disease as a result of asbestos exposure. Called the "two-disease rule," and "the separate disease rule," the rule recognizes that people exposed to asbestos can develop a myriad of diseases, sometimes over a long period of time. The rule initially provided that plaintiffs could bring a claim for a nonmalignant asbestos-related disease, like pulmonary asbestosis, and later bring a subsequent action for a separately diagnosed malignant disease. Recently, the rule was expanded by the Pennsylvania Supreme Court.

In the case before the court, a man who suffered from pulmonary asbestosis and an asbestos-related lung cancer sued a group of asbestos manufacturers in 1990 and settled his claims against them. Fifteen years later, the man was diagnosed with the rare, but clearly asbestos-related, condition called mesothelioma. He sued again and lost his second claim on the ground that he had initially recovered for *both* a nonmalignant and a malignant condition in his first lawsuit.

The Supreme Court of Pennsylvania reversed the dismissal and permitted the man's claims to go forward, finding that the lower court had unduly restrictively analyzed the two-disease rule. Noting that plaintiffs must bring their initial asbestos lawsuits within two years of the first signs of asbestos-related conditions, the court observed that asbestos plaintiffs

struggle to manage claims because "exposure to asbestos may result in a variety of benign and malignant conditions, each of which may occur at widely divergent times." The court clarified that the "two-disease" or "separate disease" rule does permit a plaintiff to sue again

for a later diagnosis of a "distinct malignant disease caused by the same asbestos exposure," even if the settlement or verdict in the previous suit included compensation for an earlier-diagnosed malignant disease.

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## Homeowners Insurance

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ledged the renewal of the policy but noted that the vacancy clause was in both the old and the new policies. Since the house had actually been unoccupied for more than 60 days before the fire, the court upheld the insurance company's denial of the claim, "tacking" the vacancy period under the old policy onto the 36 days that elapsed after the heirs' renewal of the policy.

An unoccupied house poses higher risks of loss to an insurance carrier. Vacant properties not only attract vandalism, they also suffer more extensive damage in the event of an accidental fire or water leak. The occupants of an inhabited house can stop a small fire or water leak or can call for assistance from emergency responders. When no one is home, fire and water damage is often much more extensive.

Homeowners who take long vacations or extended business trips and adult children who are managing their deceased parents' homes

have various options to assure that their coverage will not be denied. Policies are available, at an added expense, to insure vacant homes. Entrusting a home to a housesitter or short-term tenant may prevent the occurrence of a vacancy.

Care should be taken to understand the precise terms of a policy's vacancy clause: Is occupation by the homeowner himself or herself required by the policy? Is a housesitter acceptable but a paying tenant a trigger for denial of coverage? Reading your policy and communicating clearly with your agent or insurance company is an essential element in establishing adequate and appropriate homeowners insurance coverage.

For an excellent overview of how your homeowners insurance policy works, go to [www.insurance.state.pa.us](http://www.insurance.state.pa.us), where the Pennsylvania Insurance Commissioner maintains a collection of consumer brochures on insurance issues, including the brochure *Your Guide to Homeowners Insurance*.

*Resolution of legal issues depends upon many factors, including variations of facts and interpretations of Pennsylvania law. This newsletter is not intended to provide legal advice on specific subjects, but rather to provide insight into legal developments and issues. The reader should always consult with legal counsel before taking action on matters covered by this newsletter.*

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## GPS

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apparent first impression.” Recognizing that a driver who is looking at a GPS device at the time of an accident could be found liable for reckless indifference and punitive damages if the driver “completely diverts attention” from the roadway to “observe a low-positioned GPS,” the judge focused on the facts of the case. Noting that the motorcyclist did not claim that the van driver was still looking at the GPS when he made the left turn, the judge dismissed punitive damages from the case.

The judge observed that punitive damages claims against motorists have traditionally been allowed in Pennsylvania cases only where a driver unreasonably ignored known or obvious risks in a manner that posed a high risk of harming others. For example, Pennsylvania courts have allowed punitive damages claims in cases involving actions such as drunken driving, operating a truck with an improperly secured load caused by a broken loading rack, and ignoring a stop sign in a construction zone.

The consequences for using electronic devices are only just emerging in the law, as their use is relatively recent. Pennsylvania has no statewide motor vehicle laws banning or restricting cell phone or GPS use while driving. In fact, across the United States no state bans all cell phone use while driving, although 37 states ban all cell phone use by young drivers, and 12 states prohibit using handheld cell phones and electronic devices while driving. Forty-one states, including Pennsylvania, ban texting while driving. In the case involving the van and the motorcycle, the

judge pointed out that because texting while driving poses a much higher likelihood of driver distraction, it clearly poses a greater risk to pedestrians and other motorists than does a driver’s merely talking on a cell phone or using a GPS device.

No Pennsylvania appellate court has yet ruled on whether punitive damages claims can be brought against a driver for using an interactive wireless device at the time of an accident. Throughout Pennsylvania, at the trial court level, judges have generally found that the use of an electronic device while driving does not necessarily constitute negligence but depends on the facts of the case. In light of the recent statewide ban on texting, however, now it is always negligent to text while driving.

It is important that drivers recognize that the position of the GPS

device, the extent of the driver’s distraction, and the distance traveled by the vehicle during that period of diversion will be critical factors in a court’s or jury’s decision as to whether a driver engaged in outrageous conduct and is thus liable for punitive damages. Positioning your GPS device on the dashboard or windshield will support your claim that you were attentive to the road while using your GPS device.

A driver who momentarily glances at a GPS device affixed to his or her windshield while maintaining a peripheral view of the road likely would not be liable for reckless indifference or wanton conduct, but a driver who completely looks away from the road to consult a GPS device located in his or her lap or somewhere other than the dashboard or windshield is at risk for a punitive damages award.

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## Easements

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growth. The court wisely concluded:

*The philosophy of the law is simply that whenever neighbors cannot agree, the law will protect each owner’s rights insofar as that is possible. Any other result would cause landowners to seek self-help or to litigate each time a piece of vegetation starts to overhang their property for fear of losing the use or partial use of their property as the vegetation grows.*

The encroachment of trees or vegetation from one person’s land to another’s doesn’t create any per-

manent right to continue the encroachment in the future.

If tree branches from neighboring properties overhang your property, you are entitled to “compel” their removal. Overhanging tree branches from adjacent property are legally considered a trespass. It is wisest to speak to the tree owner first and resolve the problem. But if overhanging tree branches pose a danger to you or your property, you are entitled to remove them as long as you can do so without trespassing on your neighbor’s property. If the problem can’t be resolved by agreement or your safe removal of the objectionable growth, the courts will compel a landowner to trim or remove trees that encroach on your land.