$24 Million Coca-Cola Verdict Highlights Need for Good Distracted Driving Policies



By Glenn Demby

Coke says it was a car; the victim's attorneys say it was a delivery truck.

What no one denies is that a Coca-Cola employee driving a company vehicle hit 37-year-old Vanice Chatman-Wilson; also undisputed is the fact that the driver was talking on her cell phone at the time of the accident.

The Texas jury found Coke liable for Ms. Wilson's injuries and awarded her $14 million in actual and $10 million in punitive damages. Coke says it plans to appeal.

What Did Coke Do Wrong?

Like any major corporation in this day and age, Coke had a written policy on distracted driving for its delivery employees. But Ms. Wilson's lawyers claimed the policy was "vague and ambiguous."

Their argument: Coke knew all about the dangers of distracted driving but deliberately withheld the information from drivers.

The remarks the driver made immediately after the accident were key evidence supporting this claim. If I had known distracted driving was dangerous, the driver allegedly said, I wouldn't have done it.

The Problem with Coke's Distracted Driving Policy

Forceful, maybe even lurid language telling drivers about all the nasty things that could happen if they drove distracted would surely have made Coke's distracted driving policy less "vague and ambiguous"; but I don't think it would have completely solved the problem.

The reason Coke's policy failed the jury's smell test is that it didn't say drivers *couldn't* use cell phones while operating motor vehicles; it just said that they had to use hands-free devices.

As Coke pointed out in its post-verdict press release, requiring use of hands-free devices while driving was not only consistent with but stricter than Texas safety laws.

Maybe so; but Coke is missing a key point. We-followed-the-law arguments might be okay for a press release, but I doubt they cut much ice with juries, especially in cases pitting sympathetic victims like Ms. Wilson against corporate giants like Coca-Cola.

If *I* had been a juror in the case, I'd be wondering not about Texas law but why Coke, knowing what it knew about distracted driving, didn't just ban *all* cell phone use. To my eyes, allowing employees to use hands-free while driving suggests that Coke *wanted its drivers to multi-task* and was willing to risk the safety in the interest of efficiency.

2 Lessons for Distracted Driving Liability of Employers

Although individual lawsuits in a state court do not a trend make, the Coke case could prove something of a watershed in the evolution of employer liability for distracted driving of employees on both sides of the border. 2 points for employers to take away:

1. Just *having* a distracted driving policy isn't enough—the policy must also be clear and specific about the dangers posed by distracted driving; and
2. Although it might be permissible under state or provincial highway safety laws, allowing employees to use hands-free devices while driving is risky—a complete ban on such devices is a much sounder risk management strategy.