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Beware When Sending Text Message to Driver of Car

11 December 2013 - "South Africans should urgently and immediately take note of the judgment of the New Jersey Superior Court of Appeals (in the United States of America), which expanded the concept of duty for texters by identifying specific conditions under which the sender of the original message may be held responsible, along with the driver, for an accident caused by the distracted driver. " So writes Pamela Sakowicz Menaker in her article dated November 27, 2013, when she summarises the decision of the court in *Kubert v Best*.

The facts were that a couple on a motorcycle were on a highway when a driver of a truck crossed the centre line and struck them. The truck driver had been texting his girlfriend all day, and the last text was 25 seconds before the crash. The motorcycle riders each lost their left legs. The couple settled with the driver for his insurance policy limit of \$500 000 but continued the case against his girlfriend. The trial court ultimately granted summary judgment in her favour, finding that there was not enough evidence that the teenage texter knew that her boyfriend would look at the message while driving and be distracted. The important thing to note from this judgment is that the court articulated what may be a new standard for the duty of care holding:

"We affirm the trial courts order dismissing plaintiffs' complaint against the sender of the text message, but we do not adopt the trial courts' reasoning that a remote texter does not have a legal duty to avoid sending text messages to one who is driving".

This judgment, we respectfully believe, may very well be followed in South Africa. Injuries suffered in the case above were chilling and the message of the court was equally chilling. In this time and age when people text someone in the room next to them, and have sadly lost the ability of conversation, it would now be incumbent upon a texter to ascertain that the person being texted is not driving when forwarding a text message or, if knowing that the person is driving, they have secured an undertaking (which can be proved) that the recipient will not be view the text messages unless and until he/she has reached his/her destination and is no longer driving.

We would urge all persons to take careful note of this critically important judgment. In our respectful opinion insurers will certainly be taking note of this judgment and may well refuse to accept liability where they can prove that the recipient of a text message read that message whilst driving and was involved in a collision.

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