

Managing Distracted Driving

The E1T Road Map

For

National Safe Driving Program Implementation

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Executive Summary

The Distracted Driving Problem

Distracted Driving is a huge problem for everyone and part of what AAA estimates the cost of traffic crashes to be \$166.7 billion. The [Centers for Disease Control and Prevention](#) says in 2010 that the cost of medical care and productivity losses associated with motor vehicle crash injuries was over \$99 billion, or nearly \$500, for each licensed driver in the United States. Its impact will be felt by individuals, businesses, governments, judicial systems, and social and charitable organizations internationally.

Distracted Driving occurs when someone operating a vehicle turns their attention to a message of some type received through a mobile device. The mobile device could be a phone, a smart phone, a tablet, a mini, or a laptop. Distracted Driving occurs when the vehicle operator turns their attention to anything other than operating that vehicle, like applying makeup, fiddling with a GPS, or reading a paper map. Distracted Driving becomes a problem when the Distracted Driver has an accident that causes personal injury or property damage.

Current Trends Related to Distracted Driving

The number of Distracted Driving accident fatalities is rapidly trending upward while alcohol-impaired crashes causing fatalities are again down as well as all other vehicle crashes are down.

http://www.rmiia.org/auto/traffic_safety/Cost_of_crashes.asp

□ In 2010 there were 5,419,000 police-reported motor vehicle traffic crashes, down 1.6 percent from 5,505,000 in 2009. Of total crashes in 2010, 1,542,000 caused injuries and 3,847,000 caused property damage only.

□ The National Highway Traffic Safety Administration estimates about 10 million or more crashes go unreported each year. So how many of these may be related to Distracted Driving?

Distracted Driving crashes rise

□ Distracted Driving: A September 2010 study from the National Highway Traffic Safety Administration (NHTSA) found that in 2010 5,474 people were killed and 448,000 people were injured in motor vehicle crashes involving distracted driving. The percentage of people killed in such crashes rose from 10% of all motor vehicle crash fatalities in 2005 to 16% in 2009. Of those people killed, 995 involved reports of a cellphone as a distraction, or 18% of all distracted driving crash fatalities.

When Distracted Driving is involved, litigation settlements are rising. The average award to victims of Distracted Driving accidents is \$100,000. In cases involving international companies, settlements have already been awarded upwards of \$20 million. In fact, Distracted Driving litigation is creating a new body of law through precedent that holds corporate giants directly responsible for Distracted Driving accidents of their employees. The reach of Distracted Driving litigation doesn't stop there. In a recent Pennsylvania case, the SENDER of a text message that distracted a driver was sued as a "co-conspirator" much like a aiding and abetting in the commission of a felony.

Corporations are at risk. Blanket or excess liability insurers are aware of that exposure too, and are taking action. Premiums are increasing to reflect that exposure.

The same is true for an individual. The coverage limits of their homeowners or auto policies are becoming insufficient to protect them from loss of their home, investments, and lifestyle. Premiums are rising to cover their exposure to risk, especially if they have teenagers on the policy.

Legal precedent has already defined certain steps a corporation needs to take to help minimize that exposure. Risk managers are already working with their insurance companies to create Distracted Driving policies that will withstand legal challenges that will occur, in effort to minimize exposure and reduce premiums.

Employees who conduct business while out of the office or on a company or personal phone where the cell number is shown on company letterhead or email are also creating new risks. And courts have already ruled that it is not enough to comply with local regulation to escape liability for an employee Distracted Driving accident, nor is it sufficient to create and implement a policy. The corporation needs to create a Distracted Driving program for all its drivers and employees that conduct company business outside the office and actively manage the program to escape liability for negligence.

Technology just may come to the rescue. Several companies have created phone applications that do not allow use of the phone while the employee is moving. However, not all phone applications are alike. Some do not support overrides for emergency calls to 911 or other critical numbers. Others do not record movement below 5 miles per hour so they will not necessarily work in parking lots or when driving in rush hour traffic. Most phone applications do not log detrimental user activity like turning off the GPS to make a call, or stopping the application while you are expecting a return text from someone. Purchasing an application from a third party does not allow you to customize the application to fit your needs so many applications currently will only minimize your potential risk. Therefore it is extremely important to choose the application carefully.

Another noteworthy trend is that states are already passing Distracted Driving legislation. Many states are already upgrading penalties and widening scope of the legislation. This trend to regulate Distracted Driving is expected to continue. There is no uniformity of penalties in the legislation and enforcement varies greatly. Little funding for education or intra-state coordination of policy enhancement among the state department of motor vehicles has been legislated or budgeted. States seem to want to be more aggressive in attacking the Distracted Driving problem, but in the current economic climate, they cannot fund effective programs.

Negative Impact of the Distracted Drivers

The impact of Distracted Driving is significant. It even reaches beyond those directly involved in the Distracted Driving accident. It creates new burdens on state and local budgets, law enforcement, automobile insurance coverage requirements, liability protection insurance coverage, legislative branches at every level, individuals, corporations, small businesses, industry groups, even the economy. And it can affect each of these in significant and negative ways.

Issues, Roadblocks, and Stakeholders

Perhaps the biggest issue is the broad range of stakeholders that have an interest in managing Distracted Driving. Not only are they stakeholders, but each has an urgent need to mitigate the risk or expense associated with the Distracted Driving problem. Unfortunately, few of these

groups, if any, can solve the problem without enlisting the help of other groups. So rather than wait for (inter)national leadership, they will work within their domain of influence to try to mitigate their risk. *Distracted Driving could become the largest “matrixed” project ever attempted. Or if left unaddressed, it can easily become a huge legal, economical, moral, and ethical challenge, perhaps bigger than any other faced by government and its citizens.*

Solution Requirements

Finding an effective and feasible solution is not at all hopeless. With the use of a properly defined program, the use of program management best practices, and with strong leadership and accountability, the Distracted Driving problem can be solved. The authors suggest these high level requirements for a successful National Safe Driving Program Implementation:

1. Businesses educating employees and establishing string policies for their Drivers
2. Parental involvement and positive example
3. Education starting at a young pre-teen age
4. More strict enforcement and legislation
5. Higher fines and penalties
6. Proactive insurance company involvement
7. Leveraging current and future technologies
8. Court systems involvement
9. A Washington administrative authority
10. Educating people to make the right choice

Recommendation

A multi-tiered and phased approach is necessary. It must include education, legislation, and national infrastructure in addition to collaboration across industry segments, between stakeholders, and between legislative jurisdictions, with appropriate leadership, appropriate ownership of responsibility, and appropriate funding. That is not impossible, although a program of this caliber has never been done before.

There will be no one stop shopping here. The complexity of this effort precludes a piecemeal or single streamed attack. There will not be just one technology or one law or one group that will solve the issues of distracted driving. It will take a concerted effort from many. It will take collaboration from many, in a bipartisan, apolitical effort focused on reducing distracted driving incidents if we are able to make a dent in fighting this epidemic. The complexity of the problem is its armor, shielding the status quo.

The status quo will lead to confusion, consternation and frustration, abrogation of responsibility, protectionist and defensive behaviors, long delays of court challenges, widely erratic ups and downs of success and failure, escalating costs and wasteful expenditures, inefficiencies and

gaps in implementation that will be exploited, and the most unfortunate effect: an escalating level of injury and fatalities.

An Introduction to the Distracted Driving Problem

According to the National Highway Traffic Safety Administration's annual study for 2010, Distracted Driving is responsible for one in every 11 U.S. traffic deaths. The NHTSA found 3,092 people died in 2010 from distraction-related crashes, totaling about 9 percent of traffic-related fatalities. The report also documented a disturbing trend among cellular phone users showing that activities like texting and talking while driving spiked by more than half over the previous year.

In a separate study commissioned by the NHTSA, driver use of hand held electronic devices has been steadily trending between 5% and 6% of all drivers nationwide since 2004. That study also showed a more disturbing and recent trend among all drivers where visible manipulation of a hand-held device increased by 50% over 2009.

In a survey of American drivers, 2/3 of polled drivers admit they recently talked on the phone while 20% of survey respondents admitted to texting while driving. The National Transportation Safety Board reports that a driver is 163 times more likely to have an accident if they call, text, or use the Internet while driving.

Currently, highway accidents account for significantly more fatalities than all other modes of transportation combined. The statistics are staggering. Highway fatalities exceed the total of all other transportation deaths by over 1600%. Of the 34,925 (See figure 1) transportation fatalities that occurred last year, 94% occurred on the nation's roads and highways. 8.9% of the total fatalities from all modes of transportation were caused or influenced by distracted drivers. Of all highway deaths that occurred last year, 9.4% involved distracted drivers. The nation's roadways are very busy. To some extent, one might not be surprised by those statistics. At under 10%, even distracted drivers are only a small proportion of total fatalities. With all the people who use their phones while driving to make or receive voice calls, to get driving directions from smart phone GPS applications, to read text messages or actually initiate or respond to text messages, 9.4% may not be surprising either. So what has changed? Why is Distracted Driving such a big deal?

At under 10%, even distracted drivers are only a small proportion of total fatalities. With all the people who use their phones while driving to make or receive voice calls, to get driving directions from smart phone GPS applications, to read text messages or actually initiate or respond to text messages, 9.4% may not be surprising either. So what has changed? Why is Distracted Driving such a big deal?

What has changed is the huge litigation settlements awarded to the victims. These settlements are so large that businesses have taken notice. A review of court documents revealed that businesses are at risk for inaction in establishing formal programs to curtail Distracted Driving among their employees. The only way to mitigate the risk from Distracted Driving accidents is to actively manage that risk for their employees who drive while on company business.

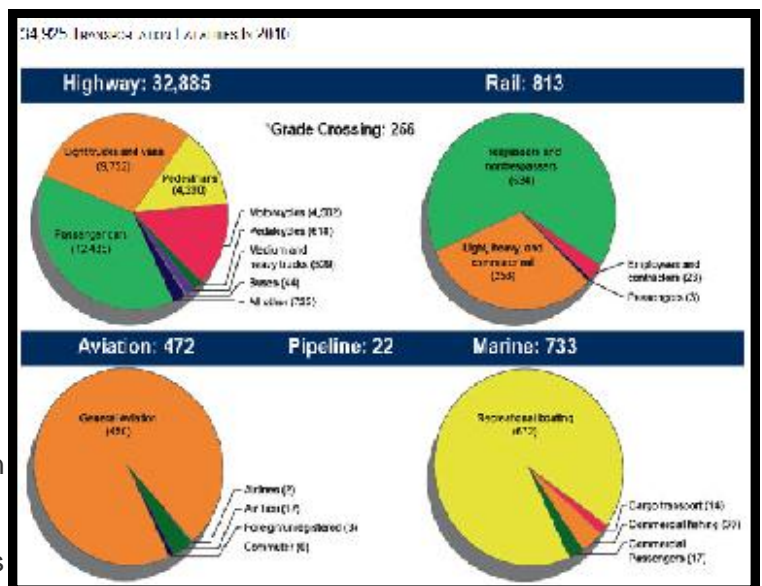


Figure 1: From the 2011 NHTSA Study

In addition, companies without a Distracted Driving policy or those that have an inadequate Distracted Driving

policy are becoming increasingly viewed by customers, clients, employees, and the communities in which they do business as bad business partners, employers, and neighbors because they are ignoring their social responsibility. This can be particularly damaging for a company shedding jobs or downsizing business operations as a result of economic pressure, as those activities already have a huge social cost burden for local communities supporting the newly unemployed.

Businesses and communities are not the only ones affected by Distracted Driving. There is of course a huge cost to the victims involved, local governments, state governments, and quasi-government services, entire industries, the judiciary and the legal profession, all the individuals responsible for Distracted Driving accidents, and all the taxpayers and residents in the entire country.

The level of impact to each of these groups can be substantial if immediate action is not taken to respond to the epidemic of Distracted Driving. This paper will explore the possible impact on each of these groups and propose what is likely to happen, identify the short and long-term negative impact likely to result from Distracted Driving, describe some possible scenarios, time frames, and interventions, and explore the range of implications on each of these groups.

As stated before, Distracted Driving is one of the top insurance losses — averaging \$100,000 per incident, according to Dexter Hamilton, member and general/commercial litigator at Cozen O'Connor and Jami McClellan, senior risk engineering consultant at Zurich. Here are some recent jury verdicts in Distracted Driving cases that are concern for alarm, proving liability settlements are trending upwards:

- **Coca-Cola Hit with a \$21 Million Distracted Driving Judgment.** In May of 2012 a jury in Corpus Christi, Texas awarded \$21 million in damages to a woman who was struck by a Coca-Cola driver who had been talking on her cell phone at the time of the accident. The plaintiff's attorneys were able to successfully argue that Coca-Cola's cell phone policy for its drivers was "vague and ambiguous." They also suggested that Coca-Cola was aware of the dangers but "withheld this information from its employee driver," which led directly to the circumstances that caused the accident.

Morgan O'Rourke, *editor in chief of Risk Management magazine* states in the Risk Management Monitor: This case emphasizes just how serious the risk is – and that all employers can be vicariously implicated if they fail to manage and monitor how employees are using mobile devices while driving. Employers who want to minimize liability as much as possible must institute risk management programs to actively or passively enforce cell phone use policies.

- Another case involved a brokerage firm whose employee was driving his personal vehicle but talking about company business on his cell phone. The driver hit and severely injured a motorcyclist while talking on his phone. His employer was forced to pay **\$500,000** to settle the case.

"There's simply going to be no sympathy once an accident happens," said Hamilton. "And companies must realize that brand destruction is very critical. A high-profile accident can harm the brand everyone worked so hard to maintain and promote."

- In the case of *Tiburzi v Holmes*, which involved Jeffrey Knight, who was a driver for Holmes Transport & Logistics, and Mark Tiburzi, who was driving his personal vehicle at the time. Knight caused an accident that injured 15 and killed three in St. Louis, Missouri. One of those injured was Tiburzi, who suffered severe traumatic brain injury. The cause of the accident? Along with excessive speed and driving over the

allotted on-duty hours, distraction was blamed — Knight had looked away from the road to check his cell phone. The jury awarded Tiburzi **\$18 million** — to be paid by Knight's employer.

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What is the impact of these large jury awards for the average person? How will these high jury awards change the status quo? What are some possible changes we may expect? Here are 20 possible outcomes; each one could significantly change today's status quo:

1. Automobile accidents are not settled with conventional restitution. Settlements will take longer and jury awards will be higher. Seemingly average types of accident cases will have a decreasing likelihood of settlement without prior proof that the driver, or the victim driver, was not on the phone, in a text conversation, or otherwise distracted by using a mobile device at the time of the accident.
2. Accident victim recoveries will be significantly higher, perhaps by 2-300% or more than today's norms. Average Distracted Driving settlements are already at \$100,000, and are likely to increase rapidly as potential litigants become aware of other jury awards.
3. Current auto coverage is inadequate. The average driver will need higher coverage limits, as well as a blanket or excess liability policy (Umbrella Policy) to protect their home, life savings or other assets.
4. Insurance companies will be saddled with large or maximum policy payouts. In order to recover from these losses, and to compensate for increased risk, and to rebuild profitability, premiums will rise quickly, putting additional pressure on family budgets.
5. Increased auto insurance premiums may cause people to drop coverage. Others may meet mandated minimum coverage by purchasing policies from poorly performing companies that offer low rates and longer settlement cycles. This will put pressure on the state's regulatory staff to respond to residents' complaints and investigate the companies, all at additional cost to the taxpayer.
6. State legislated minimums will increase, perhaps even at the demand of residents. States will be saddled with increased enforcement costs as regulation efforts are stepped up to weed out fraudulent and financially risky insurance companies.
7. Liability limits will be legislated for individuals first in order to protect their life savings, home, and other assets. Liability limits for businesses will be passed when the anti-business sentiment wanes, probably two to three years after the economy recovers. This will curtail some of the highest settlements but it will take years to get through the legislation process, so settlements will continue to rise while that is occurring. This will drive the negative affects of rising premiums, lower compliance with minimum coverage legislation, high settlement costs, and devastated families.
8. "No Fault" Accidents will have fault determined by cell phone logs. Cell phone users will pay huge settlements. NTSB is already reviewing commercial vehicle accidents, and already has assigned blame to the party guilty of Distracted Driving. The NTSB has already recommended against all cell phone use while driving. <http://content.usatoday.com/communities/ondeadline/post/2011/09/ntsb-wants-to-ban-cell-phone-use-texting-by-truckers/1>
9. More legislation, with more restrictions on device usage, will begin to proliferate as legislators make political statements by contributing to highway safety and constituent protection.
10. Businesses will raise prices on all products due to increased fleet and transport operating cost. Food and other necessary product price increases will also impact family budgets. Families will already be struggling to sustain the increased cost of transportation to get to and from work. As inflation takes over, the 50+% of Americans who are currently living paycheck to paycheck will not be able to survive another economic crisis. At best they will drop out of the markets. At worst, the Federal Reserve's monetary policy of quantitative easing will resurface and drive prices spiraling upward due to the falling value of the US dollar.

11. Cell phone sales will be regulated and cell phone usage will be monitored.
 - ⤴ perhaps even creating a national cell phone sales database to prevent drivers from hiding ownership and use of disposable, pay per use, and track phones that can be used undetected while operating a motor vehicle.
 - ⤴ Court directed user penalties will include banned usage of a cell phone, probation periods and enforcement costs, penalties for “carrying” a phone while prohibited by terms of parole, and court ordered software protection with fines for unlawfully bypassing the application features.
 - ⤴ Cell phone manufactures will be required to emulate the features of Distracted Driving phone apps on all phones, even those that are not smart phones.
 - ⤴ Businesses will monitor “corporate phones” for usage and GPS correlations in order to discover Distracted Driving Policy violations by their employees.
12. Individuals will suffer the same way businesses suffer. Especially hard hit will be the parents of teen drivers. If the parents do not take steps to prevent Distracted Driving, document what they are doing, and proactively manage a safe driving program for their teen driver(s), they will put at risk all that they own. Excess or blanket liability policies will need special riders to cover Distracted Driving, making them very expensive for the parents of teenage drivers. Teens will lose access to their parents' vehicles. Teen drivers and mid-to-low income individuals, who make up over half the nation, will become the largest under-insured or uninsured class of drivers.
13. Current cell phone users will upgrade to smart phones to protect themselves and their families from Distracted Driving accident liability by using premium grade Distracted Driving phone applications.
14. Driving behavior will be recorded and evaluated before automobile insurance policy renewal. Unsafe drivers will lose coverage, creating upward pressure on uninsured driver premiums and uninsurable driver pools required by individual states. Policy terms will shorten to months, and eventually to days, with coverage determined by a computer from information swept from national reporting databases plus and any legally mandated grace period prior to policy termination.
15. Driving behavior will be tracked by distracted driver protection companies and the information contained on server logs will become subpoenaed evidence causing loss of privacy.
16. A new body of law will develop around Distracted Driving litigation based on legal precedent.
17. A new industry supporting parole management, settlement expediting, and non-insurance based preventative driver protection services will develop to support Distracted Drivers and their victims.
18. “Safe Driving Radio” will develop with non-engaging, more restful programming to which one can safely listen while driving.
19. Commercial and passenger vehicles will increase in sophistication and contain auto pilot and crash safeguard devices to help compensate for driver distraction and avoid accidents.
20. Detection devices will be deployed on public roadways and infrastructure to identify and ticket distracted drivers electronically.

Distracted Driving has the potential to change the way we are accustomed to thinking about driving and living. It will also change the level of insurance coverage needed for adequate protection. It will 'up the ante' and reveal a much higher price to be paid for “always-on” communications connectivity, doing business from your car, or doing business outside the office.

Do you think an employer can't fire you for having a Distracted Driving accident? Here is a hypothetical situation to illustrate what is in store for Distracted Drivers:

In order to prevent the possibility of a devastating personal financial loss, an employee with inadequate coverage could say (s)he was conducting client business at the time of a severe accident with injuries (i.e., looking up the contact with the intention of calling to leave a message, so that it doesn't matter that the call was never made, nor logged on the phone itself) just to ensure there is sufficient financial backing for possible lawsuits. In order to guard against this risk, business owners will have to develop and implement termination policies related to Distracted Driving that must be signed by all employees, where termination is retroactive to prior to the time of

the alleged Distracted Driving violation. It follows therefore that employees who have a single accident where Distracted Driving is involved will immediately become jobless, retroactive to before the accident. To make matters worse, the reason for termination will be difficult to overcome when attempting to get another job.

Distracted Driving Defined

For purposes of the statistics quoted above, Distracted Driving is defined to be the use of cell phones, smart phones, internet enabled devices, portable computers, tablets, and WIFI enabled devices, MP3 players, connectivity devices like Bluetooth or Sync, or any other portable or mobile electronic device that may be created in the future, while operating a motor vehicle.

In reality, however, this definition has already begun to broaden. It isn't much of an intuitive leap to understand the driver distraction that could result from applying makeup, eating, reading, adjusting the radio or GPS, disciplining children, feeding babies, reading the paper, or even reading a map while operating a motor vehicle. New legislation on Distracted Driving has already explicitly included many of these behaviors that become dangerous if performed while operating a motor vehicle.

In addition, some recent legislation has broadened the reach of Distracted Driving legislation to include the operation of bicycles! If you have ever been in a busy downtown area and encountered a bicycle riding delivery service messenger zipping in and out of traffic and through pedestrian lanes and intersections, you will readily understand why. Should the messengers be operating a cell phone, using the phone's GPS to find the next delivery location, or reading a text message that specifies where their next pick up will be, while speeding on their way through automobile and pedestrian traffic, it is certain that a dangerous situation is created.

What's next? Think about all the work situations that could be affected by cell phone usage. As a taxpayer, would you want to pay a million dollar settlement because a 911 operator or a police dispatcher inadvertently failed to dispatch or log a call because they were taking or making a personal call while working? How about if the employee was handling a personal family emergency and there was insufficient backup to cover operations while the employee was handling the call in a break room away from their work responsibilities as was the city's written policy? This situation shows how the reach of Distracted Driving legislation can extend even beyond those individuals involved in the incident. Is the manager at fault? Is the city at fault for developing a cell phone usage policy but not properly funding its implementation? Since Distracted Driving litigation has already set a legal precedent of management liability for not implementing appropriate policy, it is only a matter of time before the body of law will support litigants outside a vehicle. on a bicycle, a golf cart, on foot or on the job.

Answers to Common Questions

Are drunk driving accidents considered to be Distracted Driving and included in the Distracted Driving statistics? If not, why wouldn't we approach Distracted Driving the same way we manage drunk driving?

While drinking and driving is certainly a distraction of sorts, alcohol related accidents and fatalities are not included in the statistics quoted above. Drinking and driving accounted for a higher number of fatalities last year, totaling 31%, according to a NHTSA study, but instances of drunk driving have steadily decreased by more than 40% over the past decade due to aggressive ad campaigns and increasingly more harsh penalties for first-time and repeat offenders.

There is a lot to learn from the significant, but limited, success of the various approaches taken to combat drunken driving over the past 10 years.

- ⤴ Recidivism is common. Serial offenders are not discouraged from repeat offenses and will take significant personal financial and safety risks rather than comply with the law, probation, mandated education, mandated treatments for addiction, or social peer pressure.
- ⤴ Ad campaigns have helped develop social awareness and have influenced safer behaviors among the general population. Designated drivers are more commonplace and legal consumption limits are better understood.
- ⤴ Insignificant, moderate, or escalating penalties have not had an appreciable deterrent affect.
- ⤴ Enforcement of national drunk driving laws is subject to enforcement gaps, non-uniform penalties across local jurisdictions, and took a long time before sentencing standards were developed and adopted.
- ⤴ The rampant escalation in social use of marijuana and recreational drugs was quickly included in the established body of Driving While Intoxicated (“DWI”) law by morphing existing DWI legislation into Driving Under the Influence (“DUI”) law so that it would include drug usage while driving.
- ⤴ Our adversarial system of litigation, our nondiscrimination body of law, plea bargaining policies, mandated access to insurance coverage, lenient sentencing of offenders, inability to properly fund appropriate management of parolees, prisons, and the court system serves to protect individual offenders at the expense of society as a whole. These same factors, along with the general acceptance of this mismanagement, has also increased tax assessments to pay for services provided to or because of the offenders, also at the expense of society as a whole. Examples included uninsurable risk pools mandated by states to cover repeat offenders, the whole concept of uninsured motorist insurance, and the high cost of litigation surrounding drunken driving accidents. These all directly impact the premium cost of insurance and real estate taxes paid by the general populace.

While alcoholism is a disease and excessive use over long periods produces elements of physical addiction, Distracted Driving is not a disease and doesn't cause nor result in addiction. Distracted Driving is always an individual's choice. It is thus more likely that the results of an accident caused by Distracted Driving will become a personal legal liability for the individual who made the choice to put others in danger. This is negligent behavior. Negligent behavior has consistently brought large litigation settlements to those damaged by that negligence. That is what makes Distracted Driving such an expensive proposition. Considering statistics show Distracted Drivers to be 163 times more likely to have an accident, the personal consequences are far greater than that of drunk driving.

Isn't Distracted Driving receiving over attention from the media?

There is no doubt that Distracted Driving is receiving a lot of play these days. Is it over attention? There is a huge shift occurring right now. The media is simply picking up on it and reporting it. Regardless of whether you believe that, the impact of Distracted Driving is by no means diminished by having the media pick up and distribute the story. If the media is overplaying the topic, maybe more people will begin to listen to the message that an accident from Distracted Driving is truly life altering and an unacceptable risk for what you get in return.

Why does Distracted Driving require immediate attention?

Reducing Distracted Driving saves lives. Regulating Distracted Driving is certainly as important as seat belt regulation. Legislation requiring the use of seat belts has reduced the severity of injuries sustained in vehicle accidents, but Distracted Driver legislation can prevent the accident from ever happening in the first place. That is a far more preferable alternative.

In addition, everyone would be better off if we can prevent the anticipated escalation in jury awards and all the negative things that will be triggered by it. The sooner we address the problem, the sooner the impact of the problem will be stabilized.

How can we solve the Distracted Driving problem if we can't solve the far more serious problem of drunk driving?

First, we have achieved a 40% decrease in drunk driving incidents over the last 10 years. It is not because 40% of the drunk drivers are in prison and unable to get behind the wheel. We are getting the message out and doing something right.

Second, Distracted Driving and drunk driving are not the same thing. Distracted Driving is always a choice. One could choose to stop at any time. Habitual drunk driving can be caused by feeding a physical addiction. It is also a disease for which there is limited medication and an extraordinarily long recovery period.

There are solutions to cure Distracted Driving immediately. The real tragedy would be to not learn the lessons from our failed or less effective anti-drunk driving programs or not to learn the lessons from those programs that have worked. Lessons learned can be applied to a new Distracted Driving program right from its inception. We just need the will to do it.

Isn't Distracted Driving primarily a teenage problem?

Intuitively it certainly seems so.

But in a recent survey, 30% of adults said they text and drive. Even the NHTSA study showed the 55+ age group doubled in the number of Distracted Driving incidents in just the last year. While the 'older generation' of Distracted Drivers may still be a very small number, the fact that the number of Distracted Drivers in that age group is growing shows that this problem is not solely related to age. It is more likely related to the familiarity and the level of comfortableness one has with the portable devices. Teens may be the biggest group now, but they certainly won't be when measured over time.

Doesn't Distracted Driving impact a very small percentage of drivers?

It does impact a relatively small number of drivers in comparison to all drivers on our nation's roadways. But it is not just limited to roadways. A train engineer has created dangerous and potentially lethal circumstances due to distraction from mobile device. It can certainly happen in a boat or while flying an airplane. Perhaps, the other more important consideration is the devastating impact of a Distracted Driving accident spreads far beyond those physically involved in an accident. The high cost of Distracted Driving ultimately finds its way back to consumers, even those who don't drive still pay the same price for their goods and services and enjoy the same benefits of our economy. What impact would 4 or 5 multimillion dollar lawsuits per year have on the post office? Is the post office too big to fail? There are a lot of things consumers in America take for granted and Distracted Driving can certainly impact them.

The older generation may become a bigger problem than expected. America is graying, and as you age, your reactions slow and your sight and peripheral vision begins to decline. Yet baby boomers will probably be on the road more often after they retire than they are today. In a recent study, almost 50% of later age teens and

early 20-somethings who participated in the survey admitted they text and drive. That is a lot of potential accidents, even if one were to extrapolate today's modest rate of 9% Distracted Driver fatalities as the average national Distracted Driver non-fatal accident rate.

R. Tyler Tomlinson, a shareholder in Stark & Stark's Newtown, Bucks County office, who specializes in accident and personal injury law, posted a notice on the Pennsylvania Law Monitor, which provides news and commentary on legal developments in the State of Pennsylvania, that a distracted driver who caused an accident with personal injuries was not the only one liable. Attorneys for the plaintiff, in the first case of its kind, pursued restitution from THE SENDER of the text message as well. Their reasoning was similar to "aiding and abetting" because they proved the sender knew the driver was on the road and the sender's text message caused the driver to be distracted. The jury did find for the defendant, but the case is currently under appeal.

Distracted Driving can change the way we think about things and the way we live.

Can't the Distracted Driving problem be resolved through education and legislation?

Education and legislation are two very important ingredients to a successful anti-Distracted Driving program. With the right education and the right legislation, the program could indeed be a success. But one man's education is not another man's interest and one State's legislation may not even nudge the prevention dial while the same legislation in a different state records enormous improvement. It is really all about matching the message and the target, having an appropriate delivery mechanism, having the right level of enforcement, and having the right funding in place to make it all happen. There are two more very critical pieces: the right program management and ownership. If you could take a hard look at poorly performing government or private sector programs you will find many of these key components are missing, irregularly or inconsistently applied, or not properly resourced. Even if you had the right education and the right legislation, the actual delivery, management, and ownership are key factors without which education and legislation will be ineffective.

Scope of the Distracted Driving Problem

Distracted Driving affects everyone who drives. It affects every company that employs people who drive vehicles. It affects not only the drivers themselves, but pedestrians, their families, and the not-for-profits and communities that support accident victims and offenders. It affects those who work for companies that are burdened with expensive settlements, whether or not they themselves are drivers and whether or not they practice safe driving. Small businesses, the life blood of our economy, can be put out of business by Distracted Driving.

Distracted Driving is not confined to just roads and highways. It does not matter whether an accident occurs on public highways or off road while four-wheeling out to the hunting grounds. And at that time and place where an accident occurs, implications of liability are created for property owners of the off road trails, the rental companies that supplied the four wheelers, as well as for business owners reaching out by phone to their vacationing employees who take those calls while driving to their hunt.

Distracted Driving is international in scope. Local regulations of foreign jurisdictions will not protect you from liability from negligence, regardless of whether the victim is or is not a citizen of the country where the accident occurs. In fact, there is no reason to assume international communities will even treat Distracted Driving as an accident at all. They are free to treat an incident as the willful negligent act that it is.

Recent trends indicate that texting is being banned while operating a bicycle. The City of Chicago has banned texting for bicyclists. The breadth of the Distracted Driving problem continues to grow, and its scope has yet to be fully understood.

Key Issues to Resolve

Multiple Owners of the Distracted Driving problem in the U.S.

Drivers and Parents

As stated earlier in this paper parents have legal, financial and moral responsibility for their ten drivers. Parents need to make their teens use phone apps, or otherwise receive education or proper, thoughtful, and regular governance that is sufficient to stop their teens from Distracted Driving.

Teens, and even the younger school children, on the other hand, may need to challenge their parents, for it is said that 30% of adults are also texting and driving. Teens should be the monitor or admin for the parents to help engage their parents in safe driving practices and become the role models and mentors that they need to be.

Teens should encourage their friends and other teens of the importance of safe driving and the ramifications of distracted driving.

Auto & Liability Insurance Companies

Since the private insurance companies have much, or perhaps the most, to lose for the damages and law suits they should become more creative and responsive and address this issue. This will benefit their policyholders and the general public. Here are some things that they can do:

- ▲ Insurance companies can help by giving discounts and incentives to parents of teen drivers and to all policyholders for downloading of a safe driving application and more for those that prove their use of the applications.

- ⤴ Internally, they can require that their employees, representatives, and agents become the face of their safe driving initiative by downloading a safe driving application to their mobile phone.
- ⤴ Insurance companies may also decline coverage to those that do not at least download a safety app or have multiple distracted driving offenses.
- ⤴ Create an internal policy, together with enforcement and monitoring provisions, that will reduce the risk of Distracted Driving exposure for their own business. This policy and program package can be made available on their web-site for interested parties as a template for their own implementation.
- ⤴ They can start a new service of certification of such a policy and program package, perhaps building service revenue that can be used to fund community education on this issue.

U.S. Court System

Judges can enforce the use of safe driving apps. As a penalty for violation, they can require community service and probation/supervision. Offenders may volunteer to use safe driving apps and allow the courts or their affiliates or insurance company to monitor the driver's activity for a period of time and or until their supervision is completed satisfactorily.

U.S. Legislature

Most of the laws against distracted driving are at the local and State levels. Besides making strong recommendations we feel most of the laws will stay at the local and State levels.

National Highway Safety Board

NHSTA has the responsibility to study, research, test, recommend and find the issues and solutions to the issues when it comes to all vehicles and vehicle types on the road.

School Systems and Drivers Education

School systems themselves are not legally responsible for teaching safe driving practices to their pupils and young adults until the pupils become old enough to drive. At that point the teen is required to take mandatory driver education classes according to the rules of the individual State. School systems are affected by Distracted Driving, every time an accident involving their community occurs; therefore, they need to become more interested in taking on the responsibility of teaching and evangelizing safe driving. Students and Student organizations can do volunteer efforts to spread the word on the dangers of Distracted Driving.

Drivers Education programs are teaching and discussing the dangers of Distracted Driving in the same way they teach the laws and effects of driving under the influence. Education alone will take a long time before it will deter teens from Distracted Driving behavior. Teens need to be taught about an expectation to volunteer to use a safe driving application as part of the privilege of receiving a driver's license. Teens need to make the personal choice, the right choice, to stop doing what they love the best (texting). Waiting for them to take the

initiative on their own has been proven not to be effective nor realistic. Therefore a collaborative effort between legislators, individual State's Department of Motor Vehicles, public and private school systems, commercial driver's education providers, insurance companies, law enforcement, and parents need to drive home the expectation for safe driving behavior.

Businesses

Businesses are exposed to the Distracted Driving risks in many ways. From the employee to the rented automobile, from the lack of any type of formal policy to the lack of aggressive enforcement of that policy, the risk abound. A business can require employees to sign contracts that they have a safe driving application on their phone. Non-compliance can lead to significant penalty, including loss of their job. Businesses should monitor their employee's use of their private or company issued phone if that phone is carried by employees during working hours, or require employees to sign a contract that they will not use the phone for business purposes. If an employee violates the company's distracted driving policy or contact provisions, that risk must be mitigated. If it isn't, liability can reach all the way up to the board room for letting such negligent behavior persist.

Businesses also need to protect their brand. Distributors need to fall into compliance with safe driving program of the product manufacturer. A single incident of a beer distributor vehicle driver causing a distracted driving death or injury could easily escalate into community protest and a brand damage associated with it. On the flip side, a company that addresses the problem and actively manages its program not only reduces its operating liability, but it show the communities in which they do business that they do care about the people in their community. It is great public relations to save lives.

Phone Companies that Transmit the Text and Sell the Phones

Phone companies are in the business of selling phones and services. Some phone companies are selling services to aid against distracted driving though not as effective of other applications in the market. They are also charging large fees for the use of those phone applications.

Some municipalities report that they are considering legislation that prohibits phones from being sold without some form of a safe driving application. While they may not be able to regulate interstate commerce, many communities have home rule laws that can cause manufacturers legal bills, brand damage, and bad press.

Impose Tracking Technology on Cell Phone Manufacturers

Again just as with the phone companies, will a manufacturer have shared liability for avoiding the legal or moral responsibility to have a safe driving application on the phones they make? Manufacturers typically create standardization through industry panels that attack an issue to circumvent or prevent government involvement. Should Distracted Driving be one of those issues? Who will be the organization that approves functions of the phone applications or hardware?

Community

Just as people dial 911 when they see a potential drunk driver on the road, witness road rage, or encounter an ill driver out of control, all drivers should notify 911 when we see someone texting and driving or driving distracted so an enforcement officer or camera may witness it and ticket them. Community awareness of the dangers of distracted driving needs to increase and be taken more seriously.

MADD-type Activism for Distracted Driving

There are getting to be more and more organizations striving to educate and offer types of solutions to the public. Though, again, it is fair to say, few people are taking Distracted Driving serious enough or taking the time and responsibility to do their fair share. ...even for their own loved ones.

State Department of Motor Vehicles, and all Departments of Transportation

The DMV needs to enforce education and testing of Distracted Driving knowledge at time of Driver's license issuance and renewal.

Since many commercial vehicles are licensed or are already forced to comply with the Department of Transportation regulations, their existing testing capabilities could easily be leveraged to also include Distracted Driving education.

States also need to address this problem for their own employees, contractors, and subcontractors in the same way described for businesses. They are at risk, and putting taxpayers at financial risk, by not implementing safe driving policies and programs.

Stakeholders' Adoption of Responsibility

It is one thing to seek input from every group of stakeholders, and it is entirely a different conversation to identify, coerce, or cajole a single point of contact ("SPOC") from each group into accepting personal responsibility for meeting specific program requirements and time lines while facilitating cooperation and collaboration from like-minded stakeholders who are otherwise complete strangers.

It will be no small task to orchestrate unpaid volunteers located across the country with a vested interest in program success to accomplish all that needs to happen. Yet the benefits will outweigh the effort as cited in each segment's business case. Properly managed, program implementation could become not only a career maker for those involved, but also a fun experience.

Management of such a project is no small task either. Not only will a virtual organization structure need to be defined and implemented, but it will have to manage virtual overlays that maximize existing communication structures of regional and national associations, corporate enterprises, and social media to measure success and penetration in addition to solution fitness.

Everyone, every business, every entity is a stakeholder in Distracted Driving events. Each must understand their own links, vulnerabilities, and role in creating safe driving behavior. Everyone needs to engage. Everyone needs to first hold themselves responsible, and then do what they can to help others change to safe driving behavior.

Supporting the International Scope of the Distracted Driving Problem

In today's economy, what happens overseas affects domestic trade and economics. The Distracted Driving problem is an international problem. Everything that we do domestically needs to be replicated in other countries. However, by using normal program management best practices, using social media as tools for communication, and creating a program portal to offer enabling information to any interested party, the domestic Distracted Driving Program can go international virally.

Implementation in the U.S. of a National Safe Driving Program will first and foremost save lives. Second it will save money by eliminating some of the redundancy otherwise spent. It will also smooth some regional differences in implementation tactics allowing standardized metrics to be collected to better understand the drivers of success as well as those of underperformance. Third, the data collected that defines the issues encountered, their impact and remediation tactics for those issues will be publicly available.

Anyone with an interest to participate and Internet access will be able to participate by learning, assessing, performing, avoiding pitfalls, and contributing toward breaking down roadblocks within their own area of expertise. Or they may choose to become a volunteer SPOC by taking on a yet-to-be assigned task, thus making their own contribution toward the larger national program.

The benefit of this approach will be to create a viral improvement effort that will not only mitigate the occurrence of Distracted Driving in the U.S., but at least potentially, abroad too. In addition, this approach will improve the speed and efficiency by which that gets accomplished by providing experiential data and outcome analytics, and standard tools to create and manage that information. This will be an Internet-based improvement program that automatically goes international by engaging foreign leadership and citizens alike in a worthwhile program that saves lives, money and frustration by reducing the occurrence of Distracted Driving where they live.

Identify Leadership and Accountability

The Distracted Driving problem needs to be attacked like any other complex strategic project. In order to do that, it will require an effective sponsor, capable of recruiting other leaders who can facilitate cooperation from numerous segments of the population. It will also require implementation of a basic project management infrastructure and human capital resources familiar with project management methodology to fill key roles in project communications, metrics development and reporting, status reporting, post implementation performance analytics, and who is comfortable facilitating team collaboration and holding team members accountable for assigned tasks and contributions.

The authors' vision for this project is to leverage existing capabilities of organizations and businesses who are interested in solving this problem. For example, insurance industry associations can create a packaged solution that their membership can use as a roadmap to reduce the Distracted Driving risk for their clients. That reduces carrier exposure immediately and helps to curtail the pace of rising premiums for their clients.

Another example might be the creation of a national definition of requirements for safe driving that could be recommended as minimum standards for safety. The National Traffic Safety Board, responsible for safety on the nation's roadways, might work to facilitate development of such a requirement list, and then publicly endorse it and create ad campaigns around it using their existing media capabilities, contacts, and communications budgets. This list could be phase driven, slowly moving the country's businesses and citizens into compliance with an ultimate plan at some point several years from now. In the meantime, the list could be used to help software developers certify their software for compliance with the requirements list. Phone application purchase portals, which are already used by phone application developers, like Apple's iStore and Google's Play, could enforce these requirements by only allowing pre-certified applications for Distracted Driving to be sold or offered on their stores. Or as an initial implementation, the individual phone applications may be required to post their certification level that indicates how many of the standard requirements are supported.

There are a lot more roles to play and a lot of innovative ideas yet to be created. Once they are approved by the Program's Steering Committee, which is created as part of the program organization structure, the duties and responsibilities needed to implement them are created, documented, and made available through the

program portal. As individuals sign up to participate in a role, they are contacted by their SPOC who helps them engage and manages their effort through implementation, performs program status reporting along the way, conducts or facilitates post implementation evaluation, and documents issues, remediation tactics, and results so that others can learn from those who have gone before them.

This method of program management provides both leadership and accountability.

Role of Supporting Technology

The technology supporting safe driving behavior will always be changing in scope, features, and functions. Today we have baseline technology. Technology that is in its infancy. Some examples of what we have today can be adapted into a safe driving product. We have Vehicle On-Board tracking via Global Positioning Systems (“GPS”). We have tethering of Internet enabled devices like laptops to cell phones. We have a lot of technology that can be used to implement safe driving behavior and that can also be used to circumvent it.

The point is, no matter what the technology, people are using it and people can get around it if they want to do so. That is why technology cannot be the goose that lays the golden egg. It must be paired with education and punishment for violators.

There are some technology related advancements that we can anticipate:

- ^ GPS capabilities on all mobile electronics that blocks usage when moving.
- ^ National Database of technology (all mobile devices) users, fed by registration of serial numbers at the DMV, to identify what devices are owned by every driver. This database will be used to check for Distracted Driving violations whenever an accident occurs.
- ^ Vehicles that block only the driver's cell and internet communications

This innovation is not currently feasible, not because it is not technologically possible, but because its cost is too great. In a year from now, that may no longer be true.

There needs to be federal, state and local accrediting organization for products and educational materials.

Technologies companies need to work together and at times combine technologies for an overall better solution.

The Cost of safe driving tools and technologies need to be and stay affordable for all drivers.

Requirements for a Successful Distracted Driving Solution

It will take a combined effort of application companies, government agencies, technology companies' hardware and software, the phone manufacturers, and phone operating systems that are open enough to build needed features and functions. We will need research on what can be done immediately, for teen drivers first, then all drivers, to identify what will work best to stop distracted driving. Most of all we will need to enlist the support and personal responsibility of drivers. We will need their understanding of the magnitude of this problem and their desire to solve this problem. We will need to motivate drivers to do what is right and safe for them and all of us, both on and off the nation's roadways.

Complex Problem Needs Simple and Effective Solutions

Because this problem has so many stakeholders, there is a need for collaboration and skillful matrix management to fairly address the issues and prevent solution and implementation gaps. There are many ways to implement safe driving, and like most other projects, whether one is better than another is sometimes difficult to determine. Yet that choice will have to be made, and made over and over again, each time influenced by a variety of circumstances that may or may not be the same and that will likely morph over time. The large number of stakeholders, the large number of approaches to implement change, and the need to assess performance and outcomes for every approach makes this program a very complex one. It is not that any one thing is difficult, it is the coordination and collaboration that is required that makes it complex, particularly when you are depending on something or someone over whom you have no authority.

Because there are likely to be many different approaches or changes to approaches already implemented that are made to improve outcomes the issues and roadblocks encountered during initial implementation will require a try and see attitude. If every group or role that plays a part in the solution is not on board with tactics, resources, time lines, and post implementation support, the entire process will function inefficiently until that role comes into compliance with the process requirements. Therefore, the secret to success is to create a simple and effective solution, easy to understand, easy to implement, and easy to manage. Complex problems always require solutions as simple as possible, even if they are just starter solutions. Conversely, complex solutions are difficult to implement and difficult to assess efficiency and quality of the outcomes.

Multifaceted, Cooperative Response Required

While there are some things that can be done immediately to reduce the fatalities and personal injury caused by Distracted Drivers across the nation, an integrated, multifaceted, collaborative approach is best. Program management experience has shown that to be the case when dealing with highly matrixed projects and programs at an enterprise level. Yet here we are dealing with a level above the enterprise and as such there are competing tactics and solutions that must be effectively arbitrated. With the correct organization in place, the steering committee will make the final decisions for purposes of the program. However, if all participants are committed to cooperation and keep the desired outcomes in sight and remain focused on those outcomes, the project will succeed.

Current Trends Demand Solution Urgency

The current trends described earlier are:

- ^ escalating number of Distracted Driving injuries and deaths
- ^ rapid escalation in the size of Distracted Driving litigation awards
- ^ significant new judicial rulings have broadened risk exposure for everyone
- ^ technology support is building, but most products are functionally incomplete
- ^ local legislation to regulate Distracted Driving is increasing. Many times the legislation is not properly funded for active enforcement. The lack of uniform standards will create more court cases, more precedent, more interest by the legal profession, more fines, parolees, and more enforcement costs.

Because the scope of the Distracted Driving problem is still being created in the pertinent body of law, this is

an area legal attention and rapid growth. If the impact of the problem can be curtailed and contained through a national safe driving program, it will significantly stall growth by significantly reducing litigation. The longer the problem persists, the more challenges of legal boundaries will take place. As case law develops, the churn in the legal system will increase operating costs, litigation expenses, and insurance premiums. It is truly a vicious cycle that will feed off itself. The good news is that it can be broken now, before it even develops into what could become a very expensive, non-productive overhead cost financed by individual taxpayers and businesses.

Specification of Supporting Technology Requirements

The Distracted Driving Program should be run like a strategic project. Detailed planning of the various phases needs to be created so that feasibility and cost can be determined. The exact specification of what technology support is needed for the project should be driven by the project business case or the preliminary scope document.

There are certain components that need to be built as part of a national infrastructure. Some of these are already known, others will be developed during the program planning stages. For example, in order for a Distracted Driving solution to be complete, we need to prevent drivers from using disposable phones that can't be readily traced to the purchaser. In order to do this, there will likely be a national database, functioning much like the one currently supporting the purchasing of firearms. The creation and support of such a national database will have a cost of construction, implementation, and annual support. Since that would have to be funded, the program manager would need to facilitate an accurate estimate of the total cost of ownership and weigh it against the value it provides to determine whether or not it will become a project in the program.

All support technology would go through such a process. Items likely to be included are: creating a web portal for the project, building a document management capability, providing a robust search engine, etc.

Requirement for National Program Management

At the highest level, this is what is required:

- ⤴ Ownership of the national program needs to be established
- ⤴ An experienced Program Manager to define and operate the program
- ⤴ A business case needs to be developed for all key initiatives and their feasibility determined
- ⤴ Stakeholders need to be identified and organized into a coordinated, collaborative effort
- ⤴ Program and organizational structure needs to be defined, resources recruited, roles staffed
- ⤴ Project phases and segments need to be defined and planned
- ⤴ One or more projects addressing the best outcome expectations or “low hanging fruit” should be initiated first
- ⤴ A pilot project may be appropriate to demonstrate program value, prove expectations, or gain new learning's for the larger scale deployment.

The Business Case for Change

Collaborative Solution Needed

Industries, Companies, Associations, and Social Organizations need to work on an effective solution together. Without it, implementation will take longer, be less effective, and cost us far more.

Recommendation

My key recommendation and one that could have the most significant impact would be to have insurance companies take control for they have the most power and the most to lose next to the loss of lives.

The good thing is the laws of all states but New Hampshire make auto liability insurance on a vehicle mandatory. So, if insurance companies would give premium discounts to those that download a safe driving application to their smart phones, drivers would have a stronger incentive to protect against Distracted Driving. Parents of teen drivers would be especially motivated by the cost savings of lower premiums. This will likely help ensure that a safe driving application is placed on their teen driver's phone. If insurance companies made it mandatory for certain age groups and those with prior driving violations to download a safety application to their cell phone or no insurance policy/coverage would be offered, the most at risk drivers would be forced to comply in order to have insurance coverage.

Also lowering the liability limits for habitual offenders of distracted driving will lessen the financial exposure to the insurance companies and increase the exposure to the vehicle owner. After a specified "probationary period" of time, if there are no new offenses, insurance companies may again increase the liability coverage.

Some cities and states are already trying to increase fines for distracted driving. The issue so far is the \$50 – \$200 fines are still not high enough to have an impact on most offenders. It is fair to say that fines of \$500 for the first offense, \$1,000 for the second and \$2,000 for the third offense, along with a one-year suspension of ones driver's license might get the unsafe driver's attention. It's safe to say that distracted driving offenses would decrease.