

# TEXTING AND DRIVING

## The Liability of a Texting Motorist



**Jason Pottenger, Attorney**  
**The Pottenger Law Firm, Kansas City, Missouri**

# HOW TO RECUPERATE DAMAGES

Texting while driving is one of the most dangerous forms of distracted driving. Studies conducted by the National Safety Council and The U.S. Department of Transportation have shown that driving while distracted by cell phone use leads to 1.6 million auto accidents each year—causing a half-million injuries and approximately 6,000 deaths. The number of accidents caused by cell phone use rise each year and this, unfortunately, leads to a yearly increase in injuries and death. If you are injured in an accident that was caused by someone who was using a cell phone while driving, then you are entitled to be compensated for any damages you may incur.



## Legal Liability

---

When driving a motor vehicle, the driver has an obligation to operate their vehicle in a safe manner. This is referred to as “duty of care.”

Duty of care is a term that refers to the legal obligation of an individual, engaging in an activity that could foreseeably harm others, to adhere to a standard of reasonable care.

Failure to adhere to the duty of care is referred to as negligence. When one’s negligence results in an accident, they are liable for the damages caused in the accident.

As we know from various studies and statistics, texting while driving is dangerous. When a driver is texting while driving, they are intentionally engaging in behavior that puts other motorists and pedestrians at risk, and therefore, are in breach of their duty of care.



## Collecting Evidence

---

Using a cell phone while operating a motor vehicle is negligent behavior and makes one liable for damages in any accident resulting from the negligence, but it can be difficult to prove. This is where your cell phone can come in handy.

The first thing you should do is call the police. When the police arrive, make sure to tell them that you believe that the other party was using their cell phone prior to the accident. If there are laws against using a cell phone while driving in the state that the accident occurred in, the police may issue a ticket, which will be included in the police report. Even if a ticket isn’t issued, the police report may say that a cell phone was believed to be a contributing factor to the accident.

Most cell phones these days can record video. From the moment you get out of your vehicle to speak to the other party in the accident, it is a good idea to be recording the interaction. They may still be on their phone, their phone may still be open on their passenger seat, or they may be trying to delete recent text messages or cell phone activity. You can also use the video to document what would traditionally be recorded with photographs (damage, skid marks, position of vehicles). You should record your interactions with the other party, as they might admit to using their cell phone just prior to the accident. If there are witnesses, you can record their statements at the scene, proving they were there at the same time as taking their statements.

## CONT... Collecting Evidence

---

Cell phone records can be difficult to obtain, but your lawyer can ask for the judge to subpoena the cell phone company to release the records. This can provide proof of use at the time of the accident, even if they delete their recent activity from their phone before the police arrive on the scene.

Make sure that you get the other driver's insurance information. This may be included in the police report, but it isn't always, so it's not a good idea to depend on the report for this information.



## Recovering Damages

---

If you can reasonably prove that the other driver's negligence led to the accident—whether from texting and driving or otherwise—then you are entitled to compensation. Make sure to note all damages that you incurred from the accident.

You're entitled to compensation for any damage to your property. Property damage covers the cost of the repair or the replacement of your vehicle, but it also covers any belongings of yours that were damaged in the accident.

You're also entitled to have your medical costs covered. If you are injured in the accident, no matter how minor the injury is, go to the hospital. If you don't go to the hospital, then a case can be made that your injuries were not a direct result of the accident.

You should also keep track of any out-of-pocket expenditures that you made as a result of the accident. If you needed to rent a car while yours was being repaired, or if you needed to buy medicine or bandages for your injuries, most of these expenses can also be recuperated in a settlement or in court.

In some cases, you may also be able to collect compensation for pain and suffering, which covers any possible intangible losses that resulted from the accident.



**FREE**

**CONSULTATION TODAY**

**(816) 531-6006 • [www.pottengerlaw.com](http://www.pottengerlaw.com)**

If you were injured in an accident involving a negligent driver, it's a good idea to contact a personal injury attorney. A personal injury attorney will be able to acquire evidence that might not be available to you and will understand how to navigate the system in a way that benefits you and gets you the best possible outcome. For more information, contact The Pottenger Law Firm today.