

N.J. Couple Blames Both Text Sender And Receiver In Distracted Driving Lawsuit

David And Linda Kubert Each Lost A Leg In Horrific Sept. 2009 Head-On Crash

May 23, 2012 8:21 PM

DOVER, N.J. (CBSNewYork) – If you're texting while driving and you have an accident, it's your fault. But what about the person who was texting you?

That's the question at the heart of a landmark lawsuit in New Jersey, CBS 2's Mary Calvi reported Wednesday.

A couple has [filed a lawsuit](#) against a young man and his girlfriend who they said were [texting each other](#) when the young man crashed his truck into their motorcycle.

On Sept. 21, 2009, David and Linda Kubert were riding their bike about a mile from their New Jersey home when a Chevy truck swerved across the center line and hit them head-on. David said he saw it coming.

"What I saw was a gentlemen in the truck steering with his elbows, with his head down. And I could tell he was text messaging," David Kubert told CBS News. "I looked down after the impact and my leg was torn off. I asked my wife if she was okay and she told me the bones of her leg were through her pants." Both Kuberts lost a leg in the crash.

The then-18-year old driver, Kyle Best, pleaded guilty to using a handheld device while driving.

But in what's now being considered a landmark case, the Kuberts are not only suing Best as a distracted driver for civil damages, but also his girlfriend, Shannon Colonna, for sending him text messages while he was driving and distracting him.

"I believe that if she knew he was driving and answering her back with texts, that she's partially responsible, too," Linda said.

Phone records show they exchanged 62 texts that day and while it's apparently not clear in the texts, in her deposition she did say she "may have known" he was driving.

"It seems to make sense that both people involved in the activity could very well be liable including the sender who is not actually behind the wheel," Todd Clement, a trial lawyer with a specialty in distracted driving, told CBS News. "As this case goes forward, I think what you're



going to see is a new awareness throughout the country. A new responsibility on the part of both the sender and the receiver of the text message not to continue this kind of negligent activity.”

According a website about [distracted driving](#) by the National Highway Transportation Safety Administration, 3,092 people were killed in crashes involving a distracted driver in 2010 and an estimated additional 416,000 were injured in motor vehicle crashes involving a distracted driver that same year.

The [NHTSA](#) has also said text messaging creates a crash risk 23 times worse than driving while not distracted.

In New Jersey a [cell phone](#) is banned for drivers, but the Kuberts said they believe both text senders and receivers need to be held accountable. “If we get this out to the public, and hopefully we are, maybe somebody won’t end up like us both or worse,” David Kubert said.

In their legal briefs, lawyers for the girlfriend called the suit a “leap of logic” and said it should be dismissed. A judge is expected to rule by the end of the week, CBS 2’s Calvi reported.