

JUDGE, KOSTURA & PUTMAN, P.C.

ATTORNEYS AT LAW



NEWS YOU CAN USE FROM THE FIRM YOU CAN TRUST

December 2009

Danger on the Road

- 91.5% of drivers condemn cell phone use while driving
- 66% of drivers admit to using the cell phone while driving
- 73% of teens admit to texting while driving
- Texting for 5 seconds at 55 m.p.h. is like driving the length of a football field with your eyes closed
- 98% of the population — regardless of age — has a four fold higher likelihood of crashing while using a cell phone
- Hands-free cell phones are NOT significantly safer than hand held
- Texting while driving increases the risk of collisions by 23 times according to the Virginia Tech Transportation Institute

November 5, 2009 Christian Science Monitor online
www.csmonitor.com/2009/1105/p25s07-usgn.html

HANG UP AND DRIVE: NEW TEXAS LAWS

The Texas legislature and the City of Austin enacted new laws or ordinances to increase safety. JKP Law shares the goal of promoting public safety and wants to publicize these changes in the law.

2009 Texas Legislation:

Texas House Bill 55: Outlaws the use of cell phones in school crossing zones unless the vehicle is stopped or unless the call is made with a hands-free device. The same law forbids school bus drivers from using cell phones unless they are stopped, are using a hands-free device, or making an emergency call. The law

took effect September 1, 2009. Cities must post proper signage to enforce the law.

Texas House Bill 339: Prohibits drivers under the age of 18 from talking or texting while driving, except in an emergency. Hands-free cell phone use is NOT allowed. This prohibition lasts during the first 12 months after teens get their license. Newly licensed teens have other restrictions in the first 12 months, including limits on the hours they drive and the number of passengers allowed. This law became effective Sept. 1, 2009



City of Austin Bans Texting

Texting, twittering or posting to social networking sites while driving is dangerous (see statistics in the left column). It will also be against the law in the City of Austin, when the ordinance takes effect on January 2, 2010.

IS JUST A WILL ENOUGH FOR MY ESTATE PLAN?

The short answer is no. Having a Will does little good if your Executor cannot locate your assets to collect and distribute them. In addition to a Will it is important to have an "inventory" of your assets and their locations

or information on how to find and access them, including passwords to online accounts or information stored on a computer. Pre-planning in the event of a disaster is also helpful. **Stan Putman** will work with you to make sure you

have a good estate plan which should include your Will, Directive to Physicians, and a Medical Power of Attorney, along with the inventory of your assets and instructions on how to locate them.

BEWARE OF SOLICITATION

If you have been in a car wreck, you may have been flooded with calls and letters from doctors and lawyers offering their services. The Austin American Statesman reported on October 28, 2009 that the Texas Transportation Commission is considering removal of driver's phone numbers from the police department's crash report: *"Deleting it (the phone number) from the form, however, would make it difficult for businesses that purchase crash records from local law enforcement agencies so that they can call to offer medical or other services to those involved."*

JUDGE, KOSTURA & PUTMAN, P.C., DOES NOT SOLICIT BY PHONE NOR DO WE BUY CRASH RECORDS FROM LAW ENFORCEMENT. We rely upon referrals from satisfied clients, our participation in professional legal associations, and our reputation in the community for our client base. Beware of anyone soliciting by phone in the event you have been involved in a crash.

Our firm does Personal Injury, Employment, Business Law, Estate Planning, and other civil litigation. If you have a need for our services, we would be honored to hear from you.

If you have been in a wreck, you don't need to be circled by sharks. Call a firm you can trust. Call Judge, Kostura & Putman, P.C.



IF JUSTICE IS DONE... APPEAL?!

A great human interest story of "the Little Guy winning" against the Big Guys was found in The San Antonio Express-News dated September 21, 2009 under the headline, "UTHSC must pay \$900,000 to researcher." A jury in federal court awarded Dr. Robert Klebe, a science professor with tenure, the \$900,000.00 verdict. Dr. Klebe was represented by our own **John Judge**. The jury found that the University of Texas Health Science Center retaliated against Professor Klebe because he complained that he was the

subject of age discrimination after UTHSC reduced his salary by 25%. On December 2nd, in a court-ordered retrial of the mental anguish damages, the defense tried to keep all liability facts out of the courtroom. Even though we reduced our exhibit list of 1,085 documents to 76, and the jury was allowed to see only 17 of the 76 exhibits we offered, the jury still found \$400,000 in mental anguish damages, which exceeds the \$300,000 statutory cap by \$100,000.

Dr. Klebe, the winner of the Gut-

tenberg Award, has devoted his life to scientific and medical advancements. He pioneered a method of growing human cells using an ink-jet printer. His scientific research would revolutionize organ transplantation and eliminate organ rejection. The jury verdict was a resounding victory for Dr. Klebe and we appreciate the jury's service. Despite what the jury had to say, UTHSC intends to appeal.

If you have been wronged by your employer, contact us. We will be pleased to meet with you.

You Matter to Us

We hope you enjoy this edition of the JKP newsletter and find it useful. You received it because you have been a client of the firm or one of the attorneys, are a colleague, or a friend to **John Judge, Judy Kostura, or Stan M. Putman, Jr.** We may know you through church or our chil-

dren's schools. We will never make our mailing list available to others. Please tell us if your address has changed or if you prefer to receive this newsletter by email or postal service. If you would rather not receive this newsletter at all, please contact us at unsubscribe@jkplaw.com

or by telephone at 512.328.9099 to request that your name be removed. We wish you the best in this holiday season and through the new year. Know we are ready to serve you if the need arises.

WHY YOU SHOULD ALWAYS READ THE FINE PRINT

Austin American Statesman Guest Editorial 04/17/08 by Judy Kostura

Judy Kostura has developed an expertise in subrogation law in her efforts to maximize compensation to her personal injury clients. She lectured in San Francisco at the American Association for Justice national convention in July, 2009 and speaks frequently at continuing education seminars. The following guest editorial was published last year in the Austin American Statesman.



Ms. Kostura, an Austin lawyer and a member of the Texas Trial Lawyers Association Communications Committee, is a frequent speaker on the topic of insurance subrogation for the State Bar of Texas and several law schools.

Wal-Mart's recent efforts to deprive an employee of her injury settlement highlight an unfair advantage insurance companies enjoy in the legal arena. Unfortunately, the Wal-Mart example is not an isolated incident. The legal tactic Wal-Mart used against the policyholder has recently been endorsed by the Texas Supreme Court and is being used daily against injured Texans.

Deborah Shank, an employee who was covered under Wal-Mart's group health plan, was catastrophically injured in a wreck caused by an 18-wheeler. Wal-Mart's employee health policy paid the medical expenses and the Shank family looked to the justice system to hold the trucking company accountable. A settlement from the trucking company was put in a trust account to help fund the round-the-clock care that Shank's severe brain injury requires.

Wal-Mart attempted to raid the trust account to recover the money it spent, relying on a subrogation clause in the health policy fine print. Wal-Mart backed off on its demand only after being vilified in the court of public opinion.

You never heard of subrogation? Look closely at your health insurance policy. After the pages promising benefits in exchange for your premiums, you'll find a section demanding reimbursement from you if you are hurt because of someone else's negligence.

Texas has allowed insurance companies to include subrogation clauses for years, but the insurers were reimbursed only after the injured policyholder was paid for lost wages, scarring, future medical expenses, pain and other damages. Putting the policyholder first is known as the "made whole" doctrine and required courts to interpret the fine print fairly. Allow me to use a real Austin example.

For privacy, let's call this client "Mary." One morning, Mary kissed her toddler son goodbye as she dropped him off at day care on her way to work. Minutes later, a car crossed the center stripe

and smashed into Mary head-on, breaking her neck and trapping her inside a burning vehicle. Brave bystanders pulled her from the flames. Rendered a quadriplegic by the wreck and burned on her arms and legs, Mary lost her job, was divorced by her husband and spent months in a hospital. The other driver's insurance company paid Mary \$100,000, which was all of the coverage available. It was not much for a 34-year-old divorced mother who would never walk or work again, but it would help. Mary's health insurer, armed with a subrogation clause, demanded that Mary hand over the entire proceeds of the settlement. Because of the "made whole" doctrine, the legal system required Mary's health insurer to waive its subrogation interest, allowing her to keep the recovery.

Vanessa Cantu, like "Mary," was rendered a quadriplegic in a collision and was able to secure a settlement from the insurance company of those responsible for her injuries. Her settlement didn't compensate her fully for her terrible injury, but it helped. Cantu's insurer, Fortis, sued her to recover the money it had paid under the policy. The case found its way to the Texas Supreme Court. The court sided with the insurance company and wrote an opinion that eviscerated the 92-year-old "made whole" doctrine in Texas law. Cantu was the first person hurt by this wrong-headed decision, but she won't be the last. The *Fortis v. Cantu* case gives insurance companies a free rein to write deceptive and onerous health insurance policies, promising benefits on one page and taking them away in the fine print on another.

Insurance companies should be treated fairly, but they shouldn't be able to jump to the front of the line when settlements are paid for serious injuries. Public outcry saved Shank in the Wal-Mart case. The Texas "made whole" doctrine saved Mary, but the Texas Supreme Court has taken that away.

We need a legislative solution. Congress and the Texas Legislature should enact a strong and unambiguous "made whole" doctrine that puts Texas families first.

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Judge, Kostura & Putman, P.C., is dedicated to providing legal services primarily in the State of Texas. Our lawyers bring over 80 years of combined experience to the practice. We are trial lawyers that represent individuals, families, and small businesses in a broad spectrum of civil matters. We do not represent insurance companies. We do not handle tax or family law or criminal matters.

Judge, Kostura & Putman, P.C., combines experience and leadership to achieve results for our clients. Our size enables us to get to know our clients personally and professionally.

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Practice Areas

- **Personal Injury:**
Representation of persons injured through the negligence of others through automobile collisions, trucking industry collisions, dram shop cases, driving while intoxicated injuries, wrongful death, burn injuries, attack by vicious animals, premises liability, and other injuries.
- **Probate:**
Probate or administration of estates for the families of deceased persons.
- **Estate Planning:**
The creation of wills, trusts, powers of attorney and other estate planning documents and measures
- **Business Law:**
Including entity formation and representation, contract creation and negotiation, "Bad Faith" insurance cases, business disputes, oil/gas/mineral matters, and deceptive trade practice claims prosecution
- **Construction Litigation:**
Representation of owners, builders, and design professionals in construction defect cases.
- **Professional License Defense:**
Representation of health care, design, legal, and other professionals in defense of regulatory board disciplinary actions.



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