

# CARLTON FIELDS

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## JUNE 2004 TELECOM AND TECHNOLOGY LITIGATION UPDATE

### **INDIANA COURT REJECTS CLAIM THAT CELL PHONE, NOT DRIVER, CAUSED ACCIDENT**

***Williams v. Cingular Wireless*, 809 N.E.2d 473 (Ind. App. June 4, 2004)**

An Indiana appeals court has dismissed a lawsuit against Cingular Wireless that alleged the cellular telephone company negligently furnished its customer the cell phone the customer was using when the plaintiff's and customer's vehicles collided. The suit alleged that Cingular knew or should have known that its customer would use the cell phone while driving.

After an auto accident, the plaintiff, Terry Williams, sued both the driver of the other car and Cingular for personal injuries resulting from the accident. The other driver was allegedly using her Cingular phone when the accident occurred. Cingular moved to dismiss the case, because Williams failed to state a claim for relief under Indiana law. The trial court granted Cingular's motion and the appeals court affirmed the dismissal of the case.

The court went through the elements of a negligence claim: (a) a duty toward the plaintiff; (b) breach of that duty by allowing conduct to fall below the applicable standard of care; and (c) compensable injury proximately caused by the defendant's breach of duty. The court held there was no direct relationship between Williams and Cingular that would give Cingular a duty toward her. Williams had no contractual relationship with Cingular.

Moreover, in holding that Cingular had no duty toward Williams, the court held there was no "high degree of foreseeability" that Cingular's sale of cellular phones would lead to car accidents. The court rejected Williams' argument that the passage of laws by some states limiting cellular phone use while driving meant that the accident was foreseeable; the court stated that these laws were directed to drivers, not cellular phone companies. The court found that many items—such as food, makeup, or maps—may be used by drivers, thus making them less attentive. The court stated that it would not be sound public policy to impose a duty on the providers of food, makeup, or maps to prevent such accidents. Rather, it is a driver's duty to drive with care.

The court stated that imposing such a duty on Cingular would effectively require cellular phone companies to stop selling cellular phones entirely, because they cannot stop drivers from using them. The court found that this would be similar to forcing car manufacturers to stop selling otherwise safe cars simply because the cars could be used in unsafe ways. The court stated, "A

cellular phone does not cause a driver to wreck a car. Rather, it is the driver's inattention while using the phone that may cause an accident."

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For more information call Thomas A. Dye at (561) 659-7070 or Daniel C. Johnson at (407) 849-0300, Co-Chairs of Carlton Fields, P.A.'s Telecommunications and Technology Litigation Practice Group, or visit [www.carltonfields.com](http://www.carltonfields.com).