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Snapchat Win Tests CDA Immunity in Age When Apps Are Everywhere

Greg Land, Daily Report

January 26, 2017

In a case testing the immunity of internet platforms for content posted by third parties, a Spalding County judge has tossed claims against image messaging service Snapchat stemming from a 2015 car wreck that involved a driver who was using the app's "speed filter" to record herself driving at more than 100 mph.

The [order](#) signed Jan. 20 by Spalding County State Court Judge Josh Thacker sided with Snapchat's Greenberg Traurig legal team, ruling that the federal Communications Decency Act of 1996 provides "broad immunity" to Snapchat.

Thacker's order is the latest to affirm that internet providers and interactive services such as Snapchat cannot be held liable for posts on their platform, even as those platforms invade more and more industries and aspects of everyday life.

In a statement to The Associated Press, Snapchat attorney Mark Trigg said the ruling was "precedent setting for the entire mobile app and product industry."

"A loss for Snapchat would have been dangerous, opening a floodgate of lawsuits for everyone from cell phone manufacturers to billboard advertisers to makeup brands—virtually anyone that can potentially cause a distraction from driving," Trigg said. "Snapchat's win instead diverts blame from these companies and requires responsible use of these technologies by the driver."

Naveen Ramachandrappa of Bondurant Mixson & Elmore, one of seven lawyers representing the plaintiffs, said they "respectfully disagree with the judge's ruling that the Communications Decency Act provides Snapchat with complete immunity for its negligent actions, and we are currently evaluating an appeal."

The immunity provisions of the act, Section 230, states that "[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider."

The act has been used as a broad shield for internet companies, including Twitter, Facebook, eBay and Craigslist, to defend suits. But the edges of that protection continue to be defined. MySpace relied on the law to defeat charges that its site was used by sexual predators to lure young girls to assignations where they were assaulted. In November, Twitter used the protection to [knock out a suit](#) that would hold it accountable for posts that lawyers argued inspired a terrorist attack on American contractors in Jordan.

Meanwhile, hotel competitor Airbnb recently invoked the protection—[unsuccessfully](#)—in its fight against city regulators that would require property owners to register short-term rentals.

The Spalding County complaint named Snapchat and Christal McGee, then 18, who was driving her father's Mercedes along Tara Boulevard accompanied by three friends when she hit Wentworth Maynard's Mitsubishi Outlander, leaving him with severe brain damage. The suit he and his wife filed last year is being handled by a team of lawyers, including Ramachandrappa, Michael Terry and Amanda Bersinger of Bondurant; Michael Neff, D. Dwayne Adams and T. Shane Peagler of the Law Offices of Michael L. Neff; and Todd Henningsen of Henningsen Injury Attorneys.

Snapchat's Greenberg Traurig team includes shareholders Lori Cohen, Mark Trigg and Janna Nugent, all based in Atlanta.

The suit asserted that Snapchat's speed filter—a feature which allows a user to photograph how fast a user is going—"motivated" McGee to "drive at an excessive speed to obtain recognition and to share her experiences through Snapchat."

California-based Snapchat raised multiple defenses as to why it should be dismissed from the action, including a jurisdictional challenge, and argued that there was conflicting testimony as to whether McGee was even using Snapchat at the time of the wreck.

Snapchat also argued, under traditional product liability principles, that it owed no legal duty to protect the public from a third party's improper use of a product and that—even if McGee was using the app when she crashed—Snapchat could not be deemed the proximate cause of the wreck.

During a November hearing, Cohen, [a product liability specialist](#), pointed to a string of legal precedent in which courts have ruled that defendants such as cellphone companies and GPS manufacturers cannot be held liable for wrecks caused by drivers using the devices.

Citing a 2011 federal case from North Carolina in which the manufacturer of a texting system inside a tractor-trailer cab whose driver caused an accident was dismissed from suit, Cohen is quoted in a transcript as saying that, if a "legal duty to anticipate misuse [were to be] imposed on manufacturers, no vehicle would be capable of traveling above the speed limit, car ignitions would all be equipped with ignition-interlock devices, [and] guns would not be sold to persons."

Similarly, she said, well-developed case law holds that an accident caused by a distracted driver "breaks the causal connection between the collision and defendant who supposedly caused the connection."

Trigg, who focused on the Communications Decency Act defense, said the law was designed precisely to provide "broad immunity to Snapchat for the traditional editorial functions of monitoring

user posts and deciding which features to include or remove from its site."

Ramachandrappa countered that the case wasn't about content or filtering user posts.

"This case is not about a post from McGee or anyone else that caused harm," he said. "It's about something that Snapchat itself created."

Under Snapchat's interpretation of the CDA, he said, "it sounds like they're arguing that as a rule they are immune from any kind of liability because they are a publisher. And that's simply not the case."

In their pleadings, the plaintiffs have argued that Snapchat's position that the CDA shields it from failure to warn claims is at odds with established precedent. Citing a Ninth Circuit case involving Roomates.com, a brief quotes the appellate opinion as saying "a defendant cannot use the CDA to evade liability for ... content he helped create."

At the Daily Report's request, Duane Morris partner Cynthia Counts reviewed Thacker's order, the transcript and Snapchat's briefs.

Counts, who heads the firm's Atlanta media law subgroup, said the order Thacker signed seemed right on point, although she said the plaintiffs' argument that the speed filter itself created the data the app displays might be problematic for Snapchat.

"The beauty of the CDA is how broad is it is; it treats you like a library, you're not responsible for what others say or do," Counts said.

The plaintiffs' position "creates a duty where no duty is owed. The duty here is against the young woman, whose duty was to protect herself and other drivers," she said.

"Clearly, the question is whether [Snapchat] did anything to encourage criminal activity," said Counts.

Counts said basing the dismissal on the CDA as opposed to Snapchat's other defenses was a sound decision.

"It's simple, it's clean. Once you get your head around how broad this statute is, it makes perfect sense."

She did, however, offer one caveat.

"I'm no Snapchat pro, but it looks like Snapchat could be deemed responsible in part for developing the content that people post while using the speed filter," she said. "Specifically the MPH figure—it looks like that is automatically calculated by the Snapchat software without any input by the user. If that's the case, a court should deem the company an 'information content provider' of that content, and thus no CDA immunity."

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