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Punishing Common Courtesy

By [Gary Wickert](#) | March 6, 2014

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Who's At Fault When One Driver Waves To Another Driver That It Is All Clear – And It Isn't?

Thomas Fuller once said, “All doors open to courtesy.” It appears that this may now include the courthouse door. Heavy traffic is moving along smoothly in all lanes of a four-lane boulevard when suddenly a vehicle in the right lane comes to a complete stop and waves to a vehicle waiting to enter the roadway from a parking lot or driveway on the right. However, instead of turning in front of the stopped vehicle, the vehicle entering goes straight and attempts to cross both lanes of traffic and is broad-sided by a fast-moving vehicle traveling in the left lane. A slow-moving truck signals the all-clear for the vehicle behind to pass. Who is at fault when it isn't clear and tragedy strikes? The vehicle in the left lane, the vehicle entering the roadway, or the kind-hearted motorist who was simply trying to be courteous and let somebody merge in front of him? The answer might make you a little less courteous the next time you are feeling generous.

A good argument can be made that “do-gooders” who bring traffic to a complete stop to wave somebody into the roadway create a dangerous blind spot for the merging vehicle and a very hazardous situation for all vehicles in the vicinity. This is especially true when the vehicle that comes to a stop is a large SUV or truck.

Nobody wants to put their life in the hands of some well-intentioned motorist, and it is hard to precisely interpret a “wave.” Does the wave mean that it is clear to pull across both lanes of traffic or simply to pull in front of the stopped vehicle and proceed in the same direction? The “wave” usually consists of a signal which can be interpreted as “it’s clear to cross the street.” This debate makes for interesting bar chat, but when tragedy results from good intentions, lawyers enter the conversation. And, if the person attempting to cross the street is a pedestrian or if you extend the liability to a driver’s signaling that it is clear for a vehicle behind him to pass, when it isn’t, the liability for having a big heart can be significant.

Duty Exists To Signal/Wave With Care

As with most legal issues, the answers differ from state to state and case to case. In some states, the question hasn’t even been asked. In **Massachusetts**, the signaling motorist can be held liable if it wasn’t safe to cross the road when the signal is given. In *Gennelly v. Leslie*, 2003 WL 23016092 (Mass. Super. 2003), the Court rejected the defense that “My signal only meant that it was safe to cross my lane of traffic, not that the entire highway was safe.” Whether a defendant’s signal to cross was negligent will usually be a fact question, but a wave won’t always be interpreted simply as “I won’t hit you.”

Most states, including **Indiana**, hold that a signaling driver may owe a duty of care to a third-party motorist as a matter of law when his actions result in the reasonable reliance by the signaled driver that traffic is clear. *Key v. Hamilton*, 963 N.E.2d 573 (Ind. App. 2012). In that case, the driver of a truck waved the third-party vehicle through after checking his rear-view mirror and getting out of his truck to be sure no vehicles were coming in the left lane. The third-party’s view was obstructed by the truck and he was hit by a vehicle passing the truck in the left lane. The Court relied on the only other Indiana case to address the issue, holding that *Claxton v. Hutton*, 615 N.E.2d 471 (Ind. App.1993) established that, while the third party has the duty to yield to vehicles in the roadway which are not required to stop, the signaling driver also owes a duty to the third party to use due care when signaling that all is clear.

A **Connecticut** case involved a pedestrian attempting to cross the street after a vehicle stopped to let him cross, but did not wave or signal. In *Powers v. Torres*, 2006 WL 329863 (Conn. Super. Ct. Jan. 26, 2006), the Court noted that there were no other Connecticut cases on point involving a courteous wave and the rights and responsibilities of the parties in that situation. However, they did refer to a Federal District Court opinion in **New Jersey** in which the Court said that a driver’s

courteous wave indicating that he will remain in place and permit another motorist to proceed is open to two interpretations: (1) that the stopped vehicle will remain in place and permit the third party to pull in front of him, or (2) it is safe to cross both lanes of traffic in front of the stopped vehicle. Because a signal interpreted as limiting the safe passage area to that solely in front of the signaler's vehicle cannot be the legal cause of an accident outside that area, liability ensues only when the signal communicates the message that the driver can proceed safely across both lanes. That, of course, is a fact question. In *Boucher*, the Court stated that while a hand wave or signal may, under some circumstances, imply that it is safe to proceed beyond the driver's vehicle, the mere stopping of the vehicle cannot reasonably be interpreted in that way. The Court in *Boucher* held that following the line of reasoning in the cases involving signaling motorists, the mere stopping of the vehicle, even if it was arguably unsafe to do so under the circumstances, was not the proximate cause of the plaintiff's injuries. However, the Court noted that courts have generally imposed liability only when a driver *gives a signal* that it is safe to proceed and a pedestrian or motorist actually proceeds in reliance on the signal.

Not all such cases can be resolved as a matter of law without putting the facts in front of the jury. In Louisiana, for example, courts hold that where the signaling driver has a clear, unobstructed view of every vehicle involved in the eventual collision, whether he or she is negligent is a question that must be decided on a case-by-case basis. In *Massingale v. Sibley*, 449 So.2d 98 (La. App. 1984), under precisely such circumstances, the Court said that the meaning and reasonableness of the driver's signal and the reliance thereon were questions of fact for the jury.

Likewise, in **Virginia**, where a driver is not in a position to ascertain whether the person receiving the signal may safely proceed, it is unreasonable to conclude that the driver's gestures are a signal that it is safe to proceed. *Nolde Bros., Inc. v. Wray*, 266 S.E.2d 882 (Va. 1980). It appears that most states indicate that, under certain circumstances, a driver giving a signal to another driver can constitute negligence.

No Duty Exists To Signal/Wave With Care

Plenty of states have found no liability as a matter of law for a courteous wave or signal because of the non-delegable duty on the part of the signaled driver to be sure the roadway is clear before entering. In a **California** case in which a motorist waved to a motorcycle that it was clear to turn left in front of him at an intersection, the Court granted summary judgment in favor of the signaling driver sued for "negligent signaling." *Gilmer v. Ellington*, 159 Cal. App. 4th 190 (Cal. App. 2008).

The Court held that the signaling driver had no legal duty to assure that all oncoming traffic was clear before signaling to the third party to enter the roadway.

In **Georgia**, when a driver of a truck signals to a vehicle behind him that it is clear to pass when it isn't, the Court held that the driver of the vehicle doing the passing, upon whom a statutory duty rests to observe certain requirements before proceeding to the left side of the road in an attempt to pass another vehicle, cannot escape liability for negligence in so passing merely by showing that he erroneously relied upon the signal of the truck driver. *Arnold v. Chupp*, 92 S.E.2d 239 (Ga. App. 1956).

In **Michigan**, where a northbound motorist struck a left-turning southbound motorist after another northbound motorist signaled "all-clear" to the turning vehicle, the Court of Appeals has held that a signaling motorist assumes no duty to warn the left-turning southbound motorist of the approach of another vehicle and, therefore, owes no duty with respect to giving of the signal or waving. *Peka v. Boose*, 431 N.W.2d 399 (Mich. App. 1988).

Similarly, the **Ohio** Supreme Court issued an opinion in a case involving a collision with a vehicle making a left turn in front of an oncoming truck which had stopped, after the driver of the truck signaled that it was safe for the turning vehicle to turn in front of him. The turning vehicle could not see around the stopped truck and was struck by a fast-moving vehicle passing the truck in the left lane. In *Van Jura v. Row*, 191 N.E.2d 536 (Ohio 1963), the Court held that the turning vehicle cannot rely on a signal given by a stopped vehicle and was negligent as a matter of law.

Courts in **Florida** approach the issue from a different perspective, holding that the signaling driver is not in a reasonable position to ascertain whether the turning driver could safely proceed and, therefore, does not owe a duty of care to the turning driver or the vehicle passing him. *Kerfoot v. Waychoff*, 501 So.2d 588 (Fla. 1987). In *Kerfoot*, however, the facts were clear that the signaling driver was not in a position to have a clear view of oncoming traffic.

Even states which hold that no duty on the part of the signaling driver exists have indicated that, under the right circumstances, the giving of a signal can constitute negligence. *Petroleum Carrier Corp. v. Carter*, 233 F.2d 402 (5th Cir. 1956) (court interpreting **Georgia** law – signal to pass); *Haralson, Adm'x v. Jones Truck Lines*, 270 S.W.2d 892 (**Ark.** 1954) (signal to pass); *Thelen v. Spilman*, 86 N.W.2d 700 (**Minn.** 1957) (signal to pass); *Miller v. Watkins*, 355 S.W.2d 1 (**Mo.** 1962) (signal to pass); *Wulf v. Rebbun*, 131 N.W.2d 303 (**Wis.** 1964) (signal for car to turn).

Rationale For Imposing Liability On Signaling Driver

It seems cruel to reward the courtesy of the driver who stops and signals the “all-clear” with significant legal liability. States which do so argue that just because the third party entering the roadway has a duty to yield to traffic, this does not preclude others, including the driver signaling, from also having a duty of care to any other motorist on the road at the same time. After all, good intentions notwithstanding, the hazard resulting in personal injury or death was created by the signaling driver. When somebody undertakes the serious and grave responsibility of “directing traffic,” that person assumes the liability that goes along with that responsibility, just as a police officer directing traffic at the scene would. States often hold that more than one person may have a duty of care in these situations, and it is for the jury to sort out the apportionment of fault. As unfair as it may seem, the rationale for imposing liability can most aptly be summarized in the words of the noted New York jurist Benjamin Cardozo, *“It is ancient learning that one who assumes to act, even though gratuitously, may thereby become subject to the duty of acting carefully, if he acts at all.”*

I’m all for courteous driving and civility on the road, because it is the common thread we all share and the glue which holds us together as a civil society. That said, when liability starts attaching to a courteous wave to a fellow driver, I’ll let the guy looking to enter the roadway wait his turn from now on.

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