Sills Cummis & Gross P.C.

Client Alert **Product Liability Law**

The Perils of Internet Research by Jurors

Many people turn to the internet any time their interest in a topic is piqued or they are faced with a question they want answered. In this digital age, we are rarely far from our smart phone, tablet, laptop or desktop computer. Most times this connectivity and "Google reflex" are useful, or at least harmless. However, as Superior Court of New Jersey, Bergen County Assignment Judge Peter E. Doyne recently found, there must be limits. Last month, Judge Doyne found a jury foreman, who, during the trial, conducted independent internet research regarding the potential sentence the defendant faced if convicted, guilty himself of criminal contempt and fined him $500. *See In re Kaminsky*, 2012 N.J. Super. Unpub. LEXIS 539 (Ch. Div. Mar. 12, 2012). The juror's misconduct ultimately resulted in a deadlocked jury and a mistrial. All counsel should take steps to make certain that jurors are fully aware of the absolute prohibition against independent research while a trial is ongoing, and also the potential penalties they face if the court's instructions are ignored. Given New Jersey's strict policies against attorney/juror contact, such steps will likely consist of asking the court to tell the jury that internet research during trial is prohibited and that a juror's internet research has recently led to a criminal contempt conviction.

Daniel M. Kaminsky was the jury foreman in *State v. Montas*, Ind. No. S-149-11, a criminal matter involving the alleged sale of 1,500 pills of ecstasy to an undercover agent. *In re: Kaminsky*, 2012 N.J. Super. Unpub. LEXIS 539, at *2. During jury selection and throughout the proceedings, the jurors were repeatedly advised that they were prohibited from "researching the law, the court, the attorneys, the judge, or the trial

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itself." *Id.* The jurors were also told that they could not use social media until after the trial. *Id.* In fact, each day before the jury was excused, the court specifically reminded the jury that they could not talk about, or use the internet to research, the case. *Id.* at *4.

The *Montas* case ended in a mistrial due to a deadlocked jury, but two jurors independently complained of Kaminsky's improper conduct. *Id.* at *5-6. The substance of these complaints was that Kaminsky, in direct contravention of the court's repeated direction, had "Googled" the potential sentence Montas faced, and became "physically sick" at the idea of putting "someone's child" in prison for between ten and thirty years. *Id.* at *5 & *9-10. One of the jurors also claimed that Kaminsky invented evidence to convince himself, as well as the other jurors, that the defendant was innocent. *Id.* at *10. That juror also indicated Kaminsky's conduct appeared to have "tainted" two of the other jurors, who refused to deliberate. *Id.*

Faced with this alleged misconduct, Judge Doyne issued an Order to Show Cause requiring Kaminsky to appear to face criminal contempt charges. *Id.* at *8. Kaminsky admitted to conducting the independent research regarding the sentence Montas faced and to sharing the results of his research with the other jurors, but he claimed that the research did not impact his decision to vote "not guilty." *Id.* at *11-12. Judge Doyne found that Kaminsky had willfully violated the court's prohibition of independent research regarding the case, since Kaminsky admitted that he had heard the instructions that strictly prohibited any outside research or consideration of any evidence outside the record. *Id.* at *14. Kaminsky's claim that the court had not specifically prohibited independent research regarding the potential sentence did not persuade Judge Doyne, who found that the court's instructions to the jurors on the issue were "more than sufficient." *Id.* at *16.

In his decision finding Kaminsky guilty of criminal contempt, Judge Doyne explained the importance of jurors understanding that court directives are not "merely advisory." *Id.* at *18. Judge Doyne further explained that the integrity of the judicial system requires that only admissible evidence be considered by the jury while rendering its decisions. *Id.* While Kaminsky faced a maximum punishment of six months in jail and a $1,000 fine, Judge Doyne imposed a $500 fine, due to the mitigating factors of Kaminsky's "understandable, if misguided, intentions," his three children, and the fact that he had recently become unemployed. *Id.* at *19-20. Judge Doyne concluded that he hoped his decision would "resonate with the contemporary juror" and that the public would

understand that in the information age the "sterilized atmosphere" of the courtroom was more important than ever. *Id.* at *21.

This case is a microcosm of the likely widespread practice of jurors independently researching the cases upon which they are sitting, although most likely fly under the radar and are not as outspoken as Kaminsky. However, it only takes one juror to hang a jury in a criminal case, and in civil actions, often just two jurors can be the swing vote. New Jersey's ban on post-trial juror interviews makes it even more important that, from the jury selection process onwards, the court emphasize to jurors the importance of refraining from "Googling," "Tweeting," "Facebooking," or otherwise sharing or researching information regarding the trial. Since *Rule* 1:16-1 prohibits attorneys and parties from questioning jurors after the trial (absent good cause shown), we may never know about rogue internet-surfing jurors unless we are so lucky as to have a good Samaritan come forward, as in the *Montas* case. Counsel should, therefore, consider asking the judge to include in his or her remarks to the jury a directive not only to abstain from independent research, but also a request to volunteer information about any fellow jurors whom they believe may be doing so. Further, counsel should consider asking the court to advise the jury of the *Kaminsky* case, and the criminal contempt conviction that resulted. Ensuring that the jury is aware of the seriousness with which the courts take this misconduct may help minimize the introduction of inadmissible "internet" evidence into the decision-making process and thereby avoid unanticipated results for our clients.

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