Data Downloads: Evidence Defense Lawyers Must Obtain

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In most trucking cases, the trucking company is oftentimes at a data disadvantage. But that is quickly changing. As car manufacturers equip passenger vehicles with sophisticated entertainment and tracking systems, quick-acting claims adjusters and defense lawyers can level the playing field.

Data contained in automobile infotainment and tracking systems

Like a semi's electronic control module, infotainment systems in newer model automobiles and pick-up trucks contain voluminous data about the vehicle and its operation. With a proper download, the infotainment system reveals what happened in the vehicle in the critical moments before a collision. The data includes the vehicle's speed – *second-by-second* – for hours before and now of the collision. GPS and navigation information shows where a driver was coming from, where she was headed, where and when she stopped along the way, how long she had been behind the wheel, and the precise time and location of the accident. Seatbelt data shows which seats were occupied and whether the person was complying with state seatbelt laws. A proper download will also indicate whether music was playing and, if so, even what song or station and at what volume. If the driver was connected to vehicle's Wi-Fi, a download can show whether the driver was talking, texting, searching the internet, checking Facebook, or streaming YouTube.

Tracking systems, which are often installed in rental cars and other fleet vehicles, contain even more data. Many such devices also record the vehicle's speed and location, second-by-second. Even more importantly for claims adjusters and defense lawyers, many tracking systems also record precise data about a vehicle's acceleration, hard brakes, and cornering. And when the tracking system anticipates a collision is imminent, it tracks vehicle movement data by the millisecond, allowing later forensic accident reconstruction.

This type of information is incredibly valuable to claims adjusters and defense lawyers. Indisputable data about the other driver's speed, location, braking and turning, and distractions is highly probative to the issue of liability. And there is simply other way to obtain this information except by downloading the vehicle's infotainment and tracking systems.

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Leveling the playing field

The data available through a download of an automobile's infotainment and tracking systems may help level the playing field in trucking litigation. In nearly every major injury case, the plaintiff's lawyer will download the semi's electronic control module. The plaintiff's lawyer will then know how fast the truck was traveling, hard brake and critical stop events. The trucking company, on the other hand, has virtually no hard evidence about the plaintiff-driver and his actions, except perhaps the recollection of its own truck driver and perhaps dash cam video. While the increasing use of infotainment systems in passenger vehicle's increases the risk that truck drivers will encounter more and more distracted drivers on the road, the availability of the data those systems contain should be a welcome development to claims adjusters serious about investigating accidents and defending their insureds.

Ensuring a proper download

Each automobile manufacturer uses its own custom infotainment system, and an improper download will result in lost or corrupted data. It is therefore critical that claims adjusters and defense lawyers ensure their experts are properly trained and qualified to complete the download. One important caution: most infotainment systems must be connected to a power source for the entire download. This often requires removal of the infotainment system beforehand.

Parties must also use care in downloading data from tracking systems. Like infotainment systems, proper download procedures vary depending on the manufacturer of the tracking system. Some systems should only be downloaded by employees of the device manufacturer. In all situations where the device is removed from the vehicle, a proper chain of custody must be maintained.

Practice tips

Don't wait for a lawsuit: Trucking companies sometimes do not aggressively investigate a potential claimant's role in the accident for fear of walking into a claim that may not otherwise be filed. But in today's litigation landscape, trucking companies should prepare for a lawsuit after every accident, no matter how minor the injuries or clear the fault. The data in infotainment and tracking systems may be overwritten and permanently lost if the vehicle is repaired, driven, or even powered on for too long. Claims adjusters and defense lawyers must therefore promptly demand and obtain a download.

Send a preservation letter immediately: The claims adjuster should send a preservation letter when first notified of the accident, ideally on the date of the accident. The preservation letter must explicitly state that the vehicle should not be driven, moved, or even powered on without agreement of the parties, and that the potential claimant should not attempt a download until all parties agree on a proper protocol. Additionally, do not just send the letter via snail mail. Send it via e-mail and via overnight mail to ensure the person in possession of the vehicle does not take any action that could destroy the data. Use tracking to confirm receipt. If the claimant's vehicle is totaled, the motor carrier should consider purchasing the salvage.

Be persistent: Plaintiff's lawyers are not accustomed to having *their* client's vehicle data downloaded. They will play defense and may try to prevent the adjuster from obtaining a download. The more the claimant or plaintiff's lawyer resists allowing a download, the more suspicious the adjuster should be about what it may reveal.

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Seek court intervention if necessary: Years often pass between an accident and the filing of a lawsuit. But adjusters should not wait for a lawsuit or claim before downloading the data. If the claimant or her lawyer doggedly refuses to allow a download, the adjuster should retain counsel to advise about the availability of relief in court. Pre-suit discovery procedures in some states may allow pre-litigation data downloads. But in even in states without pre-suit discovery, defense counsel may recommend the company file a restraining order or pursue other affirmative relief.

The increasing use of automobile infotainment and tracking systems presents a rare opportunity for trucking companies and claims adjusters to fully investigate the other driver's role in an accident. With quick action and a proper download, trucking companies can obtain the hard evidence they need to successfully defend a claim or lawsuit.

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