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Using technology to investigate truck crashes

BE PREPARED TO CONDUCT A COMPREHENSIVE SEARCH OF ALL TECHNOLOGY AND ONLINE DATA, ESPECIALLY THE DRIVER'S CELL PHONE, IN ADDITION TO TRADITIONAL TRUCK-CRASH DISCOVERY

Evidence in a tractor-trailer case begins well before the crash itself. Make no mistake, conducting thorough discovery, especially early discovery, is essential. It can lead to information that, when properly analyzed, increases the value of your claim. However, be aware that many of the critical factors and evidence in a trucking case will disappear if not timely preserved. So, don't wait for them to come to you – go out and get them.

The goal of this article is to give you an overview of some ways to use emerging technology to investigate your truck crash cases. Different discovery techniques can be used and must be tailored to the particular facts and circumstances of the claim. This article will give you some general tools so that you will have a general understanding of the basic requirements of using technology in your truck case investigations.

Phase one: Secure the evidence

The very first thing that must be done *any* time you receive or sign up a new truck case is to find and secure all of the evidence. This includes not only the truck, but the truck driver's cell phone and any other electronics that may have been in the driver's possession at the time of the wreck. These items are key pieces of evidence.

As soon as you are retained you must immediately attempt to locate the tractor trailer and any electronics, including cell phones that were in the possession of the driver at the time of the wreck. In some cases, the truck may already be back in the possession of the trucking company, but other times it may have been impounded by the police or is being stored in a tow yard.

It is also becoming more common for police to impound a driver's cell phone after a catastrophic collision. If the vehicle or the driver's phone has been impounded by the police, don't assume that all of

the evidence will be preserved indefinitely. It is still imperative that you take steps to protect your client's right to inspect, photograph and download the evidence.

First, send the trucking company and the truck driver preservation letters: one for the truck as well as the trucking company records such as the driver's logs, bills of lading, maintenance records, etc.; the other for electronics in the possession of the driver, including a request to preserve all cell phones, including the driver's personal cell phone and any work cell phones in the truck in their current state without deleting anything.

The electronics preservation letter should also include all Bluetooth devices, headsets, and other electronic or electronically powered devices, including but not limited to: laptop computer, tablet, Garmin, iPod, MP3 player, CD or DVD player, Apple watch, handheld gaming devices, etc.

Phase two: The online investigation begins

The trucking company

Before you inspect the tractor and trailer, begin your research of the trucking company online. Find out all you can about the company by examining their website. The website will give you an idea about the kind of work they do, where they drive, and how large a company they are. Take screenshots of the website if they have any useful information regarding where they drive or safety commitments they claim to make.

Many trucking companies have a map on their website that shows either the areas they drive to or the locations of their offices. This will help inform you about where to file your lawsuit and will help you determine what arguments you will need to make regarding venue. The company may also have job postings with job descriptions and promises made to potential employees listed on their website.

You will be able to learn information regarding initial sign-on bonuses, how much drivers are initially paid per mile and if they are promised to be home every night or if they are promised "weekends off."

Most of these trucking companies have accounts on Twitter, Facebook, LinkedIn and Instagram - all of which can be rich sources of information.

Next, you should search the trucking company on SAFER to obtain the company snapshot. This website has been whitelisted away over the years – the trucking industry has seen to that. However, it will give you information about the company indicating its size, safety rating, safety record, out-of-service inspection summary, and crash information. It will also indicate if the company is active or inactive. Most of the time, the best information you will learn is the size of the company, which often is illustrative of the type of coverage you can expect to uncover.

The truck driver

The same kind of online research should be done with regard to the driver of the truck. You should search all of the social media platforms including LinkedIn, Instagram, Facebook, TikTok, YouTube, and X (formerly Twitter). Many times, drivers post about obvious safety violations they have committed or post videos of themselves driving while on the phone, speeding, driving in hurricane like conditions, and mocking pre-trip inspections.

Another fertile area of investigation: Look for a blog by the driver or a profile on Reddit. More and more, truck drivers blog and post. Your driver may even have a podcast. You may find they spoke about your crash on one of these types of posts. Clearly, you should screenshot the post or save the podcast to your file. Additionally, you should search the driver's social media profiles to see if he or she has any posts about prior crashes, his/her driving

history, or other relevant information.

Ethical considerations

While conducting your online investigation you should be careful to follow your state's ethics rules regarding social media usage. In most jurisdictions, a lawyer may not "friend" a represented party on social media. Further, use of an alias, fake name, or other deceptive conduct is typically prohibited, regardless of whether it is permissible to contact a particular person.

Likewise, connecting with an unrepresented person through a social networking website may be ethical only if the attorney clearly identifies his or her identity and purpose. Similarly, using social networking websites, an attorney may not use a pretextual basis when attempting to contact the unrepresented person.

However, it is typically permissible for the lawyer to access the public portions of the represented person's social media, just as it would be permissible to review any other public statements the person makes.

While you should always review your state's Rules of Professional Conduct and Ethics Opinions to find out what conduct is permissible, an easy rule to remember is to stick to public social media pages.

Phase three: The driver's cell phone

In any truck collision case, obtaining the cell phone of the driver and the driver's cell phone records is paramount. Under no circumstances can any of us afford to overlook the incredible distraction that the cell phone has become in our daily lives.

Studies have suggested that the average person touches their cell phone more than 2,500 times a day. Cell phones are no longer just for communication. They can be used to watch movies, read books, and play games. This phenomenon also exists inside the tractor of many 18-wheeled vehicles as they roll across the highways and byways of America. In 2014, Good Morning America discussed this problem. During its exclusive look, it showed numerous truck drivers driving while using their cell phones. While it is illegal to do this, enforcement of this law is a major issue.

In investigating a truck driver's cell phone usage, you can obtain data from two sources. The first is by issuing a sub-

poena to the cell phone provider for the driver's records. The second is a complete download of the driver's phone.

Cell-phone provider data

AT&T, Sprint and Verizon all keep information regarding cell phone users for one year or less. Therefore, it is more important than ever that we clearly act before the one-year mark to get this information. In fact, as we all know, it is always best to be involved in truck-crash litigation as soon as possible, however the fact that cell phones themselves are critical pieces of evidence and easily replaced, makes being involved in these cases earlier even more paramount.

Once you have received the cell-phone provider data, the real work begins. Making sense of this information is difficult. However, if you have received the correct data, you will be able to tell the exact location of that cell phone as it travels across the United States. The data will show you the exact time the cell phone "pings" off the cell phone tower, giving you the coordinates to the location of the phone. Please keep in mind that the time given for the cell phone is in universal time; therefore a conversion must be made to your local time.

Comparing the cell-phone location to logbook location can be fruitful. How many times have we wanted a way to prove that the location on the logbook was incorrect? Now, with the cell phone, we may just have it. You should be able to discern the discrepancies between where the cell phone is and where the driver says he is simply by comparing the cell phone to the logbook.

A close comparison of both the logbook and the cell-phone data can be illuminating. In one case at my office, we have proven through the use of this method that the driver of the tractor-trailer was watching movies while he was driving. We were able to show through the use of this method that this was a behavior that was constant. Eventually, of course, this driver was involved in a major highway crash.

Downloading the driver's cell phone

The second, and more fruitful source of information comes from downloading the driver's cell phone.

Before you can download the phone, you must retain a qualified cell-phone expert. Downloading a phone is a complicated matter because they are con-

stantly upgrading. A protocol should be negotiated to ensure all sides are on the same page.

After the download is complete, as deep of a dive as is allowed into each of the apps on the driver's phone is a must. A highly qualified expert can download the driver's phone to tell you what activity was taking place on the phone at the time of the crash, e.g., Facetiming, watching movies, streaming videos, playing video games. Doing this while driving an 18-wheeled, 40,000-80,000-pound vehicle is outrageous conduct.

In addition to finding out whether the driver was distracted at the time of the crash, the cell phone could contain other data that can be beneficial in proving your claims against other defendants in your case. For example, while digging through data from a driver's cell phone in one of my cases, we found hundreds of messages from a broker who was sending detailed instructions to the driver and instructing him where to go to pick up and deliver his next loads.

The messages also revealed that the broker was setting the driver's pickup window and was aware of how many hours the driver had driven and how many hours he had left. Even though the broker knew that the next load would require the driver to exceed his hours of service, the broker sent him regardless, as evidenced by the text message exchange. These messages are helpful in establishing agency and control by the broker.

Conclusion

Technology is constantly changing. As lawyers, we must change with it. In today's online world, critical evidence can be found on electronic devices, online and on social media. To effectively litigate a truck case, a practitioner should be prepared to conduct a comprehensive search of all technology and online data in addition to obtaining traditional truck discovery.



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