



Technology and the LAW

by Henry Seaton

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Use of Technology in Trucking

No business, however small, can ignore technological advances. The old adage, “To err is human, but if you want to really screw things up get a computer” no longer applies. Manual billing, card rack dispatch, and paper logs have become obsolete. Canned computer software integrated with GPS has become cost effective and you do not need a “geek on call” or director of IT to operate it.

Clearly, technology has economic benefits. It saves time and money and affords the user a plethora of real time information. Trucking magazines are full of vendor advertisements offering the latest in low-cost, technological solutions for every aspect of trucking, including safety, vehicle performance, driver management, trailer and pallet tracking, vehicle maintenance and performance, and billing and collection.

What to buy and how much to pay for it is a daunting issue in and of itself.

It is not the use of technology that concerns me. I have had to adapt to cell phone and iPad technology which is important to

give clients the quick and immediate responses they need. Our firm has a website and I have long recommended that clients, whether carriers or brokers, publish their terms and conditions on their website to establish their standard operating procedures which should apply by default when written contracts are not executed.

Yet, before we sell out to the proposition that use of any technology is inherently good, consider this. Technology and data collection does not respect individual privacy rights and any data that comes into your possession can and most likely will be used against you in a court of law.

Privacy Rights and Driver Compliance

Although technology has developed to the point that actual driver fatigue can be measured with several cost-effective technologies, so-called “fatigued driving/hours of service” violations are measured based upon rules which straightjacket a driver’s use of his or her time and limit productivity. Far from the old standard of “requiring or permitting a driver to drive fatigued” the rules do not recognize the value of a nap, frustrate

a driver's effort to avoid congestion and rush hour driving, and legislate rules for truck drivers that have no application to the four wheelers with whom they share the road.

Since the FMCSA is going to use every scrap of paper available to prove that paper logs are not accurate or up to date, procuring EOBRs or agency-compliant devices at a low cost would seem to be a good idea. It will improve a carrier's score in the game of safety and ultimately means that a compliant driver will never have to fool with a paper log again.

Yet, there are clearly privacy concerns about the extent to which the government or a carrier should be tracking an employee driver – much less an independent contractor – with electronic surveillance. This issue has been raised by OOIDA and presents issues of substance which cannot be easily ignored. Of greater concern to me is the suggestion that TV cameras should be placed inside trucks to monitor drivers in real time, recording every nod and burp. All of that data, if it comes into the hands of the trucking company, is discoverable by plaintiff's bar. However innocuous extraneous data may be, you can bet it will be used against the trucking company in any way possible to demonize the driver and the carrier.

Finally, before we sell out to technology and science, I urge that we not suspend common sense. Before selling out to electronic

onboard recording devices, remember that what is being measured is not fatigue, but how a driver spends his or her time. Technology is just a better tool to force an alert driver to shut down his or her rig in the middle of the desert, and spend an entire weekend 60 miles from home. Before we start using technology to measure neck size and body mass indexes to discard drivers, consider that many of us who fail those tests sleep very well at night, thank you very much.

Before we let every shipper and insurer judge motor carrier fitness based on compliance data and SMS "algorithms" do not forget principal issues such as (1) data accuracy ("junk in/junk out"); (2) whether compliance algorithms even predict safety performance; and (3) whether the industry should be jumping on board with technological advances before the full implication of the purpose and use of the technology is examined.



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