



**Drones and Remote Sensing  
CLM 2017 BI/Workers' Compensation Conference  
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**I. The Ever-Changing Legal Landscape**

**Drones Present a Unique Challenges**

Unmanned Aviation Systems (UAS), commonly known as drones, have been in use and existence for many years. Until very recently, this has been primarily in the area of recreational use. Like model planes or remote-control cars, drones were a neat toy that kids and some adults would get for Christmas and use on weekends. That is no longer the case.

**Increase in Technology**

Over the last five years, technological advances aviation, battery life, and in cameras has greatly expanded the use of drones or UAS. Now not only can drone use continue for several hours, it can take place well beyond the navigators point of sight. In short, like many things that we use daily in our professions and businesses, the use of drones has increased dramatically as the technological improvements have made that use more reliable and beneficial.

**Increase in Use**

As the market has provided more reasonably priced UAS, professional use of drones has taken off, so to speak. This has enabled drones to be used not only for breathtaking photographs and video, but also in security, construction, agriculture and mining, as well as advanced recreational use. Drones are featured now in almost every major industry sector, as well as increased presence in law enforcement and entertainment. In short, workers in almost any line will likely encounter drone use as part of their work, or at least by used by their employer in some capacity.

**The Law Trying to Catch Up to the New Drone Reality**

As this use has proliferated, the law has lagged behind. UAS users waited for months, in some cases years, for the Federal Aviation Administration to finally issue rules for UAS use. This was finally done in June of 2016 with the issuance of FAA Regulation Part 107, the Small Unmanned Aircraft Rule. Currently, the FAA has settled on the following guidelines:

- Do not fly higher than 400 feet.

- Try not to fly over any obstacles when possible.
- Keep your drone within eyesight at all times
- Remain a safe distance away from others property and unprotected people.
- Notify any airports ahead of time if flying within 5 miles of an airport.
- Do not fly in adverse weather conditions or under the influence of substances.
- Don't fly near any sensitive areas (power plants, major highways, etc.)
- Don't invade other's privacy with photos or videos.

As use continues to develop and industry adapts to these new rules, there will be more certainty of all users and insurers in the workplace.

## **II. Real World Experience**

### **A. Understanding Technology**

Technology advancements have changed traditional surveillance methods. Camera systems are self-contained, portable and can operate 24/7 and for a number of days. The most advanced systems use wireless routing technology which provides a video signal and access for live view virtually anywhere. Camera systems can be placed in various types of applications and limited only by the imagination. Two common types are used: pedestal stand-alone systems and vehicle systems. Review of state specific statues for other technology tools that provide legal use. An example of this is portable GPS tracking systems.

### **B. Developing Best Practices**

The best approach for use of camera systems is developing a best practice guideline for your organization. This should be completed prior to deploying camera system technology. Consideration should be given in determining your organizations comfort level for risk and consider reputational risk.

Suggestions for consideration of best practices include:

- Who performs research for placement of a camera? Staff, vendor, or others?
- Document workflow/directions for research?
- Document research and findings recommended?
- Do you use a claim value threshold or not?
- Use of investigative intelligence for the decision?
- Does the process require both legal and claims executive approval?
- Do you require photographing prior to and after placement of the system?
- Photograph pick-up of camera?
- Do you require GPS coordinates for placement?
- Set up a method for tracking decisions use/don't use?
- Assignments to vendors what is the vendor required to do and document?
- Develop legal contract with the vendor
- Know what the vendor's practices are to place cameras?
- Research court cases that consider evidence with camera systems. Does this change your best practice?
- Review best practice periodically

### III. The Business of Drones

Business models for UAS activities are beginning to cluster into areas of expertise (agriculture, construction, media) with hobbyists stepping away from commercial enterprises. Industries are often absorbing UAS businesses into their daily operations vs. hiring independent contract UAS service providers.

UAS business models revolve providing data as a service in areas such as agriculture and construction, but there are greater revenue opportunities in areas of monitoring infrastructure and oil/gas inspections. The FAA is cautiously allowing an expanded use of UAS technologies under their Part 107 requirements for UAS businesses and all of this factors into business models

How UAS Companies Foresee Expansion and Growth Within the Industry  
Working with the FAA to allow Beyond Line of Sight, night, and restricted area flying.  
Technical advancements in design, software, and battery technologies

UAS Companies Reaching the Full Potential of the Technology Replacing the incumbent technologies; It isn't just about pictures but more about timeliness, resolution, and access. Reaching out to new industries who couldn't afford data collection or did not benefit from sporadic collection opportunities. Finding new customers by using advanced analytic processing and sensor integration technologies.

### IV. What Can Attorneys Learn to Make This Profitable?

#### Project Management-

One of the key things that law firms need to do a better job on is project management. There are many tasks which can and should be segmented. Additionally, rather than allow opposing counsel, or more regularly court deadlines/mediators steer the litigation, attorney should identify early issues, and get ahead of them. This can be done in phases, and proactively. Business often anticipate problems and set out a plan.

#### Planning for most likely scenarios not worst-case scenarios

An old joke essentially goes as follows: a man asks his friend if he knows a good one-armed attorney; the friend asks why he needs a one-armed attorney and the man says, "because every time I asked my last attorney a question, he'd say 'on the one hand, ..., but then on the other hand...'"

One of the reasons people hire attorneys is for their legal judgment and experience. Attorneys, however, are often predisposed to qualify their advice with other possible outcomes. Often, they do will simply identify the best and worst possible outcomes, without indicating what the most *likely* outcome will be. In doing so, attorneys avoid taking on any risk associated with the consequences of their advice. And, the client is often put in the perilous decision of making a decision without the benefit of their attorney's judgment and experience.

AFA's strongly incentivize attorneys to take strong positions on what they predict will be the most likely outcome for a particular case. Because inefficiency hurts the attorney's profitability, it's in their own

best interest to give the client the full benefit of their years of experience. Because the attorney and client's goals are now properly aligned, they can work together to prepare for those outcomes which are substantially likely to occur – keeping down costs and avoiding needless time wasting.