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E-Discovery & Transportation: The Changing Scope of the Post-Event Investigation

Presenters: Brian Boggess, *SEA, Ltd.*
Margey Knight, *Frias Management LLC*
Michael Lowry, *Thorndal, Armstrong, Delk, Balkenbush & Eisinger*

I. The Root of the Problem Not Just the Symptoms

1. What is E-Discovery and Why Does it Matter in Transportation?

A majority of vehicles on the road now have some form of on-board computer that tracks various data. Each passenger also is a potential electronic data source based upon their computers and personal digital devices. In an accident investigations, as much of this data as reasonably possible should be gathered to then hopefully drive an early decision both on liability and the viability of damages.

2. Electronic Evidence at the Scene

The vehicles involved in accidents can offer electronic evidence. For company vehicles, a good place to start is simply to know what type of information your vehicles are gathering, how it is stored, where it is stored, how long it is stored, how it is deleted and how to retrieve it. For the opposing vehicles, there is also a question of who owns that data? Can an investigator gather data from the opposing vehicle? What if police are involved

Second, do not just focus on the vehicles. In Las Vegas, the largest exposure for a cab company is on the Strip and at the airport. Each area has many cameras. Did the casino's cameras in the drop off area catch the door closure accident? Did the roof camera see a collision at the entrance? Were there witnesses at the scene taking pictures or videos with their phones? Do the driver's have electronic devices on them? What about the passengers? How do you obtain information from devices you do not own?

Finally, why bother with this? In Las Vegas and likely elsewhere, minor impacts become major headaches in the hands of good lawyers and shady doctors. Courts are also skeptical of biomechanical testimony. Gathering this evidence helps support the damages denial by quantifying velocities and impacts far better than witness statements.

3. Electronic Evidence at the Office (20 Minutes)

I gathered copious amounts of electronic evidence at the scene, am I done now? No. For commercial vehicles with automatic communications equipment, where is that information going? Like the vehicles, investigators need to know what type of information is being gathered, how it is stored, where it is stored, how long it is stored, how it is deleted and how to retrieve it.

For example, are GPS units transmitting data? How are the vehicles' maintenance files stored? How is driver personnel information handled?

Much of this may require cooperation from an information technology department. These professionals may have no claim or litigation experience and may resist the burden of becoming involved. One potential strategy is to integrate them into an accident response plan for long-term planning purposes rather than bringing them in on an ad-hoc basis.

4. I Hate Computers and Do Not Want to Deal with E-Discovery (10 Minutes)

Information and facts drive both claim handling and eventual litigation. Gathering this evidence at an early stage can keep claim professionals a step ahead of the claimant during initial stages, especially in disputed liability or minimal impact matters. Claim professionals can use the information already available to them to then make more informed decisions.

Second, spoliation of evidence is a serious problem in that claimant's lawyers usually send representation letters with long, ambiguous lists about the evidence they want preserved. If the claim goes to litigation and any information is missing, they may request spoliation of evidence sanctions. As many courts have come to acknowledge, this is becoming a type of "civil death penalty" in that spoliation sanctions usually terminate a case.