



# PROS, CONS, AND CONSIDERATIONS REGARDING ACCIDENT AVOIDANCE AND EVENT DATA GATHERING TECHNOLOGY IN TRANSPORTATION LITIGATION

Michael J. Judy

Dysart Taylor Cotter McMonigle & Montemore, P.C.

Accident avoidance and event data recording technology can be both a boon and a bane for transportation companies. Perhaps most importantly, accident avoidance technology can not only reduce the frequency of accidents, but it can also help mitigate the severity of the accidents.

Additionally, transportation companies can use the information captured by the technology to analyze fleet performance and to improve safety policies and procedures. The development and implementation of technology comes with a price, however. Specifically, the plaintiffs' bar is exploiting the information and data captured by the technology, and is using it as a sword against the industry in the context of casualty litigation. This article summarizes the benefits and pitfalls associated with the implementation of accident avoidance and event data recording technology.

Types of accident avoidance and event data gathering technology in commercial trucking

In 2015, nearly 38,000 people were killed and another 4.4 million were injured in motor vehicle accidents in the United States. These accidents and associated injuries resulted in accident related costs of nearly \$152 billion.

To reduce the frequency and severity of accidents, the trucking industry has been at the forefront in developing and implementing a wide array of accident avoidance and event data recording technology. The technology was developed with the intent to protect the motoring public and to enhance the safety of the transportation industry. The current technology available includes, but is not limited to:

*Event Recording*—On-board vehicle monitoring of in-cab and outside views that also records incident data, including video. It's triggered by a collision, rapid deceleration, or rapid lateral acceleration. It can also be triggered by prohibited driving operations such as lane changes without signals, excessive speed, excessive braking and following

distances. Some systems also have GPS units for position tracking at specified intervals. Data may be streamed to a server or captured on an on-board recording device.

*Stability Control*—Designed to mitigate situations where loss of directional stability or a rollover might occur and allows the driver to be in full control of the vehicle.

*Traction Control*—Reduces wheel slip during acceleration and brakes the appropriate wheel when the driver encounters slippage or yaw instability.

*Adaptive Cruise Control*—Uses radar sensors to maintain a safe distance behind other vehicles without driver intervention while cruise control is engaged. It also features audible and visual alerts when objects or vehicles are detected ahead of the truck. The system will de-throttle if a vehicle closes distance slowly and will automatically brake if it closes quickly.

*Collision Mitigation*—A radar and camera system that monitors objects and vehicles in front of the truck to produce audible and vi-

sual warnings in the event of a potential collision. It will also activate brakes, slow the engine, de-throttle, and add steering assistance to help avoid a collision if one is imminent.

*Lane Departure Warning*— A windshield-mounted camera that tracks vehicle orientation relative to the lane. The system will audibly alert the driver if the vehicle moves over a lane marking without signaling.

*Speed Warning*— Uses camera to read posted speed limit signs, then compares to actual vehicle speed. The system will give audible and visual warnings at 5 mph over the speed limit, and will de-throttle the truck at 10 mph over.

*Pedestrian Recognition*— Uses radar and cameras to detect pedestrians in motion so that it can cause the vehicle to brake automatically. The system can also mitigate collisions at lower speeds.

*Side Objects Detection*— Detects moving or stationary objects in the driver's blind spots when turning, and provides audible and visual warnings when an object is detected. However, this system only works at low speeds and may not be able to differentiate between people and objects.

## PROS OF ACCIDENT AVOIDANCE AND EVENT DATA TECHNOLOGY FOR TRUCKING COMPANIES

One of the most important benefits of safety technology is the reduction of the frequency and severity of crashes. Although the technology cannot eliminate a driver's responsibility to make reasonable decisions or drive safely, it can eliminate some of the human error that can contribute to crashes. As a result, fewer people are killed or injured in crashes involving trucks that have this technology.

For example, the National Highway Traffic Safety Administration (NHTSA) estimates that new regulations requiring electronic stability control (ESC) on large trucks and buses will save up to 49 lives, prevent up to 1,759 crashes, and provide net economic benefits of more than \$300 million per year, while costing about \$600 to add to each tractor.

In addition, the Federal Transportation Administration recently announced that it would contribute \$1.66 million towards a study of collision avoidance technology and emergency braking technology as part of a Collision Avoidance and Mitigation Safety Research and Demonstration Project that could save lives and reduce injuries nationwide.

In addition to addressing safety concerns, accident and event data recording technology can provide immediate feedback to trucking companies and insurance firms about accidents. This helps reduce the need

for accident reconstruction and can lead to accelerated claims handling. It assists those responsible for handling claims in determining which cases it needs to settle and which ones are defensible. Additionally, the technology provides feedback regarding units that are malfunctioning, which enables companies to more proactively maintain their fleets.

With respect to safety training and overall improvement of safety policies and procedures, transportation companies can utilize the data from this technology to more efficiently train drivers and pinpoint specific areas of concern within the company. Rather than providing system-wide training, a company can better utilize its resources and focus on specific problem areas. As a result, it presents enhanced opportunities for driver coaching and scoring in real-time. This way, fleets can focus on identifying and addressing problematic patterns and behaviors before they become a liability, which enhances the return on investment associated with the implementation of the technology.

## CONS OF ACCIDENT AVOIDANCE AND EVENT DATA TECHNOLOGY FOR TRUCKING COMPANIES

Even when a truck is fully equipped with the full array of the latest safety technologies, it is impossible to completely eliminate the possibility of accidents. Furthermore, the constant audible and visual alerts can distract drivers which can lead to an increased risk that an incident will occur. Similarly, there is a risk that a driver will grow accustomed to the audible and visual warnings, which undermines their effectiveness.

Another consideration is that event data recording technology can catalogue company failures and thus be used against a trucking company in ensuing litigation accompanying an accident. The data collected and stored by the safety technology are likely discoverable under the state and federal rules of civil procedure. This trove of information can be used as a sword against the company in litigation.

For example, if the data shows that a driver had 10 prior alerts for unsafe driving, and causes an accident on the 11th such occurrence, a good plaintiff's lawyer will use this as a narrative that the company does not care about safety and was negligent in failing to use the information to take corrective action with respect to the driver. Not only does this open up another theory of liability against the company, but it can also bootstrap a claim for punitive damages against the company.

## LITIGATION IMPLICATIONS OF ACCIDENT AVOIDANCE AND EVENT DATA TECHNOLOGY FOR TRUCKING COMPANIES

The plaintiff's bar is very active when it comes to seeking event data in litigation, and there are seminars dedicated to uncovering the underlying data generated by this technology. This information fits hand-in-glove with the reptile theory narratives that have plagued transportation litigation over the past several years. Moreover, crafty plaintiff's lawyers are using the lack of accident avoidance technology to argue for an enhanced standard of care. Specifically, they are arguing that a company's failure to use or implement the technology, even though it is readily available, is evidence in and of itself of the company's independent negligence. Unfortunately, most juries do not appreciate the costs associated with the technology or the thin margins on which transportation companies operate.

To help undercut the risks associated with the implementation of safety technology, it is important that the company react to information that the technology generates. Do not give opposing counsel the opportunity to paint your company in a bad light or argue to a jury that you do not care about safety. Moreover, it is important for anyone involved in the defense of a claim to know what information is available, as well as how it's stored, how it's retained and for how long, and who owns the data. Without this knowledge, there are several pitfalls that could substantially increase the exposure of a claim.

There is little doubt that the advances in safety technology are improving safety and operations. However, the technology is a double-edged sword that carries significant negative consequences if not properly managed. As such, careful consideration should be given to which safety technologies will achieve the desired safety goals with the lowest amount of risk.



*Michael J. Judy is a shareholder/director at Dysart Taylor Cotter McMonigle & Montemore, P.C. in Kansas City, Missouri. His practice focuses on transportation law and litigation. You can view his*

*expanded bio at <http://dysarttaylor.com/our-people/michael-j-judy> and you can contact him at [mjudy@dysarttaylor.com](mailto:mjudy@dysarttaylor.com).*