



AI ON THE OPEN ROAD

How Emerging Technologies Will Impact Trucking Claims

By Gary Strong and Lea Kapral

The heavy trucking industry is part of the fabric of American society. Delivery of goods and materials commonly occurs via heavy trucks. Likewise, artificial intelligence (AI) has become equally as significant. From the use of iPhones to ChatGPT, AI is here to stay, with its

benefits, drawbacks, and everything in between. When trucking and AI intertwine, the outcomes are varied.

AI technology can have a positive impact if used properly. For example, this sort of technology can give a driver an early alert that there may be a problem in the immediate future, allowing the driver to take early action. AI can give drivers a prompt that they

are doing something unsafe, such as using their cellphone when driving, speeding, or making unsafe lane changes. Drivers will receive this prompt in real time while behind the wheel in a way that is unobtrusive and will not startle them. The AI system will even notice when a driver is distracted and give them extra time to respond to a prompt on the road.



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While there are plenty of positive aspects of AI, at the end the day the human element still exists and the applicable standard of care of a reasonably prudent truck driver needs to be proven.

AI AND TRUCKING INDUSTRY CLAIM COMPLICATIONS

Motor vehicle crashes caused an estimated 36,096 fatalities in 2019, and a study by the National Highway Traffic Safety Administration shows that 94% of crashes involve human error. Autonomous transportation, then, would seem to be a beneficial solution for the transportation industry.

However, the reality is the integration of AI into the heavy trucking industry has provided new challenges in the defense of trucking industry claims. Partially due to the use of AI in trucks, claims and subsequent lawsuits are becoming more complex with higher dollar values across the U.S. Claims professionals, defense counsel, and the individual trucking companies need to work together, now more than ever, to deal with general liability claims and/or lawsuits where plaintiffs tend to inflate their general liability claims to the detriment of the trucking industry.

Further challenges when AI is incorporated into the fabric of the trucking industry occur when an accident takes place and both plaintiffs' counsel and the respective trucking company assess whether AI was a contributing factor to the accident. In the past, if there was a severe injury or a fatality arising out of a trucking accident, plaintiffs' counsel and even the trucking companies would primarily look to other vehicles as the cause of the accident.

Plaintiffs' counsel looks for deep pockets to recover from and, as a result, trucking companies are looking for additional risk transfer mechanisms. The use of AI means that we will see more defendants named following an accident, including manufacturers, designers, retailers, and end-users, along with "safety" drivers. Because a

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legitimate argument can be made that perhaps the technology is at fault for an accident, product liability law will also likely be applied. The manufacturers and designers will likely argue that the trucking companies' failure to maintain aforesaid electronic devices is what caused them to malfunction.

A LACK OF AI REGULATION AND OVERSIGHT IN MOTOR VEHICLES

The Federal Motor Carrier Safety Administration (FMCSA) is the main federal government agency responsible for regulating and providing safety oversight of commercial motor vehicles, including more than 500,000 commercial trucking companies, more than 4,000 interstate bus companies, and more than 4 million commercial driver's license holders. Part 393 of the FMCSA is titled, "Parts and Accessories Necessary for Safe Operation." This section discusses what parts of the vehicle are relevant to providing safety during the operation of a heavy trucking vehicle.

Part 396 of the FMCSA is titled, "Inspection, Repair, and Maintenance." This section discusses how to properly maintain heavy trucking vehicles and the parts related to these vehicles. This is especially relevant when these vehicles may drive several thousand miles before maintenance takes place. As presently constructed, the FMCSA do not discuss in any great detail how AI is applicable to the motor vehicle industry.

THE FUTURE OF AI AND TRUCKING

Ultimately, manufacturers, designers, distributors, retailers, and trucking companies utilizing autonomous

technology need to be prepared for a hybrid style of litigation within the transportation world. Companies should be prepared to face causes of action grounded in product liability as well. Claims of defective design, breach of implied warranty of merchantability, strict product liability, and more will almost certainly be brought against all defendants within the chain of distribution.

When determining the scope of AI use, contractual warranties, indemnities, and limitations in favor of the trucking company against the AI company can better protect the trucking company. Just as trucking companies have safety protocols in writing, so should these same companies have AI maintenance procedures, in writing, along with mandatory compliance. Companies also will need to consider how to document in writing, and prove, that a particular AI function was performed, or a decision was made, as a result of reasonable programming that met then-current industry standards or best practices.

Lawsuits and claims will not cease to exist because AI somehow will prevent accidents. This is not reality. It will be important for companies to educate employees and consumers about the capabilities, risks, and limitations of AI. Proper safety protocols for drivers are needed along with written maintenance directives for the AI machinery/products that are being used. If and/or when an accident occurs, however, nothing can replace the fundamental and sound in-person investigative skills of claims professionals along with defense counsel. ■