

## Will Technology Drive the FUTURE OF TRUCKING REGULATIONS?



Paul D. Godec and  
Bobby G. Riley\*



On June 20, 2012, Google announced a product that enables businesses to see the locations of its workers at all times. Called "Maps Coordinate," Google's product combines a business version of Google's standard maps product with an application downloaded to a worker's smartphone. The application and the product combine to create a real-time record of each worker's location.<sup>1</sup>

The product allows companies to deploy employees, share location information, and keep a permanent record of locations visited by each employee. Companies may also incorporate their specific information, such as the locations of warehouses, to customize the product. Google has already tested its product in industries such as government services, utility maintenance, and pizza delivery.

The product also includes a feature that would enable companies to monitor the locations of workers even inside buildings. Google insists that the product does not intend to put mobile workers on a tighter leash. Rather, Google asserts that the product will enable companies to manage their resources more effectively. Google claims that the product contains features to maintain certain aspects of employee privacy. For example, the employee can

become "invisible" at any time or simply become "invisible" every day at the end of a shift.

Obviously, the Maps Coordinate product could serve many useful purposes for trucking companies. The product could help trucking companies efficiently connect drivers with equipment, and coordinate drivers and equipment to available loads. Thus, the product could help trucking companies maximize the productivity and profitability of each driver and each piece of trucking equipment. The product could help companies monitor their drivers' routes to help them avoid construction delays or traffic congestion areas. The product could additionally help trucking companies monitor drivers for compliance with restrictions on hours of operation.

If trucking companies properly introduce employee tracking technology, courts have generally held that such devices do not violate employees' privacy rights. See *Elgin v. St. Louis Coca-Cola Bottling Co.*, 2005 U.S. Dist. LEXIS 28976 (No. 4:05CV970-DJS; Nov. 14, 2005) (dispute involving whether employer's installation of GPS device constituted a violation of a Missouri statute or an invasion of seclusion); *Otis Elevator Co. v. Local 1, Int'l Union of Elevator Constructors*, 2005 U.S. Dist. LEXIS 21617 (No. 03 Civ. 8862(DAB); S.D.N.Y., Sept. 23, 2005) (dispute involving whether employer's installation of GPS devices in vehicles violated a union contract); *Oman v. Davis Sch. Dist.*, 2003 U.S. Dist. LEXIS 27662 (No.

1:03CV57DAK; Sept. 18, 2003) (dispute involving installation of GPS device in vehicle to investigate allegations of moonlighting); *Haggins v. Verizon New Eng., Inc.*, 648 F.3d 50 (1st Cir. 2011) (employee dispute involving GPS technology used by employer in smart phones issued to each employee).

Likewise, courts have held that information obtained from such tracking technology may provide a proper basis for employee discipline. See *Hinkley v. Roadway Express, Inc.*, 2006 U.S. Dist. LEXIS 64434 (No. 03-2620-CM; D. Kan., Feb. 13, 2006) (GPS tracking information for employee's vehicle used as basis for discipline).

On the other hand, if technological products such as Maps Coordinate widely come into use, then a "big brother" downside could also come to exist. Indeed, regulators could eventually refine the regulations to require trucking companies to use those tracking products for purposes of monitoring hours of operation requirements. Public safety officers could similarly request the permanent records created by these tracking products to investigate whether certain drivers or certain companies systematically take routes to avoid weight and inspection stations. Of course, such records would at least suggest that those drivers or companies routinely

\*Kissinger & Fellman, P.C. (Denver, Colorado).

haul illegal overweight loads or operated unsafe vehicles.

At present, the technological and legal landscape has not come into focus to foresee what the future might

hold for monitoring truck drivers for regulatory compliance. The technology now exists, however, to monitor and to record a driver's every move at every minute. Only time will tell how

tomorrow's legal landscape will react to today's technological advances.

#### Endnote

1. Marketing information indicates that the product presently costs \$15 per user per month.

### LIMITS, *continued from page 19*

is premised on the language of a certificate of insurance Underwriters filed with a state agency, falters at both steps. NFC could not reasonably think that a certificate of liability insurance, as opposed to the insurance contract itself, would confer coverage for coal dust damages. NFC did not sign or approve the certificate; Underwriters filed the certificate with the State. Even then, moreover, the certificate says nothing about this issue. It does not mention the terms of coverage or the coverage limit, except to say that the policy's coverage is consistent with state law.

*Certain Underwriters* at 2-3. Because the exclusion in the policy was clear and straightforward, the insured's

attempt to argue about its expectations of coverage under the certificate of insurance did not alter the effect of the exclusion precluding coverage. See also *Campbell et al. v. Shura et al.*, 2003 U.S. App. Lexis 22714 (5th Cir. 2003) (stating that a publicly filed certificate of insurance is not the equivalent of an insurance policy).

### Conclusion

An ACORD Certificate of Insurance apprises the certificate holder that the insurance policy or policies identified in the certificate actually exist. It also provides basic information about the insurer, the nature of the coverage, the limits, and the effective dates of the policy. It does not confer any coverage on the certificate holder independent of the terms and conditions of the policy or policies identified in the certificate. Most important, even if the ACORD form

indicates that the certificate holder is an additional insured under the policy or policies identified in the certificate, additional insured status can only be conferred by an actual amendment or endorsement to the underlying policy. Non-standard certificates of insurance that do not contain the disclaimers found in an ACORD form can be the basis for finding coverage under a policy listed on the certificate when the certificate contains affirmative language that alters the terms and conditions of the underlying policy, and the certificate is generated, issued, and signed by an agent for the insurer. Certificates of insurance required by federal or state agencies will be construed in the same manner as a standard certificate of insurance, except in cases involving the purpose for which the certificate was issued.

### NOTES, *from on page 41*

6. STB Docket No. AB-12 (Sub-No. 190X), *Southern Pacific Rail Corporation – Abandonment Exemption – in Garfield, Eagle and Pitkin Counties*, CO, served April 3, 1996.
7. 49 C.F.R. §§1152.20(a)(4) & 1152.20(b)(1).
8. 49 C.F.R. §1105.11.
9. 49 C.F.R. §1152.21.
10. 49 C.F.R. §1105.12.
11. 49 C.F.R. §§1152.22(i), 1152.60(c) & 1152.50(d)(3).
12. 49 C.F.R. §§1105.7 & 1105.8.
13. 49 U.S.C. 10904 & 49 C.F.R. §1152.27.
14. 49 U.S.C. 10905 & 49 U.S.C. §1152.28.
15. 16 U.S.C. §1247(d) & 49 U.S.C. §1152.29.
16. See, Docket No. AB 33 (Sub-No. 299X), *Union Pacific Railroad Company – Discontinuance of Service Exemption – in Pittsburgh, Hughes and Seminole Counties, Okla.*, served January 12, 2012; docket No. AB 290 (Sub-No. 333X), *Norfolk southern Railway Company – Discontinuance of Service Exemption – in Forsyth County, N.C.*, served October 20, 2011; Docket No. AB 991X, *Yellowstone Valley Railroad, L.L.C. – Discontinuance of Service Exemption – in Dawson and Richland Counties, Mont.*, served June 28, 2011.