



# WHERE'S WALDO?

## Using Technology Tracking in Claims Investigations

By Matthew J. Smith, Esq.

Thanks to today's technology, "Waldo," or any claimant, is easier to find or track than ever before. Tracking technology available now was unheard of a generation ago, and insurers are exploring this new technology as a vital tool to investigate claims and fight fraud. Like any new technology, it is not without risk. The first step to developing a proper policy for the use of tracking technology is to understand the multiple ways available to trace and monitor a person's whereabouts.

### From Cellphones to Smartphones and Beyond

Tracking of a claimant's whereabouts beyond traditional surveillance first arose in the 1980s with the advent of cellular technology. As towers sprang up, insurers realized cellular call records were relevant to claims investigations. While technology has advanced far beyond "bag phones" and bulky car trunk transmitters, the basic technology remains. Cellular telephones use radio frequency bands to exchange signals with strategically located antennas. Each time the cellular device sends or receives information, whether it is a call, text, or other communication, an antenna is located, and the exchange of data occurs between the device and normally the strongest signal tower available. Modern technology allows for the usually seamless passing of a signal from one set of antennas to another as the device moves or signal strength becomes stronger or weaker.

While specific devices may be unique, there are normally at least four points of data exchanged every seven to eight seconds between the device and towers. This may include voice,

data, global positioning systems (GPS), or text. Importantly, it does not matter whether the device is being used, as exchanges occur regardless.

We literally can track a person's whereabouts through the collection of this data. Once a person confirms the device has been in their possession, proper analysis tracking can trace the person's path of travel using the exact cellular towers and even directional panels from which communications were conveyed. On a recent major fire loss claim, records subpoenaed from the cellular provider demonstrated (to nearly 100 percent accuracy) that the insured was not where they claimed and instead was at or near the fire location within minutes of the fire being reported.

Expert evaluation normally will be required to decipher the data and verify accuracy of the information. By working in cooperation with experts, animated models can be built at a very low cost to graphically show a jury the travel path and locations of a party during the time period surrounding an insurance loss.

### Geotagging and GPS

Virtually every smartphone camera and many other electronic devices are equipped with geotagging. This feature is traditionally set in the "on" mode and is difficult to turn off. In its simplest form, geotagging records the exact latitude and longitude of every photograph taken on the device and stores the information as metadata.

By right clicking on a digital photograph, it may be possible to determine, to an accuracy of within 15 feet, the exact location where the photograph was taken. The geotagging feature is in addition to the time and date stamps, which on most devices are now set auto-



matically and cannot easily be altered. Collectively, knowing the date, time, and exact location of a photograph may be crucial to an insurance investigation.

Additionally, this data is stored in an easily retrievable format. Most smart devices contain a searchable photo archive. Reviewing the photo geotag archive may well determine a person's physical whereabouts around the time of the loss. Combining a series of photographs may even allow the opportunity to track a person's whereabouts over a period of hours, days, or weeks based upon the geotagging data.

GPS uses satellite technology to locate with extreme accuracy the device's physical location or route of travel. Once it is confirmed that the device is in the possession of the person making the claim, GPS information, including stored routes of travel, may provide extremely accurate information detailing not only a person's whereabouts, but specific roadways traveled and exact times and locations of key events.

### Video Surveillance and Plate Readers

Americans literally are on camera anywhere we go. Street cameras led to almost immediate identification of the Boston bombers. Office buildings, schools, parking garages, hospitals, retail stores, shopping malls, and hotels are

often equipped with extensive video surveillance. Many private homes even incorporate video security. Look up in almost any major establishment and you will often see video devices in operation.

Vehicles are now tracked on highways by "plate readers." The databases associated with this technology can be searched to identify the exact date, time, and location where a vehicle was traveling. Many traffic apps now provide direct links to highway and intersection cameras. If captured quickly enough, actual video of an auto accident occurrence may be retrievable.

While much of this data may not be kept for extended periods of time, if a major loss occurs, steps may be taken promptly to secure the information, either by cooperation or emergency court order.

Astute claims investigators should look at all loss sites as potential resources for relevant video information. A nearby video camera or data reader may provide documentation of the claimant's whereabouts, observe a vehicle driving by, or provide other relevant information.

### Tracking Cards

We Americans can never resist a bargain or discount. Merchants now offer loyalty cards keyed to specific discounts or consumer rewards. Whether scanned by a barcode or recalled by a telephone

number, tracking card information may be relevant to not only determine a person's whereabouts, but also their buying practices and purchase histories.

On a recent theft claim, the individual claimed a large number of items purchased from a national high-end department store. The store offered a consumer loyalty discount program, to which the claimant did not belong. The claimant did, however, belong to and use an extensive number of similar customer programs, all with more moderately priced retailers.

While businesses from grocery stores to gas stations have embraced loyalty cards, one of the first uses of these tracking systems was in casinos. These preferred customer cards track not only the person's gaming activities at the casino, but also when they enter and leave the property. On a fire loss in Indiana, the insured's alibi was gambling at a local casino. The casino's tracking records proved the insured was at the casino on the night of the fire but left, returning 45 minutes later. It was during this time window the fire was set.

### ATM Records

The days of simply looking at banking records for financial balances are over. Each time a person utilizes an ATM, not only is the transaction recorded, but a video or still photograph records the person making the withdrawal and the exact time and location.

By reviewing banking records surrounding the time of loss, it may be possible to establish by ATM records and the accompanying photo or video a claimant's exact location to either verify or dispel their version of the events under review.

### Fitness Bands, Health Apps, and Smartwatches

The ability to track a person's whereabouts is not limited solely to property claims. Most iPhones and similar devices now come equipped with health apps. These apps are preloaded and normally do not require activation.

What many individuals are unaware of is that these devices automatically track the number of steps taken and miles walked by the device owner on a daily basis. In a recent deposition, a bodily injury

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claimant testified that her injuries prohibited walking any measurable distance rendering her homebound. The plaintiff was surprised when, after verifying she kept her smartphone with her at all times, she was shown the app on her phone (which she did not even know existed) disclosing that, in the past two days alone, she had walked more than five miles.

In addition to these apps being loaded on smart devices, one of the trends sweeping across America has been fitness bands or similar devices. While we may be an overweight population, we are equally fixated on health and fitness. Recovery of data from fitness bands or similar physical fitness monitoring devices may provide a treasure trove of information regarding a person's physical activities, depending upon the extent of injury they may be claiming.

The recent rollout of the Apple Watch brings the ability to monitor and track a person's activities and whereabouts literally to within arm's reach.

## The Need to Update Policy Language and Authorizations

Technology is moving far more rapidly than the insurance profession. These examples, and other yet-to-be-invented forms of technology, provide a wealth of information to document, verify, and investigate insurance claims, whether for personal injury or property damage. Sadly, insurance policy language addressing areas such as the duty to cooperate and provide data and information is not keeping up with the world in which we now live.

The need exists to update not only our insurance policies, but also claims authorizations to allow for retrieval of electronic information and data, including tracking technology. While review by state departments of insurance may be necessary to change policy language, insurance carriers themselves control the claims authorization forms, which often are woefully outdated.

Any new technology should be embraced with care and caution when deciding issues of insurance coverage. Proceeding with caution, however, does not mean ignoring the wealth of information available in today's technology to properly investigate insurance claims

and protect innocent policyholders from fraud. We should move cautiously, but we still must move forward and embrace these new forms of technology through appropriate policy and claims authorization modifications.

## Use of Court Subpoenas

Courts across the United States understand the rapid rise of technology and the need for insurers and other businesses to secure relevant data. Most states allow for the ability to file a petition for discovery to secure relevant records via subpoena, even before any underlying claim litigation may be filed.

While insurers historically have been reluctant to file suit against their own insureds to secure information, most no longer have to. While notification should be given to the insured or their counsel, most courts now will recognize the right of an insurer to file a petition for discovery directly against a cellular service provider or business entity to secure relevant video or data information before it is lost or destroyed. While filing of such actions requires the assistance of legal counsel and some cost, if the investigation is conducted properly, the data may make the difference between paying a fraudulent claim and saving literally tens of thousands, if not millions, of dollars.

## What the Future May Hold

Today's world of technology is moving forward rapidly and ever-changing. Facebook did not even exist until 2004. Today's Apple Watch, to older generations, harkens back to the era of Buck Rogers, but it will someday be relegated to an antique store.

What will remain constant will be insurance claims. Whether legitimate or suspicious and whether bodily injury or property, there will be no shortage of insurance claims in the future. The question will be how we embrace technology and use it effectively for the benefit of our profession and, more importantly, the policyholders who place their fate and trust in America's insurance carriers.

So where is Waldo? That is up to you to determine. He is out there and leaving a clearly identifiable trail. How aggressively are you willing to embrace today's technology to find where Waldo is and whether he is actually telling you the truth? **CM**

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