

Why the sky is no longer the limit: Using drones in insurance claims investigations



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By Maria S. Quintero

Use of unmanned aerial or vehicle systems — aka drones — in insurance claims investigations no longer belongs to the future. This October, a large insurance company sought approval from the Federal Aviation Administration to test fly light weight drones for evaluating disaster site damage. More insurers are sure to follow suit. Drone technology promises to bring benefits to the insurer and the policyholder, improving the

claims process with increased efficiency, improved accuracy and quicker claims resolution. As with most new technologies, there is little in the way of current regulation and the limited state laws in place may subject an insurer to new exposures.

The adoption of new technology in the insurance industry is nothing new. Historically insurers have used new technology to improve the amount and quality of data gathered during an investigation and to better assist the recording and evaluation of such data. Insurance claims investigating has come a

long way from an adjustor's observations, measurements and handwritten notes. Laptops, tablets, cameras, sophisticated estimating software and inspection tools such as thermal imaging have all improved the claims process. More recently, insurers have adopted mapping technology, geographic information systems and aerial photography to better inspect roofs and investigate hail and other types of property damage.

Like aerial photography and other investigation tools, drone technology may bring new perspectives to pre- and post-claims

loss investigation. The potential application of drone technology is defined principally by the drone's characteristics. Drones can take the form of a fixed wing assembly capable of long aerial flights, which insurers can use to investigate catastrophic damage after floods, tsunamis, earthquakes and wildfires. These drones offer access to areas that are contaminated or too dangerous for humans to enter, and offer a view to areas of restricted physical access which can reduce injury exposure to claims investigators.

Another type of drone, the

fan-powered drone such as the quadcopter, is capable of vertical take-off and landings and is highly maneuverable and nimble. They can be outfitted with devices such as cameras, infrared devices, microphones and sensors. These drones can be used to evaluate smaller scale damage to buildings and roofs. Both types of drones can be used in underwriting investigations to better assess the risk represented by an insured, or in fraud investigations.

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An Overview of Current Regulation

Although the benefits of drone technology in claims investigations are obvious, the regulation of drone use is currently unresolved. The FAA is responsible for the safety of national airspace and exercises oversight over unmanned aircraft. In 2012, the Federal Aviation Administration Modernization and Reform Act mandated the FAA to establish rules for the safe integration of drones into the national airspace by 2015. The FAA is expected to propose rules and regulations to address safety standards and possible certification and licensing programs for drone pilots. Congressionally-mandated test sites — approved in Alaska, Nevada, New York, North Dakota, Texas and Virginia — will conduct research into future drone use.

Drones already operate with FAA consent for border surveillance, scientific and environmental research, and law enforcement operations. Commercial flight is authorized on a case-by-case basis; only one such flight — a drone flight over the Arctic — has been approved. The recreational use of drones is allowed but only in accordance with the agency's guidelines.

On a state level, at least 42 states have introduced legislation aimed at regulating or restricting drone use. California has not passed any drone legislation but has adopted two resolutions to recognize the economic importance of the drone industry in the state and to urge the FAA to consider California as a test site for unmanned aircraft systems.

Twenty states have enacted laws addressing drone issues, such as defining what a drone is; placing limitations on drone use by law enforcement or other state agencies; and regulating the use of drones by the public. Some make it a crime to intentionally observe a person or their property without their consent, and provide for civil causes of action for those whose privacy is violated. Indiana law makes it a crime to knowingly and intentionally electronically survey the private property of another without permission; Louisiana makes it a crime to intentionally use a drone to conduct surveillance of a targeted facility without the owner's prior written consent; and in Texas it is a crime to possess or distribute images gained from the



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Deputy Larry Blanchard wears a head set for viewing the video feed from a drone during a demonstration. More than 35 states have considered drone legislation this year.

illegal use of a drone. In Oregon, a landowner can bring a trespass action against an operator flying a drone lower than 400 feet over their property and under certain conditions.

fastidious habits of a claims investigator. What if, while using the drone, a claims investigator captures an image of criminal activity near the property being inspected? Or inadvertently

cyholders filed bad faith lawsuits claiming that the program failed to include certain variables, and therefore its recommendations were inaccurate, or that the adjuster failed to demonstrate independent thought for valuing a case by mandatorily applying the stated Colossus value to settle claims. Like the technology that went before it, an insurer's use of drone technology could be subject to challenge based on its accuracy (the device or the operator) or perhaps by an insurer's over-reliance on the data gathered.

It is also possible that an insurer could face challenges to not using drone technology. If drone technology promises better accuracy, efficiency, and quality data, could the intentional decision not to use that technology, be a possible failure to promptly and fairly investigate a claim? A challenge along these lines — for instance, if a drone could have recorded damage not visible to an investigator — is within the realm of possibility with the new reality of drone technology.

the insurance industry can benefit the insurer and policyholder, leading to a more efficient and productive claims process. The sky is no longer the limit for commercial drone use.

Maria S. Quintero is a partner in the San Francisco office of Hinshaw & Culbertson LLP. She devotes her practice to helping insurers with all phases of litigation and appeals, as well as assessments and evaluations of coverage issues and determinations under first-party and third-party policies. She also advises insurers on a range of matters including claims handling and coverage.

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Insurers Could Face Exposure

There is little doubt that insurers will use drone technology when FAA regulations are passed. However, insurers will need to adopt safety regulations, training programs and standards by which the drone will operate in the face of a patchwork of state regulations on drone use. It may also be necessary to craft a privacy policy for the technology.

Privacy issues raise a host of potential problems for an insurer and can surface despite the

records a private conversation next door while surveying a property? Or flies the drone too low over an adjoining property? In addition to any statutory regulations, there are potential exposures to common law torts, including invasion of privacy and trespass actions.

If history is any guide, using this new technology in the claims process will not be immune from criticism and might lead to litigation. Some time ago policyholders challenged the insurance industry's use of Colossus, a comprehensive claims valuing software program. Poli-

Going Forward, the Sky's the Limit

While drone technology brings new perspective to claims investigations, it also brings new challenges and new exposures. The use of drone technology in



MARIA QUINTERO
Hinshaw & Culbertson