

# Client Alert

Insurance Coverage &amp; Recovery Practice Group

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## Insurance Issues Facing the Automotive and Transportation Industries in the Transition To Autonomous Vehicles

The world of self-driving cars and trucks is now upon us. Among other expected impacts, the gradual transition from driver-controlled to semi-autonomous to fully-autonomous vehicles will mean significant changes in insurance programs and liability protections for companies in the transportation industry. Currently, 93% of road traffic accidents are caused by human error.<sup>i</sup> Thus, removing the human element from driving is ultimately expected to reduce accidents and the need for personal liability insurance.

According to the Insurance Institute for Highway Safety, there will be 3.5 million autonomous and semi-autonomous vehicles on the road in the United States by 2025, and 4.5 million by 2030.<sup>ii</sup> The trucking industry, which moves more than 70 percent of domestic freight (measured by weight) and employs more than 3.5 million drivers, is poised to be a large-scale early-adopter of autonomous vehicle technology.<sup>iii</sup> The sector's economic gains attributable to this technology could reach \$100-500 billion per year by 2025, and trucking companies are taking notice.<sup>iv</sup> For example, one company already has replaced 20 percent of its fleet with semi-autonomous trucks and plans to double that number in 2018.<sup>v</sup>

According to a recent Accenture report, as demand for personal liability insurance decreases, there will be increased demand for cybersecurity insurance, product liability for sensors and software algorithms, and public infrastructure systems like cloud servers monitoring road conditions.<sup>vi</sup>

### As the insurance marketplace evolves, policyholders need to be very cautious about “gaps” in coverage, which could arise in a number of ways:

Fleet owners and vehicle operators should not expect the transition to semi-autonomous and autonomous vehicles to eliminate the need for traditional automobile insurance, at least until new products are developed.

- Certain manufacturers have already announced that they will accept responsibility for accidents that are caused by malfunctions in the technology in their cars, but that does not mean the risk of loss will shift entirely away from owners and operators over to manufacturers, even in fully automated vehicles.

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- For accidents attributable to an internal fault in the vehicle, some or all of the liability nevertheless could be attributed to the vehicle owner, if the fault resulted from tampering, improper maintenance, or some other error or omission on the part of the owner. Standard-form commercial general liability and personal umbrella liability policies are not designed to cover that risk, and should not be expected to serve as an adequate substitute for automobile liability insurance in those circumstances. Insurance companies can also expect to develop new underwriting criteria. For instance, accident history may be less important to personalizing coverage than the make/model of a vehicle, where it is stored, and where it is primarily driven.<sup>vii</sup>
- Moreover, systems in development are not yet fully autonomous but rather allow automatic or manual disengagement—that is, when the automated driving fails or recognizes its own limitations, the autonomous mode disengages and the drivers are expected to resume manual driving. A recent data analysis found an average reaction time of 0.83 seconds for drivers to resume control. Naturally, unreasonable delay in resuming control or behavior once manual driving is resumed could also be the source of personal liability.<sup>viii</sup> In addition, losses may be solely attributable to external causes. If a tree falls on a vehicle or if the vehicle is stolen, the vehicle owner will need the first-party property coverage component of automobile insurance in order to recoup those losses.

Conversely, manufacturers of vehicles and component parts must look for ways strengthen their product liability coverage. Increased limits, revised terms of coverage, separate risk pools, and specialized products all may be necessary.

- Many commercial general liability policies employ broadly-worded software and data exclusions that potentially could be interpreted to apply to any and all accidents involving vehicles with automated technology, which could completely eliminate the product liability component of the policyholder's coverage.
- As human control of the vehicle decreases, and the risk of loss increasingly shifts from operator to manufacturer, automakers will need to ensure that suppliers of the software, systems, and devices employed in the vehicle all maintain adequate product liability coverage. Increased attention to the wording of insurance and indemnity requirements in supply contracts will be imperative.
- As vehicles on the roads increasingly rely upon communication networks and “real time” sharing of data, there will be an increased risk of a single error simultaneously affecting a very large number of vehicles and causing a large-scale catastrophic occurrence. Policy limits will have to be evaluated and adjusted accordingly.

Cyber insurance rapidly is becoming an essential risk management product for manufacturers of vehicles and component parts.

- Vehicle data sharing networks are vulnerable targets for hackers and may be subject to malicious cyberattacks.
- Although autonomous and semi-autonomous vehicles have yet to be widely adopted, the threat of automotive cyberattack is already a very real danger. More than half of the vehicles sold in the United States in 2014 are connected to data networks and potentially accessible to hackers.<sup>ix</sup> On the individual user level, such hacking could take forms such as hijacking controls, unauthorized entry, and ransomware.
- There is also a threat to the system-level cybersecurity. There may be attacks on the public infrastructure managing traffic networks or vehicle communications. Municipalities may even be required to accept responsibility for maintaining secure networks.<sup>x</sup>

- There may also be privacy breaches and misuse of personal data.

Insurance companies and policyholders can expect changes in coverage in other areas as accidents decrease.

- For instance, healthcare and disability insurance related to auto accidents as well as vehicle-related workers compensation claims will be affected.<sup>xi</sup>
- There may be changes in automobile ownership. More people may be able to share one car or people may even choose to participate in vehicle-sharing run by large companies or municipalities. People could summon these cars remotely, lessening the need for a vehicle to be parked close by. A study by the University of Texas study conducted a simulation showing that in urban Austin conditions, one shared vehicle could be expected to replace 9.3 conventional vehicles.<sup>xii</sup>
- The RAND Corporation has also suggested that a no-fault insurance system may follow increased adoption of autonomous technology so that manufacturers will not be overwhelmed by injury claims and forced to go out of business. An analogue is the National Childhood Vaccine Act, passed in 1986 in response to the threat that vaccines could become scarce because of injury claims.
- Insurers have been urged to invest now in telematics technology to accumulate proprietary data generated by autonomous vehicles in order to have a head start in analyzing this data and crafting policies.<sup>xiii</sup>

Autonomous vehicle technology is advancing at a rapid pace and soon will outpace the current structure of the automobile liability insurance marketplace. Companies in the automotive and transportation industries should begin planning now for changes to their current insurance programs. It is important for these companies to consult with insurance brokers and coverage counsel to evaluate potentials gaps and identify new products that will address their changing needs.

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*This alert provides a general summary of recent legal developments. It is not intended to be and should not be relied upon as legal advice. In some jurisdictions, this may be considered "Attorney Advertising."*

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<sup>i</sup> Dr. Armand S. Rao, *Autonomous Vehicles – Insurance Implications*, COMMERCIAL VEHICLE SAFETY RESEARCH SUMMIT, <http://www.umasstransportationcenter.org/images/umtc/UMassSafe/Presentations/Session%204/Sess%204%20Insur%20Imp%20of%20autonomous%20veh%20Rao.pdf> (November 2016).

<sup>ii</sup> *Self-Driving Cars and Insurance*, INSURANCE INFORMATION INSTITUTE, <http://www.iii.org/issue-update/self-driving-cars-and-insurance> (Jul., 2016).

<sup>iii</sup> *Reports, Trends, and Statistics*, AMERICAN TRUCKING ASSOCIATIONS, [http://www.trucking.org/News\\_and\\_Information\\_Reports\\_Industry\\_Data.aspx](http://www.trucking.org/News_and_Information_Reports_Industry_Data.aspx); *Managing the Transition to Driverless Freight Transportation*, INTERNATIONAL TRANSPORT FORUM, <https://www.itf-oecd.org/sites/default/files/docs/managing-transition-driverless-road-freight-transport.pdf> (2017).

<sup>iv</sup> Lewis M. Clements & Kara M. Kockelman, *Economic Effects of Automated Vehicles*, ANNUAL MEETING OF THE TRANSPORTATION RESEARCH BOARD, [http://www.cae.utexas.edu/prof/kockelman/public\\_html/TRB17EconomicEffectsofAVs.pdf](http://www.cae.utexas.edu/prof/kockelman/public_html/TRB17EconomicEffectsofAVs.pdf) (Jan., 2017).

<sup>v</sup> Chris O'Brien, *How One Trucking Firm is Preparing Drivers for an Autonomous Future*, TRUCKS.COM, (Jun. 5, 2011), <https://www.trucks.com/2017/06/05/traft-preparing-truck-drivers-for-autonomous-future/>.

<sup>vi</sup> Accenture, *Insuring Autonomous Vehicles An \$81 Billion Opportunity Between Now And 2025*, [https://www.accenture.com/t20170530T040532\\_w\\_/pl-en/\\_acnmedia/PDF-53/Accenture-Autonomous\\_Vehicles.pdf](https://www.accenture.com/t20170530T040532_w_/pl-en/_acnmedia/PDF-53/Accenture-Autonomous_Vehicles.pdf)

<sup>vii</sup> *Self-Driving Cars and Insurance*, *supra* note ii.

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<sup>viii</sup> Vinayak V. Dixit, Sai Chand, and Divya J. Nair, *Autonomous Vehicles: Disengagements, Accidents and Reaction Times* (December 2016), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5173339/>

<sup>ix</sup> Rob Toews, *The biggest threat facing connected autonomous vehicles is cybersecurity* (August 25, 2016), <https://techcrunch.com/2016/08/25/the-biggest-threat-facing-connected-autonomous-vehicles-is-cybersecurity/>

<sup>x</sup> *Self-Driving Cars and Insurance*, *supra* note ii

<sup>xi</sup> *Self-Driving Cars and Insurance*, *supra* note ii

<sup>xii</sup> Daniel J. Fagnant, Kara M. Kockelman, Prateek Bansal, *Operations Of A Shared Autonomous Vehicle Fleet For The Austin, Texas Market*, [http://www.cae.utexas.edu/prof/kockelman/public\\_html/TRB15SAVsinAustin.pdf](http://www.cae.utexas.edu/prof/kockelman/public_html/TRB15SAVsinAustin.pdf)

<sup>xiii</sup> *Insuring Autonomous Vehicles An \$81 Billion Opportunity Between Now And 2025*, *supra* note iii.