

Autonomous Vehicles

Automated vehicles bring looming liability challenges for insurers and lawyers

By **Nicole Mangan**



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(November 15, 2017, 8:30 AM EST) -- Automobile insurance providers have historically relied on drivers' individual records, along with statistics about various categories of drivers (traditionally grouped by age and sex), to determine the risk posed by the drivers they insure and to calculate the appropriate associated insurance premiums. A driver's actions are also significant in determining fault for a collision.

Driverless vehicles are now shifting the automobile industry in a different direction and this will have an impact on how auto insurance risks are evaluated. The current automobile market contains semi-automated vehicle options where computer programs may assist drivers, but in the near future, it is anticipated that fully automated vehicles will operate without a driver.

Examples of fully automated vehicles already exist. Las Vegas is home to a driverless passenger shuttle, and Waymo, an organization associated with Google, has announced it will launch self-driving taxis in Phoenix,

Ariz.

What new insurance considerations are, and will be, important and what are the likely looming liability issues? These questions, which in some cases don't yet have clear answers, are significant ones for the industry, since "auto insurance accounts for half of the premium revenue generated by the insurance industry in Canada," according to the Insurance Institute of Canada's 2016 report, titled "Automated Vehicles: Implications for the Insurance Industry in Canada." They are also significant questions for law firms, which provide services both to those injured in motor-vehicle accidents and to insurers.

Changes in the nature and wording of auto insurance policies will need to occur. Every automobile has a manufacturer and is made of parts. Computer programs and software are relied on by manufacturers to produce their current products. As a result, insurance premiums that were once based on the risk posed by an individual driver are likely to become based more on the risk associated with the manufacturer and, even more specifically, the computer software or components their vehicles rely on.

The insurance industry will need to balance the evolving "product" risk with the traditional assessment-of-driver risk given that many of these vehicles will, at least for the next number of years, have some ability for a driver to override automated programs. Data will be critical to assessing the product risk.

Questions remain about whether there will be a way for insurance companies to access vehicle or software test data or whether collision data will be the only way to compile this information. In the case of automated vehicles, collision data itself will need to change so that the risk associated with a particular vehicle system or manufacturer can be evaluated.

Proactive manufacturers, one would anticipate, will release their test data or be willing to assume liability for — or even insure through their own company policies — their automated products in order to be competitive in the marketplace. Tesla, for example, has even speculated about providing its

vehicles in a “package” price that includes maintenance and insurance. Failure of a single component, if it occurred simultaneously in one brand of vehicles, could also introduce the risk of large-scale claims.

As or if safety improves with increased automation, lower premiums would be expected as a result. Already the industry is seeing some changes in insurance premiums. Aviva Canada announced in 2016 that it was offering a 15 per cent insurance discount for vehicles equipped with an Automatic Emergency Braking (AEB) system, which is designed to detect front-end collisions and apply the brakes. While vehicle components, if damaged, may be more expensive to repair or replace, this will have to be balanced against any savings that may arise from making the roads safer.

The Insurance Institute of Canada’s 2016 report also encourages insurers to develop clear policy terms and language to address the potential risk of an automated vehicle being targeted by a cyberattack. Once computer operated, vehicles will face the risk of attack and drivers will need to know whether they are covered in the event their vehicle’s operating system doesn’t fail but, instead, is hacked and redirected to react in a way that causes damage.

Change will also occur in the way claims departments and lawyers are required to assess fault or liability for a collision. Maintenance of a vehicle’s hardware- or software-based computer components may play a greater role in determining responsibility for a collision. Maintenance service providers, such as municipalities or highway departments, may also play a more significant role in collision prevention or face liability if, for example, an automated or semi-automated vehicle needs to be able to detect lane markers and they are worn or covered up due to a failure to maintain the road.

Traditional tools for assessing automobile accident liability, such as witness statements, are likely to decrease in importance, and forensic evidence relating to whether a human or a program was “driving” and what went wrong in an automated system to cause the accident will become more significant. Ways to recover or protect this data at the scene of an accident may also become important or change the way first responders currently investigate vehicle collisions.

Evolving insurance policy and automobile collision liability issues will mean changes not just for those in the insurance industry but for many who respond to the effects of — or undertake efforts to prevent — motor-vehicle collisions. Answering some of the outstanding questions will be important, since the technology has arrived. Insurers, regulators and the law need to be ready.

Read part one of the series here and part two of the series here.

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