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Emerging Issues

Survey of the Early Stages of Regulation of Autonomous Vehicle Liability

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While my quixotic preference for a world where all makes and models of automobiles will be fully automated and safer by the time my children are ready to learn how to drive in our hometown of Brooklyn seems less likely at the present time (my kids are now in their early teens), the time for regulators and legislators, both at the federal and state level, to sharpen their focus on autonomous vehicles (AVs) is here.

An “autonomous” or “self-driving” vehicle, is helpfully defined by the National Highway Traffic Safety Administration (NHTSA) as those vehicles in which operation of the vehicle occurs without direct driver input to control the steering, acceleration, and braking and are designed so that the driver is not expected to constantly monitor the roadway while operating in self-driving mode.¹ Providing even more depth to that definition of the AV, is the classification system developed by the Society of Automotive Engineers (SAE) which has established a six-part categorization of automated driving systems rating them by level of driver control from Level (0) where the driver is responsible for the entire driving task to Level (5) the vehicle can perform all driving functions under all conditions.² Of course, many of us have seen examples of some of the more advanced automated driving systems on the roads already – in the form of Google’s Waymo and the Tesla – but we are probably even more familiar with various autonomous features that already seem to be industry-standard in new auto models, such as lane sensors, blind spot alerts, and collision avoidance technology. By 2040, the Institute of Electrical and Electronics Engineers predicts that 75% of all cars on the roads in the world will be autonomous.³

Federal Regulations

From a federal regulatory perspective, the NHTSA, in its executive function, is responsible for developing and enforcing federal safety standards and regulations for motor vehicles in the United States.⁴ Nevertheless, the U.S. Congress has yet to implement a far-reaching regulatory scheme that encompasses all AVs.

State Regulations

At the state level, specific statutory law(s) generally govern car accident liability rather than judge-made tort law. Thus, by demonstrating a violation of a statute an individual’s liability in a car accident can generally be established.⁵ According to the Autonomous Vehicles Legislation Database maintained by the National Conference of State Legislatures (NCSL) and supported by the NHTSA, since 2017, 11 states have enacted a total of 16 bills that specifically relate to insurance and liability requirements for autonomous vehicles.⁶

While a full description of each piece of legislation is beyond the scope of this article, the following provides a summary of some of the features of these laws.

A specific example for illustration purposes of how the law has adapted traditional vehicle liability-related concepts to an AV environment can be found under Alabama Senate Bill 47, which became effective June 10, 2019, and was codified as Ala. Code § 32-9B-1 et seq. This legislation governs the commercial use and operation of automated commercial motor vehicles. Ala. Code § 32-9B-3 sets forth in relevant part that:

automated commercial motor vehicle may operate in [Alabama] without a conventional driver physically present in the vehicle if the vehicle meets . . . the following criteria:

- (5) The automated commercial vehicle is covered by motor vehicle liability coverage in an amount not less than two million dollars (\$2,000,000).
- (6) The registration of an automated commercial motor vehicle shall not be interpreted to abrogate or amend any statutory or regulatory provisions or any aspects of common law pertaining to liability for any harm or injury caused.

Another feature of interest of the Alabama law includes that the owner of an automated commercial vehicle is “considered the operator of the vehicle for the purpose of assessing compliance with applicable traffic or motor vehicle laws, including the rules of the road”. See Ala. Code § 32-9B-4(a).

Moving on to Arkansas, that state’s legislation addresses, at least in part, manufacturer-related liability under Section 3. of House Bill 1562, enacted on April 8, 2021, by providing in relevant part that although liability for an accident involving an AV is determined according to applicable state or federal law, “the original manufacturer of a vehicle converted by a third party into an autonomous vehicle or fully autonomous vehicle is not liable in any legal action.” Substantially similar provisions (i.e., where liability is exempted for original manufacturers of converted AVs) can also be found under Fla. Stat. Ann. § 316.86, Mich. Comp. Laws Ann. § 257.817, and Nev. Rev. Stat. Ann. § 482A.090.

Some more general examples of recent legislative adaptations – in the liability context – can be found in the following: Georgia Senate Bill 219, enacted May 8, 2017, provides for, in part: that persons operating an AV with the automated driving system engaged are exempted from the requirement to hold a driver’s license; the

satisfaction of the requirement to notify law enforcement in certain instances of collisions by AV; and certain equipment and insurance requirements as well as registration requirements for AVs. Most recently, South Dakota enacted House Bill 1095 on February 12, 2024, which, in part, provides that a fully autonomous vehicle may operate on public roads of the state without a human driver, provided that the automated driving system is engaged, and the vehicle, among other things, achieves a minimal risk condition if it exits the operational design domain of its automated driving system and achieves a minimal risk condition if a failure renders the system unable to perform the entire dynamic driving task.

An Evolving Liability Landscape

These legislative developments will likely have an impact on the insurance industry. Moreover, industry observers have noted that an increasing number of AV manufacturers promise that their cars will be “increasingly safer, which will significantly reduce accident frequency and, potentially, accident severity.”⁷ However, it is also generally expected that manufacturer liability will continue to expand as automated technology continues to take functions away from human drivers.⁸

While legislatures are adapting to keep pace with changes in AV technology, and while the technology itself continues to evolve, insurers will need to be ready to be tasked with balancing coverage for both driver and manufacturer.

Fortunately, Verisk’s ISO team has been engaging in discussions with insurance customers and others on this front from the early days and continues to actively monitor developments in this space, including in relation to technology and legal developments, and plans to continue to focus on the topic of AV Liability as an emerging risk all with an eye towards also introducing responsive solutions in the future as these developments unfold.