

Driverless Cars Will Fuel Surge In Product Liability Coverage

By **Jeff Sistrunk**

Law360, Los Angeles (August 5, 2016, 5:02 PM ET) -- As advances in autonomous car technology further remove humans from the equation, liability for accidents will shift away from drivers and toward the manufacturers of driverless vehicles and their hardware and software systems, a trend that experts say will lead to a surge in demand for product liability insurance.

A fatal accident in May involving a Tesla Model S equipped with partially autonomous braking and steering features has raised questions in the legal community about who will be held liable for crashes involving self-driving cars. Tesla has said that neither the Model S autopilot system nor the car's driver applied the brakes to avoid hitting a white tractor-trailer because the side of the larger vehicle was difficult to see against a brightly lit sky.

Although Tesla has since asserted that the Model S brakes were to blame for the crash, not the autopilot feature, the incident has still drawn scrutiny from concerned regulators and consumers.

Experts say that as autonomous cars become more sophisticated and require less human input, the manufacturers of self-driving vehicles and their components will face more liability for accidents while individual drivers will face less.

"In the system we have now, most of the time, it is driver error that leads to accidents," said Maria Quintero, a partner in Hinshaw & Culbertson LLP's insurance services group. "In the future, if the car makes the error, the liability would fall on the auto manufacturer or supplier. When you shift the liability from driver to a car itself, you are implicating manufacturers and suppliers all throughout the chain."

As a result, the price of personal auto insurance is expected to plummet in coming years to reflect the decline in driver liability while auto manufacturers and suppliers will likely need to obtain more product liability coverage to shield themselves from claims that defective technology caused autonomous vehicles to crash, according to experts.

"The entire auto insurance industry may be radically changed," Pillsbury Winthrop Shaw Pittman LLP partner Peter Gillon said. "Drivers are the real risks these days and not the cars. The more you take driver error out of the equation, the more you are looking at an auto insurance market based on safety system performance and product liability."

The insurance industry is just beginning to get a handle on the potential implications of self-driving vehicles, and to date, only one insurer, U.K.-based Adrian Flux, has introduced a personal auto policy addressing some of the unique risks of autonomous technology. In addition to offering all the features of traditional car insurance, the Adrian Flux policy covers loss or damage that results if a car's autonomous software fails and causes an accident.

According to experts, most insurers are largely sitting on the sidelines until a clearer regulatory framework for driverless cars emerges. The National Highway Traffic Safety Administration is currently crafting guidelines for the safe use of automated cars, although NHTSA Administrator Mark Rosekind has said the agency won't block state regulators from devising their own rules for the vehicles.

"The regulatory framework issues are going to be very important in how fast the industry gets this technology deployed," said Venable LLP partner David L. Strickland, who formerly served as administrator of the NHTSA. "With these autonomous vehicles, the question is, 'Where does the federal government's responsibility end and that of the states begin, and how do you delineate between the two?'"

Insurers are also waiting for concrete information on the potential risk exposures faced by the first wave of autonomous vehicles to roll in before they start underwriting policies for self-driving cars en masse, experts say. Unlike other emerging technologies such as drones, which are comparable to existing aircraft from a risk management standpoint, autonomous cars represent a whole new frontier for the insurance industry, according to attorneys.

While there is little data out there about losses experienced by drone operators, insurers can look at aviation risk models and forecast what types of exposures drones may face. But carriers can't rely on any traditional risk models for road vehicles to try to predict the perils that self-driving cars will face, experts say.

"For autonomous vehicles, I don't know if it would be that simple," said Brendan C. Holt, an attorney at Saxe Doernberger & Vita PC. "With vehicle control being taken out of the hands of actual insured drivers, the liability structure might be very different, making it difficult for underwriters to assess the risk."

Indeed, the proliferation of self-driving cars could result in a whole new paradigm for the liability issues surrounding traffic accidents, especially as the vehicles become more autonomous, experts say.

"With the prevalence of these driver-assistance features, accidents caused by user, or driver, error are going to decline," said Reed Smith LLP litigation partner Cristina Shea. "But the industry will likely see an uptick in liability for auto manufacturers, software manufacturers or other suppliers."

The expected increase in manufacturer liability will likely be accompanied by a corresponding spike in demand for new product liability policies that can tackle all the risks associated with the technology, attorneys say. However, drivers of autonomous vehicles will continue to shoulder a smaller proportion of the liability.

"There could still be liability issues for drivers if, for instance, they saw a warning sign of a glitch but didn't respond with prompt servicing," said Anderson Kill shareholder Josh Gold. "Driver liability will never be completely removed from the equation, but this technology puts the driver in the back seat for personal injury claims."

In addition to hardware and software failures, manufacturers of self-driving cars and their components face the specter of hackers. The threat of criminals stealing data from an autonomous car's computers or even commandeering the vehicle may necessitate the development of an entirely new breed of insurance coverage to protect the manufacturers from the cyber risks associated with their products, experts say.

"With the rise of this technology, and the fact that a lot of these cars are going to be made with wireless connectivity, there will be a possibility of hackers mounting attacks from a continent away and creating the risk of injuries, fatalities and property damage," Gold said. "Once you introduce this technology into the car, it has to be foolproof and properly secured — otherwise, hackers without motivation to profit but with motivation to harm will be able to cause injuries or fatalities by remote control."

Most insurers writing auto and product liability coverage are currently taking a wait-and-see approach, but once autonomous vehicles become more prevalent, carriers will have to adapt quickly, attorneys say.

"I do think this innovation will be a disruptor in the insurance market," Shea said.

--Editing by Christine Chun and Catherine Sum.

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