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SPOTLIGHT

# Autonomous Vehicles Present New Challenges for Insurance Industry and Regulators

The capabilities and popularity of self-driving cars are certain to expand in the coming years. Many reports on autonomous vehicles focus on the convenience of stress-free driving and safe multitasking or the wonders of a car driving itself to the gas station. But beyond those conveniences, autonomous-vehicle manufacturers promise increased predictability, and, with it, increased safety on the roads.

These changes in safety will likely have a significant effect on the highly regulated insurance industry. Currently, every state requires drivers and car owners to maintain automotive insurance. Insurers calculate risks—and thus, rate policies—based largely on claims data, which in turn is derived from accidents caused mostly by human error. As autonomous vehicles lead to increased safety on the roads, the insurance industry's current claims data may become obsolete, leading to significant changes in the ways insurers evaluate risk and calculate premiums.

The states will also need to revisit their regulatory framework. Currently, about a dozen states have passed regulations governing either the testing or operation of autonomous vehicles on the roads, and about half of the states in the country have legislation pending on these issues. At present, legislators and insurers will need to learn more before undertaking any substantial revision of auto insurance and its regulation.



At the forefront of defending automotive companies, Shook understands our clients' products, their businesses and the industry as a whole, as well as the legal and regulatory landscape, including emerging technology and liability theories.

For additional information about Shook's capabilities, please contact

**Doug Robinson**
949.475.1500
dwrobinson@shb.com

**Amir Nassihi**
415.544.1900
anassihi@shb.com

In sum, although the autonomous-vehicle movement remains in its early stages, this developing technology is a harbinger of significant changes for the insurance industry. Shook, Hardy & Bacon continues to follow these developments closely.

Additional reporting provided by Shook Associate Matt Wolfe.

INTERNATIONAL DEVELOPMENTS

## Single Insurance Product Model Forges the Way for Autonomous Vehicles in the UK

The U.K. government is keen to ensure that insurance is not a stumbling block to the introduction of autonomous vehicles in the country. A clear insurance structure is considered key to inspiring confidence within industry to develop—and in consumers to readily adopt—autonomous-vehicle technology.

The Vehicle Technology and Aviation Bill 2016–2017 introduces the idea of a single insurance product to respond to situations in which a motorist is in charge of the vehicle as well as when the vehicle is in fully automated mode.

The bill continues the U.K. government's step-by-step approach to regulatory reform in this area, allowing the government to react nimbly as technology advances and new insights emerge. The insurance market has welcomed the bill, hailing it as providing clarity to the industry and allowing for the design and introduction of appropriate products.

Under the bill, compulsory motor insurance will be extended to apply to vehicles used in autonomous mode. If a vehicle in autonomous mode causes an accident, then any victim (driver, passenger or third party outside of the vehicle) will have the automatic right of recovery against the insurer. The aim of this approach is to ensure that victims have a quick and easy route to recovery.

Insurers will maintain the right of recovery against a third party—such as a manufacturer or the driver—in accordance with common law and product liability principles. How current product liability principles will respond to incidents involving automated-vehicle technology is the subject of much debate. The U.K. government seems to believe that wholesale change to product liability law is not proportionate based on the relatively small number of autonomous vehicles that will soon appear on the market. It is likely, however, that the review of the European Product Liability Directive also played a part in deferring any revisions to existing product liability principles.

**Alison Newstead**
+44 (0)20 7332 4500
anewstead@shb.com

**Matthew Sitzer**
312.704.7704
msitzer@shb.com

Under the bill, an insurer will be able to limit or exclude liability to the driver of the vehicle if the driver has modified the vehicle's operating system without authorization or failed to install updates. This will not prevent other innocent third parties involved in the accident from recovering directly from the insurer.

Also of note is that if a person is negligent in allowing the vehicle to "drive itself when it was clearly inappropriate for it to do so" and causes an accident, then the insurer will not be liable to that person. Whether it was inappropriate for a vehicle to drive itself in a given situation may prove to be fertile ground for dispute.

The U.K. general election has hampered the progress of the bill through the legislative process. Nevertheless, the principles have been discussed and—as they are largely supported by industry, consumers and legal commentators—are likely to be enacted in some form close to the current bill.

LEGISLATION, REGULATIONS & STANDARDS

## Infrastructure Disrepair: A Roadblock for Autonomous Vehicles

Los Angeles—a city notorious for its transportation infrastructure—lived up to its reputation at the 2015 Los Angeles Auto Show. During a foreign manufacturer's autonomous prototype test drive, the vehicle stuttered forward in fits and spurts because the vehicle's onboard cameras were unable to collect sufficient data to provide a smooth ride. The culprit? Poor lane demarcations. The answer? According to the manufacturer's CEO: "You need to paint the bloody roads here!"

With an estimated 65 percent of U.S. roadways rated as "poor" by the U.S. Department of Transportation, the quality of infrastructure (or lack thereof) on which autonomous vehicles rely is an area of concern for the autonomous-vehicle industry. The fundamental infrastructure hurdle for autonomous-vehicle deployment is that roads are designed and maintained to human vision standards, not that of machines. Faded lane lines are not the only issue; while national standards dictate the construction and marking of roadways (e.g., the hexagonal stop sign, double yellow lines), there can be great local variation (e.g., traffic lights aligned vertically, horizontally, or in two rows).

Some states are heeding advice from both the private and public sectors to invest in infrastructure with an eye towards an autonomous and connected vehicle future. The California Department of Transportation announced in May it will phase out

Botts' Dots—the raised markers between lanes first implemented in the 1950s—in part because the dots interfere with autonomous vehicles' sensors. Other states, such as Utah, have begun to use LiDAR to inventory their roadways in order to provide comprehensive maps that autonomous vehicles' sensors can use. A handful of other states have established autonomous-vehicle oversight committees to begin planning and implementing autonomous-vehicle-friendly transportation infrastructure.

However, even with state and local governments' growing interest in infrastructure that can support autonomous vehicles, a January 2017 survey of state and local officials responsible for infrastructure and transportation found that while 50 percent of the officials expected an increase in funding, only 23 percent indicated plans for infrastructure capable of communicating with connected vehicles in the next five years.

Because vehicle manufacturers have promised autonomous-vehicle deployment to the general public by the early 2020s, many manufacturers and suppliers are taking matters into their own hands where possible. For example, they are incorporating multiple sensors, maps and data into their vehicles to provide the car with as much information as possible in the hope of avoiding the fits and spurts experienced in Los Angeles.

On April 4, 2017, Secretary of Transportation Elaine Chao stated that an infrastructure package from the Trump administration would be announced in May 2017. At the same event, President Trump doubled down on his campaign promise of spending $1 trillion on infrastructure: "We're talking about a very major infrastructure bill of a trillion dollars—perhaps even more." With May come and gone and the infrastructure bill still yet to be announced, the public and private sector must wait to see what funding may be available in support of autonomous and connected technology.

Additional reporting provided by Shook Associate Siena Caruso.

## The Domino Effect: One by One, States Give the Green Light to Autonomous-Vehicle Testing

Every week, a new state joins the growing coalition supporting testing of autonomous vehicles. As of now, at least 17 states across the nation—including Alabama, Florida, Georgia, Utah and Vermont—have passed legislation to permit autonomous vehicles testing. California and Michigan, the original epicenters of autonomous vehicles, are no longer the only states developing

regulations and issuing permits related to autonomous and connected vehicles. Recent state developments include:

- **Texas**: The Texas state legislature passed a bill on May 20, 2017, that would allow testing of fully autonomous vehicles on public roads without a licensed human operator. While certain major cities had been hosts to limited testing, this is an important step in creating a statewide set of expectations and liabilities for vehicle manufacturers. If signed by the governor, this bill will take effect on September 1, 2017.
- **Tennessee**: Tennessee lawmakers passed a comprehensive bill on May 30, 2017, to allow the testing of autonomous vehicles on public roads. The bill requires a $5-million insurance policy but no driver's license if the vehicle is fully autonomous.
- **Colorado**: On June 1, 2017, the governor of Colorado signed a bill approving the testing of autonomous vehicles. The new law does not touch upon every aspect of testing but does create a process for safely testing vehicles on the road. The application of current law, such as the requirement to wear a seatbelt, will continue to apply to autonomous vehicles. Colorado is the 17th state to pass a bill on autonomous-vehicle testing.

States legislatures are recognizing that autonomous vehicles are the future of transportation, and many value the economic benefits that will be derived from permitting this type of testing to move forward in their states. Enacting statewide procedures and processes will ease the transition and ensure safety for all of those on the road.

Additional reporting provided by Shook Associate Mayela Montenegro.