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LEGISLATION, REGULATIONS & STANDARDS

California Modifies Regulations: Deploy Autonomous Vehicles Without Drivers on Public Roads by June 2018

On October 11, 2017, the California Department of Motor Vehicles (DMV) released modified proposed driverless testing and deployment regulations that would allow the deployment of autonomous vehicles without human drivers by June 2018. Previously, the DMV's regulations required the presence of a human driver in the vehicle.

The modified regulations also provide:

- The term for the testing permit will be two years;
- The testing permit fee has increased from $150 to $3,600;
- The manufacturer will assume liability for damages caused by the vehicle to the extent the autonomous technology causes the vehicle to be at-fault in a collision; and
- Testing without a driver will be allowed only for those vehicles that meet the SAE International's description of a level 4 or level 5 vehicle.

The regulations are expected to be set by the end of 2017 and approved by the DMV early 2018. The DMV will accept public comments on these modified regulations until October 25, 2017.

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.

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Data Privacy Chiefs Adopt Resolution on Data Protection

On September 28, 2017, global data privacy chiefs adopted a resolution on data protection in automated and connected vehicles. While non-binding, the resolution provides guidance from a data privacy perspective.

The resolution calls for public authorities, vehicle and equipment manufacturers, providers of data-driven services and other related parties to:

- Provide comprehensive information about the data collected and processed in the deployment of connected vehicles, the purposes of the collection and the identities of the collectors;
- Retain personal data only for a certain period of time;
- Provide technical means to delete personal data when a vehicle is sold or returned to its owner;
- Provide technical means for users to restrict the collection of data;
- Provide technical measures to protect against cyber-attacks and prevent unauthorized access to personal data;
- Undertake data-protection impact assessments for new, innovative or risky development or implementation of new technologies; and
- Promote the respect of personal data privacy of vehicle users by responsibly processing their personal data.

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NHTSA's Fatality Report Is In: An Increase in Deaths on the Road

In October 2017, the National Highway Traffic Safety Administration (NHTSA) released its fatality report for 2016. The report found that 37,461 deaths occurred due to motor vehicle crashes on the road, a 5.6 percent increase compared to the 35,485 deaths that occurred for the same reason in 2015.

Overall, traffic fatalities have trended downward over the past decade due to safety programs targeting seat-belt use and impaired driving as well as improved vehicle technology, such as air bags and electronic stability control. However, the decade-long downward trend has been reduced in light of the large increases in fatalities in 2015 and 2016.

The report also shows that human error as a factor for fatalities has increased, illustrating a potential need for autonomous vehicles to enter the market. For example, unrestrained passenger vehicle occupant fatalities increased by 4.6 percent, fatalities in speeding-related crashes increased by 4 percent, and fatalities in crashes involving alcohol-impaired drivers increased by 1.7 percent.

INTERNATIONAL DEVELOPMENTS

Australian Commission Recommends Exception to Impaired-Driving Laws for Occupants of Automated Vehicles

An October 2017 report by the National Transport Commission of Australia discusses changing driving laws to support automated vehicles. Current Australian law presumes a driver is human, and the commission recommends clarification to the legislation to permit an automated driving system (ADS) to perform the dynamic driving task for a vehicle. The ADS would have a legal representative—an automated driving system entity (ADSE)—that would be held responsible for the actions of the ADS when it is engaged and will therefore divert liability away from the human occupant of the vehicle. The commission recommends that the ADSE would be the entity that ensures the vehicle is safe to operate on the roads, likely a corporation.

The commission also notes the opportunity that automated vehicles provide in transporting occupants impaired by alcohol. Allowing people to use an automated vehicle despite having consumed alcohol has the potential to improve road safety by reducing the incidence of impaired driving. Thus, the commission recommends that legislative amendments be made to exempt people from impaired-driving laws if their vehicle is set to high or full automation in motion. If the occupant subsequently chooses to take control of the vehicle, then the impaired-driving laws would apply.

AT A GLANCE

Technology

- Toyota Research Institute (a subsidiary of Toyota Motor North America) is partnering with Orlando-based Luminar Technologies, Inc. in developing Luminar's LiDAR technology. The technology builds cameras, mounted on autonomous vehicles, to sense the surrounding environment, such as trees, people, animals and signs, and is designed to

help self-driving cars travel at faster speeds by scanning surroundings faster and farther away. It can detect dark objects—such as a tire—at more than 200 meters away, compared to the 40 meters that other sensors offer. *See Orlando Business Journal*, September 28, 2017.

- A University of Arizona start-up, Lunewave, has licensed two technologies to improve radar systems for autonomous vehicles. The core of Lunewave's technology is using inexpensive, high-performing 3D-printed "Luneberg lenses," i.e., spherical lenses that can replace multiple sensors. *See Arizona Daily Star*, September 20, 2017.

- Tesla is developing electric, self-driving trucks that travel in "platoons" or road trains that can follow a lead vehicle (with a human driver). The Nevada Department of Motor Vehicles and California officials are in talks to allow trials on public roads. *See The Guardian*, August 10, 2017.

- University of Wisconsin researchers are testing transitioning self-driving cars onto roads and are working on a self-driving mini-bus. *See The Badger Herald*, October 3, 2017.

Infrastructure

- California will be increasing the width of lane line delineations from four to six inches, making them more visible. *See KQED*, August 7, 2017.

- Atlanta unveiled a stretch of "smart" road that has technology to support driverless cars, including (i) adaptive traffic signals that monitor traffic flow and can make real-time adjustments; (ii) high-definition surveillance cameras that monitor pedestrians, bicycles and vehicles; and (iii) "connected vehicle systems" technology that allow traffic signals to communicate with autonomous vehicles or drivers' mobile devices. *See The Atlanta Journal-Constitution*, September 14, 2017.