

Insurance In The Age Of Vehicle Autonomy And Ride-Sharing

By **Robert Campedel** (September 6, 2018, 2:45 PM EDT)

The future of private automobile transportation is dramatically changing. The time when the predominant form of transportation is the privately owned, personally driven and personally insured private vehicle may be substantially replaced by ride-sharing, ride-hailing and peer-to-peer programs and the development of partially and fully autonomous vehicles. Given the magnitude of the investment of major companies in the development of autonomous vehicles, their development and deployment may mirror the relatively rapid evolution of the full-size car phone to the present smart phone.



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Autonomous and semi-autonomous vehicles are at the forefront of technological development in the automobile industry and much has been written about potential liability issues with regard to individual and manufacturer-owned autonomous vehicles, both in the testing and initial deployment phases.

However, programs which involve the use of autonomous vehicles by parties other than direct owners, such as ride-share, peer-to-peer and leasing and rental programs, create a whole new panoply of insurance issues for manufacturers, owners, lessors and users of autonomous vehicles above and beyond issues pertaining to traditional direct ownership. For example, Avis Budget Group has recently announced that it has partnered with Lyft to provide Avis Rental Cars to Lyft drivers.[1] Kroger is testing the use of driverless cars to deliver groceries.[2] These relationships can create multiple layers of coverage issues, for autonomous and semi-autonomous vehicle manufacturers, owners, renters and drivers.

Furthermore, the various levels of autonomy in vehicles which have been designated as levels 0-5 by the NHTSA[3] and the SAE also create insurance issues for autonomous vehicle manufacturers owners and users. Additionally, anticipated legislation and regulations, both state and federal, will shape the future of insurance coverage for autonomous vehicles. As of this writing, 29 states have enacted legislation concerning autonomous vehicles.[4]

While vehicles with levels 1 and 2 autonomous features , i.e., lane departure assist, blind spot detection and self-parking, are on the road today, levels 3, 4 and 5 vehicles, other than for manufacturer's testing purposes are not expected to be in widespread actual use by consumers until 2025-2035 and will be an evolutionary process based upon the development of equipment, software, cost and personal preference.

As one research paper observed:

Any new approach will have to deal with the long and uneven transition to automated technology; impose substantial but appropriate financial responsibility for accidents on the manufacturers of highly automated vehicles; and provide satisfactory compensation to the victims of auto accidents in the new era.[5]

Insurance Issues

Insurance carriers, therefore, need to and are presently considering modifying existing coverage and creating new types of policies to address the various liability issues posed by each level of autonomous vehicle and potential government insurance requirements.

Michigan, for example, has enacted a statute which applies to safe autonomous vehicles, or SAVE[6] projects sponsored by manufacturers which requires that a “manufacturer shall insure each vehicle in a participating fleet as required under this act and chapter 31 of the insurance code of 1956...” and that “for each SAVE project in which it participates, during the time that an automated driving system is in control of a vehicle in the participating fleet, a motor vehicle manufacturer shall assume liability for each incident in which the automated driving system is at fault, subject to Chapter 31 of the insurance code of 1956...” Under the Michigan SAVE Act, the manufacture is required to procure insurance that provides for instances when the vehicle is under control of the autonomous system and is at fault for an accident during a SAVE project. This raises the question under the SAVE Act as to what coverage applies when the system is not at fault, which under the act appears to default to the previously enacted insurance statutes.

The Pennsylvania Department of Transportation’s Automated Vehicle Testing Guidance requirements mandate that a highly automated vehicle, or HAV, testing applicant certify that the applicant complies with the requirements of chapter 17 of title 75 of the Pennsylvania Consolidated Statutes (75 Pa. C.S.A. § 1701, et. seq.) relating to financial and insurance responsibilities — the Motor Vehicle Financial Responsibility Law.

Loaners, Owners and Peer-to-Peer Ride-Sharing Coverage

While it may seem clear that product liability coverage is therefore essential for manufacturers of automated and partially automated vehicles, both in the private ownership setting and in the rental and ride-sharing areas, the question arises as to the type of coverage that will be available and necessary in the rental, loaner or ride-sharing areas for autonomous vehicles.

These areas pose the following liability and coverage questions with regard to the lessors, lessees, owners and users in the rental, ride-sharing or peer-to-peer types of arrangements with regard to the NHTSA enumerated levels of autonomous vehicles:

Level 1 and 2

- What types of warnings and instructions need to be provided by a rental or ride-sharing company to a lessee or user of an autonomous vehicle with regard to the operation of the autonomous features of the vehicle?
- Will the operator or driver of a leased or loaned vehicle need to be certified or trained in the autonomous properties of the vehicle?

- Is driver or operator error covered by the owner's or manufacturer's policy or does the operator need to maintain coverage?[7]
- Will insurance premiums for property damage to the vehicle increase due to the expense of repairing or replacing costly components of autonomous features of level 1 and 2 vehicles?
- Should owners of vehicles participating in peer-to-peer or ride-share programs, operated by peer-to-peer platform companies, obtain commercial auto insurance coverage?[8]
- Should lessees or vehicle users, utilizing ride-share programs, maintain or obtain first party collision coverage for the vehicle for instances when operator error occurs?
- Do peer-to-peer platform companies need to maintain coverage for operator or renter negligence?
- If both the owner/manufacturer and driver maintain coverage, which coverage will be primary and which coverage will be secondary when damage is caused by a combination of product malfunction and operator error?

While the foregoing issues can often fit within the framework of traditional policy coverage, one can envision insurance carriers developing policy provisions addressing these issues in a separate policy section concerning autonomous features of level 1 and level 2 vehicles, or providing temporary or short-term coverage for ride-sharing and peer-to-peer programs, i.e., hours, days or weeks, while the vehicle is used, loaned or rented.

At the present time, carriers are offering several types of nontraditional insurance policies. Several carriers offer rideshare insurance to rideshare companies.[9] However, due to gaps in ride-sharing coverage, some companies are offering commercial insurance or taxi insurance for situations when ride-sharing coverage does not apply. Carriers also offer nonowned car insurance to employees for instances when employees use personal or peer-to-peer or ride-sharing vehicles for employer businesses. Travelers and other companies offer short-term insurance for rentals, peer-to-peer programs or Zipcar type programs.

Carriers are clearly adapting to the needs created by these programs and will likely continue to adapt when autonomous vehicles are utilized in these programs in place of conventional vehicles. Allstate Insurance Company has filed a patent application with the U.S. Patent Office entitled Data Processing System For Guidance, Control, and Testing Autonomous Vehicle Features and Driver Response. The summary section of the patent application states that "Driving data associated with the autonomous vehicle may be received from the one or more sensors of the autonomous vehicle." The data may be used to determine "the driver's response time and actions taken by the driver during the driving test." [10] Will Allstate use the data gathered by its system for performing a risk analysis in connection with underwriting, cost determination and issuance of policies on partially automated vehicles or fully automated vehicles under driver control? It seems so from a review of the patent application publication.

Level 3

Level 3 has been described by the NHTSA as a totally autonomous vehicle, however, the “driver is a necessity, but is not required to monitor the environment. The driver must be ready to take control of the vehicle at all times with notice.”[11] Insurance coverage issues with regard to level 3 include the following:

- Product liability coverage for the vehicle with regard to the notice functions directing the driver to take over the vehicle. Several sources predict that product liability coverage may become the main or sole source of coverage for fully autonomous vehicles and that responsibility will shift “from the driver to the manufacturer” making a case for a form of no fault automobile insurance.[12]
- Coverage for actions of hackers who hack into the software system resulting in the impairment of the notice function or the ability of the driver to take over the vehicle.
 - Will there be an exclusion for intentional improper actions of hackers or will the product liability coverage apply due to the manufacturers failure to design safeguards against hackers?
- Coverage for inattentive drivers who fail to notice the need to take over the vehicle or who are negligent in operating the vehicle after taking over control.
- Coverage for owners of ride-sharing, rental, or peer-to-peer operated vehicles for failure to properly instruct or warn renters, users or ride-sharers of the necessity to promptly take over the vehicle upon warning.

Interestingly, there is already a device that was being marketed called “Autopilot Buddy” that allows a driver to circumvent Tesla’s autopilot warning system that monitors whether the drivers’ hands are on the steering wheel, and warns the driver when hands are not detected on the wheel. The NHTSA has deemed the device unsafe and has sent the company marketing the “Autopilot Buddy” a cease and desist letter.[13] If an accident should occur while this product was in use, would a carrier cover the driver or manufacturer for damages under a traditional tort-based policy or even a product liability policy?

Level 3 seems to require some degree of hybrid coverage for product liability issues, as well as traditional tort-based coverage for operator error or negligence issues.

Levels 4 and 5

Levels 4 and 5 are described by the NHTSA as high automation or full automation with the driver having the option to control the vehicles. Commentators have indicated that these levels of autonomous operation should reduce accidents by as much as 90 percent and may significantly reduce or eliminate the need for traditional tort-based vehicle insurance coverage.

- With these levels of autonomy, will the insurance coverage issues shift to product liability coverage for manufacturers, rental companies and component part and software manufacturers?
- Will drivers who own vehicles still need to maintain traditional coverage for driver error when the driver opts to control the vehicle either voluntarily or due to a malfunction in the autonomous driver system?[14]
- Given the possible high cost of levels 3, 4 and 5 autonomous vehicles, should rental companies, ride-sharing companies and peer-to-peer owners require the lessor or user to certify that he or she has coverage and produce proof of insurance?
- Will rental companies, ride-sharing and peer-to-peer companies still need to maintain coverage in instances where it is alleged that proper instructions or warnings with regard to taking over control of the vehicle were not provided.

The NHTSA in its publication entitled Automated Driver Systems 2.0, A Vision For Safety stated:

Education and training is imperative for increased safety during the deployment of ADS [Automated Driving Systems] ... Consumer education programs are encouraged to cover topics such as ADS's functional intent, operational parameters, system capabilities and limitations, engagement/disengagement methods, HMI, emergency fallback scenarios, operational design domain parameters (i.e., limitations) and mechanisms that could alter ADS behavior while in service. They should also include explicit information on what the ADS is capable and not capable of in an effort to minimize potential risks from user system abuse or misunderstanding.[15]

Will this statement by the NHTSA become the standard with regard to the duty of the autonomous vehicle owner in a ride-share, peer-to-peer or rental context, to warn or instruct drivers of an autonomous vehicle? It remains to be seen as to whether the statutory and case law pertaining to insurance coverage, places the burden of the duty to warn and instruct on manufacturers, owners and rental companies or whether the driver assumes the risk of educating himself or herself on the autonomous properties of a vehicle before engaging in travel.

Legislation

The NHTSA, in the above-cited publication, has strongly encouraged the states to allow the NHTSA alone to regulate the safety, design and performance aspects of autonomous vehicle technology to avoid conflicting federal and state laws and regulations that could impede deployment.[16]

However, several states have now enacted laws with regard to various aspects of autonomous vehicle testing and implementation with most remaining states likely to enact their own vehicle codes that pertain to autonomous vehicles. Will federal law, if enacted, preempt state law governing the testing and use of autonomous vehicles?

State legislative bodies will also most likely enact legislation with regard to insurance coverage for the various issues relating to autonomous vehicles during the phases of autonomous and partially autonomous development. One can envision the development of a uniform or model autonomous vehicle insurance statute to provide consistency in

coverage.[17]

Given the potential high cost of autonomous vehicles, rental, ride-share and peer-to-peer programs may become the attractive methods of individual transportation. However, should anyone be permitted to offer their vehicle for a ride-share program? Determination of prerequisites for participation of a vehicle owner, with regard to ownership, insurance and vehicle maintenance, ride-share and peer-to-peer programs may be important subjects of legislation. Legislation that provides and regulates insurance coverage for these types of programs will surely be necessary to provide for the needs of consumers.

Conclusion

“Keep your eyes on the road and your hands on the wheel” may no longer be appropriate advice to future owners and users of autonomous vehicles. In fact, autonomous vehicles without steering wheels are on the drawing board and purportedly in our future.

However, collisions, system and equipment malfunctions, and operator errors are also in our future and insurance carriers, manufacturers, legislators and regulators will need to provide for adequate insurance coverage in the autonomous vehicle arena, particularly with regard to the traditional rental programs and the newly developing ride-share and peer-to-peer programs in order to provide safe vehicles and to adequately compensate accident victims who utilize those programs, or whose injuries result from the use of vehicles in those programs.

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[1] Globe Newswire, August 6, 2018, <https://www.nasdaq.com/pressrelease/avis-budget-group-partners-with-lyft>.

[2] Supermarket Giant Kroger Tests Driverless Cars to Make Deliveries, New York Times, August 17, 2018, Associated Press.

[3] According to the NHTSA, level 0 is a conventional vehicle with no autonomous properties. Levels 1 and 2 consist of vehicles with varying degrees of autonomous functions but the automobile is controlled by the driver. Levels 3-5 consist of totally autonomous vehicles with level 3 vehicles requiring a driver and the ability to return control to a driver if necessary, and levels 4 and 5 operating totally autonomously, but giving a driver the option to regain control of the vehicle. NHTSA, Automated Driving Systems 2.1 – A Vision For Safety, September 12, 2017.

[4] There are currently 29 states that have enacted legislation concerning autonomous cars. These are: Alabama, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Maine, Michigan, Mississippi, Nebraska, New York, Nevada, North Carolina, North Dakota, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Utah, Virginia, Vermont, Washington and Wisconsin and Washington D.C. have also enacted a statute concerning the regulation of testing autonomous cars – National Conference of State Legislatures, Autonomous Vehicles – Self Driving Vehicle Enacted Legislation.

[5] Automated Vehicles and Manufacturer Responsibility for Accidents: A New Legal

[6] MCLS § 257.665b.

[7] Zipcar advertises that it provides insurance for users of its vehicles.

[8] "Starting in 2014, insurance commissioners in over half of US states issued alerts to warn consumers that TNCs [Transportation Network Companies] lacked sufficient insurance coverage and warning drivers using private cars to transport individuals for a fee about coverage gaps." The Institute Griffith Foundation, Peer-to-Peer Car Sharing and its Impact on Insurance: Examining the Road Ahead For Public Policymakers, Liability Issues and the Future of Peer-to-Peer Car Sharing, Professor Matthew W. Daus, Esq.

[9] Progressive, AllState, Erie, Farmers, Geico, Mapfire, Mercury, MetLife, Safeco, State Farm, Travelers and USAA offer ride-share policies in various, but not all states. <https://nerdwallet.com/blog/insurance/best-ridesharinginsurance/>.

[10] Patent Application Publication No: US 2018/0237027.

[11] NHTSA Publication – Automated Driving Systems 2.0 – A Vision For Safety.

[12] Journal of Insurance Regulation, Cole and McCullough, Co-Editors, Vol. 35, No. 7. Regulatory Issues Related to Autonomous Vehicles.

[13] Consumer Advisory: NHTSA Deems 'Autopilot Buddy' Product Unsafe - <https://www.nhtsa.gov/press-releases/consumer-advisory-nhtsa-deems-autopilot-buddy>.

[14] Query, however whether some drivers may prefer to drive vehicles that they can control when late for an event and need to speed up and pass other vehicles which may not be possible in a level 4 or 5 vehicle, when the vehicle is not under driver control.

[15] NHTSA Publication – Automated Driving Systems 2.0 – A Vision For Safety.

[16] NHTSA Publication – Automated Driving Systems 2.0 – A Vision For Safety.

[17] Certain commentators have advocated a nationwide, uniform "Manufacturer Enterprise Responsibility (MER) coverage program which "departs significantly from the current products-related tort approach," when "25 percent of the motor vehicle fleet consists of HAVs operating at Levels 4-5." The MER system would be "manufacturer-financed, strict responsibility bodily-injury compensation system, administered by a Fund created through assessment levies on HAV manufacturers." Kenneth S. Abraham, Robert Rabin, Automated Vehicles and Manufacturers Responsibility for Accidents: A New Legal Regime For a New Era, University of Virginia School of Law, Public Law and Legal Theory Research Paper Series 2018-19, March 2018.