

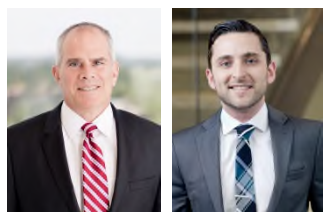
Lawyer Insights

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In the Race to Win the Autonomous Vehicle Market, Covering Risk Is Key

by Walter J. Andrews and Paul T. Moura

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The autonomous vehicle industry is pressing forward, full speed ahead. The conveniences and efficiencies created by shifting to self-driving vehicles are expected to drive vast economic growth and generate widespread consumer demand. Given the potential benefits, it is no wonder that autonomous technologies are now being embraced by a variety of market players—ranging from small start-up tech companies to perennial automotive giants. While a number of states are grappling with how best to regulate this growing industry, Florida’s focus has been on reducing regulatory barriers in order to fuel further innovation and market growth. But the more Florida encourages such innovation, the more the insurance market needs to keep pace with its own innovations.

In 2012, Florida became only the second state in the nation to authorize autonomous vehicle testing. In 2016, it became the first state to authorize autonomous vehicle testing without a driver behind the wheel. Lawmakers have also proposed legislation removing the requirement that the person operating a vehicle in autonomous mode possess a valid driver’s license. Instead, the autonomous technology would supplant the role of the driver, and that technology would be deemed the licensed entity. And just this year, the U.S. Department of Transportation designated Orlando’s Central Florida Autonomous Vehicle Partnership as one of 10 proving ground pilot sites for autonomous vehicle technologies. The goal is to develop a proving ground for use in optimizing vehicle safety and roadway management strategies for autonomous vehicles, including through the use of sensor technologies and big data.

All these initiatives feed into efforts to create a regulatory environment that reduces obstacles and promotes driverless vehicle development. As Sen. Jeff Brandes recently put it in a tweet, “Unlike California, we in Florida welcome driverless cars—no permit required.” This encouragement comes just as companies are pushing forward full-throttle to find their niche in the autonomous vehicle space. For example, Lyft recently announced that it is developing a new several-hundred-employee “Level Five” unit focused on developing an open network for autonomous vehicles that can be used by automakers and technology companies. Others are jumping at opportunities to partner with Lyft’s open network, and consumers may soon find Google’s Waymo vehicles or General Motors’ Bolt model operating on the network. This illustrates how some businesses focus their energies on building and selling autonomous cars, while others are taking the lead in developing the computer software, sensor technologies and user interface that autonomous vehicles need to navigate.

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New and Uncertain Risks

While autonomous vehicles present a boon for society and the economy, they can also introduce new, potentially catastrophic risks, as well as new questions about who is responsible for them. For example, the first known fatality in an autonomous vehicle occurred recently on a divided highway in central Florida. While on autopilot mode, the vehicle collided with a tractor-trailer—reportedly due to a combination of flaws in the vehicle radar system settings, the weather and the atypical height of the trailer. As this unfortunate event demonstrates, companies and consumers in the coming years will need to rethink their use of auto insurance when a human driver is not in control, and instead increase the role of other forms of insurance, such as products liability coverage, business interruption policies and cyberinsurance options.

For vehicles on the market that utilize only partial autonomy, the driver is still expected to monitor the roadway and have at least some control over the vehicle. In those situations, the driver should remain generally responsible for accidents because the driver still has ultimate control of the vehicle. Hence, the driver's own insurance should apply. Traditional bodily injury and property damage liability coverage, uninsured or underinsured motorist coverages, and no-fault coverages may not change significantly for these vehicles, though premium costs may decrease with a reduction in accidents.

But as vehicles on the market become truly autonomous, the role of the individual driver disappears. Driving decisions will instead be based on artificial intelligence and through communication with other connected vehicles and surrounding infrastructure. In these circumstances, the potential liability of the manufacturers and technology developers will likely increase, while the liability of individual drivers will likely decrease. The allocation of liability among these various actors can be difficult to determine when different technologies are meant to interoperate with each other to collectively create an autonomous experience. For example, if an accident occurs in an auto manufacturer's self-driving vehicle that drives on a rideshare app's network and accepts data through Miami's connected road infrastructure, then liability will likely hinge on identifying which elements contributed to the accident amid this technological chain. Thus, automation will require introducing insurance to cover the potential liabilities faced by all these new players in the industry, including suppliers of new technologies, digital services and infrastructure developers.

Importantly, the risks posed by autonomous vehicles are not limited to traffic accidents. Autonomous vehicles utilize sensors that constantly collect and maintain identifying information about passengers and owners. Not only do the vehicles track the individuals' driver safety habits and entertainment settings, but also their movements and whereabouts. Voice recognition technologies used to operate the vehicle may also enable the vehicles to capture private communications by passengers. In addition, some vehicles will be capable of interoperating with its owner's contact lists and social media accounts. Businesses and advertisers will surely capitalize on the ability to track this detailed information about a passenger's personal interests and daily routine. Exposure of this sensitive information poses a number of risks for passengers—from embarrassment, to identity theft, to potential bodily injury if location data becomes accessible to stalkers or other wrongdoers. And, if private user data is exposed on a large scale, then companies may face the risk of data breach response costs and regulatory sanctions.

Minimizing Liability Before It Occurs

Auto manufacturers, service providers, technology platform developers, transit authorities and other businesses using self-driving cars have a number of options to help minimize the potentially crippling

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costs caused by autonomous vehicle mishaps. These players will need to look to broader commercial auto and liability insurance options and should reconsider common policy exclusions. For example, traditional weather-related policy exclusions may need to be altered to account for the effects weather may have on sensors or cellular signals, as in *Small v. King*, 915 P.2d 1192, 1193 (Wyo. 1996) (no coverage under CGL policy due to exclusion for weather-related damage). Relatedly, traditional auto policies also contain audio, visual and data electronic equipment coverage exclusions, which were originally devised to limit coverage for sound systems and communications devices, as in *Maryland Casualty v. Integration Concepts*, 119 F. Supp. 3d 1322, 1328 (S.D. Fla. 2015) (electronic data exclusions barred coverage for bodily injuries sustained due to defects in software designed to conduct flow measurements); and *Clark v. Clarendon Insurance*, 841 So. 2d 1039, 1044 (excluding coverage for losses to CDs and cassettes under audio, visual or data electronic devices exclusion). Since visual and data signals are critical components of autonomous vehicles, businesses will want to negotiate exceptions to this exclusion.

Additionally, products liability and recall exposure coverage can be used to cover liabilities associated with the technical components of autonomous vehicles, such as faulty sensors and communications devices. Cyberliability and crime insurance coverages will also be essential, given the increased risk of hacking or other exposure of private data transmitted using autonomous vehicle technologies. Business interruption coverages can also protect against cyberevents that cause an interruption in autonomous vehicles' delivery and transportation schedules. Finally, given the significant media attention placed on the autonomous vehicle industry, companies will want to consider coverages for reputational or business income losses that stem from accidents, recalls or hacking events.

Autonomous technologies will dramatically change driving as we know it. Many businesses are sure to thrive on the efficiencies that driverless vehicles bring. Nevertheless, embracing autonomous technologies can also create new cracks and potholes in traditional risk management frameworks. Experienced coverage counsel can advise on how to fill those gaps—including by analyzing policy language in light of new risks, and partnering with brokers to negotiate endorsements to fit a company's unique needs.

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