

Who's Liable When Autonomous Cars Are Involved in Accidents?

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Desktop computers. Mobile phones. Wi-Fi.

Seemingly almost overnight, these advances in technology have fundamentally transformed the way society operates and functions on a daily basis.

However, these and other modern technological developments may pale in comparison to the impact felt in connection with the introduction of autonomous vehicles onto our nation's roadways.

Today, the world's leading car makers are racing to build fully autonomous vehicles. The goal for many is to have self-driving cars on the road by 2020. The benefits of this advanced technology will be significant, as autonomous vehicles will substantially reduce the number and severity of accidents caused by human error — the primary catalyst for the vast majority of current automobile accidents. However, the benefits will extend well beyond roadway safety to matters such as aiding in traffic congestion and improving the efficiency and effectiveness of transportation systems.

The rise of this new technology brings an array of unique and thorny legal issues that will cause wholesale changes to many different areas of the law in the years to come. By far the most predominant legal issue concerning the advent of autonomous

vehicles pertains to liability for accidents involving self-driving cars.

The Shift to Products Liability Law

Human error is the predominant cause of automobile collisions today. Contrary to humans, however, autonomous vehicles don't drink and drive, text and drive, or otherwise get distracted at the wheel. As autonomous vehicle technology becomes standard, there will be fewer negligent people on the road, which will negate the primary rationale underpinning motor vehicle accident litigation today — driver negligence.

While the human error element may be removed from our roadways, it does not mean car crashes and related litigation will become a thing of the past. Rather, the type of litigation that arises out of car crashes will change. Instead of focusing on driver negligence, future litigation involving autonomous vehicles will focus on the safety of the self-driving vehicles involved in the collision.

Accordingly, motor vehicle accident litigation will shift from driver negligence—and liability on the part of the operator—to products liability, making the automotive industry the principal responsible party for liability-related matters. Consequently, while vehicles and roadways become safer, vehicle manufacturers, technology manu-

facturers and other suppliers will almost certainly see their liability exposure increase considerably, with the autonomous automotive industry bearing a bigger slice of a smaller pie of total accident costs.

Four Keys to Determining Product Liability

Products liability law has already been applied to many types of famous litigation involving automobiles, including the Ford Pinto's fuel system, Takata air bags and Firestone tires. As such, existing liability frameworks exist to assist in resolving the legal issues that will arise in connection with autonomous vehicles.

Fortunately, modern products liability law is adequately developed to allocate fault for injuries and damages stemming from autonomous vehicle accidents, which will allow litigants to utilize the current law to answer the question of whether an autonomous vehicle is at fault for a collision. Moving forward, the legal framework for autonomous vehicle accident liability will be segmented into strict product liability, breach of warranty liability, misrepresentation liability and negligence liability.

Products Liability Litigation

Strict liability is the dominant legal theory in products liability litigation, and is thus poised to be the theory most consistently applied to autonomous vehicle accident litigation. Strict products liability requires that: (1) the product was defective when it left the manufacturer's control; (2) the product was unreasonably dangerous; and (3) the defect was the proximate cause of the injuries.

As automobiles become more autonomous, manufacturing defects will likely represent a large portion of defect claims, as errors on the production line will never vanish completely. Here, manufacturers can be found strictly liable for manufacturing defects even if they have exercised "all possible care" in manufacturing the vehicle. Similarly, the automobile industry will almost certainly see an uptick in the amount of design defect claims asserted against designers and manufacturers of autonomous vehicles.

Breach of Warranty Liability

Warranty theories of liability are also likely to increase. There are several different types of warranties that apply in the context of autonomous vehicles.

First, express warranties will be created through promises made by the seller to a prospective buyer pertaining to the sale of the vehicle, including those created through written vehicle warranties, descriptions of the vehicle made during the sale process, or promises made in connection with the marketing and advertising of the vehicle.

In addition, implied warranties of merchantability and fitness for a particular purpose (that the vehicles or their technology will be fit for the purpose for which they are sold) will also apply in the arena of autonomous vehicle litigation.

Misrepresenting Quality

Misrepresentation liability regarding the quality of autonomous vehicles may also come into play in from accidents involving self-driving cars. Misrepresentation involves the communication of false or misleading information, and liability in this respect can

occur when a person reasonably relies on the misrepresentation and sustains injury.

For example, if an autonomous vehicle actually requires more human input and oversight than claimed by the manufacturer and this leads to a collision, responsibility for the accident may rest with the manufacturer under a misrepresentation theory of liability.

Negligence Liability

Finally, designers and manufacturers of vehicles can also be held liable under negligence theories in relation to autonomous vehicle accidents. Manufacturers owe a duty to use reasonable care in the design of their automobiles to avoid unreasonable risk of injury, and to minimize the severity of injury in the event of an accident.

In addition, manufacturers also owe a duty to construct their vehicles without latent or hidden defects, which would encompass defective autonomous vehicle technology. Here, in addition to products liability-oriented theories, manufacturers would also face common law negligence liability where accidents occurred that were the proximate result of a vehicle operating in autonomous mode, creating a new hybrid type of legal action involving a mixture of negligence and products liability theories.

Allocating Fault Between Driver & Vehicle

Although autonomous vehicles are designed to operate on their own and without the use of a driver, many vehicles are being designed to place the operator in a position to assume control of a vehicle in a variety of circumstances, allowing drivers to effectively share operation of the vehicle with the

automobile's autonomous technology. Where vehicles are not operating in autonomous mode, but are being driven by a human, the driver will ordinarily still be subject to liability even in the context of an autonomous vehicle accident.

However, determining whether the driver or the vehicle was operating the automobile at the time of an accident may turn out to be a very thorny task, as it is not always entirely clear where the line between the driver and the vehicle falls.

Accordingly, many lawsuits will involve suing both the driver and the manufacturer due to questions surrounding which party is at fault for the accident. In such instances, establishing liability on one party or the other might be difficult, causing some more complex lawsuits where car manufacturers and drivers identify each other as the responsible party for a collision resulting in injury or damage.

The National Highway Traffic Safety Administration, along with the Society of Automotive Engineers, have developed a six-tiered rating system which classifies vehicles according to their level of automated function. Zero represents complete human control, and five denotes a vehicle operating in fully autonomous mode.

Under this system, any accident occurring while a vehicle is driving at a level of automation of two or below will be deemed to be the result of human error, as opposed to the vehicle's autonomous technology.

However, the NHTSA's liability paradigm is merely advisory, and does not represent binding regulation. Ultimately, responsibility for classifying autonomous vehicles

— and determining how to best allocate liability between driver and vehicle — will rest with the individual states.

At what juncture this liability shifts from driver to vehicle will be a point of significant debate across the country in the coming years. States will be required to establish a liability scheme that does not dissuade the automobile industry from introducing fully autonomous vehicles into the consumer marketplace, while at the same time holding designers, manufacturers, and suppliers responsible for collisions caused by the vehicles themselves.

The Final Word

The appropriate approach to liability for autonomous vehicles is merely one of a number of difficult legal issues that will have to be addressed as autonomous

vehicles become more prevalent on our nation's roadways, and the law catches up with this rapidly advancing technology. Ultimately, as vehicles become more autonomous, liability will shift from the operator to the manufacturer or the supplier of the vehicle's autonomous technology systems. At what point this liability shifts and by how much will be heavily debated as states develop legislative and regulatory schemes to allocate liability for autonomous vehicle crashes.



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