The Approaching Wave of Autonomous Vehicles Drives New Risks to Insurers - Episode #154

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John Czuba: Welcome to "Best's Insurance Law Podcast," the broadcast about timely and important legal issues affecting the insurance industry. I'm John Czuba, Managing Editor of *Best's Insurance Professional Resources.*

We're pleased to have with us today attorneys Heather Fine and Vlada Tasich. Heather and Vlada are shareholders in the product liability practice group in the Philadelphia office of Marshall Dennehey Warner Coleman & Goggin.

Heather represents automotive manufacturers, regional product manufacturers, food service retailers, and retail corporations in complex product liability and mass tort defense matters.

Through her national practice, she manages all aspects of complex product liability cases from inception through to verdict and appeal.

She is a member of the American Bar Association and the Defense Research Institute.

Vlada Tasich defends matters involving all aspects of motor vehicle design and manufacturing, as well as appliances, consumer electronics, residential and industrial fires, durable medical equipment, industrial equipment, exercise equipment, and more.

He is a member of the Product Liability Advisory Council and the Defense Research Institute. Thank you both very much for joining us today.

Today's discussion examines the expected impact of autonomous vehicles, and how it will change the risk environment for insurers. Heather will be addressing our first question.

Heather, can you explain to us a little bit about what types of autonomous vehicles are currently on the road, and what insurers can expect to see in the next few years?

Heather Fine: Sure. What I can tell you is that the National Highway Traffic Safety Administration or as we like to refer to it, the NHTSA has developed a list of six levels of autonomous vehicles.

Most of what you're going to see on the road today is at level zero, and that's no automation. The driver's responsible for all the driving activities. That's typically what you're going to see today. It's what I have.

Level one, that's driver assist. This is referred to as the hands on autonomous level. It includes cars that have some assistive technology, typically such as lane assist or parking assist. The driver is going to remain responsible for most driving actions and is always expected to keep their hands on the wheel.

We then have level two. That's partial automation. This is the next level of autonomous driving technology. Drivers are still required to typically have their hands on the wheel and remain attentive, but the car's going to take control of more of the driving activity. We've got driver functions, such as acceleration and steering, that can be automated, but the driver is required to monitor the vehicle's actions at all times. An example of this would be Tesla's current version of Autopilot.

You've got level three after that, conditional automation. This level allows the drivers to have their hands off the wheel for much longer periods of time, and they're not required to have their eyes on the road the whole time.

The driver must, however, be capable of retaking the wheel at any time. In other words, they can't be asleep. The US doesn't have any of these types of vehicles on the road quite yet, but a version of the Audi A8 is available in Europe.

You've got level four, high automation. Here, the driver's not required to take any action while driving, but they can if they so choose. If driver interaction becomes required, if some event is approaching, the vehicle is supposed to be able to pull off to the side of the road safely until the driver can take over.

Then there's level five, and that's the fully autonomous level. The driver is no longer a driver, but really, they've become a passenger. This type of vehicle will not have a need for a steering wheel or any pedals or other driving controls. Obviously, we have a ways to go before that technology is available.

John: Thank you, Heather. Vlada, what are some of the issues insurers are looking at with the introduction of autonomous vehicles to the roadways?

Vlada Tasich: We can talk about a number of issues, John. One is, who is going to be the insured? According to NHTSA data, you've got 94 percent of all serious accidents being caused by human error. If the car has more responsibility for the driving, how do you allocate that risk?

As Heather has said, we're all still likely decades away from fully autonomous cars being on the roadway, but if and when that becomes a reality, there will still be a risk present to insure, because you just can't predict every single driving scenario.

We have to keep in mind that you're also going to have a transition period where you have autonomous vehicles sharing the road with vehicles that lack that level of automation.

There's talk in the industry that some of the risks will be shifted to the manufacturers of the crash avoidance technology, or even licensors of the software that actually drives that technology within the autonomous vehicles.

Municipalities raise another issue. Municipalities may also face greater liability depending on the infrastructure of their roadways. Autonomous vehicle technology captures and analyzes that type of information and data in order to work.

We also are seeing different countries taking different approaches, at least initially, to insurance for autonomous vehicles.

In the UK, for example, they've got an Autonomous Electric Vehicle bill that specifically shifts portions of the liability risk, not to the manufacturers who have just spent millions to develop autonomous technology, but to the vehicle owners themselves, by having specific coverage on the vehicle to include instances of accidents that occur while operating in autonomous mode.

Certainly, there's still going to be many aspects that still need insurance, including coverage for physical damage in a crash, environmental damage, or theft.

John: Thank you, Vlada. Heather, what are some ways an insurer can evaluate risks?

Heather: With autonomous technology, insurers are actually going to have much more data to analyze.

The types of cars that we're going to be seeing, they'll have telematics that may be able to provide significant information about the driver's activity, such as whether their hands were on the steering wheel before a crash and for how long.

There's also technology that's being developed and in progress that can allow monitoring of where the driver was even looking before the accident occurred.

Keep in mind, this data more likely than not will be subject to extensive privacy considerations. It remains to be seen whether or not it'll be available for any sort of accident reconstruction and liability allocation.

Insurers are going to be able to look at the accident data that's generated. It will help them to better determine how much the crash avoidance technology is affecting the frequency of accidents, which will certainly be helpful.

Insurers are going to face challenges, though, in terms of the data privacy regulation and what they're going to be permitted to access from a vehicle after the crash occurs.

John: Vlada, where do you see some of the costs of the industry changing?

Vlada: It's anticipated that autonomous technology should reduce the number of accidents that are caused by inattention, drowsiness, impaired drivers, among other reasons.

If autonomous vehicles do reduce the number of accidents, as they're expected to, the cost of liability claims should go down. Insurers should also be able to expect a reduction in fraudulent insurance claims.

Autonomous vehicles will have a wealth of data about the events leading up to, during, and after a crash, such that it's going to be harder for drivers to invent or embellish their reporting to their insurer after an accident.

John: Heather, what are some of the other costs insurers can expect from a property damage perspective?

Heather: Of course, with the good comes some of the bad. When you think about it, autonomous driving technology that's being implemented, it's very complex. The programming, the machinery, it's all intricate, and it's going to be expensive to repair.

For example, if you've got a fender bender that used to involve replacement of a front bumper, while that's expensive enough on its own, it can transform into a much more significant repair cost, depending on what software is embedded into or connected to that bumper.

You might not be just replacing the structure, but all of the expensive technology that goes with it. Then there's calibration that you're going to need to consider, such as the need to recalibrate a vehicle's lane
assist features when the wheel alignment is done. There are going to be a number of different added costs in terms of property damage.

John: Vlada, what are some of the trends in the AV field that the industry is talking about and that insurers should be aware of?

Vlada: Studies have shown a decrease in personal auto ownership over the years. There's a high percentage, especially with the younger drivers, relying on services such as Uber, Lyft, or a car sharing arrangement. I'm sure we've all taken an Uber or a Lyft, to one place or another.

Fleet vehicles, such as over the road long distance trucks, they're expected to be some of the first adopters of the higher levels of autonomous technology. That makes sense when you think that, at least theoretically, it's easier for a tractor trailer to navigate a long stretch of cross country highway than it would be for, say, a New York City taxi.

Another trend that's being discussed and is getting a lot of attention is the hacking of autonomous vehicle technology. That remains a concern.

There's been much made in recent years regarding how easy it can be for automated systems to be overtaken, leaving a vehicle occupant unable to control their car, even if they attempt to retake the wheel.

Each of these topics are certain to generate further debate in the insurance industry and other industries about the cost benefit of the autonomous vehicle technology, and how to best be prepared for it.

John: Heather and Vlada, thank you both very much for joining us today.

Vlada: Thanks for having us, John.

John: That was Heather Fine and Vlada Tasich from the Philadelphia office of Marshall Dennehey Warner Coleman & Goggin. Special thanks to today's producer, Scott Richards.

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I'm John Czuba, and now this message.

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