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INTELLIGENT VEHICLES

MOTOR VEHICLES

Difficult questions regarding liability must be answered before self-driving cars become commonplace on the road, attorneys Wayne Cohen and Nicole Schneider say. Courts and legislatures must confront these new challenges in order to allow users continued access to the civil justice system, the authors say.

Autonomous Vehicles and the Civil Justice System



BY WAYNE COHEN AND NICOLE SCHNEIDER

Cars have been a ubiquitous part of American life for decades and are all but necessary in many parts of the country. But breakthroughs in technology have the potential to drastically change American car culture. Self-driving cars could eliminate the drudgery of commutes, provide expanded mobility to those with limitations, change car ownership, streamline recalls and upgrades, and generally improve safety

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on the road. However, even with all the potential benefits, difficult questions regarding liability must be answered as these cars become more commonplace on the roads. Courts and legislatures must confront these new challenges in order to allow users continued access to the civil justice system.

Challenges with Litigation and Self-Driving Vehicles

Most car accidents today occur because of human negligence and are fairly straightforward to litigate within the current justice system. Without the opportunity for human error, manufacturers anticipate that self-driving cars will be safer than regular cars and result in fewer accidents, particularly the most catastrophic collisions (Virginia Tech Transportation Institute, *Automated Vehicle Crash Rate Comparison Using Naturalistic Data*, Jan. 8, 2016). However, not every system will be perfect and there will inevitably be failures. Even the limited current testing of self-driving cars has resulted in some accidents caused by glitches in the technology (though most accidents involving self-driving cars have been caused by other, human-driven cars). Tesla recently reported its first fatality caused by a failure of the technology (The Tesla Team, *A Tragic Loss*, June 30, 2016). The autopilot Tesla failed to identify a truck driving in front of the Tesla that was blending in with a bright sky, causing the Tesla to collide with the rear of the truck. In Tesla vehicles with autopilot systems, such as the one involved in the crash, the driver is still supposed to be engaged and keep his or her hands on the steering wheel at all times. In fact,

drivers violate Tesla's terms and conditions by not placing both hands on the wheel. In the fatal accident, the driver was allegedly watching a movie at the time of impact and failed to override the autopilot system to stop the car in time to avoid the collision. When considering who should be held liable for this type of accident, the civil justice system must anticipate some of the potential pitfalls.

In a situation like the Tesla accident, some blame may be placed on the inattentive driver, like a regular negligence action in the current system. But not all self-driving cars require or even allow for human intervention like a Tesla. Google believes cars are safer when there is absolutely no human involvement, even creating cars without steering wheels and having redundant safety systems to avoid the potential for any human error. In the few remaining contributory negligence jurisdictions, this type of blame would completely bar the driver from recovering any damages. In comparative negligence jurisdictions, liability would not end with a determination that the driver was somewhat at fault. The driver's negligence would have to be compared to any other potential causes.

The next logical party would be the car manufacturers. The specific computer programmers could also be brought into in a products liability claim. Determining whether the manufacturer or programmer was the cause of the malfunction or defect will be costly for litigants, requiring expensive expert investigations and testimony. For fatalities and catastrophic injuries, products liability claims would be appropriate and would allow those injured to be compensated. But with smaller injuries, the costs involved in litigating may exceed any potential recovery, denying access to the civil justice systems for many injured victims. Apportioning fault among the parties will also be challenging as judges and jurors learn about this unknown technology. The evidence in these cases will be voluminous, detailed, and complex, as the vehicles and software can provide valuable information. Courts will have to adapt to fit this new technology into the current system.

Regulations may also play a role in transforming the legal landscape for self-driving cars. One solution to the litigation roadblocks discussed previously would be to hold manufacturers strictly liable for any damage caused by self-driving cars. Some manufacturers surprisingly support strict liability, especially manufacturers that think there should be no human involvement whatsoever. Strict liability does not work, however, for vehicles that maintain some level of human involve-

ment or require drivers to remain attentive even when an autopilot system takes over, such as Tesla. Without a one-size fits all solution, regulators at the state and federal level have to consider what is the best way ensure overall safety.

Higher Standards for the Future of Self-Driving Cars

Regulators have been diligently working to establish safety standards in time for the first wave of self-driving cars to hit the market for private consumers to purchase. The National Highway Traffic Safety Administration (NHTSA), while committed to supporting autonomous vehicles, has been careful to require high safety standards before allowing this technology to hit the road. NHTSA is planning to release safety guidelines later this year and will require self-driving cars to be much safer than traditional vehicles before being deployed on U.S. roads (Iozzio, Corinne, *Who's Responsible When A Self-Driving Car Crashes?* Scientific American, May 1, 2016). While fatalities involving self-driving cars have made headlines, statistically these collisions are occurring at a lower rate than collisions involving regular vehicles. These accidents have provided valuable information that manufacturers have been sharing to improve overall safety.

Legislatures have also started to test new safety regulations. California has continued the trend of higher safety standards for self-driving cars and has started issuing special licenses for drivers of autonomous vehicles. The purpose of special licenses is to ensure that users are properly educated on their rights and duties as a "driver". The aviation industry has specifically warned innovators that users of self-driving cars must be properly trained in how to use the technology, similar to the way pilots must be educated on how autopilot systems work in airplanes (Michaels, Daniel and Andy Pasztor, *Aviation Experts Urge Caution on Releasing Self-Driving Cars*, The Wall Street Journal, July 31, 2016). As cars become more and more autonomous, it will be easy for users to become complacent and forget that getting behind the wheel of a self-driving car requires some level of responsibility, even with cars that are entirely self-driving and only have the option for a human override. This hybrid system will create additional hurdles for the civil justice system to confront in order to allow access to compensation for all users of the road and to fairly apportion fault among the different parties.