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After the Driverless Fatality, Insurance and Litigation Will Be Forever Changed

Unlike an inconsequential glitch with your office computer, in the case of driverless cars it's control, alt and someone's life is deleted.

By **Randy Maniloff** | April 10, 2018

It was widely reported, including with graphic video, that a pedestrian in Arizona was recently struck and killed by an Uber self-driving automobile in the testing stage. A secondary story to emerge from this tragedy has been questions about the overall safety of self-driving cars. Some companies have temporarily suspended the testing of their autonomous vehicles. Arizona put the brakes on allowing Uber to test such vehicles on public roads.



Uber self-driving car. Photo: Jason Doiy/ALM

For the past several years predictions have abounded that widespread use of self-driving automobiles is on the horizon. These vehicles promise numerous safety features. While automobile manufacturers long-ago conquered cruise control, and blind-spot monitoring is an impressive innovation, I'm dubious that drivers will ever be playing Yahtzee on the way to work. In two centuries nobody has been able to eliminate train derailments. And they ride on a track, and usually with no other trains nearby.

Nonetheless, the talk of safe, self-driving automobiles is now so serious that some insurance companies have warned investors, in securities filings, that there could be a decrease in demand for auto insurance. Personally, the idea of driverless cars just makes me want to buy more insurance.

But even if widespread adoption of driverless cars somehow becomes a reality, they will surely not be fool-proof. Given their technological complexity, that seems impossible. And unlike an inconsequential glitch with your office computer, here it will be control, alt and someone's life is deleted. In addition to the technology not being without flaws, it will be many years before it is only driverless cars that are on the road. So there will still be plenty of opportunity for human factors to play a large part in automobile safety.

Admittedly I know nothing about the technology that supposedly makes driverless cars feasible and safe. But I do know something about lawyers. Just as day follows night, lawsuits follow car accidents. Widespread adoption of self-driving automobiles will dramatically alter the landscape for lawsuits following car crashes, and the insurance policies that fund the verdicts and settlements.

Right now, when there is an auto accident, it is rare to see the automobile manufacturer named as a defendant. Auto accidents are generally matters between the involved drivers. But when a self-driving automobile is involved, drivers will no

longer be fighting over which one had the red light, but whose car is to blame.

However, if the car involved in the accident was designed not to have accidents, it is easy to see the automobile manufacturer, and the companies that made the component parts for the self-driving aspect, being named as a responsible party in lawsuits for countless automobile accidents. Accidents that are now simple, and quickly resolved, will become complex, drawn-out, technological fights between drivers and manufacturers over who's to blame. Car crashes will go from one of the law's simpler problems to resolve to complex products liability litigation.

No matter how safe self-driving automobiles are, the manufacturers of automobiles, and their component parts, will still find themselves involved in enough cases to be at risk for serious financial consequences. They can expect to get to know their way around every courthouse in America.

And unlike at-fault drivers, who oftentimes have auto insurance policies with paltry limits, that is not likely to be the case for manufacturers of automobiles and their component parts. This is the plaintiffs lawyer's dream—a deep pocket for every automobile accident.

Manufacturers of cars and parts may shrug this off as something that they'll pass on to their insurance companies. But insurers know something about how to put a price on risk, including their responsibility for the defense aspect of litigation. Given the claims frequency and severity, the manufacturers may find it cost-prohibitive to go the insurance route. And if the solution is to build this risk factor into the price of the car, that would presumably make it more challenging for manufacturers to sell them.

Technological advances, no matter the convenience, quality of life or life-saving features that they provide, oftentimes come with unintended consequences. But when those consequences include lawyers, they can be particularly troublesome

and expensive. Automobile manufacturers, who are racing to get to market with driverless cars, should be careful what they wish for.

Randy Maniloff is an insurance coverage attorney at White and Williams in Philadelphia.

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