



**2018 Midwest Conference  
June 14-15, 2018  
Chicago, IL**

**When Worlds Collide – Ridesharing Meets Autonomous Vehicles**

This session will advise claims handlers, adjusters, SIU, and counsel how to properly manage ridesharing claims and those involving self-driving vehicles from all angles. What information needs to be gathered during the investigation? What should SIU investigate and who should they seek information from? What are the typical coverage issues and exclusions in play? How does the insurance industry need to change and adapt to companies like Uber, Lyft, and Tesla? What is the deal with the Tesla accidents and fatalities? What state and local statutes and regulations are at play? How will self-driving cars impact your typical automobile policy? Who is the “insured”? What happens to traditional notions of fault and liability? Who will be sued and who will be the potential defendants? These are just a few questions we will roundtable and answer for you by using both real-world and hypothetical examples.

**RIDE-SHARING**

**I. Current Legislation**

**A. State Laws in Place**

Currently, 45 states have implemented legislation addressing the insurance coverage gap and imposing certain coverage requirements upon ride-sharing companies.

Under Illinois Senate Bill 2774, passed in December 2014, cities maintain local control over critical licensing issues, giving municipalities the ability to meet their own needs. The law includes modified insurance requirements, background checks, receipt and other disclosure requirements, and a zero-tolerance policy on drugs and alcohol.

## **II. Insurance Coverage “Gap”**

In 2013, an Uber driver hit and killed a six-year-old pedestrian in San Francisco. The driver was not carrying a passenger, but he did have the app turned on. At that time, Uber provided commercial insurance to its drivers while they were carrying passengers, but not when the app was turned on and awaiting passengers. The family filed suit against Uber in January 2014 in the San Francisco Superior Court. *See* Case No. CGC 14 536979. Settlement was reached in July 2015 and filed under seal.

Insurers and critics argued that this created an “insurance coverage gap” since a personal policy would not apply if the app was on, since the driver is engaged in commercial activity, and neither would Uber’s policy, since the driver is not carrying passengers.

### **A. Using Your Vehicle for Commercial Purposes**

Personal auto policies explicitly exclude the use of your personal vehicle for hire or commercial use or livery. However, there is no standard ISO ride-sharing exclusion.

How do these typical exclusions apply during periods 1 – 3? Uber drivers are paid a percentage of revenue from the rides earned, not by the hour. Accordingly, during phase 1, the driver is not earning a wage, nor is Uber. However, the driver is presumably “working” or “on the clock.” The driver is not driving for purely personal purposes during phase 1 and the app is on during this time. Is the driver acting for a commercial purpose during period 1? Insurers are split in answering this question.

What happens when a ride-sharing driver is in an accident and then reports that claim to his or her personal auto carrier as required by ride-sharing companies? There is a risk of losing your own personal auto policy.

The Geico gecko will not be hopping into a Lyft or Uber car any time soon. According to a leaked Geico company memo, “Please Group Reject the policy” of customers involved in “ridesharing,” one section reads. Another section provides a script for telling customers that their policies do not cover vehicles used for the

ride services, and that they can seek coverage elsewhere for their cars — or may have to prove they no longer drive for Uber or Lyft.

### **1. Periods I – III**

The insurance coverage gap can be broken down as follows:

- Period One: The driver is logged into the app and driving around looking to obtain business. There are no passengers in the vehicle. The driver has not been contacted and has not accepted a ride request.
- Period Two: The driver has been contacted by phone or through the app, has accepted the ride request, and is traveling to pick up the passenger.
- Period Three: The driver arrives, picks up the passenger, and actually drives the passenger to his or her destination.

### **B. Uber and Lyft Policies**

Both Uber and Lyft extend a \$1,000,000 insurance policy to their drivers, but only between the times they agree to pick up customers and when they drop them off. When a driver pulls away after dropping a customer off, his or her personal insurance becomes their primary coverage; the ride-sharing companies only offer secondary coverage. If a driver gets in a wreck during such times, it can take a long time to sort out which insurance company is responsible.

So far, there is little to no published noteworthy case law on point.

## **III. Other Policy Coverage Issues**

### **A. Policy Exclusions**

A number of policy exclusions, provisions, conditions, and requirements come into play when reviewing any claim related to ride-sharing.

### **1. Physical Altercations / Criminal and Intentional Acts**

A case from September 2014 is working through the court system in San Francisco regarding an Uber driver who got into a heated argument with his passenger, Roberto Chicas, a 35-year-old bartender, at 2 a.m. on a Tuesday night.

The driver ended up attacking the passenger with a hammer, leaving him with a concussion, facial fractures, and lost function of an eye. The driver was criminally charged with assault with a deadly weapon and battery with serious bodily injury. Do the liabilities intended for car accidents cover attacks by a driver?

## **B. Third-Party Drivers**

What happens if a third-party driver is involved or causes the accident? If fault is in question, who do you file a claim with? The Insurance Information Institute published a recent Q&A sheet stating the passenger's personal auto policies would probably not apply since they are not underwritten to take on that risk.

PIP coverage? Others in the insurance industry have stated that passengers may be covered by their own insurance policies up to their personal injury protection ("PIP") limits depending on their state's regulations. However, unless you somehow caused the accident as a passenger, your insurance should only be the claim of last resort.

## **C. Policy Requirements**

### **1. Reporting Accidents to Your Insurer**

What happens when a ride-sharing driver is in an accident and then reports that claim to his or her personal auto carrier as required by ride-sharing companies? There is a risk of losing your own personal auto policy.

### **2. The Duty to Cooperate**

While the insured driver will have a duty to cooperate with his or her own insurer's investigation, does a similar duty apply to the third-party ride-sharing company? The contractual policy of insurance is between the insured-claimant and the insurer, not Uber. State statutes are now starting to address this issue, mandating a duty to cooperate.

## **AUTONOMOUS VEHICLES**

### **I. Current Legislation**

In 2017, 33 states have introduced legislation governing autonomous vehicles. Last year, 20 states introduced legislation. Sixteen states introduced legislation in 2015, up from 12 states in 2014, nine states and D.C. in 2013, and six states in 2012. Eighteen states: Alabama, Arkansas, California, Colorado, Florida, Georgia, Louisiana, Michigan, New York, Nevada, North Dakota, Pennsylvania, South Carolina, Tennessee, Texas, Utah, Virginia and Vermont, and Washington D.C. have passed legislation related to autonomous vehicles. Governors in Arizona, Massachusetts, Washington and Wisconsin issued executive orders related to autonomous vehicles.

### **A. State Laws in Place**

- Arizona's governor signed an executive order in August 2015 directing various agencies to "undertake any necessary steps to support the testing and operation of self-driving vehicles on public roads within Arizona." He also ordered the enabling of pilot programs at universities and developed rules to be followed by the programs. The order established a Self-Driving Vehicle Oversight Committee, as well.
- California's initial regulations require the Department of the California Highway Patrol to adopt safety standards and performance requirements to ensure the safe operation and testing of autonomous vehicles on public roads. The statute permits autonomous vehicles to be operated or tested on public roads pending the adoption of safety standards and performance requirements that would be adopted under this bill. These safety standards, as referenced above, will be released sometime this year.
- Florida's legislation declares the legislative intent to encourage the safe development, testing, and operation of motor vehicles with autonomous technology on public roads of the state. Florida made clear the state does not prohibit, nor specifically regulate, the testing or operation of autonomous technology in motor vehicles on public roads.
- Michigan's statute limits liability of vehicle manufacturers for damages in a product liability suit resulting from modifications made by a third-party to an automated vehicle or automated vehicle technology under certain circumstances. The law says that if an autonomous vehicle's operating system is at fault for a collision, then the manufacturer is responsible.

- Nevada’s statute requires an autonomous vehicle being tested on a highway to meet certain conditions relating to a human operator. The statute also states the manufacturer of a vehicle converted to be an autonomous vehicle by a third-party is immune from liability for certain injuries.
- North Dakota’s regulations provide guidelines for research into the self-driving car industry and technological developments.
- Tennessee’s regulations prohibit local governments from banning the use of motor vehicles equipped with autonomous technology.
- Washington D.C.’s statute defines “autonomous vehicle” as “a vehicle capable of navigating District roadways and interpreting traffic-control devices without a driver actively operating any of the vehicle’s control systems.” The statute requires a human driver “prepared to take control of the autonomous vehicle at any moment.” The regulations restrict conversion to recent vehicles, and addresses liability of the original manufacturer of a converted vehicle.

## **II. Insurance Coverage Issues**

### **A. The End of Personal Lines Auto Insurance?**

Will self-driving cars “doom” the insurance industry? Who is the “insured”? Who is “driving” the vehicle? Personal auto policies insure a VIN – they do not require a driver.

### **B. Underwriting**

Initially, many of the traditional underwriting criteria, such as the number and kind of accidents an applicant has had, the miles he or she expects to drive and where the car is garaged, will still apply, but the make, model, and style of car may assume a greater importance.

During the transition to wholly autonomous driving, insurers may try to rely more on telematics devices, known as “black boxes,” that monitor driver

activity. According to the National Association of Insurance Commissioners, use of telematics is forecast to grow to up to 20% within the next five years.

### **C. Regulation**

Insurance is state-regulated. Each jurisdiction has its own set of rules and regulations for auto insurance.

### **D. Liability**

As cars are become increasingly automated the onus might be on the manufacturer to prove it was not responsible for what happened in the event of a crash. The liability issue may evolve so that lawsuit concerns do not drive manufacturers and their suppliers out of business.

### **E. Repair Costs**

While the number of accidents is expected to drop significantly as more crash avoidance features are incorporated into vehicles, the cost of replacing damaged parts is likely to increase because of the complexity of the components. It is not yet clear whether the reduction in the frequency of crashes will lead to a reduction in the cost of crashes overall.

The potentially high cost of replacement parts for self-driving cars likely will affect the physical damage portion of insurance policies. The current base auto liability coverage form (ISO CA 00 01 03 10) provides \$1,000 for replacement of permanently installed electronic systems or electronic systems critical for the operation of the vehicle. In the past, these components were not considered critical to auto functionality, so higher limits were not necessary

## **III. Accidents Around the Country**

### **A. Arizona Uber Crash**

According to a report from the Tempe, Arizona Police Department, Alexandra Cole was making a left turn across three lanes of traffic in her Honda CR-V just as the light at her intersection was preparing to change from green to yellow. The first two lanes were backed up with cars, and Cole crossed them at a speed of about 20 mph. Then, she approached the third lane.

That car was an Uber SUV that employees Patrick Murphy and Matthew Rentz were operating in self-driving mode. The car was going at an estimated 38 mph, two miles per hour under the posted speed limit. Cole struck the Uber SUV, which then hit a traffic signal pole. The Uber SUV flipped on its side and collided with two other cars before coming to a stop. No serious injuries were reported, although some drivers complained of soreness and whiplash.

It appears Cole is to blame for failing to yield to oncoming traffic, but the collision unfolded in a way with which most motorists can sympathize.

### **B. California Google Accident**

In September 2016, one of Google's Lexus-model self-driving cars was going through a green light when the autonomous technology sensed another vehicle coming towards it that seemed as if it was going to run through its red light. The Google car began applying the brakes on its own, then the driver switched the car into manual mode and took over, but not quickly enough.

What happened next sounds like it was probably very frightening for its human driver: The other vehicle came into the intersection at 30 mph, running a red light and hitting the Google car's right side, effectively t-boning the car. Google said its car was traveling at 22 mph at the time of the collision. Both the Google car and the other vehicle sustained substantial damage.

Google self-driving vehicles have been involved in 11 minor collisions.

### **C. Florida Tesla Fatality**

Joshua Brown, an Ohio entrepreneur, was driving along a Florida highway in a Tesla Model S that had been switched to autopilot mode. Unable to distinguish the white 18-wheeler making a turn against the brightly lit sky, the self-driving system failed to apply the brakes, resulting in Brown's death. At the time, he was watching a Harry Potter movie on the TV screen.

In a press release, Tesla said the incident was a tragic loss, but noted that it was the first fatality in 130 million miles of Autopilot driving. The company compared that to regular driving, which incurs one fatality per 94 million miles in the US.



Tesla also stressed that the self-driving feature is still in the beta testing phase, and is only designed to be semi-autonomous. Drivers are instructed to keep their hands on the steering wheel in case of a software hiccup.

The National Transportation Safety Board began its investigation into the crash last July. While the probe is still underway, the agency has published about 500 pages of the data it had collected about the crash, including technical reports, transcripts, and images.

- There was no evidence Brown, the driver of the Model S, was using his mobile phone or another electronic device when the crash occurred, as some initial reports suggested.
- During the last 41 minutes of Brown's trip, the Model S was in Autopilot for 37.5 minutes. Brown had his hands off the wheel for a total of 37 minutes during the time the car was in Autopilot.
- The Model S displayed the visual warning "hold steering wheel" seven times during the trip. Six of those were followed by auditory warnings.
- The Model S was driving 74 mph on the highway when it was struck by a semitruck.

#### **IV. The Blame Game**

The current version of the commercial auto insurance form (ISO CA 00 01 10 13) specifically covers an insured's legal obligation for damages because of "bodily injury" or "property damage" caused by an accident that was the result of ownership, use, or maintenance of a vehicle. If the owner is distracted, under the influence, or fails to properly maintain the vehicle and causes an accident, insurance will cover the damages to the injured third-party. But what happens when the vehicle is self-driving? The owner or driver either has limited or no control over circumstances that may lead to an accident.

In the event of an accident involving a self-driving car, will the claimant blame the manufacturer or suppliers for what went wrong instead of their own human behavior?

As cars become more automated, the onus is likely to be on the manufacturer to prove it was not responsible for what happened in a crash.

The Association of California Insurance Companies is advocating just this. The group is asking “for changes clarifying that the autonomous vehicle’s manufacturer retain all liability for damage, losses or injuries caused by the operation of these vehicles.”

The rise of no-fault insurance? In a study on autonomous vehicles released by the RAND Corporation earlier this year, the non-profit, global policy think tank suggests the concept behind no-fault auto insurance might become an attractive alternative to tort-based laws.

How to handle emergency situations and account for human decision making in accidents?

## **V. Potential Defendants**

It is conceivable lawsuits could be filed against the manufacturer of a defective driverless car, component manufacturers, software companies, computer companies, programmers, etc.

---