Automated Vehicles May Revolutionize Mobility but Perhaps Not Auto Insurance

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In the United Kingdom, however, a similar requirement was first instituted over 88 years ago and is currently being updated to address the use of autonomous vehicles. This is being done through the Automated and Electric Vehicles Act 2018 (the "Act"), which received royal assent on July 19, 2018. In addition to providing a regulatory framework for the deployment of automated and electric vehicles, the Act extends auto insurance coverage to the operator of an automated vehicle even when the vehicle is in automated mode. This particular model of insurance coverage is sometimes referred to as a "one-policy" approach, meaning that there is only one policy to respond to an accident whether the vehicle is being operated by a human driver or by itself, i.e., in fully automated mode.

The Act provides for an interesting insurance model, worthy of consideration by governments, insurers, manufacturers, and other key stakeholders in the Canadian context. The House of Lords Hansard Debates during Second Reading captured the intent behind this proposed insurance regulatory framework as follows:

"To ensure the safe arrival of automated vehicles, we will need a compulsory motor insurance framework that is fit for purpose to support consumers and businesses involved in accidents. The Bill provides that framework. Currently, as the driver's use of the vehicle, rather than the vehicle itself, is insured, collisions involving automated vehicles that occur when the driver is legitimately disengaged from the driving task may not be covered. Having consulted widely and worked closely with parliamentary colleagues, the automotive industry and the insurance industry, the Government [is](sic) creating a new compulsory insurance framework within the Bill that covers motorists both when they are driving and when the driver has legitimately handed control to the vehicle. This framework will place a first-instance liability on insurers so that they can pay out to victims and, where they can, recover costs from the liable party".

Section 2 of the Act specifies that the insurer is liable for damages where "an accident is caused by an automated vehicle when driving itself, when the vehicle is insured at the time of the accident, and where an insured person or third party suffers damage as a result of the accident". The Act defines "a vehicle driving itself" as a vehicle that "is operating in a mode in which it is not being controlled and does not need to be monitored, by an individual". The Act further provides that coverage may not extend in cases where accidents are caused "by the direct result of" unauthorized software

alterations or by a failure to perform “safety-critical software updates” that “the insured knows, or ought reasonably to know, are safety-critical”. The Act also limits coverage in cases where the accident is caused by the insured’s own negligence of allowing the vehicle to drive itself when it was not appropriate to do so. After settlement with the injured party (including a judgment), the insurer can then seek recovery against anyone else who may be liable, such as the autonomous vehicle manufacturer.

Overall, the Act effectively ensures that the auto insurance framework remains the main recovery pathway for individuals, as opposed to recovery under the realm of product liability laws as against manufacturers. Despite the transformative changes of automated vehicles, it seems that this legislation also ensures that it is business as usual for auto insurers in the U.K., at least until autonomous vehicles reach a critical level of adoption which may then demand a further regulatory update.

The U.K. “one-policy” solution appears to present an answer – or at least offers a reprieve - to the doom and gloom projections of people like Warren Buffet who recently opined that self-driving cars will hurt the insurance industry. While there are some key differences between the auto insurance regime in Canada and that in the U.K. (for example, there are no policy limits in the U.K.), this U.K. legislation may present Ontario and other Canadian provinces and territories (each of which governs its own insurance and liability laws) with a model for re-thinking the current insurance regulatory framework for automobiles by attempting to balance multiple stakeholder interests in preparing for the deployment of autonomous vehicles. If that is the case, the U.K. model demonstrates the importance of proactive collaboration with the government by auto insurers and manufacturers to achieve workable regulatory solutions.

[1] Compulsory Automobile Insurance Act, 1979, S.O. 1979, c. 87 (proclaimed in 1980).

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