Insuring Automated Vehicles: Insurance Bureau of Canada Recommends "Single Insurance Policy"

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As a representative of Canada's private property and casualty insurers, IBC recommends an update to both provincial/territorial insurance laws and federal automated vehicle safety and cybersecurity standards. The proposed insurance framework is akin to the newly instituted automated vehicle insurance regime in the UK, as previously reported in our July 2018 issue of The Sensor. Like the UK insurance model, IBC proposes the introduction of a single auto insurance policy which will provide coverage regardless of whether the accident occurred when the vehicle was being driven manually or in an automated mode. The concept is borne out of policy considerations to ensure that accident victims are compensated for their injuries in cases involving automated vehicles fairly and in a timely manner, especially when claims are expected to take longer to resolve through product litigation and where coverage may be otherwise not covered under traditional auto insurance policies.

The key features of IBC's proposed framework are highlighted below:

- Injured parties may seek recovery from the owner and operator of the at-fault vehicle in the traditional manner, but the policy defending that owner and operator would respond regardless of whether the driver or the automated technology was responsible for the accident. In other words, the injured party need not sue the auto manufacturer or technology provider who may in fact be partially or wholly responsible for the accident.
- The single insurance policy would also compensate people injured in a collision caused by a cyber-breach of the vehicle's automated technology.
- The insurer's liability, however, is limited to the minimum legislated amount in circumstances where the collision was caused by the "vehicle owner and/or operator circumventing or failing to maintain safety-critical software". As previously noted in our review of the UK model, the UK legislation appears to suggest that coverage may be excluded or limited in such circumstances where the accident is caused by "unauthorized software alterations or by a failure to perform "safety critical updates" that "the insured knows, or ought reasonably to know, are safety critical".[2] Similar to the UK legislation, IBC considers a software update as "safety-critical" if it would be unsafe to operate the vehicle without it.

- After making a payment to the injured party (presumably by way of settlement or judgment), the insurer can seek to recover as against the party responsible for the collision, such as the vehicle manufacturer or technology provider.
- Any claim by the insurer against a vehicle manufacturer or technology provider would be subject to a yet unspecified deductible, presumably to discourage small claims that would be costly to litigate.
- Any claim by an insurer (following payment to the injured) against a vehicle manufacturer or technology provider would be litigated through a new mandatory arbitration process. The parties' rights of appeal to a court would be limited to questions of law.
- An injured plaintiff could still elect to sue the vehicle manufacturer or technology provider as they would in any tort case, but it would seem that the only time that would be necessary would be in circumstances where the person's claim exceeds the available policy limits.

To make the single policy approach workable, IBC further recommends a data sharing arrangement where the vehicle manufacturer would make certain prescribed data available to the vehicle owners and/or their insurer. While the UK legislation is silent on this issue, IBC recommends the availability of the following data points, aimed to assist with identifying whether the accident occurred when the vehicle was in automated mode and to what extent the accident was contributed to by the person sitting in the driver seat:

- GPS-event time stamp
- GPS-event location
- Automated status (on/off)
- Automated parking (on/off)
- Automated transition time stamp
- Record of driver intervention of steering or braking, throttle or indicator
- Time since last driver interaction
- Driver seat occupancy
- Driver belt latch
- Speed, and
- Vehicle warnings or notifications to the driver.

IBC favors a data sharing process that would avoid "administrative burden" on vehicle manufacturers, vehicle owners, or insurers. Although the paper does not specify a requirement for legislated data capture and access, it is noteworthy that such a legislated approach has been undertaken in countries like Germany where vehicles are required to be fitted with event data recorders to assist with determining whether the system or the human driver was in control at the time of the accident.

The IBC paper also makes recommendations that the federal government create standards under the Motor Vehicle Safety Act regarding automated technology to promote confidence that vehicles utilizing automated technology will perform safely.

It remains to be seen if and to what extent the provincial, territorial, and federal governments will take into account IBC's regulatory framework in their own consideration of the best approach to respond to the development and deployment of automated vehicles in Canada. There are certainly many more questions about what approach might work best in Canada but at least the IBC paper presents an opportunity

for further discussion among all stakeholders. We must remember: it is not a question of if automated vehicles will be prevalent on our roads, rather, it is only a matter of time.

By

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