

## Client Alert

May 30, 2018

### Key Points

- Limited access to autonomous vehicle operations data remains a key barrier to insurance companies' development of adaptive insurance policies.
- Representatives from the insurance industry support federal regulation of autonomous vehicle performance standards, but want states to be able to continue to regulate insurance companies.
- Insurance companies vary in their predictions regarding future liability for incidents involving autonomous vehicles.



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## House Committee Considers Impact of Autonomous Vehicles on Insurance Models

### I. Introduction

The U.S. House of Representatives Committee on Financial Service Subcommittee on Housing and Insurance held a hearing on May 23 titled “The Impact of Autonomous Vehicles on the Future of Insurance.” The hearing focused on the relationship between insurance companies, autonomous vehicle developers and government entities in adapting to the challenges associated with the market penetration of autonomous vehicles. David Carlson, U.S. Manufacturing and Automotive Practice Leader at Marsh & McLennan; Ryan Gammelgard, Counsel for State Farm’s Public Policy Resource Group; Sam Geraci, Vice President for Strategy at American Family Mutual Insurance Company; Ian Adams, Assistant Vice President at the R Street Institute (a non-partisan public policy research institution); and Jack Gillis of the Consumer Federation of America participated in the hearing.

While Congress has held hearings to consider barriers to autonomous vehicle deployment, vehicle safety and cyber security and privacy issues, this is the first congressional hearing on autonomous vehicle insurance and liability. The hearing was particularly timely, given recent accidents involving self-driving cars that have captured national attention.

### II. Access to Data

The panelists agreed that insurance companies must have access to data regarding autonomous vehicle operations, including crash and incident data, to assess risk and price insurance. Against that backdrop, panelists discussed the need for privacy and data security rules, and noted that technology companies are concerned about the need to protect proprietary and personally identifiable information. There was

debate among the witnesses regarding whether technology companies should be required by law to provide data or whether they could be incentivized to do so without legislation.

### **III. Authority of States to Regulate Insurance Companies**

The panelists agreed that the National Highway Traffic Safety Administration (NHTSA) should have the authority to set standards for vehicle performance, safety and data integrity. They also agreed that local governments should have the ability to regulate vehicle registration, licensing and operations within their jurisdiction. The panelists agreed that states, and not the federal government, should regulate vehicle insurance. They noted that states have a long history of regulating the insurance industry and that state liability and tort laws will evolve with the advent of new vehicle technologies. The panelists agreed that regulations should allow for flexibility within the insurance market and not inhibit the development and deployment of products. One insurance company representative called for a regulatory structure that accounts for the behavior of the vehicle to the same extent that it accounts for the behavior of its operator. He also noted that state regulations will need to adapt as factors such as driver history and experience become less important. Panelists also agreed that the pace of regulation in the autonomous vehicle insurance realm has been slow.

### **IV. Liability for Incidents Involving Autonomous Vehicles**

While the panelists uniformly supported access to data and the role of states in regulating insurance markets, they varied in their views regarding the future of liability. One of the insurance industry panelists predicted that manufacturers, component suppliers and technology companies will assume more liability. Another insurance industry panelist noted that the predominant thinking is that commercial liability insurance will become more prevalent, but cautioned against defining the next model of insurance too early. He later said that we likely will move toward product liability. The panelist from the R Street Institute expressed the view that an approach to civil liability based on negligence, and not on strict or product liability, is the best path for accommodating autonomous vehicles.

Two panelists thought that there may be a shift toward personal mobility insurance policies, but one member of Congress questioned whether people who use ridesharing services will want to purchase insurance. The panelists noted that the level of a vehicle's automation will affect who carries insurance, stating that, if the vehicle operator can take control of the vehicle, then the operator should have coverage, along with the vehicle manufacturer and technology companies. One insurance industry panelist noted the challenge of assessing coverage based on the level of a vehicle's automation and, in particular, how long it takes an individual to become re-acclimated to driving the vehicle when he or she needs to take control. The panelist called for more research and data to reach a more comprehensive understanding of the risks involved.

### **V. Outlook for Federal Legislation**

Members of the Subcommittee expressed willingness to work with insurance companies and consumer advocacy groups to address barriers to developing an efficient insurance framework that responds to the rise of advanced technology. The challenge of enacting laws addressing autonomous vehicles is reflected in the fact that the House and Senate have not been able to complete work on legislation to address

autonomous vehicle safety, despite the House having passed the SELF DRIVE Act ([H.R.3388](#)) and the Senate Commerce, Science and Transportation Committee having passed the AV START Act ([S.1885](#)) last year. Congress likely will continue to review the issues of liability and insurance coverage, as well as data sharing as more highly and fully automated vehicles become commercially available and operate alongside driver-controlled vehicles.

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