04.12.18

Weber Gallagher

The Fatal Autonomous Uber Accident

We are entering an era where the roads will be shared by pedestrians, fully driver operated vehicles, semi-autonomous vehicles and fully autonomous vehicles. As a result, there will be a multitude of issues facing insurers from both a coverage and liability perspective. The reality of these changes is apparent in cities that are hosting autonomous vehicle testing on their roads, such as Pittsburgh, which is home to a Weber Gallagher office. Pittsburgh is one of Uber's main test locations, but it was in another location, Tempe, Arizona, where hypothesis became reality.

On March 18th, a woman attempted to walk her bicycle across a street, mid-block at night. At the same time, an autonomous Uber vehicle going down the street at approximately 38 mile per hour, struck and killed the pedestrian. This was the first non-driver death in the autonomous age and it was captured on dash cam. We will never know how it would have played out in the courts from a liability perspective as Uber quickly entered into a settlement.

Liability issues in this case would have been very interesting. The pedestrian crossed a busy high speed street in the dark, mid-block and outside of a cross-walk. Uber does not operate vehicles unattended. Uber has a technician behind the wheel of the vehicles when they are operating in city streets. The video in the Uber shows that the technician was looking down immediately before the accident. The Tempe Police Chief said that Uber was likely not at fault. She said "It's very clear it would have been difficult to avoid the collision in any kind of mode (autonomous or human-driven) based upon how she came from the shadows right into the roadway."

This raises questions as to what standards should apply and where the liability focus should be. Should the autonomous vehicle and its human technician be held to the standard of a human driver, or should there be a different standard? Assuming the technician's job was primarily to override the autonomous system in an emergency, should that person be held to a higher standard than an ordinary reasonable driver? On the other hand, if a reasonable human driver could not have avoided the accident, how then can a technician be expected to react quicker? Of course this may not be the subject of normal vehicular accident liability principles. After all, the scrutiny will be whether or not the autonomous features malfunctioned or were not designed properly for operation in traffic. Perhaps autonomous vehicles should be designed to stop in enough time to avoid any "dart out" collision irrespective of lighting conditions.

Although Uber avoided answering these questions by entering into a quick settlement, it is going to be incumbent on the insurance industry to find the answers as these situations become more prevalent. Not only autonomous vehicle developers are testing their vehicles in limited open road locales, almost all new vehicles have semi-autonomous features. These vehicles are already operating worldwide on all public roads and probably have a greater possibility of overlap between human negligence and product malfunction. As such, the insurance industry will need to see how these situations fit into their current insurance products and coverages, and develop new products to address the changing landscape of partially and fully autonomous transportation.

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