Autonomous vehicles: insurances, responsibilitie and news

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The pandemic has not slowed down the arrival of self-driving vehicles on our roads. This technological advancement is becoming more and more commonplace, giving rise to a need for deep reflection, especially in the automobile insurance industry.

The AMF issue paper

On October 20, 2021, the Autorité des marchés financiers (AMF) published an issue paper on self-driving vehicles (SDVs),[1] deeming that the developments surrounding them were likely to have "considerable impacts on insurers and on the overall functioning of the automobile insurance system" in Quebec. In it, the AMF addresses several interesting avenues for reflection.

The public insurance plan

Under the current *Highway Safety Code*, the Minister of Transport can, through a pilot project, require manufacturers or distributors to reimburse the compensation paid by the Société d'assurance automobile du Québec (SAAQ) following accidents involving an SDV.[2]

In this context, the AMF is asking whether these manufacturers, distributors and sellers should be able to purchase insurance to protect themselves in the event of this type of claim.

Private insurance plans

With certain exceptions, the *Automobile Insurance Act* provides that the owner of a vehicle is liable for property damage caused by their vehicle.[3] Human error is currently the primary cause of collisions; however, with the advent of SDVs, attributing liability for accidents will become more complicated.

The transfer of liability to vehicle manufacturers and their subcontractors in the event of an accident could lead to a possible shift from insurance policies offering individual coverage to policies designed to protect manufacturers or software developers, for example.

The AMF is considering whether the current wording of the automobile insurance policies issued for SDVs should move towards the notion of "using" a vehicle, thus modifying the notion of driving.

In addition, direct compensation agreements currently provide that insurers compensate their own insureds for the liability of drivers of other vehicles involved in an accident. They allow subrogation against a third party responsible for the collision, but exclude collisions involving the same vehicle owners. In the context of SDVs, where a manufacturer could retain ownership of the vehicle during use, for example with a fleet of vehicles, there is reason to question the application of these

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agreements. Their very relevance is in doubt, according to the AMF.

The AMF raises other interesting discussion points:

> Should automobile manufacturers be required to disclose accident data involving SDVs to the SAAQ?
> What data should be used to determine the insurance premiums associated with an SDV?
> Should the order of application of manufacturers', subcontractors' and owners' insurance policies in the event of an accident involving SDVs be provided for by regulation?

Criminal charges in California

As a result of an accident involving an SDV driving in “autopilot” mode, killing two (2) people, the driver of the vehicle was charged with two (2) counts of manslaughter. The accident was caused by the SDV leaving a highway at high speed, running a red light and hitting a vehicle in the intersection.

In a previous report, the National Transportation Safety Board (NTSB) already reviewed the concept of “automation complacency,” in which drivers are inclined to rely too much on the self-driving modes currently on the market, which still require drivers' attention.

It should be kept in mind that full vehicle automation is not yet available and that drivers remain responsible for the operation of SDVs, which are only partially automated at this time.

Disabling Tesla’s “Passenger Play”

Since December 2020, Tesla has offered the “Passenger Play” feature in several of its vehicle models, which allows drivers to play video games while the car is in motion.

After receiving a complaint from a Tesla driver, the NTSB launched an investigation and determined that this option “may distract the driver and increase the risk of a crash.”

In December 2021, Tesla announced that in future updates to the system, Passenger Play would only be available when the car is stationary.

Robots as border patrollers

The U.S. Department of Homeland Security recently confirmed that a pilot project involving robot dogs in border surveillance at the U.S.-Mexico border is underway.

The fleet of robots, called “automated ground surveillance vehicles,” is presented as a “force multiplier.” The project is facing a range of criticism, with regard to its true ability to be a tangible agent of change in terms of border security, but also from community advocates, who accuse the government of going too far for the sake of security. According to the authorities, the robots have the potential to reduce the risk of border officers’ exposure to deadly hazards in an environment that is inhospitable to humans.

Driverless buses at Plaza St-Hubert

Closer to home, we saw driverless buses circulating freely along Plaza St-Hubert in Montréal last fall.

Keolis made its SDVs available for a free 30-minute route with seven (7) stops.

The project, implemented by the Ville de Montréal with a grant from the Government of Québec, was designed to test the SDVs in a dense urban environment.

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1. *Document de réflexion, Préparer le Québec à l’arrivée des véhicules automatisées et connectés*, Autorité des marchés financiers, October 21, 2021.
2. *Highway Safety Code*, CQLR, c. C-24.2, s. 633.1.

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3. *Automobile Insurance Act,* CQLR, c. A-25, s. 108.

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