Automakers' Insurance Offerings Will Have Broad Impact

By **Geoffrey Wyatt** (February 4, 2021, 6:35 PM EST)

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Five years ago, KPMG International predicted that fundamental shifts in the automobile industry — most prominently, the development of autonomous vehicle technology — would have massive implications for the automobile insurance sector.

One of the foundations of this prediction of change in the insurance world — that fully autonomous vehicles would become available by 2020 — has not come to pass.[1] But other shifts have.

One those shifts involves the identity of the insurers themselves. Writing from the perspective of a hypothetical future where autonomous vehicle technology is ubiquitous, KPMG theorized that one of the revolutions in such industry was that:

> Auto manufacturers began to sell insurance as part of the sticker price of the vehicle. Technology companies — which owned the data coming from the dashboard — started their own insurance groups, leveraging the competitive (and proprietary) insights gained about driving performance.[2]

The data, KPMG argued, would be the key, and the emergence of autonomous vehicles would spark this shift because "[a]utonomous driving requires and generates significant information," and this information will inform the underwriting of "driver risk based on a snapshot view across a standard set of factors like miles driven and traffic violations."[3]

It seems that day is dawning, well ahead of the arrival of any true, fully autonomous vehicles. Two years ago, Tesla Inc. became the first automaker to offer its own insurance, initially only in California but with plans to expand nationwide.[4] Late last year, General Motors Co. announced it would offer insurance nationwide through its OnStar LLC service, which launched in Arizona last month and is set to expand from there.[5] And Ford Motor Co. likewise has indicated that it plans to offer insurance.[6]

As an article covering the General Motors announcement posited — and consistent with KPMG's predictions — these initiatives are driven by the expansion of data, which can now provide insights not only into the precise number of miles driven on a covered vehicle, but also other issues including "driver phone use and propensity for heavy braking," among others.[7]

These developments could have significant implications — indeed, they could fundamentally transform auto accident litigation in multiple dimensions, even possibly displace the traditional tort system in this context, as well as greatly alter the litigation dynamic among interested parties.

The entry of automakers into the insurance marketplace also has important implications for traditional insurers. In short, significant changes could be in store for automakers, consumers and traditional insurers alike.

For automakers, the advent of proprietary data about owners' driving habits creates a new competitive advantage against traditional insurers, which may face barriers to accessing the same

data, which is heavily dependent on user opt-in. It is no surprise that individualized, up-to-the-minute data about a particular insured's driving habits can support more accurate underwriting.

Manufacturers that have unfettered access to such data for risk-assessment purposes could be able to offer lower premiums, as well as the attractive opportunity for consumers to roll insurance into monthly financing or lease payments for new vehicles.

The push toward more fully autonomous vehicle technology supplies an additional rationale for the move. One potential consequence of the expansion of autonomous driving capabilities is that manufacturers will assume greater responsibility — and by extension litigation exposure — for accidents and injuries that occur, as it can be expected that more and more decisions will be removed from drivers and trusted to the sophisticated technologies that pilot the vehicles of the future, though the degree to which manufacturers will bear responsibility has probably been overstated.[8]

Anticipating this development, a number of automakers have announced that they intend to assume responsibility for all accidents and injuries that occur that involve their fully autonomous vehicle technology.[9] Such an undertaking could prove costly, at least in the short term.

While a dramatic reduction in traffic accidents is a motivating factor in the move toward autonomous vehicle technology, and it is this anticipated outcome that makes the assumption of liability by manufacturers feasible,[10] there is likely to be a lengthy transition period during which human- and computer-driven cars will both occupy the road in great numbers.

That transition period could mean the worst of both worlds for manufacturers: expansion of liability without a substantial corresponding decline in accidents giving rise to such liability.

But automaker-sponsored insurance plans offer an intriguing solution to this problem. Conceivably, automakers could offer a hybrid warranty insurance package, offering consumers safer technology and guaranteed repair and replacement for the life of the car, along with below-market insurance premiums, in exchange for agreement to participation in a private no-fault scheme akin to workers' compensation.

Such agreements could guarantee customers compensation for certain covered incidents, but require them to give up their rights to pursue large damages awards in the tort system.

Even if automaker-offered insurance does not displace litigation, it could certainly alter the litigation dynamic, particularly from the perspective of the consumer. In traditional litigation, the interests of a driver's insurer are generally aligned with the driver: If the driver is sued for causing someone else's injury, both that driver and the insurer have an interest in minimizing liability; and where the driver is injured by someone else, both the driver and insurer have an interest in maximizing recovery from the alleged tortfeasor and their insurer, at least to the extent of medical expenses.

As a result, insurers will generally step in the shoes of the driver and manage accident-related litigation. But if autonomous vehicle technology displaces driver fault and appoints the automaker as the principal defendant in auto accident litigation, an adversity may arise between driver and insurer if the automaker is providing the insurance.

This possibility may not manifest in accidents involving cars manufactured by different companies, where the two companies will have incentives to shift fault to each other, generally in alignment with the interests of their insureds.

But in accidents involving two cars by the same manufacturer and drivers insured by the same, the possibility arises that the two drivers — who would have been adverse in the preautonomous auto accident litigation world — might find themselves on the same side in litigation against the manufacturer in something much more akin to a product liability suit, especially if both cars were designed to be fully autonomous, removing human input from driving decisions.

Of course, the emergence of automaker-offered insurance products also has implications for the broader insurance market and, in particular, for traditional insurers. And while recent reporting has naturally focused on automakers because of the novelty of their insurance offerings, "the old guard of insurance giants" has also been innovating and "begun offering ... bespoke products using data,"

according to a Business Insider article.[11]

Although they do not manufacture the cars they insure, traditional insurers can nevertheless obtain some data from their insureds through "standalone devices or mobile apps [that] track driving," according to a Money.com article.[12] And while manufacturers might be able to generate richer data sets from technology that is embedded in the car, insurers can also gain access to these data through relationships and agreements with manufacturers.

Indeed, Ford has indicated that it intends to allow several traditional insurers to receive data from its built-in tracking systems, raising the prospect that consumers could go to market with their data and insurers could bid against one another to win the driver's business.[13]

While this opportunity should ultimately improve competition and benefit consumers, the relatively free transfer of data that would be the fuel for these transformations, and the intercompany agreements needed to facilitate it, implicate potential privacy, cybersecurity and competition issues that manufacturers and insurers alike will have to carefully navigate as these changes continue to unfold.

In short, the future of autonomous vehicles predicted such a short time may yet be some way off. But the future of automobile insurance is already here, with important implications for the consumers, manufacturers and insurers of the present day.

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[1] KPMG, Marketplace of Change: Automobile Insurance in the Era of Autonomous Vehicles, Oct. 2015, at i, https://assets.kpmg/content/dam/kpmg/pdf/2016/06/id-market-place-of-change-automobile-insurance-in-the-era-of-autonomous-vehicles.pdf.

[2] Id. at 2.

[3] Id. at 16.

[4] Justin Bariso, Tesla Just Made a Huge Announcement that May Completely Change the Auto Industry, Inc., Sept. 3, 2019, https://www.inc.com/justin-bariso/tesla-just-made-a-huge-announcement-that-may-completely-change-auto-industry-heres-why-its-brilliant.html.

[5] Graham Rapier, GM Is Following Tesla's Example and Launching Its Own Insurance with OnStar, Business Insider, Nov. 18, 2020, https://www.businessinsider.com/gm-follows-tesla-with-onstar-car-insurance-product-2020-11; Paul Reynolds, GM and Other Automakers Want to Sell You Car Insurance. But Are the Policies Any Good?, Money, Dec. 15, 2020, https://money.com/gm-auto-insurance/.

[6] Id.

[7] Id. (internal quotation marks omitted); Fred Lambert, Tesla's Insurance Program Will Use Direct Driver Data Where It Can with Permission, Exec Says, Electrek, Sept. 5, 2019, https://electrek.co/2019/09/05/teslas-insurance-program-data-growth-exec/.

[8] Geoffrey Wyatt, Manufacturers Won't Bear All Liability for Driverless Vehicles, Law360, Aug. 26, 2019, https://www.law360.com/articles/1191712/manufacturers-won-t-bear-all-liability-for-driverless-vehicles.

[9] See id.

[10] See id.

[11] Rapier, supra.

[12] Reynolds, supra.

[13] Id.