INTRODUCTION

In the early 2020s, vehicles with fully automated capabilities will be on Canada’s roads. Nissan, for example, expects to introduce them in the 2020s. Volvo has partnered with Uber to bring them to public roads by 2021. Also by 2021, Ford expects to have vehicles that can operate without human interaction and without steering wheels or gas or brake pedals.

Insurance Bureau of Canada (IBC) conducted a national survey in February that found that despite consumer skepticism regarding automated vehicles, the technology has significant potential. Only 37 percent of Canadians stated they are interested in “driving” an automated vehicle when it comes to market. However, 54 percent of millennials said they’re interested in driving these vehicles.1

AUTOMATED VEHICLE LIABILITY CLAIMS

The last anticipated change is particularly challenging. Canada’s provincially prescribed auto insurance products and supporting legislation are built on the human factor in collisions. The US National Highway Traffic Safety Administration states that human error is the primary cause of more than 90 percent of collisions. As automated vehicles shift liability toward vehicle manufacturers and technology providers, there will likely be more product liability claims.

Product liability claims are typically more complex and take longer to resolve than vehicle collision liability claims. In fact, product liability claims can take several years longer to resolve than the two-to-four years associated with the average vehicle collision claim. This extended process will increase the wait for compensation for the tens of thousands
of people injured in collisions each year who rely on the tort system.

Last year, a group of IBC member insurers examined this impending claims problem. The group, which consisted of insurer representatives with actuarial, underwriting, and claims experience, found that reforms to auto insurance products and supporting legislation are needed to ensure that people injured in collisions caused by automated vehicles receive fair and timely compensation. They also noted that the legislation should ensure that affordable insurance for these vehicles is available.

UK SINGLE INSURANCE POLICY

For the past few years, the government in the United Kingdom has been evaluating the adequacy of its existing insurance legislation for automated vehicles. In a 2017 publication, it made the following statement about the effect of automated vehicle liability claims on injured people:

The innocent victim of a collision involving an [automated vehicle] faces a number of issues, and would be at a disadvantage, in terms of securing quick compensation, compared to a victim of a collision involving a conventional vehicle for a number of reasons:

• There would be no clear route to securing compensation, so they may have to take the vehicle maker to court, which could be time consuming and costly.

• Innocent third party victims might not be covered for collisions as a result of the automated vehicle and/or software failure.

• Drivers might not be covered in the event of the automated vehicle and/or software failure, so might not be insured when the [automated vehicle] is in control. 2

To address this problem proactively, the UK government consulted extensively with insurers, vehicle manufacturers, and other stakeholders. The culmination of this effort was the 2017 Automated and Electric Vehicles Bill. When passed, this bill will require that auto insurers compensate people injured in collisions caused by automated vehicles, regardless of whether the human operator or automated technology was responsible. After compensating the injured person, an insurer could try to recover any liability payments from the vehicle manufacturer, the technology provider, or whichever party caused or contributed to the collision.

The bill’s intent is to allow injured people to be compensated as they are now and to leave the product liability discussions to the insurer and the vehicle manufacturer or technology provider. On this point, the UK government stated the following:

When a crash is determined to have been caused by an [automated vehicle], where the [automated driving function] was active, the insurer would be liable to pay compensation to the innocent third party victim. They would also pay out to the motorist if injured in the vehicle if the [automated driving function] were active . . .

Where the manufacturer is found to be liable, the insurer will be able to recover against the manufacturer under existing common law and product liability laws. It is possible that some cases will go to court, though over time we expect insurers and manufacturers will develop processes to handle most recovery claims quickly and easily. And, in any case, we do not consider it to be in a manufacturer’s commercial interest to be unhelpful to insurers in determining liability or paying recovery claims; ultimately, insurers could potentially cease offering insurance products for the manufacturer’s vehicles if their route to recovery was consistently blocked. 3

A CANADIAN AUTO INSURANCE SOLUTION

After examining different product and legislative options, including the status quo and no-fault insurance, IBC’s member insurers endorsed the single insurance policy covering both human error and automated technology malfunctions. The single insurance policy facilitates liability claims for injured people by aligning the claims process for
automated vehicles with the claims process for conventional vehicles. Unlike no-fault insurance, the single insurance policy can co-exist with the mixed no-fault and tort products currently available in Alberta, Ontario, and Atlantic Canada. This co-existence is important because automated and conventional vehicles will share Canadian roads in the years ahead. The insurance products and supporting legislation need to work for both types of vehicles.

To support the single insurance policy, IBC’s members advise that there be a certain threshold to which the insurer for the automated vehicle would retain the liability loss, even if the automated technology caused the collision. They also advise a mandatory binding arbitration process to settle disputes between insurers and vehicle manufacturers over the cause of a collision and the loss amount. These two measures should facilitate any loss recovery proceedings between insurers and vehicle manufacturers.

In addition, IBC’s members advise setting up a legislated data-sharing arrangement between insurers and vehicle manufacturers. This data-sharing would help determine the cause of a collision, whether the vehicle was in manual or automated mode at the time of the collision, and the vehicle operator’s interaction with the automated technology. A legislated data-sharing arrangement is crucial to facilitating a timely resolution of liability claims and any loss recovery proceedings.

CONCLUSION

Canadians who use automated vehicles will expect appropriate insurance to be available. If involved in a collision, they will expect a claims process that is as simple and cost-effective as possible. Provincial governments, insurers, and other stakeholders must work together to ensure appropriate provincially prescribed auto insurance products and supporting legislation. With automated vehicles coming to the market in only a few years, the time to begin this work is now.

Notes:
1 IBC conducted a nationwide online study of 1,200 Canadian residents 18 years of age or older between February 5 and February 23, 2018. The margin of error for a strict probability sample for a sample of 2,000 would be ±2.83%, 19 times out of 20. All sample surveys and polls may be subject to multiple sources of error.
3 Ibid.

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