AMERICAN INSURANCE ASSOCIATION

Autonomous Vehicle (AV)

Liability Insurance Principles

Principle No. 1 – AIA and its member companies support the introduction of safe and tested autonomous vehicle technologies.

The promised social and safety benefits of autonomous vehicles – fewer accidents, increased mobility, greater traffic efficiency, additional productive/free time – are likely to far outweigh the disadvantages, such as cybersecurity issues. Therefore, AIA and its member insurance companies support the introduction of AV technologies that are tested and proven to provide enhanced safety for drivers, passengers and pedestrians.

Principle No. 2 – Accident victims must be compensated fairly and promptly.

Accident victims must be compensated fairly for their medical costs, vehicle repairs and other damages in a reasonable and prompt amount of time, without regard to whether they are injured in an accident with an autonomous or driver-controlled vehicle.

Principle No. 3 – Consumers should have competitive options for their insurance.

Consumers should continue to be able to shop around among competing companies for their automobile insurance and should retain the freedom to select the amount and type of coverage they wish to purchase. AV owners should not be locked into a single source of accident compensation, exclusive insurance program, risk pool or other non-competitive option.

Principle No. 4 – There should not be different insurance requirements for driver-controlled versus autonomous vehicles.

Maintaining two automobile insurance systems would be prohibitively expensive, create confusion in the market place and be difficult for the states to regulate, administer and enforce. Furthermore, many consumers likely will own both driver-controlled and autonomous vehicles, or maybe vehicles equipped with both options. Consumers should be able to insure all of their vehicles under one policy.

Principle No. 5 – Manufacturer product liability alone should not be relied upon as an efficient accident compensation system.

While automobile manufacturers should remain liable for any design defects, manufacturing errors or issues of crashworthiness, product liability lawsuits are ill suited for resolving routine matters of vehicular accident fault. Such suits can be lengthy, complex and expensive to litigate; therefore, product liability is not an efficient mechanism to promptly pay routine medical bills, repair or replace damaged vehicles and compensate auto accident victims.

Principle No. 6 – The addition of autonomous vehicles to the fleet should not introduce uncertainty or insurance coverage gaps into the accident compensation system.

The launch of transportation network insurance (TNC) companies initially created gaps in insurance coverage for drivers using their personal vehicles for commercial purposes. Any proposed changes to the automobile accident compensation system must avoid repeating this error. Consumer education also should be a critical element of AV introduction, including education about any changes to vehicle owner financial responsibility requirements.

Principle No. 7 – The existing tort law automobile system should not be discarded lightly.

The current automobile liability insurance system works well. Roles and responsibilities under today's system are clear: vehicle owners are required to maintain insurance; insurers must pay insurance claims promptly; where fault is litigated, courts have developed substantial bodies of case law; injured parties are free to pursue product liability claims against auto manufacturers if they believe a product defect played a role in an accident; and insurance companies can subrogate against manufacturers to recover losses paid as a result of a product defect. These rights and remedies already exist. The pros and cons of any proposed alternative insurance system must be weighed carefully, and policy makers should think long and hard about whether the problems with no-fault type systems can be remedied before implementing any such option.

Principle No. 8 – Insurers should have flexibility in providing coverage for AVs.

Autonomous vehicles remain untested as mass-market products. To foster private market product development for AV insurance, insurers should be permitted maximum freedom in rating, underwriting and insuring AV exposures.

Principle No. 9 – Manufacturers must provide liability protection for AVs tested on public roads.

Manufacturers should have to meet all financial responsibility law requirements imposed on other commercial vehicle or livery fleets. Furthermore, given the high risk nature of driving and the strict standards for vehicle crashworthiness that consumers expect, immunity from liability for the failures of developers or manufacturers of this emergent technology would be inappropriate as well as disruptive of long-established liability and injury compensation principles related to automobiles and product manufacturing.

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Background: AV Insurance Issues

AV owner/operator negligence will continue to be a liability concern.

Defective design and manufacturing errors will not be the only sources of potential liability when an autonomous vehicle is involved in an accident. Even in a potential driving environment populated with fully autonomous (Level 5) vehicles – an unlikely outcome for quite some time, if ever – owners and operators would still need to perform regular vehicle maintenance to ensure that their vehicle remains in a safe, roadworthy condition. In addition to routine maintenance of brakes, tires and mechanical systems, AV owners/operators will need to ensure installation of all AV software updates on a timely basis. Failure to perform such maintenance could result in liability for the owner/operator if an accident results. When the option exists, even choosing when to operate autonomously versus manually could result in owner/operator liability.

AV technology will introduce new and sometimes unpredictable risks.

While driver error can and should decrease substantially, the introduction of new technologies into vehicles will introduce new risks. For example, cybersecurity will be a critical issue for internet-connected vehicles, whether connected while driving or when downloading software updates. There also is a potential for new types of accidents unique to AVs – e.g., software glitches, incidents at pedestrian crossings where a human driver might have signaled intentions to a pedestrian, intentionally altered street signs, malicious devices that send false images or signals to vehicle guidance systems, vehicle breakdowns that strand unaccompanied minors or disabled persons, etc. Furthermore, competing AV operating systems may present different risks based on divergent design decisions.

Driver-controlled vehicles will remain on American roads for the foreseeable future.

There are approximately 270 million driver-controlled vehicles on U.S. roads today. Based on recent studies, a significant portion of American consumers are not interested in owning an autonomous vehicle. And, as the rate of adoption of current safety features has proven, it can take decades for new safety technologies to be deployed across the American vehicle fleet. Furthermore, early AV technologies may not be adapted for certain vehicles, such as motorcycles, or for certain vehicle uses, such as frequent off-road driving and the towing of boats or large trailers. When combined with our unique American car culture – e.g., love of muscle cars, antique and collectible vehicles, etc. – these factors suggest that driver-controlled

cars will remain on American roads well into the future. A continuation of driver control means driver error is destined to remain a factor in future accidents.

Product liability lawsuits can be complex and extraordinarily difficult to litigate.

Because the "driver" of an autonomous vehicle will be a software-guided computer, it is reasonable to expect that accidents allegedly caused by an AV will result in lawsuits against auto manufacturers claiming design or manufacturing defects in either AV software or hardware. Such product liability lawsuits can be extremely difficult, time-consuming and expensive to litigate – e.g., requiring expert witnesses in vehicle design, crashworthiness and road safety – and therefore are unlikely to compensate victims on a timely basis for their medical costs, damage to their vehicle and other damages. Such litigation can be especially daunting when attempting to collect from a large manufacturer whose vehicles might be subject to a recall if a court finds that a defect exists.

For these reasons, manufacturer product liability alone would not be an effective or efficient source of accident compensation. By comparison, the existing automobile liability insurance system compensates accident victims promptly and fairly for vehicle damages and medical bills while also preserving the right of victims and insurers to pursue product liability actions against vehicle manufacturers for any alleged defects.

Existing no-fault insurance systems are expensive and subject to fraud.

The introduction of AVs to our roadways may complicate accident liability determinations, especially with regard to accidents involving AVs and non-AVs. Liability determinations could result in protracted disputes with manufacturers, producing expensive and time-consuming litigation as parties attempt to determine whether an accident resulted from human error or a product failure. The obvious concern is that compensation of accident victims could be delayed and costly to the litigants and the court system.

Some have suggested that a no-fault insurance system could effectively address injuries and damages suffered in AV accidents. While the potential benefits of a no-fault or no-liability system may merit some exploration, it is important to recognize that the experience in many states with existing no-fault automobile liability insurance systems has been unfavorable for consumers. According to the National Association of Insurance Commissioners (NAIC), three states with no-fault insurance systems – New Jersey, Michigan and New York – had the highest average automobile insurance premiums in the nation in 2014 (the latest available from the NAIC). No-fault automobile accident compensation systems also have been prone to fraud and abuse. For example, a study of New York's no-fault system by the Insurance Research Council (IRC) found that, over the period 2007 to 2010, about one in every five claims settled in the New York City area appeared to include some element of fraud and as many as one in three claims were inflated.

Most states do not have no-fault automobile insurance systems, and their existing tort-based systems generally function well. Roles and responsibilities under these tort-based systems are clear: vehicle owners are required to maintain insurance; insurers must pay claims fairly and promptly; where fault is litigated, courts have developed substantial bodies of case law; injured parties are free to pursue product liability claims against auto manufacturers if they believe a product defect played a role in an accident; and insurance companies can subrogate against manufacturers to recover losses paid as a result of a defect. These rights and remedies already exist. Policy makers should think long and hard before discarding the time-tested benefits of these liability insurance systems in favor of a new experimental alternative. Furthermore, any consideration of a no-fault or no-liability insurance alternative for AVs would require a radical restructuring and reformation of existing no fault automobile insurance laws in order to avoid the costly issues associated with current no-fault liability systems – if such problems can be avoided.

Vehicle owners/operators will continue to purchase non-liability insurance products.

Many non-liability automobile insurance coverages will remain important purchases for consumers, including comprehensive coverage for vehicle damage from fire, flood, theft, vandalism and cracked windshields and medical payments coverage for non-collision accidents such as injuries suffered when entering or alighting from a vehicle. These coverages will be needed for both AVs and driver-controlled vehicles and, for efficiency and ease of purchase, it is reasonable to expect that most consumers will continue to insure all of their vehicle risks under one insurance policy.

The existing automobile insurance market is highly competitive.

As anyone who watches television knows, automobile insurance is widely available in every state and car owners have a multitude of choices when it comes to buying coverage. These choices include options to shop for insurance through numerous insurers – local, regional and national insurers – through various distribution channels – independent agents or direct from an insurer via voice, internet or digital communications – as well as a variety of product options – e.g., usage based insurance (pay by mile), new car replacement, antique automobile insurance, assorted limits of liability, different deductibles, etc. Competition – the cornerstone of a market-based economy – should be preserved as AVs are deployed into the American fleet, and AV owners shopping for accident protection should not be locked into a single manufacturer, exclusive insurance program, government risk pool or other non-competitive option.