

SHOOK  
HARDY & BACON

# Autonomous Vehicles: Emerging Technology, Emerging Risks

Update of the Law CLE June 14, 2018

---

---

---

---

---

---

---

---

**Mayela C. Montenegro**  
Associate  
Shook, Hardy & Bacon L.L.P.



## An Introduction to Autonomous Vehicle Technology

Update of the Law CLE June 14, 2018

---

---

---

---







---

---

---

---

### AUTOMATION LEVELS OF AUTONOMOUS CARS

<b>LEVEL 0</b>  There are no autonomous features.	<b>LEVEL 1</b>  These cars can handle one task at a time, like automatic braking.	<b>LEVEL 2</b>  These cars would have at least two automated functions.
<b>LEVEL 3</b>  These cars handle "dynamic driving tasks" but might still need intervention.	<b>LEVEL 4</b>  These cars are officially driverless in certain environments.	<b>LEVEL 5</b>  These cars can operate entirely on their own without any driver presence.

SOURCE: SAE International BUSINESS INSIDER

Update of the Law CLE June 14, 2018

---

---

---

---

---

---

---

---

## Are We at Level 2 or Level 3?

- New vehicles are being developed with the goal of reaching Level 3 autonomy.
- There is disagreement as to what actually constitutes “Level 3” technology.

Update of the Law CLE

June 14, 2018

4

---

---

---

---

---

---

---

---

**Todd A. Croftchik**  
Managing Counsel – Product Liability  
Toyota Motor North America, Inc.

**Where are we now?**

Update of the Law CLE

June 14, 2018

5

---

---

---

---

---

---

---

---

**Dustin A. Lane**  
Corporate Counsel – Automotive Product Liability  
Volkswagen Group of America, Inc.

**Where are we going?**

Update of the Law CLE

June 14, 2018

6

---

---

---

---

---

---

---

---

## Audi A8: SAE Level 3?



Update of the Law CLE

June 14, 2018

7

---

---

---

---

---

---

---

---

- The AI Traffic Jam Pilot system of the [new A8](#) is the market's first SAE Level 3 autonomous system and will initially be offered in European A8 models

Update of the Law CLE

June 14, 2018

8

---

---

---

---

---

---

---

---

**H. Grant Law**  
Partner  
Shook, Hardy & Bacon L.L.P.



## Legal Challenges Ahead

Update of the Law CLE

June 14, 2018

9

---

---

---

---

---

---

---

---

## Volume, Volume, Volume

- Waymo
  - 62,000 Pacifica minivans from Fiat Chrysler
  - 20,000 I Pace SUVs from Jaguar
- The industry
  - 10 million self-driving cars by 2020

<https://www.forbes.com/sites/alanahraman/2018/05/31/waymo-adding-up-to-62000-minivans-to-robot-fleet-may-supply-tech-for-fiat-models/#4ead6214598>  
<https://www.reuters.com/article/us-volvocars-uber/volvo-cars-to-supply-uber-with-up-to-24000-self-driving-cars-idUSKBN1DK1NH>  
<https://www.forbes.com/sites/olivergarnet/2017/03/03/10-million-self-driving-cars-will-hit-the-road-by-2020-heres-how-to-profit/>

Update of the Law CLE

June 14, 2018

10

---

---

---

---

---

---

---

---

## Who Gets the Ticket?



*"Does your car have any idea why my car pulled it over?"*

Update of the Law CLE

June 14, 2018

11

---

---

---

---

---

---

---

---

## Who Foots the Bill?

- Nameplate manufacturer
- Supplier
- Owner (with right of indemnity)
- Operator (with right of indemnity)
- No fault ?
- Punitive damages

Update of the Law CLE

June 14, 2018

12

---

---

---

---

---

---

---

---

## Practical Litigation Issues

- How will auto litigation change?
  - Defendants: Who will be named?
  - Theories: Negligence or product liability?
  - Risk Benefit v. Consumer Expectations
  - Evidence: How does “black box” data impact discovery and potential for settlement?

Update of the Law CLE

June 14, 2018

13

---

---

---

---

---

---

---

---

## Impact on Insurance

- Declining crash rates
- Declining crash severity
- Skyrocketing repair costs
- Shift from Owner to Manufacturer?
- Manufacturer indemnity

Update of the Law CLE

June 14, 2018

14

---

---

---

---

---

---

---

---

**Cary Silverman**  
Partner, Public Policy Group  
Shook, Hardy & Bacon L.L.P.



## Public Policy Implications

Update of the Law CLE

June 14, 2018

15

---

---

---

---

---

---

---

---



## Snapshot: The Regulatory Landscape

- Traditional State v. Federal Roles
- State Regulation of AVs
  - How many states have acted?
  - What have they done?
- Federal Activity
  - What has NHTSA done?
  - What how does the pending federal legislation impact liability?

Update of the Law CLE

June 14, 2018

16

---

---

---

---

---

---

---

---

## The Road Forward: Concerns

- Will every car accident become a complex product liability lawsuit?
- Will excessive liability delay or discourage innovation and safer products?
- Will constraints on liability become necessary? Is a new system needed?

Update of the Law CLE

June 14, 2018

17

---

---

---

---

---

---

---

---

## The Road Forward: Solutions?

- Challenge: Lack of consensus on how the liability system should evolve
- Danger: The wait-and-see approach
- Next step: Developing a path forward

Update of the Law CLE

June 14, 2018

18

---

---

---

---

---

---

---

---



---

---

---

---

---

---

---