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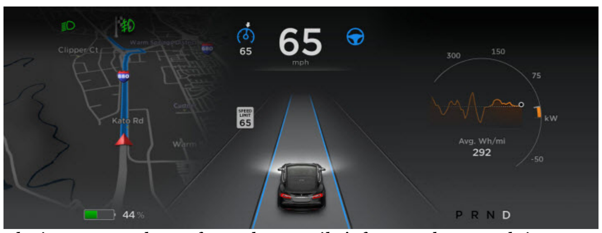
Could Tesla's Finances Be Tested By Lawsuits Over Autopilot Accidents?



The instrument cluster for Tesla Autopilot's feature shows real-time information used to determine the vehicle's behavior relative to its surroundings. Photo by Tesla Motors.

Tesla's semi-autonomous Autopilot has come under scrutiny by federal safety regulators after it was revealed that a Model S driver was killed in Florida in May while using the feature. The National Highway Traffic Safety Administration has also opened a separate investigation into whether Autopilot played a role in a non-fatal accident last week in which a Model X rolled over on a Pennsylvania turnpike, and this week yet another Autopilot-related crash was reported.

Besides potentially becoming the first real-world regulatory and legal litmus test for a self-driving fatality, the Florida accident and others could also test Tesla's exposure to liability – and its financial stability, given that the company is self-insured. "Is it a little risky for a startup like Tesla, should they have a big problem," said attorney Brian Panish of the Los Angeles law firm Panish Shea & Boyle LLP. "It could wipe out the company, if it were a recurring problem."

According to the Associated Press, the family of the Tesla owner killed in the Florida accident, 40-year-old Joshua D. Brown, has retained an attorney. Brown's family said in a statement on

July 1 that "in honor of Josh's life and passion for technological advancement" it planned to cooperate with the government and with Tesla so that "information learned from this tragedy will trigger further innovation which enhances the safety of everyone on the roadways."

While no legal action has been announced, the family's attorney, Paul Grieco, told the AP that "once the complete investigation results are published, we'll obviously evaluate all the data and the conclusions and make our decision from there."

Another controversy flared last week over whether Tesla intentionally withheld material information on the crash prior to a stock sale. This not only sparked a Twitter battle between CEO Elon Musk and the media outlet that broke the story, but has also reportedly led to an SEC investigation.

And it brought into question whether the automaker has adequate insurance coverage and resources to handle large liability claims that could result from lawsuits involving Autopilot.

While Tesla isn't likely to face financial setbacks as steep as the recent $15 billion settlement Volkswagen reached due to its self-inflicted Dieselgate scandal or even the $1.4 billion Toyota paid to settle a class action lawsuit over unintended acceleration issues, a substantial judgement could still spell trouble for a start-up like Tesla. And unlike more established car companies with deeper pockets, Tesla apparently doesn't have the insurance coverage necessary to fend off a large settlement or fine.

In an SEC filing on May 10, just three days after the fatal accident in Florida, Tesla said that the company could face product liability claims due to "failures of new technologies that we are pioneering, including autopilot in our vehicles," and that "product liability claims could harm our business … and financial condition."

Tesla also noted in the filing that it doesn't carry insurance to guard against such events. "We may be subject, in the ordinary course of business, to losses resulting from products liability … for which we may have no insurance coverage," the company stated.

Tesla added that while it has “general liability, automobile, property, workers’ compensation, and directors’ and officers’ insurance policies, as a general matter, we do not maintain as much insurance coverage as many other companies do, and in some cases, we do not maintain any at all. A loss that is uninsured or which exceeds policy limits may require us to pay substantial amounts, which could adversely affect our financial condition and operating results.”

A clause stating “our insurance strategy may not be adequate to protect us from all business risks,” is boilerplate legalese for such a filing. But Tesla also noted that if the company was sued due to an injury or death related to its Autopilot feature that resulted in a “substantial monetary award … we self-insure against the risk of product liability claims, meaning that any product liability claims will have to be paid from company funds, not by insurance.”

Tesla is self-insured, which is not unusual for larger automakers. But Tesla is not a large automaker, and even many established car companies have some form of reinsurance to limit their losses, such as when GM faced mounting legal claims over ignition switch defects in millions of its cars.

“I’m surprised [Tesla doesn't] have reinsurance at $100, $200 or $500 million,” Panish said. “As a start-up you have to cut expenses. Prudent business practice is you do a cost/benefits analysis,” he added. “But one product can wipe out a company. So you want to insure against that.”

According to Bryant Walker Smith, an assistant professor of law and engineering at the University of South Carolina and an expert on the legal implications of self-driving cars, “for Tesla to be found liable, the victim or their family would need to decide to sue, Tesla would need to refuse to settle, and the case would need to proceed all the way to a verdict,” Smith said.

“This is possible but unlikely,” he added. “However, depending on the specific facts and the specific law of the particular state, Tesla could be potentially liable for the performance of its Autopilot system, the performance of its other active safety systems, the information it provided to the driver, and the discretion it gave to that driver. Tesla might also face a claim that it misrepresented the capabilities of its system."

Smith noted that Tesla's approach to self-driving could also put it at more risk. "[Tesla] has differed in at least three ways from that of other automakers: It more aggressively deployed similar underlying technologies, it has apparently continued to refine its deployment through over-the-air updates and at least initially its system imposed fewer checks on the driver than do some others," he said. "A system that does a lot tends to inspire more confidence than a system that does less – regardless of whether this confidence is ultimately justified. This can increase the danger of abuse, misuse, or mere complacency by the operator."

The relatively small number of Tesla vehicles on the road could benefit the company, since class action lawsuits are usually comprised of a larger pool of vehicle owners. And the short time that Autopilot has been deployed could also limit Tesla's exposure to liability.

"There hasn't been a lot of history with this type of automotive defect," Panish said. "Keep in mind that defects don't usually show up until cars have a lot of driving hours; with Takata airbags and Toyota's unintended acceleration issue, it didn't appear until the vehicles had been on the road for a period of time."

Panish added that while "one case could cost up to $10 million," Tesla has enough cash on hand and short-term investments, [$1.4 billion as on March 31] of this year, to handle a small number of settlements. Tesla did not respond to a request for comment.

But "multiple similar claims could be a problem," Panish said. "And with the Tesla Autopilot issue, we don't know the extent of the problem. If we start seeing more issues, that could not bode well for Tesla."

Fatal Crash Of Tesla Model S Puts Spotlight On Limitations Of Autopilot

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