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Tesla Ruling Leaves Self-Driving Liability Questions Open

By **Matthew Berkowitz and Brian O'Shea** (November 12, 2020, 5:48 PM EST)

For years, experts have predicted that our streets will soon be filled with self-driving or autonomous vehicles. Rather than sitting behind the wheel and contending with traffic and pedestrians, we will all be able to ride in comfort in our vehicles while watching television or surfing the internet — as the vehicle safely drives itself.

But the actual impact of self-driving vehicles remains to be seen. While vehicle manufacturers, software companies, and federal and state governments are already grappling with the emergence of partially automated automobile technology, it may be several years before we know the effects of fully self-driving vehicles.

The self-driving vehicle revolution will not come without consequence. Self-driving technology is likely to lead to increased litigation — including class actions — over accidents allegedly caused by self-driving vehicles. As self-driving technology becomes more prevalent, it is only a matter of time before manufacturers and others involved in the self-driving industry face a spike in litigation.

There is little precedent for how best to litigate a case involving a self-driving vehicle. Even the most rudimentary question is an open issue: Who, if anyone, is even liable for an accident caused by a self-driving vehicle? The driver? The manufacturer? What about the developer of software for the vehicle? Just recently, one court faced this exact question.



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The Plaintiffs' Claims

In *Umeda et al. v. Tesla Inc.*, a first-of-its-kind case, plaintiffs Tomomi Umeda and Miyu Umeda sued Tesla Inc. in the U.S. District Court for the Northern District of California.[1] They alleged that on April 29, 2018, Yoshihiru Umeda, who was riding his motorcycle outside of Tokyo, Japan, with his motorcycle group, was struck and killed by a Tesla Model X while he was stopped on the side of a roadway.

The driver was asleep behind the wheel at the time of the accident. The plaintiffs claimed that Tesla was solely liable, because the driver had his vehicle's Autopilot driver-assist system engaged at the time of the accident.

The plaintiffs alleged the accident highlighted fatal defects in Tesla's Autopilot technology. Specifically, the system allegedly failed to recognize Umeda's motorcycle group gathered on the side of the roadway; it failed to recognize that its driver was asleep, and that the vehicle was driving straight toward the group; and it failed to engage the vehicle's automatic braking system to stop the accident.

The plaintiffs sued Tesla for strict products liability, negligence, wrongful death and loss of consortium for Umeda's death. Tesla, in response, moved to dismiss on forum non conveniens grounds. Tesla

argued that the plaintiffs should have filed suit in Japan, and that Japan was the more convenient forum, because the accident happened in Japan, the plaintiffs are Japanese citizens, and the evidence and witnesses were in Japan.

On Sept. 24, the court granted Tesla's motion to dismiss, and agreed that Japan was the more convenient forum. Umeda, therefore, did not reach the critical question of whether Tesla was liable for this accident.

Legacy of Umeda and Potential Defenses to a Class Action Suit Like Umeda

Despite the court's ruling, Umeda should be a shot across the bow for the self-driving vehicle industry. It is likely that there will be future similar cases, including class actions, where plaintiffs seek to hold manufacturers of self-driving vehicles liable for accidents. Manufacturers and other related industry companies should be preparing and evaluating their defenses, arguments and strategies to defend against these likely forthcoming lawsuits.

Motion to Dismiss

Initially, if a pleading is legally or factually deficient, defendants may elect to file motions to dismiss. While forum non conveniens will not be available in every case, like it was in Umeda, it is generally accepted that a driver is responsible for safely operating his vehicle.

It is not clear, however, how this applies in a case involving a self-driving vehicle. This was the exact issue the Umeda plaintiffs sought to litigate: Who is liable when the vehicle is not under the driver's direct control? Is a manufacturer liable for an accident involving its self-driving vehicle, despite the fact that the driver was asleep behind the wheel?

Because the court dismissed Umeda before considering liability, this is a question that will need to be answered by future cases. To the extent that a court concludes that a driver remains ultimately responsible, manufacturers and other industry defendants may use such precedent to seek dismissal at an early stage of litigation.

Defenses to Class Certification

As noted above, the likelihood of class action suits will increase as self-driving vehicles become more common. In defending against class certification, defendants may be able to successfully raise the commonality argument — asserting that the claims by class members are not common — and the predominancy argument — asserting that individual questions predominate over common ones.

For example, in a class action case alleging a defect with respect to a vehicle's autonomous driving features, defendants may argue that the putative class should not be certified because the court will potentially have to analyze each individual vehicle involved to see if it had the same defect. Also, the court will need to consider each individual driver's actions leading up to their accidents.

Moreover, courts may need to evaluate the extent to which each driver relied upon the vehicle's autonomous driving features, and what each driver was doing while the autonomous driving system was engaged, which is fact-intensive and arguably inappropriate in a class action lawsuit.

Furthermore, defendants may argue that the court should deny class certification because the court must conduct individual inquiries on damages — because the damages sustained by each class plaintiff may be different. Arguably, plaintiffs like those in Umeda, where there was a fatality involved, should not be in the same class as someone who sustained less serious injuries, even if their injuries were caused by the same vehicle. These potential class action defenses are issues that courts will potentially need to grapple with in the near future.

Additional Potential Defenses

In addition to the arguments discussed above, there are innumerable other potential defenses that may be raised in response to future cases like Umeda, including causation. While Tesla did not raise the issue in its motion to dismiss, defendants in future cases may argue that a driver's failure to remain alert behind the wheel proximately caused their accident, and not the vehicle's autonomous

driving system. In other words, despite a vehicle being in self-driving mode, a court or a jury could conclude that had its driver been awake and alert, she could have taken control of the vehicle to prevent the accident.

Conclusion

The landscape for litigation over self-driving vehicles is evolving. The most effective strategies and arguments for litigating these cases remains uncertain, as old law will be applied to new technology. But one thing is certain: As self-driving vehicles become more ubiquitous and less cost-prohibitive, there will be more cases like Umeda.

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[1] [Umeda et al. v. Tesla Inc.](#) , Case No. 5:20-cv-2926-SVK.

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