

## **Attorney Q&A: Legal potholes could slow adoption of self-driving car**

Attorney Gail Ritzert of Rosenfeld Ritzert & Varriale, LLP is one of the foremost experts on product and liability issues. Recently, Ritzert participated in an interview where she discussed the legal aspects surrounding the revelation of the self-driving car.

In the Q&A below, Ritzert details potential ticketing, lawsuits and civil and criminal liability issues while making predictions as to whether or not changes in litigation will arise as software companies enter the legal mix in the auto-manufacturing world. Ritzert also discusses what it means to require human backup drivers and determines who is responsible when a backup driver is distracted and/or legally intoxicated.

**Q. Who gets ticketed if a self-driving car fails to abide by the rules of the road for any reason? Who gets sued if a car hits and hurts/kills someone? Would the owner of the car be responsible, even if he or she wasn't driving? Or would the software maker be liable?**

**A.** The answers to the questions can only be based on the current status of the law as it exists. As the technology moves forward, and self-driven vehicles become available for purchase, the laws will change, but at a much slower pace than technology. Under the current state of the law, in New York for example, a self-driven vehicle would fall within the province of New York's Vehicle and Traffic Laws as it would fit the definition of a motor vehicle (NY VTL section 125). Under New York VTL section 388, an owner of a motor vehicle is liable and responsible "for death or injuries to person or property resulting from negligence in the use or operation of such vehicle, in the business of such owner or otherwise, by any person using or operating the same with the permission, express or implied, of such owner." Liability under this statute is imposed regardless of whether the owner is driving the vehicle or not. (Note I'm not addressing the issues involved in leased or rented vehicles.)

If the accident or incident was the result of a software issue, a product liability claim would certainly be asserted against the software company.

Given the present state of the self-drive technology, the requirement that the person "operating" the motor vehicle do so in a safe manner and within the law will not change. Nor will the imposition or liability or responsibility under civil and criminal law.

**Q. If only a handful of companies are making the software than drives most cars on the road, can these companies be expected to encounter litigation every single time an accident occurs on a public roadway? Will there be new laws that cap claims that accident victims can make? Or will businesses likely stay away from developing this kind of technology on a large scale purely out of fear of massive litigation?**

**A.** One can never predict litigation trends with complete accuracy or certainty. However, it is unlikely that the use of self-drive technology will increase the number of suits against auto-manufacturers; it will just add the software developers to the mix. So long as the vehicle and traffic laws impose liability and responsibility on the owner of the vehicle, injured third-persons will not generally look for additional tortfeasors, unless the circumstances are egregious or available insurance is insufficient to cover the loss. The product/software suits are more likely to be driven by the operator/driver who may assert that product/software malfunctioned, causing the accident.

The issue and viability of tort/product liability reform and caps on damages will continue to be hotly contested topics. While the limitation of potential liability and damages may shorten the time between development and sale of a product, the fear of lawsuits will not inhibit creativity or the efforts to make a safer car. In fact, there have been suggestions and discussions in which the development of safer cars has attributed to the reduction in automobile personal injury lawsuits. If the federal government passes legislation or regulations on the development of these vehicles, pre-emption may play a role in future litigation. To see how federal pre-emption may be applied, you may want to follow how the US Supreme Court responds to the arguments *Bruesewitz v. Wyeth* case.

**Q. Is it likely that a human “driver” will be required to sit behind the wheel at all times, even though he or she isn't really driving, just in case the software fails? How realistic is it that the “driver” would actually be paying enough attention to do any good if something went wrong? Or would most of them probably just kick back and read, watch TV or nap?**

**A.** Given the present state of technology and laws, a person will be held responsible for the operation of the vehicle, and held liable if they are not paying attention and an accident occurs. The reality is driver's now, who presently control the operation of their motor vehicles, spend time talking on cell phones, texting, reading a book, shaving, putting on makeup, etc. Without historical data on how these cars will function, or how the technology will respond under adverse conditions, at this point in time, it seems logical that the law will continue to require that a person remain responsible for the operation of the self-driven vehicle.

**Q. Same goes with DUI laws – if automatic cars required human backup drivers, it's likely that the driver would have to be sober. But would anyone really obey that, especially if they had a few?**

**A.** As noted above, because problems may occur requiring a driver to override the self-drive function, DUI laws will remain in place. Rather than thinking that there will always be people who will drive under the influence, what's not to say that the cars and technology will be developed to detect whether the operator is under the influence and not allow that person to assume responsibility for the operation of the vehicle.