

**JESUS, TAKE THE WHEEL: LIABILITY AND INSURANCE  
IMPLICATIONS IN MICHIGAN’S PENDING WORLD OF  
AUTONOMOUS VEHICLES**

MICHAEL P. CARTY<sup>†</sup>

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I. INTRODUCTION

Long before the first automobile, the American legal system was already in the midst of building a system of liability apportionment.<sup>1</sup> Indeed, the tort system for compensating civil wrongs was formed in the late nineteenth century in America.<sup>2</sup> Initially, the development of the automobile provided but another hurdle for the tort system to traverse.<sup>3</sup> However, the liability system quickly proved to contain numerous pitfalls,

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<sup>†</sup> B.A., 2018, University of Michigan; J.D. Candidate, 2021, Wayne State University Law School.

1. G. Edward White, *The Intellectual Origins of Torts in America*, 86 YALE L.J. 671 (1977) (stating that the first treatise on tort law in America was published in 1859).

2. *Id.*

3. Claudia Maria Darmofal, *The Dismantling of Michigan’s No-Fault Auto Insurance Law by House Bill 4156: The Permanent Scaling Back of Auto Insurance Coverage in Michigan for the Promise of a Temporary Rate Reduction*, 71 U. DET. MERCY L. REV. 597, 601 (1994) (describing the shortcomings of the tort system and liability insurance for automobiles in Michigan before no-fault insurance was implemented).

making it inadequate to properly compensate victims in automobile accidents.<sup>4</sup>

Michigan was one of the first states to seriously consider a sweeping change to the framework for victim compensation in automobile accidents.<sup>5</sup> On October 31, 1972, Michigan enacted Public Act 294, now known as the No-Fault Act.<sup>6</sup> Since its inception, the no-fault insurance system has widely received both praise and criticism.<sup>7</sup> The most significant criticism of the no-fault system pertains to its expensive cost.<sup>8</sup> The statistics support the criticism. Michigan's average annual auto insurance costs between 2017 and 2019 were more expensive than any other state in the country and an astonishing \$1,777 more than the national average.<sup>9</sup> While the costs in Michigan are substantial, the extensive coverage offered by no-fault policies ensures that economic damages sustained in car accidents are easily recoverable without establishing liability or apportioning fault.<sup>10</sup>

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4. *Id.*

5. James T. Mellon & David A. Kowalski, *The Foundations and Enactment of Michigan Automobile No-Fault Insurance*, 87 U. DET. MERCY L. REV. 653, 671 (2010). Massachusetts was the first state to enact a no-fault insurance law in 1971. *See id.*

6. *Id.* at 679. The law became effective on October 1, 1973. *Id.*

7. *See, e.g.*, Craig Casazza, *Is It Time to Do Away with No-Fault Laws?*, FORBES (July 7, 2017), <https://www.forbes.com/sites/ccasazza/2017/07/07/is-it-time-to-do-away-with-no-fault-laws/#de3ad83bb665> [<http://web.archive.org/web/20200406031602/https://www.forbes.com/sites/ccasazza/2017/07/07/is-it-time-to-do-away-with-no-fault-laws/>] (explaining both the advantages and disadvantages often raised by supporters and critics of no-fault insurance, respectively, and arguing for an adjustment to no-fault that does not completely throw away the system).

8. Gary T. Schwartz, *Auto No-Fault and First-Party Insurance: Advantages and Problems*, 73 S. CAL. L. REV. 611, 618 (2000). Schwartz noted that:

A hybrid no-fault plan obviously adds to the costs otherwise entailed by a tort system by providing substantial compensation for economic losses to many victims who would be unable to recover for those losses in a modern tort system. However, given the extent to which hybrid no-fault eliminates the negligence issue, it significantly reduces the cost of processing claims.

*Id.*

9. Liz Knueven, *The Average Cost of Car Insurance in the US, from Coast to Coast*, BUS. INSIDER (Dec. 3, 2019), <https://www.businessinsider.com/average-cost-of-car-insurance> [<http://web.archive.org/web/20200406031850/https://www.businessinsider.com/personal-finance/average-cost-of-car-insurance>]. The average annual cost of auto insurance in Michigan between 2017 and 2019 was \$3,343, and the national average over the same period was \$1,566. *Id.*

10. *Id.* (“In Michigan, car insurance is expensive because of a no-fault law requiring unlimited coverage for personal injury protection. Regulations like these will be big factors in the amount [you will] pay for coverage.”). *But see* Steven M. Gursten, *New Michigan No-Fault Law Passes: What You Need to Know*, MICH. AUTO L. (May 24, 2019), <https://www.michiganautolaw.com/blog/2019/05/24/new-michigan-no-fault-law/> [<http://web.archive.org/web/20200406032037/https://www.michiganautolaw.com/blog/2>

At the end of the day, insurance is simply a contract between two parties by which one assumes the risk of loss of the other.<sup>11</sup> As with all forms of insurance, no-fault car insurance offers a tradeoff.<sup>12</sup> In the case of car insurance, more extensive coverage comes at the cost of lofty individual premiums but provides for comfort and ease for injured persons seeking to recover economic damages.<sup>13</sup> As with most insurance legislation, striking an efficient balance proves to be difficult.<sup>14</sup>

The development of autonomous vehicles may lower the cost of these tradeoffs in the long run, but, in the short-term, it could blur the picture even further.<sup>15</sup> Indeed, in a world filled with autonomous vehicles, there may be less of a need for insurance and expensive premiums.<sup>16</sup> In reality, a combination of traditional and driverless vehicles will occupy roads far

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019/05/24/new-michigan-no-fault-law/] (explaining a new no-fault law passed in which consumers can choose from several policies with limited coverage caps).

11. See *Insurance*, BLACK'S LAW DICTIONARY (11th ed. 2019). Insurance is defined as:

A contract by which one party (the insurer) undertakes to indemnify another party (the insured) against risk of loss, damage, or liability arising from the occurrence of some specified contingency. An insured party [usually] pays a premium to the insurer in exchange for the insurer's assumption of the insured's risk.

*Id.*

12. See Schwartz, *supra* note 8, at 622 (describing that “[t]he primary arguments on behalf of auto no-fault stress that a no-fault plan is far more effective than the tort system in compensating the victims of auto accidents, and that such a plan sharply reduces the excessive administrative costs associated with that system,” but also that it, in turn, leads to higher premiums for vehicle owners).

13. *Id.*

14. See, e.g., Clifford M. Clifford et al., *Confronting the Trade-Offs in Health Reform: What We Learned from the ACA*, HEALTH AFF. (June 7, 2017), <https://www.healthaffairs.org/doi/10.1377/hblog20170607.060430/full/> [<http://web.archive.org/web/20200406032639/https://www.healthaffairs.org/doi/10.1377/hblog20170607.060430/full/>] (outlining some of the rebalancing of tradeoffs in health care legislation between the Obama and Trump administrations).

15. See JAMES M. ANDERSON ET AL., AUTONOMOUS VEHICLE TECHNOLOGY: A GUIDE FOR POLICYMAKERS 9 (2016), [https://www.rand.org/content/dam/rand/pubs/research\\_reports/RR400/RR443-2/RAND\\_RR443-2.pdf](https://www.rand.org/content/dam/rand/pubs/research_reports/RR400/RR443-2/RAND_RR443-2.pdf) [[http://web.archive.org/web/20200406032823/https://www.rand.org/content/dam/rand/pubs/research\\_reports/RR400/RR443-2/RAND\\_RR443-2.pdf](http://web.archive.org/web/20200406032823/https://www.rand.org/content/dam/rand/pubs/research_reports/RR400/RR443-2/RAND_RR443-2.pdf)] (“[W]e find that AV technology has the potential to substantially reduce many of the existing negative externalities of personal automobile use and create some additional benefits in increased mobility and improving land use. While there are some important disadvantages, we find these are generally outweighed by the advantages.”).

16. *Id.* at 16 (“AV technology will likely lead to substantial reductions in crashes and the resulting human toll. While a portion of these benefits will accrue to the purchaser of the vehicle, much of the benefit is in the form of a positive externality to other vehicles, pedestrians, and bicyclists.”).

sooner.<sup>17</sup> This Note argues that before autonomous vehicles debut on the public market, the Michigan Legislature should address their potential problems and build a legal framework for insurance and liability in the era of self-driving cars.<sup>18</sup>

Part II provides an outline of the current liability and no-fault insurance structure for automobile ownership in the State of Michigan.<sup>19</sup> Part III analyzes the potential options for a liability and insurance structure with the implementation of autonomous vehicles, splitting the options into continuing the current no-fault system or choosing a different, liability-based framework.<sup>20</sup> Lastly, Part IV recommends adjusting the current Michigan no-fault framework to place greater responsibility on autonomous vehicle manufacturers and fleet companies.<sup>21</sup>

## II. BACKGROUND

### *A. Automotive History in Michigan and Existing Vehicle Legislation*

The revolution of the automobile brought with it an array of problems that the world had yet to consider. The first gasoline-fueled automobile in Michigan graced the streets in 1896,<sup>22</sup> and Ford introduced the famous Model T in 1908.<sup>23</sup> As early as 1908, automotive accidents in Detroit had become a notable issue, with car crashes killing thirty-one people in two months.<sup>24</sup> By 1917, the number of cars on the roads of the city had surpassed 65,000, resulting in 7,171 accidents and causing 168 fatalities.

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17. Tyler Duvall et al., *A New Look at Autonomous-Vehicle Infrastructure*, MCKINSEY & Co. (May 22, 2019), <https://www.mckinsey.com/industries/capital-projects-and-infrastructure/our-insights/a-new-look-at-autonomous-vehicle-infrastructure> [http://web.archive.org/web/20200406032933/https://www.mckinsey.com/industries/capital-projects-and-infrastructure/our-insights/a-new-look-at-autonomous-vehicle-infrastructure] (explaining potential infrastructure that could benefit a society with a mix of autonomous and traditional vehicles).

18. *See infra* Part III.

19. *See infra* Part II.

20. *See infra* Part III.

21. *See infra* Part IV.

22. Bill Loomis, *1900-1930: The Years of Driving Dangerously*, DET. NEWS (Apr. 26, 2015), <https://www.detroitnews.com/story/news/local/michigan-history/2015/04/26/auto-traffic-history-detroit/26312107/> [http://web.archive.org/web/20200406033109/https://www.detroitnews.com/story/news/local/michigan-history/2015/04/26/auto-traffic-history-detroit/26312107/].

23. *Ford Motor Company*, ENCYCLOPEDIA BRITANNICA, <https://www.britannica.com/topic/Ford-Motor-Company> [http://web.archive.org/web/2020040603327/https://www.britannica.com/topic/Ford-Motor-Company] (last updated Mar. 2, 2021).

24. *See* Loomis, *supra* note 22.

The vast majority of victims were pedestrians.<sup>25</sup> Detroit was ahead of the curve nationally in reacting these problems.<sup>26</sup> The city was the first to implement numerous safety measures, such as stop signs and traffic signals, into its infrastructure.<sup>27</sup> Though they were progressive relative to the rest of the country, the actions taken by Detroit in response to the revolutionary technology were still in a reactive, rather than proactive, manner.<sup>28</sup>

Over a century later, Detroit is still one of the leaders in the manufacturing and development of automobiles.<sup>29</sup> As both vehicles and society have changed through the years, so too has regulation and legislation. Throughout the history of the automobile, there have been significant advances in technology. Though standard and, perhaps, required in all cars today, revelations from power steering and seatbelts to cruise control and blind-spot detectors were all revolutionary at the time of their developments.<sup>30</sup> What has remained consistent from the start, however, is the basic premise of *driving* the automobile. Every automobile to hit the streets, regardless of the revolutionary bells and whistles of the time, has required a human driver to operate the vehicle.<sup>31</sup>

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25. *Id.*

26. *Id.*

27. *Id.* Detroit was also the first city to implement street markings and one-way roads, and it was one of the first cities to dedicate a police squad to traffic control and set up a judicial court to oversee traffic violations. *Id.*

28. *Id.*

29. *The Auto Industry in Michigan*, DET. REGIONAL CHAMBER, <http://www.detroitchamber.com/econdev/chamber-initiatives/michauto-universal-name/the-auto-industry-in-michigan/> [<http://web.archive.org/web/20200406033545/https://www.detroitchamber.com/econdev/chamber-initiatives/michauto-universal-name/the-auto-industry-in-michigan/>] (last visited Apr. 6, 2021).

30. See, e.g., *Three-Point Seatbelt Inventor Nils Bohlin Born*, HIST., <https://www.history.com/this-day-in-history/three-point-seatbelt-inventor-nils-bohlin-born> [<http://web.archive.org/web/20200406033719/https://www.history.com/this-day-in-history/three-point-seatbelt-inventor-nils-bohlin-born>] (last updated July 28, 2019) (noting that prior to the three-point seatbelt in 1959, safety belts were most often worn only by racecar drivers, but by 1968, regulations required them in all vehicles); David Sears, *The Sightless Visionary Who Invented Cruise Control*, SMITHSONIAN MAG. (Mar. 8, 2018), <https://www.smithsonianmag.com/innovation/sightless-visionary-who-invented-cruise-control-180968418/> [<http://web.archive.org/web/20200406033845/https://www.smithsonianmag.com/innovation/sightless-visionary-who-invented-cruise-control-180968418/>] (“In 1958, Chrysler was first to offer [cruise control] as a luxury model option. A year later, its popularity influenced Chrysler to offer [cruise control] on all car models.”).

31. See ANDERSON ET AL., *supra* note 15, at 14 (noting that modern airbags were implemented in 1984, antilock brake systems (ABS) in 1985, and forward collision warnings later on in 2000); see also *Evolution of the Automobile*, IDRIVE SAFELY, <https://www.idrivesafely.com/defensive-driving/trending/evolution-automobile> [<http://web.archive.org/web/20200406035140/https://www.idrivesafely.com/defensive-driving/>]

The latest research and development in the automotive space threatens to change that.<sup>32</sup> With autonomous vehicles on the cusp of commercial viability, human drivers may someday be an antiquated concept.<sup>33</sup> While research indicates roadways containing only autonomous vehicles would reduce accidents, the presence of both human-driven and autonomous vehicles on the road could produce liability issues that legislatures have not considered.<sup>34</sup> Before continuing the conversation on autonomous vehicles, it is important first to have a firm understanding of automotive legislation and liability issues as they currently stand.

### *1. Current Landscape of Liability and No-Fault Insurance*

Prior to the 1970s, individuals involved in automobile accidents looking for civil recourse against another driver had no choice but to turn to the common law of negligence.<sup>35</sup> Like any negligence claim, a victim in an automobile accident must prove four elements: (1) the defendant owed a duty to the plaintiff; (2) the defendant breached that duty; (3) the breach of the duty led to the plaintiff's harm; and (4) the defendant's breach of duty was the proximate cause of the harm.<sup>36</sup>

The traditional tort theory of liability presented a few obstacles in the context of automobile accidents.<sup>37</sup> First, seriously injured plaintiffs had to go through the process of starting and completing a civil action before they

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trending/evolution-automobile] (last updated Apr. 16, 2020) (stating that the first turn signals were added to a car in 1939, power steering in 1951, and cruise control in 1957).

32. See *Ford Targets Fully Autonomous Vehicle for Ride Sharing in 2021; Invests in New Tech Companies, Doubles Silicon Valley Team*, FORD (Aug. 16, 2016), <https://media.ford.com/content/fordmedia/fna/us/en/news/2016/08/16/ford-targets-fully-autonomous-vehicle-for-ride-sharing-in-2021.html> [<http://web.archive.org/web/20200406035641/https://media.ford.com/content/fordmedia/fna/us/en/news/2016/08/16/ford-targets-fully-autonomous-vehicle-for-ride-sharing-in-2021.html>].

33. See, e.g., *id.* (stating that Ford proclaims that it will have fully autonomous vehicles requiring no driver in commercial operation by 2021).

34. *Automated Vehicles for Safety*, NAT'L HIGHWAY TRAFFIC SAFETY ADMIN. (NHTSA), <https://www.nhtsa.gov/technology-innovation/automated-vehicles-safety#topic-road-self-driving> [<http://web.archive.org/web/20200406035852/https://www.nhtsa.gov/technology-innovation/automated-vehicles-safety>] [hereinafter *Automated Vehicles for Safety*] (last visited Apr. 15, 2021). NHTSA reported that there were 37,133 people killed in motor vehicle crashes in the United States in 2017 and that ninety-four percent of all serious accidents were due to human error. *Id.*

35. See Mellon & Kowalski, *supra* note 5, at 654 (stating that on October 1, 1973, Michigan's No-Fault Act became effective).

36. *Id.*

37. See Shaun Springer, Note, *United States Fidelity Insurance & Guaranty Co. v. Michigan Catastrophic Claims Association: Oh Ye State Legislature, Hear the Cries of Michigan Motorists; The State Supreme Court Adds to the List of No-Fault Areas in Need of Reform!*, 87 U. DET. MERCY L. REV. 731, 733–34 (2010).

could receive any sort of compensation for medical bills or otherwise.<sup>38</sup> Additionally, the plaintiffs that were most severely injured and accrued exorbitant medical bills often received fractions of their damage amounts due to the inability of defendants to pay and the low thresholds of liability insurance.<sup>39</sup> In this way, traditional tort liability often resulted in overcompensation for minor injuries and under compensation for major ones. Lastly, like all claims, lawsuits cost time, money, and resources.<sup>40</sup> This created a system that inherently discriminated against uneducated and indigent plaintiffs.<sup>41</sup>

A particularly onerous barrier to recovery under this theory of liability was the concept of contributory negligence,<sup>42</sup> which, in its purest form, served as a complete bar to recovery if the plaintiff had committed any negligence, no matter how trivial.<sup>43</sup> Thus, in the case of an automobile accident, the Michigan Supreme Court explained, “[W]hen two cars collide on a bright clear day at the intersection of thoroughfares of equal importance, both drivers are to blame,” and the plaintiff could not recover.<sup>44</sup> This rigid and unforgiving system was in need of a change.<sup>45</sup>

In 1973, Michigan became one of the first states to enact a compulsory no-fault automobile insurance law.<sup>46</sup> Indeed, Michigan law requires the “owner or registrant of a motor vehicle” registered in the State of Michigan to maintain an insurance policy that provides for both personal protection insurance and property protection insurance.<sup>47</sup> Additionally, an owner or registrant operating a vehicle without such a policy can be charged with a

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38. *Id.*

39. *Id.* (explaining also that the minimum third-party liability insurance coverage required by statute was merely \$20,000).

40. *Id.*

41. See generally ROBERT E. LOGEMAN, MICHIGAN NO-FAULT AUTOMOBILE CASES: LAW AND PRACTICE (3d ed. 2011).

42. *Id.*

43. See *Contributory Negligence*, LEGAL INFO. INST., [https://www.law.cornell.edu/wex/contributory\\_negligence](https://www.law.cornell.edu/wex/contributory_negligence) [[http://web.archive.org/web/20200406040102/https://www.law.cornell.edu/wex/contributory\\_negligence](http://web.archive.org/web/20200406040102/https://www.law.cornell.edu/wex/contributory_negligence)] (last visited Mar. 2, 2020) (defining “contributory negligence”).

44. See Mellon & Kowalski, *supra* note 5, at 654 (quoting *Stuck v. Tice*, 291 Mich. 486, 489, 289 N.W. 225, 226 (1939)).

45. *Id.*

46. See generally George T. Sinas, *Case Management and the Michigan No-Fault Law: A Look at the Legal Issues*, 79 MICH. B.J. 1348 (2000); see also *Background on: No-Fault Auto Insurance*, INS. INFO. INST. (Nov. 6, 2018), <https://www.iii.org/article/background-on-no-fault-auto-insurance> [<http://web.archive.org/web/20200406040327/https://www.iii.org/article/background-on-no-fault-auto-insurance>]. Michigan’s implementation of no-fault trailed only Massachusetts (Jan. 1, 1971), and Florida (Jan. 1, 1972) and New Jersey (Jan. 1, 1973) followed closely behind Michigan. *Id.*

47. See MICH. COMP. LAWS § 500.3101 (2019).

misdeemeanor, resulting in potential license suspension, fines, or imprisonment.<sup>48</sup> At its most basic level, no-fault insurance is a system in which a party injured in an automobile accident can recover some or all compensation from their own insurance company rather than having to wait for fault to be determined.<sup>49</sup> Theoretically, this provides for a simple and swift avenue of recovery for individuals injured in car accidents; however, as we will see, that is not always the case.<sup>50</sup>

The basic no-fault policy in Michigan has three parts: (1) Personal Injury Protection (PIP); (2) Property Protection Insurance (PPI); and (3) Residual Liability Insurance (RLI).<sup>51</sup> PIP protects consumers who are involved in an automobile accident by paying all reasonable medical expenses incurred and up to eighty-five percent of lost wages resulting from the injury for up to three years.<sup>52</sup> Historically, Michigan consumers had no choice but to carry a policy that contained no cap to recovery of medical expenses, which understandably caused insurance premiums to soar past those in alternative insurance systems.<sup>53</sup> In 2019, however, Michigan Governor Gretchen Whitmer signed into law a change that allows consumers to select from policies that do have limits to PIP coverage.<sup>54</sup> Starting in July 2020, all automobile owners now have the choice of policies with PIP coverage limits of \$50,000;<sup>55</sup> \$250,000; \$500,000; or the current “no limit.”<sup>56</sup> The new legislation sought to lower insurance premiums for vehicle owners by providing some flexibility in the selection of a policy.<sup>57</sup>

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48. WILLIAM J. SCHERMER & IRVIN E. SCHERMER, *AUTOMOTIVE LIABILITY INSURANCE*, § 87:2 (4th ed. 2019).

49. See Jeffrey F. Ghent, Annotation, *Validity and Construction of “No-Fault” Automobile Insurance Plans*, 42 A.L.R.3d 229 (1972).

50. Since its conception, the idea of no-fault insurance has sparked debate. See Schwartz, *supra* note 8, at 613.

51. MICH. DEP’T INS. & FIN. SERVS., PUB. NO. 0202, *MICHIGAN’S AUTO INSURANCE LAW HAS CHANGED* (2019), [https://www.michigan.gov/documents/cis\\_ofis\\_ip202\\_25083\\_7.pdf](https://www.michigan.gov/documents/cis_ofis_ip202_25083_7.pdf) [[http://web.archive.org/web/20200406040719/https://www.michigan.gov/documents/cis\\_ofis\\_ip202\\_25083\\_7.pdf](http://web.archive.org/web/20200406040719/https://www.michigan.gov/documents/cis_ofis_ip202_25083_7.pdf)] [hereinafter *MICHIGAN’S AUTO INSURANCE LAW HAS CHANGED*].

52. *Id.*

53. See CITIZENS RSCH. COUNCIL OF MICH., *MED. COSTS OF NO-FAULT INS.*, REPORT NO. 385 (2013), [https://crcmich.org/wp-content/uploads/medical\\_cost\\_no-fault\\_automobile\\_insurance-2013.pdf](https://crcmich.org/wp-content/uploads/medical_cost_no-fault_automobile_insurance-2013.pdf) [[http://web.archive.org/web/20200406040841/https://crcmich.org/wp-content/uploads/medical\\_cost\\_no-fault\\_automobile\\_insurance-2013.pdf](http://web.archive.org/web/20200406040841/https://crcmich.org/wp-content/uploads/medical_cost_no-fault_automobile_insurance-2013.pdf)].

54. See Gursten, *supra* note 10.

55. The \$50,000-cap policy is available only to those who are enrolled in Medicaid. See *id.*

56. See *id.*

57. *Id.*

PPI provides coverage for damage that a vehicle owner's car does to another's property within the state, such as a building, fence, or parked car.<sup>58</sup> Michigan's compulsory no-fault policy will pay up to one million dollars in damage that falls within PPI.<sup>59</sup> PPI does not cover damage done to any non-parked vehicles involved in an accident, however.<sup>60</sup> Rather, in order to get coverage to protect against damage to vehicles in a collision, policy holders must maintain collision coverage.<sup>61</sup> While collision coverage is not compulsory, those who do not carry it will foot the bill for repairs to their vehicle resulting from an accident.<sup>62</sup>

Lastly, RLI protects policy holders involved in a car accident from suit except in limited circumstances.<sup>63</sup> Generally, these exceptions apply only to situations in which a driver causes accidents resulting in death or serious bodily harm to the victim,<sup>64</sup> accidents involving a driver from another state, accidents occurring in another state, and for claims up to \$1,000 in vehicle damage that is not covered by insurance for which the driver is at least fifty percent at fault.<sup>65</sup> From a policy standpoint, the no-fault insurance structure in Michigan seeks to provide a mandatory alternative to tort liability in the case of automobile accidents that will provide more efficient avenues for recovery to injured parties.<sup>66</sup>

## 2. No-Fault Insurance – In Practice

Now that the basic premise and requirements of no-fault insurance in Michigan have been set out, it is important to turn to their coverage and application. No-fault insurance claims are one of the most frequently litigated areas of the law in Michigan.<sup>67</sup> The world would be far too simple

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58. See MICHIGAN'S AUTO INSURANCE LAW HAS CHANGED, *supra* note 51.

59. *Id.*

60. *Id.* See also *Shavers v. Kelley*, 402 Mich. 554, 267 N.W.2d 72 (1978) (explaining that owners of tangible property or properly parked vehicles damaged in a crash can collect from the insurer of the vehicle inflicting damage but that a moving vehicle involved in a crash must collect from their own insurer); *Pioneer State Mut. Ins. Co. v. Allstate Ins. Co.*, 417 Mich. 590, 597, 339 N.W.2d 470, 473 (1983) (explaining that certain vehicles can be excluded as property covered by PPI based on location of their use). In this case, a plaintiff owning a farm tractor involved in an accident while being operated on a highway was not able to recover under the PPI of the motorists insurer. *Id.*

61. See MICHIGAN'S AUTO INSURANCE LAW HAS CHANGED, *supra* note 51.

62. *Id.*

63. *Id.*

64. 2 MICH. CIV. PRAC. FMS. § 25:2 (2019) (defining "serious impairment of body function" as "an objectively manifested impairment of an important body function that affects the person's general ability to lead his or her normal life").

65. See MICHIGAN'S AUTO INSURANCE LAW HAS CHANGED, *supra* note 51.

66. See generally *Mellon & Kowalski*, *supra* note 5.

67. See *LOGEMAN*, *supra* note 41.

if every accident involved one driver at fault, one victim, and two vehicles.<sup>68</sup> In reality, there are far more variables involved.<sup>69</sup> For example, not all victims in auto accidents are policyholders.<sup>70</sup> What if someone involved in an automobile accident does not have coverage? The scope of no-fault insurance policies is of the utmost importance.<sup>71</sup>

Michigan's no-fault insurance statute requires that the "owner or registrant" of a vehicle must carry a no-fault insurance policy.<sup>72</sup> The statute provides four definitions of an "owner": (1) a person renting or having use of a motor vehicle for more than thirty days through a lease or otherwise; (2) a person renting or having use of a motorcycle for more than thirty days under a lease; (3) a person that holds legal title to a vehicle (other than someone in the business of leasing vehicles); and (4) a person with the "immediate right of possession" to a vehicle under an installment contract.<sup>73</sup> Moreover, a "registrant" does not include an individual who is in the business of leasing motor vehicles to lessees under a lease providing for use for more than thirty days.<sup>74</sup> Motorcycle owners, however, need not carry no-fault insurance because the definition of "motor vehicle" includes only those vehicles that have more than two wheels.<sup>75</sup> The Michigan Supreme Court reaffirmed this.<sup>76</sup>

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68. See MICH. DEP'T OF STATE POLICE, 2018 YEAR END TRAFFIC CRASH STATISTICS (2018), [https://www.michigan.gov/documents/msp/2018\\_Year-End\\_for\\_Web\\_653222\\_7.pdf](https://www.michigan.gov/documents/msp/2018_Year-End_for_Web_653222_7.pdf) [[http://web.archive.org/web/20200406041117/https://www.michigan.gov/documents/msp/2018\\_Year-End\\_for\\_Web\\_653222\\_7.pdf](http://web.archive.org/web/20200406041117/https://www.michigan.gov/documents/msp/2018_Year-End_for_Web_653222_7.pdf)] (providing comprehensive statistics of automobile accidents in the State of Michigan). Some of the reports include statistical breakdowns of type of vehicle, reason for accident, distracted drivers, number of passengers, hazardous action, and much more. See *id.*

69. See *id.*

70. See *Facts + Statistics: Uninsured Motorists*, INS. INFO. INST., <https://www.iii.org/fact-statistic/facts-statistics-uninsured-motorists> [<http://web.archive.org/web/20200406041314/https://www.iii.org/fact-statistic/facts-statistics-uninsured-motorists>] (last visited Apr. 2, 2020) (stating that in 2015, 20.3% of drivers in Michigan were uninsured, compared to the national average of 13%). Given that one in five drivers in the state are uninsured, it is easy to foresee a large number of them being involved in a car accident in a given year. See *id.*

71. See generally, SCHERMER & SCHERMER, *supra* note 48.

72. See MICH. COMP. LAWS § 500.3101 (2019).

73. *Id.* § 500.3101(3)(l)(iv).

74. *Id.* § 500.3101(3)(n).

75. *Id.* § 500.3101(3)(i). In addition to motorcycles, "motor vehicle" also does not include mopeds, farm tractors not required to be registered under the Michigan vehicle code, off-road vehicles (ORVs), golf carts, power-driven mobility devices, commercial quadricycles, or electric bikes. *Id.*

76. See *Underhill v. Safeco Ins. Co.*, 407 Mich. 175, 284 N.W.2d 463, 466 (1979) (holding that, in a case where a "motorcyclist injured in collision with automobile brought suit against insurer of automobile after insurer denied claim," motorcycles are not "motor

Although the statute lays out the concept of “ownership” seemingly clearly, obscurities still arise.<sup>77</sup> For example, the Michigan Court of Appeals ruled that, in some instances, there can be multiple “owners” of the same vehicle for insurance purposes.<sup>78</sup> Indeed, in *Integral Insurance Co. v. Maersk Container Service Co. Inc.*, the court held that, in a case involving a ninety-day lease, both the owner holding title and the lessee qualified as “owners” under the statute, and, therefore, the statute required both to maintain no-fault insurance on the vehicle.<sup>79</sup> There have also been arguments between insurance providers trying to alter the structure to shift the burden of no-fault insurance coverage from *owners* to *drivers*; however, courts have repeatedly thwarted these attempts.<sup>80</sup>

In *Citizens Insurance Co. of America v. Federated Mutual Insurance Co.*, the Michigan Supreme Court held invalid a car owner’s insurance policy as violating the no-fault law because of its denial of coverage for liability arising out of the use of the insured vehicle.<sup>81</sup> The court relied on the statute’s emphasis on the owner, rather than the driver, in holding that the vehicle-owner’s insurer was liable for coverage in an automobile accident involving the permissive use of that vehicle involved in the accident.<sup>82</sup> Furthermore, the Michigan Supreme Court also held that the right to recover PIP benefits relies on whether the injury arises out of the “ownership, operation, maintenance, or use” of a vehicle, even when the vehicle in a given case does not normally require mandatory no-fault insurance.<sup>83</sup> Therefore, an insurer will still be on the hook for no-fault

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vehicles” under the no-fault statute and could recover from the insurer of the automobile involved in the accident).

77. See *infra* Section II.A.2.

78. See *Integral Ins. Co. v. Maersk Container Serv. Co.*, 206 Mich. App. 325, 520 N.W.2d 656 (1994) (“Action was brought to determine whether no-fault insurer for owner of tractor/trailer or whether insurer for lessee were liable for personal injury protection (PIP) benefits when tractor/trailer was involved in accident.”). The court held that both the owner and the lessee of the tractor may be deemed “owners” of the vehicle, but due to an exclusion clause in the insurance contract, the lessee’s insurer would be responsible for paying out PIP benefits. *Id.* at 332, 520 N.W.2d at 659–60.

79. *Id.*, 520 N.W.2d at 660.

80. See, e.g., *Citizens Ins. Co. of Am. v. Federated Mut. Ins. Co.*, 448 Mich. 225, 531 N.W.2d 138 (1995) (“Driver’s insurer brought action against car owner’s insurer to resolve dispute over whether car owner’s insurer could exclude liability coverage for permissive user.”). The court held that the “exclusion of primary residual liability coverage, unless permissive user of covered vehicle is uninsured or underinsured, is invalid” and that the insurer of the vehicle must pay benefits. *Id.*

81. *Id.* at 227, 531 N.W.2d at 139.

82. *Id.* at 235, 531 N.W.2d at 142.

83. See SCHERMER & SCHERMER, *supra* note 48 (citing *Lee v. Det. Auto. Inter-Ins. Exch.*, 412 Mich. 505, 315 N.W.2d 413 (1982)).

coverage if the covered individual suffers accidental bodily injury arising out of an accident with an uninsured or exempted vehicle.<sup>84</sup>

This begs the question of what happens when innocent third parties or passengers in a car are victims of an accident. Once again, not all victims are car owners and, therefore, may carry no auto insurance. According to the statute, the policy covering the owner of the vehicle covers both the named insured and any resident relative.<sup>85</sup> In addition, it also covers “any other person sustaining bodily injury while occupying the insured motor vehicle, or while occupying no motor vehicle at all, where the injury results from an accident involving the insured automobile.”<sup>86</sup> However, a named insured is also able to receive compensation from his own personal no-fault insurer even when a vehicle not covered under a no-fault insurance policy is the only vehicle involved in an accident.<sup>87</sup> Indeed, in *Lee v. Detroit Automobile Inter-Insurance Exchange*, the Michigan Supreme Court held that for purposes of no-fault insurance, “persons, not motor vehicles, are insured against loss.”<sup>88</sup>

Clearly, the world of automobile insurance and no-fault policies has spun a very sophisticated and everchanging web of complexities.<sup>89</sup> The

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84. See *State Farm Mut. Auto. Ins. Co. v. Wyant*, 154 Mich. App. 745, 398 N.W.2d 517 (1986) (explaining a case in which a child was seriously injured on a hayride that was being pulled by way of tractor). The injured child’s father collected benefits from his own no-fault insurer, though the injury did not arise out of use of his own motor vehicle. That insurer (plaintiff) filed suit to recover against the defendants, pursuant to what it thought were subrogation rights. The court held that the individual could recover PIP under his own policy, as the No-Fault Act provides that PIP benefits are to be paid for “accidental bodily injury ‘arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle.’” Therefore, the victim’s father’s insurer could not recover against defendants. *Id.*

85. See SCHERMER & SCHERMER, *supra* note 48. “Resident relative” generally covers the spouse and children of the named insured, but the determination is often made on a case-by-case basis. See, e.g., *Workman v. Det. Auto. Inter-Ins. Exch.*, 404 Mich. 477, 274 N.W.2d 373 (1979) (explaining that the term “resident” of a “household” has no absolute meaning and that circumstances dictate the judgment). The court held that a plaintiff who was temporarily residing at her mother’s home when the accident occurred, though she usually resided at her father-in-law’s property, qualified as a resident relative under her *father-in-law’s* insurance policy. *Id.* (emphasis added). See also, e.g., *Bierbusse v. Farmers Ins. Grp.*, 84 Mich. App. 34, 269 N.W.2d 297 (1978) (holding that, in the case of a divorce, until the divorce was finalized, the spouse and children of an insured were resident relatives of the insured even though they domiciled in a different household).

86. See SCHERMER & SCHERMER, *supra* note 48.

87. See *Lee*, 412 Mich. at 508–09, 315 N.W.2d at 414 (holding that, in a case where a mailman was injured when unloading materials from his federally issued vehicle (which did not need to be registered in the state), the mailman could recover under his own personal no-fault policy).

88. *Id.*

89. See *supra* notes 67–88 and accompanying text.

prevailing theory of a world filled with fully autonomous vehicles is a utopian one—in a reality where human error causes ninety-four percent of serious accidents, the elimination of the human element altogether could provide for a system that rids itself entirely of car crashes.<sup>90</sup> The mesh point between a world without any autonomous vehicles and one with nothing but is a tricky one to maneuver, however.<sup>91</sup> For example, there have been multiple headlines in the past year portraying companies like Tesla and Uber in an unfavorable light for incidents resulting in deaths related to their self-driving technology.<sup>92</sup> As a result, Michigan has attempted to establish some forms of liability ahead of the rollout of fully autonomous vehicles.<sup>93</sup>

### B. Autonomous Vehicles in Michigan

Michigan continues to maintain its position at the forefront of research and development of the latest technology in the automotive market: autonomous vehicles.<sup>94</sup> As seen early on in the development of cars, the

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90. See *Automated Vehicles for Safety*, *supra* note 34.

91. See generally Korok Ray, *Driverless Roads*, 38 NAT'L AFFS. 19 (2019), <https://www.nationalaffairs.com/publications/detail/driverless-roads> [http://web.archive.org/web/20200406041720/https://www.nationalaffairs.com/publications/detail/driverless-roads]. Ray raised logistical issues regarding the use of autonomous cars:

Autonomous cars on the road will need to respond not only to human drivers, but also to other autonomous cars. Should Car A simply observe the behavior of Car B, as human drivers would, or should the cars announce their algorithms or protocols to each other in advance so they can better tailor their behavior to one another?

*Id.* at 23.

92. See *Tesla Model 3: Autopilot Engaged During Fatal Crash*, BBC (May 17, 2019), <https://www.bbc.com/news/technology-48308852> [http://web.archive.org/web/20200406041939/https://www.bbc.com/news/technology-48308852]; see also Daisuke Wakabayashi, *Self-Driving Uber Car Kills Pedestrian in Arizona, Where Robots Roam*, N.Y. TIMES (Mar. 19, 2018), <https://www.nytimes.com/2018/03/19/technology/uber-driverless-fatality.html> [http://web.archive.org/web/20200406042109/https://www.nytimes.com/2018/03/19/technology/uber-driverless-fatality.html].

93. See *infra* Section III.B.

94. See, e.g., Eric D. Lawrence, *Waymo Plans Final Assembly on Self-Driving Cars in Detroit; Will Need 100–400 Workers*, DET. FREE PRESS (Apr. 23, 2019), <https://www.freep.com/story/money/cars/2019/04/23/waymo-self-driving-cars-detroit-jobs/3543494002/> [http://web.archive.org/web/20200406042241/https://www.freep.com/story/money/cars/2019/04/23/waymo-self-driving-cars-detroit-jobs/3543494002/]; see also Randy Essex, *Ford Self-Driving Cars Now Rolling Around Downtown Detroit and Corktown*, DET. FREE PRESS (June 12, 2019), <https://www.freep.com/story/money/cars/2019/06/12/ford-self-driving-cars-downtown-detroit-corktown-vw/1429279001/> [http://web.archive.org/web/20200406042506/https://www.freep.com/story/money/cars/2019/06/12/ford-self-driving-cars-downtown-detroit-corktown-vw/1429279001/]; see also Carol

failure to take action at the outset to combat potential issues arising from new technology can produce grave consequences.<sup>95</sup> As it did in the early 1900s on automobile legislation, Michigan has again led the pack in autonomous vehicle legislation.<sup>96</sup>

It is first important to distinguish exactly what the term “autonomous vehicle” means. Autonomous vehicles are generally grouped by level of autonomy ranging from 0 to 5.<sup>97</sup> Level 0 vehicles include those that contain no autonomous features, making up the vast majority of vehicles on the roads presently.<sup>98</sup> Levels 1 and 2 cover vehicles that contain “Driver Assistance” and “Partial Automation” features, respectively.<sup>99</sup> Level 1 vehicles contain features that can assist the driver with single tasks, such as braking or steering, but never two simultaneously.<sup>100</sup> Level 2 vehicles, however, contain an “advanced driver assistance system (ADAS),” which can itself control steering and acceleration simultaneously in some situations but still requires the driver to pay full attention to the road.<sup>101</sup> Levels 1 and 2 vehicles are presently on the market and the roads, and existing legislation governs the framework for their regulation.<sup>102</sup>

The more interesting discussion, and the focus of this Note, centers on the vehicles classified as Levels 3 to 5.<sup>103</sup> Level 3 applies to vehicles containing “Conditional Automation,” which allows for an “automatic driving system (ADS)” to control all aspects of driving itself but requires that a human driver be ready to take control of the vehicle at all times.<sup>104</sup> Lastly, Levels 4 and 5 refer to “High Automation” and “Full Automation,” respectively.<sup>105</sup> In both cases, the vehicle contains an ADS that, in some

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Cain, *Michigan at the Forefront of Autonomous Technology with MCity*, CBS DET. (Apr. 2, 2019), <https://detroit.cbslocal.com/2019/04/02/michigan-at-the-forefront-of-autonomous-technology-with-mcity/> [http://web.archive.org/web/20200406042613/https://detroit.cbslocal.com/2019/04/02/michigan-at-the-forefront-of-autonomous-technology-with-mcity/].

95. See *supra* notes 22–26 and accompanying text.

96. See Greg Tasker, *Michigan Continues to Take the Lead in Autonomous Vehicle Legislation*, DET. DRIVEN (Mar. 6, 2018), <http://www.detroitdriven.us/features/Michigan-continues-to-take-the-lead-in-autonomous-vehicle-legislation.aspx> [http://web.archive.org/web/20200406042713/http://www.detroitdriven.us/features/Michigan-continues-to-take-the-lead-in-autonomous-vehicle-legislation.aspx].

97. See *Automated Vehicles for Safety*, *supra* note 34.

98. *Id.*

99. *Id.*

100. *Id.*

101. *Id.*

102. See Seth Quidachay-Swan, *Autonomous Vehicles and Current State Liability Legislation*, MICH. B.J., Mar. 2019, at 48.

103. See *infra* Section III.

104. See *Automated Vehicles for Safety*, *supra* note 34.

105. *Id.*

or all situations, allows for the vehicle to completely drive itself with no human driver required to be readily available.<sup>106</sup>

Though there are not currently any Level 3, 4, or 5 vehicles available for purchase to consumers, their entry into the market is all but inevitable in the next decade.<sup>107</sup> Due to mounting interest and investment in the market, Michigan has taken action to attempt to create a legal framework to govern the development, sale, and use of autonomous vehicles.<sup>108</sup>

### C. Michigan SAVE Act

In December 2016, then-Governor of Michigan Rick Snyder signed Public Acts 332–335 into law.<sup>109</sup> The acts, collectively the SAVE Act, established a limited framework for the regulation of autonomous vehicles.<sup>110</sup> The SAVE Act first lays out eligibility requirements for participation in a “SAVE Project.”<sup>111</sup> Indeed, not all autonomous vehicles are currently eligible for sale and use in the State of Michigan.<sup>112</sup> For example, the SAVE Act provides that “motor vehicle manufacturers” may participate in a SAVE project, so long as they self-certify that the vehicles in their participating fleets contain an automatic driving system, automatic crash notification systems, and certain data recording systems in place to measure the vehicles’ status and select attributes.<sup>113</sup>

Because the law is so new and there have been limited numbers of autonomous vehicles on the road to test the legislation,<sup>114</sup> the statute has

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106. *Id.*

107. See Quidachay-Swan, *supra* note 102, at 48.

108. See *infra* Section II.C.

109. See Quidachay-Swan, *supra* note 102, at 49.

110. *Id.*

111. MICH. COMP. LAWS § 257.665b (2019); see also Bryant W. Smith, *Michigan’s Automated Driving Bills*, STANFORD CTR. FOR INTERNET & SOC’Y (Sept. 6, 2016), <http://cyberlaw.stanford.edu/blog/2016/09/michigans-automated-driving-bills> [<http://web.archive.org/web/20200406042907/http://cyberlaw.stanford.edu/blog/2016/09/michigans-automated-driving-bills>] (explaining that a “Save Project” includes situations in which a vehicle manufacturer is the only participant in an “on-demand automated motor vehicle network,” as opposed to non-Save Project situations where a vehicle manufacturer merely supplies vehicles to be used by another company).

112. See MICH. COMP. LAWS § 257.665b (2019).

113. See *id.* § 257.665b(1).

114. See, e.g., Nicole Gelinias, *The Mobile City: How Self-Driving Cars and Buses Could Boost Detroit’s Economy*, CITY J., Winter 2020, <https://www.city-journal.org/detroit-autonomous-vehicle-industry> [<http://web.archive.org/web/20200406043053/https://www.city-journal.org/detroit-autonomous-vehicle-industry>] (explaining that limited testing of autonomous vehicles has begun in Detroit and Ann Arbor); see also Kelsey Piper, *It’s 2020. Where Are Our Self-Driving Cars?*, VOX (Feb. 28 2020, 5:33 PM), <https://www.vox.com/future-perfect/2020/2/14/21063487/self-driving-cars-autonomous-vehicles-waymo-cruise-uber> [<http://web.archive.org/web/20200406043200/https://www>

been under heavy scrutiny from many interested parties in the industry.<sup>115</sup> Two major obscurities in the statute are whether it grants only motor vehicle manufacturers the privilege of running driverless taxi programs and whether the scope of legal autonomous vehicles pertains only to research and development.<sup>116</sup> Additionally, because of the lack of clarity in the bill, there is confusion as to whether motor vehicle manufacturers have more liberty or greater restriction and regulation.<sup>117</sup>

Additional shortcomings concern the vague and ambiguous terms of the statute.<sup>118</sup> For example, it is unclear whether only manufacturers of autonomous vehicles may participate in the program or if the program is open to those who would like to partner with those manufacturers.<sup>119</sup> In addition, it is difficult to reconcile the juxtaposition of driverless vehicles with the current state of regulation that pertains to “drivers” and “operators.”<sup>120</sup> For example, the Michigan Vehicle Code defines a “driver” as “every person who drives or is in actual physical control of a vehicle”<sup>121</sup> and an “operator” as a person who “operates a motor vehicle upon a highway or street” or “operates an automated motor vehicle upon a highway or street.”<sup>122</sup> Clearly, these definitions will need reframing in the context of automated driving.<sup>123</sup>

The Michigan SAVE Act has still received praise as a significant revelation in the world of autonomous vehicle legislation.<sup>124</sup> Most importantly, the SAVE Act lays the groundwork for liability of autonomous vehicles moving forward.<sup>125</sup> The Act sets out that the manufacturers of vehicles qualifying for participation in a SAVE project will be liable for injuries caused by their vehicles, at least to some degree.<sup>126</sup> More specifically, the statute provides that “when engaged, an

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[vox.com/future-perfect/2020/2/14/21063487/self-driving-cars-autonomous-vehicles-waymo-cruise-uber](https://www.vox.com/future-perfect/2020/2/14/21063487/self-driving-cars-autonomous-vehicles-waymo-cruise-uber)](noting that companies such as Waymo and GM have conducted autonomous vehicle testing on public streets in California).

115. See Smith, *supra* note 111.

116. *Id.* (explaining the ambiguity and vagueness of the Michigan Save Act).

117. *Id.*

118. *Id.*

119. *Id.*

120. *Id.*

121. MICH. COMP. LAWS § 257.13 (2020).

122. *Id.* § 257.36. The definition of an “operator” excludes a chauffeur. *Id.* See also *id.* § 257.35a (defining “operate” as “[b]eing in actual physical control of a vehicle . . .” or “[c]ausing an automated motor vehicle to move under its own power in automatic mode upon a highway or street regardless of whether the person is physically present in that automated motor vehicle at that time. . .”).

123. See Smith, *supra* note 111.

124. *Id.*

125. See Quidachay-Swan, *supra* note 102, at 49.

126. *Id.*

automated driving system . . . shall be considered the driver or operator of the vehicle” for purposes of judging conformance with traffic and motor vehicle laws.<sup>127</sup> Additionally, when the ADS is actively controlling a vehicle, the vehicle manufacturer will be liable for any accident in which the ADS is active and at fault.<sup>128</sup>

While the SAVE Act provides a terrific framework for the future of autonomous vehicle legislation, it remains just that—a framework.<sup>129</sup> The blueprint is far from complete, and it is important for the legislature to continue building on the foundation they have formed before the rollout of autonomous vehicles to the public.

### III. ANALYSIS

“The purpose of insurance is to insure.”<sup>130</sup> While this is an oversimplification of a sophisticated infrastructure of risk management, it contains a certain modest truth.<sup>131</sup> At its roots, insurance serves as a contractual tool whereby considerable quantities of individuals pay “premiums” into a pool that covers losses when they occur.<sup>132</sup> Given the number of vehicles on the road and the prevalence of car accidents, it is no surprise that auto insurance makes up a significant part of the insurance industry.<sup>133</sup> Indeed, the auto insurance industry had a market size of \$288.4

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127. See MICH. COMP. LAWS § 257.665b(4).

128. *Id.*

129. See discussion *supra* Section II.C.

130. *Hastings Mut. Ins. Co. v. Safety King, Inc.*, 286 Mich. App. 287, 298, 778 N.W.2d 275, 282 (2009).

131. See, e.g., 43 AM. JUR. 2D *Insurance* (2020) (providing a comprehensive review of insurance, including over forty chapters of material). Clearly, insurance is far from simple; however, the encyclopedia’s review still begins by defining “insurance” simply as “a contract by which one party, for a compensation called the premium, assumes particular risks of the other party and promises to pay to such other party or his or her nominee a certain or ascertainable sum of money on a specified contingency.” See *id.* § 1.

132. *Insurance*, LEGAL INFO. INST., <https://www.law.cornell.edu/wex/insurance> [<http://web.archive.org/web/20200406043324/https://www.law.cornell.edu/wex/insurance>] (last visited Feb. 3, 2020). This source defines “insurance” as:

A contract in which one party agrees to indemnify another against a predefined category of risks in exchange for a premium. Depending on the contract, the insurer may promise to financially protect the insured from the loss, damage, or liability stemming from some event. An insurance contract will almost always limit the amount of monetary protection possible.

*Id.*

133. See NAT’L ASS’N OF INS. COMM’RS (NAIC), 2018 MARKET SHARE REPORTS FOR PROPERTY/CASUALTY GROUPS AND COMPANIES BY STATE AND COUNTRYWIDE, 5–7 (2019), [https://naic.org/prod\\_serv/MSR-PB-19.pdf](https://naic.org/prod_serv/MSR-PB-19.pdf) [[http://web.archive.org/web/20200406043436/https://naic.org/prod\\_serv/MSR-PB-19.pdf](http://web.archive.org/web/20200406043436/https://naic.org/prod_serv/MSR-PB-19.pdf)] (displaying statistics for the “Property and Casualty” Insurance Industry for 2018). The total Property and Casualty (P/C) Insurance

billion in revenue in the United States in 2020.<sup>134</sup> No-fault laws entered into the automotive field in order to curb and cure the tort system of its inadequate delays, inequities, and excessive costs.<sup>135</sup> No-fault laws accomplish this goal by requiring drivers to maintain insurance “so that victims of automobile accidents may receive insurance benefits as a substitute for common-law tort remedies without regard to fault.”<sup>136</sup>

Though no-fault laws have been successful in creating more consistent channels for victim compensation following a car accident, the rollout of autonomous vehicles into the market may strain the current system.<sup>137</sup> For example, the current system and legislation require that all vehicle owners carry a no-fault insurance policy that includes PIP, PPI, and RLI.<sup>138</sup> However, a future of autonomous vehicles brings with it a potential reality where private car ownership is a relic of the past.<sup>139</sup> Indeed, the implementation of autonomous vehicles has a plethora of implications.<sup>140</sup> In the end, two options reign supreme.<sup>141</sup> Autonomous vehicle legislation in Michigan can likely move forward in one of two ways: (1) an adjustment to the current no-fault legislation,<sup>142</sup> or (2) an alternative to no-fault insurance in the form of the traditional tort theory of liability.<sup>143</sup>

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industry recorded nearly \$666.7 billion in earned premiums in 2018. The “Total Private Passenger” insurance accounted for \$242.6 billion of those earned premiums—36.37% of the P/C insurance market. *See id.*

134. *Automobile Insurance in the US Market Size 2004–2024*, IBISWORLD, <https://www.ibisworld.com/industry-statistics/market-size/automobile-insurance-united-states/> [http://web.archive.org/web/20200406043542/https://www.ibisworld.com/industry-statistics/market-size/automobile-insurance-united-states/] (last visited Apr. 4, 2020).

135. 2 MICH. CIVIL JUR. *Automobiles and Motor Vehicles* § 263 (2020).

136. *Id.*

137. *See* ANDERSON ET AL., *supra* note 15, at 144 (stating that though the system may need to be adjusted, “if AV technology reduces the responsibility of the individual driver as expected, a no-fault approach may become more attractive”).

138. *See supra* notes 51–66 and accompanying text.

139. *Autonomous Driving*, MCKINSEY & CO., <https://www.mckinsey.com/features/mckinsey-center-for-future-mobility/overview/autonomous-driving> [http://web.archive.org/web/20200406043806/https://www.mckinsey.com/features/mckinsey-center-for-future-mobility/overview/autonomous-driving] (last visited Feb. 3, 2020).

140. *See, e.g.*, Jack Boeglin, *The Costs of Self-Driving Cars: Reconciling Freedom and Privacy with Tort Liability in Autonomous Vehicle Regulation*, 17 YALE J. L. & TECH. 171 (2015) (analyzing the intersection of problems with individual privacy and legal liability); Dorothy J. Glancy, Symposium, *Autonomous and Automated and Connected Cars – Oh My! First Generation Autonomous Cars in the Legal Ecosystem*, 16 MINN. J. L. SCI. & TECH. 619 (2015) (discussing issues from vehicle ownership implications to the differences in liability and infrastructure based on connected versus unconnected autonomous vehicles).

141. *See infra* Section III.A–B.

142. *See infra* Section III.A.

143. *See infra* Section III.B.

### A. Adjustment to Current No-Fault Legislation

The first issue that will arise between the current framework of insurance and liability legislation and the introduction of autonomous vehicles is the reconciliation of terms and definitions.<sup>144</sup> As stated earlier, the Michigan No-Fault Act provides that all “owners and registrants” of a vehicle must maintain automobile insurance on their registered vehicles.<sup>145</sup> Additionally, current legislation and regulation of automobiles in the state of Michigan refers to “drivers” or “operators” of vehicles.<sup>146</sup> What is unclear at the moment though is how the introduction of autonomous vehicles will influence the traditional notion of car ownership.<sup>147</sup>

#### 1. Private Vehicle Ownership

The first possibility is that the world of autonomous vehicles does not have any impact on vehicle ownership.<sup>148</sup> That is, though the driver will become obsolete, citizens will continue to purchase or lease vehicles for their own private use as they currently do.<sup>149</sup> Assuming this is the case, there are still implications to the current insurance and liability scheme.<sup>150</sup> First, automotive regulation still refers to “drivers” and “operators” of the vehicle.<sup>151</sup>

The SAVE Act provides certain definitions and explains that when an Automatic Driving System (ADS) is active, the manufacturer will essentially step into the shoes of a “driver” and assume liability for

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144. See *supra* Section II.A.2–II.C.

145. See *supra* notes 72–76 and accompanying text.

146. See *supra* notes 118–23 and accompanying text.

147. See *infra* Section III.A.1–2

148. See Duvall et al., *supra* note 17 (setting out two possibilities for vehicle ownership structures for autonomous vehicles: first, a system that remains similar to the private vehicle ownership structure we see today and alternatively, a system that relies heavily on fleets of automobiles owned by ridesharing companies and manufacturers operating as “robo-taxis” and antiquating the idea of private vehicle ownership).

149. *Id.*

150. See, e.g., Jonathan Kama, *Automated Vehicles and Michigan’s No-Fault Auto Insurance Act*, MICH. BUS. & ENTREPRENEURIAL L. REV. (May 12, 2018), <http://mbelr.org/automated-vehicles-and-michigans-no-fault-auto-insurance-act/> [<http://web.archive.org/web/20200406043944/http://mbelr.org/automated-vehicles-and-michigans-no-fault-auto-insurance-act/>] (outlining briefly some of the potential issues and changes that no-fault insurance may encounter). Michigan is far from unique in facing an issue at the intersection of autonomous vehicles and insurance. See, e.g., Robert W. Peterson, *New Technology – Old Law: Autonomous Vehicles and California’s Insurance Framework*, 52 SANTA CLARA L. REV. 1341 (2012) (dissecting the pending shortcomings of the California auto insurance framework in addressing autonomous vehicles).

151. *Id.*

malfunctions in the system as they relate to traffic laws.<sup>152</sup> However, the SAVE Act is currently limited to those vehicles that meet certain requirements to participate in the program, leaving a gap in coverage for potential vehicles that could be developed outside the bounds of the program.<sup>153</sup> The best, and most likely, option moving forward is to widen the scope of the SAVE Act. That way, regardless of who is using the vehicle, the manufacturer will be liable for any defect or malfunction in the ADS of an automobile.

The inadequacy and confusion over the term “driver” or “operator” for purposes of determining liability in an auto accident may prove a no-fault insurance system all the more desirable.<sup>154</sup> Autonomous vehicles change the traditional notion of attributing fault to drivers.<sup>155</sup> In the context of traditional automobiles, a driver is thought of as being exclusively in control of their vehicle, and in the case of an accident, one or more drivers are “at fault” for the accident.<sup>156</sup> Although the SAVE Act attempts to peg the ADS as the driver of the vehicle for purposes of liability and abiding to traffic laws, intense litigation could still ensue regarding cause. Corporations face countless product liability cases every year and have far more resources and experience than a majority of the plaintiffs bringing the cases.<sup>157</sup> It is easy to see a difficult path to recovery for an ordinary plaintiff seeking to prove the fault of an ADS against the corporation with both a legal and technical advantage.<sup>158</sup> Therefore, a system that places less weight on attributing fault, such as no-fault, could alleviate much of the problems with the term “driver,” proving negligence and balancing the scale.

Regardless of the status of a human as a “driver” for the sake of liability, a number of issues could arise for insurance purposes.<sup>159</sup> As the

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152. See MICH. COMP. LAWS § 257.665b(4) (2019).

153. *Id.*

154. See ANDERSON ET AL., *supra* note 15, at 116.

155. *Id.* at 115.

156. *Id.*

157. See A. Mitchell Polinsky & Steven Shavell, *The Uneasy Case for Product Liability*, 123 HARV. L. REV. 1437, 1438 (2010) (stating that there are tens of thousands of product liability cases filed every year in the United States). In addition to the uneven playing field regarding resources and experience, product liability cases also limit the recovery of the plaintiff due to extensive delay and costs associated with litigation. See *id.* at 1464.

158. See generally Bryant Walker Smith, *The Transformation of Transportation: Autonomous Vehicles, Google Cars, and Vehicles Talking to Each Other: Automated Driving and Product Liability*, 2017 MICH. ST. L. REV. 1 (2017) (discussing the relationship between autonomous cars and current product liability infrastructure).

159. See ANDERSON ET AL., *supra* note 15, at 114–15 (explaining that autonomous vehicles will prove challenging to many insurance systems as they are currently written but that the advantages are significant. For example, autonomous vehicles may very well reduce the number and cost of serious automobile accidents. In turn, this should drive

law stands, “owners and registrants” of vehicles must carry compulsory no-fault insurance policies.<sup>160</sup> However, might autonomous vehicle owners question a scheme in which they pay large monthly sums into an insurance pool in order to cover accidents which largely result from human error? Again, the NHTSA reported that roughly ninety-four percent of accidents are due to human error.<sup>161</sup> While citizens do not always have a choice when it comes to legislation and compulsory insurance policies, it is not hard to imagine a society frustrated by what they may feel are wasted payments into a fund that largely pays for the negligence of others.

The Michigan Legislature serves itself best by keeping abreast of these potential issues. One attractive solution could be to compensate those who own autonomous vehicles through some sort of subsidy, decreasing the price of their no-fault insurance policies.<sup>162</sup> For example, insurance providers in Europe have offered policyholders a twenty percent discount if they purchase a car with lane keeping technology.<sup>163</sup> The Michigan Legislature could follow suit and either work in conjunction with insurance providers or offer certain tax credits to individuals directly. In this way, the legislature could largely keep their current no-fault statute intact while also preventing those who own autonomous vehicles from suffering for the negligent acts of others.

The legislature could also use a different strategy that would apportion these insurance payments appropriately between the owner of the autonomous vehicle and the manufacturer. Stealing a page from the world of corporate employment taxes,<sup>164</sup> the legislature could create a balancing test that would split the payment of insurance policies for an autonomous vehicle efficiently between the owner and the manufacturer. By doing this,

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insurance premiums downward. Insurers price premiums based on risk of injury resulting from an accident, and in a world where these risks decrease, so too would premium prices).

160. MICH. COMP. LAWS § 500.3101 (2019).

161. See *Automated Vehicles for Safety*, supra note 34. But see Tiffany Y. Gruenberg, *Self-Driving Cars Will Likely Increase Product Liability Litigation*, NAT'L L. REV. (Jan. 22, 2019), <https://www.natlawreview.com/article/self-driving-cars-will-likely-increase-product-liability-litigation> [<http://web.archive.org/web/20200406044111/https://www.natlawreview.com/article/self-driving-cars-will-likely-increase-product-liability-litigation>] (explaining that while human error may be decreased, the advanced and sophisticated technology that autonomous vehicles will rely on may increase the number of product liability cases).

162. See, e.g., ANDERSON ET AL., supra note 15, at 114 (explaining the potential for insurers to offer discounted premiums to individuals who own autonomous vehicles).

163. *Id.*

164. See Payroll (FICA) Taxes, Practical Law Practice Note 1-512-7630 (“The Federal Insurance Contributions Act (FICA) imposes payroll taxes on both employers and employees to finance social security and certain Medicare benefits. An employer is generally responsible for withholding and remitting its employees’ portion of payroll taxes, as well as for paying the employer portion of these taxes.”).

the government could both accomplish the goal of decreasing the burden of insurance premiums on autonomous vehicle owners while also incentivizing the manufacturers to create safe vehicles. This system may still not sit well with manufacturers, and they and owners alike may find a general tort theory of liability more attractive.<sup>165</sup>

## 2. *Shared Autonomous Vehicles (SAVs)*

Another possibility resulting from the influx of autonomous vehicles into the public market is that vehicle ownership as we know it will become obsolete alongside the human driver.<sup>166</sup> Indeed, the autonomous vehicle development could lead to a shift from the private vehicle ownership seen today to a commercial car-sharing model of the future.<sup>167</sup> With current ridesharing companies such as Uber already looking into the manufacturing of autonomous vehicle technology, it would be unsurprising to see these companies implementing the new tech into their existing networks of services in order to streamline the process even further.<sup>168</sup>

For the simplification that a commercial autonomous vehicle-sharing model seems to provide for travel and commutes, it undoubtedly makes up for in its complication of liability and insurance.<sup>169</sup> Once again, the Michigan No-fault Insurance Act states that “the owner or registrant of a motor vehicle required to be registered in this state shall maintain security for payment of benefits under personal protection insurance and property protection insurance as required under this chapter, and residual liability insurance.”<sup>170</sup> Where private vehicle ownership presides, a compulsory insurance system requiring owners to carry a policy with certain minimum

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165. See *supra* Section III.B.1.

166. See Duvall et al., *supra* note 17.

167. Mark A. Geistfeld, *A Roadmap for Autonomous Vehicles: State Tort Liability, Automobile Insurance, and Federal Safety Regulation*, 105 CAL. L. REV. 1611, 1614 (2017).

168. See Dara Kerr, *Uber Ignites Self-Driving Car Operations in Dallas*, CNET (Sept. 17, 2019), <https://www.cnet.com/news/uber-ignites-self-driving-car-operations-in-dallas/> [<http://web.archive.org/web/20200406044401/https://www.cnet.com/news/uber-ignites-self-driving-car-operations-in-dallas/>].

169. See ANDERSON ET AL., *supra* note 15, at 117 (outlining potential problems the current insurance and liability systems in states could face with the implementation of autonomous vehicles.) While autonomous vehicles may reduce the number of current problems that human error creates, they could also create new kinds of problems that do not currently exist. For example, they may create certain habits by which pedestrians will come to expect vehicles to stop as soon as a pedestrian enters a cross walk. Suppose the vehicle strikes the pedestrian in the walkway who crossed based on this assumption. Perhaps autonomous vehicles reduce some human errors while generating others. See *id.*

170. MICH. COMP. LAWS § 500.3101 (2019).

coverages makes sense. However, if a shift towards a public vehicle-sharing structure occurs, the current system will fail to make sense.

In a system where manufacturers or private fleet companies own the vehicles in a market, who will be willing to carry the insurance? A first option would be to adjust the current legislation to require *users* of shared autonomous vehicles (SAVs) to carry insurance as a prerequisite to use. This would likely prove to be far more complicated than a simple change in legislative language, however. How would the statute determine who is required to carry insurance? Would someone who uses an autonomous vehicle only a handful of times per year be required to carry the same insurance as someone who uses it for their daily commute? These are only a few among many complicated questions better left for another article.

The more attractive alternative would require the vehicle manufacturers or fleet companies owning the vehicles to carry insurance policies.<sup>171</sup> This is not a novel concept, as there are currently non-autonomous carsharing services operating today that maintain insurance on fleets of cars that are loaned out to members.<sup>172</sup> These companies could then, in turn, factor their insurance premiums into their pricing models.<sup>173</sup> For example, Zipcar, one of the leading carsharing companies in the United States, maintains the requisite insurance policies on the cars that make up its fleets.<sup>174</sup> Then, Zipcar extends certain levels of liability coverage to its customers as part of their yearly membership fees.<sup>175</sup> This model would largely allow the market to set the prices for both the ride sharing services and insurance payments by the individual. In addition, it

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171. See Geistfeld, *supra* note 167, at 1616 (discussing the possible repercussions of autonomous vehicles on the car industry based on a carsharing model).

172. See, e.g., Joseph P. Schwieterman & Mollie Pelon, *First Zipcar, Now Uber: Legal and Policy Issues Facing the Expanding "Shared Mobility" Sector in U.S. Cities*, 4 BELMONT L. REV. 109, 112 (2017).

173. *Id.* (indicating that insurance is generally included in a carsharing company's membership fee).

174. *Id.* at 114. See also *Insurance Coverage*, ZIPCAR, <https://support.zipcar.com/hc/en-us/articles/220433387-Insurance-Coverage-> [<http://web.archive.org/web/20200406044509/https://support.zipcar.com/hc/en-us/articles/220433387-Insurance-Coverage->] (last visited Apr. 5, 2020). Zipcar's website provides:

Zipcar insurance also includes third party liability coverage and Personal Injury Protection (PIP) or 'no-fault' coverage. All third party liability and PIP coverage meets the minimum requirements of the state or jurisdiction in which an accident occurs, and the full extent of coverage varies based on a member's age and location.

*Id.*

175. See Schwieterman & Pelon, *supra* note 172, at 114. See also *Zipcar Membership Plans*, ZIPCAR, <https://www.zipcar.com/pricing> [<http://web.archive.org/web/20200406044613/https://www.zipcar.com/pricing>] (last visited Apr. 5, 2020) (outlining membership pricing and indicating insurance coverage).

may allow for a proper allocation of insurance payments between the occasional user and the everyday commuter.

### *B. Alternative Liability Solutions*

Though the no-fault structure can adjust in a way that will allow for seamless integration of autonomous vehicles into the market,<sup>176</sup> it may not be the most attractive option to the manufacturers responsible for pushing the development and infrastructure of the vehicles along. As alluded to earlier, manufactures and fleet companies may be hard-pressed to spend money on no-fault insurance policies that are largely paying out for injuries resulting from accidents for which their vehicles were not at fault. After all, the purpose of insurance may well be to insure,<sup>177</sup> but the purpose of a corporation is to maximize profits.<sup>178</sup> Therefore, the traditional tort theory of liability may be of keen interest.

#### *1. Traditional Tort Theory – Negligence*

Tort law touches on a few forms of liability, namely negligence and product liability.<sup>179</sup> For purposes of automobile accidents in the present day, the most common form of tort theory used in litigation is that of negligence.<sup>180</sup> Autonomous vehicles could be subject to product liability cases arising from defects in their manufacturing causing potentially harmful errors and accidents; however, those claims would look primarily similar to the vast existing framework for product liability claims against car manufacturers.<sup>181</sup> Therefore, this Note's analysis will focus on what could prove to be difficult to reconcile with autonomous vehicles: negligence claims.

Once again, to establish a negligence claim, a plaintiff must meet four factors: (1) there was a duty owed to the plaintiff; (2) that duty was breached by the defendant; (3) the breach of the duty led to the plaintiff's harm; and (4) the defendant's breach of duty was the proximate cause of

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176. *See supra* Section III.A

177. *See Hastings Mut. Ins. Co. v. Safety King, Inc.*, 286 Mich. App. 287, 298, 778 N.W.2d 275, 282 (2009).

178. *See Dodge v. Ford Motor Co.*, 204 Mich. 459, 170 N.W. 668 (1919) (holding that while a corporation has wide latitude to determine how to run its company, Henry Ford was required to operate the business in pursuit of profits for the shareholders rather than for the benefit of his employees and customers).

179. Gary E. Marchant & Rachel A. Lindor, *The Coming Collision Between Autonomous Vehicles and the Liability System*, 52 SANTA CLARA L. REV. 1321, 1323 (2012).

180. *Id.*

181. *Id.*

the harm.<sup>182</sup> In an automobile accident, there are generally three factors that could be the fault: the driver, a manufacturing defect, and an uncontrollable outside factor, such as the weather.<sup>183</sup> This section will focus on the driver.

The implementation of autonomous vehicles could have a substantial impact on the concept of the driver's fault in automobile accidents.<sup>184</sup> For example, taking human drivers out of the equation may lower the frequency of accidents caused by human error.<sup>185</sup> The uncertainty manifests itself when accidents do still occur, however.<sup>186</sup> When an accident occurs, it is likely that either the human driver or the autonomous vehicle manufacturer will be at fault for the damage.<sup>187</sup> There is some disagreement, however, over the likelihood of these crashes being attributed to fault of the driver or fault of the manufacturer.<sup>188</sup> For example, the autonomous vehicle manufacturers and the NHTSA report that ninety-four percent of serious accidents are caused by human error.<sup>189</sup> Contrarily, critics see early autonomous vehicles not as a haven of newfound safety but rather of increased risk of injury.<sup>190</sup>

Considering that the tech and car companies that produce these vehicles believe that they eliminate almost all accidents simply by taking the driver out of the equation, they favor a fault-determining system like traditional tort negligence.<sup>191</sup> Furthermore, instead of paying for insurance premiums that are only being inflated by the risk that human drivers dominate the roadway, they may be unwilling to pay into a no-fault system that they feel serves to benefit negligent drivers at the companies' expense. Autonomous vehicle manufacturers may push for a tort theory of liability

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182. See Mellon & Kowalski, *supra* note 5, at 654.

183. See Marchant & Lindor, *supra* note 179, at 1327.

184. *Id.*

185. *Id.*

186. *Id.*

187. *Id.*

188. *Id.*

189. See *Automated Vehicles for Safety*, *supra* note 34.

190. See Marchant & Lindor, *supra* note 179, at 1327–28. Speaking to manufacturer liability, the authors state:

When an accident does occur though, the vehicle manufacturer, or some other party involved in the design, manufacture, or operation of the autonomous vehicle is likely to be held liable for a higher proportion of the accidents. This will be more likely to occur with autonomous vehicles than it currently does with conventional vehicles. In other words, when an autonomous vehicle does crash, most likely something went wrong with the collision avoidance system or the vehicle encountered conditions that it was not adequately programmed to address.

*Id.*

191. See *Automated Vehicles for Safety*, *supra* note 34.

for automobile accidents because (1) they feel that they are not likely to be “at fault” as much as the human drivers that will be involved in accidents, and (2) they may be comfortable defending product liability claims against accident victims because of the extensive history of product liability claims in car accident cases.

## 2. *Opposition to No-Fault*

Critics of the no-fault system argue that autonomous vehicles could render the no-fault system and auto insurance at large completely unnecessary.<sup>192</sup> Moreover, some argue that autonomous vehicles may reduce the costs of car accidents so significantly that they could fall under other policies like health or homeowner’s liability insurance, much like the case of a bicyclist sustaining an injury.<sup>193</sup> This approach features some glaring holes, however.<sup>194</sup> First, this leaves a notable portion of the population that does not have either health or homeowner’s liability insurance extremely vulnerable. For instance, in 2018, 8.5% of people in the United States did not carry any sort of health insurance at any point over the course of the year.<sup>195</sup> Allowing for those without the means to carry health or homeowner’s liability insurance to be completely barred from using an autonomous vehicle or being left to fight large corporations from their limited resources clearly violates the spirit of the Michigan No-Fault Act.

Another flaw in the system of using other forms of insurance is the lengthy transition period.<sup>196</sup> In terms of both time and money, nobody is certain at what point a specialized form of automobile insurance becomes undesirable.<sup>197</sup> Additionally, autonomous vehicles will enter the market

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192. See, e.g., Paul Tullis, *Self-Driving Cars Might Kill Auto Insurance As We Know It*, BLOOMBERG (Feb. 19, 2020), <https://www.bloomberg.com/news/articles/2019-02-19/autonomous-vehicles-may-one-day-kill-car-insurance-as-we-know-it> [http://web.archive.org/web/20210416200914/https://www.bloomberg.com/tosv2.html?vid=&uuid=9ddfbf0-9eef-11eb-b7ad-359290864313&url=L25ld3MvYXJ0aWNsZXMvMjAxOS0wMi0xOS9hdXRvbm9tb3VzLXZlaGljbGVzLW1heS1vbmUtZGF5LWtpbGwtY2FyLWlu c3VyYW5jZS1hcy13ZS1rbm93LW10].

193. See ANDERSON ET AL., *supra* note 15, at 115.

194. *Id.*

195. EDWARD R. BERCHICK ET AL., U.S. CENSUS BUREAU, HEALTH INSURANCE COVERAGE IN THE UNITED STATES: 2018 2 (2019), <https://www.census.gov/content/dam/Census/library/publications/2019/demo/p60-267.pdf> [http://web.archive.org/web/20200406044948/https://www.census.gov/content/dam/Census/library/publications/2019/demo/p60-267.pdf]. In Michigan, 5.4% of the population was uninsured for the entirety of 2018. Though it may be lower than the national population on a percentage basis, it still accounts for over 530,000 uninsured. *Id.* at 19.

196. See ANDERSON ET AL., *supra* note 15, at 115.

197. *Id.*

gradually.<sup>198</sup> In the period that sees both traditional and autonomous vehicles sharing the road, drivers of traditional cars would likely be at fault for a significant portion of the accidents.<sup>199</sup> In a scenario that eliminated no-fault and any other form of car insurance, insured and uninsured alike would be open to those same risks of the traditional tort theory of liability—lack of adequate compensation, onerous barriers to recovery, and a discrimination against indigent plaintiffs.<sup>200</sup> Once again, these are the very risks that the Michigan No-Fault Act sought to eliminate.<sup>201</sup>

The point remains that both systems of insurance and liability seek to make victims of civil wrongs whole.<sup>202</sup> For the Michigan Legislature to gut the no-fault system it has in place in order to reinstitute a traditional tort theory of liability for car accidents would result in the same problems that no-fault sought to address. Therefore, while the traditional tort theory of liability may be attractive to the autonomous vehicle manufacturers, it would be irresponsible of the Michigan Legislature to rid society completely of the protections no-fault has afforded.

#### IV. CONCLUSION

There truly is no *right answer* when it comes to insurance legislation. And perhaps the categories listed above are too rigid and bimodal. The most attractive model for auto insurance in the age of autonomous vehicles is a hybrid of sorts. The no-fault era has done significant work in protecting injured parties in an automobile accident by providing pre-established avenues of recovery from one's own insurer without analyzing fault in the accident. And while the no-fault system is far from flawless, it would be naïve to assert that its costs have come without any benefit. However, that is not to say there is no room for improvement in the system, especially as society prepares for the autonomous vehicle to enter the market and roadways. Again, insurance is all about striking a balance.

The best solution is to adjust the no-fault system in a way that will allow for the easy and consistent form of recovery that it has established over the years while also allowing for efficient allocation of risk and cost

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198. See generally Steven Wittenberg, *Automated Vehicles: Strict Products Liability, Negligence Liability and Proliferation*, 20 ILL. BUS. L.J. 10 (2015).

199. *Id.* at 11.

200. See *supra* Section II.A.I.

201. See *supra* Section II.A.I.

202. See *Tort*, LEGAL INFO. INST., <https://www.law.cornell.edu/wex/tort> [<http://web.archive.org/web/20200406045122/https://www.law.cornell.edu/wex/tort>] (last visited Mar. 2, 2020) (describing the goal of tort law as “to provide relief to injured parties for harms caused by others, to impose liability on parties responsible for the harm, and to deter others from committing harmful acts”).

between vehicle manufacturers and users. In this way, it may function as a sort of blend between the current no-fault insurance system and the product liability framework. By continuing to require all autonomous vehicle owners to maintain no-fault insurance, consumers using the vehicles will still be covered by the comprehensive coverage regardless of whether the consumer or a manufacturer owns the vehicle. Additionally, the heavier burden will be placed on the vehicle manufacturers and fleet owners, who have the capital to maintain the policies and the infrastructure to weigh costs of the premiums against pricing for consumer use of their vehicles.

What is most important, however, is the Michigan Legislature acts. It has already made great strides in passing into law the SAVE Act, and it can continue to do so by beginning to build a framework for autonomous vehicle liability and insurance legislation. Technology and the law need not be at odds with one another. Not only can the Michigan Legislature create efficiency for the implementation of autonomous vehicles into the market, it can also set precedent that the law is not a needless impediment serving to stifle technology but, instead, is a tool for continuous growth.