

AI Issues in the Commercial Auto Policy: The Insurer's Perspective

Article

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The introduction of artificial intelligence into commercial vehicles has revolutionized the insurance marketplace. Conventional thinking runs that this technology will be beneficial for insurers. For example, AI-enhanced dash cameras have the ability to spot distant vehicles and road obstructions far better than the naked eye. This allows for fleet operators to quickly deploy mitigation techniques, such as braking and gear-shifting, thus avoiding serious accidents. Additionally, predictive maintenance sensors exist to alert drivers and technicians of pending feature failure. Deployment of these sensors may reduce costly maintenance downtime and improve vehicle safety on our highways.

The use of AI in commercial cabs is not solely to prevent accidents: it also optimizes delivery routes and personalizes customer relationships. However, these uses invoke varying risks. Specifically, claims for improper data handling or retention practices are on the rise. Concerns also exist over AI-enhanced equipment malfunction or breakdown. As far as lawsuits are concerned, as more commercial vehicles are outfitted with these advanced features, apportionment of liability will take center stage. Will the standard Insurance Services Office (ISO) commercial/business auto policy continue to provide adequate protection to policyholders?

Emerging Liability Questions

The short answer: not necessarily. In the context of AI technology deployment, businesses operating corporate fleets typically sign contracts with providers to install and service their on-board product. Claims professionals should pay heed to the contractual damages exclusion found within the standard commercial auto policy. This exclusion removes the liability coverage grant assumed under any sort of contract or agreement. Businesses often store extensive amounts of customer information on vehicles equipped with these systems. Any transfer of liability, say, for equipment malfunction leading to significant downtime, lost data, or even subsequent damages may not be covered because of this exclusion. Claims professionals should immediately recognize these types of claims and consult both the service contract and auto policy before issuing a coverage determination.

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While bodily injury and property damage flowing from an accident are covered under the commercial auto policy, it remains to be seen whether insurers will be able to successfully subrogate claims against liable third-party product providers. Interestingly enough, only private passenger automakers have publicly agreed to indemnify third parties when their product is to blame. Manufacturers including Mercedes-Benz, Volvo, and Alphabet have accepted responsibility for when one of their AI-enabled features is determined to be causal of an accident. Notably, that differs from driver error of an AI-connected vehicle that caused an accident. Yet currently, fully autonomous *commercial* vehicles have not been widely deployed. Additionally, large aftermarket fleet management equipment providers, like Samsara and Verizon, have not extended these liability protections to their customers. If their software is to blame and a contract is unclear about any next steps, insurers may take a hit on their overall recovery rate.

Key Takeaway: Proper Due Diligence Is Critical

Insurers, on the one hand, and brokers, agents, and insureds on the other, should carefully parse through fleet auto policies at origination and renewal. Proper due diligence will be critical to ensure that adequate coverage is maintained should one of these aforementioned losses occur. Should businesses require more specialized coverage not offered in standard policy forms, inquiries should be made for endorsements that directly address these evolving risks. Additionally, claims adjusters should be cognizant of the exclusions in the commercial auto policy and request any agreements policyholders have made with third parties as part of the coverage investigation. Finally, subrogation representatives and counsel cannot rely on public announcements by auto manufacturers of liability acceptance and indemnification. Due diligence should start before executing any contractual agreements and not after a serious incident has occurred.

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