



Mr. Brian P. Kelly
Secretary
California State Transportation Agency
915 Capitol Mall, Suite 350B
Sacramento, CA 9581

Nov. 14, 2017

Ms. Jean Shiomoto
Director
Department of Motor Vehicles
2415 1st Ave., Mail Station F101
Sacramento, CA 95818-2606

Re: DMV Overreached: Robot Car Makers Not Individuals Should Be Responsible for Autonomous Accidents

Dear Mr. Kelly and Ms. Shiomoto:

Auto manufacturers and Silicon Valley developers have led the public to believe that as their robot cars take to the road, they would be responsible for harms they cause. Now, acting on behalf of General Motors, the Department of Motor Vehicles has put a big caveat on that notion. Exceeding your authority, DMV's latest proposed regulation, contradicting earlier rules, now puts the owner of the robot car on the hook for accidents as carmakers can make the claim that the owner didn't maintain the vehicle to the manufacturer's standards. That's an outrageous and unlawful overreach.

Consumer Watchdog objected to language in your recently proposed regulations that would let robot carmakers railroad consumers. Sec. 228.28 of the autonomous vehicle regulations adds the amendment that a robot car manufacturer is responsible for technology failures only when the robot car has "been maintained in compliance with manufacturer's specifications and any modifications to the vehicle that affect the operation of the vehicle's autonomous technology are in compliance with the manufacture's specifications."

How are consumers to know what these specifications are? And why would robot carmakers not always blame consumers rather than pay claims?

Suppose, for example, mud splashed on a vital sensor, obstructing how the robot technology "saw" oncoming traffic and there was a crash. The manufacturer could claim it was not at fault, because the owner didn't maintain the vehicle in compliance with the manufacturer's standards when they failed to clean off the mud fast enough. Worse, consider a case where the robot car software was obviously to blame and mud was not wiped from a sensor. The company could still claim the robot car hadn't been properly maintained and deny liability even though the alleged "maintenance failure" had nothing to do with the crash.

What is extremely troubling is that DMV added this amendment at the request of General Motors. The revised language is virtually identical to the language proposed by General Motors

Chief Counsel and Policy Director Paul Hemmersbaugh in a letter to DMV on April 24, 2017: “and that has all times been maintained in compliance the manufacturers bulletins and specifications and has not been modified without the manufacturers consent.”

For years, GM and the driverless car industry have been promising the public that their robot cars will be safer than anything on the road today and that they will bear the responsibility when their robots fail and people are killed or injured. Now their lawyers are sneaking in a “get out of jail free” card that will allow the companies to blame consumers every time the robot causes a crash. This kind of duplicity is not surprising when it comes to the auto industry. But it’s appalling that the DMV would reverse course and try to subvert the rights of California consumers.

The robot car immunity amendment is far beyond the Department of Motor Vehicles’ legal authority. Nothing in Vehicle Code Section 38750 (SB 1298, Padilla), which charged the Department with enacting autonomous vehicle regulations refers to, much less authorizes DMV to address, liability matters. Nor is the proposed regulation authorized by other laws. Liability is a matter for tort law and the courts. The DMV has no authority to propose regulations that usurp the power of the courts or the Legislature.

Consumer Watchdog objected strenuously to Sec. 228.28 in our recently filed comments, but did not realize at that time that the comments were directly attributable to GM.

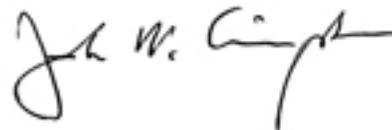
DMV’s complete capitulation to the manufacturers’ interests is bad enough. Making it even worse is how it came about. It is the result of the ongoing and troubling federal revolving door between the National Highway Traffic Safety Administration and the auto industry. Before Hemmersbaugh proposed self-serving language on GM’s behalf, he was general counsel at the National Highway Traffic Safety Administration. He wrote the legal opinion in response to a Google query in 2016 that said that a computer system can qualify as the legal driver of a car. He most assuredly had dealings with the DMV when he was a NHTSA “regulator.” Now he lobbies for General Motors.

Consumer Watchdog advises that you not succumb to GM’s power grab, but follow the law. We urge you to withdraw Sec. 228.28 as you do not have authority to propose it. Failure to do so will most certainly result in a time-consuming legal challenge to your regulations.

Sincerely,



Jamie Court
President



John M. Simpson
Privacy Project Director

Cc: Brian Soublet, Bernard Soriano