Subcommittee on Insurance and Liability – Meeting 4
July 25, 2018
Salem, OR

Members in attendance: Richard Blackwell (subcommittee chair), Eliot Rose, Chris Hagerbaumer, Jeremiah Ross, Neil Jackson

Members on phone: Robert Nash

ODOT staff in attendance: Ali Lohman, Paul Duncan, Amy Joyce, Jenna Adams-Kalloch

Public attendance: Jocelyn Blake, Evan Manvel, Maggie Emery, John Powell, Nicole Stoenner (representing task force member Rep. Susan McLain), Joanie Deutsch

Public on phone: Arthur Towers, Becky Gilliam

Welcome and Review of Minutes
1:04 p.m. meeting start
1:06 p.m. June 20 meeting minutes approved

Task Force Debrief
Richard Blackwell congratulated the subcommittee on their recommendations passing in the full task force meeting with little difficulty. He attributed this success to the time spent polishing the recommendations. He noted that subcommittee would have to address a few questions raised in the full task force meeting.

Bonding
Richard Blackwell tasked the subcommittee with considering the merits of allowing alternate financing for financial responsibility requirements, specifically bonding. The bonding inquiry was raised in the full task force meeting.

Eliot Rose asked if there would be any benefit from a public interest perspective to allow bonding.

Richard Blackwell said that bonding is generally expensive and would only be available to large entities.

Robert Nash asked whether bonding would be able to fulfill the specific coverages this subcommittee considers important.
Richard Blackwell answered that a bond would probably not address these concerns unless they were specified in statute.

Jeremiah Ross said that making sure bonds fulfill appropriate coverages would be a cumbersome process.

Jeremiah Ross discussed his experience with bonding companies. He said that they do not always see themselves as on the same page as the bond holders and are closely bound by statute.

Robert Nash said that a bonding company might not have an obligation to pay out until there is a determination of fault.

Richard Blackwell noted that bonds are “first-come, first-serve” and would be exhausted after a payout. This could create a possible scenario of multiple incidents in proximity to one another and not everyone being made whole by the bonds.

Chris Hagerbaumer said that the subcommittee already developed a good recommendation that should work in most cases. She noted that other stakeholders will be able to make their cases throughout the policymaking process.

Richard Blackwell discussed that there would be no recourse for consumers if a bonding company became insolvent.

Neil Jackson shared his concern about certification of bonding and stated that the current process is preferable. He also noted that he was not aware of a commercial entity relying on a bond.

The subcommittee voted unanimously not to add coverage by bonding to their recommendations on financial responsibility for testing manufacturers.

**Discussion & Possible Recommendations on “Standardized, nonproprietary” Data**

The subcommittee addressed their previous recommendation regarding “standardized, nonproprietary data” storage requirements. This was also a follow up item from the full Task Force meeting on July 12, 2018.

Richard Blackwell expressed doubt that the subcommittee would have the expertise to make specific recommendations about the type of data that would be important to record.

Lt. Tannenbaum said that the Subcommittee on Licensing and Registration had come to a similar conclusion because they wanted flexibility for future developments. He noted that law enforcement and courts will have the means to obtain data they need.

The subcommittee noted that the National Highway Traffic and Safety Agency (NHSTA) will likely develop policy in this area.
Lt. Tannenbaum said that issues with retrieving data from event data recorders (EDRs) sometimes occur because of damage to the EDRs or proprietary means of accessing EDRs, but rarely is there an issue with the readability of the data itself.

Neil Jackson expressed his concern that there could be roadblocks to getting important data due to concerns about trade secrets. He noted that there are protective court orders that can turn proprietary data over to a limited group of people.

Richard Blackwell expressed doubt that information in EDRs would be proprietary at all.

The subcommittee discussed the example of the Apple-FBI iPhone unlocking controversy.

Eliot Rose noted that it is possible test vehicles may not have EDRs at all and asked if the subcommittee should define some minimum standards for what data needs to be preserved in test vehicles.

Lt. Tannenbaum said that EDR data is an accessory for crash reconstruction purposes. He said this body should avoid making rules that could conflict with future NHTSA standards.

Neil Jackson said that the cost of accessing data from EDRs could be a concern and should not be prohibitive.

Jeremiah Ross said that pre-filing could also be a concern. He said some information should be accessible without having to file a lawsuit.

The subcommittee agreed to include a note in the report stating the subcommittee would be concerned about unreasonable costs to access certain types of data and information.

**Discussions of Insurance Requirements / Liability Considerations in a Post-Deployment Environment**

The subcommittee took this time to identify issues that might need to be addressed in a future report regarding deployment.

Neil Jackson expressed his concerns about automated platooning commercial vehicles. He suggested they might need greater minimum coverage requirements than other AVs.

Lt. Tannenbaum suggested more information might be needed to make a judgment in that area.

Robert Nash noted that, in the event of a catastrophic incident, injured parties could seek compensation from entities beyond a manufacturer’s insurance coverage and that setting minimums too high could be prohibitive.

Based on this discussion, the subcommittee decided its existing recommendation on commercial vehicle policy was adequate.

Eliot Rose said that there will need to be a way to establish whether a person or a vehicle is liable for an incident in a deployment framework.
Lt. Tannenbaum said that ride-share fleets are expected to be the first deployment application and that passengers in those vehicles should not be liable for any crashes if they are not performing any part of the driving task.

Neil Jackson said that there may be grey area regarding the interactions of people within an automated rideshare vehicle.

Richard Blackwell said that clarifying who is the operator of a vehicle will be important in a post-deployment environment.

Eliot Rose said that fully examining insurance issues around ride-hailing services in critical for deployment.

Jeremiah Ross raised the issues of municipal liability and dealer liability for repairs and updates.

Robert Nash said that he is not sure liability will ultimately fall on the same person who is responsible for covering insurance.

Public Comment

Nicole Stoenner, staffer for Rep. Susan McLain, made the point that not all residents will have the same access to the court system and this may be an equity concern.

Recap and Next Steps

The Subcommittee voted against including a bonding option in its recommendation on requiring $5 million umbrella insurance coverage for automated vehicle testing.

Adding highlighted language to the following recommendation:

- For automated vehicle testing, preserve and store some form of standardized, non-proprietary recorded data from a crash or incident involving an automated vehicle for the duration of the applicable statute of limitations. Data should be capable of being shared with law enforcement, government entities, or parties involved in an incident, subject to appropriate legal process. The Insurance and Liability Subcommittee recommends that the report reflect that this data should be able to be obtained without the recipient being charged an unreasonable rate to obtain such data.

The Subcommittee flagged the following as areas of concern for deployment:

- Commercial automated vehicle minimum insurance requirements
- Defining the operator of an automated vehicle/defining who is in control of the vehicle;
- Liability concerns for ride-hailing services, including the protection of passengers from liability
- Government/Municipal liability
• Dealer liability relating to repairs and software updates
• Who is assigned liability vs. who is required to maintain coverage

The subcommittee will hold a half-hour phone call meeting to confirm recommendation language on August 2 at 9 a.m.

End 2:21 p.m.