



(<https://www.carriermanagement.com/>)

Critical Information for P/C Carrier Executives

HIGHLIGHTS

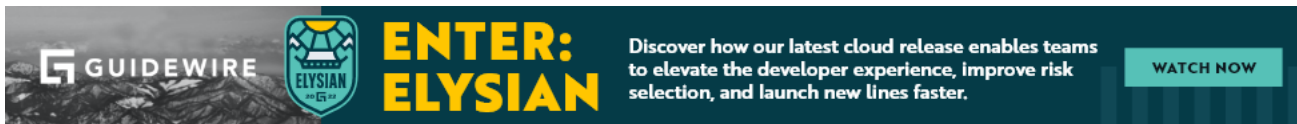
🔥 State Farm Wins, Buffett Says

(<https://www.carriermanagement.com/news/2022/05/02/235622.htm>)

🔥 Welcome to Elon Musk's Nightmare

(<https://www.carriermanagement.com/news/2022/04/21/235303.htm>)

📊 Reserves and Inflation: Insurers Got This!



GUIDEWIRE **ENTER: ELYSIAN** Discover how our latest cloud release enables teams to elevate the developer experience, improve risk selection, and launch new lines faster. **WATCH NOW**

(<https://ra.wellsmedia.com/www/delivery/cl.php?>

bannerid=12386&zoneid=117&sig=7c4eaf07862806b1cf8b06059329632ce296f08f822a32c0c9c704482f7402a&oadest=https%3A%2F%2Fwww.guidewire.com%2Felysian%2Felysian-launch%26utm_source%3Dcarriermanagement%26utm_medium%3Dbanner-ads%26utm_content%3Delysian-launch-ondemand)

[.3A%2F%2Fwww.carriermanagement.com%2Ffeatures%2F2022%2F06%2F07%2F235750.htm](https://www.carriermanagement.com/features/2022/06/07/235750.htm))

Free Preview

This is a preview of some of our exclusive, member only content. If you enjoy this article, please consider becoming a member.

On the Road to Level 3: Paradigm Shift in Auto Crash Fault Assessments

🖨️ PRINT ([HTTPS://WWW.CARRIERMANAGEMENT.COM/FEATURES/2022/06/07/235750.HTM?PRINT](https://www.carriermanagement.com/features/2022/06/07/235750.htm?print)) ✉️ EMAIL

June 7, 2022 by Mike Nelson (/author/mike-nelson/) and Stephanie Niehaus (/author/stephanie-niehaus/)



Article

(<https://www.carriermanagement.com/features/2022/06/07/235750.htm>)

FREE NEWSLETTER

Sign up to receive daily news!



0 Comments

(<https://www.carriermanagement.com/features/2022/06/07/235750.htm?comments>)

NEW You can now listen to Carrier Management articles!



Listen to this article

0:00 / 6:39 1X

On March 20, 2022, industry publication *Road & Track* caused a bit of a splash when it reported not only that German auto manufacturer Mercedes-Benz plans to seek approval for its “Drive Pilot” system here in the United States by year end but also that “Mercedes will accept full legal responsibility for the vehicle whenever Drive Pilot is active.”

Per the *Road & Track* report:

Mercedes’ new Drive Pilot seems, in operation, like many ‘traffic jam assistant’ technologies already on sale today. On certain highways, below 40 mph, a Drive Pilot-equipped S-Class or EQS will take control of the car’s speed, steering, and brakes to move you along in traffic. But there’s one key difference: Once you engage Drive Pilot, you are no longer legally liable for the car’s operation until it disengages. You can look away, watch a movie, or zone out. If the car crashes while Drive Pilot is operating, that’s Mercedes’ problem, not yours.

Source: Mack Hogan, “Mercedes Drive Pilot Beats Tesla Autopilot By Taking Legal Responsibility

(<https://www.roadandtrack.com/news/a39481699/what-happens-if-mercedes-drivepilot-causes-a-crash/>),” *Road & Track* (March 20, 2022)

Executive Summary

Level 3—the first level of truly automated driving—is almost here, according to recent reports about Mercedes-Benz. While the reports reveal the German auto maker’s intention to seek approval for its Drive Pilot system in the U.S. by year-end, and to accept full responsibility for crashes in Drive Pilot, Mercedes’s commitment is practically illusory in its impact on U.S. consumers, insurers and liability professionals, write lawyers Mike Nelson and Stephanie Niehaus. Here, they explain why and also briefly describe the prospects of using vehicle data to objectively determine liable parties in auto accidents, including the manufacturers of increasingly autonomous vehicle systems.



[C-SUITE \(/C-SUITE/\)](#)

[NEWS \(/NEWS/\)](#)

[RESEARCH \(/RESEARCH/\)](#)

[LEADERSHIP \(/LEADERSHIP-STRATEGY/\)](#)

[JOIN \(HTTPS://WWW.CARRIERMANAG](https://www.carriermanagement.com)

[\(/MARKETS \(/MARKETS/\)](#)

[REGULATION \(/REGULATION-COMPLIANCE/\)](#)

[TOP 50 \(/TOP-CONTENT/\)](#)

[BEGIN\(HTTPS://WWW.CARRIERMANA](https://www.carriermanagement.com)

[MEMBERS ONLY \(/MEMBERS-ONLY/\)](#)

[REDIRECT_TO=HTTPS://WWW.CARRIE](https://www.carriermanagement.com)



Insurance innovators choose Socotra

Bring insurance products to market faster than ever with our new Unified Portal and modern policy core.

[LEARN MORE](#)

(https://ra.wellsmedia.com/www/delivery/cl.php?bannerid=12280&zoneid=173&sig=81c554f5c6c7d88c17c5f4174cfecb064c2c3d81d5a91ddf623b7c57e45ccf6d&roadest=https%3A%2F%2Fwww.socotra.com/unified-portal%2F%3Futm_campaign%3DFY22Q2-Avolanta%26utm_source%3Dcarrier_management%26utm_medium%3Dbanner_ad%26utm_content%3Dunified_portal)

Road & Track does not reference or cite a specific press release or other source in which Mercedes makes this seemingly groundbreaking commitment to accept legal liability. But the report is consistent with then-aspirational commitments several manufacturers and tech companies made in 2015 to accept liability if their autonomous technologies were found to be responsible in an accident.

In a 60-Minutes episode called “Hands Off the Wheel” (<https://www.cbsnews.com/news/self-driving-cars-google-mercedes-benz-60-minutes/>) that aired on Oct. 4, 2015, Mercedes was identified along with Google as saying “if their technology is at fault once it becomes commercially available, they’ll accept responsibility and liability.” Just days later, Volvo announced that its president and chief executive would include commitments during a speech in Washington, D.C., that “Volvo will accept full liability whenever one of its cars is in autonomous mode, making it one of the first car makers in the world to make such a promise.” (Volvo Press Release (<https://www.media.volvocars.com/global/en-gb/media/pressreleases/167975/us-urged-to-establish-nationwide-federal-guidelines-for-autonomous-driving>), Oct. 7, 2015).

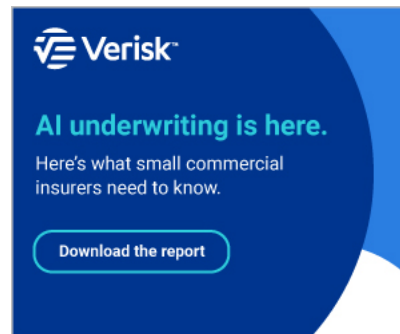
As it stands today, though, only Mercedes faces the potential of having to satisfy its prior liability commitments with its release of Drive Pilot—its first SAE Level 3 system. Many readers will recognize SAE Level 3 as the first level of truly automated driving. As reflected in the accompanying SAE graphic, updated as of last year, Level 3 features are capable of driving the vehicle—albeit only under specific conditions—and do not require driver supervision unless and until the feature makes a take-over request of the

Mercedes, Honda and Level 3 Approvals

In December 2021, Mercedes-Benz announced that it was the first automotive company in the world to meet legal requirements of UN-R157 for a Level 3 system.

What exactly is UN-R157?

In March 2021, UN Regulation No. 157 – Automated Lane Keeping Systems (ALKS)



(https://ra.wellsmedia.com/www/delivery/cl.php?bannerid=12298&zoneid=118&sig=742167e396ebb1674da8e69c-the-buzzword%2F%3Futm_source%3Dcarrier-mgmt%26utm_medium%3Dbanner%26utm_campaign%3Dcl-smallcomm-ai%26utm_content%3Dreport)

FEATURES

25 Years: The Journey of Cyber Insurance (<https://www.carriermanagement.com/features/2022/06/17/2>)

Understanding the Role of Data Scientists in Risk Modeling (<https://www.carriermanagement.com/features/2022/06/13/2>)

A Fintech Founder’s Backstory: Who Is Penetration Tester? (<https://www.carriermanagement.com/features/2022/06/07/2>)

How a Fintech Named Captain Helps Homeowners Rebuild After Natural Disasters (<https://www.carriermanagement.com/features/2022/06/07/2>)

Giants and Innovators (<https://www.carriermanagement.com/features/2022/06/07/2>)

The Next Wave of Climate Change Litigation: Industrial Meat (<https://www.carriermanagement.com/features/2022/06/07/2>)

RESEARCH & WHITEPAPERS

UIPATH How End-to-End Automation Enables Business Transformation

UIPATH Automating for End-to-End Claims Processing

ARTURO Case Study: How IAG Streamlined Claims with Arturo

driver. For further context, despite its marketing and promises of “full self-driving,” even Tesla has only reached SAE Level 2 with its currently available features.

On the Autonomous Driving page (<https://group.mercedes->

(<https://unece.org/transport/documents/2021/03/standards/un-regulation-no-157-automated-lane-keeping-systems-alks>) was implemented by the United Nations Economic Commission for Europe as “the first regulatory step for an automated driving system...in traffic and it therefore provides innovative provisions aimed at addressing the complexity related to the evaluation of the system safety.”

While Mercedes may be the first automaker to receive approval of a system in compliance with UN-R157, our research indicates that Honda was the first automaker to receive government approval of a Level 3 system. In November 2020, the Japanese government approved Honda’s Traffic Jam Pilot, which Honda offered to consumers through a very limited run of Honda Legend sedans in early 2021.

(Source: Ericka Pingol, “Honda Reveals First Autonomous Car with L3 Autonomy

(https://www.trendmicro.com/en_au/research/21/c/honda-unveils-first-self-driving-car-with-level-3-autonomy.html)” *Trend Micro*, March 16, 2021).

Other manufacturers, including BMW and Polestar, have announced plans to introduce Level 3 technologies into their lineups in the near term.

See, for example, Sebastian Blanco, “BMW Level 3 Autonomous Driving Tech Is Coming in 2025

(<https://www.caranddriver.com/news/a39414801/bmw-autonomous-driving-tech-2025/#:~:text=In%20brief%2C%20Level%203%20will,is%20unable%20to%20drive%20it>

(*Car and Driver*, March 13, 2022); Murray Slovick, “Level 3 Autonomous Vehicles: Regulators Can’t Keep Up with the Tech

(<https://www.electronicdesign.com/markets/automotive/article/21214818/electronic-design-level-3-autonomous->

vehicles-regulators-cant-keep-up-with-the-tech),” (Electronic Design, Jan. 24, 2022).

[benz.com/innovation/case/autonomous/drive-pilot-2.html](https://www.mercedes-benz.com/innovation/case/autonomous/drive-pilot-2.html)) of its website, Mercedes touts that it was the “first automotive manufacturer worldwide to secure internationally valid system approval for conditionally automated driving (SAE Level 3),” referring to authorization it received late last year from the German government to begin selling S-Class vehicles equipped with Drive Pilot in Germany. According to the press release announcing that approval: “The German Federal Motor Transport Authority (KBA)...granted system approval for [Drive Pilot] on the basis of the technical approval regulation UN-R157, thus paving the way for offering such a system internationally, provided that national legislation allows it.”

The press release also states that the “first customers will be able to buy an S-Class with Drive Pilot in the first half of 2022, enabling them to drive in conditionally automated mode at speeds of up to 60 km/h in heavy traffic or congested situations on suitable stretches of motorway in Germany.” (Source: Mercedes-Benz Press Release (<https://group-media.mercedes-benz.com/marsMediaSite/en/instance/ko/Mercedes-Benz-receives-worlds-first-internationally-valid-system-approval-for-conditionally-automated-driving.xhtml?oid=52173961>), Dec. 9, 2021).

And there, in essence, is the fine print. Several paragraphs into its report, even *Road & Track* qualifies that:

Right now, Drive Pilot can only engage at speeds under 40 mph (60 km/h in Germany) on limited-access divided highways with no stoplights, roundabouts, or other traffic control systems, and no construction zones. Eligible roads must be mapped by Mercedes for Drive Pilot use (similar to GM SuperCruise); the automaker has already mapped every such highway in Germany, and most of those in Nevada and California. The system will only operate during daytime, in reasonably clear weather, without overhead obstructions. Inclement weather, construction zones, tunnels, and emergency vehicles will all trigger a handover warning. And no, you can't close your eyes or go to sleep while it operates.

In other words, while commendable in principle, Mercedes's apparent commitment to “accept responsibility and liability” if Drive Pilot is at fault in an accident is really quite limited.

Even in Germany, where Drive Pilot is approved for commercial sale and is operable across 13,191 kilometers of the Autobahn network, the circumstances under which Drive Pilot can be used are circumscribed pursuant to the regulation (UN-R157) under which it was approved.

Here in the United States, where regulations and infrastructure can differ dramatically from state to state and Level 3 consumer vehicles remain a thing of the future, Mercedes's commitment is practically illusory in its impact on consumers, insurers and liability professionals. Indeed, Mercedes acknowledges on its website (<https://group.mercedes-benz.com/innovation/case/autonomous/drive-pilot-2.html>) that, while it is “working intensively” to obtain regulatory approval for Drive Pilot in California and Nevada by the end of 2022, the availability of Drive Pilot in those states assumes “the legal and regulatory framework allows use of the system.”

Right now, that is just an assumption.

Still, the commitment by manufacturers to accept increasing responsibility for increasingly autonomous systems is not insignificant. In some ways, it is merely a recognition of our existing product liability regime—when a product malfunctions during its expected use, the manufacturer can be held liable. A manufacturer’s pre-acceptance of liability also can help drive innovation and adoption.

SAE J3016™ LEVELS OF DRIVING AUTOMATION™
 Learn more here: [sae.org/standards/content/j3016_202104](https://www.sae.org/standards/content/j3016_202104)

Copyright © 2021 SAE International. The summary table may be freely copied and distributed AS-IS provided that SAE International is acknowledged as the source of the content.

	SAE LEVEL 0™	SAE LEVEL 1™	SAE LEVEL 2™	SAE LEVEL 3™	SAE LEVEL 4™	SAE LEVEL 5™
What does the human in the driver's seat have to do?	You are driving whenever these driver support features are engaged – even if your feet are off the pedals and you are not steering			You are not driving when these automated driving features are engaged – even if you are seated in “the driver’s seat”		
	You must constantly supervise these support features; you must steer, brake or accelerate as needed to maintain safety			When the feature requests, you must drive	These automated driving features will not require you to take over driving	
What do these features do?	These are driver support features These features are limited to providing warnings and momentary assistance These features provide steering OR brake/acceleration support to the driver These features provide steering AND brake/acceleration support to the driver			These are automated driving features These features can drive the vehicle under limited conditions and will not operate unless all required conditions are met This feature can drive the vehicle under all conditions		
Example Features	<ul style="list-style-type: none"> • automatic emergency braking • blind spot warning • lane departure warning 	<ul style="list-style-type: none"> • lane centering OR • adaptive cruise control 	<ul style="list-style-type: none"> • lane centering AND • adaptive cruise control at the same time 	<ul style="list-style-type: none"> • traffic jam chauffeur 	<ul style="list-style-type: none"> • local driverless taxi • pedals/steering wheel may or may not be installed 	<ul style="list-style-type: none"> • same as level 4, but feature can drive everywhere in all conditions

(/assets/SAE.jpg)
 Source: SAE International

But we think these commitments also reflect an awareness by manufacturers that advanced automotive technologies themselves can advance liability determinations. Connected and autonomous cars generate vast amounts of data during normal use and at trigger events, and that data can be used to objectively determine fault in the event of an accident. BMW noted as much in a May 2020 Safety Assessment Report for SAE Level 3 Automated Driving Systems (<https://bmwmovement.org/bmw-releases-safety-assessment-report-of-autonomous-vehicle-testing/>), stating “all BMW vehicles equipped with highly automated driving technology such as the SAE Level 3 BMW ADS have a number of data recording capabilities to allow for an accurate reconstruction of crash-related events.”

In the face of this objective data, the at-fault party will be hard-pressed to deny liability, including if that party is the manufacturer. To loosely quote (<https://group.mercedes-benz.com/innovation/case/autonomous/drive-pilot-2.html>) Mercedes, the introduction of these technologies will result in a “radical paradigm shift.” We believe this shift will encompass a new approach to liability determination based on vehicle data.

The authors would like to thank Kimberly Gross for her research assistance in preparing this article.

PRINT ([HTTPS://WWW.CARRIERMANAGEMENT.COM/FEATURES/2022/06/07/235750.HTM?PRINT](https://www.carriermanagement.com/features/2022/06/07/235750.htm?print))

EMAIL

EXECUTIVE VIEWPOINT ([HTTPS://WWW.CARRIERMANAGEMENT.COM/VIEWPOINTS/EXECUTIVE-VIEWPOINT/](https://www.carriermanagement.com/viewpoints/executive-viewpoint/))

FEATURED (HTTPS://WWW.CARRIERMANAGEMENT.COM/FEATURED/)

Was this article valuable?

CONTRIBUTORS



(/author/mike-nelson/)

Mike Nelson (/author/mike-nelson/)

Mike Nelson is the Founder and CEO of QuantivRisk, a technology company that uses vehicle performance data to uncover objective views of vehicle crashes. He is also a partner in the law firm Nelson Niehaus LLC, which offers litigation and risk management services related to emerging mobility technology. Reach him at nelson@nelson.legal.



(/author/stephanie-niehaus/)

Stephanie Niehaus (/author/stephanie-niehaus/)

Stephanie Niehaus is General Counsel for QuantivRisk, a technology company that uses vehicle performance data to uncover objective views of vehicle crashes. She is also a partner in the law firm Nelson Niehaus LLC, which offers litigation and risk management services related to emerging mobility technology. Reach her at Stephanie.Niehaus@nelson.legal.

RELATED ARTICLES



Autonomous Vehicles Can Be Tricked Into Dangerous Stops: Research

(https://www.carriermanagement.com/news/2022/06/07/23693.htm)



Lawyer-Turned InsurTech Founder Looks Into Cloud to Settle Tesla Claims

(https://www.carriermanagement.com/features/2022/03/09/232747.htm)



On the Highway: A Litigator's View From the Driver's Seat of a Tesla

(https://www.carriermanagement.com/features/2022/04/21/235303.htm)



Tesla Insurance Turning 'Nightmare' Claims Experience Into 'Dream': Musk

(https://www.carriermanagement.com/news/2022/04/21/235303.htm)



Who Owns Tesla Vehicle Performance Data?

(https://www.carriermanagement.com/features/2022/01/24/231783.htm)



Why ADAS Drives Claims Severity Higher (It May Not Be What You Think)

(https://www.carriermanagement.com/news/2022/01/24/231783.htm)



NHSTA Orders Crash Reports on Autonomous Vehicles, ADAS-Involved Accidents

(https://www.carriermanagement.com/news/2021/08/29/197247.htm)



Auto Tech Annoys Drivers; Some Turn ADAS Features Off

(https://www.carriermanagement.com/news/2019/08/29/197247.htm)

OUR CONTRIBUTORS



STEPHANIE NIEHAUS

On the Road to Level 3: Paradigm Shift in Auto Crash Fault Assessments

(https://www.carriermanagement.com/features/2022/06/07/236770.htm)



JAMES GILLARD

Innovating to Control Costs: Carriers Seeking Top-Line Growth Amid Bottom-Line Pressures

(https://www.carriermanagement.com/features/2022/06/07/236847.htm)



TINASHE MACHAKA

Are APIs the Golden Ticket to Seamless Connectivity in

(https://www.carriermanagement.com/features/2022/05/31/236595.htm)



JOSE SERRA

CEO Viewpoint: Unlocking Cyber ILS

(https://www.carriermanagement.com/features/2022/05/31/236595.htm)

Insurance?

MIKE NELSON (https://www.carriermanagement.com/features/2022/06/07/235750.htm) LAKSHMI SHALINI (https://www.carriermanagement.com/features/2022/05/12/236069.htm)

On the Road to Level 3: Paradigm Shift in Auto Crash Fault Assessments

How Telematics-Driven Context Can Help Price Insurance and Reduce Auto Crash Risk

See All Our Contributors (/contributors/)

C-SUITE (/C-SUITE/)	NEWS (/NEWS/)	LEADERSHIP (/LEADERSHIP-STRATEGY/)	MARKETS (/MARKETS/)
REGULATION (/REGULATION-COMPLIANCE/)	TOP 50 (/TOP-CONTENT/)	MEMBERS ONLY (/MEMBERS-ONLY/)	
VIDEOS (HTTPS://WWW.INSURANCEJOURNAL.TV/CHANNELS/CARRIER-MANAGEMENT/)			

HEADLINES	POPULAR TOPICS	CONNECT WITH US	CARRIER MANAGEMENT
State Farm Wins, Buffett Says (https://www.carriermanagement.com/news/2022/03/02/235692.htm)	Boardroom Agenda (/c-suite/boardroom-agenda/) (https://www.carriermanagement.com/news/2022/03/02/235692.htm)	Email Newsletters (/subscribe/)	Submit Content (/submitcontent/)
Welcome to Elon Musk's Nightmare (https://www.carriermanagement.com/news/2022/04/21/235693.htm)	Technology (/c-suite/technology/)	Twitter (https://twitter.com/CarrierMgmt)	Advertise (/advertise/)
Reserves and Inflation: Insurers Got This! (https://www.carriermanagement.com/news/2022/04/21/235693.htm)	Financial (/c-suite/financial/)	Facebook (https://www.facebook.com/CarrierManagement)	Subscribe (/subscribe/)
Will Asynchronous Work Work? (https://www.carriermanagement.com/features/2022/03/09/233278.htm)	News (/news/)	LinkedIn Group (https://www.linkedin.com/groups/486672008)	Contact Us (/contact/)
Will Asynchronous Work Work? (https://www.carriermanagement.com/features/2022/03/09/233278.htm)	BRAND SPOTLIGHT AgentSync (/brand-spotlight/agentsync/) (https://www.carriermanagement.com/features/2022/03/09/233278.htm)	Do Not Sell My Info (/do-not-sell/)	Carrier Management (https://www.carriermanagement.com)
Will Asynchronous Work Work? (https://www.carriermanagement.com/features/2022/03/09/233278.htm)	MediaAlpha (/brand-spotlight/mediaalpha/)		Insurance Journal (https://www.insurancejournal.com)
Will Asynchronous Work Work? (https://www.carriermanagement.com/features/2022/03/09/233278.htm)	EIS (/brand-spotlight/eis/)		Claims Journal (https://www.claimsjournal.com)
Will Asynchronous Work Work? (https://www.carriermanagement.com/features/2022/03/09/233278.htm)	Verisk (/brand-spotlight/verisk/)		Insurance Journal Academy (https://www.ijacademy.com)
Will Asynchronous Work Work? (https://www.carriermanagement.com/features/2022/03/09/233278.htm)	Notion, a Comcast Company (/brand-spotlight/notion/)		Insurance Journal TV (https://www.insurancejournal.tv)
Will Asynchronous Work Work? (https://www.carriermanagement.com/features/2022/03/09/233278.htm)	CoreLogic (/brand-spotlight/corelogic/)		MyNewMarkets.com (https://www.mynewmarkets.com)
Will Asynchronous Work Work? (https://www.carriermanagement.com/features/2022/03/09/233278.htm)	Majesco (/brand-spotlight/majesco/)		