



Flying Blind

CARS THAT CAN TAKE TO THE AIR ARE HERE, BUT WHAT ARE THE INSURANCE AND CLAIMS IMPLICATIONS?

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Fifty-five years ago, the cartoon “The Jetsons” introduced a space-age family complete with George, Jane, Judy, Elroy, a dog named Astro, and, last but not least, a robot maid named Rosie. The family lived in Orbit City in the year 2062 and its mode of transportation was none other than a bubble-shaped flying saucer called an Aerocar.

In 1940, Henry Ford declared, “Mark my words: A combination airplane and motorcar is coming. You may smile, but it will come.” Well,

according to my Apple Watch it is not yet 2062, but flying cars are here.

The transition from drones to flying cars is only natural and is already well-underway. Police in Dubai, for example, are already using a HoverSurf manufactured drone/motorcycle hybrid to fly around human police officers. So if you are in the market for a flying car and you have a rather large bank account at your disposal, you’re in luck: Nineteen different companies are currently developing flying car products. You can

secure a fully functional flying car by the end of 2018, if not earlier.

AVAILABLE OPTIONS

Terrafugia, the first flying car manufacturer, is now beginning to sell “the Transition,” which was initially developed in 2006. According to the company’s website, “The Transition is the world’s first practical flying car. A folding-wing, two-seat, roadable aircraft, the Transition is designed to fly like a typical Light Sport Aircraft in the air and drive like a typical

car on the ground. It will run on premium unleaded automotive gasoline, fit in a standard construction single-car garage, and convert between flight and drive modes in under a minute.”

The Transition’s first recorded flight took place back in 2009. This option is capable of reaching speeds of up to 100 mph and can reach altitudes of 10,000 feet. For just \$300,000, this flying car can be delivered right to your garage/hangar.

Meanwhile, the AeroMobil 3.0 is still a concept car, scheduled for release in 2020. This option will use electric power on the roadway and conventional aircraft fuel while in flight. However, the expected price tag is much higher at \$1.3 million.

These options pale in comparison to the sleek and elegant new PAL-V Liberty, which combines the features of a three-wheeled sports car and a helicopter. First developed in 2012, this vehicle is scheduled for release in 2019. Classified as a “Gyroplane,” the PAL-V can reach a speed of 112 mph. The listed price is now \$599,000, and, yes, you can pre-order one in your choice of color.

Kitty Hawk is an all-electric flying car company started by Google founder Larry Page. Its vehicle, known as “the Flyer,” looks like a large flying drone/pontoon boat, and is designed to operate over water. The contraption reportedly does not require a pilot’s license because it is classified as an ultralight aircraft under current FAA regulations. Kitty Hawk promises people will be able to learn to fly the Flyer “in just minutes.” A consumer version will be available soon, according to the company.

Ride-sharing giant Uber is exploring Vertical Takeoff and Landing (VTOL) aircraft and the large-scale process of creating flying car short-term transportation systems. Uber has partnered with NASA to explore the infrastructure necessary to make this a reality. The project, Uber Elevate, aims for flying-car taxis to be in circulation in large cities, such as Los Angeles, by 2020. The closing line in Uber’s current promotional videos is, “Closer than you think.”

INSURANCE AND UNDERWRITING ISSUES

Robert Hartwig, clinical associate professor of finance and co-director of the Center for Risk and Uncertainty Management at the University of South Carolina’s Darla Moore School of Business, told MarketWatch in 2012, “There is no off-the-shelf policy for something like this.” Therefore, flying cars present a novel risk to insurers. They share characteristics of both personal aircraft and cars, but when combined, they present unique, distinct issues. Little, if any, useful data on flying-car risks currently exists.

The MarketWatch article notes annual premiums could run as high as \$60,000. It quotes insurance expert and consultant Scott Simmonds as saying, “It’s the flying aspect of the car. That’s the exposure with hair on it.” Policies for light aircraft can cost as little as \$3,000, he says, but a flying car is likely to fall into the more expensive experimental aircraft category.

Terrafugia Vice President Richard Gersh says in the MarketWatch article that premiums would more likely be “in the \$20,000 range, plus or minus.”

Flying car manufacturers are also working hand-in-hand with insurers to fast-track available insurance coverages. Two insurance companies have preliminarily agreed to insure Samson’s “Switchblade” flying car, which the company calls “the world’s first flying sports car.” There will be an insurance manager at Samson to assist purchasers with their coverage needs, and the cross-over training included with each kit can be used by existing pilots to seek a reduced insurance rate. Those who train exclusively in Samson’s Switchblades will, in turn, receive a reduced insurance premium.

The definition of “insured vehicle” will be key to any coverage. For example, most standard commercial general liability policies exclude coverage for bodily injury and property damage resulting from the ownership, maintenance, or use of aircraft or from aviation operations. The standard aircraft policy exclusion has already been applied

to aircraft other than airplanes (see *Metro. Prop. & Cas. Ins. Co. v. Gilson* in 2011, involving an ultralight vehicle; *Farmers Ins. Co. v. Daniel* in 2008, involving a helicopter; and *Hanover Ins. Co. v. Showalter* in 1990, concerning airplanes, balloons, helicopters, kites, kite balloons, orthopters, and gliders).

LIABILITY AND ACCIDENT COST

Any accident involving a flying car will likely be significant. Every claim will involve costly property and bodily injury damage, not to mention that flying cars cost hundreds of thousands of dollars to purchase and repair. There will also be inevitable growing pains. Early design and engineering hiccups are likely, as history has shown with the inventions of automobiles and airplanes.

An AeroMobil prototype crashed in 2015 during a test flight in Slovakia. Fortunately, the pilot was able to walk away with only minor injuries. However, the potential for severe and catastrophic accidents and claims is readily apparent.

New issues in assessing fault may be created as “fault shifting” potentially comes into play. For example, the Association of California Insurance Companies (ACIC) is advocating just this with autonomous vehicles. The group is asking “for changes clarifying that the autonomous vehicle’s manufacturer retain all liability for damage, losses, or injuries caused by the operation of these vehicles.”

The onus could soon be on the flying car product and software manufacturers to disprove liability in these complicated scenarios, especially as software capabilities and automation settings are put in place.

INVASION OF PRIVACY

Liability coverage typically includes protection for personal injury, which also covers invasion of privacy. Flying cars, like drones, will likely fly over homes, backyards, and other personal spaces, increasing the likelihood of invasion of privacy claims. Policies may provide specific coverages or exclusions for trespass, nuisance, and invasion of privacy.

You may have heard of the so-called “drone slayer” in Kentucky who

shot down a drone allegedly spying on his daughter sunbathing in the family's backyard (see *Boggs v. Merideth*, March 21, 2017). Similar instances could occur with flying cars and related products.

Policy exclusions may arise for illegal activities—such as invasion of privacy or illegal surveillance or filming—or where questions exist as to whether a flying car was operated in violation of FAA regulations. Indeed, it took the FAA years to determine how to regulate drones. Hundreds of pages of FAA rules, regulations, and guidelines are now available for drones. Flying cars will present even more complicated regulatory and licensing issues for state and federal governments alike.

POSSIBLE DEFENDANTS

When considering all of the potential defendants flying car litigation could involve, insurers will need to keep the following in mind:

- The FAA could be sued for its authorization of operations in certain airspace.
- Owners could be sued for negligent operation, or for the training/hiring of a pilot.
- Pilots could be sued for their own negligence.
- Product and component manufacturers could face suits for software malfunctions, design and manufacturing defects, inadequate warnings, breach of warranty, or failure to comply with to-be-determined safety standards.
- Operation training facilities may be subject to liability.
- Flying cars could be deemed an ultra-hazardous activity and subject to strict liability.

Flying cars are no longer just in cartoons. But while the future may be here, the potential legal and

insurance issues associated with flying cars are truly endless and will only be refined over time. How will courts and juries assess fault in flying car accidents? What types of claims will plaintiffs file? How will flying cars be regulated at the federal, state, and local levels? How will insurers underwrite these new risks? How will existing insurance policies grapple with flying cars? Be sure to stay abreast of these constant changes in technology, especially as flying cars begin to impact our insurance industry. ■

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