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Amanda Carmody

PLATOONING SEMI-TRUCKS IN NEW MEXICO:
LIABILITY ISSUES AND REGULATORY SOLUTIONS

I. INTRODUCTION

According to New Mexico’s Autonomous Vehicle Committee,1 over a dozen car manufacturers are working to incorporate more automated technology into vehicles, making vehicles more autonomous over the next five to ten years.2 While vehicle automation has many uses and applications, this paper focuses specifically on automated semi-truck platooning. Semi-truck platooning is defined as two or more vehicles which follow each other at a set speed and distance in an attempt to reduce drag and increase fuel efficiency.3 Automation assists semi-truck drivers maintain speed and distance between platooning vehicles.4 Platooning could have environmental, commercial, and safety benefits for New Mexico. Environmentally, platooning could impact the amount of greenhouse gases attributed to transportation in the State. Commercially, New Mexico is part of a four state coalition that wants to develop platooning as a means to help commerce.5 Regarding safety, many proponents of platooning believe automation will generally make driving safer.6 Encouraging platooning is likely to have an overall positive effect in New Mexico, but consideration should be given to the inevitability of crashes involving non-platooning motorists and platoons.

New and traditional liability issues will arise from crashes involving non-platooning motorists and platoons. Requiring all automated platooning vehicles to have standardized data storage within the vehicle will greatly influence litigation involving platoons. This paper addresses some of the liability issues associated with a potential crash involving platooning semi-trucks and suggests that the State regulate automated semi-trucks, including the way crash data is stored within the truck, to assist and protect any parties to litigation arising from such a crash.

Additionally, crashes involving platooning semi-trucks that result in serious or fatal injuries have the potential to include multiple liable parties. Poor road

1. A committee created by NMDOT to evaluate and study autonomous vehicle technology and develop a proposal to ensure autonomous vehicles are safely driving in New Mexico.
2. AUTONOMOUS VEHICLE COMMITTEE, RECOMMENDATIONS FOR STATUTORY AND ADMINISTRATIVE POLICIES CHANGES REGARDING THE SALE AND OPERATIONS OF AUTONOMOUS VEHICLES IN NEW MEXICO, (November 28, 2018).
3. See NYSDOT TASK ASSIGNMENT, REPORT NO. 18-01, TRUCK PLATOONING POLICY BARRIERS STUDY, FINAL REPORT, S-1,2 (January 2018).
4. Id.
6. Supra note 2 at 17.
maintenance could implicate the governmental entity responsible for maintaining the road pursuant to the New Mexico Tort Claims Act. The driver of the platooning semi-truck could be liable for any harm caused by their own negligence, including but not limited to, a failure to act as a reasonably prudent person, carelessly driving, or recklessly driving. The driver’s employer could be liable under a legal theory which makes an employer liable for the actions of its employees while the employee is acting within the course and scope of his or her employment, or for negligently hiring and retaining a driver. There could be a products liability claim against almost any entity responsible for parts or technology within the truck. In New Mexico, “a supplier in the business of putting a product on the market is liable for harm caused by an unreasonable risk of injury resulting from a condition of the product or from a manner of its use.” Regulating the way crash data is stored within platooning semi-trucks could not only help identify the cause of the crash, but the party responsible for the crash, ultimately reducing the amount of costly, time consuming, and perhaps unnecessary litigation.

II. BACKGROUND

This section provides an overview of platooning technology, identifies environmental, commercial, and safety benefits of semi-truck platooning, and explains the legal theories associated with personal injury and wrongful death litigation.

a. Platooning technology.

Platooning semi-trucks utilize vehicle automation to follow one another at a set rate and speed in an attempt to be more efficient. The Society of Automotive Engineers (“SAE”), defines the different levels of automation from S-0 to S-5, with an S-0 vehicle having no automation, and an S-5 vehicle having complete automation and no human driver. Additionally, automated steering could help platooning reach its full potential. Platooning trucks have automated capabilities to “connect” to each other, but still operate at a low level of automation. While semi-trucks without automation can platoon, platooning semi-trucks that have S-2 automation—or automated throttle and break control and vehicle to vehicle communication—will be the focus of this paper. Regardless of the level of automation, there are

7. See N. M. STAT. ANN. § 41-4-11 (1978).
9. See N.M. R. ANN., CIV. UJI 13-405 (known as the legal theory of Respondeat Superior).
10. See N.M. R. ANN., CIV. UJI 13-1406.
11. Efficiency is specifically discussed in the “environmental benefits portion of this paper.
12. See Supra note 2 at S-1,2.
13. Assisted driving appears in SAE automation levels 2 and up. The more the vehicle is capable of, the higher the SAE rating.
14. See Supra note 2 at S-1,2.
15. Id.
16. Id.
regulations that require all semi-trucks to have a certified driver. This paper assumes that platooning will involve drivers in the near and somewhat distant future, and the term “platooning,” refers to two or more semi-trucks using any level of automation or which a driver is present.

b. Deployment in New Mexico.

Currently, no federal policy prohibits platooning, but in New Mexico there is a statute prohibiting vehicles from “following too closely.” Part of the reason platooning semi-trucks are able to reduce fuel consumption is due to the proximity in which they travel to one another, which is usually closer than allowed by statute. New Mexico’s following too closely statute is presently read to prohibit platooning. Nineteen states have passed similar laws that exempt platooning semi-trucks from following too closely statutes, or establish a specific testing program that allows automated platooning vehicles on public highways within the state. However, this year, a bill was introduced to the New Mexico Senate that would modify the following too closely statute to enable and encourage platooning.

c. Environmental benefits.

One benefit of platooning is the effect it has on fuel consumption and greenhouse gas emissions. Semi-trucks are large, heavy, and do not promote aerodynamic flow over the vehicle. This means that air moves across the truck and creates friction, slowing the truck down with “drag.” The squared end of a semi-truck creates a significant amount of drag because air “drops” off the back instead of gliding effortlessly off the truck. Platooning allows semi-trucks to travel close enough to stop the air from dropping off the back of the first truck, and instead, travel over the top of the following truck. Reducing the amount of drag impacts how efficiently the semi-trucks operate. A study conducted by Peloton Technology showed “an average fuel consumption saving of 4.5% for the lead truck, and 10%

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18. N. M. STAT. ANN. § 66-8-113 (1978) (“The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the condition of the highway”).
19. Supra note 2 at v.
21. Id.
24. See Id.
25. See Id.
26. See Supra note 2 at S-1,2.
27. See Id.
for the following truck.”

In New Mexico, transportation fuel use was responsible for 17% of the State’s greenhouse gas emissions between 2000 and 2013. Reducing the amount of fuel semi-trucks use would positively impact the amount of greenhouse gas emitted from transportation within the State.

d. Commercial benefits.

New Mexico, Arizona, California, and Texas recently established the I-10 coalition “to accommodate the seamless movement of freight between the nation’s largest ports.” One of the coalition’s goals is to “[d]evelop technology, standards of practice and protocols to enable better freight movement along the corridor, in areas including but not limited to permitting, parking, platooning and inspections.” Currently, no federal policy prohibits platooning, and other coalition states have actually taken steps to encourage platooning.

e. Safety benefits and concerns.

Platooning trucks will not be the only vehicles on New Mexico roadways. New Mexico citizens commuting to work, taking vacations, or simply taking a joy ride will be sharing the road with platoons. In 2019, 408 people died on New Mexico roads, and 18 of those deaths involved semi-trucks. In 2018, there were seventeen fatalities involving semi-trucks in the State. While safety is a primary reason to adopt platooning technology, no one has said that crashes will be eliminated. As long there are crashes and injuries, there will be personal injury and wrongful death litigation.

f. Liability issues and theories.

Although liability can arise from intentional and negligent acts or omissions, this paper will focus solely on negligence. There is not a significant difference between intentional and negligent acts for purposes of this paper, except that intentional acts are not typically covered by insurance. Negligence can be

28. See id.
30. Supra note 1 at 15.
31. Supra note 3.
32. Supra note 1 at 15; See also e.g. Keith Goble, California gets go-ahead to continue truck platoon testing, LAND LINE MAG., Oct. 17, 2017, http://www.landlinemag.com/story.aspx?storyid=71038#.XMW-aOhKjZs and TEX. DEP’T OF TRANSP. PLATOONING PROJECT, CASE STUDY 3, https://rellis.tamus.edu/case-studies/case-study-3/, (California’s governor signed an order permitting platooning testing on California highways, and Texas has conducted testing within the state).
35. Supra note 2 at 17; Infra note 55 (Most crashes are caused by driver error)
36. There are instances where a lack of insurance makes it difficult or impossible to sue an individual for damages. The nuances and exceptions to coverage for intentional torts are not relevant to this paper.
broadly defined as an act or omission which a reasonable person knows, or should know, could cause harm, and in the exercise of ordinary care, would not do. In order for negligence to become an issue in litigation, the alleged negligent act has to actually or proximately cause harm to the plaintiff. New Mexico applies the “doctrine of comparative fault” or “several liability,” and under this doctrine, when a person is harmed by the negligence of many, fault is assigned by percentage to every party that caused the injury. In cases where the harm is a bodily injury, it is referred to as personal injury claim. If the harm caused is death, the claim is referred to as a wrongful death claim. In a wrongful death claim, a personal representative is appointed to litigate the deceased’s claim against the negligent party or parties. In this paper, the term “injured person” will be inclusive of decedents and/or the personal representative of their estate.

III. PARTIES THAT COULD BE LIABLE FOR INJURIES RESULTING FROM A CRASH INVOLVING PLATOONING SEMI-TRUCKS.

a. Government entities.

The government could be held liable for harm caused by a crash involving platooning semi-trucks if the crash were to occur on a roadway that is not properly maintained. Many crashes occur on roadways maintained by government entities. The New Mexico Tort Claims Act waives sovereign immunity of the government if the maintenance of the roadway is found to be a contributing factor in a personal injury, wrongful death, or other tortious act. In New Mexico, the courts have held that the “Tort Claims Act imposing liability for negligent maintenance of highways and streets must be construed to effectuate its remedial purpose of ensuring that highways are made safe and kept safe for the traveling public.” Specifically, the Court has held that failure to adjust traffic on a flooded road and failure to place traffic control devices fall under the waiver of sovereign immunity. New Mexico has a public policy interest in allowing injured persons to hold the government liable in an attempt to incentivize maintaining roadways, and maintaining roadways for platooning vehicles falls within this interest.

Platooning vehicles need the right environment to operate efficiently. Multi-lane, continuous roadways, without congested traffic, are idyllic for

37. See N.M. R. ANN., CIV. UJI 13-1601.
38. See Id. and See N.M. R. ANN., CIV. UJI 13-305.
41. See N. M. STAT. ANN. § 41-4-11(1978)(The New Mexico Tort Claims Act provides that a state actor can only be liable for “failure to maintain.”)
42. Visit https://gps.unm.edu/tru/crash-maps/2016-maps, for maps that show locations of crashes by New Mexico Counties. Examples of government entities that can be held liable include, but are not limited to, New Mexico Department of Transportation, the State of New Mexico, The City of Albuquerque, San Juan County, etc.
43. N. M. STAT. ANN. § 41-4-11(1978).
46. See Supra 2 at 26.
platooning semi-trucks.\textsuperscript{47} Road striping helps all automated vehicles maintain lane assistance, and clean, smooth roads help the computer surveillance in automated vehicles.\textsuperscript{48} In order for platooning semi-trucks to operate effectively, the first vehicle in the platoon must “notify” the following truck(s) of the road conditions. The maintenance of clear signage, striping, smooth road surfaces, and marked hazards will be crucial if the government wants to avoid liability in crashes involving platooning semi-trucks.\textsuperscript{49}

b. Drivers and their employers.

Federal Motor Carrier Safety Regulations require all semi-trucks, regardless of the level of automation, to have a certified driver.\textsuperscript{50} As long as platooning semi-truck drivers have a role in operating the vehicle, they could be brought into litigation arising from a crash if they negligently performed their duties.

Drivers of platoons may be named defendants not only under the theory of negligence, but also under the theory of negligence per se.\textsuperscript{51} While negligence is a general duty to act reasonably, negligence per se incorporates a statutory violation, such as failure to yield, or obey the speed limit, to demonstrate negligence. New Mexico already has statutes that apply to all drivers, and do not exclude drivers of autonomous vehicles.\textsuperscript{52} These statutes include, but are not limited to, requiring drivers to exercise due care, keep a proper lookout, and to not drive carelessly.\textsuperscript{53} Regardless of statutory violations, most crashes are caused by drivers, including semi-truck drivers,\textsuperscript{54} and there is no evidence suggesting that automation in platoons will eliminate crashes caused by platooning drivers.

Drivers, as opposed to the vehicle or environment, are found to be the “immediate reason” for 94\% of all crashes.\textsuperscript{55} This includes driver inattention, incorrect decision making, and misjudgments.\textsuperscript{56} Drivers of vehicles with high levels of automation have caused crashes in other states. In Florida, a Tesla was being used in autopilot mode with a human driver present when it drove into another vehicle making a left hand turn in front of it, killing the driver behind the wheel.\textsuperscript{57} The investigation that followed placed fault on the driver because he was “not

\textsuperscript{47} See Id.

\textsuperscript{48} See Id at 5, 26.

\textsuperscript{49} See Supra 2 at 26.


\textsuperscript{51} See generally N.M. R. ANN, CIV. UJI 13-13-305, 1601.

\textsuperscript{52} See generally N. M. STAT. ANN. § 66.

\textsuperscript{53} See generally N. M. STAT. ANN. §§ 66–8–113, 66–8–114, 66-7-337.


\textsuperscript{55} Id.

\textsuperscript{56} Id.

\textsuperscript{57} CAPTAIN ERIC SCHUM, A SIMPLE FIX: HOW A SINGLE STATUTE COULD HELP ENSURE PUBLIC SAFETY AS DRIVERLESS CARS BECOME MORE COMMON IN NEW MEXICO, Presented November 28, 2018, at 4.
In March 2018, “a self-driving car operated by Uber struck and killed a pedestrian . . . in Tempe, Arizona.” After an investigation, police found that the driver was continually not paying attention, and was even streaming video on her phone around the time of the crash. Platooning trucks will have less automation than either of the automated vehicles in the Florida and Arizona crashes, placing more responsibility on the driver. If the driver of a platooning semi-truck is negligent, his or her employer could also be brought into litigation.

Companies employing platooning drivers will be brought into litigation arising from a crash under several theories: respondeat superior, which holds employers vicariously liable for actions of their employees while the employee is acting within the course and scope of his or her employment; negligent hiring, retaining and supervising; and negligent entrustment. Trucking companies will train drivers on automated systems, and may create new policies and procedures for platooning trucks with automation. Further, companies will likely need policies and procedures that dictate how to provide software updates and maintenance to the digital components of automated semi-trucks, ensuring they do not take on comparative fault for failing to maintain their fleets. Determining how much fault should be attributed to the driver (and their employer) will be affected by any claim against manufacturers of the automated semi-truck, and possible software developers of the automated system.

c. Parties in the “chain of distribution.”

There is a belief that an automated vehicle is safer than a non-automated vehicle because some tasks will be assigned to a computer not susceptible to the inaccuracies of human drivers. Even though drivers cause the vast majority of crashes, people may still blame new technology if they are involved in a crash with an automated vehicle. If a part or component of a platooning truck is a contributing factor of a crash, claims against all parties in the chain of distribution, including but not limited to the parts manufacturer, technology company, and fleet manufacturer, could be brought into litigation under the theory of products liability. All parties in the chain of distribution of a defective product are strictly liable, and while there are three types of defects (manufacturing, design, and warning defects), all are governed by the theory of strict liability in New Mexico:

New Mexico has adopted the principle of strict products liability. Under the strict products liability theory, a supplier of products is liable for harm proximately caused by an unreasonable risk of...

58. Id.
60. Kate Conger and Bryan Menegus, Uber Driver in Fatal Tempe Crash May Have Been Watching The Voice Behind the Wheel, GIZMODO (Jun. 22, 2018).
61. See generally N.M. R. ANN, CIV. UJI 13-405, 1647, 1646.
injury resulting from a condition of the product or from a manner of its use. This rule applies even though all possible care has been used by the supplier. . . . . . .

New Mexico’s “unreasonable-risk-of-injury” test allows for proof and argument under any rational theory of defect. 65

This means, that even when components work as they should, they can create an unreasonable risk to the user, and all parties in the chain of distribution could face liability under New Mexico law. 66

Additionally, the software platooning trucks use could also contribute to crashes: “[The] challenge lies in determining to what extent the automated vehicle’s software or algorithm defect is attributable to the manufacturer.” 67 Software within an automated semi-truck could be brought in under new theories of negligence. Bryant Walker Smith, a professor at the University of South Carolina, has proposed that the negligent action of software could be treated the same way the negligent action of a driver. 68 Applying this, the software would be negligent if a human or other software could have avoided the crash. 69 Treating the programming or software as an actor that could be found negligent in this way would essentially create another way for plaintiffs to bring in software issues or defects if they were not able to under the theory of products liability.

Internally, semi-trucks are complex machines, and automation only adds to their complexity. Automated semi-trucks used for platooning will need a basic hardware and computational elements. 70 This could include:

(1) millimeter-wave radar and/or infrared laser radars to detect obstacles in front of them, (2) infrared laser radars and cameras to recognize the lane markings, (3) Dedicated Short Range Communications (DSRC) radios to communicate with other vehicles, (4) a controller (i.e., computer) to run the system control software, (5) a drive by wire system (braking and throttle), and/or (6) electronic steering control. 71

With the added internal components, there are likely tens, or even hundreds, of possible parties that could be found liable from harm caused by a crash involving platooning semi-trucks. Having readily available and understandable crash data is in the best interest of all potential parties.

65. Smith ex rel. at ¶¶ 12-17 (internal quotations and citations omitted).
66. Id. (there is subsequent case law distinguishing parties that can be included in the “chain of distribution,” but this paper does not rely on that analysis).
69. Id.
70. Supra note 2 at 2,3.
71. Id.
IV. DETERMINING FAULT WITH ELECTRONIC DATA RECORDERS.

The term “black box” is often associated with airplane crashes because the purpose of the black box is to record flight information and help determine the cause of a crash. Many cars have a type of black box, or Event Data Recorder (EDR), that serves the same purpose. EDRs are not required by law, but 99.6 percent of new vehicles, excluding semi-trucks and other commercial vehicles, have EDRs. There are federal regulations that set out what EDRs have to record, how they record it, and how information is accessed, but the regulations do not apply to semi-trucks. EDRs within semi-trucks are different in the following way:

[W]ithin the heavy truck industry, vehicle manufacturers, engine suppliers, vehicle owners, and fleet operators have the option to adjust event trigger thresholds, data retention policies, or to disable event recorder systems altogether. Even accessing the data in heavy trucks can be significantly more complicated. Heavy truck manufacturers utilize standardized diagnostic connectors, but each engine supplier requires unique software in order to access the data, and some manufacturers do not allow access to their data through publicly available hardware or software.

Even when semi-trucks have EDRs, the way the information is stored and accessed varies from vehicle to vehicle, even those that are the same make and model, which makes it difficult to have a standardized, accessible way to obtain data for liability determinations.

The Supreme Court has held that the information contained on EDRs is private and protected by the fourth amendment. However, this usually only matters in criminal cases and/or police investigations, and generally implies a search warrant or subpoena is needed to access information from an EDR or electronic control unit (“ECU”). Most civil litigation will not involve warrants, and New Mexico already has law that will help plaintiffs involved in platooning crashes to obtain information from EDRs within semi-trucks.

A specific claim for damages and the rules governing discovery allow crash data to be accessed in civil litigation. New Mexico law specifically recognizes a

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72. DOT and NHTSA, PROPOSED RULE; WITHDRAWAL, FEDERAL MOTOR VEHICLE SAFETY STANDARDS; EVENT DATA RECORDERS (Feb. 8, 2019).
73. Id.
74. 14 C.F.R. § 563 details the requirements for EDRs.
76. Id.
77. Id.
78. 40 A.L.R.6th 595 (Originally published in 2008) (fourth amendment protection implies that law enforcement usually will need a search warrant to access an EDR).
79. See Id.
80. N.M. R. ANN, CIV. UJI 13-1650; N.M. R. ANN, 1-026.
81. Rule 1-026 NMRA states “Parties may obtain discovery of any information, not privileged, which is relevant to the subject matter involved in the pending action. The information sought need not be admissible at the trial if the information sought appears reasonably calculated to lead to the discovery of
civil claim for spoliation of evidence. Spoliation is the term used when a party to a lawsuit fails to maintain evidence either intentionally or negligently. Additionally, in civil litigation, parties generally have a right to information likely to lead to admissible evidence. The law of spoliation, coupled with the rules of discovery, allows parties to civil litigation a way to access information stored on an EDR. New Mexico has not ruled specifically on the admissibility of EDR information, but has assumed, as derived from other states’ common law, that the information is reliable and admissible. However, experts, or witnesses with expertise in a specific scientific area, are needed to interpret the data from EDRs. There is no standardization for semi-truck EDRs, and it could be very difficult to find an expert with a focused enough expertise to translate and analyze data in court, or even to find a way to access and translate the data into readable information. If automated semi-trucks do not have an EDR, the crash data may be stored on a secure digital card within the ECU of the vehicle.

New Mexico spoliation and discovery rules likely allow information to be taken from an ECU. But that does not mean obtaining the information is without its challenges. For example, the Tesla that was involved in a crash in Florida stored its information within the vehicle’s ECU, but there was no readily accessible way to access the information on the ECU. Even though this storage system collected much more data than a EDR would, it required a tool to access the data over air, connecting physically to the vehicle, or by accessing the storage card directly. However, the tool needed to access the information was not commercially available. As such, Tesla and its software were the only means of recovering the stored data. As a result of this crash, the National Transportation Safety Board (“NTSB”) concluded that the information from the automated vehicle could not be independently analyzed or verified. In civil litigation, this presents a problem: how

admissible evidence.” It should also be noted that the rule allows discovery to be limited if “the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, limitations on the parties’ resources, and the importance of the issues at stake in the litigation.”

82. N.M. R. ANN, CIV. UJI 13-1650.
83. Id.
84. N.M. R. ANN, 1-026.
86. See generally FRE 402, 407 and Marcus A. Mazza, Heavy Truck Event Data Recorders - Expert Article, THE EXPERTS, ROBINSON FORENSIC (May 3, 2017). (On the Society of Automotive engineers offers a course specifically in reading heavy vehicle EDRS on its website: https://www.sae.org/learn/content/c1022/).
87. Supra note 72.
88. NHST, Collision Between a Car Operating With Automated Vehicle Control Systems and a Tractor-Semitrailer Truck Near Williston, Florida (May 7, 2016) at 14-15.
89. See Rule 1-026 NMRA.
90. Id. at 14.
91. Id. at 16.
92. Id.
93. Id.
94. Id. at 37.
do you bring crash data evidence into court if only the company (that is being sued) can read the information?

V. CURRENT EDR STANDARDS AND REQUIREMENTS FOR DATA COLLECTION ACCESSIBILITY.

The National Highway Traffic Safety Administration ("NHTSA") has recognized a need for enhanced EDRs in automated vehicles, and NTSB has concluded that “a standardized set of retrievable data is needed to enable independent assessment of automated vehicle safety and to foster automation system improvements.”95 Vehicle manufacturing standards are regulated at the federal level,96 and currently, there are no regulations that standardize crash data for independent analysis. Divers and vehicle operation are regulated at the state level, 97 and some states including California and Nevada have tied vehicle operation to a requirement for storage of types of crash data.98

Nevada and California have different requirements for the data that is recorded in order to operate an automated vehicle within the respective state. Nevada requires partially autonomous vehicles to have the ability to record when the vehicle is taking autonomous action and when the driver is in full control.99 California regulates the data storage further, and more explicitly:

The autonomous vehicle has a separate mechanism, in addition to, and separate from, any other mechanism required by law, to capture and store the autonomous technology sensor data for at least 30 seconds before a collision occurs between the autonomous vehicle and another vehicle, object, or natural person while the vehicle is operating in autonomous mode. The autonomous technology sensor data shall be captured and stored in a read-only format by the mechanism so that the data is retained until extracted from the mechanism by an external device capable of downloading and storing the data. The data shall be preserved for three years after the date of the collision.100

In addition to the above requirements, California has an extensive vetting process required for registration of automated vehicles, including that the manufacture make a certified statement as to the safety and technology of the vehicle.101 Nevada requires labeling affixed to the registration of automated vehicles that indicates the vehicle is automated.102 In certain instances, both states require the manufacturers of autonomous vehicles to maintain either insurance, a surety bond, or proof of self-insurance in the amount of $5,000,000.00.103 While both Nevada and California

95. Id.
96. Supra note 1 at 15.
97. See Supra note 72 at 23.
98. NEV. ADMIN. CODE §§ 482A.110, .190(2) (2012); CAL. VEH. CODE § 38750 (West)
100. CAL. VEH. CODE § 38750 (West).
101. CAL. VEH. CODE § 38750 (West).
102. NEV. ADMIN. CODE §§ 482A.080
103. NEV. ADMIN. CODE §§ 482A.080; CAL. VEH. CODE § 38750 (West).
regulate automated vehicles more aggressively than most states, most of their 
regulations do not explicitly address automated semi-trucks.

Regulation of automated semi-trucks, particularly regulation and 
standardization of EDRs, ECUs, or any other data storage, will assist in litigation 
 arising from crashes with automated vehicles. California and Nevada do not 
explicitly include platooning semi-trucks, but they do not exclude them either. As 
discussed, if there is a crash involving automated platooning semi-trucks, there will 
be many possible parties to bring into litigation, typically more than a crash involving 
non-platooning vehicles. Parties usually act in their best interest and attempt to place 
fault on one another to avoid liability. Regulation of autonomous semi-trucks 
including regulation of data storage, could help all parties determine fault more 
accurately, and avoid bringing unnecessary parties into litigation. In fact, without the 
information, it may be impossible to determine the cause of a crash involving an 
automated vehicle.

VI. NEW MEXICO CAN ADDRESS THE ISSUES IN DETERMINING 
LIABILITY WHEN AN AUTOMATED SEMI-TRUCK PLATOON IS 
INVOLVED IN A CRASH.

When a crash involving platooning semi-trucks occurs, determining what 
party is liable will be crucial in avoiding unnecessary litigation. Government entities, 
drivers and employers, and all distributors in the chain of products distribution could 
be brought into litigation under the theories of liability discussed above. Regulation 
of data collection in autonomous vehicles, including semi-trucks, could assist 
investigators and litigators determine what party is, or parties are, at fault. Currently, 
New Mexico does not regulate automated vehicles, including automated semi-trucks. 
New Mexico should follow the examples set by Nevada and California, and not shy 
away from regulation of data collection in automated vehicles. Because no 
regulations exist, New Mexico has an opportunity to explicitly include automated 
semi-trucks when regulating automated vehicles.

Captain Eric Schum of the New Mexico State Police has proposed a rough 

draft of a statute that would regulate how companies supply digital data to law 
enforcement when investigating a crash involving automated vehicles.104 His 
proposed statute sets deadlines for information to be furnished, requires easily 
understandable data, and specifies what information must be included or excluded in 
data recording.105 While Captain Schum’s proposed statute is a start, New Mexico 
should regulate autonomous vehicles more aggressively, as California and Nevada 
have done. Statutes regulating autonomous vehicles in New Mexico should include:

1. Language similar to California’s statute that requires certain data 
to be stored and accessible. Semi-trucks and platooning technology should be 
explicitly included in this type of regulation;
2. Enforcement of compliance with data storage before an automated 
semi-truck or other vehicle is registered;
3. Platooning trucks must be identifiable to law enforcement;
4. Platooning fleets must register with the state;

104. Supra note 54 at 7
105. Id.
5. All automated vehicles, including platooning semi-trucks should have mandatory insurance requirements; and
6. Failure to comply with any statute should result in a fine.
By regulating all data collection in autonomous vehicles, including platooning semi-trucks, law makers can directly help any person who is injured in killed in a crash. Determining fault through data storage may not always be conclusive, but in many instances, it could help litigation from becoming unnecessarily costly, time consuming, and complex. Regulation not only benefits individuals who may be injured in a crash, but also helps government entities, drivers, companies, and manufacturers avoid unnecessary litigation.

VI. CONCLUSION

Autonomous vehicle technology started in science fiction, was realized by wealthy tech companies, and is now being incorporated into personal vehicles and commercial transportation. Semi-truck platooning is a form of vehicle automation that could directly and indirectly effect every person in New Mexico. Reducing greenhouse gas emissions, encouraging commerce, and safer travel are significant possible benefits of platooning. However, the direct effects on individuals should not be overlooked. Crashes involving platooning trucks are likely to occur, especially if New Mexico passes legislation that effectively encourages platooning in the state. New and traditional liability issues will arise from crashes involving non-platooning motorists and platoons. Determining fault will be complicated, especially if data collection is difficult or impossible. The law in New Mexico should anticipate technological development and enact statutes that require platooning semi-trucks to store data in a comprehensive and easily accessible way. In doing so, New Mexico could help the government, companies platooning throughout the state, and automated technology developers or manufactures avoid unnecessary litigation. Most importantly, regulation could help an injured person, or their family, move on from catastrophe and hold the correct entity responsible for the injury, pain, and suffering they endure as a consequence of automated semi-truck platooning.