



## “Flying Blind on Flying Cars - Is the Insurance World Headed for a Major Crash?”

By: Brian P. Henry and Andrew L. Smith

Fifty-five years ago, the cartoon “The Jetsons” presented 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. Their means of transportation was none other than a bubble-shaped flying saucer, called an Aerocar. In the words of Henry Ford back in 1940, “*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 already here.

Remotely piloted drones are old news. Police in Dubai are already using a HoverSurf manufactured drone/motorcycle hybrid to fly around actual human police officers. The transition from drones to flying cars is only natural and is already well-underway.

### The Available Options

If you are in the market for a flying car and you have a rather large bank account at your disposal, you are in luck. Nineteen different companies are currently developing flying car products. You can secure a fully functional flying car by the end of this year.

Terrafugia, the first flying car manufacturer, is now beginning to sell “the Transition,” initially developed in 2006. According to the company 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 up to 100 m.p.h. and can reach altitudes of 10,000 feet. For just \$300,000, this flying car can be delivered to you later this year.

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, combining the features of a three-wheeled sports car and a helicopter. First developed in 2012, this option is scheduled for release next year. Classified as a

“Gyroplane,” the PAL-V can reach a speed of 112 m.p.h. and can travel up to 750 miles. The listed price is now \$599,000, and yes, you can pre-order yours in your choice of color.

Kitty Hawk is an all-electric flying car company started by Google founder, Larry Page. Known as “the Flyer,” the vehicle 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 the 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 by the end of this year.

Ride-sharing giant, Uber, is exploring Vertical Takeoff and Landing (“VTOL”) aircraft and the largescale 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, fully expects 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

According to Robert Hartwig, President of the Insurance Information Institute, “*There’s no off-the-shelf policy for something like this.*” Flying cars present a novel risk to insurers – they share characteristics of both personal aircraft and cars, but when combined present unique, distinct issues. Little if any useful data on flying car risks currently exists.

Experts estimate annual premiums could run as high as \$60,000 — more than 76 times the average \$785 household auto insurance policy. “*It’s the flying aspect of the car,*” says insurance expert, Scott Simmonds. “*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 the 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 coverage. Two insurance companies have preliminarily agreed to insure the Switchblade. There will be an Insurance Manager at Samson to assist purchasers with their insurance, 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

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in their Switchblades will in turn receive an equally reduced insurance premium.

The definition of “insured vehicle” will be key to any coverage. For example, most standard CGL 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*, 458 F. Appx. 609 (9th Cir. 2011) (ultralight vehicle); *Farmers Ins. Co. v. Daniel*, Case No. CIV-07-1421-C, 2008 WL 4372879 (W.D. Okla. Sept. 19, 2008) (helicopter); *Hanover Ins. Co. v. Showalter*, 204 Ill. App.3d 263, 561 N.E.2d 1230 (Ill. Ct. App. 1990) (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. 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 inevitable 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 from the scene and escaped 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. Difficulties will arise in pointing the finger and determining who to blame. Fault-shifting may come into play. For example, the Association of California Insurance Companies 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, your backyard, and other personal space, elevating 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 pool in their backyard. *See Boggs v. Merideth*, W.D.Ky. No. 3:16-CV-00006-TBR, 2017 U.S. Dist. LEXIS 40302 (Mar. 21, 2017). Similar instances could occur involving flying cars and related products.

Policy exclusions for illegal activities and criminal acts may come up, such as invasion of privacy, 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 agree 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

Think of all the potential defendants flying car litigation could entail. Insurers will need to consider evaluating the following:

The FAA could be sued for its authorization of operations in certain airspace.

Owners could be sued for negligent operation, or training/hiring of a pilot.

Pilots could also be sued for their own negligence.

Product and component manufacturers will also need insurance to guard against 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.

### Conclusion

The future is here! Flying cars are no longer just in cartoons. 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 and how flying cars are already impacting our insurance industry.

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**Brian P. Henry** is a Shareholder in the Sarasota, Florida office of Smith, Rolfs & Skavdahl Company, LPA. Brian is nationally-recognized for his knowledge and experience on expert preclusion issues, having written and lectured extensively on the subject and having handled more than 100 Daubert-type challenges in cases throughout the country. Brian has served as an expert witness on the standard of care for attorneys handling fire science cases, and he is a frequent lecturer on fire science, expert preclusion, insur-

ance, and product liability issues at conferences throughout the country.

**Andrew L. Smith** is a Partner in the Cincinnati, Ohio office of Smith, Rolfs & Skavdahl Company, LPA who concentrates his practice in the areas of construction law, insurance defense, and bad faith litigation defense. Andrew has extensive experience in state and federal court handling complex civil litigation matters. He is also the co-host of BearcatsSportsRadio.com and an avid UC Bearcats follower.

## Technology Update: Ride-Sharing Endorsement, Drone Case Law, and Airbnb for Your Boat! *By: Andrew L. Smith*

It is safe to say technology is taking the insurance world by storm. Bitcoin, Uber, Airbnb, and Tesla – these are just a few common-place names the world now knows. This article will address several recent updates for ride-sharing, drones, and another new venture to rent boats, similar to Airbnb, started in Cincinnati, Ohio.

### ISO Ride-Sharing Endorsement

An interesting question regarding Uber and Lyft claims is whether the driver's personal auto policy provides coverage during "period one." This is the timeframe the driver is logged into the app and driving around looking to obtain business. There are no passengers in the vehicle. The driver has not been contacted and has not accepted a ride request.

Ride-share drivers are paid commission based on fares – they are not paid an hourly wage. This raises the question of whether a claim occurring during period one can be excluded under the commercial activity, for hire, or livery services exclusion contained in any standard personal auto policy since the driver is not yet earning income during this timeframe. Insurers are split on this coverage issue.

The Insurance Services Office, Inc. ("ISO") has released a Public or Livery Conveyance Exclusion Endorsement for personal auto policies. (Form PP 23 40 10 15). The Endorsement applies to any period of time an insured is logged into a "transportation network platform" as a driver, whether or not a passenger is occupying the vehicle. "Transportation network platform" is defined as "an online-enabled application or digital network used to connect passengers with drivers using vehicles for the purpose of providing prearranged transportation services for compensation."

Thus, the Endorsement excludes coverage for any ride-sharing claim during any of the three periods. The Endorsement ex-

cludes liability, med pay, and first-party damage coverages. Because UM and UIM coverages are statutory and provided by state-specific endorsements, ISO is filing a similar change, to the extent permitted by law, to each state's UM/UIM endorsements.

### New Drone Case

In May 2017 the D.C. Circuit Court of Appeals in *Taylor v. Huerta*, 856 F.3d 1089 (D.C.Cir. 2017), struck down an FAA rule requiring recreational drone users to register their model aircraft with the federal government. Section 336 of the FAA Modernization and Reform Act of 2012 provides the FAA "may not promulgate any rule or regulation regarding a model aircraft." Accordingly, the court held the FAA could not require a recreational drone user or hobbyist such as Mr. Taylor to register his drone with the FAA.

This is the first published case across the country addressing Part 107 of the Federal Aviation Regulations for Small Unmanned Aircraft implemented in August 2016. How this court decision impact the remainder of the Part 107 and other FAA rules and regulations for drones remains to be seen.

### WavStay

WavStay is a new service connecting boat owners and renters. Yet another extension of the rapidly-expanding "sharing economy," WavStay is similar to Airbnb and Uber. Cincinnati natives, Denise Harris and Bob Thompson, launched the website-based business in May 2017 in Cincinnati, Ohio.

WavStay allows users to view, compare, and book boats, yachts, charters, and waterfront properties through its website. The company is operating in Cincinnati, Ohio, Lake Cumberland, Tennessee, Charlestown, South Carolina, and throughout

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