

# National Trends and Emerging Tort Claim Issues

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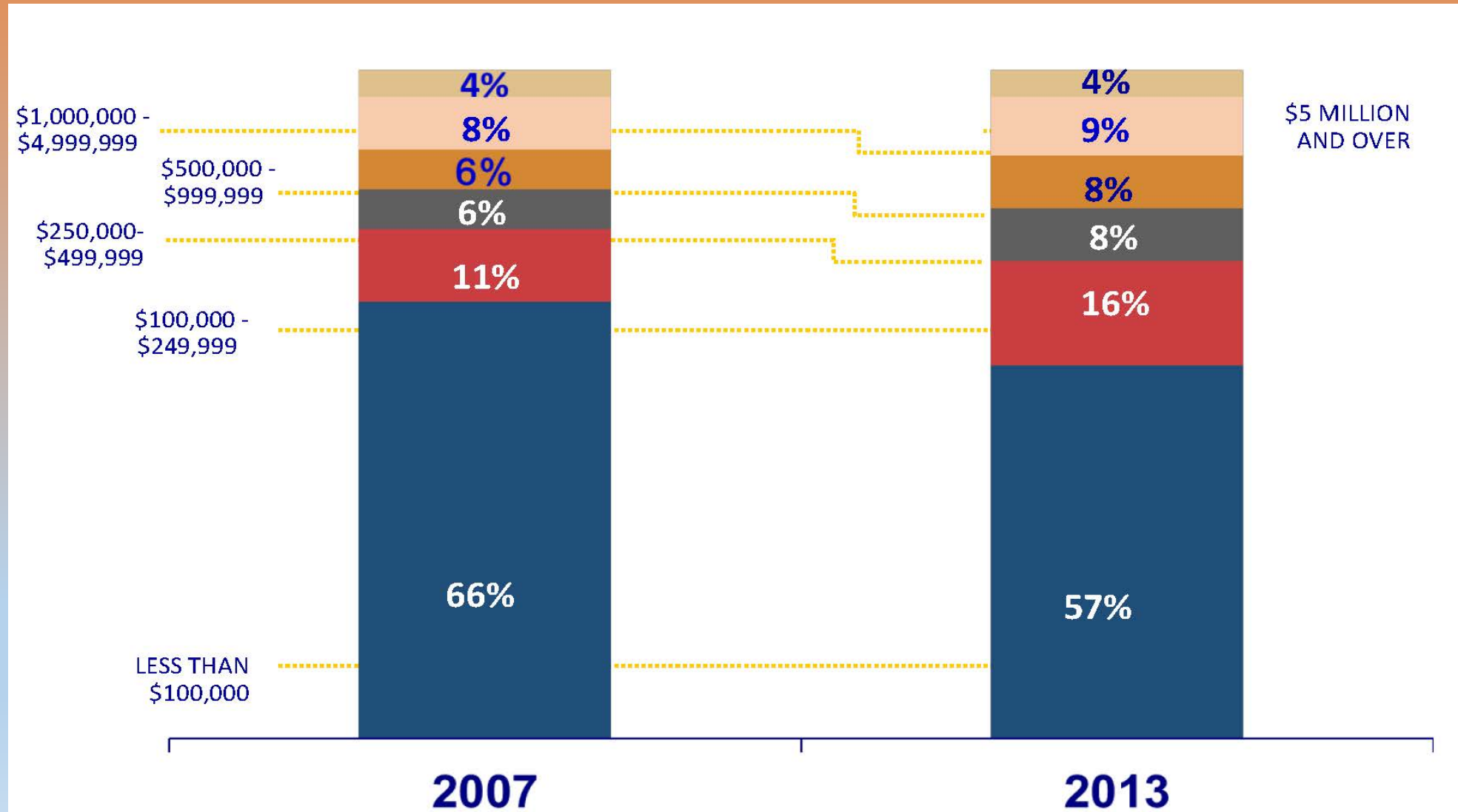
# National Trends and Emerging Claim Issues

- Public Entity Trends and Tort Verdicts
- DOT Emerging Claim Exposures
- Pedestrian and Bicycle Collisions
- Facilitated Automation
- Liability and insurance issues for Smart/Autonomous Vehicles

# National Trends and Verdicts



# Rising Jury Awards



# Median Compensatory Awards for Personal Injury (2007-2013)

State	Median Award
New York	\$280,000
Louisiana	\$166,475
<b>California</b>	<b>\$123,067</b>
Texas	\$13,137
Oklahoma	\$10,000
<b>National, Overall</b>	<b>\$45,001</b>

# California – Top 10 Personal Injury Verdicts in 2016

Amount	Type	Case
\$125,168,202	Car Accident	Briones v. Zink
\$ 46,000,000	Car Accident	Solorio v. Nissan Of Fontana Inc. et al.
\$ 29,062,351	Car Accident	J.P., pro ami Rojas v. Sunde
\$ 22,588,041	Motorcycle Accident; Premises Liability	McCoy v. California Department of Transportation
\$ 21,657,000	Moped Accident	Danielle Laws v. Chen
\$ 18,070,000	Asbestos Exposure	Depoian v. American International Industries, Inc., et al.
\$ 14,967,421	Car Accident; Product Liability	Gray v. Mazda Motor of America Inc.
\$ 11,980,000	Work Accident; Duty to Warn	Hukill, et al v. California Department of Transportation
\$ 11,000,000	Pedestrian Accident	Kim v. Baltayan
\$ 9,860,631	Pedestrian Accident	Carly Bray v. Kassandra Hoelscher

# Nuclear Verdicts

- Generally defined as a verdict in excess of \$10 million, or perhaps less than \$10 million, but still high considering the juries and damages.
- Typically involve aggravating factors such as a fatigued driver, distracted driving, maintenance issues, etc.

Source: Wall Street Journal, Nuclear' Verdicts Have Insurers Running From Trucks 10/14/15

Source: PCI Commercial Auto Insurance Bulletins, Commercial Auto Nuclear Verdicts, 5/8/17, 5/23/17 & 7/17/17

# What's Behind Some of These Trends

- Rising medical costs
- Automobile results
- Plaintiff attorney strategies
- Social inflation



# Social Inflation

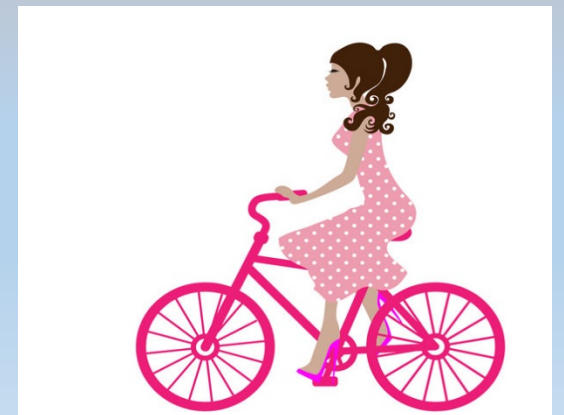
Social inflation is the increase in insurance losses caused by factors such as higher jury awards, changing judicial decisions and/or legislative changes.

- Media attention
- Federal judiciary
- Advertising for legal services
- Third party litigation funding

# Emerging Tort Trends...

- Adoption of Complete Streets and Vision Zero: Increased use of transportation facilities by pedestrians and bicyclists
- Total Highway deaths increased 14.4% between 2014-2016\*
- Pedestrian deaths increased 21.9% between 2014-2016\*
- Pedestrian and bicyclists accounted for 17.2% of total transportation-related deaths in 2016, compared to 12.4% in 2000\*

\* Bureau of Transportation  
Statistic Annual Report, 2017



# Emerging Tort Trends: Facilitated Automation

## Who will be held responsible for accidents?

**Driver:** Still has primary responsibility for safely operating vehicle; but this may change with increased automation

**Vehicle:** Manufacturer and software developers will increasingly face liability for product defects

**Insurer:** Insurance premiums might decrease for drivers and increase for manufacturers as liability shifts (or move to no fault)

**States:** Drivers and manufacturers will increasingly blame the roadway for human and robotic errors

Who will be responsible for failure of vehicle and roadway computer systems due to: hacking; virus; solar flares; etc.?

# Motorist Highway Usage The Past



Pave  
Stripe  
& Drive

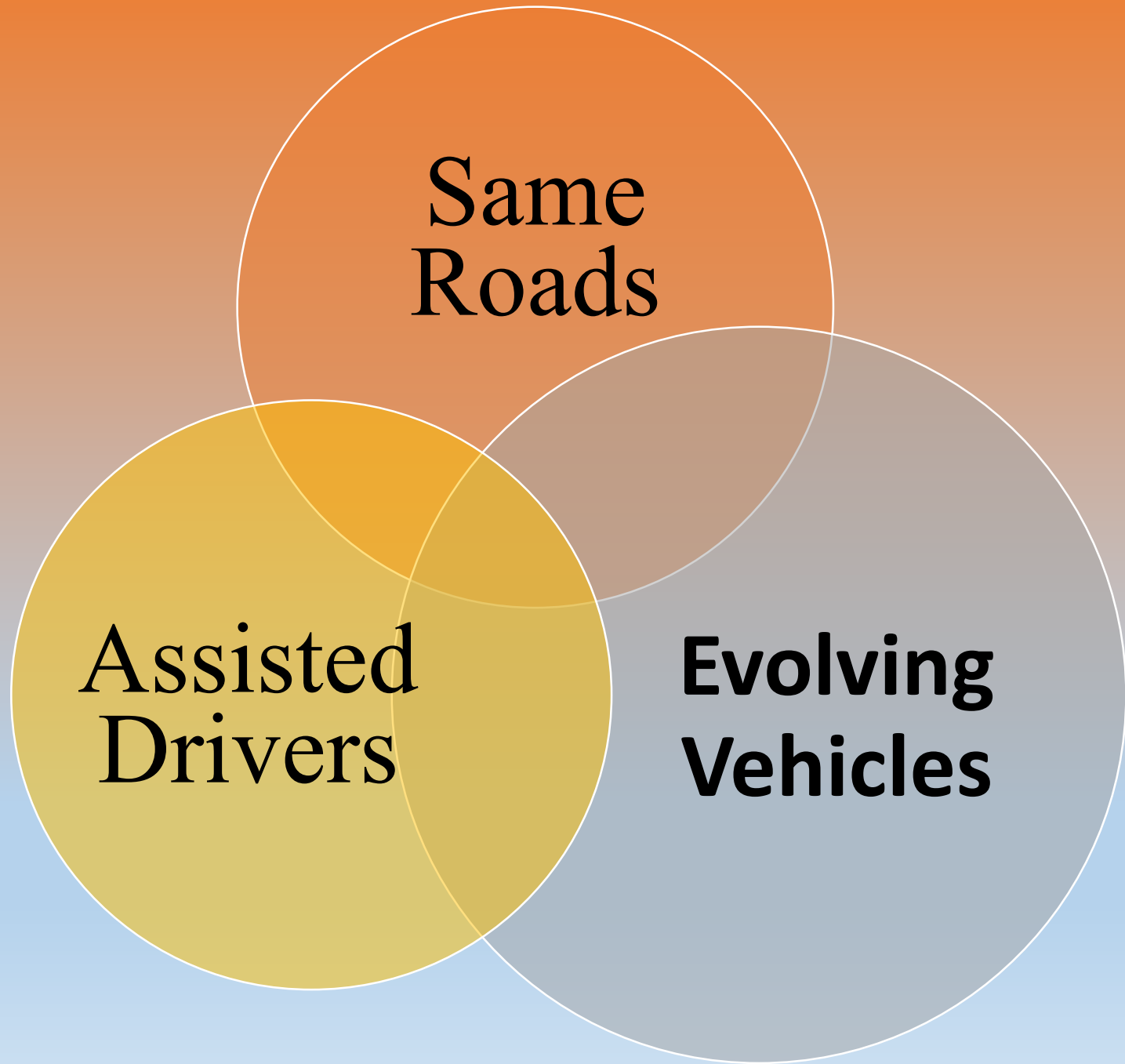


Dumb  
Cars



Smart  
Drivers

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# The Present: Transitional Period

## Roadways for Human Drivers

- Roadways designed for people, not robots
- People are increasingly relying on computer assistance to operate vehicles (ceding responsibility)

## Driver Assistance Systems

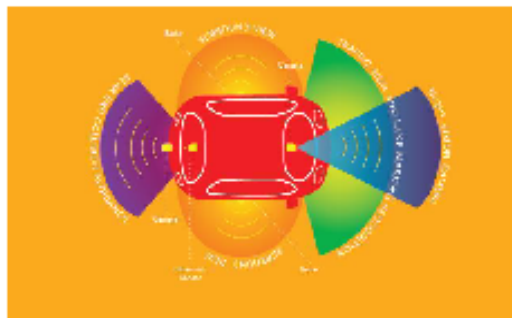
- Autonomous systems rely on existing safety features
- Driver assistance only – not fully automated
- People over rely on driver assistance

# Facilitated Automation

## 3M™ Connected Roads 380 Series Pavement Markings

### Product Characteristics

- Brighter White Compared to 380AW<sup>1</sup>
- Improved Contrast / Color Durability Compared to Other 3M Contrast Tapes<sup>2</sup>
- All Weather – Wet Retroreflective Optics
- Contrast Construction
  - Wider black edges provides camera systems a larger target to detect markings at a distance<sup>2</sup>
  - 2"-6"-2" (5cm-15.25cm-5cm)
  - Black-(White or Yellow)-Black



Source: <sup>1</sup>3 Month NTPEP Cap Y Data (Wisconsin), Oct 2017; <sup>2</sup>Based on test performed by 3M

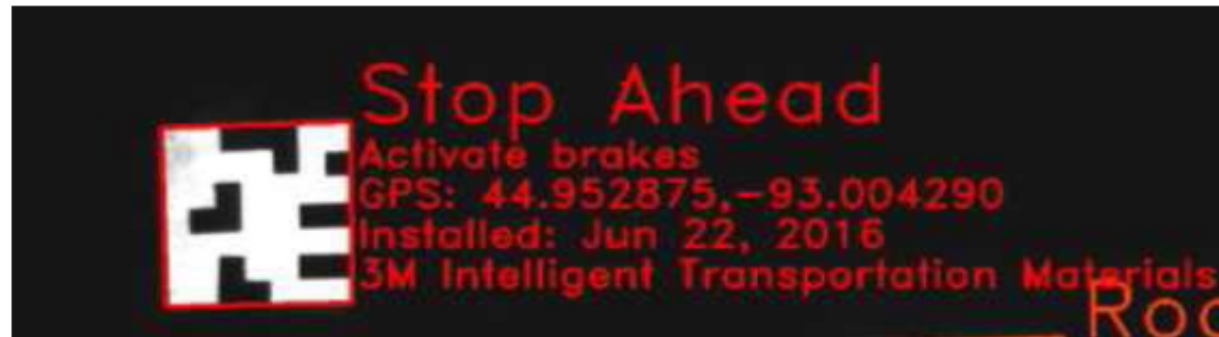
# Facilitated Automation: Embedded Sign Messages

## Machine Readable Signage – *Human and Machine Vision Optimized*

Solutions that may enable more reliable sign detection and classification



Visible Spectrum Image



Computer Vision Image and Associated Meta-Data

### Signing Performance Goals

- Embeddable digital information
- Encoded error recovery
- Digitally certain results
- Encryptable
- Authenticatable
- Redundant classification confirmation
- Dynamically changeable
- Maintains visible light performance



**3M** Science.  
Applied to Life.™

# Hwy85 Smart Corridor

## Caltrans:3M Communication Meeting

3M™ Connected Roads Team  
Transportation Safety Division  
May 9, 2018

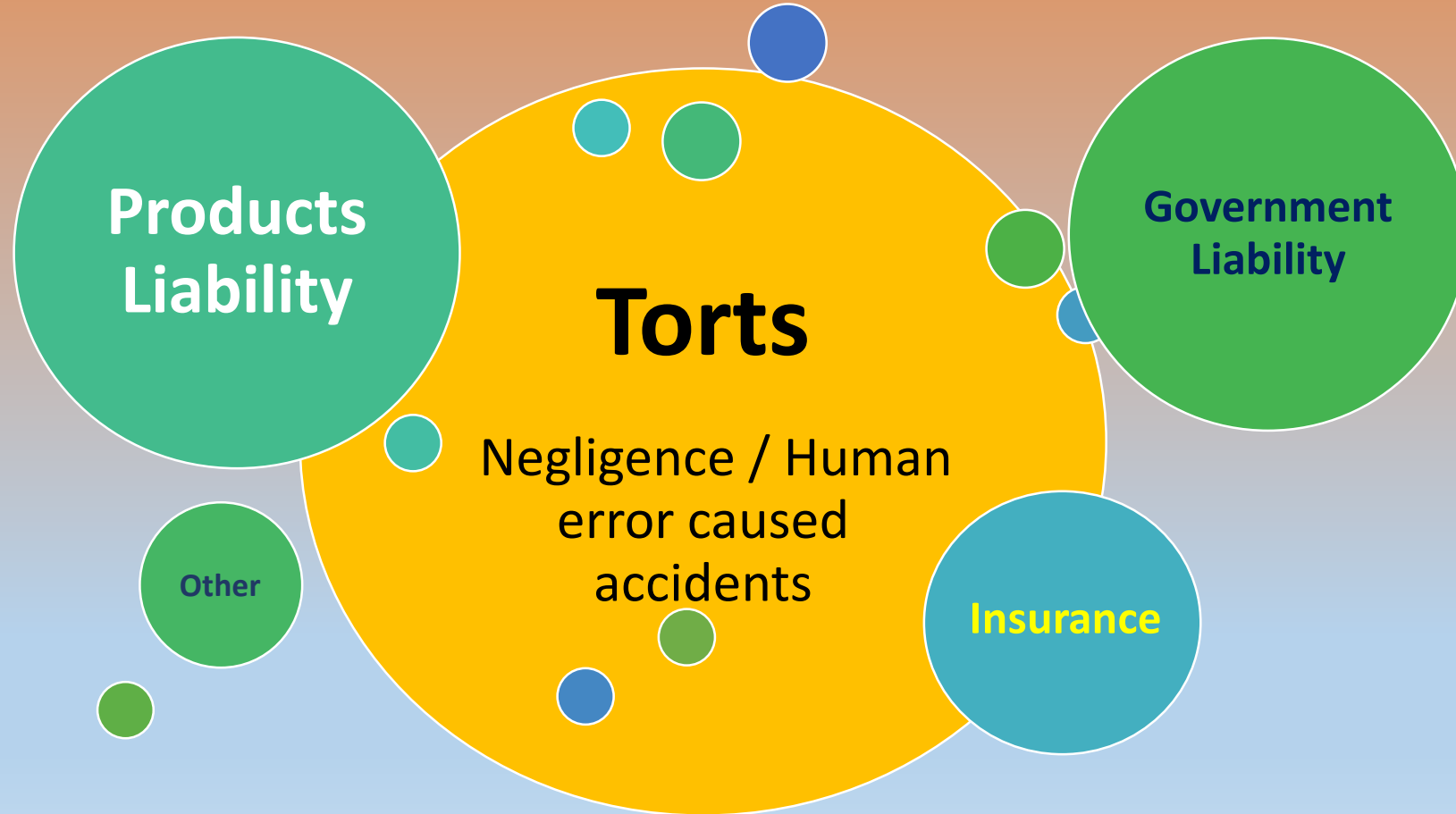


# The future



We are decades away from fully autonomous vehicles (AVs) communicating with computer enabled roadways

# Legal Implications



# Removing Legal Obstacles

Reduce Liability & Improve Reliability to Pave Way to Future

## Innovate

- DOTs & NHTSA policy to improve roadway safety inevitably leads us to automation
- Manufacturers are taking the lead and adapting to human safety systems
- DOTs need to innovate new roadway technologies to effectively communicate with AVs

## Obstacles

- Potential liability when robots fail to “read” the road like humans (roads are designed for human recognition; computers process differently)
- Potential liability when new roadway technologies are developed and fail

## Solutions

- Government immunity from liability from autonomous vehicle failures/errors
- Government immunity from products liability for future roadway safety technologies
- No fault insurance system

# Considerations Moving Forward

**Tort liability** threatens to impede progress

**Manufacturers, Insurers, and Plaintiffs' Attorneys** are already discussing legal implications, so should we

**Drivers** must bear primary responsibility for operation of vehicles during long transition to fully AVs

**Strong Governmental Immunities** will free States to innovate (instead of refusing to innovate to avoid risk)

Questions????

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