2023 Automotive Trends

Top Legal Issues Driving the Automotive Industry

Dykema

WELCOME

Serving the automotive industry for nearly a century, Dykema fields one of the most extensive and innovative automotive legal practices in the United States. In creating our *2023 Automotive Trends Report*, we surveyed automotive executives, professionals, and service providers to gauge their perspectives on legal trends most likely to impact the industry in the coming year.

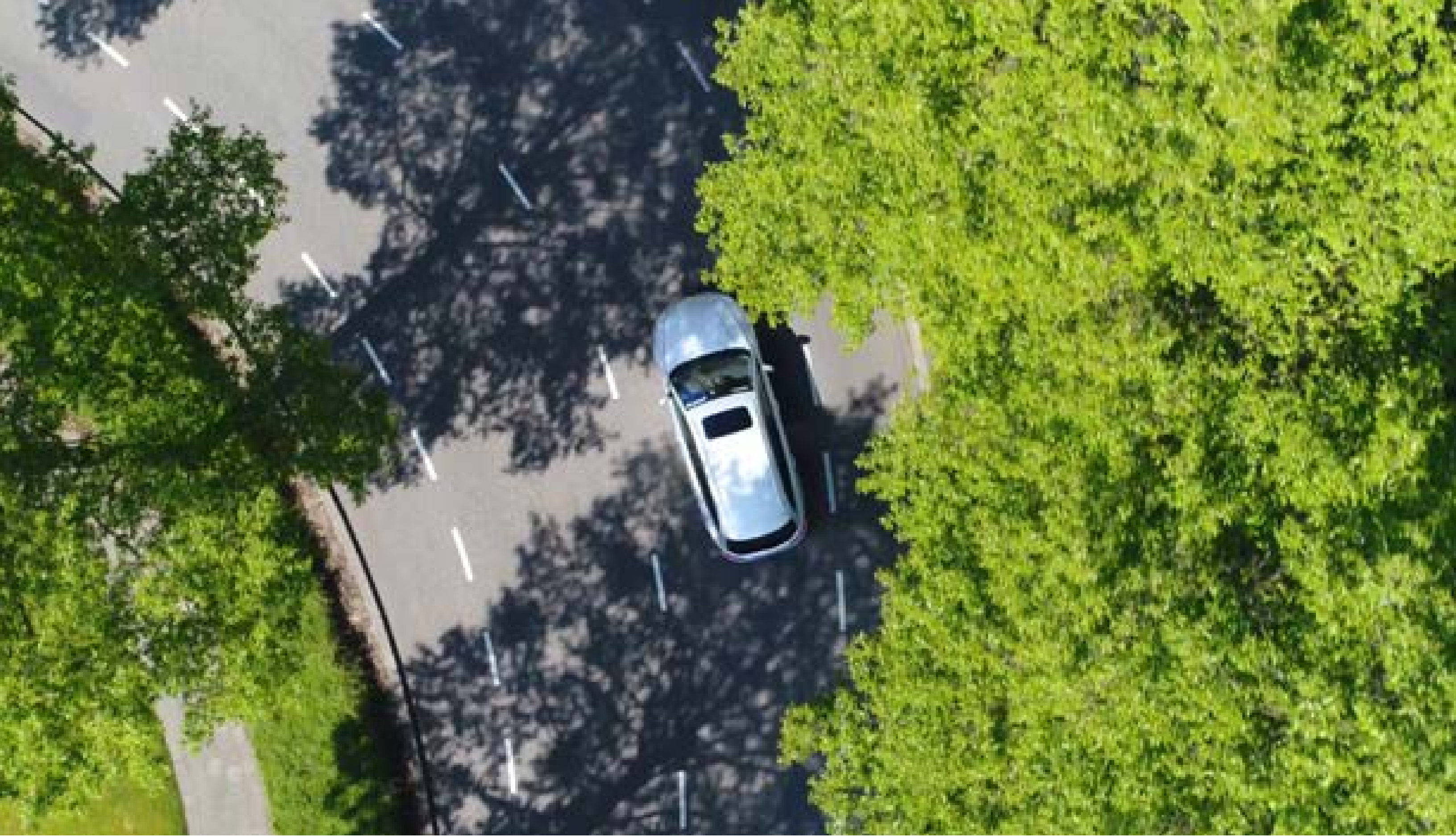
We hope and trust you will find the following report and its insights valuable as you navigate the automotive environment in the coming months.

On behalf of the more than 140 Dykema Automotive Industry Group members, we would like to thank all survey respondents for their time and insights.

Sincerely,

Dykema's Automotive Industry Group

Laura Baucus
Director, Automotive Industry Group



EXECUTIVE SUMMARY

The Auto Industry Is Evolving

Here Are the Legal Trends Driving That Evolution

For Dykema's *2023 Automotive Trends Report*, we polled original equipment manufacturers, suppliers, decision makers, senior executives, and other thought leaders across the automotive space to gather their insights on the major legal trends driving the industry forward this year and beyond. We hope this report serves as a key resource as you look to navigate this dynamic industry.

Our report focused on the legal issues of today that will have the greatest impact on the automotive industry of tomorrow, asking respondents to select key areas of concern for each subject matter.

The topics explored were Supply Chain, Antitrust, Financial Distress, Risk and Litigation, Government Regulation, Labor and Employment, Cybersecurity, ESG (Environmental, Social, and Governance), Intellectual Property, Electric Vehicles, and Autonomous Vehicles.

The top responses from our survey, for almost every category across the board, reveal an industry-wide focus on legal benefits and risks tied to new electric and autonomous vehicle technologies, including increased government regulation and incentives, newly developed intellectual property, cybersecurity, and litigation. Policymakers at both federal and state levels have shown that they are more than willing to invest the resources necessary to not only develop these technologies, but also, more importantly, scale them,

> Digitalization and sustainability are driving vehicle, infrastructure, connectivity, and security changes and breakthroughs like nothing we have ever witnessed in our transportation industry. There are challenges to overcome as these transformations play out, and there are incredible opportunities for stakeholders and participants in the mobility industry.

– Glenn Stevens Jr.
Executive Director, MICHauto

particularly electric vehicle and battery technologies. Likewise, autonomous vehicle technology is expected to garner legislative attention, with more focus on safety and risk-minimization regulations rather than incentives. Perhaps unsurprisingly, the primary risk concerns for the industry in 2023 include lawsuits tethered to electric and autonomous vehicle technologies.

Survey results also reveal potential roadblocks ahead for the industry, such as broader antitrust oversight of investments in these new EV and AV technologies, dynamic changes in rules for noncompete agreements and overtime compensation, and new pressures to self-monitor compliance with ESG initiatives.

Finally, supply chain woes remain top-of-mind for respondents. The lingering effects of the pandemic's supply chain disruptions (amplified by global unrest and inflationary pressures) continue to ripple across the automotive industry. Our findings also indicate that a continued shortage of skilled workers will remain a thorn again this year.

Buoyed by consumer demand and legislative support, automakers and suppliers entered 2023 in a period of cautious innovation. But it remains to be seen whether the ongoing supply chain disruptions and potential litigation hurdles will stand in their way.

Supply Chain

Consistent with our report's findings, we anticipate that pandemic-era supply chain disruptions will continue throughout 2023. Our respondents see this as a multifaceted issue that they expect will live on through shortages of both raw materials (81%) and labor (63%). In 2022, we saw a marked increase in supply chain litigation, which had dwindled substantially following the pandemic. Given that many in the industry operate sole-source, just-in-time supply chains, even the smallest disruption can have serious consequences on production. In 2023, we expect that players on all sides of the industry, customers and suppliers alike, will be examining their contracts closely for past non-performance or a force majeure defense excusing performance, spurring new supply chain litigation (through injunctive relief or for breach after a pay under protest/reservation of rights). How will the automotive industry deal with supply chain disruption going forward? From a contract perspective, we expect to see a varying degree of responses, including new business arrangements, new sourcing strategies, and new contracts or amendments.

"Supply lines between manufacturers, suppliers, and customers aren't as threatened as they were during the height of the COVID-19 pandemic, but other disruptive events—Russia's invasion of Ukraine, concern over a railway strike, Hurricane Ian—seems to come along every month. It's one on top of another."

– Laura Baucus, Director, Dykema Automotive Industry Group

ONE BIG THING

A Focus on Costs and Transparency

Increased costs—of labor, transportation, and raw materials—were viewed by 79% of our respondents as having an outsized impact on the supply chain in 2023. We expect to see the industry employ more creative contracting concepts this year to address these rising costs, from volume- and index-based pricing to pricing escalation clauses, cost-sharing terms, and other provisions that offer more flexibility, with such flexibility sometimes tied to cost transparency. As automakers and suppliers continue to focus on transparency in their supply chains, we'll likely see more revisions to audit and tracking provisions, force majeure clauses, and termination rights and notices in contracts.

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BY THE NUMBERS

Which supply chain challenges will have the greatest impact on the auto industry in 2023?

81%
Shortages of parts and raw materials

63%
Shortages of labor

79%
Increased costs (e.g., raw materials, transportation, labor)

37%
Financial distress of customers or suppliers

28%
Unexpected fluctuations in customer quantity demands

27%
Effects of geopolitical events (e.g., wars)

16%
Efforts to near-shore supply chain

6%
Lack of sufficient warehousing

5%
Effects of extreme weather events

Antitrust

In 2023, antitrust enforcement in the automotive sector will likely trend toward more rigorous oversight and focus on supply chain control and labor markets. 62% of our respondents anticipate policymakers will look beyond traditional horizontal mergers and cartels, instead focusing on factors like vertical impact, labor, and ESG. As manufacturers turn their sights toward more non-traditional suppliers (such as electric and autonomous vehicle technologies), 55% of our respondents expect to see broader antitrust oversight in these spaces. Look for employee contract agreements like noncompete clauses, confidentiality provisions, and trade secret protections to play a more prominent role in automotive industry transactions. But given the current expansive and aggressive environment and the massive criminal and civil liability from antitrust violations, automakers and suppliers must approach these transactions with increased caution and keep antitrust issues top of mind.

ONE BIG THING

DOJ vs. Big Tech

Earlier in November, Senator Elizabeth Warren requested that the Federal Trade Commission and Department of Justice investigate "Big Tech's expansion into the automotive industry," raising concerns over data privacy, geolocation vulnerability, cloud storage, autonomous driving technology, and more. After the DOJ's Antitrust Division requested $273 million to fund its FY 2023 activities—a 35.7% increase YoY—it's likely many of these concerns will be addressed in 2023. As the connected car industry—which relies on this technology—continues to grow at a rapid pace, expect it to operate firmly in the DOJ's and FTC's crosshairs in 2023.

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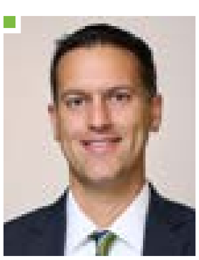

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BY THE NUMBERS

Which antitrust and trade regulation concerns are most likely to affect the auto industry in 2023?

61%
Government focus on factors beyond traditional horizontal market concentration (e.g., vertical impact, labor, ESG)

55%
Increased oversight of investments in electric or autonomous technology

32%
Focus on consumer "right to repair" issues

19%
Aggressive merger enforcement and review process

12%
More investigations into price fixing and bid rigging among suppliers

7%
Enforcement related to employment no-poaching agreements, wage fixing, and information exchanges

Financial Distress

As costs skyrocket and fears of an economic decline heighten, the automotive industry will have its plate full with financial distress challenges in the year ahead. Our report identifies three primary challenges driving this uncertainty: supply chain disruptions (65%), economic and inflationary pressures (71%), and increased costs of raw materials, transportation, and labor (73%). For those hoping to stay ahead of the curve, cost-cutting initiatives, best procurement practices, and sales and collection efforts will continue to be pressure points. As the Inflation Reduction Act rolls out this year, the expected rise in investments for clean, domestically produced energy will provide a source of optimism.

ONE BIG THING

Proactive Measures

Will decreased consumer demand trigger financial distress for automotive companies in 2023? Almost 40% of our respondents think so. And over 70% are concerned about other economic pressures as well. It comes as no surprise that at least five suppliers in the automotive industry have filed for bankruptcy during the past few months. Other suppliers have made efforts to close plants. We expect that 2023 will bring additional filings for bankruptcy protection in the automotive industry under Chapter 11 or the new Subchapter V. In this pressurized economy, mitigation of risks is essential. Knowing how to identify early signs of distress (for upstream customers and downstream suppliers) in your automotive supply chain, and training personnel on proactive actions to take if distress is identified, is paramount. On the customer side, the rush to maintain critical supply can lead to undertrained personnel making costly mistakes that could have been easily avoided through established protocols. For example, what may appear to be a simple stopgap measure to support a supplier temporarily can have profound implications on customer-forced support of supplier operations when an out-of-court workout or bankruptcy of the supplier occurs. Similarly, supplier creditors that fail to identify customer decline and take appropriate actions can find themselves not only with initial losses but also facing the prospect of having to give back funds received, which could have been avoided if proper protocols had been followed.

BY THE NUMBERS

Which legal issues are most likely to lead to financial distress in the auto industry in 2023?

73%
Increased costs (e.g., raw materials, transportation, labor)

71%
Economic and inflationary pressures

65%
Supply chain disruptions

40%
Decreased consumer demand

22%
Effects of geopolitical unrest

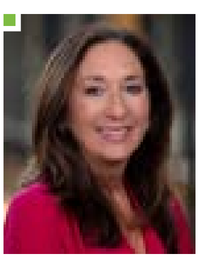
20%
Insufficient financing options

18%
Decline in future product forecasts and offerings

10%
Lack of internal source controls or financial mismanagement

3%
Effects of extreme weather events

FINANCIAL DISTRESS CONTACTS



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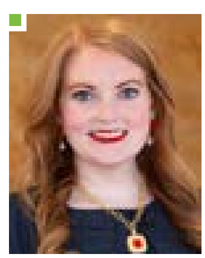

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Risk and Litigation

As shortages in raw materials, parts, and labor linger, almost 46% of our respondents believe that supply chain litigation between customers and suppliers will be a key issue this year.

Patent litigation also is on the rise in the automotive industry. With vehicles becoming what are essentially computers on wheels—complete with cutting-edge technologies—over 32% of our respondents agree that possible patent infringement litigation is an increasing risk. As these new technologies take hold, respondents envision that there might be a ramp up of recalls and warranty cost-recovery litigation (43%) and class action litigation (32%).

> "The more things change, the more they stay the same—or at least that's our outlook for the automotive litigation landscape in 2023."
>
> **– Derek Whitefield**
> **Member, Los Angeles**

ONE BIG THING

Cautious Innovation

As the automotive industry continues to grow and evolve at light speed, so does the potential risk imposed by its high-tech advances. Over 50% of our respondents reported apprehension that new EV and AV technologies utilized by the industry may result in an increased number of lawsuits being filed in 2023. The question is, how does the industry stay on top of the potential litigation risks that may go hand in hand with these technologies?

BY THE NUMBERS

What are the top litigation risks facing the auto industry in 2023?

51% Litigation arising from new electric and autonomous technologies

46% Supply chain litigation between customers and suppliers

43% Recall and warranty cost-recovery litigation

32% Intellectual property disputes arising from new electric and autonomous technologies and trade secrets

32% Increases in class action suits

28% Higher jury awards due to public distrust of corporations

16% Higher jury awards due to younger jury pools

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Government Regulations

Divided government in Washington likely means a shift from the more active legislative agenda we've seen recently to a greater reliance on Congressional oversight and regulatory action. Combating inflation remains a top concern for our respondents, as 63% view interest rate hikes as the federal government's most influential instrument affecting the automotive industry. The Biden Administration will also look for ways to continue to advance its climate agenda and the transition to renewable energy projects. The new Republican majority in the House may not agree with these priorities, but might not want to risk the large-scale investments being made to attract manufacturing and create domestic supply chains for critical minerals and components. The Inflation Reduction Act expands the EV tax credit, but in order to qualify, manufacturers must meet North American final assembly requirements and sourcing requirements for battery components. All eyes will be on the IRS in March 2023, as the agency is expected to release rules for the sourcing requirement.

ONE BIG THING

Less Fuel, More Miles

When asked what type of regulations will have the greatest impact on the industry, the top responses told a consistent story: stricter fuel efficiency standards (51%), more EV purchase and production tax incentives (57%), and stricter greenhouse gas emission standards (51%). ICE (internal combustion engine) manufacturers also will be racing to meet the increasingly strict fuel efficiency standards set by the Biden Administration—49 miles per gallon for all vehicles produced for the model year 2026. The incentives to hit this goal are both environmental and financial, as rising inflation and volatile oil prices could make fuel-efficient vehicles a more economical choice come 2026.

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BY THE NUMBERS

Which government regulations will have the greatest influence on the auto industry in 2023?

63%
Federal interest rate hikes

57%
Electric vehicle purchase and production tax incentives and credits

51%
Stricter fuel efficiency standards

51%
Stricter greenhouse gas emission standards

32%
Stricter rules of origin requirements

29%
Increased NHTSA implementation of safety regulations and related penalties

24%
Legislation providing incentives for semiconductor chip manufacturing in the United States

24%
Increased NHTSA focus on emerging automation technologies

23%
Continued fallout from Russian sanctions

19%
Increased NHTSA focus on improving motor vehicle cybersecurity

Labor and Employment

Employers in the automotive industry are well acquainted with the myriad challenges that exist in finding and keeping a skilled workforce in place. Those challenges will continue to expand in the year to come, as government regulation of independent contractor relationships, overtime compensation, and noncompetition agreements evolve in real time. As organized labor continues its rejuvenation—even in typically non-union workplaces—working relationships already strained in a post-pandemic economy will endure further complications. Supply chain fallout is felt here as well, as many of our respondents wrote in issues like labor scarcity or lack of proper training as key issues that arose from pandemic-era disruptions.

ONE BIG THING

Employees (Still) Have the Power

As the pandemic has waxed and waned over the past three years, one of the constants has been the paradigm shift that is remote work. When asked about the top labor and employment concerns facing the industry, 77% of our respondents cited employee demands to continue working from home—more than double any other response. Automakers and suppliers looking to attract and retain top talent are those who acknowledge this transformation by accommodating the needs of their employees. This includes abiding by tax and compensation laws across state lines, as well as complying with claims of COVID as a disability under the Americans with Disabilities Act. Strengthening the power swing toward workers is the Supreme Court's decision to block the Occupational Safety and Health Administration's emergency testing standard (or ETS, the "vaccine-or-testing" rule) for large companies in early 2022. Given the waning pandemic, it is unlikely that revisiting that decision will gain any momentum in the year to come. And employees may gain even more power in 2023, as the FTC's new proposed rule (proposed January 5, 2023) will, if implemented, broadly ban employers from imposing non-competes.

> "Employers in the automotive industry will continue to ride the post-pandemic wave, encountering workforce challenges with remote work shifts and potential regulatory changes that require new policies and training."
>
> **– Jim Hermon**
> **Member, Detroit**

BY THE NUMBERS

What are the top labor and employment concerns in the auto industry for 2023?

77% Employee demands to work remotely post-pandemic

33% Department of Labor's proposed changes to the definition of "joint employer"

30% Increased federal protection for employees in non-unionized workspaces

26% Employment implications of state legalization of recreational cannabis use

23% Salary increase for white-collar overtime exemption

19% Restrictive clauses involving noncompetes and trade secret misappropriation

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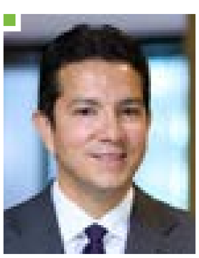

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Cybersecurity

The automaker of tomorrow will do way more than simply get you from A to B—it will create an in-vehicle experience that makes this trip more streamlined than ever. But as manufacturers continue to integrate digital capabilities and autonomous software, concerns over data privacy will grow, as evidenced by the 35% of respondents who view hijacking sensors and AI as major cybersecurity threats. Vehicles increasingly record and transmit personal information, and although the intended purpose is to help drivers and fleet operators, the same data in the wrong hands can lead to a breach under state law or permit stalking and hazards to persons and property. Keep an eye on potential rises in cybersecurity litigation, as many of our respondents view archaic software use (46%) and consumer knowledge gaps (29%) as major threats going forward.

ONE BIG THING

Ransomware Gets More Sophisticated

After a brief pause due to the Russia-Ukraine conflict, the general assault on critical and sensitive data systems is entering another year. 80% of our respondents view ransomware and extortion tactics as key cybersecurity risks in 2023—the most popular response by a wide margin. Automotive sector companies—especially EV and AV manufacturers—are in the unenviable position of having not only operational and HR data that is attractive to hackers in general, but also technology of interest to state actors. Businesses have so far met the risk with additional hardening, but the federal government is becoming more active with the Cyber Incident Reporting for Critical Infrastructure Act (CIRCIA). CIRCIA mandates incident reporting in critical infrastructure sectors, among which are certain transportation systems and information technology, and it enables new centralized analyses and responses to these events. In the long run, the industry can expect threat actor techniques to ramp up in sophistication of attacks touching on the manufacture and operation of mainstream electric vehicles.

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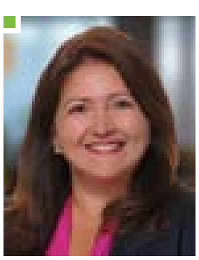

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BY THE NUMBERS

What are the top cybersecurity risks facing the auto industry in 2023?

80%
Ransomware and extortion tactics

45%
Use of archaic software and legacy components

35%
Hijacking sensors (and AI) in autonomous vehicles

27%
Inadequate software diagnostic and traceability functions

23%
Vulnerabilities in GPS trackers (exposing fuel supply, control, and location)

21%
Consumer knowledge gaps causing slower adoption rates

Environmental, Social, and Governance

The automotive industry is driven by disruption, and ESG strategies will continue to accelerate this disruption in 2023. Our findings indicate a rise in investments for green mobility projects (49%) and increased scrutiny on ESG factors in transactions (46%). As society moves toward a carbon-free future, both manufacturers and suppliers are integrating their financial and ESG reporting practices anticipating the need to identify and disclose climate-related risks and greenhouse gas emissions both directly and within their supply chain, and to avoid claims of greenwashing. But while environmental practices have been a focus for years, the industry is now turning its sights toward the other two-thirds of the ESG triad. In 2023, our respondents anticipate social and governance strategies to move into the spotlight, with 52% viewing diversity, equity, and inclusion (DE&I) initiatives as a primary influence on the automotive industry. Labor practices, shareholder activism on issues of corporate social responsibility, supply chain human rights compliance, and corporate structure concerns will also play key roles.

> "High on a company's priority list for 2023 should be ESG compliance policy and internal enforcement, particularly as we start to see increased scrutiny from the federal government on these initiatives."
>
> **– Mark Chutkow**
> **Member, Bloomfield Hills**

ONE BIG THING

Sustainability Linked Bonds

For automotive companies focused on ESG initiatives, the potential for EVs to decrease CO2 emissions is particularly attractive. But one of the primary drivers of a seeming lag by consumers to purchase EVs seems to be the unfavorable economics, which require significant upfront capital. In 2023, we anticipate investments in green mobility projects to dramatically increase, as the federal government looks to accelerate this transition and improve the economics from a consumer perspective. Expect to see a boom in issues for instruments like sustainability linked bonds (SLBs), which require far lower capital expenditure than standard green bonds, and whose financial characteristics are tied to predefined ESG metrics. An accelerant of these investments can be found in the Inflation Reduction Act, which granted the EPA $20 billion to establish the nation's first "green bank" to finance investments with private sector partners to reduce greenhouse gas emissions.

BY THE NUMBERS

How will increased focus on ESG issues influence the auto industry in 2023?

52%
More DE&I initiatives

46%
Increased scrutiny on ESG factors in transactions

38%
Demand for ethical and traceable supply chains

16%
Federal enforcement of corporate greenwashing authority

49%
Greater investment in green mobility projects

38%
SEC's proposed rule requiring disclosure of greenhouse gas emissions in financial statements

16%
Impact of Supreme Court's "major question doctrine" on EPA and SEC

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Intellectual Property

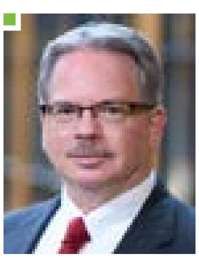
The automobile industry is in a “no-going-back” transformation, as automakers continue phasing out ICEs (internal combustion engines) to meet increasingly strict emissions standards. In theory, a vehicle powered by an electric motor is simpler to assemble than an ICE, as EVs do not require fuel injection and air feed into a combustion chamber, ignition control, or an exhaust system with catalytic converters and mufflers. However, as more and more EVs are being driven, the industry will face new challenges, many of which will require innovation beyond traditional automobile technologies. In fact, almost 40% of respondents answered that phasing out gas-powered vehicles will impact automotive IP development. Outstanding questions around who owns these new technologies will need to be answered.

ONE BIG THING

Building a More Efficient Battery

As the season’s first arctic blast swept across the country, it was reported that some EVs wouldn’t be able to charge in such cold conditions. So while EVs graduate to mainstream adoption, a primary concern among consumers across the board is what to do when their battery runs out. This sentiment was felt strongly by our respondents, citing battery technology development (67%) and public charging infrastructure (60%) as the greatest intellectual property concerns in the automotive space this year. Patent filings in the battery industry increased from 3,773 in 2010 to 5,319 in 2019, many of which were driven by the electric vehicle industry. Expect this number to skyrocket in 2023 and beyond, as automakers invest heavily in thermal management systems, recycling technologies, and battery stamina.

INTELLECTUAL PROPERTY CONTACTS



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BY THE NUMBERS

Which of the following will have the greatest impact on IP strategies for the auto industry in 2023?

67%
Development of faster-charging, longer-lasting batteries

39%
Top automakers pledge to phase out gas-powered vehicles

60%
Development of quick-charging public stations and roadway charging infrastructure

13%
Consumer interest in vehicle control systems

20%
Increased research in thermal management technology

16%
Inventorship challenges where an automotive AI system generates a portion of an invention

36%
Patent-eligibility challenges related to new innovations (e.g., AI, autonomous software)

Electric Vehicles

In 2023, legal support for the EV industry may transition away from matters involving research and development and instead focus on scaling up production and adoption. Tax incentives for charging infrastructure (53%) and subsidies for EV production (55%) were among the top responses, a sign that the federal government is focused on getting more EVs on the road. Supply chain disruptions are still top of mind, as 56% of respondents believe EV battery production will exacerbate this issue. Furthermore, ongoing or threatened conflicts involving Russia and China—which account for large tranches of the global supply of raw precious metals and processed components used in EVs, respectively—continue to present challenges for EV scaling. Domestically, grant programs for battery processing, manufacturing, and recycling will present marginal opportunities to address these supply limits.

> "It will be interesting to watch efforts to strengthen the EV supply chain in 2023, while tax incentives and charging infrastructure improvements will presumably continue to bolster demand."
>
> **– Clay Cossé**
> **Member, Dallas**

ONE BIG THING

Charging Here, There, Everywhere

As the EV space continues to scale up, many are wondering whether our public charging infrastructure and power grid can handle the number of vehicles hitting the road. The bipartisan Infrastructure Investment and Jobs Act (IIJA) appropriated almost $19 billion for EV charging programs. IIJA funds include $5 billion to build 500,000 EV charging stations across the country, $2.5 billion for alternative fuel infrastructure to support these stations (as well as hydrogen, propane, and natural gas), and almost $11 billion for moving school and transit bus fleets and passenger ferries to low- or zero-emissions fuel. Furthermore, the Federal Highway Administration (FHWA) will distribute $5 billion to states for construction of the EV charging infrastructure (via the National Electric Vehicle Infrastructure Formula Program), with the federal government aiming to share up to 80% of construction costs.

BY THE NUMBERS

Which of the following legal trends will have the greatest impact on the electric vehicle space in 2023?

56%
EV battery production creating supply chain and sustainability issues

55%
Rise in subsidies and tax incentives for EV production

53%
Tax incentives for EV charging infrastructure

43%
Improved public charging infrastructure creating ownership and jurisdictional issues

34%
Compliance with federal fuel efficiency and greenhouse gas emission standards

33%
Federal funding for EV technology research and development

25%
Increase in patents for EV battery technology

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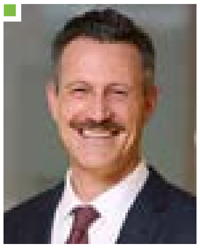

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Autonomous Vehicles

In the autonomous vehicle (AV) space, 2022 was a year defined by consolidation. The winners increased their market share and partnerships, and brought robotaxi, autonomous trucking, and robo-delivery services to new cities. 2023, however, could be a year defined by caution. Our findings indicate that risk and liability will be top of mind this year, with increased scrutiny around data collection (48%), stricter safety standards around impaired driving prevention (50%), and litigation risks around driver responsibility and collision liability (60%) among the most popular responses. The federal approach to operational liability and vehicle safety regulation continues to be hands off, focusing instead on crash data collection and monitoring under the National Highway Traffic Safety Administration's (NHTSA) Standing General Order. Safety advocates, state and local stakeholders, and trial lawyers are pushing for strict liability for AV manufacturers and operators. But neither NHTSA nor Congress has yet to set out liability standards or vehicle safety regulations relevant to AV crashes. So for now, operational liability questions continue to be governed by state law.

ONE BIG THING

Questions (Might) Get Answers

Crash data reporting for Automated Driving Systems (ADS) and Advanced Driver Assistance Systems (ADAS) for the year 2022 pursuant to NHTSA's Standing General Order will be of particular interest for many in the AV space this year. Although the Infrastructure Investment and Jobs Act (IIJA) did not address AV liability or vehicle safety, it did touch on a number of safety issues in the related area of ADAS. The most newsworthy recent development on this front came from the Senate, which sent Acting NHTSA Administrator Ann Carlson a letter on November 15, 2022, inquiring about the status of a number of ADAS initiatives that the IIJA required NHTSA to undertake. The letter took NHTSA to task for failing to meet deadlines required by prior transportation legislation, involving issues around crash avoidance, reduction in driver distraction, advanced headlamps, and advanced impaired driving technology. NHTSA's lack of response should be seen in the context of the absence of a permanent, President-appointed, Senate-confirmed administrator for all but three months in the past five years. Many will keep an eye out for the appointment and confirmation of a new NHTSA Administrator and, if that occurs, what tack they will take toward AVs. Finally, it remains to be seen whether preemptive federal liability legislation will see a renewed push this year.

BY THE NUMBERS

Which of the following legal trends will have the greatest impact on autonomous vehicles and ADAS in 2023?

60%

Potential legislation and litigation risks around driver responsibility and collision liability

54%

Continued supply chain issues and their effects on ADAS technologies (e.g., shortage of semiconductor microchips)

50%

Stricter safety standard requirements around impaired or distracted driving prevention

48%

Increased scrutiny around the collection and storage of electronic data

32%

Industry-wide focus on the scalability and profitability of autonomous vehicles

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Dykema's Automotive Industry Group

"Best known for its strong reputation and depth of experience in the automotive industry" and ranked among the top seven national firms for automotive litigation (*Legal 500 US*), Dykema is a go-to firm for automotive legal counseling. From our coast-to-coast network of offices, we guide an international roster of automotive clients through complex legal challenges, helping to achieve business success.

Faced with the unique industry challenges created by the complexity of conducting business in a global marketplace, new and innovative supply chain structures, ever-increasing regulatory restrictions, and unique challenges posed by collaboration between the automotive and technology-focused industries, our clients get a true advantage from having our industry-savvy lawyers on their side.

Our cross-practice, cross-office team anticipates legal issues and meets our clients' business challenges long before they develop. We nurture collaborative relationships with our automotive clients, becoming a true partner that fully understands your business. For more information, click here.

METHODOLOGY

In December of 2022, national law firm Dykema distributed its 2023 Automotive Survey via email and social media to a select group of executives at organizations that included original equipment manufacturers, suppliers, industry publications and advocacy groups, and outside financial, accounting, and legal support across the automotive space. The survey respondents represent a cross section of executives and automotive advisors engaged in several areas of legal expertise, including litigation, antitrust, government advisory, labor and employment, intellectual property, and emerging technologies like cybersecurity and autonomous software. Due to rounding, percentages used in some questions may not add up to 100%.

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