Macroliability

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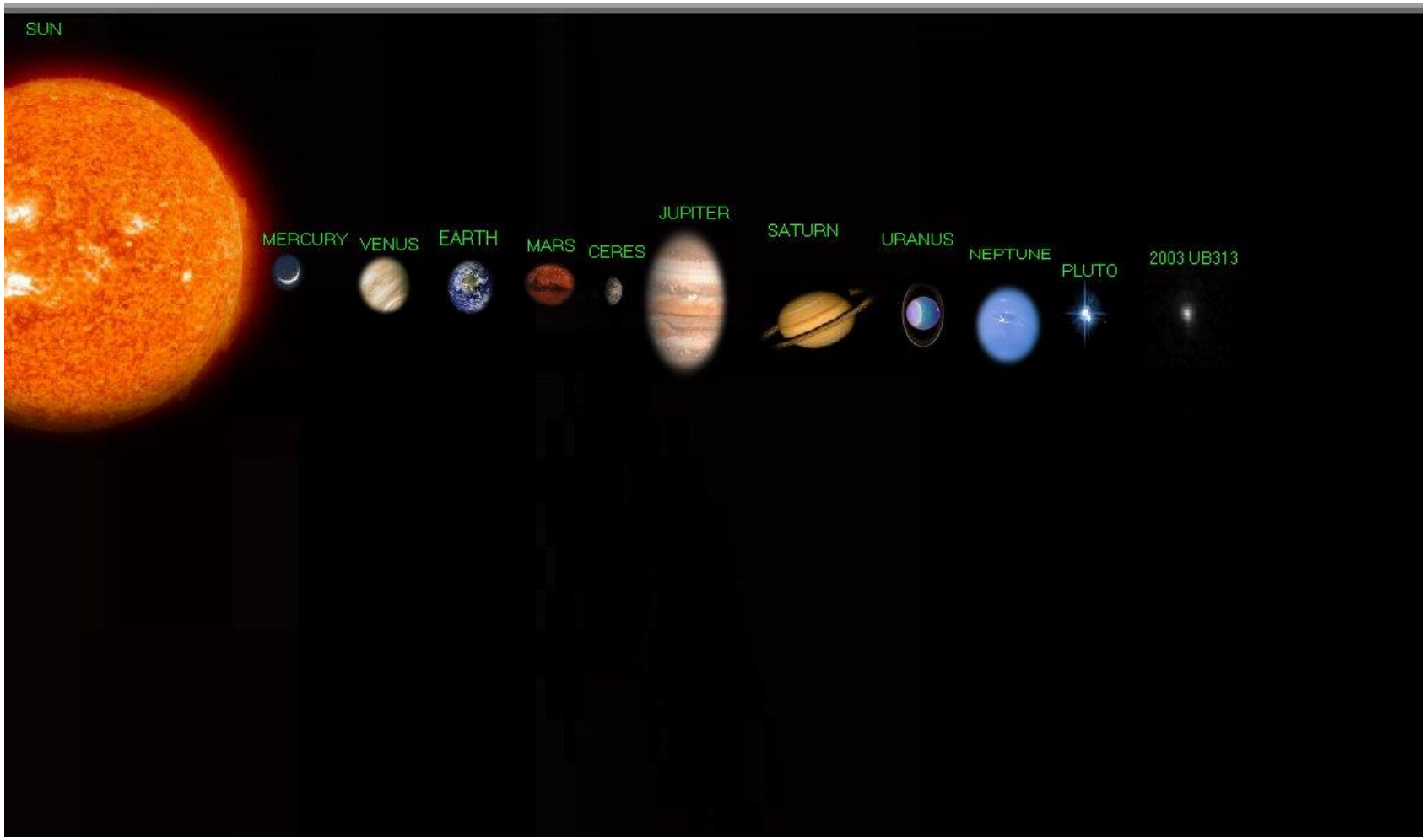
The charts that follow are not to scale.



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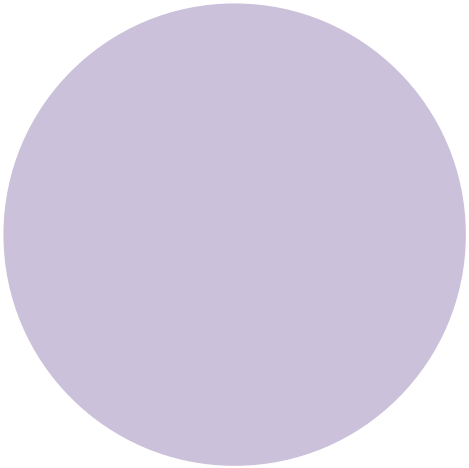
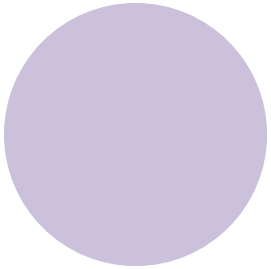
Crashes without automation

Crashes with automation?





> 30,000 fatal crashes
1,600,000 injury crashes
5,500,000 police-reported crashes
11,000,000 total crashes (…)

every year in the United States alone

This has yet to be demonstrated (notwithstanding frequent claims to the contrary)

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Crashes without automation

Crashes with automation?

(Increase in vehicle miles traveled?)

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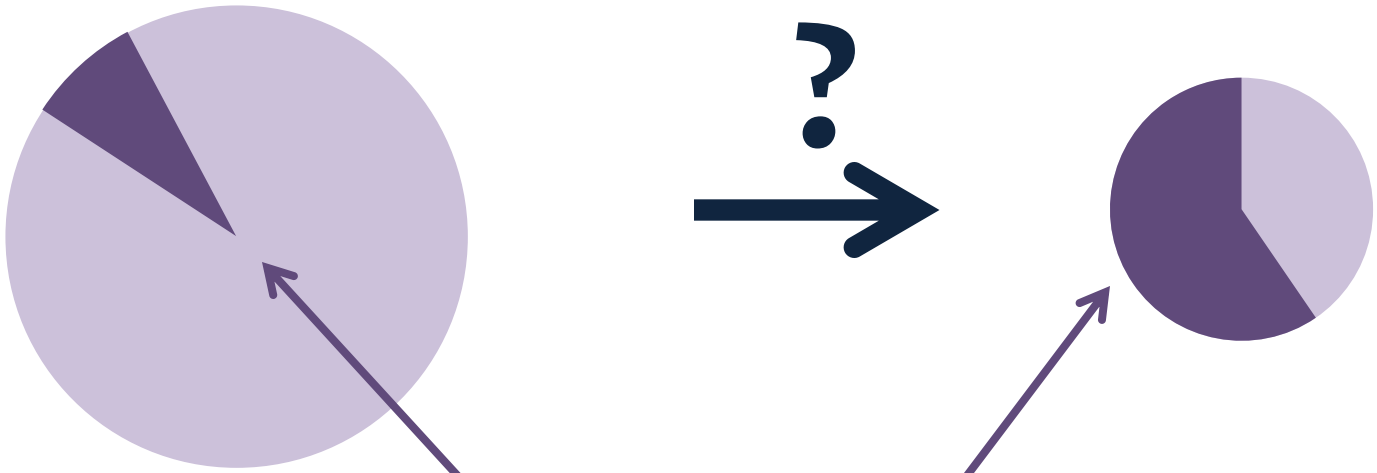
Crashes without automation

Crashes with automation?



Product failure

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Crashes with automation: Some types of product failure

The automated driving system ...

... performed worse than a human
... performed worse than a better system

... interacted poorly with the user
... interacted poorly with other systems

... used bad data
... supplied bad data

... facilitated a security breach
... degraded ungracefully

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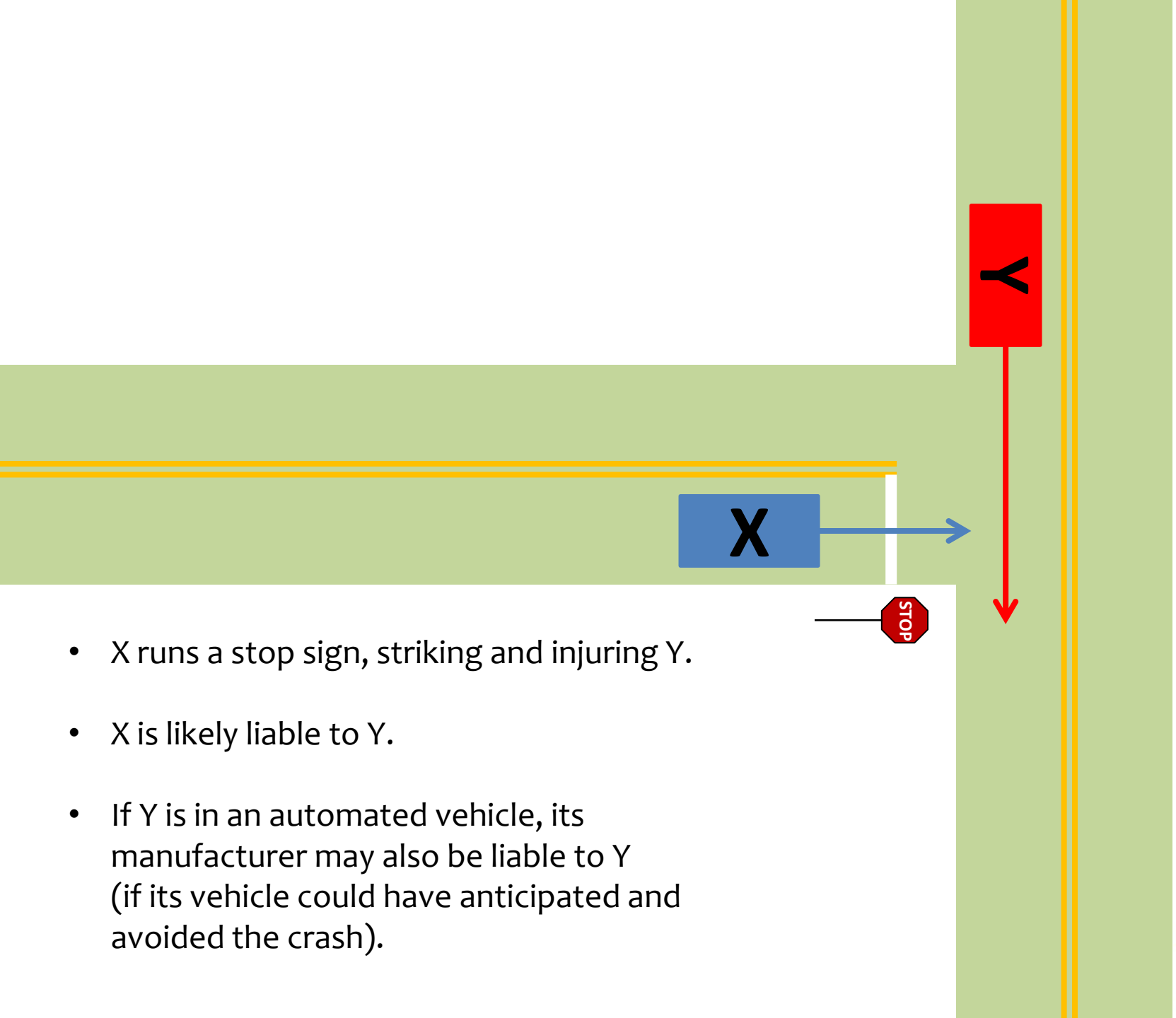
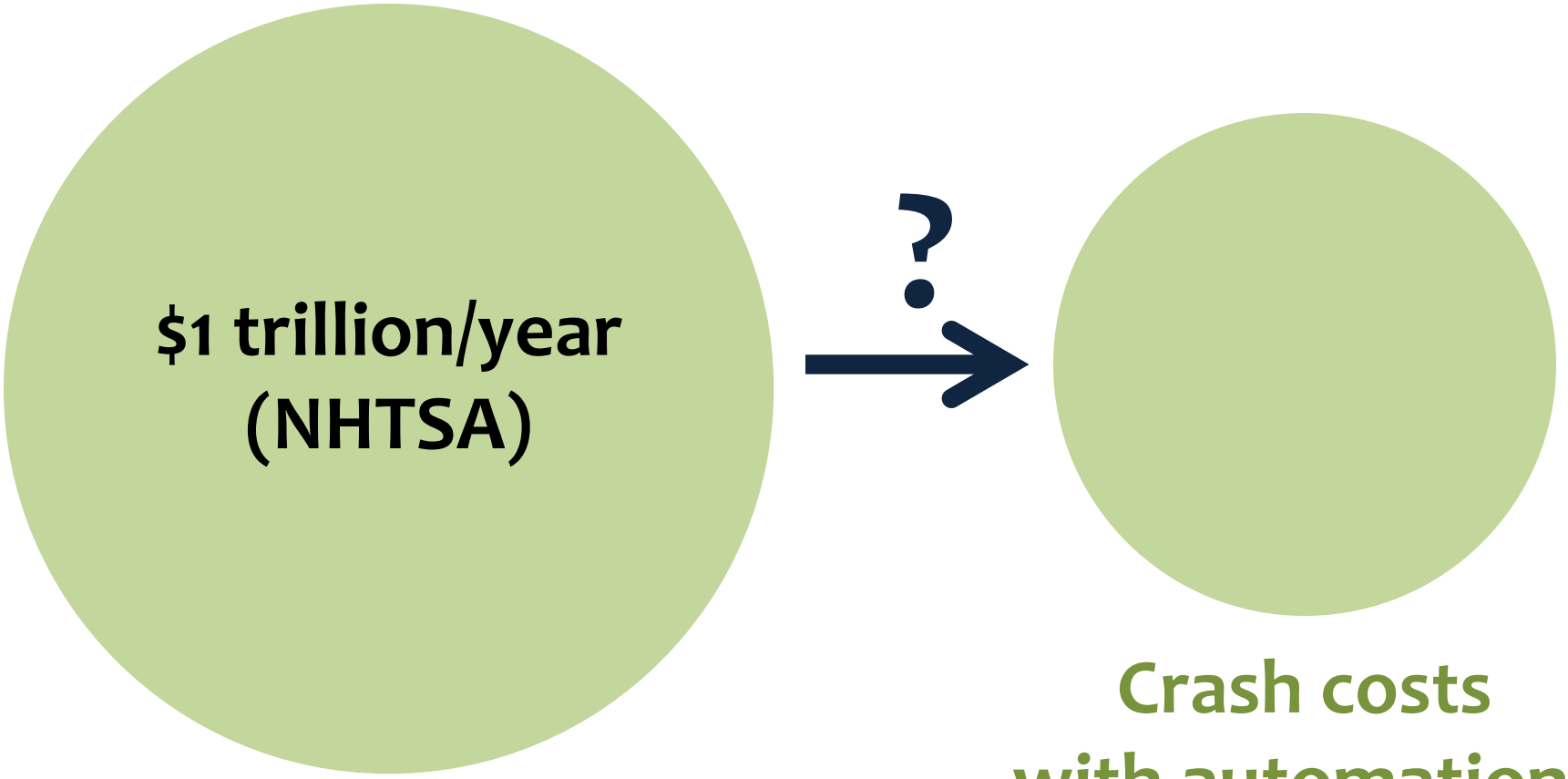


- X runs a stop sign, striking and injuring Y.
- X is likely liable to Y.
- If Y is in an automated vehicle, its manufacturer may also be liable to Y (if its vehicle could have anticipated and avoided the crash).



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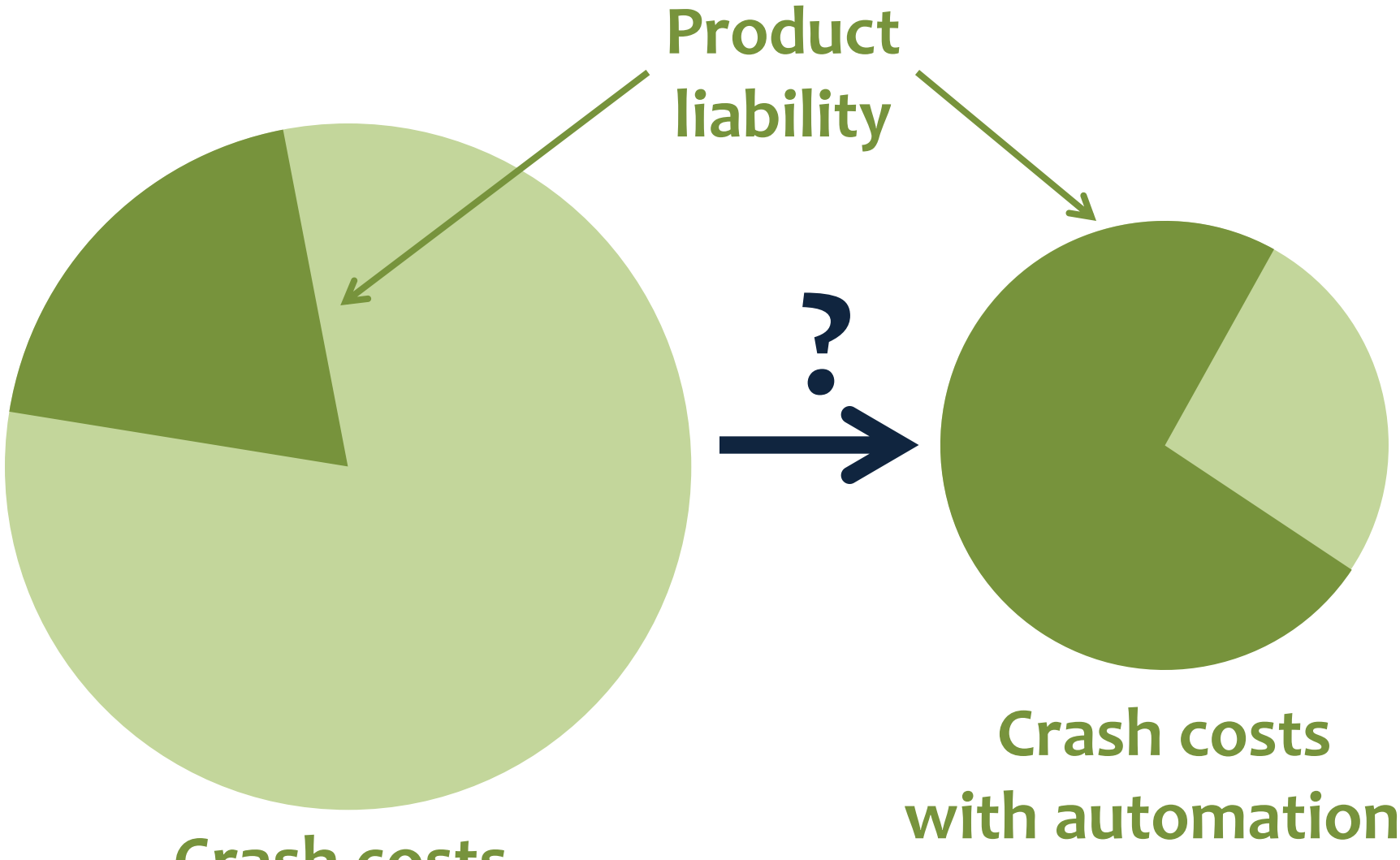

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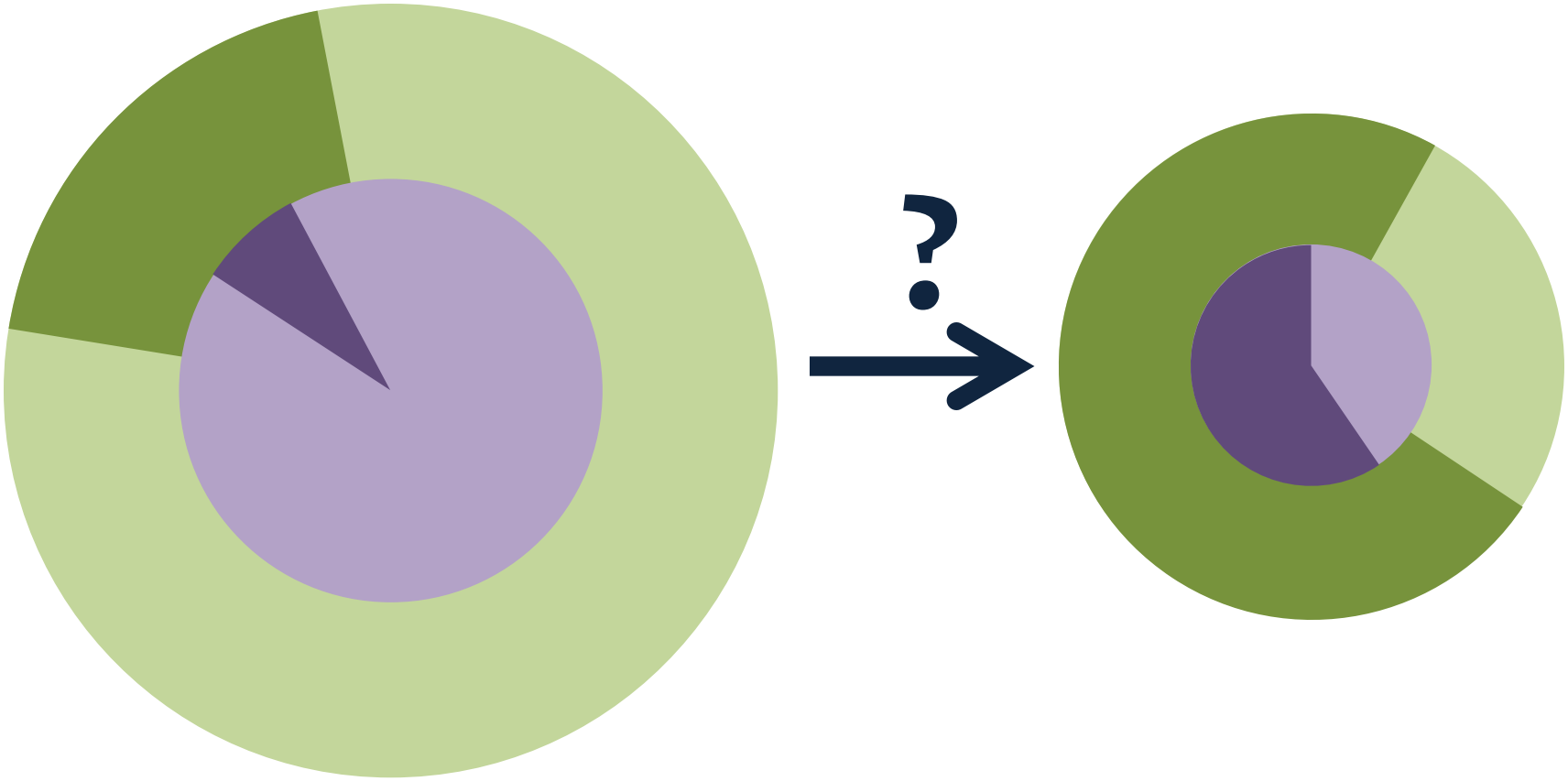
Without automation

With automation?



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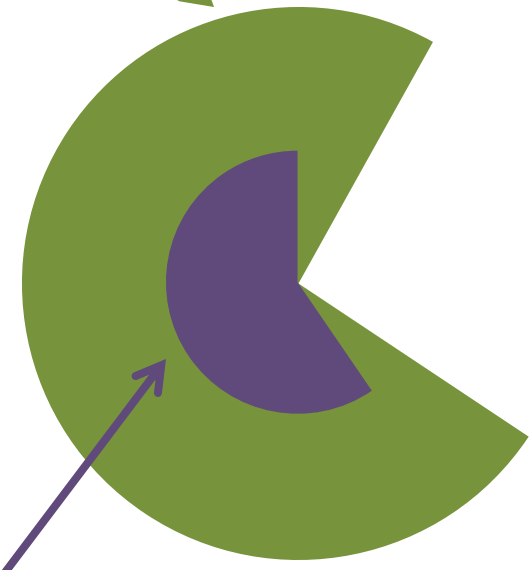
Product liability

Compared to individual drivers, manufacturers …

… may face higher jury awards
… may be more likely to be solvent
… may pay more through J&S liability



Product failure

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Product liability tomorrow

Product liability without automation

Product liability with automation?

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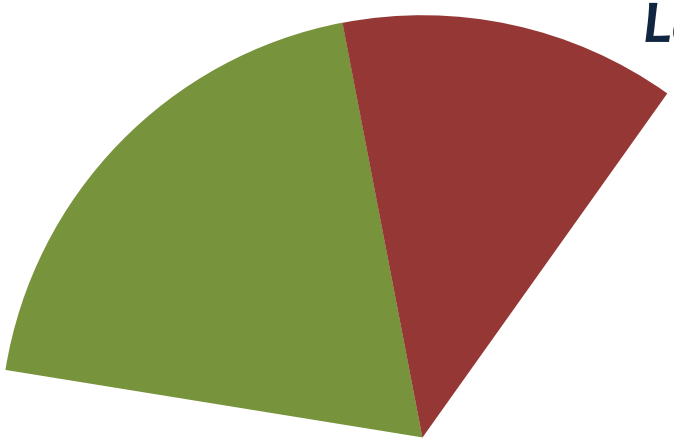
Product liability tomorrow



Lack **of automation as the defect**

Product liability without automation

Product liability with automation?

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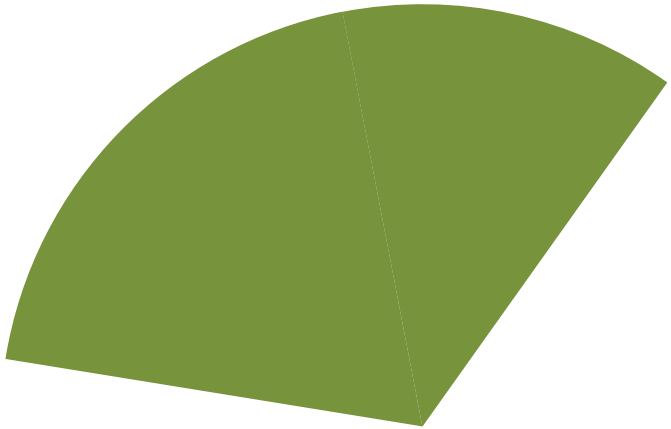
Product liability tomorrow:
A bigger slice of a smaller pie (of liability)?



Product liability without automation

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Product liability with automation?

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Who cares?

- People who are injured in crashes (*Compensation* rationale of product liability)

- People who could be injured in crashes (*Safety* rationale of product liability)

Who might care?

Developers	Consumers	Society
Liability uncertainty?	Slower deployment?	Slower adoption?
Liability exposure?	Higher cost?	Slower adoption?

Is this testable?

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"The prospect of liability for catastrophic accidents resulting from a failure of AVCS will **likely deter** entities from becoming involved with AVCS and **impede its development** unless the federal government adopts some or all of the legislative [limits on liability]."

*Advanced Vehicle Control Systems: Potential Tort Liability for Developers (prepared for FHWA in **1993**)*

So what happened?

- 1993 report's recommendations were *not* adopted
- Automakers released many of the technologies
- Many companies investing heavily in R&D
- Several have "accepted" current liability regime

Others also “accept” liability

https://upload.wikimedia.org/wikipedia/commons/5/59/DHL-BX08KLD.jpg

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What *could and should* happen?

THE GEORGETOWN LAW JOURNAL

Proximity-Driven Liability

102 Geo. L.J. 1777 (2014)

NEW MEXICO LAW REVIEW

How Governments Can Promote Automated Driving

Daimler und Benz Stiftung

Regulation and the Risk of Inaction

Autonomous Driving in the Road Transport of the Future

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Michigan State Law Review

Technology and Liability

(forthcoming 2016)

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