Ride-Sharing Coverage and Investigation – Don't Get Left in the Back Seat!

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By way of background, "ride-sharing" is a service arranging one-time shared rides on short notice. Unlike traditional taxi companies, almost anyone can drive for a ride-sharing service. A driver simply needs a car and a smartphone.

Uber is the largest ride-sharing provider, valued at over $50 billion. It is available in 84 countries worldwide, averaging 40 million rides per month. Ride-sharing is highly criticized for lacking regulation, insurance, licensure, inspections, and training. Not a week goes by where ride-sharing is absent from the news headlines – ranging from a Kalamazoo Uber driver serial killer to a San Francisco driver who assaulted a passenger with a hammer.

The rapid rise of the sharing economy, as you might imagine, has hit insurance companies by storm as ride-sharing claims and related litigation continues to unfold. With no signs of slowing down, it is imperative you learn the ride-sharing ropes, including the coverage and SIU issues implicated in any Uber and Lyft claim.

Insurance Coverage Gap

In 2013 an Uber driver hit and killed a six-year-old pedestrian in San Francisco. The driver was not carrying a passenger, but he did have the app turned on. At that time, Uber provided commercial insurance to its drivers while they were carrying passengers, but not when the app was turned on and awaiting passengers. The family filed suit against Uber in January 2014 in the San Francisco Superior Court. A confidential settlement was reached by Uber in July 2015.

Insurers and critics alike argued this created an "insurance coverage gap" since a personal policy would not apply if the app was on, since the driver is engaged in commercial activity, and neither would Uber's policy, since the driver is not carrying passengers. Indeed, as we all know, personal automobile policies generally exclude the use of your personal vehicle for hire or commercial use, known as a Livery or Commercial Use Exclusion. Your typical pizza deliveryman comes to mind when evaluating these standard exclusions, but technology continues to outpace policy language.

Below is an explanation of the three separate periods involved in every ride-sharing transaction:

- Period I: The driver is logged into the app and driving around looking to obtain business. The driver has not been contacted and has not accepted a ride request.

- Period II: The driver has been contacted by phone or through the app, has accepted the ride request, and is traveling to pick up the passenger.

- Period III: The driver arrives, picks up the passenger, and drives the passenger to his or her destination.

Without question, Periods II and III involve traditional commercial activity to implicate a standard personal auto policy exclusion. However, insurers are split on whether a ride-sharing driver's conduct during Period I amounts to commercial activity. It is important to note that drivers are paid a percentage of revenue from the rides earned. They are not paid by the hour. Accordingly, during Period I, the driver is not earning a wage, nor is Uber. However, the driver is arguably "working" or "on the clock." The driver is not driving for purely personal purposes during Period I and the app in on during this time. This issue has yet to be fully resolved by the courts throughout the country.

The Insurance Services Office ("ISO") has now released a Public Or Livery Conveyance Exclusion Endorsement (PP 23 40 10 15), which 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. Thus, ISO excludes coverage during Periods I - III for liability, med pay, and first-party damage coverages.

Ride-Sharing Company Responses

Uber and Lyft recognize variations on the period scheme identified above, and tailor their coverages for each of those periods. Uber divides the ride-sharing process into the following periods: (1) while the driver is operating his or her vehicle but waiting to receive a ride request; (2) while the driver has accepted a ride request and is on the way to pick up the rider; and (3) while the rider is in the car and headed to the rider's destination. In order to have coverage for these periods, the Uber app must be turned on. When the app is turned off, Uber considers the driver to be using the car for the driver's own personal use, and Uber does not provide insurance during while the app is turned off.

For period (1), Uber provides only third-party liability coverage with limits of $50,000 per person and $100,000 per accident, and $25,000 per accident for property damage. For period (2), Uber provides: $1 million in third-party liability coverage; $1 million in uninsured and underinsured motorist coverage; and collision and comprehensive coverage (if the driver already has such coverage on his/her personal insurance). The limit for collision/comprehensive coverage is the actual cash value of the vehicle, subject to a $1,000 deductible. For period (3), Uber provides the same types and limits of coverages as it does for period (2).

Lyft follows a somewhat different scheme, dividing the periods as where: (1) the driver is operating his/her vehicle but waiting to receive a ride request; and (2) the driver has accepted a ride request up through the end of the ride. Like Uber, Lyft requires the driver to rely on his or her own personal auto insurance while the app is turned off. For period (1), Lyft provide "contingent liability coverage," meaning that Lyft's coverage will apply only in the event that the driver's own personal insurance does not respond. The "contingent liability coverage" provides a $50,000 limit per person for bodily injury, $100,000 per accident for bodily injury, and $25,000 for property damage. For period (2), Lyft provides three different types of coverages: "primary automobile liability" coverage; "contingent comprehensive & collision" coverage; and uninsured/underinsured motorist coverage. The limit for "primary automobile liability" coverage is $1 million per accident; but this coverage will be excess over the driver's own commercial or personal auto insurance that specifically provides coverage for ridesharing. The "contingent comprehensive & collision" coverage has a limit up to the actual cash value of the vehicle or the cost of repair (whichever is less), subject to a $2,500 deductible. The uninsured/underinsured coverage limit is $1 million per accident.

Auto Insurer Responses

Many personal auto insurers offer ride-sharing coverages either as an endorsement to their standard personal auto policies or as a stand-alone policy. Like Uber and Lyft, these insurers break down the available coverages based upon the ride-sharing period involved. For example, State Farm offers Rideshare Driver Coverage, which extends the driver's personal auto policy to cover accidents that occur while the insured is driving for a transportation network company. State Farm's Rideshare Driver Coverage recognizes the following ride-sharing periods: (1) while the app is turned off; (2) while the app is turned on and the driver is looking for a rider; and (3) while the driver has been matched with a rider. For period (1), only the personal auto coverage of the policy will apply. For period (2), the Rideshare Driver Coverage extends all coverages from the personal auto policy for third-party liability, property damage to the covered auto, medical expenses, roadside assistance, rental reimbursement, and uninsured/underinsured motorist coverages. For period (3), the Rideshare Driver Coverage extends all coverages from the personal auto policy, except third-party liability coverage. The cost for Rideshare Driver Coverage generally adds about 15-20% to the standard personal auto policy premium.

Farmers Insurance Company also offers a Rideshare insurance program, which breaks down the ride-share process into the following periods: (1) when the vehicle is being used for personal use (only personal auto coverage will apply); (2) when the driver has logged onto the ride-sharing app but has yet to pick up a passenger; (3) when the passenger has accepted a ride; and (4) the passenger has been picked up and is in route to his or her destination. Under the Rideshare program, the driver's personal auto coverage is extended to cover period 1. Under periods (2) and (3), a separate commercial auto coverage applies, which the insured can customize. The coverages available for periods (2) and (3) include comprehensive and collision coverages; uninsured and underinsured motorist coverage; and medical payment and personal injury protection.

Legislative Response

As a result of the insurance coverage gap, 45 states have implemented consumer protection legislation imposing certain coverage requirements upon ride-sharing companies. Most of the statutes are very similar in nature, with the primary differences focusing on the amount of coverage required to be provided by ride-sharing companies. Be sure to research the provisions of your state's own ride-sharing statute.

The Duty to Cooperate

An interesting topic when it comes to ride-sharing is to what extent the companies have an obligation to cooperate in an insurance claim investigation involving a ride-sharing driver or passenger. While the insured driver would have a duty to cooperate with his or her own insurer's investigation involving an insurance claim, this in turn raises the question of whether a similar duty apply to the third-party ride-sharing companies, where contractual privity is lacking. Many states have answered this question in the affirmative in their statutes, mandating a duty to cooperate in any claim investigation.

SIU Tips and Tricks

In any car accident case, there is the possibility a ride-sharing driver is involved and potential alternative sources of insurance based on the ride-sharing activity may be implicated. From day one of any car accident investigation, consider the possibility Uber, Lyft, or even another company may be implicated. Are you asking your insured about ride-sharing during the initial recorded statement? What about the Examination Under Oath? Are you asking other occupants in the vehicles whether the trip involved ride-sharing during witness statements?

Imagine a scenario where your insured causes a four-car pileup on the interstate. The sole passenger sitting in the back seat sustained serious and permanent physical injuries. Three years later, during the insured's deposition in a high value federal court case, you learn for the first time, the driver was taking the injured passenger on an Uber trip at the time of the accident. Talk about a game-changer, but why did you fail to learn these crucial facts until three years later and after hundreds of thousands of dollars were spent in attorney fees when the claim should have been denied from the beginning under the Livery Exclusion? This is just one small example of why investigating ride-sharing involvement is so vastly important. Ride-sharing will also open additional doors, avenues, and concerns for fraud investigators.

Although several insurance companies, including Farmers Insurance and GEICO, offer ride-sharing policies or policy riders, transportation network company ("TNC") drivers may not be aware of this option or may opt to not purchase the policy for financial reasons. Regardless of the reasoning for not having the proper policy, it is important to identify the possibility an insured may be operating as an independent contractor for a TNC.

The first and most obvious clue: does the insured vehicle have an Uber, Lyft, or other ride-sharing decal on their vehicle? These are often on the front windshield or back window. If these are noted by the field appraiser or by the adjuster after a damage photo review, the adjuster will need to focus their line of questioning around whether the vehicle was being operated as a ride-sharing service at the time of loss.

Questions to assist in identifying whether the vehicle was being operated as a TNC include the following:

- **Where were you coming from and where were you going to?**

  Do not let the insured provide ambiguous answers – get the details! What is the name of business they were leaving? Whose house were they driving to and where was it? Do they claim that they were "just driving around"? If so, why?

- **Who was with you, what is your relationship, and where were they seated?**

  Look at the demographics of the involved parties. Is a 25-year-old woman driving a 60-year-old man in the back passenger's seat? What is their relationship, and most importantly, why was he or she sitting in the backseat? This is incredibly indicative of a TNC ride, and follow-up questions need to be asked. Adjusters need to speak with everyone in the vehicle at the time of the loss, even if the insured claims the passenger(s) do not want to be involved (red flag!).

- **Do you drive for a TNC? If so, were you operating a ride-share at the time of the loss?**

  These are probably the most important questions an adjuster can ask. Be direct; do not be afraid to ask this. Why? Depending on the policy, if an insured is operating a ride-share at the time of the loss, it may not be covered. If the insured lies about doing so, they may have committed fraud and misrepresentation (depending on the policy).

Lastly, be aware there are ride-sharing forums online in which ride-share operators give each other tips on how to get a loss covered even if it otherwise would not be covered. Some forum users recommend using the phrase "car-pooling" instead of "ride-sharing," and some even state "omission is key." Remember – if you are not specific in your questioning, you may overlook a key issue which would have validated (or invalidated) coverage. An insured will likely not offer up details to aid in an investigation, so in addition to the above questions, be sure to review the police report (if one is available) in detail and speak to unbiased witnesses.

Conclusion

Ridesharing companies like Uber and Lyft are here to stay. Whether you are an attorney, claims professional, or investigator, be sure to stay atop of the latest coverage and SIU issues for ride-sharing claims. If you have not already, in each and every car accident claim and suit, begin to evaluate whether ride-sharing is a factor.

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