

**INSURANCE COVERAGE IN THE WAKE OF  
SUPERSTORM SANDY**

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## **2015 NYSBA CLE Insurance Coverage: Emerging Claims – Ride Sharing**

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### **I. Insurance information provided by current automobile ride-sharing companies**

Automobile ride-sharing companies like Uber, Lyft and Sidecar connect passengers with private drivers offering a seat in their vehicle in exchange for a share of the trip fee. Passengers are able to request, ride, and pay the trip fee all through an application on their mobile phone.

Insurance in the context of automobile ride-sharing blurs the line between personal and commercial automobile insurance. Each ride-sharing company holds a commercial insurance policy providing coverage for incidents occurring while a trip is in progress; however, for incidents occurring before the driver has accepted a trip or when the driver is unavailable on the application, it is not always clear whether coverage is provided by the commercial policy or by the driver's own personal auto policy. The website for each major ride-sharing company outlines coverage during each relevant "coverage period". (see *infra*, § IV for discussion of relevant "coverage periods").

Uber's commercial auto policy provides the following coverage:

- Period 1 -- no coverage
- Period 2 -- "contingent coverage" for drivers' liability for bodily injury up to \$50,000 per individual and \$100,000 per accident and for property damage up to \$25,000. This coverage will pay only if the driver's personal auto insurance completely declines or pays zero.
- Period 3 -- primary coverage up to \$1 million for drivers' liability to passengers and third parties; \$1 million UM/SUM coverage per incident; no-fault (PIP) coverage in certain states at similar levels as taxis or limos; contingent comprehensive and collision coverage up to the actual cash value of the vehicle with a \$1,000 deductible. This contingent comprehensive and collision coverage applies only if the driver personal comprehensive and collision coverage on his or her personal auto policy.

Lyft's commercial auto policy provides the following:

- Period 1 -- no coverage
- Period 2 -- "contingent liability coverage" up to \$50,000 per person and \$100,000 per accident for bodily injury and up to \$2,500 for property damage. This "contingent liability coverage" applies only in the event that the driver's personal auto carrier does not respond.

- Period 3 -- primary coverage up to \$1 million for drivers' liability to passengers and third parties; \$1 million UM/SUM coverage per incident; contingent comprehensive and collision coverage up to \$50,000 with a \$2,500 deductible. This contingent comprehensive and collision coverage applies only if the driver personal comprehensive and collision coverage on his or her personal auto policy.

Sidecar's commercial auto policy provides the following coverage:

- Period 1 -- no coverage
- Period 2 -- "contingent liability coverage" varies by state
- Period 3 -- primary coverage up to \$1 million for drivers' liability to passengers and third parties; secondary collision coverage up to \$50,000 per accident with a \$500 deductible. This collision coverage is secondary to any valid and collectible insurance held by the driver, and will apply when all coverages from other such insurance has been fully exhausted or declined.

## **II. Insurance Problems: Fraud; "Primary" Insurance; and "Coverage periods"**

Among the problems currently facing insurers, perhaps the biggest is that drivers often lie to their personal insurance carrier about their work. Indeed, because full commercial insurance can cost up to ten times as much as personal insurance, and is thus too costly for most drivers, for many drivers, the only solution is to procure personal insurance and hide their status from their insurer. Though, so doing can result in confusion, and in some cases, insurance fraud. An internal Geico document, for example, told insurance agents to reject car-service app drivers and refer them to Geico's fraud unit; other insurers suggest that they are equally wary of insuring these drivers.

In their attempts to offer a solution, ride-sharing companies have begun to offer insurance coverage for on-duty accidents, resulting in personal insurance covering off-duty accidents. For instance, if Uber offers primary insurance, it agrees to pay for damage from a driver's accident without the driver's personal insurance needing to decline the claim first. Though, still, questions arise when ride-sharing insurers request that the driver first report their accident to their personal insurance to get a denial. Thus, there is a question as to whether the coverage really is "primary," and said confusion can result in a driver committing insurance fraud when reporting the accident to their personal carrier.

Commercial coverage offered by ride-sharing companies applies only during certain "coverage periods." There are three relevant "coverage periods": "Period 1", while the driver is logged-off of the ride-sharing application; "Period 2", while the driver is logged-on to the application but not currently engaged in a trip; and "Period 3", beginning when the driver accepts a trip and ending once the trip has been completed. Incidents occurring during Period 1 must be reported to the driver's personal auto carrier as they are not covered under the ride-sharing company's commercial policy. Incidents occurring

during Period 3 are covered up to \$1 million by ride-sharing company's primary commercial policy. Commercial coverage during Period 3 is primary to any personal auto coverage held by the driver.

Coverage for incidents occurring during Period 2 is not always clear. Initially, ride-sharing companies did not provide commercial coverage for incidents occurring during Period 2, directing drivers to report all such to their personal auto carrier. Personal auto carriers consistently responded to such Period 2 claims either by denying coverage based upon livery exclusions or by cancelling the driver's policy for failure to disclose ride-sharing activities in the application. In response to public concern regarding this apparent gap in coverage, ride-sharing companies have recently started offering "contingent liability coverage" for incidents occurring during Period 2. This "contingent coverage" applies only if the driver has reported the incident to his or her personal auto carrier and the carrier has completely denied or paid zero.

### **III. Several states have passed, or are attempting to pass, legislation regulating insurance for the ride-sharing industry.**

As a result of the problems aforementioned, several states have passed, or are attempting to pass, legislation regulating insurance for the ride-sharing industry. Indeed, in June 2014, Colorado became the first state to enact a law regulating ride-sharing companies, or "on-demand transportation network companies" ("TNCs"). Specifically, the passage of Senate Bill 14-125 created a limited regulatory structure for TNCs, and set forth certain requirements for both the driver and the TNC. Under the current law, TNCs are exempt from the regulation for common carriers, contract carriers, and motor carriers, but must meet certain requirements and be permitted by the Public Utilities Commission ("PUC"), including: (1) *filing a certificate of insurance with the PUC for at least \$1 million primary liability coverage per occurrence for incidents occurring while a network driver has a rider*; (2) *requiring personal automotive liability insurance that recognizes the driver is in a TNC*; (3) obtaining a criminal history record check, and driving history reports on drivers; and (4) prohibiting the use of drivers with certain felony convictions, moving violations, or who are under 21. Any TNC that fails to comply with a PUC order, decision, or rule is subject to a penalty of up to \$11,000 per offense depending on the violation.

In March 2015, Georgia passed a bill that requires ride-sharing drivers to have commercial insurance, from the time they turn on their apps (*regardless* if any passengers are on board), and until a passenger is dropped off. Specifically, drivers must be covered for \$300,000 in bodily injury damages and \$50,000 for property damage. In so doing, the Georgia Legislature recognized that although reputable companies such as Uber and Lyft do carry some level of insurance, if they unilaterally decided to drop that insurance coverage, they would not be in violation of state law, and neither the Insurance Department nor an affected consumer would have any recourse. Further, most ride-sharing coverage provided by ride-sharing companies typically does not kick in until drivers are en route to pick up a passenger, meaning, there is a "gap" when drivers are logged into the system and not driving anyone or matched to a passenger.

Likewise concerned about what to do between the time that a ride-sharing driver turns on their phone and when they actually get to pick up their passenger, New York lawmakers hope to pass legislation clarifying insurance provisions and requirements relative to transportation network companies. The bill currently being proposed -- Senate Bill S4108 -- would require minimum liability coverage for

Period 2 and \$1 million primary liability coverage for Period 3, in addition to physical damage coverage if the driver carries it otherwise. The bill would also require TNCs to disclose any applicable insurance exclusions to their drivers. *See also Kentucky legislation* (bill currently being proposed requiring insurance coverage for ride-sharing vehicles similar to what Kentucky now requires of taxi and limousine services and authorizing state transportation and insurance officials to draft regulations that would settle a number of insurance coverage questions for the ride-sharing industry, including when a ride-sharing driver's personal coverage stops and her commercial coverage begins); *Arizona legislation* (a bill is now pending in Arizona - unanimously passed in the House and working its way through the Senate - that requires ridesharing drivers to carry commercial insurance); *Nebraska legislation* (bill currently being proposed that creates insurance coverage regulations for drivers who have logged on to a ride-booking application but have not picked up a passenger, and requires driver background checks, vehicle inspections, fee collection, and complaint investigation); *Wisconsin legislation* (legislation being presented requires two tiers of insurance: when the driver is logged into the application but has not accepted a passenger yet, the insurance requirement is \$25,000 for property damage, \$50,000 for death and bodily injury per person and \$100,000 for death and bodily injury per incident. When the driver is actively engaging in services – on their way to pick up a passenger or with a passenger in the car – the requirement bumps up to \$1 million for all of the above categories).

#### **IV. Insurers offering “hybrid” personal auto policies**

In order to combat the myriad of problems aforementioned, insurers have also proposed new hybrid insurance policies. For instance, Erie Insurance has proposed a hybrid policy wherein the driver has insurance coverage during every part of the trip – before, during, and after the hired ride. The new coverage is available to persons who put a “business use” designation on their personal car insurance policy. “Business use” traditionally has covered people who use their personal cars for things like delivering pizza or flowers, but instead of excluding persons who use their cars as taxis (historically excluded), the exclusion will be removed for persons who use their car for a ride-sharing service. In addition, USAA plans to offer insurance for ride-sharing drivers, giving USAA members the option to extend their personal auto insurance policy to provide coverage from the moment they log in to a ridesharing mobile app, until they are matched with a passenger (this provides for coverage during “the gap”).

Also, MetLife Auto & Home recently announced that Lyft drivers in Colorado have access to a unique auto insurance policy that provides coverage for Lyft drivers engaged in activities related to providing Lyft services, including coverage for Bodily Injury, Property Damage Liability, Medical Payments, and Physical Damage. The endorsement offers coverage for drivers and passengers at every stage of the trip; and premiums vary based on the mileage driven in the Lyft program. Similarly, Geico will begin to offer a new type of policy that will provide coverage to such ride-sharing drivers when they're operating privately and when they're transporting customers, which will be priced in between traditional private and commercial policies. Additionally, Progressive Corp. has joined the movement in offering insurance coverage for drivers working for ridesharing companies. Progressive's new auto policy is designed to cover Lyft drivers, both when they are en route to pick up a customer and when they're off the clock. The policy replaces the driver's existing personal auto coverage, and provides varying coverage contingent upon which “period of potential exposure” the driver is facing (i.e., first –

going around hoping to get business; second – when the driver is en route to pick up passenger; third – actual driving of the passenger).

## **V. Ride-sharing in the non-automobile context: “Flight-sharing”**

As illustrated above, ride-sharing has become an ever increasing concern in the context of automobiles; and like ride-sharing, “flight-sharing” has quickly become an issue on the horizon. However, if flight-sharing “takes off,” it will create additional concerns in the insurance realm.

Companies such as Airpooler and Flytenow, Inc., connect passengers with private pilots offering a seat on their small planes in exchange for a share of the flight costs. Pilots and passengers link up by searching the various flights available (on internet “bulletin boards”), or by setting flight email notifications when pilots post flights that meet passenger’s travel criteria. The Federal Aviation Administration (“FAA”), however, recently issued an opinion that ride-sharing programs offered by said companies are illegal, noting that by sharing gas and other costs with passengers, the pilot is receiving compensation and therefore needs a carrier license to operate as an air service. Notably, the FAA response was based on a draft version of proposed legislation in 1963, which, when enacted, totally overturned the earlier version and made an exception for private pilots to get a pro-rated share of the costs, without the need for a commercial license.

In the U.S. Court of Appeals for the District of Columbia, Flytenow, Inc. is challenging the FAA’s ban on the flight-sharing. Indeed, in January 2015, Flytenow, Inc. filed a 59-page brief, arguing that the FAA is violating federal rules that allow private pilots to share expenses with passengers, and that the FAA is further violating the company’s First Amendment right to use the Internet to communicate. Airpooler is also challenging the FAA’s position, using congressmen.

Although not yet fully developed, in dealing with the aforementioned, insurance companies may seek to exclude such activities from coverage, and require a rider with some experience/rating requirements in order to procure said rider. Also, the question currently being considered regarding the FAA - if ride-sharing in this context is “commercial” – will impact how insurance policies are affected. Indeed, if flight-sharing is deemed commercial, pilots will need the requisite commercial coverage, as most private aircraft insurance coverage is usually very limited and would not extend to any liability that the passenger might incur as a result of providing compensation for the flight. Commercial aviation insurance coverage, however, provides multi-million dollar liability coverage, and extends to everyone on-board; proving prohibitively expensive to insureds. In the meantime, as the FAA has determined that flight-sharing is commercial, and as the Court has not yet come down on this issue, passengers and pilots can be liable, and insurance could be void, because private aviation insurance policies specifically *exclude* commercial operations.

## **VI. Further development**

On March 31, 2015, the National Association of Insurance Commissioners published a report entitled “Transportation Network Company Insurance Principles for Legislators and Regulators” which provides a comprehensive overview of insurance issues in the context of automobile ride-sharing. The report analyzes insurance coverage issues from the perspectives of the insurance company, driver, TNC, other for-hire transportation, and passenger/third-party, and proposes solutions including legislation and

hybrid policies similar to those discussed in the sections above. The report also suggests public communication, education, and outreach to ensure that policyholders, passengers, and personal auto carriers are educated by making sure that the periods of TNC service are clearly defined, there are no coverage gaps, and the types and limits of coverage are appropriate. It also suggests making available materials providing definitions of ride-sharing terminology, court interpretations of common livery exclusions, identification of any legal barriers to policy cancellation due to involvement in ride-sharing activities, and disclosure of state-mandated coverage for TNCs. The report also includes an overview of all local ordinances and state legislation currently in place regarding insurance coverage in the context of automobile ride-sharing.