CLM 2016 Atlanta Conference
May 19-20, 2016 in Atlanta, GA

The Black Car Blues: Investigating and Adjusting Potentially Fraudulent Claims Involving Suspected Rideshare Drivers

I. INTRODUCTION

Uber, Lyft, and Sidecar (among others) are "ridesharing services." Through the each company's own smartphone app, passengers can request a ride from a driver who is driving their own car, not a taxi or company-owned car. The drivers receive passenger requests through the driver-version of the app, decide whether to take the fare, and pick up and drop off the passenger at the passenger's desired location. Drivers turn on the app when they want to take fares and can turn off the app when they're done working for the day. At the end of the ride, the passenger's credit card is automatically billed to a credit card on file with the company. Unlike a traditional taxi ride, no cash changes hands.
Although we'll use the term "ridesharing companies"[1] throughout this paper, most ridesharing companies describe themselves as "technology companies." For example, Uber characterized itself as follows in a filing with the California Public Utility Commission:

> Uber operates no vehicles, and does not hold itself out or advertise itself as a transportation service provider. In fact and law, Uber does not provide transportation services of any kind and does not own, lease or charter any vehicles for the transportation of passengers. On the contrary, Uber is a technology company that licenses the Uber App to transportation service providers. The transportation service providers pay a fee to Uber to use its software technology; the passenger of the transportation service provider pays the transportation service provider for transportation services received.[2]

There are two significant implications of ridesharing companies' self-description. First, if ridesharing companies self-identify as "technology companies" that simply connect passengers with drivers, not

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[1] Some of the legislation regulating ridesharing companies uses the terms "transportation service networks" (abbreviated "TSN") or "transportation service providers."
[2] Application of Uber Technologies, Inc. for Rehearing of Decision 13-09-045, Public Utilities Commission of the State of California, Rulemaking 12-12-011 (Oct. 23, 2013); see also Terms of Service, LYFT (July 28, 2014), http://www.lyft.com/terms ("Lyft does not provide transportation services, and Lyft is not a transportation carrier. It is up to the driver to decide whether or not to offer a ride to a rider contracted through the Lyft platform, and it is up to the rider to decide whether or not to accept a ride from any driver contacted through the Lyft platform. . . .")

"transportation service providers" like taxis or other car services, who is liable when a driver gets in an accident? Second, how does this shift in liability lead to fraud and what can we do to prevent it?

II. INSURANCE COVERAGE FOR RIDESHARING

A. Traditional Taxi/Limousine Regulation

Taxi and limousine transportation is a highly regulated industry.[3] This regulation typically involves: (1) limited entry (e.g. restricting the number of firms, and/or the ratio of taxis to population), (2) just, reasonable, and nondiscriminatory fares, (3) service standards (e.g., vehicular and driver safety standards, dispatch capability, and a minimum level of response time), and (4) financial responsibility standards (e.g., insurance).[4]

For example, Florida sets certain minimum insurance limits for taxi and limousine companies.[5] Owners are required to maintain minimum limits of $120,000 for a single person injured in an accident, $250,000 for all total bodily injuries in an accident, and $25,000 for all property damages.[6] As of this writing, Florida has no minimum insurance requirements for rideshare drivers.

While their customers were increasingly siphoned off by unregulated rideshare services, transportation companies were not content to wait for the law to catch-up. Nationwide, dozens of taxicab companies filed suit against Uber, stating claims for unfair competition and tortious interference with business relationships, often seeking an injunction of rideshare services. These efforts have, for the most part, been unsuccessful. *Checker Cab Philadelphia, Inc. v. Uber Technologies,* 2015 WL 966284 (E.D.Pa., Mar. 3, 2015) (denying a motion for an injunction); *Manzo v. Uber Technologies, Inc.,* 2014 WL 3495401 (N.D.Ill., July 14, 2014) (dismissing a claim for unfair competition as a "backdoor method" to bring a claim that Uber violates Chicago taxi and livery regulations); *Greater Houston Transportation Co. v. Uber Technologies, Inc*., Civ. A. No. 14–941 (S.D.Tex. Apr. 21, 2014) (denying request for temporary injunction); *Boston Cab Dispatch, Inc. v. Uber Technologies, Inc.,* 2015 WL 314131 (D.Mass., Jan. 26, 2015) (dismissing a claim for unfair competition).

However, state and local legislatures are working quickly to fill the regulation gap. First, we'll consider current coverage issues facing many rideshare drivers nationwide, including coverage gaps. Then we'll look at legislative efforts aimed at filling those gaps and further regulating the rideshare industry.

B. Auto Insurance for Rideshare Drivers

For a rideshare driver, there are three periods that define their time behind the wheel. Period one is when they are driving with the rideshare app off and are not accepting fares. Period two is when the app is on but there is no fare in the car (i.e. they are waiting for a rideshare request or are en route to pick up a passenger). Period three is when the driver has the app on and has a fare in the car, driving the passenger to his or her destination.

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[3] Paul S. Dempsey, Taxi Industry Regulation, Deregulation & Reregulation, 24 TRANSP. L.J. 73, 75 (1996).

[4] Id.

[5] FLA. STAT. § 627.733(1)(b).

[6] FLA. STAT. § 324.032(1).

Period One	Period Two	Period Three
No passenger	No passenger	Passenger
App is off	App is on	App is on

There are different coverage implications for each of these periods. Taking the periods out of order, we'll look at insurance coverage during period one, period three, and then turn to the more complicated answer to coverage during period two.

1. App is Off and No Passenger (Period One)

While the rideshare app is off and the driver has no passenger in the car, the driver's own personal insurance applies.[7]

2. App is On with a Passenger (Period Three)

Here is where the coverage question begins to get more complicated. Most personal auto insurance policies contain several provisions which narrow coverage to exclude commercial use of the insured vehicle. For example, many policies contain the following exclusions (or something similar) with regard to liability coverage:

Coverage . . . will not apply to any insured person for bodily injury or property damage arising out of the ownership, maintenance, or sue of any vehicle . . . while being used to carry persons . . . for compensation or a fee. . . . This exclusion does not apply to share-expense car pools.[8]

Another example:

There is no coverage for that insured's liability arising out of the ownership or operation of a vehicle while it is being used as a public or livery[9] conveyance. This exclusion does not apply to share-the-expense car pool.[10]

Personal auto policies contain similar exclusions for medical payments coverage[11] and physical damage coverage.[12]

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7 Want to Drive with Uber?, UBER, https://www.uber.com/driver-; Lyft's Insurance Policy, LYFT, https://www.lyft.com/drive/help/article/1229170.

8 Sidecar has gone so far as to argue that it is a "noncommercial enterprise" and simply offers carpooling services. Opening Comments of Sidecar Technologies, Inc. and Side.Cr, LLC, Public Utilities Commission of the State of California, Rulemaking 12-12-011 (Jan. 28, 2013).

9 One definition of "livery" is "the business of keeping vehicles that people can hire.", MERRIAM WEBSTER, http://www.merriam-webster.com/dictionary/livery.

10 Cathy Schwamberger and Melissa A. Murphy-Petros, The "Sharing Economy" and Personal Lines Insurance Coverage Issues, INS. COVERAGE & CLAIMS, 249-51 (Mar. 2015).

11 "Coverage . . . will not apply to bodily injury sustained by any person while occupying a covered auto while it is being used to carry persons . . . for compensation or a fee. . . . This exclusion does not apply to shared-expense car pools." Id.

12 "There is no coverage for . . . any covered vehicle while it is used to carry persons for a charge. This exclusion does not apply to the use of a private passenger car on a share-the-expense basis." Id.

Regardless of these policy exclusions, when drivers were involved in accidents with passengers in the car, Uber encouraged them to file a claim with their own personal insurance and expressly disclaimed any liability for accidents occurring during a ride.[13]

This approach had the effect of causing rideshare drivers to lie or mislead their insurers about the use of their cars for rideshare services.[14] If drivers were involved in accidents and made a claim, their lie could be considered a material misrepresentation in either the policy application process or the subsequent investigation. As a result, the policy could be void ab initio (from the beginning), leaving the driver personally exposed for any liability.[15]

In these scenarios, Uber sometimes stepped in to provide coverage under a commercial policy. (Commercial policies are generally cost-prohibitive for part-time rideshare drivers.[16]) Under pressure from drivers, legislatures, plaintiffs, and personal lines carriers, Uber has since increased their commercial policy limits and provides primary coverage under "non-owned auto policies."[17] Despite this, fraud surrounding whether a driver is driving a ride-sharing vehicle or not is still rampant. Below we will give you some ideas and tips to look for when you think a driver/insured may be using his or her vehicle as a rideshare vehicle.

3. App is On but No Passenger (Period Two)

When the rideshare app is on but the driver does not yet have a fare because either (1) the driver is either waiting for a passenger's request or (2) the driver is *en route* to pick up a passenger, the answer is even more complicated.

Previously, rideshare companies did not provide coverage for these periods. That approach came under scrutiny when an Uber driver struck and killed a six-year old girl on December 31, 2013. The driver, on the way to pick up a fare and with the app on, failed to yield to pedestrians in a crosswalk while turning right. He hit a mother and her two young children, the youngest of which did not survive. Uber denied coverage, since there was no fare in the car at the time of the accident.[18] The family sued the driver and Uber in California Superior Court.[19] The case ultimately settled, but it caused Uber and other ridesharing services to consider their coverage position during period two. Most services now provide enhanced contingent liability during this period.[20] Additionally, personal lines are also creating new products to fill

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[13] R.J. Lehmann, Blurred Lines: Insurance Challenges in the Ride-Sharing Market, R STREET (Oct. 2014), http://www.rstreet.org/wp-content/uploads/2014/09/RSTREET28.pdf.

[14] Christopher Tidball, Uh Oh . . . Uber Has Some Coverage Issues, PROPERTY CASUALTY 360° 3, (Feb. 9, 2015), http://www.propertycasualty360.com/2015/02/09/uh-ohuber-has-some-coverage-issues?page=3 (reviewing Uber driver message boards and finding "a proliferation of advice about how and why you should lie to your insurance company").

[15] Id.

[16] Lehmann, supra.

[17] Want to Drive with Uber?, supra (providing commercial insurance at $1M third party liability/$1M UI/UM coverage).; Lyft's Insurance Policy, supra (providing contingent collision and comprehensive coverage at $50k/per occurrence and $1M UI/UM).

[18] Josh Constine, Uber's Denial of Liability in Girl's Death Raises Accident Accountability Questions, TECH CRUNCH (Jan. 2, 2014), http://techcrunch.com/2014/01/02/should-car-services-provide-insurance-whenever-their-driver-app-is-open/.

[19] Liu v. Uber Technologies, Inc., No. CGC-14-536979 (Sup. Ct. Cal., S.F., Jan. 27, 2014).

[20] Want to Drive with Uber?, supra (providing contingent liability at $50/$100/$25).; Lyft's Insurance Policy, supra (providing contingent liability at $50/$100/$25).

the gap, covering both personal auto use and rideshare services for premiums far cheaper than commercial coverage.

Although the industry has started to self-regulate, primarily in response to lawsuits and associated media backlash, state and local legislatures are also stepping up to the plate. But legislatures have been "faced with the difficult decisions of whether to force [rideshare companies], which do not operate like taxi companies, to comply with the already-established regulations for taxis or to establish new regulations that treat [rideshare companies] as something entirely different."[21] The interests are competing and strong, making these regulations sometimes difficult to pass.[22]

III. HOW TO IDENTIFY DRIVERS WHO MAY BE INVOLVED IN RIDESHARING?

The first thing to do when you are evaluating auto claims is to wipe all preconceived notions of taxi drivers from your mind. Rideshare drivers come in all shapes, sizes, genders, and ages. So, how can you ferret them out?

First, look at their policy limit. Many companies like Uber require minimum personal auto limits that are above most states' statutory minimum limits. If the driver's limits are higher than you would have anticipated or perhaps higher than a family member's limits, you may want to investigate the rideshare potential.

Second, pay attention to the time of day and location. Does it make sense for a stay-at-home parent to be driving around the airport located 30 miles from his or her house at 10am on Monday? Does it make sense that a retiree is cruising the bar district at 3am on a Saturday? If not, ask more questions. We use the stay-at-home parent and the retiree as examples of people who have been seen more and more using ridesharing as opportunity for extra income.

Third, investigate the driver's cell phone. Most rideshare transactions are done completely through "apps." These apps even allow the drivers to place phone calls to prospective passengers and have the incoming number appear different from the drivers' actual phone number. Thus, the investigation into the cell phone use may involve more than just a record of calls made and received, but also an investigation into the "app" usage.

Finally, don't underestimate the power of the fraudulent mind. Spend a few minutes cruising some of the rideshare message boards and you will be quickly schooled on ways drivers hide their participation in the sharing economy. These boards are replete with tips, tricks, and suggestions of ways to avoid "getting caught" ridesharing to assure maximum insurance coverage.

IV. CONCLUSION

Despite rideshare companies' self-identification as "technology companies," drivers, courts, and legislatures are increasingly pushing them to take on responsibility for their insurance coverage and their driver's actions. In the realm of insurance coverage, they have largely been successful. Rideshare companies have ramped up their coverage limits and filled major gaps. Additionally, insurance companies have also stepped up and have started offering more options for coverage endorsements to

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[21] Emily Dobson, Transportation Network Companies: How Should South Carolina Adjust Its Regulatory Framework?, 66 S.C. L. REV. 701, 702 (2015).

[22] See for example, Florida Senate Bill 1298 and House Bill 817 (which stalled out as of the writing of this paper), and Texas house bill 2440 (which has not been passed as of the writing of this paper.) See in contrast, California Assembly Bill 2293 (which went into effect on July 1, 2105.)

rideshare drives. Despite this, misrepresentation and fraud remains prevalent among some rideshare drivers who either do not yet realize that economical choices are available to provide them with additional coverage, or do not want to incur any extra expense and choose to hide their participation in the ridesharing community.