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Insurance Complications in the Modern World

This panel of attorneys and claims professions will discuss insurance complications in the modern world. New technologies and business have taken the world by storm, including ride-sharing, Airbnb, Bitcoin, cybersquatting, legalized marijuana, drones, and self-driving cars. We will provide background and insight into the insurance claims process and litigation issues for these hot new trends. We will focus on how insurance coverage under traditional policies, such as homeowners and commercial general liability policies, will be impacted, as well as the claims investigation process.

I. Ride-Sharing

What is it?

Ride-sharing is a service that arranges one-time shared rides on very short notice. This type of carpooling generally makes use of three technological advances: (1) GPS navigation devices to determine a driver's route and arrange the shared ride; (2) smartphones for a traveler to request a ride from wherever they are located; and (3) social networks to establish trust and accountability between drivers and passengers.

Unlike traditional taxi companies, almost anyone can drive for a ride-sharing service. All you need is a car and a smartphone app. These services externalize all business costs.

Criticisms

Ride-sharing has been highly controversial, criticized as lacking adequate regulation, insurance, licensure, and training. One of the main ride-sharing firms, Uber, is banned in Berlin and a number of other European cities. Opposition may also come from taxi companies and public transit operators, because they are seen as unfair, competitive alternatives. Your personal credit card information is also stored in the app.

Key Players

Uber is the largest ride-sharing provider, valued at \$41 billion. Uber is available in 58 countries worldwide. Uber averages 30 million rides a month.

The next closest competitor, Lyft, averages more than two million rides per month.

Background of Coverage Issues Starting in San Francisco

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. *See* Case No. CGC 14 536979. Settlement was reached in July 2015 and filed under seal.

Insurers and critics argued that 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.

Insurance Coverage Gap

The insurance coverage gap can be broken down as follows:

- Period One: The driver is logged into the app and driving around looking to obtain business. There are no passengers in the vehicle. The driver has not been contacted and has not accepted a ride request.
- Period Two: 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 Three: The driver arrives, picks up the passenger, and actually drives the passenger to his or her destination.

Both Uber and Lyft currently extend a \$1,000,000 insurance policy to their drivers, but only between the times they agree to pick up customers and when they drop them off. When a driver pulls away after dropping a customer off, his or her personal insurance becomes their primary coverage; the ride-sharing companies only offer

secondary coverage. If a driver gets in a wreck during such times, it can take a long time to sort out which insurance company is responsible.

So far, there is little to no published noteworthy case law on point.

Using Your Vehicle for Commercial Purposes

Personal auto policies explicitly exclude the use of your personal vehicle for hire or commercial use. However, there is no standard ISO ride-sharing exclusion. What happens when a ride-sharing driver is in an accident and then reports that claim to his or her personal auto carrier as required by ride-sharing companies? There is a risk of losing your own personal auto policy.

The Geico gecko will not be hopping into a Lyft or Uber car any time soon. According to a leaked Geico company memo, “Please Group Reject the policy” of customers involved in “ridesharing,” one section reads. Another section provides a script for telling customers that their policies do not cover vehicles used for the ride services, and that they can seek coverage elsewhere for their cars — or may have to prove they no longer drive for Uber or Lyft.

While it has long been known that many insurers reject personal auto policies if they discover that the drivers engage in commercial activities, the clear language of the memo shows how seriously insurance companies view the situation. “Private passenger auto policy isn’t intended to cover livery services,” said Nicole Mahrt Ganley, a spokeswoman for the Property Casualty Insurers Association of America. “There is little question that engaging in livery services is a material change in the nature of the risk being insured, and most states would allow companies to cancel coverage in those situations.”

Clarity may be provided in Sacramento, where a 24 year-old Lyft passenger Shane Holland was killed in November 2014 in an accident. PropertyCasualty360° reports Lyft’s policy is expected to cover the accident regardless of fault, but that remains to be seen.

State Legislation

It would be much less confusing, if the ride-sharing companies provided primary coverage to drivers the entire time they are on their app. The companies would not have to offer such coverage to those who have special commercial policies designed for ride-sharing drivers, which a handful of insurance companies already offer. If these measures

become law, it would become less likely that drivers would lie to their personal insurance company that they were not working at the time of an accident. If drivers file fewer personal insurance claims, that helps keep insurance rates low for everybody.

A California law requires ride-sharing companies to disclose in writing to drivers upfront that the driver's personal insurance policy will not apply while using their private-passenger vehicle for a ride-sharing, and the terms of the insurance policy provided by the ride-sharing company. Drivers are required to carry proof of insurance coverage.

- *“From the time a driver logs on to the app until the moment a driver accepts a ride request on the app,”* drivers are responsible for maintaining primary liability insurance coverage of at least \$50,000 per person / \$100,000 per occurrence for death and personal injury, as well as \$30,000 of coverage for property damage. Ride-sharing companies must also provide \$200,000 of excess liability coverage if the driver's personal policy is insufficient.
- *“From the moment a driver accepts a ride request on the app until the driver completes the transaction on the app or until the ride is complete, whichever is later,”* ride-sharing companies are primary and must provide coverage of \$1 million for death, personal injury, and property damage.
- *“From the moment a passenger enters the vehicle of a driver until the passenger exits the vehicle,”* ride-sharing companies must provide UM/UIM coverage of \$1 million.

In Florida, Senate bill (SB 1298) passed back in April and was sent to the House where it died on calendar. There are plans for it to be proposed next session. Both bills would require companies to provide at least \$1 million in liability coverage for death, bodily injury, and property damage while passengers are in the vehicles, which are not owned by the company, but the drivers. Both bills would require that there be gap coverage, but to differing degrees. The House bill would only require minimum automobile liability insurance of \$50,000 for death and bodily injury per person, \$100,000 for death and bodily injury per incident, and \$25,000 for property damage. The Senate bill would require \$125,000 for death and bodily injury per person, \$250,000 for death and bodily injury per incident, and \$50,000 for property damage.

Daytona police has also started to crack down on searching for unlicensed Uber drivers.

Gap Coverage Options

Insurers now offer differing options and packages to drivers, including:

Metromile

- Available for: Uber drivers
- Available in: California, Illinois, and Washington
- Description: “Per-mile” insurance. Metromile will give you a special device to plug into your car to track how far you drive. By tracking your car and matching it up with your Uber rides, Metromile can see which of your miles were personal miles and which were business. Metromile subtracts your business miles and only charges you for the personal miles, which is pretty nifty (if it works).

Geico (what about that memo?)

- Available for: All rideshare drivers
- Available in: Virginia and Maryland
- Description: Appears straightforward and offered by Geico Commercial.

Progressive

- Available for: Lyft drivers
- Available in: Pennsylvania
- Description: Not a lot of information available. It is a commercial auto insurance policy. Rates will be close to a personal auto insurance policy, and adjusted based on the mileage driven as a rideshare driver (unclear how they will gather that data).

Allstate

- Available for: all ride-share drivers
- Available in: Colorado, Illinois, Texas, and Virginia
- Description: Will cost drivers \$15 to \$20 per year. Exact coverage unknown.

USAA

- Available for: all ride-share drivers (who have served in the military or are a spouse or child of someone who is a USAA member)
- Available in: Colorado and Texas
- Description: Takes a different route. USAA’s insurance extends your existing personal policy for \$6 to \$8 extra per month.

Farmers Insurance Group

- Available for: all ride-share drivers
- Available in: California
- Description: The “Rideshare Endorsement,” is the first of its kind to be offered by a major California insurance company. For an 8% policy surcharge, ride-share drivers can extend their existing Farmers insurance coverage to apply to what California law considers “period one,” or the period between when a rideshare driver is signed into a ride-share app and the time they match with a passenger for pickup. During period one, ride-share companies are only required to offer minimum liability coverage, which may not include coverage for collision damage, medical bills, or uninsured motorists.

Physical Altercations

A case from September 2014 is working through the court system in San Francisco regarding an Uber driver who got into a heated argument with passengers and ended up attacking one of them with a hammer. Do the liabilities intended for car accidents cover attacks by a driver?

Third-Party Driver

What happens if a third-party driver is involved or causes the accident? If fault is in question, who do you file a claim with? There is no guarantee that third-party coverage is sufficient, or whether ride-sharing services can force you to go through the third-party’s insurance if the fault is still in question.

The Insurance Information Institute published a recent Q&A sheet stating the passenger’s personal auto policies would probably not apply since they are not underwritten to take on that risk. Others in the insurance industry have stated that passengers may be covered by their own insurance policies up to their personal injury protection (“PIP”) limits depending on their state’s regulations. However, unless you somehow caused the accident as a passenger, your insurance should only be the claim of last resort.

Duty to Cooperate

While the insured driver will have a duty to cooperate with his or her own insurer's investigation, does a similar duty apply to the third-party ride-sharing company? State statutes are now starting to address this issue. California's statute states:

In a claims coverage investigation, a transportation network company or its insurer shall cooperate with insurers that are involved in the claims coverage investigation to facilitate the exchange of information, including the provision of dates and times at which an accident occurred that involved a participating driver and the precise times that the participating driver logged on and off the transportation network company's online-enabled application or platform.

II. Bitcoin

What is it?

Bitcoin was created in 2009 by an unknown person using the alias Satoshi Nakamoto. Bitcoin is a type of digital currency in which encryption techniques are used to regulate the generation of units of currency and verify the transfer of funds, operating independently of a central bank. It is virtual currency. Bitcoins cannot be seen or touched. It is not printed. It is not recognized or regulated by any governmental entity in the world, nor is there any central body overseeing its use, either nationally or internationally.

The use of Bitcoin is anonymous. There are several marketplaces called "Bitcoin exchanges" that allow people to buy or sell bitcoins using different currencies. People send Bitcoins to each other using mobile apps or their computers, similar to sending cash digitally through a bank website or wire transfer. Bitcoins are stored in a "digital wallet," which exists either in the cloud or on a user's computer. Unlike bank accounts, Bitcoin wallets are not insured by the FDIC.

Bitcoin is beginning to be accepted for payment on various websites, both legal and illegal. Overstock.com and Virgin Galactic accept bitcoin. Bitcoin is also used to anonymously facilitate illegal drug transactions. Some investors believe Bitcoin is the

future of currency. The Winkelvoss Twins from Facebook are among the biggest investors. For now – do not pay your bills for legal services in Bitcoin!

Risks – The Wild West!

- Fragile and anonymous: A man in England accidentally threw away his computer hard drive without removing several million dollars of Bitcoins from it (oops!). There was a rush of people to the garbage dump trying to locate the “bag of gold.” Whoever wound up with the hard drive would likely also be able to claim ownership of the Bitcoin. The hidden treasure was never found.
- Lack of regulation/security: Bitcoin is more vulnerable to risks not faced by the use of cash or securities. The digital wallets are susceptible to computer hacking. Bitcoin is unregulated and unprotected by the government. There is no FDIC protection for Bitcoin. In 2014, Mt. Gox, one of the world’s largest Bitcoin exchanges, filed for bankruptcy, resulting in over \$450 million in losses for Bitcoin owners.
- Volatility: Volatility in price is one of the main concerns. An upward move in price can be beneficial to an owner, but trying to understand exactly how a Bitcoin is created and what causes its price movements is a very complex problem.

Insurance Options

As it stands, only several insurers write Bitcoin coverage. Great American writes limited first-party coverage. The company’s crime policies currently do not cover what it calls “virtual peer-to-peer mediums of exchange.” As such, a new form of protective coverage has been made available through its Fidelity/Crime Division to both commercial and government policyholders. Some Bitcoin coverage is also available through Lloyd’s.

How to Define Bitcoin

The first question for insurers is what exactly is Bitcoin? “Currency”? “Legal tender” or “money”? “Property”? “Electronic data”? “Digital asset”? “Valuable paper and records”? The only relevant legal authority is IRS Notice 2014-21. This Notice involves virtual currency in general. The IRS considers Bitcoin to be property, and not currency, for tax purposes. The IRS also considers transactions involving Bitcoin taxable and

expects them to be reported. Depending upon how Bitcoin is defined, different types of insurance products available for coverage and claims, such as basic property coverage, cyber security coverage, fidelity/crime insurance, and errors and omissions coverage.

“Money” is generally defined as “currency, coins and bank notes in current use and having a face value; and travelers checks, register checks and money orders held for sale to the public.” Bitcoins are not coins or notes. They are not checks or anything tangible either.

Bitcoin might meet the definition of “currency.” This is due to the fact that the term “currency” is not defined in a standard policy. (Canada and Japan have formally determined Bitcoin does not meet the legal definition of currency and is instead a commodity like gold or silver).

“Electronic data” coverage extensions generally include “information reduced to an electronic format for processing with and storage in electronic data processing equipment,” but exclude “valuable papers and records.”

“Valuable papers and records” is often defined as “inscribed, printed or written documents, manuscripts and records including abstracts, books, deeds, drawings, films, maps or mortgages”. One could argue Bitcoins are both electronic data and valuable records.

Cyber liability, a newer coverage with non-standardized policy language, offers property insurance for loss of “electronic data” or “digital assets” from a hacking event. However, almost all policies exclude “money” and “securities.”

Who is an “Insured”?

“Miners” of Bitcoin often form pools to engage in Bitcoin transactions and storage. If an insured is part of a pool, does insured status extend to all members of the pool? Does the insured’s participation in the pool constitute an activity beyond their insured status, so they are not an insured for their particular Bitcoin transaction? Anonymity is also an issue here.

Special Policy Limits

Policy coverage limits may come into play to cap the amount of coverage available for a Bitcoin loss. For instance, a typical homeowner’s policy provides a limit for available coverage of “legal tender” ranging between \$1,000 and \$5,000.

Policy Exclusions

Since some Bitcoin transactions fall into a gray area as to their legality, a policy's criminal acts or illegal activities exclusion may apply.

Proving Ownership

Bitcoin does not provide the same type of record as other transactions, so insurers and insureds face unique challenges in proving existence, ownership, and whether a loss actually occurred. Like a safety deposit box, only you have the key. It is easy to lose the key, which prevents you from proving ownership. You also do not want third-parties lurking into your digital wallet. Some insurers may be deterred from insuring Bitcoin as its anonymous nature makes subrogation extraordinarily difficult.

False pretense coverage may be next to impossible to write since the transaction itself cannot be fully documented or confirmed.

Third-Party Issues

Third-party claims are complicated by the anonymous nature of Bitcoin. Since transactions and transfers, both legal and illegal, are so difficult to trace and prove, there are great challenges for anyone trying to pursue or defend a liability claim.

Loss Prevention

Insurers must fully understand the risks of Bitcoin use. Insurers must create loss prevention strategies to help their insureds adopt best practices to safeguard their Bitcoin holdings, and advise how to safely conduct Bitcoin transactions. Sophisticated hackers use Malware to steal Bitcoin from owners who have inadequate safety measures in place. Ransomware is used by hackers to steal Bitcoin from an unsecure account, and they will not return it to the owner until a ransom is paid.

III. Cybersquatting

What is it?

Cybersquatting is the practice of registering names, especially well-known company or brand names, as Internet domains, in the hope of reselling them at a profit.

Panasonic, Fry's Electronics, Hertz and Avon were among the “victims” of cybersquatters.

Classic Example: The George W. Bush Library Foundation retrieved its domain name. A small Internet company had bought www.georgewbushlibrary.com for less than \$10 after it expired, then sold it back to the library for \$35,000!

How to Detect

First, check to see if the domain name takes you to a website. If it does not take you to a functioning website, but instead takes you to a site stating “this domain name for sale,” or “under construction,” or “can’t find server,” the likelihood increases you are dealing with a cybersquatter.

If the domain takes you to a functioning website comprised primarily of advertisements for products or services related to your trademark, you may also have a case of cybersquatting.

What to Do in Response

A victim of cybersquatting has three options: (1) suck it up and pay; (2) sue under the provisions of the Anticybersquatting Consumer Protection Act (“ACPA”); or (3) use an international arbitration system created by the Internet Corporation of Assigned Names and Numbers (“ICANN”).

Insurance Issues

Policy exclusions for illegal activity or criminal acts come into play.

The policy may contain a prior notice exclusion that bars coverage for claims or potential claims that were reported by the insurer under a prior policy.

The policy may contain a prior knowledge exclusion that bars coverage for any facts or circumstances known to the insured prior to the inception of the policy that could reasonably be expected to give rise to a claim under the policy.

IV. Drones

What is it?

These small aircrafts or “drones” have two distinct features not shared with the rest of the aviation marketplace: (1) they are unmanned, having no human pilot/operator onboard; and (2) they are remotely operated by a pilot using data link transmissions. Drones have the ability to house high-powered cameras, infrared sensors, facial recognition technology, and license plate readers.

The Federal Aviation Administration (“FAA”) determined unmanned aircraft systems (“UAS”) are “currently the most dynamic growth sector within the aviation industry.”

- By 2020, it is estimated that about 30,000 small unmanned aircrafts will be used for all types of business purposes.
- Currently, the FAA has allocated \$63.4 billion for the modernization of the country’s air traffic control systems, as well as an expansion of airspace to accommodate the commercial use of UAS.
- The Teal Group’s 2012 market study forecasts that total spending for UAS worldwide is expected to reach \$89.1 billion over the next 10 years, including strong military and commercial demand.

FAA Regulations and State Legislation

Recognizing this growing demand to expand the use of unmanned aircrafts into new areas of use, Congress mandated in 2012 that unmanned aircrafts be integrated into the national airspace by 2015, which has not happened. It is illegal to fly commercial drones in the United States, though the FAA is developing rules to regulate commercial flights of small UAVs. In the meantime, as the FAA works on drone regulations, the agency has granted 1,546 exemptions for businesses to use the aircrafts.

The FAA has issued a proposed rulemaking on UAS. The proposal, issued on February 15, 2015, specifies requirements for operation of a UAS, including:

- Must weigh less than 55 pounds.
- May only operate during standard daylight hours and within visual sight.

- Must fly no higher than 500 feet and go no faster than 100 mph.
- Must be operated by a person at least 17 years or older that has passed a FAA knowledge test.
- Must be registered, but does not require an airworthiness certification. The FAA also indicated that it was also considering issuing separate regulations for UAS weighing less than 4.4 pounds.

In 2011, for instance, the FAA penalized drone videographer Rapheal Pirker \$10,000 for using a drone. Pirker challenged the fine, and a federal administrative-law judge overturned the penalty, saying there was no law banning the commercial use of small drones.

In 2015, 45 states have considered 168 bills related to drones. Common issues addressed in the legislation include defining what a UAS, UAV or drone is, how they can be used by law enforcement or other state agencies, how they can be used by the general public and regulations for their use in hunting game.

Florida's "Freedom from Unwarranted Surveillance Act" prohibits the use of drones in gathering information about another while he or she is on privately owned real property, unless an exception is met. *See* Florida Statutes, Section 934.50. The law took effect on July 1, 2015. Under the statute:

- A law enforcement agency may not use a drone to gather evidence or other information.
- A person, a state agency, or a political subdivision may not use a drone equipped with an imaging device to record an image of privately owned real property or of the owner, tenant, occupant, invitee, or licensee of such property with the intent to conduct surveillance on the individual or property captured in the image in violation of such person's reasonable expectation of privacy without his or her written consent. For purposes of this section, a person is presumed to have a reasonable expectation of privacy on his or her privately owned real property if he or she is not observable by persons located at ground level in a place where they have a legal right to be, regardless of whether he or she is observable from the air with the use of a drone.

- An aggrieved party may initiate a civil action against a law enforcement agency to obtain all appropriate relief in order to prevent or remedy a violation of this section.
- The owner, tenant, occupant, invitee, or licensee of privately owned real property may initiate a civil action for compensatory damages for violations of this section and may seek injunctive relief to prevent future violations of this section against a person, state agency, or political subdivision. In such action, the prevailing party is entitled to recover reasonable attorney fees from the non-prevailing party based on the actual and reasonable time expended by his or her attorney billed at an appropriate hourly rate and, in cases in which the payment of such a fee is contingent on the outcome, without a multiplier, unless the action is tried to verdict, in which case a multiplier of up to twice the actual value of the time expended may be awarded in the discretion of the trial court.
- Punitive damages for a violation may be sought against a person subject to other requirements and limitations of law.
- Evidence obtained or collected in violation of this act is not admissible as evidence in a criminal prosecution in any court of law in this state.
- There are also limited exceptions to the statute:
 - To counter a high risk of a terrorist attack by a specific individual or organization if the United States Secretary of Homeland Security determines that credible intelligence indicates that there is such a risk.
 - If the law enforcement agency first obtains a search warrant signed by a judge authorizing the use of a drone.
 - If the law enforcement agency possesses reasonable suspicion that, under particular circumstances, swift action is needed to prevent imminent danger to life or serious damage to property, to forestall the imminent escape of a suspect or the destruction of evidence, or to achieve purposes including, but not limited to, facilitating the search for a missing person.
 - By a person or an entity engaged in a business or profession licensed by the state, or by an agent, employee, or contractor

thereof, if the drone is used only to perform reasonable tasks within the scope of practice or activities permitted under such person's or entity's license. However, this exception does not apply to a profession in which the licensee's authorized scope of practice includes obtaining information about the identity, habits, conduct, movements, whereabouts, affiliations, associations, transactions, reputation, or character of any society, person, or group of persons.

- By an employee or a contractor of a property appraiser who uses a drone solely for the purpose of assessing property for ad valorem taxation.
- For conducting environmental monitoring, as provided by federal, state, or local law, rule, or permit.
- For aerial mapping, if the person or entity using a drone for this purpose is operating in compliance with FAA regulations.
- To deliver cargo, if the person or entity using a drone for this purpose is operating in compliance with FAA regulations.

Potential Defendants

Insurers will also need to consider possible defendants:

- The FAA could be sued for its authorization of operations in certain airspace.
- The owner of a drone could be sued on several bases, including negligent operation or negligent training or hiring of a pilot.
- The pilot could also be sued for his or her own negligence.
- Product manufacturers will also need insurance to guard against suits for software malfunctions, design and manufacturing defects, inadequate warnings, breach of warranty, or failure to comply with to-be-determined safety standards.
- Drone operation training facilities may be subject to liability.

- If a particular drone is deemed to be an ultra-hazardous activity, then parties may be subject to strict liability.

Indemnification/duty to defend/duty to insure agreements will need to be drafted to protect interests among owners, operators, manufacturers, pilots, training, rental facilities, and property owners.

Invasion of Privacy Concerns

Liability coverage typically includes protection for personal injury, which also covers invasion of privacy. Drones will likely fly over homes, your backyard, and other “personal” space, elevating the likelihood of invasion of privacy claims. Policies may provide specific coverages or exclusions for trespass, nuisance, and invasion of privacy.

Insurance Issues

Insuring unmanned aircraft systems is complicated. The following types of coverage will be needed: liability, personal injury, invasion of privacy, property and workers’ compensation.

The definition of the “insured vehicle” will be key to any coverage. For example, most standard CGL policies exclude coverage for bodily injury and property damage resulting from the ownership, maintenance, or use of aircraft or from aviation operations.

Most CGL policies cover only commercial activities on the ground at the “registered premises” of the business and limited activity away from these premises.

Aircraft Exclusion

Generally, the aircraft exclusion to a homeowners policy precludes coverage for “*bodily injury or property damage arising out of the operation, maintenance, use, loading or unloading of an aircraft.*” See Homeowners Policy, Form FP-7955. Likewise, the exclusion in a CGL policy precludes coverage for “*bodily injury or property damage arising out of the ownership, maintenance, use or entrustment to others of any aircraft.*” See CGL Policy, ISO Form CG 00 01 10 01-2000.

The aircraft exclusion has been applied to aircraft other than airplanes. See *Metro. Prop. & Cas. Ins. Co. v. Gilson*, 458 F. Appx. 609 (9th Cir. 2011) (ultralight vehicle); *Farmers Ins. Co. v. Daniel*, Case No. CIV-07-1421-C, 2008 WL 4372879 (W.D. Okla. Sept. 19, 2008) (helicopter); *Hanover Ins. Co. v. Showalter*, 204 Ill. App.3d 263, 561

N.E.2d 1230 (Ill. Ct. App. 1990) (airplanes, balloons, helicopters, kites, kite balloons, orthopters, and gliders).

While a drone is an Unmanned *Aircraft* System, this analysis may not be so straightforward. Is the term “aircraft” specifically defined in policy? Ambiguities are construed against insurer and in favor of insured. “Aircraft” is generally defined in a policy as “*any contrivance used or designed for flight, except model aircraft or hobby aircraft not used or designed to carry people or cargo.*” See Homeowners Policy, Form FMHO 943 (ed. 11-96) (ISO 1990). “Aircraft” is further defined in Merriam-Webster’s Dictionary as “*a machine such as a airplane or a helicopter that flies through the air.*”

“Model” and “hobby” are not defined – look to plain and ordinary meaning. The burden is on the insurer to prove an exclusion. The burden shifts to insured to prove exception terms apply to restore coverage. “Model” defined in Dictionary as “*a usually small copy of something*” or “*to design something similar to something else.*” “Hobby” defined in Dictionary as “*a pursuit outside one’s regular occupation engaged in especially for relaxation.*”

There is also the issue of “cargo.” Cameras are routinely attached to drones. Amazon.com is experimenting with delivering packages and merchandise via drone. “Cargo” is defined in the Dictionary as “*the goods or merchandise conveyed in a ship, airplane, or vehicle*” or “*goods transported by a vessel, airplane, or vehicle.*” Courts have referenced the commercial nature of cargo. See *State Farm Fire and Cas. Co. v. Pinson*, 984 F.2d 610, 613 (4th Cir. 1993) (“Clearly, the term cargo has a strong commercial connotation” and concluding a boat towed by a car is not cargo).

Illegality Issues

Policy exclusions for illegal activities and criminal acts may come up:

- Invasion of privacy.
- Illegal surveillance or filming.
- Fishing and hunting.
- Transportation of illegal substances and drugs.
- Where questions exist as to whether a drone was operated in violation of FAA regulations at the time of an accident.