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Coverage Complications: Ride-Sharing, Bitcoin, Drones, and Self-Driving Cars

This panel of attorneys and claims professions will discuss modern insurance coverage complications associated with technologies, including ride-sharing, Bitcoin, drones, and self-driving cars. We will explore common policy terms, conditions, and exclusions applied to these business models. Does a personal automobile policy provide coverage to an Uber driver? What happens when the Uber driver gets into an accident or physical altercation? Is there coverage if my drone crashes into my neighbor's yard? Is my Tesla covered under my car insurance when operating in autopilot mode? Is a Bitcoin theft limited by the legal tender limits to my homeowner's policy? These are just a few of the questions we will address during this presentation.

I. Ride-Sharing

A. State Legislation

Currently, roughly 30 states have implemented legislation addressing the insurance coverage gap and imposing certain coverage requirements upon ride-sharing companies.

B. 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. *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.

i. Using Your Vehicle for Commercial Purposes

Personal auto policies explicitly exclude the use of your personal vehicle for hire or commercial use or livery. However, there is no standard ISO ride-sharing exclusion.

How do these typical exclusions apply during periods 1 – 3? Uber drivers are paid a percentage of revenue from the rides earned, not by the hour. Accordingly, during phase 1, the driver is not earning a wage, nor is Uber. However, the driver is presumably “working” or “on the clock.” The driver is not driving for purely personal purposes during phase 1 and the app is on during this time. Is the driver acting for a commercial purpose during period 1? Insurers are split in answering this question.

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.

ii. Periods I – III

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.

iii. Uber and Lyft Policies

Both Uber and Lyft 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.

iii. Insurance Gap Coverage Options

Insurers now offer differing options and packages to drivers.

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).

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.

C. Other Policy Coverage Issues

i. 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 his passenger, Roberto Chicas, a 35-year-old bartender, at 2 a.m. on a Tuesday night. The driver ended up attacking the passenger with a hammer, leaving him with a concussion, facial fractures, and lost function of an eye. The driver was criminally charged with assault with a deadly weapon and battery with serious bodily injury. Do the liabilities intended for car accidents cover attacks by a driver?

ii. Third-Party Drivers

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? 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.

PIP coverage? 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.

iii. Reporting Accidents to Your Insurer

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.

iv. The 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? The contractual policy of insurance is between the insured-claimant and the insurer, not Uber. State statutes are now starting to address this issue, mandating a duty to cooperate.

II. Bitcoin

A. What Is Bitcoin Under Policy Definitions?

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.

The first question for insurers is what exactly is Bitcoin? “Currency”? “Legal tender” or “money”? “Property”? “Electronic data”? “Digital asset”? “Valuable paper and records”?

IRS Notice 2014-21 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.

“Bitcoin is the name of an encrypted online currency.” *United States v. Ulbricht*, 2014 U.S. Dist. LEXIS 145553 (Criminal case from the United States District Court for the Southern District of New York).

“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.”

B. Insurance Options

As it stands, only several insurers write Bitcoin coverage.

C. Other Policy Coverage Issues

i. Defining the “Insured”

If an insured is part of a pool, does insured status extend to all members of the pool? “Miners” of Bitcoin often form pools to engage in Bitcoin transactions and storage. 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.

ii. 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” or “securities” ranging between \$1,000 and \$5,000.

EX: You receive a new fire loss claim on your desk. A \$26 million mansion is a total loss. The insured, a sophisticated entrepreneur from Silicon Valley claims he had a hard drive in a safe with \$2 million in Bitcoin that is now gone as a result of the fire. What do you do? Is the Bitcoin covered under his homeowner’s policy? Is the legal tender limit effective? Do you treat this similar to a claim involving cash that burned in the fire?

iii. Policy Exclusions for Criminal Activity

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

iv. 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.

v. 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.

III. Self-Driving Cars

A. State Legislation

Sixteen states introduced legislation related to autonomous vehicles in 2015, up from 12 states in 2014, nine states and D.C. in 2013, and six states in 2012. Nevada was the first state to authorize the operation of autonomous vehicles in 2011.

B. Driver Requirement

Who is “driving” the vehicle? Personal auto policies were not designed for driverless vehicles. There is no driver requirement.

C. Who is the “Insured”?

Who is the “insured”? Personal auto policies were not designed for driverless vehicles. Policies are simply registered to a VIN number.

D. Fault and Liability

In the event of an accident involving a self-driving car, will the claimant blame the manufacturer or suppliers for what went wrong instead of their own human behavior? It is conceivable lawsuits could be filed against the manufacturer of a defective driverless car, or the company which installed the car’s computer software.

As cars become more automated, the onus is likely to be on the manufacturer to prove it was not responsible for what happened in a crash. The Association of California Insurance Companies is advocating just this. The group is asking “for changes clarifying that the autonomous vehicle’s manufacturer retain all liability for damage, losses or injuries caused by the operation of these vehicles.”

EX: Auto-pilot parallel parking claim after Ford Fusion car packs up into car behind even though the insured used this feature 200 times previously without issue. Do you pay the claim of your insured? Who is negligent?

EX: Tesla car uses semi autopilot program. Passenger is picked up by an Uber driver in the Tesla. He uses the app to change lanes, crashing into a cement truck. Driver, passenger, and driver of truck are injured. This claim hands on your desk. What do you do? Uber driver? Passengers?

IV. Drones

A. FAA Regulations

Recognizing this growing demand to expand the use of drones into new areas of use, Congress mandated in 2012 that unmanned aircrafts be integrated into the national airspace by 2015, which still has not been completed. However, as of June 21, 2016, the FAA finally released “Part 107,” the first operational rules governing routine commercial use of small UAS. Part 107 takes effect on August 29, 2016.

Under the brand new regulations, a small UAS:

- Must weigh less than 55 pounds;
- Must remain within the visual line-of-sight of the remote pilot in command;
- May only operate during daylight times or civil twilight (30 minutes before official sunrise to 30 minutes after official sunset, local time) with appropriate anti-collision lighting;
- Must fly no higher than 400 feet above ground level and go no faster than 100 mph;
- Must operate during minimum weather visibility of three miles from control station; and
- Must be operated by a person with a remote pilot certificate. To obtain the required certification the person must: (1) be at least 16 years old; (2) demonstrate aeronautics knowledge by either passing an FAA knowledge test or completing FAA-approved training courses; and (3) be vetted by the Transportation Security Administration.

Under the regulations, FAA airworthiness certification is not required. However, the remote pilot in command must conduct a preflight check of the small UAS to ensure it is in a condition for safe operation.

In addition, pursuant to Part 107, transportation of property for compensation or hire is permissible if:

- The aircraft, including its attached systems, payload, and cargo weigh less than 55 pounds;
- The flight is conducted within visual line-of-sight and not from a moving vehicle or aircraft; and

- The flight occurs wholly within the bounds of a state and does not involve transport between: (1) Hawaii and another place in Hawaii through airspace outside Hawaii; (2) the District of Columbia and another place in the District; or (3) a territory or possession of the U.S. and another place in the same territory or possession.

B. State Legislation

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.

C. Insurance Coverage Issues

i. Defining “Insured Vehicle”

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.

iii. Defining “Registered Premises”

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

iv. Invasion of Privacy and Criminal Activity

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.

In July 2015 a Kentucky man was arrested when he shot down a neighbor’s drone hovering over his backyard with a shotgun. William "Willie" Merideth, age 47, was at his Bullitt County home when his 16-year-old daughter told him she saw the drone flying in the sky.

Instances such as this have occurred elsewhere, and will become more and more frequent as consumers continue to purchase drones for recreational use. Not all courts have ruled in favor of the homeowner, as in this case. FAA regulations have yet to be finalized. We have all heard of the “castle doctrine,” but how do we interpret the right

to protect one's land when dealing with drones instead of the classic examples of robberies or home invasions?

How do insurers prevent SIU and private investigators from improperly using drones to secure information and evidence?

EX: Person is flying drone and sees neighbor in the backyard swimming and partying over his privacy fence. Person knows a personal injury insurance claim is pending and records this damaging footage. Person offers to sell footage to insurer for \$500. What do you do? How do you handle this? What do you consider? Height? Purpose? Length of time? Intent of operator?

v. 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.

While a drone is an Unmanned Aircraft System, this analysis may not be so straightforward. Is the term “aircraft” specifically defined in the 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](https://www.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.

THANK YOU FOR ATTENDING!

