

When Does Insurance Cover Sharing Economy Activities?

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The sharing economy has over the last few years expanded from an informal method to a robust arena of commerce. One of the challenges facing participants in the sharing economy is how to insure against losses and claims that might occur. This article addresses insurance legislation and case law that has developed in the states when the “sharing economy insurance” kicks in. While the sharing economy covers a broad array of goods and services, for purposes of this article we focus on ridesharing and home sharing.

HOME SHARING

1. Homeowners Insurance Policy Exclusions

The typical homeowners insurance policy may cover a homeowner who rents her home for a single, special occasion. Each insurer is a bit different, with some requiring a special endorsement or some requiring advance notice of rental of the property. If someone intends to rent his or her home multiple times, such conduct likely will require the owner to obtain a commercial insurance policy.

For owners listing on the most popular website for home rentals, Airbnb, insurance is provided that protects the homeowner to a large extent. Known as Host Protection Insurance, it will cover some injuries and damages that might occur while renters occupy the home. However, Host Protection Insurance does not cover all situations and so the homeowner needs to determine if a special policy is required.

Many homeowners policies contain a “Property Not Covered” section, which generally includes a provision to make it clear that people staying at the insured home do not have coverage for their property. A common provision is:

We do not cover:...Property of roomers, boarders and other tenants, except property of roomers and boarders related to an “insured”....

Most homeowners insurance policies also contain an exclusion for a business conducted from the insured location.

No cases were found interpreting a personal homeowners or renters insurance policy to address the potential lack of coverage that exists when renting one’s home to a third party.

RIDESHARING

1. Automobile Insurance Policy Exclusions

Most personal auto insurance policies contain a “for hire” exclusion, which likely contains language comparable to the following:

We do not provide coverage... arising out of the ownership or operation of a vehicle while it is being used as a public or livery conveyance. This exclusion does not apply to a share-the-expense car pool.

“Share-the-expense” provides an exception when the driver is reimbursed for expenses incurred in sharing a ride. The “for hire” exclusion has been strictly applied in other contexts.

2. Caselaw Interpreting the “For Hire” Exclusion

In *State Farm Mut. Auto. Ins. Co. v. Logisticare Solutions, LLC, et al.*, 751 F.3d 684(5th Cir. May 23, 2014), a volunteer driver for Logisticare was involved in an accident that injured her passenger. Logisticare provides non-emergency medical transportation and the driver in this case was providing such services for Medicaid patients. State Farm filed a declaratory action in federal court on the basis that it had no duty to defend or indemnify the volunteer driver or Logisticare in the underlying action. The district court granted State Farm summary judgment, and the volunteer and Logisticare appealed. The United States Court of Appeals for the Fifth Circuit affirmed in part and reversed in part. The court reviewed the “for hire” provision, which provided:

THERE IS NO COVERAGE FOR AN **INSURED**: FOR DAMAGES ARISING OUT OF THE OWNERSHIP, MAINTENANCE, OR USE OF A VEHICLE WHILE IT IS BEING USED TO CARRY PERSONS FOR A CHARGE. This does not apply to the use of a **private passenger car** on a share-the-expense basis.

(Emphasis and capitalization in original.)

The court determined that Mississippi law applied to the underlying action, and that “Mississippi treats insurance policies as contracts, which ‘are to be enforced according to their provisions.’”

The court found that State Farm had a duty to defend in the underlying action, finding that the allegations of the complaint did not trigger the “for a charge” exclusion.

Turning to the duty to indemnify, the court found that State Farm had no such duty, because the volunteer driver “intended to and did profit from her arrangement with LogistiCare.” Because the volunteer driver “received more than her costs,” the court concluded that the “share-the-expense” exception did not apply, and affirmed the district court’s granting summary judgment on the duty to indemnify.

3. NAIC Issues White Paper on Transportation

On March 31, 2015, the National Association of Insurance Commissioners (“NAIC”) Executive (EX) Committee and Plenary adopted the White Paper, “Transportation Network Company Insurance Principles for Legislators and Regulators” (the “NAIC TNC Paper”), available at the NAIC website, http://www.naic.org/documents/committees_c_sharing_econ_wg_exposure_adopted_tnc_white_paper_150331.pdf. The NAIC TNC Paper discussed insurance coverage issues that have emerged from the increased prevalence of Transportation Network Companies (“TNC”). According to the NAIC TNC Paper, three different exposure periods exist in ridesharing: 1) driver logged on but no match; 2) driver has match and has accepted; and 3) driver has passenger in the vehicle. (An exposure period not addressed, but that has been discussed in the industry is the period when the rideshare driver has the application turned off)

The NAIC TNC Paper addressed the TNC Insurance Compromise Model Bill that Uber and several insurers drafted. The Model Bill gained wide support from the industry and the basic framework of the Model Bill, addressing minimum insurance coverages required under the three exposure periods, has now been enacted in a large majority of states.

The NAIC TNC Paper also discussed the sharing of insurance responsibility between drivers and the transportation networks, again much of what is reflected in the legislative enactments addressed below. Finally, the NAIC TNC Paper discussed a tragic case that arose from an exposure period 1 situation and revealed to the public some of the potential insurance issues associated with transportation networks. That case is addressed below.

4. *Liu v. Uber Technologies, Inc., et al.*

On December 31, 2013, a horrific accident took place in San Francisco involving an Uber driver, who had his application turned on but had not obtained a match and did not have a passenger in his vehicle. The driver struck and killed a five-year-old girl and severely injured her mother and brother who were walking in a cross walk. The family sued in state court (*Liu v. Uber Technologies, Inc., et al.*, No. CGC-14-536979 (Superior Court of the State of California, County of San Francisco)), seeking damages against Uber and the driver, on a variety of theories, including wrongful death, negligence in operating a motor vehicle, and strict products liability.

The lawsuit claimed that the driver was logged into the Uber application at the time of the accident, alleging:

[Defendant Driver] was logged on to the UBER APP at the time that the collision occurred and was appearing as a UBER and/or Uber X DRIVER available for providing transportation services to USERS and/or was viewing, monitoring and/or interacting with his wireless communications device/smartphone/GPS at or near the time of the collision.

Defendants...knew, or should have known use of the APP by DRIVERS, including but not limited to [Defendant Driver], in the manner intended and actually required by UBER...would be in violation of California Vehicle Code 23123 which, in subsection (a) states ‘A person shall not drive a motor vehicle while using a wireless telephone unless that telephone is specifically designed and configured to allow hands-free listening and talking, and is used in that manner while driving.’

The lawsuit alleged that because the driver was distracted by the application, he struck and killed the young girl and severely injured her mother and brother. The case settled on a confidential basis in July 2015. The publicity surrounding the case was likely a factor in the subsequent enactment of laws in a number of states and municipalities throughout the country establishing minimum coverage levels for transportation networks.

5. Legislative Actions to Address the Exposure Periods

A number of states and local governments have enacted legislation or ordinances to address the potential insurance coverage gaps that occur in the three exposure periods identified in the NAIC TNC Paper. For example, in May 2014, the Chicago City Council approved adding Chapter 9-115 to the Chicago Municipal Code, which addresses licensing and insurance requirements for transportation network providers. Chapter 9-115-090 addresses the insurance that a provider must obtain and show proof of, including a minimum of i) \$1,000,000 per occurrence commercial general liability coverage and ii) \$1,000,000 combined single limit for bodily injury and property damage of commercial automobile liability insurance. The Chicago ordinance requires the latter limits to be in effect from the time that the driver has accepted a ride until the ride is completed. When a driver is logged into the rideshare application until the driver accepts a ride, the driver must have at least the minimums required by the Illinois Vehicle Code. The NAIC TNC Paper Appendix A lists the cities and municipalities that had passed laws at the time the NAIC TNC Paper was adopted.

In January 2015, the Illinois General Assembly passed P.A. 98-1173, the Transportation Network Providers Act (the “Illinois

TNP Act”), which became effective June 1, 2015. Section 10 of the Illinois TNP Act lists the minimum coverages that must be provided under the three exposure periods, requiring:

1. Exposure period 1 (“from the moment a participating TNC driver logs on to the transportation network company’s digital network or software application until the TNC driver accepts a request to transport a passenger”).
 - a. Automobile liability insurance with minimums \$50,000 death and personal injury per person and \$100,000 per incident, property damage at least \$25,000;
 - b. Contingent automobile liability insurance in the amounts in a. above in the event that the driver’s insurance is not sufficient or exclusions apply.
2. Exposure periods 2 and 3 (“from the moment a driver accepts a ride request on the transportation network company’s digital network or software application until the TNC driver completes the transaction”)
 - a. Automobile liability insurance in the amount of \$1,000,000 for death, personal injury, and property damage.
 - b. The insurance required can be satisfied by any combination of the driver, and the transportation network.

At the time of the NAIC TNC Paper, only four other jurisdictions had passed transportation network companies laws to address the insurance gap that had existed. However, that number has since increased to forty-four states and the District of Columbia. In addition, the six remaining states (Alaska, Connecticut, Florida, New York, Oregon and Vermont) have TNC legislation pending. Legislative momentum developed in Spring 2015, when the NAIC TNC Paper was approved and the industry focused on the issue.

One potential issue for courts dealing with future rideshare cases may arise if victims try to establish that at the time they were injured, the rideshare driver had accepted a ride. The difference in most jurisdictions’ applicable coverages between having the application on and having accepted a ride likely will make the question of when a ride was “accepted” a focal point for personal injury lawyers.

CONCLUSION

The sharing economy has grown in the last several years. With that growth comes new questions and challenges that will be sorted out through potential new products and coverage determinations, as well as through potential legislative solutions.

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