

Uber-Complicated: Insurance Gaps for Rideshare Vehicles Can Create Uncertainty for Passengers and Drivers

Article By:

Insurance Recovery at Gilbert LLP

Many of us have come to enjoy the convenience of summoning a ride via our Smartphones with a rideshare service company such as Uber, Lyft, or Sidecar. However, significant issues exist over whether rideshare vehicles have adequate insurance coverage to compensate people injured in accidents involving those vehicles.

If one is injured by a Greyhound bus, for example, there is little question that Greyhound likely would have adequate insurance to cover any injuries and likely would have sufficient resources to compensate the injured party even without insurance.

By contrast, if one is injured by a rideshare driver, there are several potential obstacles to securing adequate compensation.

First, the rideshare company may classify the driver as an independent contractor instead of an employee, meaning that the company will not accept responsibility for the driver's actions. Second, even if the rideshare company accepts responsibility, the company's insurance may not provide coverage, as discussed below. In that event, the injured party is left to rely on the driver's insurance, which also may be inadequate and may even exclude coverage for rideshare-related accidents.

The independent contractor issue has been litigated in numerous states with different outcomes. Uber currently is facing two class action lawsuits in California related to this issue: *Ghazi v. Uber Technologies, Inc., et al.*, No. CGC-15-545532 (Superior Court of California, County of San Francisco) and *O'Connor v. Uber Technologies, Inc., et al.*, No. CV-13-3826 (U.S. District Court for the Northern District of California).^[1]

Even if rideshare companies accept responsibility for a driver's conduct, the companies typically have provided only limited insurance for their drivers. Specifically, rideshare companies typically have *not* provided coverage in the following two periods: (1) when the rideshare app is turned off, or (2) when the app is turned on but no passenger is in the vehicle.

But, a horrific accident involving an Uber vehicle helped to start changing this dynamic. Uber was sued in 2014 in California after a driver struck and killed a child during period (2) above, when he had his app turned on but had not yet picked up a passenger. The case is captioned *Liu v. Uber*

California and other states recently have started requiring rideshare companies to maintain some coverage for their drivers in period (2), but that coverage is limited. The companies typically provide contingent liability coverage with \$50,000 per person/\$100,000 per accident bodily injury coverage, but this insurance typically pays only for losses not covered by the driver's personal policy.

And, even when rideshare company coverage is in place, insurers have relied on certain insurance policy exclusions in an effort to avoid paying claims. One insurer is currently making such arguments in the coverage dispute with Uber over the *Liu* settlement See *Evanston Insurance Co. v. Uber Technologies, Inc.*, No. C15-03988 WHA (U.S. District Court for the Northern District of California).

If a rideshare company's commercial insurance is inadequate to fully compensate an injured party, that person is left to rely on a driver's personal insurance. But the driver's insurance may be of no help because personal auto policies often contain an exclusion (the "livery exclusion") for accidents occurring during commercial use of the vehicle, such as when a driver is transporting a passenger for hire.

Recently, there has been some effort in the insurance industry to close the insurance gaps discussed above, particularly during period (2), when a rideshare driver is using a mobile app but has not yet picked up a passenger.

In March 2015, the National Association of Insurance Commissioners adopted a white paper on insurance coverage for rideshare companies titled "Transportation Network Company Insurance Principles for Legislators and Regulators." The paper recommends that rideshare companies provide full coverage for period (2) or that drivers purchase individual commercial coverage during that period.

Similar to California, legislatures in Colorado, Illinois, and Virginia have passed laws requiring rideshare companies to offer full insurance during period (2).

In addition, some insurance companies are offering products to rideshare drivers to protect them in the event that rideshare companies' commercial insurance does not pay. For example, Geico (in Maryland and Virginia) and Progressive (in Pennsylvania) are offering individual commercial insurance to rideshare drivers that has lower rates than most commercial insurance. USAA (in Colorado and Texas) offers a commercial insurance policy to rideshare drivers for an extra \$6 to \$8 per month. Erie Insurance (in Illinois and Indiana) has removed an exclusion from personal auto policies purchased with a "business use" designation such that rideshare drivers now may be covered.

Overall, many options are emerging to provide additional insurance coverage on rideshare vehicles for the benefit of passengers and other third parties at all stages of the transportation process – from the time a rideshare driver turns on the app through the transport of a passenger. Passengers, drivers, and affected third parties should continue to monitor these developments to make sure they are adequately protected.

[1] One consequence of the driver being classified as an independent contractor is that rideshare companies do not have to provide worker's compensation insurance for a driver's on-the-job injuries. The *Ghazi* case addresses whether Uber drivers actually are employees and thus Uber must provide worker's compensation insurance.

National Law Review, Volume VI, Number 33

Source URL: <https://natlawreview.com/article/uber-complicated-insurance-gaps-rideshare-vehicles-can-create-uncertainty-passengers>