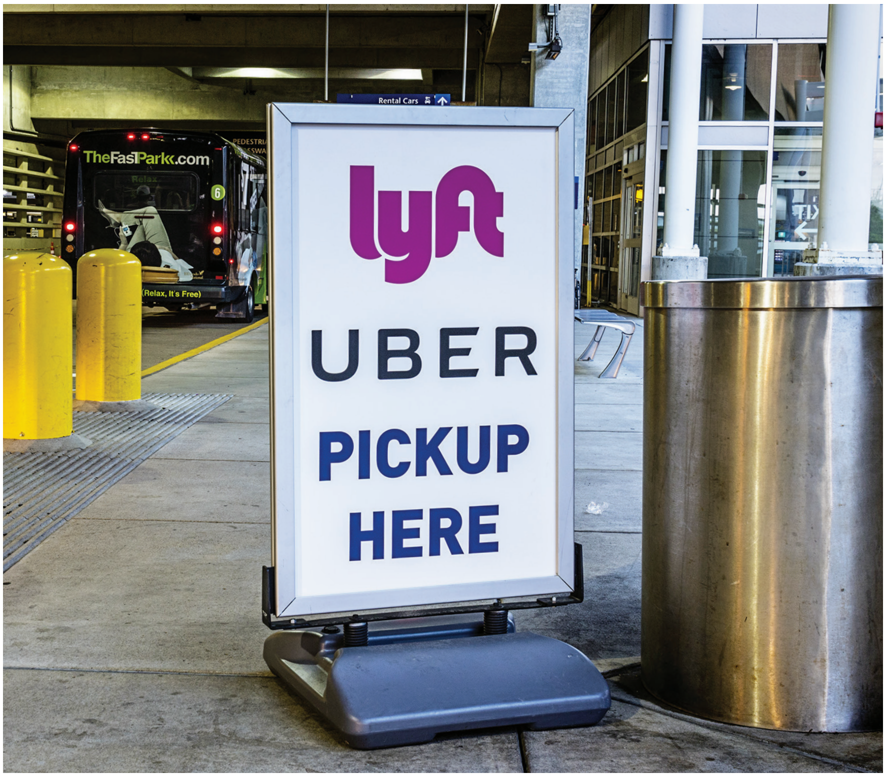

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THE RIDE-HAILING REALITY

Coverage and Claims Questions in the Age of Uber and Lyft

By John D. Hackett, Andrew L. Smith, and Candace E. Padgett

Unlike traditional taxi companies, almost anyone can drive for a ride-hailing service. A driver simply needs a car and a smartphone.

Uber, the largest ride-hailing provider, is available in 84 countries worldwide, averaging 40 million rides per month. Some have criticized ride-hailing services for their lack of regulation, insurance, licensure, inspections, and driver training. Some negative ride-hailing stories have also made it into the headlines—from a Kalamazoo Uber driver who went on a shooting spree, to a San Francisco driver who assaulted a passenger with a hammer.

From a ride-hailing company's perspective, drivers are independent contractors and not employees. From the drivers' insurers' perspectives, drivers are not covered for accidents that happen while engaged in commercial activity.

The rise of the sharing economy has taken insurance companies by storm as ride-hailing claims and litigation continue to unfold. It is important for claims professionals to learn the ride-hailing ropes, including the coverages and special investigation unit (SIU) issues implicated in ride-hailing claims.

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 had the app turned on and was looking for passengers. At that time, Uber provided liability insurance to drivers only while carrying passengers. The six-year-old's family filed suit against Uber in January 2014 and a confidential settlement was reached in 2015.

Insurers and critics alike argued the lack of coverage for ride-hailing drivers looking for passengers created an insurance coverage gap since the drivers' own auto policies would not cover accidents that happened when the app was on, and Uber's policy would not cover accidents unless the drivers were carrying passengers. Personal auto policies typically exclude coverage for accidents that happen when an insured uses a personal vehicle for hire or for commercial use.

Below is an explanation of the three periods involved in every ride-hailing transaction:

- **Period I:** The driver is logged into the app and driving around to find a passenger looking for a ride. The driver has not yet accepted a ride request.
- **Period II:** The driver has been contacted through the app, has accepted the ride request, and is traveling to pick up the passenger.
- **Period III:** The driver arrives, picks up the passenger, and drives the passenger to a destination.

Without question, Periods II and III involve commercial activity, and accidents that happen during those

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periods typically are not covered under a standard personal auto policy. Personal auto insurers are split on whether Period I amounts to excluded commercial activity. During Period I, the driver is not earning a wage but is arguably "working," or engaged in commercial activity, because the app is turned on and the driver is actively searching for a passenger.

As a result of the perceived gap, 45 states have implemented consumer protection laws imposing coverage requirements on ride-hailing companies. Most statutes are similar, with the primary differences focusing on the amount of coverage required. Be sure to check your state's ride-hailing statute to check the required limits and coverages.

ISO released a public or livery conveyance exclusion endorsement (PP 23 40 10 15), which applies to any period of time an insured is logged into a "transportation network platform" as a driver, whether or not a passenger is occupying the vehicle. Thus, ISO's endorsement excludes coverage during Periods I through III for liability, med pay, and first-party damage coverages.

Uber and Lyft now provide liability coverage for accidents that happen during Period I, but coverage is limited. In Period I, drivers have bodily injury liability limits of $50,000 per person and $100,000 per accident. These limits are adequate for small claims, but inadequate for larger or catastrophic claims. In recognition of the Period I gap, many auto insurers have created manuscript endorsements for customers who use their autos for ride-hailing purposes. Since there is no standard endorsement, however, each insurer's endorsement must be examined closely to determine coverage and applicable limits.

Another interesting issue is whether a ride-hailing company must cooperate in the investigation of an insurance claim involving a ride-hailing driver or passenger. While the driver has a contractual duty to cooperate with her own insurer, the ride-hailing company is not in privity of contract with the driver's insurer. Many states have enacted statutes to mandate that the ride-hailing company cooperate in any claims investigation.

SIU TIPS AND TRICKS

It is important to consider ride hailing in your claims investigation. Although several insurers offer ride-hailing endorsements, drivers may not be aware of this optional coverage or may opt to not purchase it. Regardless of the reason for not having proper coverage, it is important to identify the possibility that the insured may have been operating as an independent contractor for a ride-hailing company, even if the insured claims otherwise. The first and most obvious clue is an insured vehicle that has an Uber or Lyft decal on it. If found, the claims professional must focus questioning on whether the vehicle was being used as part of a ride-hailing service. Some questions for drivers that will help identify whether or not the vehicle was being operated as a ride-hailing vehicle include:

- Where were you coming from and where were you going to?
- Who was with you, what is your relationship, and where were they seated?
- Do you drive for a ride-hailing company? If so, were you operating at the time of the loss?

It is important to get details and not let the insured give ambiguous answers. Look at the demographics of the parties. For example, was a 25-year-old woman driving a 60-year-old man who was in the back seat? This is indicative of a ride-hailing situation, and follow-up questions must be asked. The claims professional needs to speak with everyone in the vehicle, even if the insured claims that the passengers "do not want to be involved." Don't be afraid to ask whether the insured drives for a ride-hailing company. Be aware of the Period I gap and the availability of coverage from the ride-hailing company. Always look for the possibility of fraud and misrepresentation. If you are not specific in your questioning, then you may overlook a key issue that could invalidate coverage.

Ride-hailing services are here to stay. Whether you are an attorney, claims professional, or investigator, be sure to stay atop of the latest coverage and SIU issues for ride-hailing claims. ■