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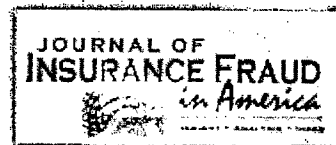
Rideshare scams underway and growing; Insurers must defend against losses

By Audrey C. Parr, Esq. & Corinne A. Taylor, J.D. Candidate
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Drivers falsely use personal auto policies for rideshare damage, injury claims

Abstract: Ridesharing is a new livery-type transportation service, controlled by smartphone apps. The potential for fraud is significant, and scams already are underway.

Drivers are lying on applications and renewals for personal auto coverage, stating they aren't engaged in commercial rideshares. False damage and injury claims are being submitted to personal auto policies. Drivers are advising each other on scam techniques in the blogosphere. This article addresses rideshare fraud involving personal injury and property damage, personal and commercial policies, legitimate and fraudulent claims, first- and thirdparty coverages, and material misrepresentation in the insurance application and renewal. Insurers must develop company-wide policies to ferret out scams and proactively prevent future fraud.



Unknown to many insurers, drivers are widely using their personal auto policies (PAPs) to falsely insure commercial activities. Fast-spreading rideshare companies such as Uber, Lyft and Sidecar have generated a new type of driver — one who is insured by a PAP, yet uses the auto for personal use and livery activity.¹

Today's ridesharing would traditionally trigger livery exclusion and material misrepresentation analysis under a PAP. Insurers, however, unwittingly are paying potentially expensive damage and injury claims because the incidents are going unrecognized as rideshare-related.

An active and well-hidden world of fraud against PAP insurers is underway. Rideshare drivers are even advising each other how to bilk insurers in the blogosphere and on Facebook.

This article discusses the advent of this new rideshare community, the fraudulent claims now multiplying, and how insurers can protect themselves.

Rideshares explained

The meaning of the term “rideshare” has changed dramatically over the last six years. PAPs traditionally afforded coverage for ridesharing co-workers and friends, to and from work and school. Yet this simple concept forever changed in 2009 when Uber entered the digital marketplace, offering a phone-based alternative to hailing taxis.



Ridesharing is now synonymous with smartphone applications by companies such as Uber, Lyft and Sidecar. The ridesharing business model allows a network of “Riders” to digitally arrange a “Ride” directly through a network of “Drivers” — in the driver’s personal vehicle — all at the tap of a screen.

These businesses first were recognized in 2013 in California as “transportation network companies” (TNCs). They promise riders lower rates than taxis through the use of personal autos, insured by PAPs, without traditional taxi regulation. Demand for these services has exploded across the U.S. and the world.

Uber is the largest network. It boasts at least 8 million users² and 160,000 drivers³ (likely many more⁴). They operate in 311 cities⁵ and 60 nations⁶ worldwide. The legality of these operations, however, often varies from city to city.⁷

TNC activity is growing exponentially. Consequently, it is important that PAP insurers know what TNCs are, how to identify insureds driving for them, how TNC insurance works and what gaps exist in TNC insurance coverage. Insurers also must know how these gaps create alarming opportunities for PAP fraud. Recent studies of rideshare drivers revealed troubling findings:

- 92 percent of TNC drivers did not tell their PAP insurer about their TNC activity⁸;
- 72 percent were not familiar with TNC insurance coverage at all⁹; and
- 90 percent of driver-respondents did not have a rideshare-specific insurance policy¹⁰.

Blog posts by drivers also suggest an active world in which they routinely share their own schemes and lend advice on defrauding insurers.

One driver commented: “If I were to call my insurer today, I know for a fact that they would drop me... there are hundreds of thousands of other drivers like me and they are all being asked to lie to their insurance company.”¹¹

Fear of PAP cancellation is a widespread cause for driver misrepresentation. One poster warned: “Do not mention your work as a [TNC] Driver on any social media. Good way to get coverage denied in case of an accident.”¹² An increase in PAP premiums is another common concern: “DO NOT TELL YOUR INSURANCE COMPANY you drive for [TNC]. Because of course they will want you to switch to much higher insurance. Which you don’t need because [the TNC] adds you to their policy...”¹³

Drivers feel stuck in limbo as TNCs continue growing without insurance solutions. One blogged: "Do you tell your private insurer that you're driving for [a TNC]? Here's what I'm thinking... Don't mention it, because, Duh."¹⁴

Comparing auto coverages

Most TNC websites promote a \$1-million insurance policy covering accidents. Importantly, this coverage is mostly third-party. Collision/ comprehensive is available only under limited circumstances. MedPay is not mentioned at all.

TNC insurance coverage and available limits also vary according to what "Period" a driver was in when the accident occurred. A period defines different stages in the ride process. Coverages and limits also differ for each TNC.

While a certain period may afford a driver first-party coverages under the TNC policy, even slightly different circumstances could result in total TNC insurance coverage denial. This can prompt drivers to misrepresent their activities to PAP insurers, including committing outright claim or application fraud.

Rideshare responsibilities

Fraud often breeds in the gap between TNC insurance provisions and what the driver was doing when the accident occurred. Consider these guidelines and areas for investigation:

Offline. App is off and driver is acting in a personal, non-commercial capacity. A PAP typically would insure the driver during this period. But, fraudulent claims may arise when drivers turn off their apps to pocket cash, or to specifically deceive their insurer when better coverage is available from his/her PAP than the TNC.

Period 1. Driver online and "available." This is the most complex period as the app is on and the driver is distracted, consistently awaiting a ride request, but has not accepted a rider yet.

Although TNCs have allegedly agreed to provide limited coverage for this period,¹⁵ neither the publicized TNC policy nor the TNC model bill discussed below reflect this mindset. Further, as this alleged limited coverage does not include first-party coverages, drivers are prompted to seek collision and potential injury coverage under their PAP.

"Other fraud may occur when rider and driver fabricate a 'paper' accident, reportedly caused by a phantom hit-and-run vehicle."

Periods 2 & 3. Driver has accepted a request and is “en route” or transporting the rider “on trip,” respectively. These periods, theoretically, are less complicated. The TNC *should* provide all third-party coverages and certain limited first-party coverages. But, in tandem with the offline and Period 1 claims, fraudulent claims arise when drivers could receive better coverage from their PAP, or have intentionally turned off their app. Insurers also should watch for potential staged accidents and jump-ins because TNC apps are run through traceable GPS, lending credibility to otherwise questionable occurrences.

Fraud risks

PAPs routinely include livery exclusions because driving for profit inherently poses greater risks: more miles driven, increased exposure to unfamiliar geography, and a higher number of unknown passengers. Regardless, TNCs routinely direct drivers to first submit claims to their PAP insurer.

Rideshare drivers also voluntarily submit TNC-related claims to PAP insurers due to fear of TNC denial or deactivation (and subsequent loss of income), the TNC's lack of first-party coverage, or the TNC's higher deductibles.

1. Bogus collision claims

Some TNCs claim¹⁶ to offer collision and comprehensive coverages. But importantly, this coverage appears strictly limited by circumstance such as:

- The driver is in Period 2 or 3; and
- driver's PAP affords collision and/or comprehensive coverage.

TNC deductibles also are higher than most PAP policies. Uber's policy purports to have a \$1,000 deductible.¹⁷ Lyft claims \$2,500¹⁸ and Sidecar asserts \$500.¹⁹ Thus, drivers often submit claims through PAPs. If the accident occurred in Period 1, they require first-party coverages, and/or seek to benefit from lower deductibles. Faced with possible cancellation due to material misrepresentation, drivers often opt to conceal or misrepresent their TNC activities to stay eligible for PAP coverage.



U B E R

Drivers cite no other choice. “[T]hey make it in your interest to lie to your insurance

company and commit insurance fraud to save money on the deductible," one driver encouraged in an online forum.²⁰ Said another: "If I got rear ended I would leave [the TNC] out of it if I had no passengers."²¹ This sentiment was echoed on a *Facebook* community for drivers: "If you get into an accident, end your ride immediately and turn off your app, so you cannot be identified as a ride-service driver."²² Parr Law, P.C. investigated an enhanced real-life version of this collision fraud scenario: post-accident addition of collision coverage after a TNC-related vehicle accident. In one case, the driver had no PAP collision coverage and was involved in a TNC-related single-vehicle accident without witnesses. With TNC collision coverage reportedly being contingent upon the PAP providing collision coverage, the driver immediately turned off his TNC app, did not report the accident and added collision coverage to his PAP two days later. He next told his insurer the accident occurred within its coverage period, during personal use.

2. Staged crashes

The TNC ride process lends itself well to staged accidents — physical and fabricated "paper" losses. This is because TNC drivers are chosen by their proximity to a rider — and rides are arranged with information provided ahead of time, including a real-time vehicle route.

Driver and rider thus have complete knowledge of each other's location. The rider can arrange with his friend — the driver — to be near his pickup location while a second target vehicle prepares to cause the crash, knowing everyone's exact locations.

Of added note: The TNC's GPS tracking likewise can provide claimants self-created evidence of an alleged crash and location in an otherwise questionable situation.

Other fraud may occur when rider and driver fabricate a "paper" accident, reportedly caused by a phantom hit-and-run vehicle. When making the claim, conspirators lie that the crash was unwitnessed, state there was no police response, and use the GPS tracking to "prove" at least two people were inside the vehicle, potentially injured.

3. Jump-ins

Jump-ins are likewise easily coordinated by claimants asserting TNC "pooling." Just as sharing a taxi is common, so is sharing a TNC ride. In a ride, only one rider is required to pay (and is therefore the only identifiable passenger in TNC records) but in reality, there may be a carload of passengers. Thus, scheming drivers and riders can collude with jump-in passengers to make false injury claims — especially with no independent witnesses or police response.

4. Interfering with app

As described above, drivers may intentionally turn off their app to fraudulently represent

they were in an offline period and thus are eligible for PAP coverages. This also occurs when drivers wish to take cash. A major liability issue arises when drivers pick up a passenger without using their app — and TNC vehicles commonly pull over to taxi-hailing consumers, offering to drive them to their destinations.

Legislation defines TNC activity by “pre-arranged rides” using an app²³ — TNCs also make their money from percentages of rides. This creates PAP fraud exposure because TNCs will reject any claim submitted where apps are not used. Drivers then feel justified in filing a claim with PAP insurers, omitting any mention of TNC activity. This issue will become more problematic as TNCs expand legitimate cash use.²⁴

Legislation

In a push to address some of these insurance and safety concerns, TNC and insurance company leaders developed the TNC model bill in March 2015. The number of states approving TNC regulation jumped from three to 21 since its introduction. More bills are pending.

The model advocates for:

- Excluding TNC activity from the PAP;
- Imposing mandatory primary coverage from TNC, TNC driver or combination \$50k/\$100k/\$25–30k in Period 1; and
- Requiring TNC primary coverage of \$1 million during Periods 2 and 3.

Although the model and current legislative efforts are a step in the right direction, neither creates bright-line liability for PAP insurers or TNCs.

UM/UIM, MedPay, comprehensive, collision and secured lender rights still need to be resolved. Legislators also need to clarify Period 1 liability.

Insurers can defend

Parr Law, P.C. suggests insurers be proactive. Developing a company-wide TNC policy should be the first measure. This is crucial for properly interpreting the PAP and successfully investigating claims. Educating employees and customers on TNCs and their impact upon a PAP is imperative. Developing appropriate policies for TNC drivers will negate a certain percentage of TNC activity concealment and fraud.

Finally, insurers also should include specific areas of inquiry during the application and claims processes to uncover TNC fraud:

1. Better policies

A major line of defense against a fraudulent PAP claim involves material

misrepresentation. However, a PAP insurer must prove that it would have either:

- Not insured the driver and/or the subject vehicle; or
- Charged a higher premium if it knew of TNC activity.

Therefore, creating a strong, consistent policy on how TNC activities affect PAP coverages and limits is essential.

Insurer options include:

- Declaring that TNC activity will void a PAP policy from policy inception (ab initio); or
- Insuring TNC activity if the driver admits to the activity during application/renewal.

Coverage options:

- Business classification;
- Endorsement;
- Commercial insurance (only); and
- Hybrid policies/per-mile insurance.

2. More education

Educating employees and customers about TNC fraud is indispensable.

Employees must be trained about what TNCs are, how they operate, how rideshare periods work, and how the insurer handles TNC activity under a PAP. Only when employees know what red flags to look for can they effectively uncover potential scams. Educating customers also helps protect a PAP insurer against material misrepresentations. Many TNC drivers do not understand the nuances of their PAP insurance or the TNC's policy. One nuance of particular importance for reps and customers to understand is that driver misrepresentations may result in stripping of coverages. This could leave drivers potentially *individually* liable for certain injury and/or property damages.

While most Period 2 & 3 claims should be covered by a TNC, this mechanism may leave innocent third parties exceedingly vulnerable during Period 1. Insurers are exposed to increased defense costs because they are bound to defend their insureds during the ensuing litigation.

Plain disclosure by an insurer of how TNC activity will affect a driver's policy will help deter a percentage of TNC claims from being falsely filed under a PAP.

3. Tighter policy applications

Drivers often do not disclose their TNC activities to their PAP insurer because TNCs promote the notion that TNC activity has no effect on a PAP. This can be addressed directly. Questions insurers should ask in assessing risk include:

- Do you participate in any rideshare program (e.g., Uber, Lyft or Sidecar)?
- Have any vehicle(s) listed on this policy been used in a rideshare program by you and/or any other listed operator?
- Will you comply with your policy obligation to allow your insurer direct access to your rideshare records to confirm your work status at any time?

4. Detailed questioning

A large number of fraudulent TNC claims submitted involve Period 1 ("available") and/or first-party collision claims. Thus, it is valuable to ask questions that identify TNC activity and determine in which period the incident occurred.²⁵

Helpful questions include:

- Do you drive for any rideshare programs? Which one(s)?
- How long have you been doing so?
- What vehicle do you use for rideshare fares?
- Has the vehicle involved in this MVA been used as a rideshare vehicle?
- Was your rideshare app on at the time of MVA? Which ones?
- Had you already been notified of a rideshare request when the MVA happened?

- Were you in the process of ride acceptance?
- Had you already accepted the rideshare request when the MVA happened?
- Were you on your way to pick up a rideshare when the MVA happened?
- Did you have a rideshare rider in the vehicle at the time of the MVA?
- When was the last time before the MVA that you had a rideshare app on?
- When was the next time after the MVA you had any rideshare app on?
- When was the last time you had a rideshare rider in your vehicle before the MVA?
- Were other private parties in the vehicle?

Conclusion

TNCs are here to stay and their popularity is ever-growing. PAP insurers must adapt to this new market.

The current state of affairs with TNC insurance creates vast chasms of opportunity for fraud. PAP insurers must protect themselves and root out scams. They should promote company-wide policies on ridesharing and educate employees and customers.

Specific questions also must be included in applications and during claims investigation to uncover illicit TNC activity.

Only by adapting to this new industry can PAP insurers accurately protect and defend against rideshare fraud.

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