



September 21, 2015

## INSURANCE FOR THE UBER-AGE

Recently, there have been several legal journal articles concerning the insurance coverage implications of using a cell phone application (app) to hail a ride with a transportation network company (TNC), such as Uber, Lyft, Sidecar, Wingz or Summon and what type, and amount, of insurance coverage should be required during their use. Cases have arisen, in other states, following motor vehicle accidents involving TNC drivers and third parties with resulting property damage and/or bodily injury to the TNC fares and/or drivers or passengers in the other vehicles. Many states' Legislatures have failed to so far address the potential gap in automobile liability insurance coverage which may exist in such situations where a private automobile insurance carrier denies coverage under its policy as a result of an exclusion from coverage for using a personal auto in a business pursuit and the lack of coverage provided by the TNC.

Fortunately, Arkansas is not one of them. In an unusual turn of events, Arkansas actually is helping lead the way with regard to "prearranged rides" or "ride-sharing" and this new area of insurance coverage law, with the enactment of Acts 1050 and 1267 of the Regular Legislative Session of 2015 (Senate Bills 800 and 780, respectively), The Transportation Network Company Services Act, codified at Ark Code Ann. §§ 23-13-701, *et seq.* The Act is modeled after the TNC Insurance Compromise Model Bill, which was adopted by many major TNC entities and the National Association of Insurance Commissioners on March 31, 2015. Since its adoption, several other states have enacted similar legislation.

The new Act defines several key terms and, in doing so, settled, at least as far as Arkansas is concerned, a split in decisions amongst the various

states as to insurance coverage for the four phases of a TNC drivers' use of his personal vehicle. In Phase 1, the driver is awaiting a fare and has not yet been contacted by his TNC to provide transportation services. In Phase 2, a TNC driver is in route to his fare, having been contacted by his TNC concerning a potential fare. In Phase 3, the TNC driver has a fare in his vehicle. In Phase 4, the TNC driver has dropped off his fare and has returned to Phase 1, awaiting notification from his TNC of another potential fare. Pursuant to Ark. Code Ann. § 23-13-709(a)(1), since July 7, 2015 (90 days after promulgation of the Act), all TNC's must have in place primary automobile liability insurance coverage for their drivers while they are logged on to the TNC's digital network, while they are engaged in a "prearranged ride" and while the driver is otherwise using a vehicle to provide transportation network services. *Id.* Ark. Code Ann. § 23-13-702(9)(A) defines a "prearranged ride" or "transportation network services" as beginning when a TNC driver accepts a ride requested through a digital network controlled by a TNC, continuing while the TNC driver transports a requesting rider and ending when the last requesting rider departs from the TNC driver's vehicle. Thus, Arkansas requires TNC's to have in place automobile liability insurance coverage for Phases 2 and 3, as well as Phases 1 and 4, but only if the TNC driver is logged on to the TNC's digital network during Phases 1 and 4.

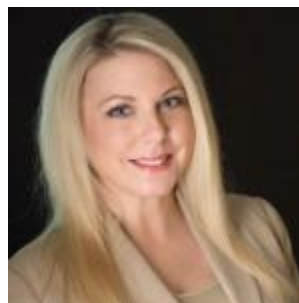
In addition to defining when coverage must be provided, the Arkansas Act also provides mandatory minimum coverages required of TNC's. Specifically, Ark. Code Ann § 23-13-709(a)(1)(B)(i) requires TNC's have in place \$50,000 in liability coverage for death and bodily injury per person and \$100,000 per incident while its drivers are logged in to the TNC's digital network and available to receive transportation requests, but not actually

engaged in a “prearranged ride,” while section (C)(i) requires \$1,000,000 in coverage in place for death, bodily injury and property damage while a TNC’s driver is actively engaged in a “prearranged ride.” *Id.* The coverage requirements may be satisfied through a combination of insurance maintained by the TNC’s and their driver. Ark. Code Ann § (A)(1)(B)(ii)(a) & (b) & Ark. Code Ann § (A)(1)(C)(ii)(a) & (b). However, if the insurance maintained by the TNC’s driver has lapsed, does not provide the required amount of coverage or is otherwise denied, the coverage under the TNC’s policy is primary. Ark. Code Ann § 23-13-709(a)(2). Further, coverage under the TNC’s policy is not dependent upon coverage under the TNC’s driver’s policy first being denied. Ark. Code Ann § 23-13-709(a)(3).

The Act is clear it does not affect private automobile policies’ exclusions of coverage and specifically allows for exclusion of all coverages while a loss or injury occurs while a TNC’s driver is logged on to a TNC’s digital network or while providing a “prearranged ride.” Ark. Code Ann § 23-13-709(c)(1)(B) & (2)(A)-(F). Further, it confirms an automobile liability insurer who excludes coverage for TNC drivers shall have no duty to defend or indemnify any claims arising out of such driver’s conduct. Ark. Code Ann § 23-13-709(c)(4) & (8)(a). Finally, in the event an automobile insurer chooses to defend or indemnify a claim against a TNC’s driver that is excluded under the terms of the driver’s policy, it shall have a right of contribution against other insurers that provide coverage to the same TNC driver in satisfaction of the coverage requirements of the Act. Ark. Code Ann § 23-13-709(c)(9).

Given the recent enactment of the Transportation Network Company Services Act, and its even more recent implementation, there have not yet been any Arkansas Appellate Court decisions interpreting it. It will be curious to see how both private automobile liability carriers and the Arkansas Courts deal with it. There are many other interesting aspects to the new Act and I encourage all who defend TNC’s, or engage their services personally, to read it for themselves. I’ve attached hereto both Senate Bills 780 and 800 for review.

**The thanks of the AADC go out to Michael Harrison of Watts Donovan Tilley for writing this issue of our newsletter.**



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