



What's Your (App) Status? PIP Coverage And Priority In The Ridesharing World

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Uber, Lyft, and other ridesharing companies are hardly novel concepts at this point, and Michigan was among the first states to regulate them. However, nearly five years after Michigan's Limousine, Taxicab, and Transportation Network Company Act¹ took effect, the question of which insurer must provide personal injury protection coverage for accident victims arising out of ridesharing situations continues to confound both No-Fault practitioners and Michigan courts. And although the pandemic nearly crushed the ridesharing industry in 2020, signs of recovery are afoot,² so now is the time to understand where to look for PIP coverage when an accident involving a ridesharing company occurs.

The Statutory Scheme

For many years, the starting point for determining which insurer is liable to provide PIP coverage has been Michigan's

priority statute, MCL 500.3114. This remains a good place to start, since in Michigan, Uber and Lyft drivers are generally considered independent contractors. So, if they drive their personal vehicles, they must (of course) maintain their own personal coverage.

But what about when an accident happens and an Uber or Lyft driver is on his or her way to pick up a passenger, or has a passenger in the vehicle? Where does the driver look for PIP coverage? What if the driver is not using his or her personal vehicle when the accident happens? Does it matter whether the driver has a passenger in the vehicle or not? Does the law treat the driver as an employee, or as someone operating in a commercial context, where the vehicle owner's insurer provides coverage? And where should passengers look for coverage?

These types of questions are answered by reading the priority statute in harmony with the Limousine, Taxicab,

and Transportation Network Company Act (“TNC Act”).³ Among other things, the TNC Act, which went into effective on March 21, 2017, regulates Uber, Lyft, and other ridesharing companies, which the TNC Act defines as “transportation network companies.”⁴ While the TNC Act includes several important safety and policy measures such as mandating drivers’ criminal background checks,⁵ annual vehicle inspections,⁶ and accommodations for disabled passengers,⁷ it also regulates insurance coverage for accidents involving transportation network companies.

The TNC Act’s coverage and priority rules focus on how a vehicle is being used at the time of the accident.

Coverage And Priority – “App Status”

Uber and Lyft drivers use their vehicles – whether owned or leased by them or rented on a short-term basis – for dual purposes. Sometimes, the vehicles they drive are used for personal purposes, but other times, the vehicles are used to transport passengers. The TNC Act acknowledges this reality by focusing its coverage and priority rules not on the driver or vehicle’s generalized involvement with a transportation network company. Rather, the TNC Act’s coverage and priority rules focus on how a vehicle is being used at the time of the accident.

The first inquiry is whether, at the time of the accident, the driver is logged into a “transportation network company digital network” or is engaged in a “prearranged ride.” A “transportation network company digital network” is defined by the TNC Act as “an online-enabled application, website, or system offered or utilized by a transportation network company that enables the prearrangement of rides with transportation network company drivers.”⁸ In simple terms, this is the app that allows transportation network company drivers and passengers to connect with each other via their smartphones to schedule “prearranged rides.”

Under the TNC Act, a “prearranged ride” is “the provision of transportation by a transportation network company driver to a transportation network company rider, beginning when a transportation network company driver accepts a ride requested by a transportation network company rider through a digital network controlled by a transportation network company, continuing while the transportation network company driver transports the requesting transportation network company rider, and ending when the last requesting transportation network company rider departs from the personal vehicle.”⁹

The trigger for determining coverage is based entirely on “app status.” When a driver is logged into a transportation network company’s app or is engaged in a prearranged ride,

the transportation network company must either directly, or on the driver’s behalf, provide PIP coverage.¹⁰ As such, individuals injured in accidents that occur when the driver is logged into the transportation network company’s app – whether the individual is the driver or a passenger – should look to the transportation network company’s insurer for coverage. While this article is limited to the issue of priority, No-Fault practitioners should also pay attention to the coverage levels available for accidents involving Uber or Lyft drivers or rides, as the levels of coverage for third-party claims varies depending on whether the driver is simply logged into the transportation network company’s app or has a passenger in the vehicle during a prearranged ride.¹¹

A transportation network company’s obligation to provide such coverage in this situation does not depend upon a personal carrier first denying the claim, and if there is a lapse in coverage or the transportation network company’s policy does not provide the level of PIP coverage required by the statute, the transportation network company must *still* cover the claim pursuant to the statutory requirements.¹² In short, individuals involved in accidents in a ridesharing situation, even if they are not certain that the driver was logged into the transportation network company’s app, would do well to put the transportation network company’s carrier on notice of the claim as soon as possible. The failure to do may be a missed opportunity and, perhaps, a loss in benefits.

Don’t Forget About Personal Policies

A common mistake when evaluating coverage and priority in the ridesharing context is failing to consider the role of personal no-fault insurance policies. Because vehicles used by transportation network company drivers can serve as *both* personal vehicles and transportation network company vehicles, depending on the driver’s app status at the time of the accident, it is important to consider all possible sources for coverage until the driver’s app status is confirmed. Whether a driver is logged into a transportation network company’s app at the time of an accident is not always easy to determine. And if the driver’s memory is wrong or the smartphone wasn’t actually logged into the app, even when the driver thought it was, the transportation network company will likely not be required to provide coverage.

One possible source of coverage is the driver’s personal policy, or that of a resident domiciled in the same household as the driver, since if the driver is not logged into a transportation network company’s app at the time of the accident, the driver is using the vehicle for personal purposes. In such circumstances, the order of priority set forth in MCL 500.3114 applies and a personal policy will be first in line.

For some reason, personal policies are sometimes not considered in ridesharing situations, and the focus tends to be on finding coverage from the vehicle owner’s carrier. Perhaps

this is due to reliance upon longstanding exceptions to MCL 500.3114(1)'s general rule that places personal policies first in priority. No-Fault practitioners are of course familiar with the "in the business of transporting passengers" exception,¹³ which in this commercial context places the vehicle owners' carrier in priority for PIP coverage. But when the Michigan Legislature passed the TNC Act, it also amended the priority statute to provide that this exception does not apply to drivers or passengers in a "transportation network company vehicle," which is defined as "a personal vehicle while the driver is logged onto the transportation network company digital network or while the driver is engaged in a transportation network company prearranged ride."¹⁴

There is also the "employment" exception,¹⁵ which does not apply when a driver is logged into a transportation network company's app, since the TNC Act proscribes coverage in that situation through the driver's carrier or that of the transportation network company. And it does not apply when the driver is using the vehicle for personal use because he or she is not engaged in employment activities at the time of the accident.¹⁶

In the ridesharing context, the No-Fault Act requires the vehicle owner's carrier to provide PIP coverage only when the driver is not logged into the transportation network company's app and has no personal coverage.¹⁷ For this reason, if an individual is involved in an accident in a ridesharing situation and has a personal policy, a claim should be made with the personal carrier, even if the individual firmly believes the driver was logged into a transportation network company's app at the time of the accident or otherwise believes coverage under the vehicle owner's policy is available.

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Questions Answered

Once the legal framework for PIP coverage in ridesharing situations is understood, the questions posed previously are easily answered:

Q. *If a driver is on his or her way to pick up a passenger, and a motor vehicle accident occurs before the driver gets there, or the driver has a passenger in his or her car during a prearranged ride, where should the driver look for PIP coverage?*

A. The driver should confirm app status at the time of the accident.

If the driver was logged into the transportation network company's app, then the transportation network company should provide coverage. If not, a personal policy of the driver or the driver's relative domiciled in the same household should provide coverage (provided such a policy exists). But the driver should really be sure of app status, and if there is any doubt, he or she should make a claim with *both* the carrier for the transportation network company and with his or her personal carrier.

Q. *What if the driver is not using his or her personal vehicle when the accident happens?*

A. Again, app status is the key.

If the driver was logged into the transportation network company's app at the time of the accident, the transportation network company should provide coverage. If not, the driver should *still* look to his or her personal carrier or the personal carrier of a relative domiciled in the driver's household. The vehicle owner's policy typically provides coverage only if no personal coverage is available.

Q. *Does it matter whether the driver has a passenger in the vehicle or not?*

A. Not for PIP coverage.

Q. *Does the law treat a transportation network company driver as an employee, or as someone operating in a commercial context, where the vehicle owner's insurer provides coverage?*

A. Generally, no.

The TNC Act's insurance coverage framework will govern when the driver is logged into a transportation network company's app at the time of the accident. The order of priority set forth in MCL 500.3114 will govern if the driver is not logged into an app, with the vehicle owner's policy in priority only when there is no personal policy available.

Q. *Where should passengers look for coverage when involved in an accident during a prearranged ride with a transportation network company?*

A. Passengers should look to the transportation network company for coverage, bearing in mind that their personal insurer, if they have one, should also be notified of the claim. ■

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Endnotes

- 1 MCL § 257.2101, et seq.
- 2 According to one source, Uber and Lyft have regained 52% of the business they lost in March 2020. See “Uber and Lyft expect ride-hailing to make a sharp recovery, but there are some potential roadblocks,” MarketWatch, April 28, 2021.
- 3 MCL § 257.2101, et seq.
- 4 MCL § 257.2102(l).
- 5 MCL § 257.2107(1)(a).
- 6 MCL § 257.2109(1).
- 7 MCL § 257.2145(4).
- 8 MCL § 257.2102(m).
- 9 MCL § 257.2102(o). “Transportation network company pre-arranged ride” does not include shared-expense carpooling or vanpooling arrangements, nor does it include transportation provided using a taxicab, limousine, or other vehicle. *Id.*
- 10 MCL § 257.2123(1)-(4).
- 11 MCL § 257.2123(2)-(3).
- 12 MCL § 257.2123(5)-(6).
- 13 MCL § 500.3114(2).
- 14 MCL § 500.3114(2)(g); MCL § 500.3114(9)(b).
- 15 MCL § 500.3114(3).
- 16 See, e.g., *id.* at 85-86; *Besic v Citizens Ins Co of the Midwest*, 290 Mich App 19, 21-22 (2010); *Dulic v Progressive Michigan Ins Co*, Michigan Court of Appeals No. 271275, 2007 WL 490984 at *2 (Feb. 15, 2007); *Maroky v Encompass Indem Co*, Michigan Court of Appeals No. 333489, 2017 WL 4700030, at *2 (Oct. 19, 2017), *appeal denied*, 914 NW2d 925 (Mich 2018)); *Truck Insurance Exchange v Farm Bureau Ins Co of MI*, Michigan Court of Appeals No. 332318, 2017 WL 1967488 (May 11, 2017).
- 17 Indeed, No-Fault insurers may exclude coverage for PIP benefits while a driver is logged into a digital transportation network. See MCL § 500.3101(6). MCL § 500.3017(1) eliminates the insurance requirement when a driver is logged into a transportation network company’s network: insurers of a personal vehicle “may exclude all coverage afforded under the policy for any loss or injury that occurs while a transportation network company driver is logged into a transportation network company digital network or while a transportation network company is providing a prearranged ride.” Insurers may exclude PIP coverage under MCL § 500.3017, including “personal protection and property protection insurance required under section 3101.” *Id.*



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