

# Über Problems

## Ride-Sharing Exclusions in Personal Automobile Insurance Policies

BY ANDREW MCFADDEN

*This article examines the new ride-sharing exclusion's validity by reviewing the Transportation Network Company Act's insurance requirements, similar personal automobile insurance exclusions, and case law interpreting those exclusions.*

New ride-sharing businesses, such as Uber and Lyft, have transformed travel and created new business opportunities for people who own or lease personal automobiles. Companies insuring personal automobiles recently added a ride-sharing exclusion to their policies to account for the increased risks that ride-sharing businesses create.

Unanswered questions exist regarding whether, or to what extent, ride-sharing drivers' personal automobile insurance policies cover automobile accident losses. This article analyzes those questions in the context of the recently enacted Transportation Network Company Act (TNCA), several personal automobile insurance exclusions, and case law interpreting those exclusions.

### The TNCA

The Colorado legislature passed the TNCA<sup>1</sup> in 2014 to regulate the new ride-sharing business.



The TNCA defines companies like Uber and Lyft as "transportation network companies."<sup>2</sup> The TNCA explicitly recognizes that many drivers operate their personal vehicles when driving for Uber or Lyft.<sup>3</sup> Many, if not most, Uber or Lyft drivers use their owned or leased personal vehicles, rather than driving company-owned vehicles like drivers for many taxi or limousine services.<sup>4</sup> In addition, the TNCA does not require a commercial driver's license (CDL) or livery license to drive for a transportation network company.<sup>5</sup>

Like the Motor Vehicle Financial Responsibility Act (MVFRA), the TNCA imposes minimum liability insurance requirements.<sup>6</sup> The ride-sharing company or driver must satisfy<sup>7</sup> the TNCA's insurance requirements, which depend on whether the driver is logged into the ride-sharing company's application but has not engaged in a prearranged ride<sup>8</sup> or is engaged in a prearranged ride.<sup>9</sup> This article refers to the first time frame as the "log-in period" and the second time frame as the "prearranged ride period."

The TNCA defines a prearranged ride as "a period of time that begins when a driver accepts a requested ride through a digital network, continues while the driver transports the rider in a personal vehicle, and ends when the rider departs from the personal vehicle."<sup>10</sup> Notably, a prearranged ride includes the driver's journey to pick up the passenger, but does not include the driver's return journey. Rather, the prearranged ride ends when the rider exits the

vehicle, even if that destination is far from the original pick-up location.

When the driver is logged into the ride-sharing application but has not engaged in a prearranged ride, the TNCA requires the ride-sharing company to either provide insurance coverage for the driver<sup>11</sup> or confirm that the driver's personal automobile insurance policy includes a ride-sharing endorsement that meets minimum insurance requirements.<sup>12</sup> For the prearranged ride period, the TNCA requires that the ride-sharing company obtain minimum liability insurance coverage of \$1 million.<sup>13</sup> Stated simply, if a ride-sharing driver has a passenger when an accident occurs, the ride-sharing company's insurance covers the accident. If there is no passenger in the vehicle, the applicable TNCA insurance requirements vary depending on

whether the driver is logged into the application and whether the driver has accepted a digital request for a prearranged ride. The chart below summarizes the TNCA's coverage requirements and the typical ride-sharing exclusion's scope.

The TNCA's minimum insurance requirements for the log-in period contain several uncertainties. First, the driver or company must maintain an automobile insurance policy that "[m]eets at least the minimum coverage of at least fifty thousand dollars to any one person[,]"<sup>14</sup> but the TNCA does not specify the required coverage type (e.g., liability coverage or uninsured motorist coverage). The failure to specify the required coverage type means that the minimum requirements may include both liability coverage and first-party coverage minimum limits (e.g., uninsured motorist coverage).

A second uncertainty is whether a ride-sharing company has a continuing duty to confirm that a driver has an active endorsement on his or her automobile insurance rider. If a driver's policy lapses for nonpayment, for example, the TNCA is silent as to the ride-sharing company's obligations during that lapsed period.

A third uncertainty is whether the TNCA minimum liability limits are \$50,000, as stated in CRS § 40-10.1-604(3)(b)(II), or only \$25,000, as referred to in CRS §§ 40-10.1-604(3)(b)(III) (B) and -604(4) requiring compliance with the MVFRA.<sup>15</sup> Arguably, the TNCA sets two conflicting minimum liability limits. One way to harmonize this language is to interpret the TNCA to set the higher minimum liability limit of \$50,000 and to require any ride-sharing endorsement or rider to maintain this higher

Time Frame	Coverage barred by typical ride-sharing exclusion	No TNCA requirement	TNCA requires that ride-sharing company provide coverage or confirm that driver has coverage with proper endorsement	TNCA requires that ride-sharing company's insurance provide coverage
Ride-sharing driver is not logged into ride-sharing application		✓		
Ride-sharing driver is logged into ride-sharing application, but has not accepted a prearranged ride	✓		✓	
Ride-sharing driver has accepted a prearranged ride, but has not picked up passenger	✓			✓
Ride-sharing driver is driving passenger to destination	✓			✓
Ride-sharing driver has dropped off rider and is still logged into the ride-sharing application	✓		✓	

liability limit rather than the lower limit the MVFRA requires.

While these uncertainties raise important questions regarding types and limits of coverage, the TNCA clarifies the personal automobile insurer's responsibility: "Nothing in this section requires a personal automobile insurance policy to provide coverage for the period of time in which a driver is logged into a transportation network company's digital network."<sup>16</sup> This section eliminates any requirement under the TNCA for insurers to provide coverage under a personal automobile insurance policy for losses caused while its insured drives for a ride-sharing company. However, the interplay between fulfilling the MVFRA requirements for personal automobile insurance policies and the new TNCA obligations remains unclear, especially for first-party coverages.

### Automobile Insurance Exclusions

Personal automobile insurance policies offer varying coverages for losses, such as liability, collision, medical payments, and uninsured motorist coverages. Policy exclusions limit these coverages. Liability coverage is sometimes referred to as third-party coverage because it covers claims a third party asserts against the insured. In contrast, the other available policy coverages are sometimes referred to as first-party coverages (e.g., collision, medical payments, and uninsured motorist coverages) because they involve claims between the insured and the insurer. The scope of this article discusses only liability coverage and how exclusions affect liability coverage.

The Colorado legislature recognizes that automobile use causes a substantial "toll in human suffering and loss of life"<sup>17</sup> and has set mandatory liability insurance requirements to lessen that toll.<sup>18</sup> However, insurers cannot be required to insure all possible losses arising out of the use of a personal automobile, and insurers can control their risk exposure through exclusions.<sup>19</sup> The Colorado Supreme Court concluded that "although Colorado's public policy is concerned with protecting innocent tort victims, it is also concerned with insurers' freedom to contract, allowing insurers to limit their liability to calculate risks[.]"<sup>20</sup>

Colorado statutes specifically authorize three liability coverage exclusions under personal automobile policies:<sup>21</sup>

- the intentional act exclusion, which applies when the injured person "[s]ustains injury caused by his or her own intentional act";
- the stolen-vehicle exclusion, which applies when the injured person "[i]s operating a motor vehicle as a converter without a good faith belief that he or she is legally entitled to operate or use such vehicle";<sup>22</sup> and
- the household member exclusion, which excludes "claims made by a member of a household against another member of the same household."<sup>23</sup>

To be enforceable, all other personal automobile policy liability exclusions must fall within the catch-all provision of CRS § 10-4-623(1), which states that "[t]he coverage described in section 10-4-620 [mandated liability coverage] may be subject to conditions and exclusions that are not inconsistent with the requirements of this part 6." Colorado courts have interpreted CRS § 10-4-620(1) to authorize additional exclusions that comply with Colorado public policy.<sup>24</sup>

Insurers of personal automobiles have recently added a ride-sharing exclusion that seeks to exclude from coverage any loss that occurs while the driver is logged into a transportation network company's application. Stated another way, if a person is driving for Uber or Lyft, the ride-sharing exclusion precludes coverage under the driver's personal automobile insurance. The ride-sharing exclusion is not specifically authorized by statute. Thus, to be enforceable, the ride-sharing exclusion must fall within the catch-all provision and comport with Colorado public policy. No Colorado court has yet considered the ride-sharing exclusion, and its effectiveness and scope remain unresolved. But Colorado case law concerning the validity of other exclusions informs the validity of the ride-sharing exclusion.

### Criminal Act Exclusion

The criminal act exclusion is a common exclusion that is not explicitly authorized by statute. It excludes from coverage any loss that an insured causes during the commission of a crime. How

broadly a criminal act exclusion may be drafted and still satisfy Colorado's public policies is an open issue.

In *Bailey v. Lincoln General Insurance Company*,<sup>25</sup> Raymond Juhl rented a vehicle and obtained insurance through Dollar Rent-A-Car. This insurance included an excess liability policy provided by Lincoln General. Juhl then engaged in a high-speed car chase in the rented vehicle while on methamphetamine and collided with another car, killing its passenger and seriously injuring its driver. Juhl pleaded guilty to multiple felonies. Juhl eventually assigned the claimants (the injured party and the deceased's estate) his rights under the excess insurance policy.

When the claimants sought coverage under the excess policy, Lincoln General denied coverage pursuant to the policy's criminal act exclusion.<sup>26</sup> The claimants filed suit against Lincoln General, alleging breach of contract, bad faith, and violation of the Colorado Consumer Protection Act. The trial court found the exclusion valid and entered summary judgment for Lincoln General. The Colorado Court of Appeals affirmed, and the Colorado Supreme Court granted review. Beginning its public policy analysis, the Supreme Court explained that "[i]n determining whether insurance provisions are void as against public policy, our primary focus has been whether they attempt to 'dilute, condition, or limit statutorily mandated coverage.'"<sup>27</sup>

The criminal act exclusion in *Bailey* sought to exclude all losses occurring during felonious conduct.<sup>28</sup> The Court considered the exclusion's purpose, stating:

Most felonious criminal misconduct, like intentional misconduct, significantly alters the calculus of risk between the insurer and insured, subjecting the insurer to increased and significantly greater risk of liability. Just as intentional misconduct resulting in loss is not a "fortuitous" event properly subject to coverage, neither is most felonious criminal misconduct that "includes a voluntary act or the omission to perform an act which he is physically capable of doing."<sup>29</sup>

However, there are limits on how broadly the criminal act exclusion may be drafted. In *Bailey*, the exclusion implicated all felonious conduct, and could have been broad enough

to reach circumstances that would “render the insurer’s risk a nullity.”<sup>30</sup> But those circumstances were not before the Court. Rather, “the insured’s felonious criminal misconduct rose far above the mere criminal negligence . . . ; the insured here was ‘aware that his conduct’ was ‘practically certain to cause’ the death of a person.”<sup>31</sup> Thus, the Court did not address whether Lincoln General’s use of the criminal act exclusion rendered the coverage illusory.<sup>32</sup>

While the Court held that the criminal act exclusion at issue in *Bailey* did not violate public policy,<sup>33</sup> it suggested that a criminal act exclusion drafted to encompass less severe criminal conduct, such as a speeding ticket, may not be compatible with Colorado public policy.<sup>34</sup>

#### **Intentional Act Exclusion**

Because a criminal act often involves an intentional act, these two exclusions frequently overlap. However, as noted above, CRS § 10-4-623(a) expressly authorizes the intentional act exclusion. In *Bailey*, the Supreme Court discussed the policy behind the intentional act exclusion, concluding that while “Colorado’s public policy is concerned with protecting innocent tort victims, it is also concerned with insurers’ freedom to contract, allowing insurers to limit their liability to calculable risks, excluding liability for the intentional misconduct of insureds that significantly increases insurers’ risk of liability.”<sup>35</sup>

In *GEICO v. Moore* the Tenth Circuit Court of Appeals recently addressed, in dicta, the intentional act exclusion’s validity.<sup>36</sup> In *Moore*, while driving a vehicle insured by GEICO, the driver shot at multiple people with a shotgun. The driver’s parents owned the vehicle, and the parents sought liability coverage under the GEICO policy. While *Moore* found no duty to indemnify or defend under the policy because the car-to-car shooting was not an automobile accident,<sup>37</sup> the court offered some helpful insights, stating that intentional act exclusions “are necessary to help insurers set rates and supply coverage. If a single insured is allowed, through an intentional act, to consciously control risks covered by the policy, the central concept of insurance is violated.”<sup>38</sup>

These decisions provide further insight into how courts balance Colorado public policy

against the ability of insurers to control the risks they assume under their policies.

#### **Employee Exclusion**

The employee exclusion precludes coverage for losses suffered by an insured’s employee that occur within the scope of employment. Rather than excluding certain conduct, like the criminal act and intentional act exclusions, the

another employee negligently backed up a trailer. The injured employee sought liability coverage under the commercial automobile insurance policy Canal Insurance issued to Nix Transport, Inc. Canal Insurance denied coverage based on the employee exclusion and filed a declaratory judgment action. The trial court found the exclusion validly precluded coverage. The Colorado Court of Appeals affirmed,<sup>40</sup> explaining that

the policy issued to Nix Transport contains certain exclusions that were intended to be compatible with the requirements of the Workers’ Compensation Act, and to prevent the payment of double premiums and the need for unnecessary coverage by insurers. The policy specifically excludes: any obligation for which the insured or any carrier as his insurer may be held liable under any workmen’s compensation, unemployment compensation or disability benefits law, or under any similar law [and] bodily injury to any employee of the insured arising out of and in the course of his employment[.] The policy also excludes “any person while engaged in the business of his employer with respect to bodily injury to any fellow employee of such person injured in the course of his employment.” The plain meaning of these exclusions is that an injury to an employee under these circumstances is not covered by the policy.<sup>41</sup>

By upholding the employee injury exclusion, the Court recognized that the Colorado legislature had chosen the Workers’ Compensation Act<sup>42</sup> to be the exclusive remedy for work-related injuries. As a result, the Court found that the Workers’ Compensation Act implicitly authorized the employee exclusion and the exclusion comported with Colorado public policy.

Similar to the Workers’ Compensation Act, the TNCA constitutes specific legislation intended to regulate the ride-sharing business. The TNCA sets mandatory insurance requirements for certain time periods and explicitly states that nothing in the TNCA requires a personal automobile insurance policy to cover losses occurring during a ride-sharing trip. On the other hand, the TNCA does not create a wholly independent statutory insurance regime

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and comport with  
Colorado public  
policy.”

employee exclusion bars coverage based on the employee’s status. The employee exclusion is not statutorily authorized and thus must comply with Colorado public policy to be valid.

In *Canal Insurance Company v. Nix*,<sup>39</sup> Nix Transport, Inc.’s employee was injured when

governing the ride-sharing business as does the Workers' Compensation Act for work-related injuries. Rather, the TNCA sets regulatory requirements for ride-sharing businesses, including minimum insurance liability limits intended to comport with other state laws, such as the MVFRA. In addition, the TNCA insurance requirements create some uncertainty as to required coverages and policy limits. While the TNCA clearly regulates the ride-sharing business, it is unclear if the Colorado legislature intended the TNCA to be the exclusive statutory act regulating insurance requirements for the ride-sharing business.

### Business Delivery Exclusion

The business delivery exclusion precludes coverage for losses caused by a driver delivering goods in the scope of employment. Similarly, the ride-sharing exclusion seeks to exclude from coverage any losses caused when a driver is operating a vehicle for a ride-sharing company, also a profit-motivated endeavor. Thus, these two exclusions may be analogous.

The Colorado Court of Appeals found the business delivery exclusion invalid as against public policy in *St. Paul Fire and Marine Insurance Company v. Mid-Century Insurance Company*.<sup>43</sup> In *St. Paul Fire*, a restaurant owner directed an employee to use the owner's personal vehicle to deliver food. Mid-Century Insurance (Mid-Century) insured the owner's personal vehicle and St. Paul Fire and Marine Insurance (St. Paul) insured his business. The employee caused an automobile accident on the delivery, and Mid-Century denied coverage based on the business delivery exclusion. St. Paul filed a declaratory action to determine whether the Mid-Century policy provided coverage. The policy's business delivery exclusion stated that the "exclusion does apply to any vehicle . . . [w]hile used in employment by any person whose primary duties are the delivery of products or services[.]"<sup>44</sup>

On a summary judgment motion, the trial court held that the Mid-Century policy provided coverage despite the business delivery exclusion, and the Court of Appeals affirmed. When the accident occurred, the Colorado Automobile Accident Reparations Act,<sup>45</sup> commonly known

as the No-Fault Act, set mandatory automobile insurance requirements that differ from current requirements under the MVFRA. However, both the current law and the previous No-Fault Act required minimum liability coverage. Analyzing whether the business delivery exclusion was compatible with the No-Fault Act, the Court explained that for the business delivery exclusion to be enforceable, "it must be authorized by statute or be in harmony with the legislative purpose of mandating liability coverage to avoid inadequate compensation . . . To be in harmony with the legislative purpose, it must not dilute, condition, or limit statutorily mandated coverage."<sup>46</sup> In *St. Paul Fire*, it was undisputed that the exclusion diluted, conditioned, and limited statutorily mandated coverage because it narrowed the class of insureds that the insurer was required to provide coverage for, namely, "permissive users." Thus, the Court examined the No Fault Act to determine whether the General Assembly authorized the exclusion.<sup>47</sup>

Noting that the No-Fault Act did not expressly permit the business delivery exclusion, the Court found the exclusion invalid because the No-Fault Act required a complying policy to cover permissive users.<sup>48</sup>

Although the MVFRA has replaced the No-Fault Act, it similarly requires liability coverage for permissive users. This requirement was central to the *St. Paul Fire* holding, and the MVFRA may similarly provide a basis for invalidating the business delivery exclusion.

The business delivery exclusion and the ride-sharing exclusion apply to similar circumstances, and *St. Paul Fire* may provide guidance for interpreting the ride-sharing exclusion. One important difference between the two exclusions is that the ride-sharing exclusion would likely be read in conjunction with the TNCA. Comparatively, the business delivery exclusion did not, and still does not, have any equivalent underlying statutory authority to inform a public policy analysis of its validity and permissible scope.

### Household Exclusion

The household exclusion bars any family member of the insured's household from obtaining compensation under the insured's liability

coverage. While currently authorized by CRS § 10-4-418(2)(b), this codification occurred only after the Colorado Supreme Court invalidated the household exclusion as violating public policy.

In *Meyer v. State Farm Mutual Automobile Insurance Company*,<sup>49</sup> the Colorado Supreme Court consolidated three appeals that required determination of the household exclusion's validity. Two of these cases involved an automobile collision where the at-fault driver and the injured passenger seeking coverage were family members. In those two cases, both automobile insurance carriers denied liability coverage to the injured family members on the basis of the household exclusion.

The State Farm policy's household exclusion stated that the bodily injury coverage did not apply to "any insured or any member of the family of an insured residing in the same household as the insured."<sup>50</sup> The Court held that the exclusion violated the No-Fault Act and was contrary to public policy. Although the Court recognized that the exclusion sought to protect the insurer "from fraudulent or collusive lawsuits between members of the same family[.]"<sup>51</sup> the Court viewed the insurer's fraud concerns as less significant than the household exclusion's detrimental effects because the exclusion:

becomes particularly disturbing when viewed in light of the fact that this class of victims is the one most frequently exposed to the potential negligence of the named insured. Typical family relations require family members to ride together on the way to work, church, school, social functions, or family outings. Consequently, there is no practical method by which the class of persons excluded from protection by this provision may conform their activities so as to avoid exposure to the risk of riding with someone who, as to them, is uninsured.<sup>52</sup>

In response to *Meyer*, in May 1986 the Colorado legislature codified the household exclusion at CRS § 10-4-418(2)(b), which provides:

The commissioner [of insurance] shall not find that a policy form, certificate, or contract of insurance or rider does not comply with the applicable requirements and standards of this title on the ground that it excludes coverage of claims made by a member of

a household against another member of the same household. Such exclusions are in conformity with the public policy of this state.<sup>53</sup>

In *Schlessinger v. Schlessinger*,<sup>54</sup> the Colorado Supreme Court discussed the impact of CRS § 10-4-418(2)(b) on *Meyer*, explaining in dicta that the statute overruled *Meyer's* holding as to the household exclusion.<sup>55</sup> Later lawsuits have challenged the constitutionality of CRS § 10-4-418(2)(b), but each time the statute was upheld.<sup>56</sup>

To the extent that a ride-sharing driver uses his or her car to provide ride-sharing services, the ride-sharing exclusion, like the household exclusion analyzed in *Meyer*, may exclude from coverage injuries to the “class of victims . . . most frequently exposed to the potential negligence of the named insured.”<sup>57</sup> Whether the ride-sharing exclusion may be subject to challenge on these grounds, or whether the legislature may provide further guidance, remains to be seen.

#### **Named Insured Exclusion**

The named insured exclusion prohibits a person specifically named in the insurance policy from obtaining compensation under his or her own liability coverage. The named insured exclusion was also invalidated by the Colorado Supreme Court in *Meyer*.<sup>58</sup> This exclusion often factually overlaps with the household exclusion, as multiple family members are frequently listed as named insureds on the same policies. Similar to the household exclusion, the named insured exclusion may help predict when Colorado courts may invalidate exclusions as violative of public policy.

In the third of the consolidated appeals before the *Meyer* Court, *Adcock v. State Farm Mutual Insurance Company*, the injured claimant was a passenger in her own vehicle. She gave her friend permission to drive her vehicle, and her friend caused an automobile collision. The insurer argued that the named insured exclusion barred coverage for the insured under her policy. The Court noted that the insurance policy provided that liability coverage did not apply to “any insured or any member of the family of an insured residing in the same household as the insured,” and

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under the policy, the term “insured” included “any person using the automobile with the permission of the named insured.”<sup>59</sup>

The Court invalidated the named insured exclusion on the same bases as the household exclusion, finding that the exclusion contravened

the public policy of providing coverage to persons injured in automobile collisions. While the Colorado legislature overruled *Meyer* as to household exclusions with the enactment of CRS § 10-4-418(2)(b), the *Meyer* opinion remains good law as to named insured exclusions, at least when the insured is not the driver.

Interestingly, in *Adcock*, State Farm argued that if the Court invalidated an insurance policy exclusion, the applicable liability coverage limits should be the statutorily prescribed minimum limits, not the policy’s actual limits. The Court summarized the argument as:

Where an automobile insurance policy contains an exclusion which is declared invalid because it conflicts with a statute mandating liability coverage and the policy limits exceed the minimum statutory requirements, the carrier’s liability is limited to the minimum coverage required by statute. The rationale for this rule is that the exclusion is invalid only to the extent it violates the statutory requirements.<sup>60</sup>

State Farm argued that such a “step-down” provision should be read into the insurance policy. The Court, while acknowledging that the argument was compelling, rejected the step-down provision and determined that the policy liability limits applied.

State Farm’s step-down provision argument suggests a potential compromise in the ride-sharing context. Many well-intentioned drivers do not realize that their personal automobile policies will not cover an accident that occurs while driving for a ride-sharing company. While the ride-sharing exclusion may be subject to challenge on various grounds, it may be inequitable to require a personal automobile insurer to fully insure the risk of accidents occurring while insureds drive for ride-sharing companies, especially when a policy exclusion expressly forbids such conduct. When evaluating whether to validate or invalidate the ride-sharing exclusion, a potential compromise could be achieved by implying a step-down provision into the policy. Such provision in the ride-sharing context would reduce the coverage limits to the state minimum and spread the loss between both the insured and the insurer, rather than loading it entirely onto one party.

### Ride-Sharing Exclusion

A ride-sharing exclusion seeks to exclude from coverage any loss that occurs while the driver is logged into a ride-sharing application. This exclusion may apply to a policy's various coverage types. Thus, even if a driver has no passenger in the vehicle and has not engaged a prearranged ride, a personal automobile policy that includes a ride-sharing exclusion may not provide coverage while the driver is logged into the application. Importantly, the exclusion precludes coverage for both the driver and any passenger in the vehicle.

As explained above, Colorado statutes expressly authorize only three exclusions. They do not specifically authorize the ride-sharing exclusion. To be valid, it must fall within the catch-all authorization of CRS § 10-4-620(1) and comport with Colorado public policy. Any policy that seeks to "dilute, condition, or limit statutorily mandated coverage"<sup>61</sup> may violate public policy. Because the ride-sharing exclusion denies liability coverage<sup>62</sup> for the driver and passenger, it may dilute, condition, and limit statutorily mandated coverage. At the time of this article's publication, no Colorado appellate court had reviewed the relatively new ride-sharing exclusion's validity. Thus, the balancing tests the courts employed in *Bailey*, *Canal Insurance*, *St. Paul Fire*, and *State Farm* may provide guidance as to the factors a court may weigh during its public policy analysis.

Two main public policy factors emerge from the case law. The first is whether an existing statutory regime supports an exclusion, such as the employee exclusion and Workers' Compensation Act in *Canal Insurance*. The second factor is whether the insured's conduct "significantly alters the calculus of risk between the insurer and insured, subjecting the insurer to increased and significantly greater risk of liability."<sup>63</sup> The *Bailey* Court explained that intentional misconduct or criminal acts alter this risk calculus for the intentional and criminal act exclusions.

Applying the first factor to the ride-sharing exclusion, the TNCA might constitute a statutory regime supporting the ride-sharing exclusion. The TNCA provides specific liability coverage requirements when a driver is logged into a

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ride-sharing application. The ride-sharing exclusion likely prohibits coverage for any time the driver is logged into a ride-sharing application. The TNCA appears designed to dovetail liability coverage between the driver's personal insurance policy and the ride-sharing

company's insurance policy, and it may implicitly support the ride-sharing exclusion. On the other hand, the TNCA differs significantly from the Workers' Compensation Act in that the latter is an entirely independent statutory regime providing the exclusive remedy for employee compensation for workplace injuries. In contrast, the TNCA only sets requirements for ride-sharing businesses and minimum liability insurance limits, which may themselves create some uncertainties, as previously discussed. Importantly, the TNCA is silent as to first-party coverages and explicitly relies on the MVFRA to fill in other requirements. For these reasons, it is unclear whether the TNCA causes the ride-sharing exclusion to comport with state public policy.

Whether the insured's conduct significantly alters the insurance policy's risk calculus is a more complicated analysis. As explained above, the TNCA creates two time periods with different insurance requirements—the log-in period and the prearranged ride period—and these two time periods have different associated risks. For the log-in period, the simple act of accessing and logging into a ride-sharing application does not seem to significantly alter the risk calculus under a policy. Moreover, if a ride-sharing driver causes an accident during the log-in period, the accident victims may not have coverage for their injuries. However, a ride-sharing driver may elect to drive in busier areas during the log-in period to increase the likelihood of securing a prearranged ride, which may increase the risk of an accident. As applied to the log-in period, the second public policy factor may or may not support the ride-sharing exclusion.

The prearranged ride period differs factually from the log-in period. During the prearranged ride period, drivers transport passengers to earn profit, similar to a taxi service. Insurers likely do not underwrite personal automobile insurance policies to cover such commercial exposures. Differing from the log-in period, the prearranged ride period also may alter the risk calculus, providing some support for upholding the validity of ride-sharing exclusions. The factual differences between the log-in period and prearranged ride period complicate the public policy analysis of the ride-sharing exclusion.

Interestingly, *St. Paul Fire* determined that the business delivery exclusion violated public policy and that the insured's personal automobile policy covered the loss during the commercial act of delivering food. Delivering food for commercial purposes and driving for a ride-sharing company may be similar enough to cause a court in a ride-sharing coverage dispute to look to *St. Paul Fire* for guidance. Thus, even though the commercial aspect of ride-sharing significantly alters the risk under the policy, *St. Paul Fire* may weigh against the validity of ride-sharing exclusions.

The ride-sharing exclusion seeks to protect personal automobile insurers from the perceived increased risk of their insured's driving for the ride-sharing companies. However, if the ride-sharing exclusion is invalidated, personal automobile insurers may have to bear some or all of the risk of their insureds driving for ride-sharing companies. Insurers can be expected to argue that this outcome is unfair and would result in increased premiums for most Colorado drivers.

Another possibility is that the ride-sharing companies, such as Uber and Lyft, will be forced to cover all losses occurring when a driver logs

into the ride-sharing application. Ride-sharing companies may argue that this result is unfair because a driver could simply log into the application, never engage in a prearranged ride, and seek insurance coverage after a loss despite never providing a commercial benefit to the ride-sharing company.

While the TNCA provides an excellent foundation that seeks to balance these competing interests, the TNCA's liability requirements are complicated and confusing. In addition, many practical questions about the ride-sharing insurance endorsements exist. Does a driver need to purchase a special ride-sharing endorsement to maintain coverage? Will the endorsement cover only the log-in period? Will the endorsement provide minimum liability limits of \$25,000 or \$50,000? Will the endorsement offer first-party coverage? It is unknown if insurers will offer ride-sharing endorsements to all drivers who request them. If the endorsements are available to some drivers, are drivers aware of the endorsements, and are the endorsements affordable?

### Conclusion

The ride-sharing business has created new issues under Colorado's mandatory insurance

laws. The TNCA seeks to resolve these issues, but important questions remain. The TNCA creates some uncertainty as to what liability limits are required and fails to include guidance as to important first-party coverages. Given these uncertainties, many drivers and their passengers may find themselves uninsured if a loss occurs. The TNCA is silent regarding important first-party coverages that protect the driver and passengers, such as collision coverage and uninsured motorist coverage. Further, victims of a negligent ride-sharing driver may also find themselves without coverage for their injuries.

Ultimately, these issues will likely be addressed by a Colorado court or the Colorado legislature. As the prevalence of ride-sharing drivers increases, practitioners should stay on top of developments in this area. <sup>CL</sup>

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### NOTES

1. CRS §§ 40-10.1-601 et seq.
2. CRS § 40-10.1-602(3).
3. See definitions of "Personal vehicle," "Prearranged ride," and "driver" at CRS § 40-10.1-603(1), (2), and (4), respectively.
4. See [www.uber.com/driver-jobs](http://www.uber.com/driver-jobs) and [www.lyft.com/driving-jobs](http://www.lyft.com/driving-jobs).
5. See CRS § 40-10.1-605 for the operational requirements to drive for a transportation network company.
6. Compare CRS § 40-10.1-604 with § 10-4-620 and § 42-7-103(2).
7. CRS § 40-10.1-604.
8. CRS § 40-10.1-604(3).
9. CRS § 40-10.1-604(2).
10. CRS § 40-10.1-602(2).
11. CRS § 40-10.1-604(3)(b)(III)(C).
12. CRS §§ 40-10.1-604(3)(b)(III)(B) and -604(3)(d).
13. CRS § 40-10.1-604(2).
14. CRS § 40-10.1-604(3)(b)(II).
15. Compare CRS § 40-10.1-604(3)(b)(II) (requiring \$50,000 minimum limits per person) with CRS § 40-10.1-604(3)(b)(III)(B) (cross-

- referencing CRS §§ 42-7-101 et seq., specifically section 103(2), which mandates minimum liability limits of \$25,000 per person) and CRS § 40-10.1-604(4) (cross-referencing CRS §§ 10-4-601 et seq., specifically section 620, which also mandates minimum liability limits of \$25,000 per person).
16. CRS § 40-10.1-604(5).
  17. CRS § 42-7-102.
  18. CRS § 10-4-620 and § 42-7-103(2).
  19. Plitt et al., *Couch on Insurance*, vol. 7A, §108:1, 8-10 (3d ed. 2013).
  20. *Bailey v. Lincoln Gen. Ins. Co.*, 255 P.3d 1039, 1045 (Colo. 2011) (en banc).
  21. CRS § 10-4-623(1).
  22. CRS § 10-4-623(2).
  23. CRS § 10-4-418(2)(b).
  24. See *Bailey*, 255 P.3d at 1047. See also *GEICO v. Moore*, 427 Fed. Appx. 643, 646 (10th Cir. 2011).
  25. *Bailey*, 255 P.3d 1039 (Colo. 2011) (en banc).
  26. The *Bailey* Court noted that an excess-insurance policy "is not subject to the requirements of [Colorado's Motor Vehicle Financial Responsibility Law], which only apply

- to statutorily mandated coverage[.]" *Id.* at 1046.
27. *Id.* at 1045 (citations omitted).
  28. *Id.* at 1044. ("THE VEHICLE MAY NOT BE USED . . . IN THE COMMISSION OF A CRIME THAT COULD BE CHARGED AS A FELONY[.]").
  29. *Id.* at 1047.
  30. *Id.* at 1046.
  31. *Id.*
  32. *Id.*
  33. *Id.* at 1048.
  34. *Id.* at 1046.
  35. *Id.* at 1045.
  36. *GEICO*, 427 Fed. Appx. 643 (10th Cir. 2011).
  37. The Tenth Circuit "conclude[d] that enforcing the intentional acts exclusion in this case is not contrary to the [statutory] requirement . . . because Mr. Brown's actions in this case did not arise out of the use of a motor vehicle; therefore we need not consider the question of whether an intentional shooting may be deemed an 'accident' for the purpose of determining the extent of mandatory liability coverage under Colorado law." *Id.* at 646-47.



38. *Id.* at 650 (citations omitted).  
 39. *Canal Ins. Co. v. Nix*, 7 P.3d 1038 (Colo.App. 1999).  
 40. *Id.* at 1039.  
 41. *Id.* at 1040.  
 42. CRS §§ 8-40-101 et seq.  
 43. *St. Paul Fire and Mar. Ins. v. Mid-Century Ins. Co.*, 18 P.3d 854 (Colo.App. 2001).  
 44. *Id.* at 855.  
 45. Repealed effective July 1, 2003 (previously located at CRS §§ 10-4-701 to -726).  
 46. *St. Paul Fire*, 18 P.3d at 855.  
 47. *Id.* at 855 to 856 (citations omitted).  
 48. *Id.* at 856 (citation omitted).  
 49. *Meyer v. State Farm Mut. Ins. Co.*, 689 P.2d 585 (Colo. 1984) (en banc). The other two cases were *Farmers Ins. Exchange v. Aguirre*, No. 82SA474, and *Adcock v. State Farm Mut. Auto. Ins. Co.*, No. 82SA98.  
 50. *Meyer*, 689 P.2d at 587.  
 51. *Id.* at 591.  
 52. *Id.* at 590.  
 53. CRS § 10-4-418(2)(b).

54. *Schlessinger v. Schlessinger*, 796 P.2d 1385 (Colo. 1990) (en banc).  
 55. *Id.* at 1389 (“In our view, the General Assembly’s enactment of section 10-4-418(2)(b) is a clear signal that this court’s interpretation of the legislative declaration of purpose in the Auto Repairs Act did not correspond to the purpose actually intended by the General Assembly . . . the public policy underlying the Auto Accident Repairs Act was not intended to abrogate the household exclusion clause in automobile liability policies[.]”).  
 56. See *Allstate Ins. Co. v. Feghali*, 814 P.2d 863 (Colo.1991) (en banc) (applying rational basis test, household exclusion statute upheld against equal protection challenges under Colorado and U.S. Constitutions), and *Mayo v. Nat’l Farmers Union Prop. and Cas. Co.*, 833 P.2d 54 (Colo.1992) (en banc) (finding fundamental right to travel not contravened, household exclusion again upheld against equal protection challenges under Colorado and U.S. Constitutions). See also *Coffman v. State Farm Mut. Auto. Ins. Co.*, 884 P.2d 275 (Colo. 1994) (en banc) (discussion of prospective application of statute).

57. See *Meyer*, 689 P.2d at 590.  
 58. *Id.* at 585.  
 59. *Id.* at 588.  
 60. *Id.* at 592 (citations omitted).  
 61. *Bailey*, 255 P.3d at 1045.  
 62. Depending on the particular language in the personal automobile insurance policy, the ride-sharing exclusion also likely precludes the driver and his or her passengers from all first-party coverages, which includes collision, comprehensive, medical payments, uninsured motorist, and underinsured motorist coverage.  
 63. See *Bailey*, 255 P.3d at 1047.



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