



## Legal Issues Pertaining to Transportation Network Companies and Autonomous Vehicles - Episode # 125

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**Hosted by:** John Czuba, Managing Editor

**Guest Attorneys:** Drew Broaddus and Nathan Edmonds of [Secrest Wardle](#)

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**John Czuba:** Welcome to *The Insurance Law Podcast*, the broadcast about timely and important legal issues affecting the insurance industry. I'm John Czuba, Managing Editor of *Best's Recommended Insurance Attorneys*.

We're pleased to have with us today attorneys Drew Broaddus and Nathan Edmonds from the [Secrest Wardle](#) law firm with offices in Troy, Lansing, and Grand Rapids, Michigan.

Nathan Edmonds is a senior partner, and has been in practice for over 20 years specializing in defense litigation. He's experienced in defending all aspects of motor vehicle litigation, including first-party, third-party, uninsured, and underinsured motorist litigation.

He also works closely with fraud investigators to obtain the best possible results for his clients. Additionally, he has also authored several articles for the firm's automobile negligence publication.

He most recently authored a *No-Fault Newsline* article that served as an informative update regarding the recent Michigan House and Senate approval of bills imposing no-fault and liability insurance regulations on ride-sharing services.

Drew Broaddus is a partner with the firm, and has obtained excellent results in a wide range of practice areas. He serves as chair of the firm's appellate and insurance coverage practice groups. He also is renowned for victories achieved in his practice of appellate law.

He also has done recent work on the topic of transportation network companies and autonomous vehicles, which is the focus of today's discussion.

First off, we're very pleased to have you both with us today.

**Nathan Edmonds:** Thank you, John.

**Drew Broaddus:** Thank you.

**John:** Nathan, today we'll start our questions off with you. Can you tell us briefly about the transportation litigation recently passed? Does this solve all of the problems for insurers?

**Nathan:** Initially, it would appear on first blush that it does. However, the law has not been interpreted yet, so I would tell you, yes it does, as it leveled the playing field between the transportation network companies to equal them with taxis.

That law was passed on December 21st, 2016, requiring the transportation network companies to carry \$1 million in third-party liability coverage, as well as having first-party no-fault coverage.

When they're not delivering passengers, they're required to have \$100,000 for third-party coverage, along with first-party no-fault coverages. There are also some other interesting aspects that appear to address the problems for insurers.

**John:** Nathan, if an insured does not disclose the use of a vehicle for transporting passengers for hire, what can be done?

**Nathan:** The current legislation that passed, it's going to fall into the Michigan No Fault Act, section 500.3017. When that happens, someone doesn't have it, they have the option now to exclude all coverages.

That is that the transportation company, if they do not have those types of coverages, and the insurance company has a clause in their policy, they are able to exclude all coverages including first-party and third-party coverages.

However, the insurer must have the clause in their insurance policy then, to be able to exclude their coverage. Carriers will need to update their policies and have them approved to include that exclusionary language.

If you don't have that exclusionary language, there is still the fallback position of having policies rescinded, which is currently an option under Michigan law.

That is subject to potential change, as that case is up in front of the Michigan Supreme Court, but for the time being, if you don't have a clause, the next option is to rescind.

**John:** What are some suggestions to investigate a claim for an insurer dealing with a vehicle for hire being involved in a claim?

**Nathan:** It can be tricky. The first aspect that I would tell an insurer is to ask for the records of the transportation network company, whether it be Uber, Lyft. Get everything that you can from them.

If they're not willing to provide it, then obviously you go to your insured, ask for their records, ask for the tax returns of your insured/driver. See if they have been driving for them.

Look down into their Facebook and other source of media aspects to see if they are advertising for the use of their vehicle as a transportation network vehicle.

I would also tell the insurer to obtain statements of anyone involved in the accident, as well as people who come to the scene after, whether they're witnesses, police, fire, rescue. Take as many statements as possible because they will say, "This person told you that they were driving. The driver or a passenger said the driver ran the light."

When you have those types of statements, those can always help later on. If you can't get a recorded statement, and no one wants to speak with you, then possibly consider using your examination under oath clause in your insurance policies to pin down your testimony so that someone will not be able to change their testimony after they get representation.

Consider also looking at video surveillance of local businesses to see if they have any footage of the accident, because if you see someone getting out of the back of the car, clearly that will help you in your defense that it was being used as a transportation network company.

Those would be my initial thoughts to help you pin down those claims and avoid the potential liabilities and pitfalls that happen. The earlier action is always the best course of action.

**John:** Thank you, Nathan. Drew, turning some questions over to you now. What happens if a passenger is hurt, and an Uber or Lyft driver failed to buy the commercial insurance required by the new act?

**Drew:** Assuming we're dealing with the a PIP claim, first-party claim under the No Fault Act, we would also assume that in most cases, the individuals are going to have their own insurance, and the driver likely has his own insurance as well under a non-commercial policy in this scenario.

What often happens is that this leads into a primary function inquiry, where the challenge becomes whether MCL 500.3114 sub-part (2) or 3114 sub-part (1) controls. That's the insurer of the motor vehicle versus the insurer of the injured person.

What this calls for is an inquiry as to whether the vehicle was being used as a taxi or not. We get into questions about how much was this individual driving for Uber or Lyft, were they using the vehicle for other things?

That, again, assumes a situation where they both have their own insurance, and just not the commercial insurance. If, for example, the driver has no insurance, it would fall back to the individual who is injured, their own policy.

If neither one has insurance, it could be what's called an assigned claim situation, where the claim could fall over to our assigned claims system and randomly get assigned a no-fault carrier since it is still a no-fault claim.

Liability could also be an issue here. That could fall back on the driver's insurer, and then you could be dealing with exclusions and rescissions as Nate alluded to earlier.

**John:** Drew, could a business exclusion be invoked in defense of a PIP claim if it's learned that an insured is driving for Uber or Lyft under a non-commercial policy?

**Drew:** Apart from the specific language that Nate mentioned earlier, it's unlikely because the general rule is that exclusions really don't carry a lot of weight in the first-party context, in the PIP context. There are mandatory coverages, and they cannot be excluded by policy language.

In certain situations, this could be helpful for a liability claim. In other words, the carrier could utilize this exclusion to deny providing a defense to its own insured. But in the PIP situation, unless the new legislation has been followed specifically, it would probably not help.

**John:** Will the new TNC statute have an impact on claims that are currently pending?

**Drew:** Unlikely. The statute takes effect on March 21st, 2017. The general rule in Michigan is that statutes only apply prospectively unless the legislature expressly or impliedly indicates an intent to give it retroactive effect.

I've been through this new act. I didn't see any indication by the legislature that it would apply retroactively, so I think the default rule would control.

**John:** How soon can we expect to see autonomous vehicles on the road in Michigan?

**Drew:** Sooner than you might think. We just had a new law enacted on the 9th of December of 2016 which allows them to operate in extremely limited situations on roadways for the first time.

It replaced an earlier law, MCL 257.663, which had limited autonomous vehicles to test sites, closed tracks for research and development.

The focus of the new act that just passed in December is still on research and development, so you're not going to be picked up by an autonomous taxi any time soon. But you may see these vehicles on the roadway.

Again, very limited use subject to specific permits still for R&D, but it's a big step in that we could actually see them on the roadway next to you, where previously it was illegal under the old act.

There will be something called automated platoons which are talked about in the new act. Those are specifically allowed now; basically a group of autonomous vehicles. All this needs to be subject to a permit in advance. The companies can't just send them out there going around.

Interesting times with respect to the autonomous vehicles in Michigan.

**John:** How does Michigan compare to other states? I know I've read things like California seems to be pretty far along. Is Michigan lagging behind some of these states?

**Drew:** I think there might have been some perception that Michigan needed to catch up. That was some of the impetus behind the new act, but I think some of this has not been reported accurately in terms of how often autonomous vehicles are actually being used.

For example, the state of California recently shut down an Uber program, but those vehicles turned out actually weren't truly autonomous. When you look closer, they needed an engineer and a safety driver in the vehicle that could take control whenever necessary in order to operate on the roads. There were some misconceptions around that.

Also, when you look closer at these stories, it turns out that they are often being used in an extremely limited geographical area and subject to very specific permits, similar to what our new act would allow.

For example, in Pittsburgh, there was a pilot program that got a lot of attention, but the more I read about that, I learned it only had four vehicles in the entire city of Pittsburgh and again, there was an Uber driver, an engineer sitting in front of the car. They're not quite as ubiquitous as some of the media might imply at this point.

**John:** Nathan, which states are watching closely? Any final comments for us today?

**Nathan:** The TNC network appear to now be 43 states with regulations. Michigan, being a no-fault state, appears that many states are going to watch how our wonderful law is interpreted.



That is going to be the biggest development that has occurred, as we've had no-fault since 1973 here in Michigan and it always is subject to interpretation. That seems to be the funniest thing that happens in the field of law.

Even though I can tell you what the legislation appears to say, it's always subject to a wonderful interpretation by whatever judge or the court of appeals, or Michigan Supreme Court, as it will work its way through.

The best aspect that I can tell you for any individual or for the insurance company is that for an insured, you need to be honest and be forthright. If you do that, you have no problems. It's when you're falling to the problems of the non-disclosure that the issues crop up.

If anyone has any questions regarding what to do, whether their policy covers it, or how to move forward, feel free to contact us. We'll be glad to talk to you and help you out.

**John:** Nathan and Drew, thanks so much for joining us today.

**Nathan:** Thank you.

**Drew:** Thanks again.

**John:** That was attorneys Drew Broaddus and Nathan Edmonds from [Secrest Wardle](#) law firm, with offices in Troy, Lansing, and Grand Rapids, Michigan.

Special thanks to today's producer Frank Vowinkel. Thank you all for joining us for *The Insurance Law Podcast*. To subscribe to this audio program, go to iTunes or our web page, [www.ambest.com/claimsresource](http://www.ambest.com/claimsresource).

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I'm John Czuba, and now this message.

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