

CBA Cincinnati Bar Association Report

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Technology Update: Ride-Sharing Endorsement, Drone Case Law, and Airbnb for Your Boat!



By Andrew L. Smith

It is safe to say technology is taking the insurance world by storm. Bitcoin, Uber, Airbnb, and Tesla — these are just a few common-place names the world now knows. This article will address several recent updates for ride-sharing, drones, and another new venture to rent boats, similar to Airbnb, started in Cincinnati, Ohio.

ISO Ride-Sharing Endorsement

An interesting question regarding Uber and Lyft claims is whether the driver's personal auto policy provides coverage during "period one." This is the timeframe the driver is logged into the app and driving around looking to obtain business. There are no passengers in the vehicle. The driver has not been contacted and has not accepted a ride request.

Ride-share drivers are paid commission based on fares — they are not paid an hourly wage. This raises the question of whether a claim occurring during period one can be excluded under the commercial activity, for hire, or livery services exclusion contained in any standard personal auto policy since the driver is not yet earning income during this timeframe. Insurers are split on this coverage issue.

The Insurance Services Office Inc. (ISO) has released a Public or Livery Conveyance Exclusion Endorsement for personal auto policies. (Form PP 23 40 10 15). The endorsement applies to any period of time an insured is logged into a "transportation network platform" as a driver, whether or not a passenger is occupying the

vehicle. Transportation network platform is defined as "an online-enabled application or digital network used to connect passengers with drivers using vehicles for the purpose of providing prearranged transportation services for compensation."

Thus, the endorsement excludes coverage for any ride-sharing claim during any of the three periods. The endorsement excludes liability, med pay, and first-party damage coverages. Because uninsured motorist (UM) and underinsured motorist (UIM) coverages are statutory and provided by state-specific endorsements, ISO is filing a similar change, to the extent permitted by law, to each state's UM/UIM endorsements.

New Drone Cases

In May 2017 the D.C. Circuit Court of Appeals in *Taylor v. Huerta*, 856 F.3d 1089 (D.C.Cir. 2017), struck down an FAA rule requiring recreational drone users to register their model aircraft with the federal government. Section 336 of the Federal Aviation Administration (FAA) Modernization and Reform Act of 2012 provides the FAA "may not promulgate any rule or regulation regarding a model aircraft." Accordingly, the court held the FAA could not require a recreational drone user or hobbyist such as Taylor to register his drone with the FAA.

This is the first published case across the country addressing Part 107 of the Federal Aviation Regulations for Small Unmanned Aircraft implemented in August 2016. How this court decision impacts the remainder of the Part 107 and other FAA rules and

regulations for drones remains to be seen.

Then, in *Singer v. City of Newton*, D.Mass. No. 17-10071-WGY, 2017 U.S. Dist. LEXIS 153844 (Sep. 21, 2017), a federal court for the first time struck down multiple parts of a local drone ordinance as preempted by federal law.

Subsection (c)(1)(b) stated no pilotless aircraft may be operated “at a distance beyond the visual line of sight of the Operator.” The Ordinance neither defines the term “Operator,” nor sets an altitude limit.

Subsection (c)(1)(a) prohibited pilotless aircraft flight below an altitude of 400 feet over any private property without the express permission of the property owner.

Subsection (c)(1)(e) prohibited pilotless aircraft flight over public property without prior permission from Newton.

WavStay

WavStay is a new service connecting boat owners and renters. Yet another extension of the rapidly-expanding “sharing economy,” WavStay is similar to Airbnb and Uber. Cincinnati natives, Denise Harris and Bob Thompson, launched the website-based business in May 2017 in Cincinnati, Ohio.

WavStay allows users to view, compare, and book boats, yachts, charters, and waterfront properties through its website. The company is operating in Cincinnati, Ohio, Lake Cumberland, Tennessee, Charlestown, South Carolina, and throughout Florida. WavStay plans to soon launch a mobile app. According to Harris, “You can go and host or be a guest on someone’s yacht for a night, or a weekend, or a week, or a month, anywhere in the United States. And, by the end of the summer, we hope to be global.”

Regarding insurance, the WavStay website states:

WavStay has a comprehensive insurance policy that is included with your rental agreement. The policy covers (you) the renter, the boat owner and the captain. The boats that list with us are professionally operated and carry their own insurance policy as well. However, some charter vessels listed on the WavStay site do require the charterer to purchase insurance at a nominal daily rate for the length of their stay.

It appears WavStay offers host insurance similar to the policy offered through Airbnb. The scope of coverages is not publicly available so it is still unknown exactly what is covered and what policy limits WavStay provides, in addition to any other insurance on behalf of the boat owner.

These are just a few examples of the modern complications we face in the insurance industry. Whether you are defending litigation or investigating a new claim, it is important to stay abreast of these developments as technology is now impacting our industry more than ever before.

Smith is a partner in the Cincinnati office of Smith, Rolfes & Skavdahl Company LPA who concentrates his practice in the areas of construction law, insurance defense, and bad faith litigation defense. He is the creator of the AGC of Ohio construction law blog, Between the Law and a Hard Hart, and the co-host of BearcatsSportsRadio.com.

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