



STATE OF OREGON
LEGISLATIVE COUNSEL COMMITTEE

May 30, 2019

Representative Susan McLain
900 Court Street NE H477
Salem OR 97301

Re: Insurance coverage under statute and under A-engrossed House Bill 3023

Dear Representative McLain:

You asked whether the provisions related to insurance coverage in the A-engrossed version of House Bill 3023 (HB 3023-A), combined with existing requirements for automobile insurance coverage in statute, provide that a transportation network company must provide coverage at the point where an individual participating driver's coverage ends. Our answer is yes.

Section 8 of HB 3023-A provides that a transportation network company or a participating driver, or both, must obtain and keep in force a primary automobile insurance policy that recognizes that the participating driver is providing prearranged rides for the transportation network company. This provision recognizes that ordinary automobile insurance policies will not cover drivers who provide rides for hire and that insurance companies can deny or exclude such coverage as provided in section 9 of the bill. Section 8 of the bill also specifies what types and amount of coverage the primary automobile insurance policy must provide and when the coverage is effective. Crucially, subsection (4) states that "[i]f a participating driver's primary automobile insurance policy has lapsed or does not provide the coverage required under this section, the transportation network company with which the participating driver is associated shall provide the required coverage beginning with the first dollar of any claim."

As you noted, ORS 742.468 specifies that "[f]or purposes of statutes mandating kinds or amounts of coverage that motor vehicle liability policies must contain, [comprehensive general liability policies, excess liability policies and umbrella liability policies] shall not be considered motor vehicle liability policies[.]" The primary purpose of this statute is to exclude certain types of insurance policies from meeting the requirements set forth for motor vehicle liability policies, including coverage limits required under ORS chapter 806, the specific contents of motor vehicle liability policies set forth in ORS 742.450, exclusions permitted under ORS 742.454 and other requirements or permissions generally set forth in ORS 742.450 to 742.464. The types of policies identified in ORS 742.468 would need to meet requirements set forth elsewhere in the Insurance Code.

Although the purpose of ORS 742.468 is to exclude certain types of policies from the requirements imposed on motor vehicle liability policies, a possibly unintended effect of the exclusion might be that certain types of insurance policies that have the features of comprehensive general liability policies, excess liability policies or umbrella liability policies are

not motor vehicle liability insurance and therefore do not need to meet the statutory requirements for motor vehicle liability insurance. The crux of your question, therefore, is whether section 8's mandate of coverage and the fact that subsection (4) states that a transportation network company must provide coverage if the participating driver's automobile insurance policy lapses or does not provide the required coverage means that the primary automobile insurance policy that section 8 requires is not, in fact, a motor vehicle liability policy for the purposes of the Insurance Code and therefore does not need to meet the requirements for motor vehicle liability insurance.

We think not. Although the Insurance Code does not define "comprehensive general liability policy," "excess liability policy" or "umbrella liability policy,"¹ two of these terms in general insurance industry usage refer to policies in which coverage begins at the point at which payments from an insured's primary insurance exhaust the limits of coverage under the primary insurance policy.² The third term, comprehensive general liability policy, refers to "coverage against all liability exposures of a business unless specifically excluded. Coverage includes products, completed operations, premises and operations, elevators, and independent contractors. . . . Independent contractors coverage insures for bodily injury incurred as the result of negligent acts and omissions of an independent contractor employed by the insured."³

The coverage mandate in section 8 of HB 3023-A clearly focuses on liabilities that result from the operation of a motor vehicle and does not require coverage for other types of liabilities for which a comprehensive general liability policy would provide coverage. The type of coverage that section 8 mandates, therefore, is not comprehensive general liability coverage. Transportation network companies or participating drivers are therefore unlikely to obtain and pay for such coverage and insurers are unlikely to offer such coverage to them.

Section 8 of HB 3023-A also mandates that, if a participating driver's primary automobile insurance policy lapses or does not provide the required coverage, the transportation network company "shall provide the required coverage *beginning with the first dollar of any claim.*" (Emphasis added.) Because coverage under excess and umbrella policies begins when the primary insurance has been exhausted, the requirement that the transportation network company's insurance provide coverage from the first dollar indicates that the kind of coverage section 8 mandates is not the kind of coverage that would be available under an excess liability policy or umbrella liability policy.⁴ First-dollar coverage essentially requires that the transportation network company provide primary coverage for any losses, after which any

¹ ORS 465.475, a statute that governs insurance for claims for environmental cleanup, does include a definition of "general liability insurance policy," which means "any contract of insurance that provides coverage for the obligations at law or in equity of an insured for bodily injury, property damage or personal injury to others." The definition includes a comprehensive general liability policy, an excess liability policy and an umbrella liability insurance policy, among others, but does not further define any of these terms.

² "Excess insurance" is a "layer of property, liability or health coverage above or in excess of the primary amount or layer of insurance. For example, the primary coverage is \$100,000 and the excess insurance is \$1 million. After the losses exceed \$100,000, the excess insurance will pay for the losses up to a total of \$1 million." Harvey Rubin, *Dictionary of Insurance Terms* (5th ed., 2008). Similarly, "umbrella liability insurance" is "excess liability coverage above the limits of a basic business liability insurance policy such as the owners, landlords and tenants liability policy. For example, if a basic policy has a limit of \$500,000, and it is exhausted by claims, the umbrella will pay the excess above \$500,000 up to the limit of the umbrella policy, which may be as high as \$10,000,000, \$25,000,000 or more. The umbrella policy also fills gaps in coverage under basic liability policies." *Dictionary of Insurance Terms*.

³ *Dictionary of Insurance Terms*.

⁴ Again, the Insurance Code does not define what "first-dollar" coverage means, but in standard insurance industry usage, it refers to an "insurance policy under which payment is made for a loss not subject to any deductible or under which payment is made up to the limits of the policy, and then an excess insurance policy [or umbrella insurance policy] takes effect. *Dictionary of Insurance Terms*.

available excess or umbrella liability coverage would kick in. The type of policy that section 8 mandates, therefore, is not an excess liability policy or umbrella liability policy.

Given the focus in section 8 of HB 3023-A on coverage during a participating driver's operation of a motor vehicle or during periods in which a participating driver is available to provide prearranged rides, and given further that the type of coverage section 8 mandates is clearly distinguishable from comprehensive general liability insurance, excess liability insurance and umbrella liability insurance, we think that the automobile insurance policies described in section 8 must meet the requirements set forth for motor vehicle liability policies in ORS 742.450 to 742.464 and other applicable statutes.

One further issue might bear on your question. ORS 742.464 permits policies that provide motor vehicle liability coverage also to grant "any lawful coverage in excess of or in addition to the required coverage" and states that the *excess or additional coverage* is not subject to the requirements set forth for the primary motor vehicle liability insurance.⁵ Such policies are, however, subject to the coverage limits set forth in ORS 806.080 and 806.270.⁶ Therefore, to the extent that the policy that a transportation network company holds provides coverage for any "gaps" in a participating driver's primary automobile insurance policy coverage, the gap-filling provisions of the transportation network company's policy are not subject to the requirements imposed on primary motor vehicle liability policies, except for the requirements imposed by the Vehicle Code's minimum financial responsibility provisions. The effect of this exclusion, however, is likely minimal because of the requirement that the transportation network company provide first-dollar coverage under its policy.

We conclude, therefore, on a plain language reading of the provisions of section 8 of HB 3023-A and an interpretation of the statutes that govern motor vehicle liability insurance policies, that a transportation network company must provide primary or first-dollar coverage if a participating driver's automobile insurance policy lapses or does not provide the required coverage. The transportation network company's primary coverage would constitute motor vehicle liability coverage under the Insurance Code and would be subject to all of the provisions of law that apply to motor vehicle liability coverage. To the extent that the transportation network company provides coverage under an excess or umbrella liability policy for the purposes of reinsurance or to fill gaps in the participating driver's coverage, the excess or umbrella liability policy would not be motor vehicle liability insurance and would not be subject to the requirements imposed on motor vehicle liability insurance, but the excess or umbrella liability policy must meet the requirements of the Vehicle Code's financial responsibility law.

⁵ The policy would also not be required to provide medical malpractice insurance under ORS 742.400 or include a statement providing that coverage is effective even if the insured is bankrupt, as required under ORS 742.031. This last provision might be of concern if, first, the participating driver is deemed to be an employee of the transportation network company and, second, the transportation network company goes bankrupt. In that case, because the policy does not require this statement, the transportation network company's insurer, in this scenario, might not be liable for claims under the transportation network company's *excess or umbrella* liability insurance policy. This would not, however, affect the insurer's liability under the transportation network company's primary insurance policy, which would remain subject to ORS 742.031 and would therefore have to include the required statement about continued liability in the event of the insured's bankruptcy.

⁶ ORS 806.080, together with ORS 806.060 and 806.070 and related statutes, are commonly known as the financial responsibility requirements for owning, operating, maintaining and using a motor vehicle. The minimum coverage limits for a motor vehicle liability insurance policy under ORS 806.070 is \$25,000 for bodily injury or death to one person in any accident, \$50,000 because of bodily injury or death to two or more persons in any one accident, and \$20,000 for injury to or destruction of property. ORS 806.270 specifies requirements for a certificate of insurance that evidences coverage under a motor vehicle liability policy.

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Very truly yours,

DEXTER A. JOHNSON
Legislative Counsel

A handwritten signature in black ink, appearing to read 'Sean Brennan', written in a cursive style.

By
Sean Brennan
Senior Deputy Legislative Counsel