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Uber Techs., Uber Tort? The Impact of Transportation Network Companies on Pennsylvania's Choice No-Fault Automobile Insurance System

Amber N. Morris*

ABSTRACT

The rise of Uber and other transportation network companies (“TNCs”) has created a puzzling question: At what point in time does a TNC driver’s personal vehicle become a commercial vehicle? This question is of the utmost importance when a party disputes liability after a motor vehicle accident in which one of the drivers was a TNC driver. Automobile insurance, however, fluctuates between states. In Pennsylvania, for example, drivers elect to be insured by either full tort or limited tort coverage, with full tort drivers exchanging higher premium rates for more comprehensive coverage. A commercial vehicle exception in Pennsylvania’s statute, however, upgrades a less-covered, limited tort driver to full tort status if the driver was a passenger of a vehicle “other than a private passenger vehicle.”

This Comment first explains automobile liability insurance in the United States, with a focus on Pennsylvania liability law. This Comment then proceeds to discuss the rise of TNCs and laws addressing TNCs in Pennsylvania. Next, this Comment analyzes the overlap of Pennsylvania TNC and liability laws to determine when a TNC driver’s personal vehicle becomes commercial and how this distinction affects the driver’s tort election status.

Ultimately, this Comment suggests that a TNC vehicle is commercial any time the TNC driver is logged into the digital network. Thus, a limited tort TNC driver should be upgraded to full tort status if an accident occurs any time the driver is logged onto the digital network. Finally, this Comment recommends that choice no-fault jurisdictions should amend

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their TNC insurance laws to explicitly address the issue of tort status and unambiguously confirm that a TNC vehicle is always commercial when the TNC driver is logged onto the digital network.

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I. INTRODUCTION

The automobile insurance scheme in the United States is divided into two systems: tort and no-fault.¹ Both systems vary across the United States, depending on the laws of each state.² This Comment will focus on Pennsylvania’s “choice” no-fault statute.³ Specifically, this Comment will discuss Pennsylvania’s commercial vehicle exception⁴ to the statute and how this exception should apply to transportation network companies

1. *See Background on: No-fault auto insurance*, NO-FAULT AUTO INS. (Nov. 6, 2018), <https://bit.ly/2SymFXz> [hereinafter *No-Fault Auto Insurance*]. Tort insurance systems generally allow an injured party to sue an “at-fault” party for both economic and non-economic damages. *See id.* Conversely, no-fault insurance systems allow an injured party to sue for non-economic damages only if the injured parties meet the state’s threshold limitation on lawsuit. *See id.*

2. *See id.*

3. *See infra* Section II.B. “Choice” no-fault insurance systems allow consumers to choose how they are insured—through either the typical tort system or the no-fault system. *See No-Fault Auto Insurance*, *supra* note 1.

4. Pennsylvania’s commercial vehicle exception reads: “An individual otherwise bound by the limited tort election shall retain full tort rights if injured while an occupant of a motor vehicle other than a private passenger motor vehicle.” 75 PA. STAT. AND CONS. STAT. ANN. § 1705(d)(3) (West 2019).

(“TNCs”)⁵ like Uber and Lyft.⁶ Further, this Comment will address whether the commercial vehicle exception should apply to Phase I⁷ of a transportation network ride.⁸

Unlike Pennsylvania, which is a no-fault state, parties injured in an automobile accident in a state that follows a tort system may sue an “at-fault” party⁹ to recover two types of damages: economic¹⁰ and non-economic.¹¹ Conversely, in a state employing a no-fault system, parties injured in an automobile accident may sue an at-fault party for non-economic damages only if the injured parties meet the state’s limitation on lawsuit.¹² Unless an exception applies, persons injured in a no-fault state may only sue an at-fault party for non-economic damages if the injured party meets the state’s statutory threshold.¹³ The statutory threshold can be either verbal or monetary.¹⁴

Thus far, 12 states have adopted no-fault systems,¹⁵ 3 of which have adopted choice no-fault systems.¹⁶ A choice no-fault system allows

5. A transportation network company is “a person or entity that obtains a license to operate a transportation network service . . . and uses a digital network to facilitate prearranged rides.” 53 PA. STAT. AND CONS. STAT. ANN. § 57A01 (West 2019).

6. See *infra* Section III.A.

7. Phase I of a transportation network ride refers to the time at which the transportation network driver is logged into the digital network but is neither driving a passenger to the destination nor on the way to pick up a passenger. See *Auto insurance to help protect you*, UBER, <https://www.uber.com/drive/insurance/> (last visited Jan. 27, 2020) [hereinafter *Uber Insurance Policy*]; see also *Insurance*, LYFT, <https://lft.to/2oNtqnj> (last visited Jan. 27, 2020) [hereinafter *Lyft Insurance Policy*]. During Phase I, the driver is waiting to receive a notification that someone on the digital transportation network is requesting a ride. See *Uber Insurance Policy*, *supra*; see also *Lyft Insurance Policy*, *supra*.

8. See *infra* Section III.A.

9. An “at-fault” party is the party that is legally liable for the automobile accident and resulting injuries. See *No-Fault Auto Insurance*, *supra* note 1.

10. Economic damages, or actual damages, are those damages that carry provable monetary value, such as medical expenses, lost wages, and property damage. See *Ending the Confusion: Economic, Non-Economic, and Punitive Damages*, AM. C. SURGEONS, <https://bit.ly/2n39Uqm> (last visited Nov. 4, 2019).

11. See *No-Fault Auto Insurance*, *supra* note 1. Non-economic, or general damages, are those damages that stem from subjective, non-monetary losses, such as loss from pain and suffering, emotional distress, and loss of consortium. See AM. C. SURGEONS, *supra* note 10.

12. See *No-Fault Auto Insurance*, *supra* note 1. A limitation on lawsuit is a verbal or monetary threshold that must be met before an injured party may bring a lawsuit against a third party. See *generally id.* (discussing the variations on the no-fault automobile insurance approach). Limitations on lawsuits are discussed further in Section II.A.2. of this Comment.

13. See *id.*

14. See *id.*

15. The states that have adopted no-fault systems are Florida, Hawaii, Kansas, Kentucky, Massachusetts, Michigan, Minnesota, New Jersey, New York, North Dakota, Pennsylvania, and Utah. See *id.*

16. Of the states that have adopted no-fault statutes, the states that have adopted a choice no-fault system are Kentucky, New Jersey, and Pennsylvania. See *id.*; see also KY.

individuals to elect their tort status, i.e., whether to be treated as an insured in a tort system or as an insured in a no-fault system.¹⁷ Insureds that elect the tort system may sue an at-fault party for both economic and non-economic damages without proving that the insured suffered serious injuries.¹⁸ Conversely, insureds electing the no-fault system may sue an at-fault party for economic damages only if the insureds prove they suffered serious injuries.¹⁹ Because they elect for less coverage, insureds choosing the no-fault system typically pay less in premiums for less coverage under their insurance policy.²⁰

State legislatures implemented choice no-fault insurance systems in an effort to decrease premiums and personal injury litigation.²¹ Personal injury litigation in traditional tort systems was typically drawn-out and often failed to adequately compensate the injured party.²² As with many complex legal systems, issues arose that created questions for both the legislature and the judiciary.²³ For example, the legislatures in choice no-fault states carved out exceptions to the general rule if the general rule would be prejudicial or unfair.²⁴ One such exception to the general rule applies when an occupant of a vehicle “other than a private passenger motor vehicle”—a commercial vehicle—is injured.²⁵

This Comment will focus on Title 75, Section 1705(d)(3) of the Pennsylvania Consolidated Statutes, otherwise known as the commercial vehicle exception.²⁶ In Pennsylvania, there is currently an unresolved question as to whether TNC vehicles are considered private passenger motor vehicles under Title 75, Section 1705(d)(3) of the Pennsylvania Consolidated Statutes.²⁷ A TNC is a company that hires drivers as

REV. STAT. ANN. § 304.39-060 (West 2019); N.J. STAT. ANN. § 39:5H-10 (West 2019); 75 PA. STAT. AND CONS. STAT. ANN. § 1705 (West 2019).

17. See *No-Fault Auto Insurance*, *supra* note 1.

18. See 5 JEFFREY O’CONNELL & SAMUEL H. MCCOY, *LAW OF LIABILITY INSURANCE* § 48.01, [2] (Matthew Bender & Co. ed. 2018). Pennsylvania law defines a “serious injury” as an injury that resulted in “death, serious impairment of bodily function or permanent disfigurement.” 75 PA. STAT. AND CONS. STAT. ANN. § 1702 (West 2019).

19. See O’CONNELL & MCCOY, *supra* note 18.

20. See *No-Fault Auto Insurance*, *supra* note 1.

21. See 7 AM. JUR. 2D *Automobile Insurance* § 30 (2019); see also *Rump v. Aetna Cas. & Sur. Co.*, 710 A.2d 1093, 1096 (Pa. 1998); *Walton v. Lumbermens Mut. Cas. Co.*, 666 N.E.2d 1046, 1049 (N.Y. 1996).

22. See *Automobile Insurance*, *supra* note 21.

23. See generally *No-Fault Auto Insurance*, *supra* note 1 (discussing the effectiveness of no-fault insurance regimes and the prevalence of fraudulent claims and fraud rings in those states).

24. See, e.g., 75 PA. STAT. AND CONS. STAT. ANN. § 1705(d)(1)–(3) (West 2019).

25. § 1705(d)(3).

26. See *infra* Section III.A.

27. See Daniel E. Cummins, *Quandary on Whether Limited Tort or Full Tort Applies to Uber Drivers*, LEGAL INTELLIGENCER (June 27, 2019, 11:42 AM), <https://bit.ly/2EiRp5Y> (“One such issue is whether an Uber or Lyft driver who has elected the limited tort option

independent contractors²⁸ to provide pre-arranged car rides to customers of the TNC through digital, application-based software.²⁹ In providing these pre-arranged car rides, TNCs hire drivers to use the drivers' personal vehicles as the means of transporting customers.³⁰

This Comment addresses whether TNC drivers' private vehicles are considered "private passenger motor vehicles" under Pennsylvania's commercial vehicle exception.³¹ First, this Comment details the tort and no-fault systems in the United States.³² Then, this Comment specifically addresses Pennsylvania liability law regarding choice no-fault automobile insurance.³³ This Comment discusses the rise of TNC laws throughout the United States and in Pennsylvania, as well as TNC insurance requirements under Pennsylvania law.³⁴ Next, this Comment analyzes the question of when a TNC vehicle is a commercial vehicle under Pennsylvania choice no-fault automobile insurance laws.³⁵ This Comment argues that a TNC driver's personal vehicle is commercial any time the driver is logged into the TNC's digital network.³⁶ Thus, Pennsylvania's commercial vehicle exception should apply to TNC drivers, and these drivers should be considered full tort insureds when they are logged into the TNC's digital network.³⁷ Finally, this Comment recommends that legislators in Pennsylvania and other choice no-fault jurisdictions amend their state's statutory language regarding TNC automobile insurance.³⁸ Statutory amendments regarding TNCs must provide clear and unambiguous language that explicitly applies the commercial vehicle exception to TNC drivers.³⁹ Failure to amend TNC statutes could lead to unjust compensation and an increase in litigation, which would frustrate the purpose of no-fault automobile insurance.⁴⁰

under his own personal automobile insurance policy will be deemed to be a full tort plaintiff if he is involved in an accident while driving as an Uber or Lyft driver.”).

28. See Daniel Wiessner, *Uber drivers are contractors, not employees, U.S. labor agency says*, REUTERS (May 14, 2019, 1:04 PM), <https://reut.rs/38HJD3R>; see also Lawrenz Fares, *Federal court holds that Uber drivers are independent contractors*, JURIST (Apr. 12, 2018, 8:36 PM), <https://bit.ly/38EiBKw> (reporting that the United States District Court for the Eastern District of Pennsylvania found that Uber drivers are independent contractors).

29. See 53 PA. STAT. AND CONS. STAT. ANN. § 57A01 (West 2019).

30. See *id.*

31. See *infra* Section III.A.

32. See *infra* Section II.A.

33. See *infra* Section II.B.

34. See *infra* Section II.C.

35. See *infra* Section III.A.

36. See *infra* Section III.A.

37. See *infra* Section III.A.

38. See *infra* Section III.B.

39. See *infra* Section III.B.

40. See *infra* Section III.B.

II. BACKGROUND

The effect of Pennsylvania's commercial vehicle exception on TNCs encompasses two overlapping areas of law: automobile insurance and TNC regulation.⁴¹ Automobile insurance and TNC regulation are further complicated by the distinction between Phase I and Phase II⁴² of a transportation network ride.⁴³ Given the complex nature of these areas of law, this Comment will first introduce automobile insurance systems in the United States and insurance regulations regarding TNCs.⁴⁴

A. *Automobile Insurance Systems in the United States*

Every state in the United States employs automobile insurance statutes differently.⁴⁵ The automobile insurance system in the United States is broken into tort systems and no-fault systems.⁴⁶ The no-fault system can be further broken down into add-on states and choice no-fault states.⁴⁷

1. Tort Systems

Historically, most states employed the traditional tort liability system of automobile insurance.⁴⁸ Although some states changed their laws to reflect no-fault language, most states continue to operate as tort systems.⁴⁹ In states employing tort systems, insured individuals who are injured in an automobile accident may sue an at-fault party for both economic and non-economic damages without first proving they suffered serious injuries.⁵⁰ Economic damages, or actual damages, are those damages that carry provable monetary value, such as medical expenses, lost wages, and property damage.⁵¹ Non-economic, or general damages, are those damages that stem from subjective, non-monetary losses.⁵² Examples include loss

41. See 53 PA. STAT. AND CONS. STAT. ANN. § 57A01 (West 2019).

42. Phase II of a transportation network ride refers to the time in which the transportation network driver accepts a ride request and is driving to pick up a passenger. See *Uber Insurance Policy*, *supra* note 7. Phase II lasts until the passenger reaches the final destination. See *id.*

43. See *infra* Section II.C.2.

44. See *infra* Section II.A–C.

45. See generally *No-Fault Auto Insurance*, *supra* note 1 (discussing the different automobile insurance systems in the United States).

46. See *id.*

47. See *id.*

48. See *id.*

49. See *id.*

50. See O'CONNELL & MCCOY, *supra* note 18. Although tort systems allow insureds to sue third-party drivers, various state laws and judicial doctrines, such as contributory and comparative negligence, may limit the amount of damages an insured may recover. See *id.*

51. See AM. C. SURGEONS, *supra* note 10.

52. See *id.*

from pain and suffering, emotional distress, and loss of consortium.⁵³ In states that implement tort systems, the injured party must prove that an at-fault party was at least negligent in causing the accident before the injured party may recover damages.⁵⁴

2. No-Fault Systems

Although many states continue to use a tort system of automobile insurance, state legislatures began a movement toward the no-fault system in the 1960s.⁵⁵ Since the birth of this movement, 12 states have adopted a no-fault system.⁵⁶ No-fault automobile insurance utilizes first-party benefits⁵⁷ as the main source of recovery for an injured insured.⁵⁸ States employing a no-fault insurance system require a minimum amount of personal injury protection (“PIP”) that an insured must purchase to cover first-party benefits.⁵⁹ Additionally, states employing a no-fault system cite different thresholds that a first-party insured must meet before bringing a tort action against a third party.⁶⁰ These thresholds can be either verbal or monetary.⁶¹

Verbal thresholds are thresholds that require prerequisite circumstances to occur before bringing suit against a third party.⁶² For example, Pennsylvania prohibits insureds with no-fault insurance to recover for non-economic damages unless they prove that they suffered a “serious injury.”⁶³ A “serious injury” is an injury that resulted in “death, serious impairment of bodily function or permanent disfigurement.”⁶⁴ On the other hand, monetary thresholds are restrictions on lawsuits based on the number of medical bills an injured party accrues.⁶⁵ For example,

53. *See id.*

54. *See* O’CONNELL & MCCOY, *supra* note 18.

55. *See No-Fault Auto Insurance, supra* note 1.

56. The states that have adopted no-fault systems are Florida, Hawaii, Kansas, Kentucky, Massachusetts, Michigan, Minnesota, New Jersey, New York, North Dakota, Pennsylvania, and Utah. *See id.*

57. First-party benefits, often referred to as personal injury protection (“PIP”), are payments made by the insured’s own insurance company, regardless of fault in the accident. *See id.* First-party coverage varies by state and is usually limited based on medical expenses, lost wages, and other out-of-pocket expenses. *See id.* An injured party generally sues an at-fault party for additional funds once first-party benefits are exhausted. *See generally id.* (explaining the role of first-party benefits in states with no-fault laws).

58. *See Automobile Insurance, supra* note 21.

59. *See No-Fault Auto Insurance, supra* note 1.

60. *See id.*

61. *See id.*

62. Florida, Michigan, New Jersey, New York, and Pennsylvania have enacted verbal thresholds. *See id.*

63. *See* 75 PA. STAT. AND CONS. STAT. ANN. § 1702(d) (West 2019).

64. *Id.*

65. Hawaii, Kansas, Kentucky, Massachusetts, Minnesota, North Dakota, and Utah have enacted monetary thresholds. *See No-Fault Auto Insurance, supra* note 1.

injured parties in Minnesota must accrue a minimum of \$4000 in medical bills before suing an at-fault party.⁶⁶

No-fault systems were implemented in an effort to decrease consumer premiums and costly personal injury litigation.⁶⁷ Premiums are usually high in traditional tort systems compared to premiums in no-fault systems.⁶⁸ Additionally, personal injury litigation is typically drawn-out in tort systems and may not adequately compensate the injured party.⁶⁹

B. *Choice No-Fault Systems*

To further decrease burdensome litigation and allow consumers to choose their means of insurance, several state legislatures adopted choice no-fault systems.⁷⁰ Currently, three states employ the choice no-fault insurance scheme.⁷¹ A choice no-fault system allows consumers to choose how they are insured. Consumers can choose to be insured under either the typical tort system or the no-fault system.⁷²

Consumers who choose the tort system⁷³ may sue an at-fault party as if these consumers reside in a typical tort jurisdiction.⁷⁴ Generally, insureds electing “full tort” status⁷⁵ need not prove severe injury to sue an at-fault party.⁷⁶ By contrast, insureds electing the no-fault system⁷⁷ are treated as if they reside in a no-fault jurisdiction.⁷⁸ Thus, a limited tort injured insured may only sue an at-fault party for non-economic damages

66. *See id.*; *see also* MINN. STAT. ANN. § 65B.51(3)(a) (West 2019).

67. *See Automobile Insurance, supra* note 21.

68. *See id.*

69. *See id.*

70. *See* *Washington v. Baxter*, 719 A.2d 733, 739 (Pa. Super. Ct. 1998).

71. *See No-Fault Auto Insurance, supra* note 1. States that follow a choice no-fault regime are Kentucky, New Jersey, and Pennsylvania. *See id.*; *see also supra* note 16 and accompanying text for each state’s choice no-fault statute.

72. *See No-Fault Auto Insurance, supra* note 1.

73. In Kentucky, a consumer is treated as a no-fault consumer unless the consumer specifically refuses to consent to the limitations on lawsuit. *See* KY. REV. STAT. ANN. § 304.39-060(4) (West 2019).

74. *Id.*; *see also* N.J. STAT. ANN. § 39:6A-8(b) (West 2019); 75 PA. STAT. AND CONS. STAT. ANN. § 1705(c) (West 2019).

75. A consumer choosing the tort system in Pennsylvania is labeled as full tort status. *See* 75 PA. STAT. AND CONS. STAT. ANN. § 1705(c) (West 2019). A consumer choosing the tort system in New Jersey is labeled no limitation on lawsuit status. *See* N.J. STAT. ANN. § 39:6A-8(b) (West 2019).

76. *See No-Fault Auto Insurance, supra* note 1.

77. A consumer choosing the no-fault system in Pennsylvania is labeled as limited tort status. *See* 75 PA. STAT. AND CONS. STAT. ANN. § 1705(d) (West 2019). A consumer choosing the no-fault system in New Jersey is labeled limitation on lawsuit status. *See* N.J. STAT. ANN. § 39:6A-8(a) (West 2019). In Kentucky, a consumer is treated as a no-fault consumer unless the consumer specifically refuses to consent to the limitations on lawsuit. *See* KY. REV. STAT. ANN. § 304.39-060(4) (West 2019).

78. *See No-Fault Auto Insurance, supra* note 1; *see also* KY. REV. STAT. ANN. § 304.39-060 (West 2019); N.J. STAT. ANN. § 39:6A-8(a) (West, 2019); 75 PA. STAT. AND CONS. STAT. ANN. § 1705(d) (West 2019).

if the insured meets the verbal or monetary threshold outlined by that state.⁷⁹

Pennsylvania utilizes a verbal threshold that requires limited tort insureds to prove they sustained a serious injury before obtaining relief from a third party for non-economic damages.⁸⁰ A serious injury is an injury that resulted in “death, serious impairment of bodily function or permanent disfigurement.”⁸¹ To meet the “serious impairment of bodily injury” standard, the injured insured must show: (1) what body function, if any, was impaired because of injuries sustained in the motor vehicle accident; and (2) that the impairment was serious.⁸² In determining whether the injury was serious, courts consider the extent of the impairment, the length of time the impairment lasted, the treatment required to correct the impairment, and any other relevant factor.⁸³

Like typical no-fault states, Pennsylvania’s choice no-fault system also outlines specific exceptions to the general rule of limited tort status.⁸⁴ For example, if an injured insured meets one of the outlined categories in Title 75, Sections 1705(d)(1) through (3), the party will be treated as a full tort insured without necessarily proving serious injury.⁸⁵

Of the six exceptions outlined in Sections 1705(d)(1) through (3), this Comment focuses on the commercial vehicle exception.⁸⁶ This exception reads: “An individual otherwise bound by the limited tort election shall retain full tort rights if injured while an occupant of a motor vehicle other than a private passenger motor vehicle.”⁸⁷ In other words, injured persons who elected Pennsylvania’s limited tort status are upgraded to full tort status if they are occupants of a commercial vehicle at the time of the injury.⁸⁸

C. *The Rise of Transportation Network Companies*

A transportation network company (“TNC”) is “[a] person or entity that obtains a license to operate a [TNC] . . . and uses a digital network to

79. Pennsylvania and New Jersey outline verbal thresholds, whereas Kentucky operates on a monetary threshold of \$1000. *See No-Fault Auto Insurance, supra* note 1; *see also* KY. REV. STAT. ANN. § 304.39-060 (West 2019); N.J. STAT. ANN. § 39:6A-8(a) (West 2019); 75 PA. STAT. AND CONS. STAT. ANN. § 1705(d) (West 2019).

80. *See* 75 PA. STAT. AND CONS. STAT. ANN. § 1705 (West 2019).

81. *Id.* § 1702 (West 2019).

82. *See* *Washington v. Baxter*, 719 A.2d 733, 739 (Pa. Super. Ct. 1998).

83. *See id.*; *see also* *Cadena v. Latch*, 78 A.3d 636, 640 (Pa. Super. Ct. 2013); *Graham v. Campo*, 990 A.2d 9, 16 (Pa. Super. Ct. 2010).

84. *See* 75 PA. STAT. AND CONS. STAT. ANN. § 1705(d)(1)-(3) (West 2019).

85. *See id.*

86. *See infra* Section III. Pennsylvania’s commercial vehicle exception to limited tort status is codified at 75 PA. STAT. AND CONS. STAT. ANN. § 1705(d)(3) (West 2019).

87. § 1705(d)(3).

88. *See id.*

facilitate prearranged rides [to its customers].”⁸⁹ TNCs utilize GPS-technology and smartphone capabilities to provide modern ride-sharing services.⁹⁰ With the convenience of GPS and smartphone-based technology, TNCs such as Uber and Lyft have disrupted the market and largely displaced most traditional taxi and livery services across the globe.⁹¹ This displacement of traditional taxi and livery services has led to widespread litigation.⁹²

1. The Beginning of State Legislation

Because the advent of TNCs was so novel, little legislation was passed until there existed an apparent need for such laws.⁹³ Indeed, the desire to pass legislation was sparked in 2014 when a California Uber driver struck and killed a child walking in a crosswalk in San Francisco.⁹⁴ Uber denied liability for the incident because, although the driver was logged into the digital network at the time of the accident, the driver neither had a passenger in his vehicle nor was on his way to pick up a passenger.⁹⁵ Uber stated that “[t]he driver in question was not providing services on the Uber system at the time of the accident.”⁹⁶

Although the subsequent court case was settled for an undisclosed amount of money, the tragic accident motivated California lawmakers to increase the regulation of TNCs.⁹⁷ The 2014 California regulations specifically mandated that TNCs provide at least secondary insurance to their drivers whenever the driver is logged into the digital network.⁹⁸ California was one of the first states to implement stricter laws regarding TNCs, and many other state legislatures followed suit.⁹⁹

89. 53 PA. STAT. AND CONS. STAT. ANN. § 57A01 (West 2019).

90. See Erin Mitchell, *Uber’s Loophole in the Regulatory System*, 6 HOUS. L. REV. 75, 76 (2015); see also *How Uber Makes—And Loses—Money*, CBINSIGHTS, <https://bit.ly/36yDHJ8> (last visited Feb. 4, 2020) (discussing the difference between traditional taxi services and Uber’s double-sided marketplace business model).

91. See Mitchell, *supra* note 90, at 76.

92. See *id.*

93. See Vauhini Vara, *Uber, Lyft, and Liability*, NEW YORKER (Nov. 4, 2014), <https://bit.ly/2Dtiva3> (discussing a tragic accident involving a minor pedestrian that sparked adoption of stricter California legislation regarding TNCs).

94. See *id.*

95. See *id.* The Uber driver was in Phase I of a ride at the time of the accident. See *Uber Insurance Policy*, *supra* note 7; see also *Lyft Insurance Policy*, *supra* note 7.

96. See Vara, *supra* note 93.

97. See *id.*; see also Fitzgerald Rodriquez, *Uber Settles Wrongful Death Suit of Sophia Liu*, S.F. EXAM’R (July 14, 2015, 12:00 AM), <https://bit.ly/1Msvu8B>; Josh Richman, *New Uber, Lyft, Sidecar insurance rules signed into law by Gov. Jerry Brown*, MERCURY NEWS (Sept. 17, 2014, 9:44 AM), <https://bayareane.ws/2MV1Tyv>.

98. See Vara, *supra* note 93.

99. See Richman, *supra* note 97. In 2015, the National Conference of Insurance Legislators (“NCOIL”) adopted a model act to regulate insurance requirements for TNCs and their drivers. NAT’L CONFERENCE OF INS. REGULATORS, MODEL ACT TO REGULATE INSURANCE REQUIREMENTS FOR TRANSPORTATION NETWORK COMPANIES AND

2. Pennsylvania TNC Laws

Roughly two years after California incorporated stricter laws regulating TNC insurance, Pennsylvania Governor Tom Wolf signed TNC insurance requirements into law in 2016.¹⁰⁰ The law requires TNCs to secure primary insurance for their drivers during all phases of a trip.¹⁰¹ Primary insurance is defined as “[c]overage under an automobile insurance policy . . . not . . . dependent on a personal automobile insurer first denying a claim.”¹⁰² Additionally, a driver’s personal insurance need not first deny a claim before the TNC insurance triggers; a driver is automatically covered under the commercial policy that is secured during the specific phase of the trip.¹⁰³

The Pennsylvania TNC law addresses two phases of a TNC rideshare.¹⁰⁴ Phase I begins as soon as the TNC driver logs into the digital network and is waiting for a passenger to request a ride.¹⁰⁵ Phase II begins when the driver accepts a ride request and is driving to pick up the passenger, continuing while the passenger is in the driver’s vehicle.¹⁰⁶ Phase II ends when the ride is complete.¹⁰⁷

During Phase I of a trip, Pennsylvania law requires TNCs to provide certain amounts of primary automobile insurance coverage.¹⁰⁸ Specifically, the TNC must provide coverage of at least \$50,000 per person for death or bodily injury, at least \$100,000 per accident for death or bodily injury, and at least \$25,000 per accident for property damage.¹⁰⁹ The statute also requires TNCs to secure first-party medical benefits of at least \$25,000 for pedestrians and at least \$5000 for drivers.¹¹⁰ Both Uber

TRANSPORTATION NETWORK DRIVERS, at 1 (2015), <https://bit.ly/2t9jgJD>. As of June 21, 2018, every state except Oregon has enacted legislation regulating TNCs. *See* PROP. CAS. INSURERS ASSOC. OF AM., TRANSPORTATION NETWORK COMPANY STATES WITH ENACTED LEGISLATION (2018), <https://bit.ly/1pB4nOl>. Oregon’s proposed bill failed to pass through the legislature in 2017. *See id.* Oregon legislatures introduced another bill to regulate TNCs, however, in the 2019 regular session. *See* H.B. 3023, 80th Or. Legis., Reg. Sess. (Or. 2019). H.B. 3023 was in the House Committee on Revenue upon adjournment of the 2019 Regular Session. *See* 2019 Regular Session HB 3023 B, OR. ST. LEGISLATURE, <https://bit.ly/2nVwNMv> (last visited Feb. 4, 2020).

100. *See* Daniel E. Cummins & Stephen T. Kopko, *New Law: Mandated Coverages for Uber and Lyft Vehicles*, TORT TALK (Nov. 6, 2017), <https://bit.ly/2PLvFGY>; *see also* 53 PA. STAT. AND CONS. STAT. ANN. § 57A07 (West 2019).

101. *See* § 57A07.

102. *Id.*

103. *See id.*

104. *See id.*

105. *See supra* note 7 and accompanying text.

106. *See supra* note 42 and accompanying text.

107. *See id.*

108. *See* § 57A07(b)(1)-(2).

109. *See* § 57A07(b)(1).

110. *See* § 57A07(b)(2).

and Lyft adhere to these requirements.¹¹¹ Although TNC insurance is the primary insurance during this Phase I of the trip, the driver's personal insurance can still cover the driver if the insurance company chooses to do so.¹¹²

During Phase II of a trip, Pennsylvania law requires TNCs to secure primary automobile insurance of at least \$500,000 for death, bodily injury, and property damage.¹¹³ Like Phase I, the TNC must also secure at least \$25,000 for pedestrians and at least \$5000 for drivers in first-party medical benefits.¹¹⁴ Both Uber and Lyft implement these requirements.¹¹⁵

Although both Uber and Lyft comply with the Pennsylvania laws regarding TNC insurance coverage, the question still remains: At what point does a TNC driver's personal vehicle become a commercial vehicle?¹¹⁶ The answer to this question carries significant weight in determining whether a driver qualifies as a limited tort or full tort insured, and thus, must be thoroughly examined.¹¹⁷

Under current Pennsylvania law, however, an insured electing limited tort coverage on a personal insurance policy cannot later allege that the vehicle is not a "private passenger vehicle" for the purpose of claiming coverage under the commercial vehicle exception.¹¹⁸ In *Bennett v. Mucci*,¹¹⁹ the plaintiff sustained injuries in a car accident involving a vehicle he drove "solely for the operation of his business."¹²⁰ Although the plaintiff used the car solely for business purposes, he maintained personal insurance, as opposed to commercial insurance, for the vehicle.¹²¹ The plaintiff elected the limited tort alternative when purchasing his personal insurance.¹²² At trial, the jury found that the plaintiff's injuries were not "serious," as required under Title 75, Section 1705.¹²³ Thus, the jury

111. See *Uber Insurance Policy*, *supra* note 7; see also *Lyft Insurance Policy*, *supra* note 7.

112. See § 57A07(1)(2).

113. See § 57A07(c)(1).

114. See § 57A07(c)(2).

115. See *Uber Insurance Policy*, *supra* note 7; see also *Lyft Insurance Policy*, *supra* note 7.

116. See *Cummins*, *supra* note 27 ("The quandary in this regard is whether the Uber or Lyft driver's use of his own personal vehicle for business purposes triggers an exception to the limited tort option.").

117. See *id.*

118. See *Bennett v. Mucci*, 901 A.2d 1038, 1041 (Pa. Super. Ct. 2006) ("One who elects limited tort coverage for a vehicle under a private passenger motor vehicle liability insurance policy can not later claim that the same vehicle is not a private passenger motor vehicle for purposes of § 1705.").

119. 901 A.2d 1038 (Pa. Super. Ct. 2006).

120. *Id.*

121. See *id.*

122. See *id.*

123. See *id.* at 1039.

awarded the plaintiff only economic damages.¹²⁴ The plaintiff appealed the jury's verdict.¹²⁵

On appeal, the appellant-plaintiff argued that, because he used the vehicle for business purposes, his limited tort election should not be binding based on the plain language of Section 1705(d).¹²⁶ The Pennsylvania Superior Court disagreed and held that a person electing limited tort status on a personal vehicle cannot later allege that the vehicle is not a "private passenger vehicle" for the purposes of claiming the commercial vehicle exception.¹²⁷ The court noted that accepting the appellant's argument "would undercut the General Assembly's goals of promoting financial responsibility."¹²⁸ Although the Pennsylvania General Assembly¹²⁹ has an interest in promoting financial responsibility, it has also exhibited a preference for the full tort option, rather than the limited tort option, when the driver's tort status is in dispute.¹³⁰ In *Bennett*, the Superior Court distinguished this general preference for full tort rights by stating:

The result we reach in the instant matter is not in tension with our General Assembly's preference for full tort rights. Where, as here, the insured is the victim of an accident in the vehicle for which he procured limited tort coverage, the outcome under [Section] 1705 is not in doubt.¹³¹

The court in *Bennett* addressed Pennsylvania's commercial vehicle exception with regard to personal insurance policies only.¹³² The court did not address the exception when both personal and commercial policies cover individuals,¹³³ as is the case when TNC drivers are driving while

124. *See id.*

125. *See id.*

126. *See id.* at 1041.

127. *See id.*

128. *Id.* at 1042.

129. The Pennsylvania General Assembly is Pennsylvania's legislature. *See General Assembly Homepage*, PA. GEN. ASSEMBLY, <https://www.legis.state.pa.us/> (last visited Feb. 4, 2020).

130. *See L.S. v. Eschbach*, 874 A.2d 1150, 1156–57 (Pa. 2005); *see also Ickes v. Burkes*, 713 A.2d 653, 656–57 (Pa. Super. Ct. 1998) ("[T]he intent of the [Motor Vehicle Financial Responsibility Law is] to provid[e] the full tort coverage whenever there is a question as to which coverage is applicable."); *Berger v. Rinaldi*, 651 A.2d 553, 557 (Pa. Super. Ct. 1994) ("[I]n virtually every circumstance where there is a question about [which] coverage will apply, there is a conscious attempt to rule in favor of the full tort alternative.") (quoting *Consideration of H.B. 121 Continued*, 1990 Assemb., 174th Sess. 214 (Pa. 1990) (statement of Rep. Richard Hayden, Representative, Pa. House of Rep.), available at <https://bit.ly/35oHk3F>) [hereinafter Statement of Rep. Richard Hayden].

131. *Bennett*, 901 A.2d at 1041.

132. *See id.* at 1041–42.

133. *See id.*

logged into the TNC's digital network.¹³⁴ Thus, the question remains whether a TNC driver's tort election under the driver's personal insurance applies during Phase I of the trip.¹³⁵ The remainder of this Comment explains why the commercial vehicle exception should apply to TNC drivers whenever the driver is logged into the digital network, thereby upgrading TNC drivers to full tort status.¹³⁶

III. ANALYSIS

The rise of Uber and other TNCs presented novel issues for Pennsylvania legislators, leading to new legislation regarding insurance requirements in 2016.¹³⁷ Despite this recent wave of legislation, a complex question still remains: At what point in time does a TNC driver's personal vehicle become a commercial vehicle?¹³⁸ This question is of the utmost importance when automobile accident liability is disputed, specifically regarding the insured's tort election options in Pennsylvania and how these elections affect insurance payouts.¹³⁹ Pennsylvania's commercial vehicle exception should apply whenever a TNC driver is logged into the digital network, thereby upgrading limited tort TNC drivers to full tort status.¹⁴⁰ Further, choice no-fault jurisdictions should amend their laws to clearly and unambiguously apply the exception to TNC drivers logged into their digital networks.¹⁴¹

A. *When is a TNC Vehicle a Commercial Vehicle?*

Because Pennsylvania mandates that TNC insurance be primary for a TNC driver while the driver is logged into the TNC's digital network,¹⁴² whether a TNC vehicle is commercial during Phase II of a trip is largely undisputed.¹⁴³ The question remains, however, whether the driver's tort

134. See generally 53 PA. STAT. AND CONS. STAT. ANN. § 57A07 (West 2019) (governing the minimum coverage TNCs must maintain for their drivers in Pennsylvania).

135. See Cummins, *supra* note 27.

136. See *infra* Section III.A.

137. See § 57A07; see also Cummins, *supra* note 27 (“As the use of Uber and Lyft rideshares become more prevalent in Pennsylvania, it is more likely that motor vehicle accidents involving such drivers will increase and thereby give rise to novel issues of law.”).

138. See Cummins, *supra* note 27 (“One such issue is whether an Uber or Lyft driver who has elected the limited tort option under his own personal automobile insurance policy will be deemed to be a full tort plaintiff if he is involved in an accident while driving as an Uber or Lyft driver.”).

139. See *id.* (“The quandary in this regard is whether the Uber or Lyft driver's use of his own personal vehicle for business purposes triggers an exception to the limited tort option.”).

140. See *infra* Section III.A.

141. See *infra* Section III.B.

142. See § 57A07(f).

143. See Cummins & Kopko, *supra* note 100 (“[T]he statutory framework confirms that a Lyft or Uber driver's separate personal automobile insurance coverage typically will

election under the driver's personal insurance applies during Phase I of the trip.¹⁴⁴

1. Furthering the Business of the TNC

During Phase I, a driver is neither driving a passenger to a final destination nor on the way to retrieve a passenger; the driver is simply waiting for a ride request.¹⁴⁵ One issue that arises in determining whether the TNC driver is driving a commercial vehicle during Phase I is whether the driver is furthering the business of the TNC when the driver is waiting for a ride request.¹⁴⁶

Title 53, Section 57A07 explicitly states that a TNC must provide primary insurance during all phases of a trip.¹⁴⁷ Section 57A07's statutory language requiring the TNC to provide primary insurance includes Phase I of the trip—when the driver is not currently engaged in a pre-arranged ride.¹⁴⁸ Additionally, the Section 57A07 explicitly allows the personal insurance provider to opt-out of coverage when the driver is using the vehicle “while the driver is logged onto a digital network or while a driver provides a prearranged ride.”¹⁴⁹ The TNC driver's personal insurance need not apply to potential accidents during Phase I because the driver is “logged onto a digital network.”¹⁵⁰ Under this scenario, the TNC driver is furthering the business of the TNC in Phase I because the driver is waiting for a ride request, which will initiate a new ride and lead to more company revenue.¹⁵¹ Unlike a TNC driver who is driving without the application

not come into play if the driver is involved in an accident resulting in personal injuries or property damages.”).

144. See Cummins, *supra* note 27.

145. See *supra* note 7 and accompanying text.

146. See Johnson v. Glenn Sand & Gravel, 453 A.2d 1048, 1050 (Pa. Super. Ct. 1982) (citing Pillo v. Mohan, 189 A.2d 850, 851 (Pa. 1963)) (“[T]he test for whether an agency issue should reach the jury turns upon whether any reasonable inference from the facts supports the finding that the employee was acting in furtherance of his employer's business.”). Note, however, that this case points back to an employee-employer relationship. See *id.* TNC drivers, on the other hand, are independent contractors. See Wiessner, *supra* note 28.

147. See § 57A07(a).

148. See § 57A07 (b)(1)–(2).

149. See § 57A07(1)(2) (“Nothing in this section shall require that a personal automobile insurance policy provide coverage while the driver is logged into a digital network, while the driver is engaged in a prearranged ride or while the driver otherwise uses a vehicle to transport passengers for compensation; see also § 57A07(1)(1) (“Insurers that write automobile in this Commonwealth may exclude any and all coverage afforded under the policy issued to an owner or operator of a personal vehicle for any loss or injury that occurs while a driver is logged into a digital network or while a driver provides a prearranged ride.”).

150. See § 57A07(1).

151. See *How Uber Makes—And Loses—Money*, *supra* note 90 (“For Uber, growth means faster pickup times, more drivers on the road, and potentially lower prices for riders. It also means more revenue for Uber.”).

open, a TNC driver waiting for a ride request is open for business.¹⁵² A TNC driver waiting for a ride request can be equated to a convenience store clerk waiting for customers; even if customers do not engage in commerce, the worker is nonetheless furthering the business of the company by working. In this situation, a fact finder could make a reasonable inference that the TNC driver was “acting in furtherance of his employer’s business.”¹⁵³ Therefore, Section 57A07 is not negated simply because a TNC driver is waiting for a ride request.¹⁵⁴

Conversely, a TNC driver could turn on the digital network with no intention of furthering the business of the TNC. For example, a driver could log on to the digital network and drive across town without picking up, or attempting to pick up, a single passenger. This loophole could potentially lead drivers to pay only the minimum amount for their personal insurance, while unfairly reaping the benefit of full tort status.¹⁵⁵ By applying Pennsylvania’s commercial vehicle exception to the TNC driver’s tort election under the driver’s personal insurance, the driver could use the TNC’s digital network while driving for non-business purposes—the driver would be covered by the TNC’s commercial insurance policy and would, therefore, be covered as a full tort driver.¹⁵⁶ Thus, allowing Pennsylvania’s commercial vehicle exception to override a TNC driver’s personal vehicle tort election could create substantial public policy issues, including increased insurance fraud and insurance premiums.¹⁵⁷

Some may argue that the TNC driver is not furthering the business of the TNC during Phase I; however this argument is fundamentally unfair. Such an approach would unjustly disadvantage the TNC drivers who are legitimately furthering the business of the TNC while they wait for a ride

152. See *supra* note 7 and accompanying text.

153. See *Johnson v. Glenn Sand & Gravel*, 453 A.2d 1048, 1050 (Pa. Super. Ct. 1982).

154. See generally § 57A07 (requiring TNCs to provide minimum primary insurance for TNC drivers).

155. Automobile insurance is required in Pennsylvania pursuant to the Motor Vehicle Financial Responsibility Law. See 75 PA. STAT. AND CONS. STAT. ANN. §§ 1701–1799.7 (West 2019). Insureds must select whether they want to be insured as a limited tort or full tort driver. See *id.* § 1705. Full tort drivers typically receive better insurance coverage in exchange for higher premiums. See *No-Fault Auto Insurance*, *supra* note 1.

156. See § 1705(d)(3) (upgrading limited tort individuals to full tort status if they were injured while a passenger in a vehicle “other than a private passenger motor vehicle”); see also § 57A07(a) (West 2019) (mandating that the TNC insurance is primary and must cover the TNC driver even if the driver’s personal insurance does not cover the claim).

157. See generally *Insurance Fraud*, NAT’L ASS’N INS. COMM’RS, <https://bit.ly/2Gu2h3w> (last updated May 14, 2019) (“Insurance fraud occurs when an insurance company, agent, adjuster or consumer commits a deliberate deception in order to obtain an illegitimate gain.”); see also *Insurance Fraud is Driving Up Premiums*, BUS. INS. QUOTES, <https://bit.ly/2GxykiL> (last visited Nov. 4, 2019) (“[A] significant percentage of a premium increase is to help cover losses due to insurance fraud.”).

request.¹⁵⁸ Should the Pennsylvania General Assembly adopt the position that the commercial vehicle exception does not apply to Phase I of a trip, TNC drivers who are not abusing the system would be unfairly forced to apply their tort election under their personal insurance policy.¹⁵⁹ This inequitable framework could, therefore, result in less coverage for the TNC drivers who are legitimately abiding by the system.¹⁶⁰

Potential abuse of the system, although important to recognize, should not influence the legislature to unfairly strip rights away from those who are adhering to the Commonwealth's laws. Rather, the onus should fall on the TNC itself to monitor its drivers' locations and actions. The TNC should monitor and track statistics including, but not limited to the number of rides accepted and completed compared to the number of rides requested, and how many rides were accepted and completed in a timeframe. Therefore, the TNC should bear the responsibility of tracking these statistics and any fraud that may arise from the application of the commercial vehicle exception to Phase I of a TNC trip. TNCs should report any abuse of the system by TNC drivers to the appropriate authorities,¹⁶¹ and the TNC should also internally handle such abuse. Creating a duty on the part of TNCs to monitor their drivers' statistics would minimize abuse of the system.¹⁶²

2. *Bennett v. Mucci*

The case of *Bennett v. Mucci*¹⁶³ contributes to the conversation about whether a TNC driver's personal insurance tort election should apply during Phase I of a TNC ride.¹⁶⁴ In *Bennett*, the Pennsylvania Superior Court held that an insured electing limited tort coverage on a personal

158. Those who are not legitimately furthering the business of the TNC are committing insurance fraud and raising premiums for all consumers, not just the TNC drivers. *See generally Insurance Fraud is Driving Up Premiums, supra* note 157 (describing insurance fraud and fraud reporting services).

159. *See generally* § 1705 (outlining Pennsylvania's election of tort options).

160. If the driver elected limited tort on the driver's personal insurance policy, the driver may only sue for economic damages unless the driver proves he or she sustained a "serious injury," pursuant to Section 1705. *See id.*

161. Many states have instituted fraud bureaus that investigate insurance fraud. *See Insurance Fraud*, FED. BUREAU OF INVESTIGATION, <https://bit.ly/1LNH0xR> (last visited Feb. 4, 2020). Additionally, the National Association of Insurance Commissioners has created a uniform fraud reporting system, which allows consumers and insurers to electronically report suspected insurance fraud. *See* NAT'L ASS'N INS. COMM'RS, *supra* note 157.

162. *See generally Stopping Insurance Fraud*, BUS. SEC., <https://bit.ly/36xJGOI> (last visited Feb. 4, 2020) (discussing the implication of insurance fraud on businesses and how businesses can protect their bottom lines).

163. 901 A.2d 1038 (Pa. Super. Ct. 2006).

164. *See id.* (holding that an insured electing limited tort coverage on a personal insurance policy cannot later allege that the vehicle is not a "private passenger vehicle" for the purpose of claiming coverage under the commercial vehicle exception).

insurance policy cannot later allege that the vehicle is not a “private passenger vehicle” for the purpose of claiming coverage under the commercial vehicle exception.¹⁶⁵ This broad holding is inapplicable to TNC drivers because TNC drivers carry two automobile insurance policies—a personal policy and a commercial policy—whereas the plaintiff in *Bennett* only carried a personal policy.¹⁶⁶

Because *Bennett* addressed tort elections regarding personal insurance policies,¹⁶⁷ the question persists: Should *Bennett* govern TNC drivers who hold both a personal and commercial insurance policy on their vehicle? To date, Pennsylvania courts have not directly addressed this issue. If this issue arises in Pennsylvania litigation, however, courts should distinguish the facts in *Bennett* from applying the commercial vehicle exception to a TNC driver.

Although the plaintiff in *Bennett* used his vehicle solely for business purposes, he did not maintain a commercial insurance policy on the vehicle.¹⁶⁸ Rather, he maintained only a single, personal insurance policy for the vehicle.¹⁶⁹ Because two policies were not in dispute, the Pennsylvania Superior Court held that the plaintiff’s tort election status on his personal, and only, insurance policy was controlling.¹⁷⁰

A TNC driver operating during Phase I of a TNC ride does not fall under the broad holding of *Bennett*.¹⁷¹ Unlike the plaintiff in *Bennett*, a TNC driver maintains both personal automobile insurance and the TNC’s commercial insurance.¹⁷² Because two competing policies exist, a conflict arises regarding which coverage will apply.¹⁷³ When a coverage dispute exists regarding whether the limited tort or full tort option should apply, the General Assembly’s intent is to defer to the full tort option.¹⁷⁴ Given

165. *See id.* at 1041.

166. *See id.*

167. *See generally id.* (discussing the implications of electing limited tort coverage on a personal insurance policy).

168. *See id.* at 1041.

169. *See id.*

170. *See id.* at 1042.

171. *See id.* at 1041 (holding that a driver who elects limited tort coverage under a personal insurance policy cannot later claim the vehicle is not a private passenger vehicle for the purposes of Title 75, Section 1705 of the Pennsylvania Consolidated Statutes).

172. *See generally* 53 PA. STAT. AND CONS. STAT. ANN. § 57A07 (West 2019) (enumerating the required automobile insurance coverage TNCs must provide for their drivers).

173. The issue of competing insurance policies was addressed by Representative Richard Hayden during the Pennsylvania House of Representatives hearings on House Bill 121. *See* Statement of Rep. Richard Hayden, *supra* note 130.

174. *See* *L.S. v. Eschbach*, 874 A.2d 1150, 1156–57 (Pa. 2005); *see also* *Ickes v. Burkes*, 713 A.2d 653, 656–57 (Pa. Super. Ct. 1998) (“[T]he intent of the [Motor Vehicle Financial Responsibility Law is] to provid[e] the full tort coverage whenever there is a question as to which coverage is applicable.”); *Berger v. Rinaldi*, 651 A.2d 553, 557 (Pa. Super. Ct. 1994) (“[I]n virtually every circumstance where there is a question about [which] coverage will apply, there is a conscious attempt to rule in favor of the full tort alternative.”)

this preference, courts should rule that a TNC's commercial policy trumps a TNC driver's personal insurance when an accident occurs.¹⁷⁵ Thus, the commercial vehicle exception should apply to a TNC driver who elected limited tort on the driver's personal insurance policy, thereby upgrading the driver to full tort status if the driver is involved in an accident while logged onto the TNC's digital network.

B. Choice No-Fault Jurisdictions Should Create a Unified Definition of a Commercial Vehicle Regarding TNCs

Currently, Pennsylvania law is silent as to whether the commercial vehicle exception, codified under Section 1705(d)(3), applies while the TNC driver is logged onto the TNC's digital network.¹⁷⁶ By comparison, New Jersey (another choice no-fault jurisdiction) explicitly states that the limitation on lawsuit option¹⁷⁷ is not available for actions arising from a "prearranged ride."¹⁷⁸ Under New Jersey law, a "prearranged ride" is defined as:

[T]he provision of transportation by a [TNC] driver to a [TNC] rider, beginning when a driver accepts a ride requested by a rider through a digital network controlled by a transportation network company, continuing while the driver transports a requesting rider, and ending when the last requesting rider departs from the personal vehicle.¹⁷⁹

Although New Jersey law is certainly more explicit than Pennsylvania law¹⁸⁰ in denying the limitation on lawsuit option during a prearranged TNC ride, Title 39, Section 39:5H-2 of the New Jersey Statutes contains one major flaw. The statute fails to address whether the limitation on lawsuit option applies during Phase I of the TNC trip when

(quoting *Consideration of H.B. 121 Continued*, 1990 Assemb., 174th Sess. 214 (Pa. 1990) (statement of Rep. Richard Hayden, Representative, Pa. House of Rep.), available at <https://bit.ly/35oHk3F>).

175. See *L.S.*, 874 A.2d at 1156-57; see also *Ickes*, 713 A.2d at 656-57; *Berger*, 651 A.2d at 557.

176. See 75 PA. STAT. AND CONS. STAT. ANN. § 1705(d) (West 2019).

177. The limitation on lawsuit option is New Jersey's version of the limited tort option in Pennsylvania. Compare 75 PA. STAT. AND CONS. STAT. ANN. § 1705(d) (West 2019) (regulating limited tort coverage in Pennsylvania), with N.J. STAT. ANN. § 39:6A-8(a) (West 2019) (regulating coverage limitation on lawsuit coverage in New Jersey).

178. See N.J. STAT. ANN. § 39:5H-10(j) (West 2019) ("The limitation on lawsuit option . . . shall not be assertable by a transportation network company or a transportation network company driver in any action for damages arising from a prearranged ride, or be asserted against any party not receiving personal injury protection benefits in any action for damages arising from a prearranged ride.").

179. N.J. STAT. ANN. § 39:5H-2 (West 2019).

180. Title 53, Section 57A07 of the Pennsylvania Consolidated Statutes fails to address whether the limited tort option under Title 75, Section 1705 of the Pennsylvania Consolidated Statutes can apply at any time during a prearranged ride. See 53 PA. STAT. AND CONS. STAT. ANN. § 57A07 (West 2019).

the driver is not engaged in a prearranged ride.¹⁸¹ Therefore, neither New Jersey nor Pennsylvania law explicitly addresses whether the limitation on a lawsuit or limited tort option, respectively, applies to Phase I of a TNC ride.¹⁸²

Although case law regarding this issue is underdeveloped, this question is one of significant importance and one in which legislatures must resolve. Failure to adopt the commercial vehicle exception when a TNC driver is logged onto the digital network could lead to an unjust award of damages that are limited to the TNC driver's personal tort election.¹⁸³ Additionally, unclear statutory language could lead to increased litigation regarding the scope and meaning of the statute.¹⁸⁴

For example, the at-fault driver's insurance company would likely claim that the TNC driver is bound by the driver's personal tort election.¹⁸⁵ The insurer would pose this argument because it wants to pay as little money to the opposing party as possible to protect its bottom line.¹⁸⁶ By arguing the TNC driver is bound by the driver's limited tort election, the insurance company would need to pay only economic damages, unless the driver proves the injuries were "serious."¹⁸⁷

Conversely, the TNC driver would likely argue that Pennsylvania's commercial vehicle exception applies, thereby upgrading the driver to full tort status, because the driver was operating under a commercial insurance policy at the time of the accident.¹⁸⁸ TNC drivers would also likely argue that they were furthering the business of the TNC when the accident occurred and that current controlling case law in Pennsylvania, namely *Bennett v. Mucci*, is inapplicable in such a situation.¹⁸⁹

Presently, the TNC laws in choice no-fault jurisdictions may lead to unfair and unjust awards to plaintiffs, as well as increased litigation, both

181. See N.J. STAT. ANN. § 39:5H-10 (West 2019).

182. See *id.*; see also § 57A07.

183. For a discussion of insurance fraud and increased premiums, see *supra* Section III.A.

184. See *A.S. v. Pa. State Police*, 143 A.3d 896, 905-06 (Pa. 2016) ("A statute is ambiguous when there are at least two reasonable interpretations of the text."). "Two reasonable interpretations" therefore potentially lead to litigation over those interpretations. See, e.g., *id.* (determining whether a statute was ambiguous).

185. See generally *10 Tactics Insurance Companies Use to Deny and Devalue Claims*, DICKERSON OXTON, <https://bit.ly/2WQaC76> (last visited Nov. 4, 2019) (discussing the ways in which insurance companies handle claims).

186. See *id.* ("The insurance company's ultimate goal is to pay out nothing or as little as possible on every claim.")

187. See 75 PA. STAT. AND CONS. STAT. ANN. § 1705 (West 2019).

188. See *id.*

189. See *supra* Section III.A (discussing the significance of the TNC driver furthering the business of the TNC and why *Bennett v. Mucci* should not apply when there exists a personal insurance policy *and* a commercial insurance policy).

of which directly contradict the purpose of no-fault insurance.¹⁹⁰ No-fault systems were created in an attempt to decrease the burdensome and drawn-out personal injury litigation in tort systems and to adequately compensate the injured party.¹⁹¹ Therefore, to protect the purpose of no-fault insurance, legislatures in choice no-fault states should clarify that the commercial vehicle exception applies to TNC drivers when the driver is logged into the TNC digital network. Thus, choice no-fault jurisdictions should amend their statutes to explicitly apply the commercial vehicle exception to TNC drivers when the driver is logged into the digital network, thereby creating a uniform definition of “commercial vehicle” as applied to TNC vehicles.

IV. CONCLUSION

The rise of Uber and other TNCs created complex questions for legislatures throughout the United States.¹⁹² This Comment addressed two questions in particular: (1) at what point in time does a TNC driver’s personal vehicle become a commercial vehicle;¹⁹³ and (2) whether this distinction affects a TNC driver’s personal tort election option in the case of an accident when the driver is logged into the TNC network.¹⁹⁴ The TNC driver’s personal vehicle should be considered commercial any time the driver is logged into the TNC’s digital network.¹⁹⁵ Therefore, the commercial vehicle exception should apply to TNC drivers and TNC drivers should thus be considered full tort insureds when they are logged into the TNC’s digital network.¹⁹⁶

Pennsylvania and other choice no-fault jurisdictions should amend their laws to reflect clear and unambiguous language adopting a uniform definition of “commercial vehicle” as applied to TNCs.¹⁹⁷ Failure to adopt clear and unambiguous statutory language could lead to unjust compensation and an increase in litigation, which directly negates the purpose of no-fault automobile insurance.¹⁹⁸

190. *See Automobile Insurance, supra* note 21; *see also* O’CONNELL & MCCOY, *supra* note 18, at [1].

191. *See Automobile Insurance, supra* note 21; *see also* O’CONNELL & MCCOY, *supra* note 18, at [1].

192. *See supra* Section II.C.

193. *See supra* Section III.A.

194. *See supra* Section III.A.

195. *See supra* Section III.A.

196. *See supra* Section III.A.

197. *See supra* Section III.B.

198. *See supra* Section III.B.