

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Personal Insurance Federation of
California's Comments on Assigned
Commissioner's Ruling Modifying Decision
13-09-045 Adopting Rules and Regulations
to Protect Public Safety While Allowing
New Entrants to the Transportation Industry

Rulemaking 12-12-0011
Decision 13-09-045

Comments from Personal Insurance Federation of California

In response to Assigned Commissioner's Ruling (ACR) requesting comment on the proposed modifications to Decision (D.) 13-09-045 *Adopting Rules and Regulations to Protect Public Safety While Allowing New Entrants to the Transportation Industry*, the Personal Insurance Federation of California submits these comments.

The Personal Insurance Federation of California (PIFC) consists of seven member companies, including State Farm, Farmers, Liberty Mutual Insurance, Progressive, Allstate, Mercury and Nationwide. Combined, these companies write the majority of personal lines auto insurance in California.

PIFC writes to respond to the Commissioner's request for comments on (1) the definition of "providing TNC services", (2) modifications to requirement that TNCs maintain commercial liability insurance policies, and (3) new requirements that TNCs maintain additional coverages.

1. Definition of Providing TNC Services

PIFC agrees with the Commissioner's ACR that "providing TNC services" needs to be defined to ensure adequate insurance coverage is provided to the public and TNC drivers. To fully accomplish this, PIFC recommends the following language:

Providing TNC services means, when participating drivers make themselves available for passengers, which includes, but is not limited to, logging on to the transportation network company's application program, attaching an insignia or logo indicating the personal motor vehicle is providing transportation network services, or having a fare-paying passenger getting into or out of the vehicle.

This language will accomplish the Commissioner’s goal of removing gaps in commercial liability coverage. It recognizes that at the time a driver signs up on the app to accept paying passengers (app on), or in any other way makes him/herself available to accept paying passengers, the driver is performing a commercial activity. Examples of TNC activities that occur outside of the “app on/app off” period include accepting hails, and arranging with a passenger a later pick up – Such commercial activities, although prohibited, occur and are possible due to the TNCs’ business models.

Ensuring that commercial coverage exists in the above situations is necessary to provide insurance coverage to injured drivers, passengers, and pedestrians. Personal lines auto policies, per their livery exclusions, will not cover commercial activities. Personal lines policies were created for a specific purpose – to provide insurance coverage to drivers using their personal vehicles for every day, personal use. For this reason, such policies are priced based on this lower risk activity, and accordingly exclude higher risk commercial activities, such as livery services.

2. Modifications to Requirement that TNCs maintain Commercial Liability Insurance Policies

The Commissioner’s ACR maintains the current requirement for TNCs to carry \$1 million in commercial liability coverage, as well as provides for additional first party commercial coverage. PIFC agrees that commercial coverage will help ensure adequate coverage, since personal policies are not designed to cover accidents arising from providing of TNC services. PIFC strongly recommends that the insurance requirements also be modified to make the TNC’s commercial liability policies primary and to clarify that the duty to defend rests with the TNC’s primary commercial liability policy. Further, to close the loop, TNCs should notify personal auto insurers when a driver signs up with their program.

a. The TNC’s Commercial Liability Policy Should be Primary. Any Applicable Personal Policy Should be Excess.

As explained above, personal auto policies are specifically designed to cover personal every day activities. Defining “providing TNC services” at app on, as recommended in the ACR, recognizes that these activities are commercial in nature, and should accordingly be covered by the TNCs’ commercial liability policies. Thus, it follows that such policies should be primary, and that any other applicable personal insurance policy, if in existence, should be excess.

Currently, the commercial policies per the CPUC regulations are excess. Leaving them as excess ignores the fact that commercial activity must be covered by a commercial policy. It condones shifting the TNCs’ cost of doing business to the consumers of personal auto policies. Further, it provides motivation to “find” coverage in other

policies, which will result in unnecessary litigation, and leave the injured party subject to a delay gap. This is not good public policy.

b. The Duty to Defend Rests with the TNCs' Primary Commercial Liability Policies

It follows that the duty to defend should rest with these primary commercial liability policies. Placing the duty to defend, instead on a personal auto policy will shift the TNCs' business costs to the everyday buying public. The responsibility rests with the commercial carrier as the insurer of these commercial activities.

It is necessary to clarify that the duty to defend rests with the commercial policy since case law has interpreted the duty to defend as broader than the duty to indemnify. If it is not clarified, even if a personal auto policy has a livery exclusion, that insurer may still have a duty to defend, placing added costs to the system for no good reason.

c. TNCs Must Notify Personal Lines Insurers of New Drivers

PIFC recommends the Commissioner require TNCs to notify personal auto insurers when a new driver (and insured of the personal insurer) initially signs up with the TNC's program. In doing this, the personal auto insurer should be permitted to opt out should it choose not to be burdened with this information. For the companies that choose to obtain such information, this will speed the process for assigning claims to the appropriate carrier.

d. New Requirements that TNCs Maintain Additional Coverages

PIFC agrees with the Commissioner's conclusion in his ACR that gaps will remain without first party coverage. Should the Commissioner adopt the proposed modifications requiring first party coverage, PIFC again urges the Commissioner to make such coverages primary (while making any other applicable personal policies excess), and clarify that the duty to defend rests with these commercial policies for the reasons provided above.

In conclusion, PIFC respectfully requests that the Commissioner continue to recognize that "providing TNC services" must be broadly defined to ensure there is adequate coverage to protect the public. In recognizing that a broad array of TNC related activities are commercial, we request the Commissioner provide that such commercial policies shall be primary; that other applicable personal policies be excess; and that the duty to defend will likewise rest with commercial policies. Finally, PIFC recommends notification on the part of TNCs as outlined above.

PIFC appreciates the opportunity to contribute to these proceedings.

R. 12-12-011

Dated April 7, 2014 at Sacramento, CA

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