

ATTACHMENT 1

**California Department of Insurance
Investigatory Hearing
Background White Paper**

**Insurance and Transportation Network Companies:
Solving the insurance challenges so passengers, drivers,
pedestrians and property owners are adequately protected**

**Friday, March 21
1-3pm
State Capitol, Room 112, Sacramento**

Purpose of Hearing

The California Department of Insurance (CDI) has called this informational hearing for two purposes:

- To help inform any recommendations CDI may make to the California Public Utilities Commission (CPUC) or to the Legislature regarding insurance related to Transportation Network Companies (TNCs);
- To better understand how insurance companies are handling drivers using their personal vehicles for a TNC use, and whether insurers might offer a market-based solution to the real or perceived gaps that have been identified.

The purpose of the March 21st hearing is to discuss the insurance issues related to TNCs. Competitive concerns between TNCs and other transportation models are not within CDI's jurisdiction and will not be part of the conversation.

CDI's concern is that drivers, passengers, pedestrians and third parties are covered in the event of injury or damage.

Background

In a September 23, 2013 Decision ("Decision"), the California Public Utilities Commission (CPUC) established a new transportation business model called Transportation Network Companies (TNCs.) The CPUC defined TNCs as an "organization whether a corporation, partnership, sole proprietor, or other form, operating in California that provides prearranged transportation services for compensation using an online-enabled application (app) or platform to connect passengers with drivers using their personal vehicles." (Decision, p. 2)

In its Decision, the CPUC "require[d] TNCs to maintain commercial liability insurance policies providing not less than \$1,000,000 (one million dollars) per-incident coverage for incidents involving vehicles and drivers while they are providing TNC services. The insurance coverage shall be available to cover claims regardless of whether a TNC driver maintains insurance adequate to cover any portion of the claim." (Decision, p. 30)

CDI recommended that the CPUC require TNCs to maintain primary commercial insurance. Although the CPUC did not use the word "primary," it did require the TNCs to cover claims regardless of whether the TNC driver maintains insurance adequate to cover any portion of the claim. Accordingly, the CPUC requires the TNCs' insurance to drop down and pay first dollar for any claim not covered by the TNC driver's policy.

Coverage Gaps

In a January 2014 letter CDI advised the CPUC of gaps in TNC insurance requirements caused by the fact that, while TNCs are required to maintain \$1 million in liability coverage, TNCs are not required to maintain: 1) medical payments coverage; 2) comprehensive coverage; 3) collision coverage; or 4) uninsured or underinsured motorist (UM/UIM) coverage. Drivers who purchased those coverages on their personal automobile insurance policy may be surprised to find that because they used their personal vehicle “for hire” or for “livery purposes,” the “for hire/livery” exclusion in their personal auto policy may apply and leave them without coverage for medical payments, comp/collision, or UM/UIM.

CDI suggested that the CPUC consider whether TNCs should be required to maintain some or all of the aforementioned coverages. CDI also suggested that the CPUC consider defining the phrase “while providing TNC services” to prevent coverage disputes over when TNC services start and stop and to clarify which insurance is in effect at the time of an accident.

CDI followed up with a public notice to TNC drivers citing the potential gaps in insurance coverage for TNC drivers. To view the notice, please visit CDI’s website at <http://www.insurance.ca.gov/0250-insurers/0300-insurers/0200-bulletins/bulletin-notices-commiss-opinion/TransNetwkDrvrs.cfm>

Lyft & Uber voluntarily close some coverage gaps

In February, TNCs Lyft and Uber announced that they expanded their coverage by purchasing UM/UIM and collision coverage. Purchasing these additional coverages filled part of the gap CDI identified. Specifically, UM/UIM will provide coverage to passengers and drivers injured by an uninsured or underinsured driver. Collision will provide coverage for damage to the TNC driver’s car.¹ With regard to the medical payments coverage, although neither Lyft nor Uber purchased that coverage the potential gap caused by lack of medical payments coverage is reduced by liability and UM/UIM coverages. The gap is further reduced by any health coverage in effect for the driver or passenger who is injured as well as medical payments coverage the passenger may have in place on their own personal auto policy.

While voluntary purchase of UM/UIM and collision coverage is a positive step, problems remain.

Remaining coverage gaps and issues

First, as of March 18, 2014, Lyft and Uber are the only TNCs that have purchased additional coverage. Drivers for other TNCs still face the coverage gaps identified in CDI’s January 10, 2014 letter to the CPUC.²

Second, though certain TNCs have purchased UM/UIM and collision coverage, there is no current legal requirement that these TNCs retain the coverage or that other TNCs purchase coverage.

¹ We understand that Uber has a \$1,000 deductible for its collision coverage and that Lyft’s collision coverage does not apply unless the Lyft driver purchased collision coverage on his or her own policy.

² We have been informed that Sidecar is in the process of purchasing similar insurance.

Third, uncertainty regarding when a TNC driver is “providing TNC services” still exists along with potential coverage disputes regarding when a TNC’s \$1million liability policy is triggered. Some TNCs have, in the past, taken the position that drivers are not “providing TNC services” until the driver accepts a match. At a minimum, this creates potential coverage disputes over whether a TNC’s commercial policy or the TNC driver’s personal auto policy must pay. It also creates the possibility, albeit small, that neither policy will be on the risk leaving accident victims to seek damages solely from the driver’s own financial assets.

When does personal automobile insurance stop and TNC insurance begin?

There are three distinct time periods involved with TNC applications (“Apps”):

PERIOD 1	App Open → Waiting for Match
PERIOD 2	Match Accepted → Passenger Pick-Up
PERIOD 3	Passenger in the Car

The CPUC might clarify and perhaps change when the \$1 million TNC policy comes into play. The CPUC Decision currently provides that the TNC coverage applies when TNC drivers “are providing TNC services.” The CPUC advises that the following section of its Decision clarifies that TNC services begin when a driver accepts a Match:

“TNC drivers may only transport passengers on a prearranged basis. For the purpose of TNC services, a ride is considered prearranged if the ride is solicited and accepted via a TNC digital platform before the ride commences.” (Decision, p. 30)

However, as set forth above, some TNCs have taken the position that drivers are not “providing TNC services” until the driver picks up a passenger. Recently, it appears that some TNCs may be changing their position. We understand, but have not confirmed, that Uber very recently purchased additional insurance to cover all three time periods. While this is a step in the right direction, problems remain.

First, Uber announced it purchased liability limits of 50/100/25, for Period 1, which is lower than the \$1 million liability limits currently required by the CPUC for Periods 2 and 3. And it is unclear whether Uber takes the position that these lower limits or the CPUC’s \$1 million liability limit requirements apply to Period 2. Second, Uber is currently the only TNC that announced the purchase of additional insurance to cover all three time periods and this coverage is still voluntary. It appears that some TNCs still take the position that the driver’s personal auto policy should cover Period 1 and the TNCs’ commercial policy should cover Periods 2 and 3. If TNCs are not required to provide coverage until Period 2, coverage disputes may occur over whether the driver’s personal auto policy or the TNCs’ commercial policy provides coverage for Period 1 - “App Open → Waiting for Match”.

Livery exclusions and the three periods related to TNC use

Related to the above issue is how the livery exclusion applies in relation to the three time periods of TNC use. The challenge in this area is that the livery exclusion is in contract language, not statute, and California has nearly 100 auto insurers. CDI sets forth samples of the livery exclusions of some of the largest personal auto insurers below:

Sample No. 1:

We will not pay for those damages which an insured person is legally obligated to pay because of:

1. bodily injury or property damage arising out of the use of your insured auto while used to carry persons or property for a charge, or any auto you are driving while available for hire by the public. This exclusion does not apply to shared-expense car pools or when the three following conditions are met:
 - a. you are operating an auto as a volunteer service for a nonprofit charitable organization or a governmental agency; and
 - b. you are transporting physically or mentally handicapped persons or persons 60 years of age or older; and
 - c. you do not receive more than the amount allowed for by law for reimbursement of actual miles driven.

Sample No. 2:

1. We will not cover bodily injury or property damage arising out of the ownership, maintenance or use of a vehicle while used to carry persons or property for a charge. This exclusion does not apply to shared-expense car pools.

Sample No. 3:

Under Part I, this policy does not apply to liability for, nor will we provide or pay for a defense of a lawsuit for:

1. bodily injury or property damage arising from the use of any automobile while carrying persons for a charge, but this exclusion does not apply to you while occupying an additional insured automobile as a passenger or to shared-expense car pools.

Sample No. 4:

What is Not Covered: ...bodily injury or property damage arising out of the ownership, maintenance or operation of any vehicle while it is being used to carry persons or property for compensation or a fee, including but not limited to the pickup or delivery or return from a pickup or delivery of products, documents, newspapers, or food. This exclusion does not apply to a share-the-expense car pool.

Sample No. 5:

What is Not Covered: ... damages arising out of the ownership, maintenance, or use of a vehicle while it is being used to carry persons for a charge. This exclusion does not apply to the use of a private passenger car on a share-the-expense basis.

Sample No. 6

Section I – Liability –Exclusion

Section I does not apply to any vehicle used to carry passengers or goods for hire. However, a vehicle used in an ordinary car pool on a ride sharing or cost sharing basis is covered.

Section II – Medical Payments – Exclusion

There is no coverage for bodily injury sustained by any occupant of an owned auto used to carry passengers or goods for hire. However, a vehicle used in an ordinary car pool on a ride sharing or cost sharing basis is covered.

Section III – Physical Damage – Exclusion

An auto used to carry passengers or goods for hire is not covered. However, a vehicle used in an ordinary car pool on a ride sharing or cost sharing basis is covered.

Because of the varying language in the above "livery and driving for hire exclusions," some drivers would be covered and other might not be covered if TNCs are not required to provide insurance during Period 1. For example, one major insurer's exclusion provides it will not cover damage or injury "arising out of the use of your insured auto while used to carry persons or property for a charge, or any auto you are driving while available for hire by the public." That could exclude coverage during all three periods.

Another insurer's exclusion applies "while used to carry persons or property for a charge." That might imply that Period 1 is covered while Periods 2 and 3 are not.

TNCs have asserted that it is "extremely rare for personal policies to deny coverage." Personal auto insurers likely disagree. As seen above, it depends on the policy language, which does not provide any consistency. Moreover, whether a personal auto policy insurer agrees to provide coverage may depend on the amount of the personal auto policy liability limits vs. the amount of claimed liability. For example, if a driver has a 15/30/5 policy, an insurer may make a business decision to simply pay \$30,000 policy limits rather than litigate the issue that personal auto insurance was not in effect because the driver was using the vehicle for livery purposes.

Livery exclusions and ridesharing

"Ridesharing" means two or more persons traveling by any mode, including, but not limited to, carpooling, vanpooling, buspooling, taxipooling, jitney, and public transit." (Cal. Veh. Code 522.)

The livery exclusions discussed above appear to except ridesharing from the exclusions. In other words, personal auto policies generally provide coverage for ridesharing a/k/a carpooling. Thus, the casual carpooling that occurs between the East Bay and San Francisco is generally covered by the driver's personal auto policy.

We also note that the CPUC did not define TNCs to include ridesharing. "Ridesharing" is exempt from the CPUC's jurisdiction under the Passenger Charter-party Carriers' Act which exempts:

Transportation of persons between home and work locations or of persons having a common work-related trip purpose in a vehicle having a seating capacity of 15 passengers or less, including the driver, which are used for the purpose of ridesharing, as defined in Section 522 of the Vehicle Code, when the ridesharing is incidental to another purpose of the driver. This exemption also applies to a vehicle having a seating capacity of more than 15 passengers if the driver files with the commission evidence of liability insurance protection in the same amount and in the same manner as required for a passenger stage corporation, and the vehicle undergoes and passes an annual safety inspection by the Department of the California Highway Patrol. The insurance filing shall be accompanied by a one-time filing fee of seventy-five dollars (\$75). This exemption does not apply if the primary purpose for the transportation of those persons is to make a profit. "Profit," as used in this subdivision, does not include the recovery of the actual costs incurred in owning and operating a vanpool vehicle, as defined in Section 668 of the Vehicle Code. (Public Utilities Code section 5353, emphasis added.)³

³ Vehicle Code Section 668. A "vanpool vehicle" is any motor vehicle, other than a motortruck or truck tractor, designed for carrying more than 10 but not more than 15 persons including the driver, which is maintained and used primarily for the nonprofit work-related transportation of adults for the purposes of ridesharing.

Coverage for true ridesharing should be covered by most personal auto policies, as can be seen from the livery exclusions set forth herein. However, because of the varying language used in livery exclusions, it may make sense for the Legislature to better define "Ridesharing" and to mandate that personal auto policies cannot exclude ridesharing.

CDI's draft options for insuring TNC risk

This section includes draft ideas developed by the California Department of Insurance detailing ways in which TNC insurance might be improved. These have not been subject to a detailed legal review and are dependent upon discretionary actions by stakeholders.

Existing coverage options

- CPUC could require TNCs to buy primary commercial liability insurance to cover all time periods when a TNC "app" is being used.
- CPUC could require TNCs to buy optional coverages such as UM/UIM, comprehensive and collision, and medical payments coverage that would be triggered if the driver carries these coverages on his/her personal policy.
- Drivers could purchase commercial coverage that would provide coverage 24/7/365.

Creation of new coverage options

- Legislature could require TNCs to buy additional insurance. Legislature could define "while providing TNC services" in order to deal with the lack of coverage for Period 1 ("App Open → Waiting for Match") and avoid lengthy coverage disputes. Legislature could enact a statute like AB 1871 (Jones 2010), related to personal vehicle sharing, which holds harmless owner's personal auto insurer for losses that occur when the vehicle is being used in a car-sharing program. However, issue of driver's gross negligence must be considered in the TNC context where the car is being driven by owner.
- An insurer could issue commercial coverage to the TNC providing liability coverage and other auto coverages (UM/UIM, comprehensive and collision, medical payments) that applies to any auto (a) while engaged in a TNC activity (including "logged in and trolling for fares") or (b) full time coverage. The coverage would apply to a schedule of vehicles provided by the TNC which includes all registered drivers. The premium could be pro-rated and billed monthly to the TNC for each vehicle listed based upon the amount of time logged in as doing TNC activity as reported by the TNC also on a monthly basis. Each TNC driver is issued a certificate of coverage identifying the policy number, insurer contact information, limits etc. that apply while the driver is engaged in TNC activity. Drivers could hypothetically pay the TNC for their pro-rata share of the insurance coverage. This concept could have the drivers still purchasing personal auto for their personal use, and this split coverage would need to be discussed with the personal lines auto insurers.
- Personal lines insurers could file for a "Type of Use" new optional rating factor [CCR 2632.5(d)(3)] plus an endorsement, offered to all good drivers, that removed the livery exclusion, classified the car as TNC, and then file a new class plan for that exposure. If the loss experience of all the TNC classification was tracked separately, there would be an equitable rate for the TNC drivers separate from other drivers. Challenges to this approach include: (1) CIC 660(a)(1) specifically carves out livery from the definition of personal auto; (2) a mechanism for documenting

personal/TNC miles may be needed, and (3) putting occasional TNC drivers in the same pool with frequent TNC drivers may make the endorsement cost-prohibitive for occasional drivers.

- A commercial insurer could make a Rule filing to the company's already established commercial auto program to provide an endorsement/rates/rule for coverage for TNC drivers.
- A commercial insurer could make a new rate filing.

Pending legislation

AB 2293 (Bonilla) – Currently in spot form, this bill is sponsored by the insurance industry (PIFC, ACIC, AIA and others). The industry notes that the bill will ultimately be aimed at providing clear guidelines regarding insurance coverage for ride-sharing services aimed at ensuring that the “personal and financial safety of consumers, passengers and drivers are protected.” The fact sheet says the bill also aims to clarify when a TNC’s coverage is activated, and will include disclosure so that “ride-sharing program participants (car owners, drivers and passengers) know where they stand” vis-à-vis insurance.

AB 2224 (Nazarian) – Also currently in spot form, this bill is apparently sponsored by the taxi industry.