Sharing Economy (C) Working Group

March 28, 2014
Phoenix, AZ
Attachment A:
Consider Adoption of its Nov. 16, Dec. 18, Jan. 21 and March 5 Minutes
Sharing Economy (C) Working Group
Washington, District of Columbia
November 16, 2014

The Sharing Economy (C) Working Group of the Property and Casualty Insurance (C) Committee met in Washington, DC, Nov. 16, 2014. The following Working Group members participated: Dave Jones, Chair, and Joel Laucher (CA); Scott J. Kipper, Vice Chair (NV); Marty Hester (AK); Marguerite Salazar represented by Peg Brown (CO); Thomas B. Leonardi represented by George Bradner (CT); John Turchi (MA); John G. Franchini (NM); John D. Doak and Cuc Nguyen (OK); Paula Pallozzi (RI); Mike Kreidler represented by Lee Barclay (WA); and Rebecca Nichols (VA).

1. **Heard a Presentation from the ISO**

Jeff DeTurris (Insurance Services Office—ISO) explained that the sharing economy arose out of an unmet need, an increased use of technology and the downturn in the economy as people sought ways to reduce expenses and increase income. Mr. DeTurris said the ISO defines car-sharing as follows: “car owners ‘share’ their car with other drivers, analogous to car rental.” ISO defines ride-sharing as follows: “drivers use their car to transport passengers, analogous to taxi service.” He stated that insurer concerns with regard to car-sharing are the potential frequency of use or additional miles driven, as well as insurer awareness of drivers’ use of personal vehicles as a livery service. The ISO personal auto insurance policy covers any person using a covered auto. Personal lines insurers typically take great care in rating the driver (or drivers) covered under a policy to assess the risk. Car-sharing allows for additional, unanticipated drivers’ use of the covered vehicle. Vehicle use by multiple unknown drivers is typically a commercial risk. Personal vehicle-sharing programs such as the model established by the California Legislature generally covers the risk created by ride-sharing. The ISO recently developed a new personal auto exclusion regarding car-sharing arrangements, which is now available in 47 jurisdictions. He said the ISO also developed a policyholder notice for ISO-member companies to inform insureds about the new exclusion. The exclusion states, “We do not provide liability coverage for the ownership, maintenance or use of: ‘Your covered auto’ while: a. enrolled in a personal vehicle sharing program under the terms of a written agreement; and b. being used in connection with such personal vehicle sharing program by anyone other than you or any ‘family member’.”

Mr. DeTurris stated that ride-sharing is defined as using a smartphone app to connect drivers with passengers through a transportation network company (TNC). He said TNCs are much like social networking sites, as they rate drivers and post reviews of passenger experience. Currently, TNCs operate in at least 60 cities worldwide. Payment and tips are submitted through the smart device application. These applications have a broad appeal for use as a driver or a passenger by young adults, students, teachers, seniors and the unemployed. He said the ISO also created a policy exclusion for ride-sharing that states, “We do not provide liability coverage for any ‘insured’: for that ‘insureds’ liability arising out of the ownership or operation of a vehicle while it is being used as a public or livery conveyance.” Many insurers already have similar policy exclusions. Mr. DeTurris defined the three exposure periods related to ride-sharing: 1) phase one, which is when the driver is logged into the TNC application but not matched with a passenger; 2) phase two, which is when a match has been made but there is no passenger in the TNC driver’s vehicle; and 3) phase three, which is when there is a passenger in the TNC driver’s vehicle. Many states, as well as the NAIC, have published public notices to alert drivers and passengers to the potential risks and coverage gaps related to use of TNCs. A list of the state insurance department news releases, as well as the NAIC Consumer Alerts, have been posted on the Working Group’s Web page.

Mr. DeTurris stated that several of the ISO’s member companies are becoming more aware that this is an opportunity for new products and realize they will have to accommodate in order to maintain market share. Insurers would appreciate additional information to accurately rate the new exposures that ride-sharing creates. Such information could include the territories typically driven by TNC drivers, mileage driven while offering ride-sharing services, hours of operation and typical use of the vehicle. He said the ISO is researching the development of this information in order to assist its member companies with accurately pricing the risk assumed by TNC drivers. He said the ISO also intends to clarify the public or livery conveyance policy exclusion. Additionally, the ISO is working on the creation of a new coverage option regarding ride-sharing services, and its commercial auto division is working on coverage options, with a possible change or additional classification.
Mr. DeTurris stated that house-sharing is an arrangement where hosts temporarily share space with tourists or travelers, matching property owners and travelers online or through a smart device application. Exposure considerations include the frequency of rental, the insurer’s awareness of the house-sharing activity, the host’s awareness of insurance coverages, whether the insured is physically present during the traveler’s stay and local ordinances applicable to the property. Similar to ride- or car-sharing, several of these risks are typically considered commercial exposures. Mr. DeTurris explained that, under the current ISO homeowners insurance policy, personal property excluded includes property of roomers, boarders and other tenants; limited coverage is provided for the insured’s property in an apartment regularly rented or held for rent to others. Liability coverage is provided for rental properties or those held for rent on an occasional basis; however, “occasional” is undefined and lacks clarity. Several exclusions are included in the current typical ISO homeowners insurance policy form that could be applicable to house-sharing, although they were not created specifically for it. He said the ISO is reviewing the forms for potential exclusions and is considering the creation of a notice that would ultimately go to homeowners for consideration of policy provisions and potential for exposures excluded under its standard homeowners insurance policy.

Mr. DeTurris stated that a coverage option and a more explicit exclusion will be developed soon and that rating may be more of a work in progress with several iterations necessary. Mr. Bradner questioned the likelihood of insurers to drop coverage once they are made aware of the insured’s use of TNC products. Mr. DeTurris stated that several of the ISO’s member companies have expressed a desire to cover these risks in a growing market and realize that they will have to get on board in order to remain viable in the marketplace. They may have to separate the risks by offering additional coverage options to individually rate risks.

2. Heard a Presentation Regarding California Legislation

Commissioner Jones stated that California defines a TNC as a company that facilitate the use of personal vehicles to transport passengers for a fee. He stated that California statute defines the three periods of exposure relative to ride-sharing as follows: 1) period one, which is when the driver for the TNC turns on the application and makes himself/herself available; 2) period two, which is when a match is accepted by the prospective rider but the rider has not been picked up; and 3) period three, which is when the rider is picked up. Period three ends when the rider has been delivered to his/her destination. Commissioner Jones stated that, in California’s review of personal auto policies, it was found that almost all policies had some sort of livery exclusion. It was shared that, on New Year’s Day 2014, an unfortunate accident occurred involving an Uber driver, whereby the TNC driver struck a family on his/her way to pick up a passenger. The accident took place during period one, while the application was on but no riders were in the vehicle. The accident resulted in the death of a 6-year-old girl and injury of her family members. Litigation is ongoing regarding the TNC’s liability for the accident. The personal auto insurer for the driver did pay the claim, even though the limited policy included a livery exclusion.

The California Public Utilities Commission (CPUC) has determined that TNCs are essentially a form of common carrier regulated by the CPUC, which means that TNCs would be licensed at the state level in California. Commissioner Jones recommended that the major economic actor, the TNC, should be required to provide insurance. He recommended that the TNC provide coverage of $1 million for all three periods, as well as $1 million for uninsured and underinsured motorist coverage and that they should provide comprehensive and collision up to the amount that the driver carries on his/her personal auto policy. The driver should be required to provide that information to the TNC and the TNC should disclose that their personal auto policy limits apply.

The California Legislature ultimately determined that, in period one, the required coverage limits are $50,000 for bodily injury per person, $100,000 for bodily injury per accident and $30,000 for property damage. The California legislation also requires that the TNC ensure either the driver or maintain $200,000 in excess of the initial coverage limits. In period two and period three, the TNC should obtain primary liability coverage in the amount of $1 million. In period three, the TNC should have $1 million for uninsured and underinsured coverage, as well. The law was enacted in September 2014 and goes into effect July 1, 2015. Commissioner Jones believes that the law leaves gaps for comprehensive and collision, med pay and uninsured motorist coverage, as well as underinsured motorist coverage in period one and period two.

3. Heard a Presentation from the PCI

David Kodama (Property Casualty Insurers Association of America—PCI) stated that the PCI members identified several major concerns that correlate with those discussed by ISO in its previous presentation. Member concerns include...
over terminology relative to sharing economy; new exposures and pricing appropriate to the assumed risk; identifying the need for modification to policy language; and expenses for claims investigation and adjudication involving TNCs. He said PCI-member companies support innovation with respect to product development. They believe that surplus lines companies need to respond to the new business models and be allowed to do so by state regulation. They believe that policy exclusions need to be enforced and that coverage gaps need to be eliminated. They believe consumers and insurers need to be clear on what coverage applies in all instances and they believe that the TNC should maintain the duty to defend the driver until the dispute is resolved and that data should be shared among the insurers.

4. **Discussed its Preliminary Objectives and Action Plan**

   Commissioner Jones proposed that the Working Group develop a draft white paper, *Transportation Network Company Insurance Principles for Legislators and State Regulators*, by the 2015 Spring National Meeting to identify regulatory concerns and principles of legislation. He stated that, at the Spring National Meeting, the Working Group should take comments on the white paper, discuss workers’ compensation issues regarding TNCs and hear updates from Colorado and California regarding enacted legislation. Commissioner Doak stated that an additional action item may be to track the development of public notices distributed by the state insurance departments, as well as the NAIC. Ms. Pallozzi suggested inviting the National Council on Compensation Insurance (NCCI) to provide input at a future meeting regarding workers’ compensation.

5. **Discussed Other Matters**

   Gus Fuldner (Uber) stated that many jurisdictions have addressed this issue at the municipal level, and Mr. Fuldner offered to share those outcomes with the Working Group. Three states (California, Colorado and Washington) have enacted legislation and 12 cities have enacted ordinances regarding ride-sharing. He said Uber can help the Working Group correct and dispel factual inaccuracies often prevalent in new, quickly evolving topics.

   Amy Bach (United Policyholders) stated that taxis and limousines are required to carry higher limits than those imposed on TNCs by the recently enacted legislation in California. She stated that the legislation is a good start, but represents a compromise from levels required to fully protect consumers. She stated that she is most concerned with the exclusions and requests that regulators work with insurers on eliminating and clarifying exclusions. She believes that the use of cell phones by drivers should also to be included in the white paper.

   Mary VanSise (ISO) offered to share the ISO white paper on ride-sharing with the Working Group as soon as it is finalized.

Having no further business, the Sharing Economy (C) Working Group adjourned.
The Sharing Economy (C) Working Group of the Property and Casualty Insurance (C) Committee met via conference call Dec. 18, 2014. The following Working Group members participated: Dave Jones, Chair, and Chris Shultz, Jennifer McCune, Mikki Theis and Joel Laucher (CA); Scott J. Kipper, Vice Chair (NV); Marty Hester (AK); John Turchi and Cara Blank (MA); John G. Franchini (NM); John D. Doak, Buddy Combs, Joel Sander, James Mills and Cuc Nguyen (OK); Paula Pallozzi (RI); Rebecca Nichols (VA); and Mike Kreidler represented by Bianca Stoner and Lee Barclay (WA). Also participating were: Joy Hatchette (MD); Joan Dutil (MO); Joana Lucashuk (NY);

1. **Discussed Draft Outline of Transportation Network Company (TNC) White Paper**

Gus Fuldner (Uber) stated that it is important to consider consumer protection from the perspective of the driver and to make note that drivers using Uber’s application have already purchased a contract with a personal auto insurance carrier. Mr. Fuldner said that the white paper outline as drafted includes the passenger or third-party perspective, noting that the draft indicates that third parties are often unaware of coverage issues. He stated that several of the comments received by the Working Group at the Fall National Meeting regarding the third-party perspective include broader coverage and higher limits than those provided by taxi or limousine companies. Mr. Fuldner encouraged the Working Group to focus on existing filings for new products that fill coverage gaps, many of which have been approved by various state insurance departments.

Birny Birnbaum (Center for Economic Justice—CEJ) stated that the draft outline is solid, as it addresses problems and includes options for resolving those issues. Mr. Birnbaum stated that principles and tools for policymakers should be included, regardless of whether it is handled at the state or municipal level. Sonia Larkin-Thorne (Consumer Advocate) stated that she agrees with Mr. Birnbaum regarding the draft outline. She stated that anything that adds costs to an existing product for which it was not intended and that a consumer is required to purchase is unfair. She believes that people who do not use their personal auto for a business use should not be required to bear the burden for those that do.

Commissioner Doak stated that a key issue to be addressed in the white paper, as well as through additional resources, is consumer education. He stated that this could be achieved through a public service announcement notifying consumers that most personal auto policies have exclusions for business use, as in the case of the ride-sharing services. Commissioner Jones recommended adding a section on the outline under “Potential Solutions to Coverage Issues” for public education and public outreach. Amy Bach (United Policyholders) stated that United Policyholders recently published an article, “Lyft Your Limits,” notifying consumers of potential coverage gaps due to the use of ride-sharing services. She stated that there are four types of consumers involved in this issue: ride-sharing companies; drivers using ride-sharing to earn income; passengers utilizing the service provided; and third-party individuals who are not utilizing the service but may become involved if an accident were to occur. Ms. Pallozzi recommended that the Working Group send a referral to the Transparency and Readability of Consumer Information (C) Working Group to update the NAIC Consumer Shopping Tool for Auto Insurance and the Consumer’s Guide to Auto Insurance to include issues relative to ride-sharing. She asked the Working Group if the white paper should address consumers and the general public, as well as regulators and legislators. Commissioner Jones stated that the white paper could be drafted for the broader public and any stakeholder involved. Ms. Blank suggested that the white paper characterize the differences in exposures regarding ride-sharing, in addition to those included in a standard personal lines auto insurance policy and identify the increased exposure to losses due to the use of ride-sharing services.

Mr. Laucher asked that Uber provide any disclosures it currently provides to its drivers and passengers, as well as copies of the policies it currently carries in the states and cities where it operates. Mr. Fuldner agreed to make those available to the Working Group. He suggested that the white paper should also include the disclosures provided by personal insurance carriers and questions included in their insurance applications. Mr. Fuldner stated that there are existing personal auto policies that address limited business use of personal vehicles, including home health care, senior citizen services and real estate agents. These existing insurance products may be helpful in determining new coverages available through personal auto carriers.
Greg Serio (Park Strategies) suggested adding a subsection concerning the perspective of taxi regulators, due to shared jurisdiction between state insurance regulation and municipal or local ordinances. Ms. Pallozzi recommended that the white paper utilize information compiled by Property Casualty Insurers Association of America (PCI) for Section V—Overview of Current Legislation.

Commissioner Jones requested that all relevant information pertinent to creation of the white paper be sent to NAIC staff by Jan. 2, 2015. He suggested that the Working Group have another conference call in early February 2015 to discuss comments on an initial draft of the white paper.

2. **Discussed State Tracking of TNC Activities in SBS**

Jennifer Gardner (NAIC) stated that Ms. Pallozzi shared a screenshot that shows Rhode Island’s current tracking of TNC activities in State Based Systems (SBS). Other states that utilize SBS software may want to copy Rhode Island’s approach to the tracking of TNC issues. Commissioner Jones requested that NAIC staff distribute information to all commissioners to alert them of the capability for tracking TNC issues in SBS.

Having no further business, the Sharing Economy (C) Working Group adjourned.
Sharing Economy (C) Working Group
Conference Call
January 21, 2015

The Sharing Economy (C) Working Group of the Property and Casualty Insurance (C) Committee met via conference call January 21, 2015. The following Working Group members participated: Dave Jones, Chair, and Chris Shultz, Jennifer McCune, Mikki Theis, Durriya Syed, Geoff Margolis, Daniel Goodell and Joel Laucher (CA); Scott J. Kipper, Vice Chair represented by Rajat Chan (NV); Marty Hester and (AK); Anne Melissa Dowling represented by George Bradner (CT); John Turchi represented by Robert A. Whitney (MA); John D. Doak represented by Cuc Nguyen, James Mills and Joel Sander (OK); Paula Pallozzi (RI); Rebecca Nichols and Melinda Willis (VA); and Mike Kreidler represented by Bianca Stoner (WA). Also participating were: Joy Hatchette (MD); Joan Dutilt and Angela Nelson (MO); Carl Sornson (NJ); and Joana Lucashuk (NY).

1. Heard Comments from Interested Parties

Gus Fuldner (Uber) stated that Uber is supportive of developing a balanced regulatory approach that encourages innovation and brings transportation network company (TNC) services to a wide range of communities across America. To date, over 20 jurisdictions have passed regulatory schemes including four NAIC member states and well over a dozen municipalities. The four NAIC member states that have passed TNC legislation are: California, Colorado, District of Columbia and Illinois. Illinois enacted legislation Jan. 12 that addresses insurance requirements of TNCs. The bipartisan bill creates a framework that provides clarity and streamlines the insurance requirements across the state allowing TNCs to expand into smaller communities across Illinois. The Illinois Department of Insurance has also approved new private market products that help fill coverage gaps in Period 1. Erie Insurance has been approved to sell endorsements to personal auto policies in Illinois and Indiana. USAA, Farmers and MetLife have filed similar products in Colorado. Mr. Fuldner stated that the risk in Period 1 is very similar to personal lines coverage and very different than Period 2 and 3. He stated that Uber contributed actuarial data to the Colorado Department of Regulatory Agencies Division of Insurance for their study regarding coverage limits. Gus stated that Uber supports the recommendation to increase the transparency and disclosures to consumers especially with regard to personal auto policies disclosure of exclusions to their applicants.

Greg Serio (Taxi cab, Limousine and Para Transit Association) stated that a critical issue not identified in the draft white paper is if TNC activity is different from other liversies and if yes, how. He suggested that if defined coverage periods with different limits and requirements for coverage is adequate regulation for TNCs it should also be adequate for the rest of the livery industry including taxicabs and limousines. He stated that TNCs are providing the same service as the rest of the livery industry and that they should be regulated and required to carry the same level of insurance as the rest of the livery industry. Mr. Serio stated that the concept of dual insurers covering a vehicle under different coverage periods is problematic for determining who has the duty to defend the insured in a lawsuit. He stated that the Taxicab, Limousine and Para Transit Association is concerned with the leakage of commercial risk into personal lines insurance. He suggested that the NAIC discuss insurance requirements with the International Association of Transportation Regulators (IATR) or other taxi regulators to determine a uniform approach to livery regulation.

Kate Sampson (Lyft) suggested that the paper emphasize the new products being developed by the personal auto insurers earlier in the paper. She stated the insurance carriers she has spoken with have made clear that they are capable of developing sophisticated rating plans for TNC drivers so that the cost is not extended to insureds who do not participate in TNC activities. She stated that there are times when a driver could be operating under Period 1 under the Lyft platform while driving for personal reasons, such as being available for hire on their way home from work. She suggested that the white paper address how the personal transfer of miles to the TNC policy will reflect a refund or compensation from insureds with their personal auto insurance arrangements. Ms. Sampson suggested that the white paper acknowledge the lack of insurance products available to TNCs through admitted insurers and that surplus lines insurers are the most viable option for TNCs to obtain coverage at this time.


Commissioner Jones suggested that the draft be exposed for comment with a comment deadline of Feb. 20. The Working Group conceded to the timeline proposed by Commissioner Jones. The Working Group will have a conference call following
the comment deadline to discuss comments received. Revisions will be made pursuant to that conference call and sent to the Working Group for review prior to the Spring National Meeting. Paula Pallozzi suggested changing the sentence under Section 2, “Coverage Issues” to state, “coverage gaps for TNC drivers exist because TNC drivers may not be required to maintain commercial coverage.”

3. **Discussed Referral to Transparency and Readability (C) Working Group**

The Working Group is interested in public outreach and education regarding sharing activities and seeks to inform consumers and the public of coverage issues relative to sharing services. The Working Group conceded to take an e-vote on the recommendation that the Transparency and Readability (C) Working Group review and consider updates to the *NAIC Consumer Shopping Tool for Auto Insurance, A Consumer’s Guide to Auto Insurance, NAIC Consumer Shopping Tool for Homeowners Insurance* and *NAIC Consumer Shopping Tool for Homeowners Insurance*. The Working Group will consider the referral via e-vote once the Property and Casualty Committee has assigned the Chair of the Working Group.

Having no further business, the Sharing Economy (C) Working Group adjourned.
March 5 Meeting Minutes Will Be Available Soon
Attachment B: Consider Adoption of Draft White Paper
Transportation Network Company Insurance Principles for Legislators and Regulators
Attachment C:
Hear a Presentation from the National Council on Compensation Insurance (NCCI)
Regarding Workers’ Compensation Issues Relative to TNC Activities
Presentation from National Council on Compensation Insurance (NCCI) Will Be Available Soon