

By Eric Nordman, Director of Regulatory Services and CIPR

Hey buddy, can you spare a ride? This age-old question has taken a new twist as technological advances have changed the way in which business is done. Allow us to introduce the transportation network company (TNC). A TNC is an organization offering prearranged transportation services for compensation using an online application or platform to connect passengers with drivers willing to transport them. The TNC might also be known as a “ride-sharing company.”

There are several companies fitting the general description of a TNC. Included on the list are Lyft (available in more than 60 locations), Sidecar (available in Boston, Chicago, Long Beach, Los Angeles, San Diego, San Francisco, Seattle and Washington, D.C.), Summon (available in the San Francisco Bay area), Uber X (available in 36 countries and more than 60 U.S. cities) and Wingz (offers transportation to the Burbank, Los Angeles, Oakland, San Francisco and San Jose airports).

The basic business model starts with an advertisement for drivers. Ads often are along the lines of “Make up to \$20/hour; drive your car when you want to pick up passengers we identify for you.” There are no upfront costs to the driver, but the TNC does check the driver’s background and driving record. The TNC will inspect the vehicle and there is some limited training.

The TNC advertises for riders and will generally use an iPhone or Android app as the point of contact. The prospective traveler downloads the app, follows the on-screen instructions to enter information about the pick-up and drop-off points, identifies the date and time for the pick-up and posts a request. The driver responds if he/she wishes to accept the offer and agrees to pick up the rider. The rider is notified by email or text message when the driver has accepted the offer. Another text message is sent when the driver is on the way. The TNC makes its money by taking a percentage of sales. Prices to the public for the service are generally less than for a taxicab. The cost of the ride is charged to a credit card with no tipping involved.

It all sounds wonderful. It’s a good deal for the public and a good deal for the drivers. It’s a win-win situation for all, right? But wait! It seems there may be an issue or two...

### ◆ TAXICABS AND LIMOUSINES

In most places, taxicabs and limousines are regulated to protect the public. Because taxis and limos are offering to transport passengers from place to place for a fee, shouldn’t

the TNC driver simply get licensed as a taxi driver? The taxi and limo drivers certainly think they should. If you type “taxicabs and ride-sharing” into any search engine, a number of articles will pop up where taxi drivers are protesting the TNCs. A June 12, 2014, article in the *Pittsburgh Post-Gazette* is titled, “Growing Opposition to Ride Share Companies Goes Global.”<sup>1</sup> It describes how taxi drivers and train workers have united across Europe to protest Uber’s entry in the London market. It seems the taxi drivers refused to pick up riders and drove very slowly to create gridlock and massive traffic jams. According to the article, the protest backfired, as the result was an 850% increase in people contacting Uber over the prior Wednesday.<sup>2</sup>

There is similar opposition in the U.S. as taxi and limo drivers—and their trade associations—have united to oppose the TNC concept in a variety of ways. The basic argument is the TNC is an unlicensed taxicab company and it is illegally taking away business that rightfully belongs to the properly licensed taxi and limo drivers. In light of the opposition, various governmental bodies have taken action. Some jurisdictions have issued cease-and-desist orders. Others have levied fines against the drivers or the TNCs.

### ◆ INSURANCE ISSUES

While the operation of a TNC is not primarily about insurance, there are some insurance issues surfacing. The leader among the insurance regulatory community has been California Insurance Commissioner Dave Jones. In September 2013, the California Public Utilities Commission, Transportation Licensing Section issued a press release<sup>3</sup> and guidance to owners of TNCs and their drivers.<sup>4</sup> A consumer-friendly version of the formal guidance was issued in October 2013.<sup>5</sup> The guidance defines the TNC, requiring a TNC to only use smartphone technology applications to facilitate passenger transportation in a driver’s personal vehicle. It distinguishes the TNC driver from a taxicab driver by prohibiting the TNC driver from accepting street hails and requiring all rides to be prearranged using the smartphone digital platform. It requires driver training, a drug and alcohol testing program, a criminal background check and a vehicle inspection by the TNC. The guidance also has insurance requirements: the

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<sup>1</sup> [www.post-gazette.com/business/2014/06/13/Growing-opposition-to-ride-share-companies-goes-global/stories/201406120314](http://www.post-gazette.com/business/2014/06/13/Growing-opposition-to-ride-share-companies-goes-global/stories/201406120314)

<sup>2</sup> Ibid.

<sup>3</sup> <http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M077/K132/77132276.PDF>

<sup>4</sup> <http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M077/K112/77112285.PDF>

<sup>5</sup> [www.cpuc.ca.gov/NR/rdonlyres/1788F1F1-EA38-4B68-B221-4116994F2252/0/TNC\\_App\\_Instrctns.pdf](http://www.cpuc.ca.gov/NR/rdonlyres/1788F1F1-EA38-4B68-B221-4116994F2252/0/TNC_App_Instrctns.pdf)

## RIDE-SHARING: NEW TECHNOLOGY CREATES INSURANCE CHALLENGES (CONTINUED)

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TNC must be licensed by the California Public Utilities Commission and must ensure the driver has passed a background check.

Commissioner Jones reviewed the guidance issued by the California Public Utilities Commission and noticed there were some remaining insurance issues left unaddressed by the California Public Utilities Commission guidance. He convened a public hearing March 21, 2014, to investigate the matter.<sup>6</sup> Following the public hearing, Commissioner Jones issued a letter to the California Public Service Commission dated April 7, 2014.<sup>7</sup> In the letter, the Commissioner made eight recommendations to the California Public Utilities Commission and two recommendations to the California Legislature. His findings outline several significant insurance issues.

The major insurance issue surrounds the driver's personal auto insurance policy. The most commonly used auto policy is the personal auto policy developed by the insurance advisory organization, Insurance Services Offices, Inc. It contains an exclusion that says, "We do not provide Liability Coverage for any *insured* for that *insured's* liability arising out of the ownership or operation of a vehicle while it is being used to carry persons or property for compensation or a fee. This Exclusion does not apply to a share-the-expense car pool." Other auto insurers have similar exclusionary language in their policy forms.

As a result, a TNC driver's personal auto insurance policy will not provide coverage when the driver is using his car to transport people in a ride-sharing arrangement for a fee. Following the hearing, Commissioner Jones found, "Drivers' existing personal auto insurance does not cover TNC-related driving and auto insurers are not planning to offer coverage of this risk in the near future if ever."<sup>8</sup> Commissioner Jones also found the TNCs were under the mistaken belief that personal auto insurers would provide coverage, which is not the case in all of the states. The issue is compounded when the states have other mandatory insurance requirements, such as personal injury protection (no-fault), uninsured motorists coverage or underinsured motorists coverage.

In addition to the liability coverage gap, a TNC driver might also find personal auto coverage for comprehensive or collision coverage does not apply while the vehicle is being driven for hire.

One of the biggest concerns is determining at what point in time a driver is operating the vehicle for hire. Is it when the

driver picks up a passenger? Is it when the driver turns on the TNC app and makes himself or herself available for hire? Lack of clarity surrounding this issue will inevitably lead to coverage disputes as claims arise.

Several of the large TNCs provide \$1 million of liability coverage for damages that exceed a driver's personal insurance limits. However, the coverage applies only when a passenger is in the car or once a driver has accepted a request for a ride from a smartphone application. The coverage gap was identified in the April 7, 2014, letter from Commissioner Jones to the California Public Service Commission. In it, Commissioner Jones recommended the California Public Service Commission redefine its definition of "when providing TNC services." His correspondence suggested three distinct time periods associated with the delivery of TNC services.

The first period occurs when the driver opens the TNC app and is available to pick up riders, but has not received a matching offer from a potential fare. The second period occurs when a pick-up request is received, the driver has been matched with the rider and the driver picks up the passenger. The third period occurs when the passenger is in the car until the passenger has safely exited the vehicle. Commissioner Jones also recommended the TNC companies be required to maintain primary commercial auto liability insurance in the amount of \$1 million for each of the three coverage periods. Further, he recommended the TNCs be required to carry \$1 million limits of uninsured motorists coverage and underinsured motorists coverage.

Other recommendations from Commissioner Jones include: requiring notice to personal auto insurers that a person has decided to become a TNC driver; requiring the TNC to share data with the personal auto insurance regarding a claim; requiring the TNC to provide evidence of coverage to its drivers so the driver could share the information with passenger in case of an accident; requiring disclosure regarding the impact on insurance coverage of a TNC driver picking up a "private client" and charging a fee; and suggesting a 60-day delay in imposing the suggested requirements on TNCs and TNC drivers to allow them time to secure the additional coverages. Commissioner Jones also made suggestions to the California Legislature regarding legislation to isolate TNC use from personal auto use and to revisit California's ride-sharing and casual carpooling laws.

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<sup>6</sup> [www.insurance.ca.gov/video/0030VideoHearings/upload/TNCBackground20140101.pdf](http://www.insurance.ca.gov/video/0030VideoHearings/upload/TNCBackground20140101.pdf)

<sup>7</sup> [www.insurance.ca.gov/video/0030VideoHearings/upload/CDI-CPUC20140407.pdf](http://www.insurance.ca.gov/video/0030VideoHearings/upload/CDI-CPUC20140407.pdf)

<sup>8</sup> [www.insurance.ca.gov/video/0030VideoHearings/upload/CDI-CPUC20140407.pdf](http://www.insurance.ca.gov/video/0030VideoHearings/upload/CDI-CPUC20140407.pdf)

## RIDE-SHARING: NEW TECHNOLOGY CREATES INSURANCE CHALLENGES (CONTINUED)

As TNCs have moved into other states and cities, insurance commissioners have reacted in similar ways to advise the public of the shortcomings and insurance issues regarding ridesharing. Most have come in the form of bulletins warning consumers of insurance coverage gaps. Some of the large TNCs say they have filled the insurance gap with extended excess policies, although such policies are so new they have not been tested. Also, coverage for when a driver is available to pick up a passenger and has the app on typically has much lower limits, such as \$100,000 per occurrence.

Insurance regulators oversee insurance companies and insurance agents, not TNCs. The insurance laws and regulations apply to the insurance company and the insurance producer issuing the insurance policy to the TNC or the individual driver. Municipalities typically regulate the licensing of taxicabs, limousines and other livery services. Municipalities or states can change the requirements on whether ridesharing services must be licensed as taxis.

One of the primary missions of state insurance regulators is consumer protection and many state insurance regulators have recently issued consumer alerts concerning ridesharing. These consumer alerts typically focus on the fact that most personal auto policies contain exclusions for driving for hire or livery services. Regulators have warned consumers that their personal auto policy likely will not provide coverage for liability incurred while driving passengers in exchange for payment (other than in an expense-sharing arrangement, such as carpooling). In addition, even if the state requires the TNC to have a liability policy, that policy may not provide coverage for bodily injury to the TNC driver, damage to the TNC driver's car or bodily injury or physical damage caused by an uninsured or underinsured motorist. In that case, such drivers may wish to purchase a commercial policy with liability, uninsured/underinsured motorists, personal injury protection, or comprehensive and collision coverage.

Some insurance regulators have recommended that all TNCs provide high-limit, primary commercial liability insurance that begins the moment a driver switches on the app, as well as uninsured motorist coverage and underinsured motorist coverage to protect the driver and passenger. The Illinois Legislature recently passed a law that would require commercial liability insurance to be primary and in effect the entire time a driver's app is on. The law would also require conspicuous disclosure to TNC drivers about insurance coverages provided by the TNC.

The personal auto insurers have made it clear drivers should obtain a commercial policy if they are participating

in ridesharing arrangements for a fee. There is concern among personal auto insurers that the bifurcated coverage will lead to confusion and conflict. Claims investigations may increase as insurers have to determine which policy (commercial or personal) is responsible for coverage at the time of the accident. These disputes could lead to litigation, driving up costs for all policyholders.

### ◆ CIPR EVENT

It is obvious that there are some challenges as we move to new types of business models in the modern technology-driven world. Ridesharing is an example of how a new business idea using a new technology can change the world as we know it. Often the change shifts the balance of power. Some people gain and some people lose. Just as Thomas Edison's invention of the electric light caused great concern among candlemakers, so, too, has the introduction of the TNC-caused great concern for taxis and limo drivers. Their world has changed and they are trying to sort out what the change means for them.

If you would like to learn more about insurance issues related to ride-sharing and car-sharing, plan to attend the next CIPR event, "Commercial Ride-Sharing and Car-Sharing Issues," to take place at the NAIC Summer National Meeting in Louisville, Kentucky. The event will be held at 11 a.m. Saturday, Aug. 16, 2014, in Marriott Ballroom V of the Louisville Marriott Downtown. Commissioner Jones will serve as the moderator of the event. A panel of experts, including insurance industry representatives, taxi drivers, TNCs, consumer advocates and others will be represented in what is expected to be a timely and provocative event. We hope to see you there.

### ABOUT THE DIRECTOR



*Eric Nordman, CPCU, CIE, is the director of the NAIC Regulatory Services Division and the CIPR. He directs the Regulatory Services Division staff in a wide range of insurance research, financial and market regulatory activities, supporting NAIC committees, task forces and working groups. He has been with the NAIC for 23 years. Prior to his appointment as director of the Regulatory Services Division, Nordman was director of the Research Division and, before that, the NAIC's senior regulatory specialist. Before joining the NAIC, he was with the Michigan Insurance Bureau for 13 years. Nordman earned a bachelor's degree in mathematics from Michigan State University. He is a member of the CPCU Society and the Insurance Regulatory Examiners Society.*



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