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Technical Advisory

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Subject: “Rent-Your-Car” Programs Gain Traction, but Insurance Road Is Slippery

Background: Those who say that *insurance is dull* have never worked in insurance. It could be more aptly described as trying to get a drink of water from a fire hose. One of the facets of insurance that makes it both interesting and challenging is keeping up with changes in the industry, which is actually a reflection of changes in our society. One of the most recent innovations to come along is the concept of “car sharing.” This is essentially an idea to fill the gap between owning a car and renting a car on a daily or weekly basis. The appeal is to have access to an auto for only a specific errand (called a “micro rental”), which is promoted by its supporters as a way to save money (for renters), make money (for owners), and help save the planet. One car sharing web site contends that sharing one car takes 14 other cars off the road.

As an example of how car sharing works, a quick check of available cars for rent today at one of the car sharing web sites shows a 2004 BMW 325ci in a selected city for \$8/hr. The web site includes a picture of the car, a description of its features, a list of times of day the auto is available for short rentals, a map of where to pick up the car, and some comments posted by previous renters.

In a similar vein, there are programs around in which homeowners advertise on certain web sites that they will rent a room to anyone, to save them the expense of renting a hotel room [Example: <http://www.airbnb.com/>]. Likewise, some web sites promote the rental of a parking space at someone’s home. [Example: <http://www.parkatmyhouse.com/>]

Main Points: Car sharing has gained traction over the last year or two. At present, there are two distinctly different approaches to implementing car sharing. In one business model, the business owns the autos, rents only to members, includes

insurance with the rental, and often has cooperative plans with local universities and businesses. Zipcar is probably the best known business which follows this model. According to their web site, [Zipcar](#) operates in over 170 cities and 140 college campuses in the US, Canada and the UK. They have a fleet of over 9,000 cars with more than 400,000 members (“Zipsters”). For more information on Zipcars, [click here for the article on the IIABA’s Virtual University.](#)

A second approach is fragmented among several business models, but the main distinction with Zipcars is that none of these companies owns the autos. The business models using this approach are all based around various ways to connect owner with renter (“Peer-to-Peer” [P2P] or “Neighbor-to-Neighbor”), under a generic “rent your car” arrangement. Among the best known are [RelayRides](#), [Getaround](#), [JollyWheels](#), [RentMyCar](#), and [Zilok](#).

The types and levels of services provided by these programs vary, such as background checks on renters, special access devices installed into vehicles, fees charged, and insurance provided. Some programs offer virtual “full service” to members, while others are essentially only a conduit for owners and renters to find each other and negotiate terms, which was accomplished in times past by using the newspaper Classified Ads.

Insurance Issues

Issue #1: Insurance provided by the “rent your car” program.

For the “rent your car” programs which include insurance, the information provided on their web sites raises questions about the technical accuracy of the information, and could inadvertently lead to unforeseen consequences for renters and owners. For example, one of the “rent your car” programs addresses insurance coverage as follows:

“During the rental, our insurance kicks in and provides a \$1,000,000 comprehensive liability protection. If anything goes wrong, our insurance covers the damages. If a borrower has an accident, your insurance is not affected. We provide the insurance to protect them and your car. If they get into an accident, our insurance policy will go into effect, leaving your personal policy untouched.”

Comments.

1. This description of how insurance works does not take into account that the owner’s Personal Auto Policy is either primary or prorates with other insurance – see discussion following. In addition, it gives the impression that there are no exclusions or limitations in the “\$1,000,000 comprehensive liability protection” policy they carry.

2. The statement that “*our insurance policy will go into effect, leaving your personal policy untouched*” could lead an owner or renter to not report a claim to his or her own personal insurance carrier. The Personal Auto Policy sets forth several requirements in the Duties After An Accident Or Loss provision, such as “*We must be notified promptly of how, when and where the accident or loss happened. Notice should also include the names and addresses of any injured persons and of any witnesses.*” Also, in a serious accident where total liability exceeds \$1,000,000 – both owner’s and renter’s PAP will be called upon to respond.

Issue #2: Personal Auto Policy Coverage

Assume Jack rents a car owned by Jill, and the rental is arranged through one of the “rent your car” programs (designated as “RYC” below). Jack has at-fault accident, causing bodily injury to Joe. Joe sues Jack, Jill and RYC.

Jill’s PAP – Liability. Jill’s Personal Auto Policy is either primary or prorates with RYC’s insurance. Excerpt from the Other Insurance provision of Part A – Liability Coverage:

OTHER INSURANCE

If there is other applicable liability insurance we will pay only our share of the loss. Our share is the proportion that our limit of liability bears to the total of all applicable limits. However, any insurance we provide for a vehicle you do not own, including any vehicle while used as a temporary substitute for "your covered auto", shall be excess over any other collectible insurance.

Comments: Despite the statement which appears on the web site of one of the “rent your car” programs noted above, the PAP is either primary, or prorates with other insurance (RYC), where Jill’s auto is concerned. (Jack’s PAP is excess, as specified in the last sentence of the Other Insurance provision.) However, given the statement the “rent your car” program makes, Jill might make the incorrect assumption that the claim need not be reported to her insurer, or that even if reported, her limits will be “protected” by the insurance offered by the “rent your car” program. Jack should also report any accident to his insurer.

Therefore, Jill’s PAP is primary or prorates with RYC insurance for lawsuits against herself (owner), Jack (driver) and RYC, (vicarious liability), since all are “insureds” in Jill’s PAP, as follows.

INSURING AGREEMENT

A. *We will pay damages for "bodily injury" or "property damage" for which any "insured" becomes legally responsible because of an auto accident.*

B. *"Insured" as used in this Part means:*

1. *You or any "family member" for the ownership, maintenance or use of any auto.... [Jill]*

2. Any person using "your covered auto". **[Jack]**
3. For "your covered auto", any person or organization but only with respect to legal responsibility for acts or omissions of a person for whom coverage is afforded under this Part. **[RYC]**
4. For any auto or "trailer", other than "your covered auto", any other person or organization but only with respect to legal responsibility for acts or omissions of you or any "family member" for whom coverage is afforded under this Part. This Provision (B.4.) applies only if the person or organization does not own or hire the auto or "trailer".

While Jill's PAP includes herself, Jack and RYC, Inc. as "insureds" for liability, the exclusions must be reviewed. Here is Exclusion A.5.:

EXCLUSIONS

A. We do not provide Liability Coverage for any "insured":

5. For that "insured's" liability arising out of the ownership or operation of a vehicle while it is being used as a public or livery conveyance. This Exclusion (A.5.) does not apply to a share-the-expense car pool.

Comments: This exclusion has historically been the subject of considerable debate, mostly over the interpretation and intent of the phrase "public or livery conveyance." The IIABA's Virtual University (VU) has an excellent article on this exclusion, [click here to read the VU article.](#)

Of particular note for Jill's rental of her car to others, this excerpt from the VU article offers insight:

The expressed intent of the policy drafters (via 1989 ISO filing memorandum) is that this exclusion is designed to preclude coverage for vehicles available for hire to the general public for the transportation of people or cargo (e.g., taxis, sight-seeing vans, package delivery services, etc.).

While Jill does offer her auto for rent to the general public, it is debatable (perhaps doubtful) that this equates to a taxi service. If that were true, then Jack's PAP would not cover him while driving, what is from his perspective, just a rental car. (Note that the exclusion is based on how the auto is being used.) And there is no question that had Jack rented a car from a more traditional car rental agency such as Hertz that his PAP would provide him liability coverage. Perhaps a clearer example of how exclusion A.5. applies in this scenario would be if Jill actually drove people around in her car for hire.

On the other hand, a plausible argument could be made that Jill's auto *is* being used by the public at large for some purpose of transportation. Given that this type of "car sharing" is relatively new, there is insufficient jurisprudence at present which offers a body of compelling interpretations of whether or not exclusion A.5. applies to these "rent your car" arrangements. Likewise, the insurance literature which analyzes exclusion A.5. contains court cases involving only situations where the insured was operating his

or her own auto in possible “*public or livery conveyance*” circumstances, and none which dealt with any “rent your car” arrangements.

Interestingly, however, one prominent insurance text describes the intent of exclusion A.5. as follows: “*The purpose of the exclusion is to deny coverage in those situations when the vehicle is used for hire or held out for hire to the general public; the exclusion applies when the insured makes the vehicle available for use by the general public or attempts to make a profit through the hiring out of his vehicle.*” While it is doubtful that the author had car sharing arrangements in mind, this description reflects a widely-held interpretation of how and when exclusion A.5. applies, and does support the view that there would be no coverage. It does, however, beg the question about the logic of applying this exclusion to the driver’s (renter’s) PAP.

There are two business-related exclusions in Jill’s PAP that also should be examined: Exclusions A.6. and A.7. Following is exclusion A.6.

- A. We do not provide Liability Coverage for any “insured”:
 - 6. While employed or otherwise engaged in the “business” of:
 - a. Selling;
 - b. Repairing;
 - c. Servicing;
 - d. Storing; or
 - e. Parking;
- vehicles designed for use mainly on public highways. This includes road testing and delivery. This Exclusion (A.6.) does not apply to the ownership, maintenance or use of “your covered auto” by*
- a. You;
 - b. Any “family member”; or
 - c. Any partner, agent or employee of you or any “family member”.

Comments: Exclusion A.6. is often described as the “auto business” exclusion, and it could certainly be argued that Jill is occasionally engaged in the auto *rental* business. In fact, most of the “rent your car” web sites tout the thousands of dollars their members earn through the rental of their own autos. Some of the “rent your car” websites do address the income and related tax implications. Here is one example from a RYC web site:

“Income earned by sharing your car is taxable. If the amount of money you earn from sharing your car is greater than \$600 in a calendar year, you will get a Form 1099 from us for that year.”

However, the exclusion lists five specific types of auto businesses (6.a. – e.), none of which includes auto *rental*. Some experts believe the “rent your car” exposure is closer in intent to exclusion A.6. than to exclusion A.5. They have suggested that when and if insurers elect to exclude the “rent your car” exposure, appropriate exclusionary language might be added to exclusion A.6. Time will tell.

Exclusion A.7. is the other business exclusion in the Personal Auto Policy. Excerpt:

7. Maintaining or using any vehicle while that "insured" is employed or otherwise engaged in any "business" (other than farming or ranching) not described in Exclusion A.6.

This Exclusion (A.7.) does not apply to the maintenance or use of a:

a. Private passenger auto;

b. Pickup or van; or

c. "Trailer" used with a vehicle described in a. or b. above.

Comments: Exclusion A.7. broadly applies to any other business use, but exempts business use based on body style: private passenger auto, pickup or van. Therefore, this exclusion would not seem to apply to Jill or other owners who rent their autos, or to renters like Jack who drive them.

Underwriting

Whatever determination of coverage an adjuster makes under Jill's PAP, it seems likely that from an underwriting standpoint, many insurers would not want to cover such an exposure. Or, some might be willing to include the exposure, but only with additional premium through endorsement. In addition, where the exposure is found to be present in current, in-force policies, some insurers might be compelled to nonrenew or cancel, depending on what is permitted by statute.

Necessary Action: Circulate this Technical Advisory to all appropriate Personal Lines personnel.