

Technical Advisory



TA 314

August 11, 2014

Subject: Louisiana Department of Insurance Issues Consumer Alert on Ridesharing

Background: Ridesharing companies, primarily Uber and Lyft, have been the subject of many news reports in recent months. State and local governments, along with taxi and limo companies, have debated what, if any, regulations should apply to them. Insurance regulators and insurers have focused on the coverage implications for drivers, passengers, and the ridesharing companies – known generically as Transportation Network Companies (TNCs).

Due to the serious coverage gaps in most Personal Auto Policies, many insurers and state insurance regulators around the country have issued advisories and consumer alerts about ridesharing. On July 24, the Louisiana Department of Insurance issued the following consumer alert.

Louisiana Department of Insurance July 24, 2014 Commissioner Donelon Urges Potential Rideshare Drivers to Review Auto Insurance Coverage before Signing on

Louisiana's Commissioner of Insurance Jim Donelon is joining a number of other states in issuing a consumer alert to potential drivers of new transportation network companies (TNCs) or rideshare services. These companies offer mobile applications (apps) that give passengers access to transportation services that are provided by people who register to serve as drivers for these networks.

The drivers who are hired to participate in TNCs are using their personal cars to transport passengers. The companies regard the hired drivers as third party transportation providers or vehicle operators.

Commissioner Donelon is advising individuals to do their homework before signing on to serve as drivers with a transportation network. "Drivers should review their policies and talk with their agents regarding their participation in such programs prior to signing up." said Commissioner Donelon. "Virtually all personal auto insurance policies exclude coverage when personal vehicles are used to give rides for fees."

Whether consumers are the passengers of or the drivers for a TNC, Commissioner Donelon advises them to be aware of potential gaps in insurance coverage. For instance

a potential driver may want to contact their insurance company and inquire about a commercial insurance policy. Potential drivers should verify the type of liability coverage they must have and the type of liability coverage that is already in place for the benefit of all parties who might sustain damages and injuries from accidents that occur while engaged in the use of the transportation services.

The LDI is aware of several transportation network companies that are actively doing business in various parts of the country and those TNCs that have expressed interest in operating in Louisiana. One company is currently operating within Baton Rouge. If you are a driver considering employment with a TNC and have questions, you are encouraged to contact your insurance provider or your agent.

Main Points: The term “ridesharing” probably contributes to some of the misperceptions about what is involved, and why it creates coverage gaps in the PAP. Ridesharing is actually a form of renting – not sharing – where individuals use their own autos to pick up and carry paying customers to their destinations. Drivers and passengers connect through smartphone apps of a TNC. The passenger pays the fare to the TNC, using the app on his or her smartphone. The TNC then sends part of the payment to the driver’s account, and retains a portion of the payment.

Several issues are currently being examined by insurers and regulators (in public transportation as well as insurance).

Issue #1: The PAP exclusion.

The principle coverage issue is the “public or livery conveyance” exclusion in the PAP. Below is the excerpt from the ISO PAP. Coverage under proprietary forms may be different.

PP 00 01 01 05

Part A – Liability Coverage

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:

(1) Insurance regulators, insurers, and insurance coverage experts consistently cite this exclusion as the basis for lack of coverage for any ridesharing arrangement.

(2) This exclusion is also found in Part B – Medical Payments, Part C – Uninsured Motorists, and Part D – Coverage for Damage to Your Auto, as well as many personal umbrella/excess policies.

(3) There is no ISO endorsement to buy back coverage.

(4) One potential gray area is the provision which applies the exclusion to the auto “while it is *being used as a public or livery conveyance.*” [Emphasis added.] The question is whether the exclusion applies only when the driver has a passenger in the auto, or if it also applies when the driver is on the way to pick up a passenger, or after the passenger has been dropped off and the driver is returning to his base location. Some non-ISO proprietary forms broaden their exclusion to include “*holding out the vehicle to the public.*” This would seem to apply to the time a driver was enroute between picking up and dropping off customers, as well as when a customer was being transported.

Issue #2: Insurance provided by the TNC.

Some regulators and TNCs propose that the TNC auto policy applies when the driver is “available” to pick up a passenger. This seems to raise a number of interpretive questions. Others suggest that the TNC insurance would apply “when the driver has the TNC’s app turned on,” which could also pose questions in certain situations.

Another issue concerning the TNC’s insurance is what limits are available to the driver, especially since the driver would almost certainly have no coverage for ridesharing activities from his personal insurance. Personal umbrella or excess policies vary widely, but many also exclude this exposure. Some states have, or are considering, mandating certain limits which the TNC must provide.

Although it is clear that a driver’s PAP would almost never apply to ridesharing, some draft regulations being discussed in the trade press require the driver to furnish “proof of insurance” to the TNC, as a part of the sign-up procedure. This has led to a related debate between regulators and TNCs over how to craft language over primary/excess issues between the TNC’s insurance and the driver’s PAP.

Issue #3: What the insurance agency should do.

First, it is important to closely follow the industry press, as well as bulletins from insurers, regulators, and IIABL. Several important coverage issues remain unresolved, except it is almost certain that the PAP will not apply to ridesharing. For insureds who engage in ridesharing as drivers, the agency should offer their PAP insured a quote on a business auto policy (BAP) designed to handle the “public or livery conveyance” exposure. As always, it is very important to follow proper E&O documentation procedures with this issue.

Issue #4: Ridesharing vs. Carsharing.

Another form of “sharing” of an auto is carsharing, which is very different from ridesharing. And to make things a little more confusing, there are two kinds of carsharing, although both involve short-term renting (which, like ridesharing, is not

really sharing in the classic sense). In one version of carsharing, an individual rents his or her auto to another person on a short-term basis, usually by the hour. This is done through a third party company such as RelayRides, GetAround, and other carsharing companies. As with ridesharing companies like Uber, car sharing companies work through smartphone apps. A car owner and potential renter link up via the carsharing company's app, and the payment is handled in the same manner as in ridesharing.

Referring back to PAP exclusion A.5. above, in the section on ridesharing, many experts believe that this form of carsharing using RelayRides, etc., also falls within the scope of an auto "being used as a public or livery conveyance." This form of carsharing is often referred to by the insurance industry as "personal vehicle sharing."

In 2013, ISO released an endorsement to the PAP which excludes personal vehicle sharing, meaning the exclusion applies during the time the renter (and not the owner) is driving the auto. Excerpt:

PP 23 16 10 13

Personal Vehicle Sharing Program Exclusion Endorsement

I. Part A - Liability Coverage

Part A is amended as follows:

The following exclusion is added:

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".*

Comments:

(1) The endorsement also applies the same exclusionary language to Part B – Medical Payments, Part C – Uninsured Motorists, and Part D – Damage to Your Auto.

(2) The owner of an auto who allows his or her auto to be rented to others will probably have to rely solely on whatever insurance is provided by the carsharing company.

On the other hand, another form of carsharing involves renting a car on a short-term basis from a rental company such as Zipcar, EnterpriseCarShare, Hertz24, and others. This arrangement is nothing more than a micro-rental from a traditional car rental company, and does not involve the auto owned by the individual, as is the case with ridesharing, or the first form of carsharing (aka "personal vehicle sharing").

Lastly, there is an unfortunate abundance of new, undefined terms in the ridesharing and carsharing arena. More broadly, these are only parts of a larger endeavor (some would say “movement”) called the “sharing economy.” For example, a well-known example of “house sharing” is a company called Airbnb. Alas, as with ridesharing and carsharing, house sharing actually involves renting (“sharing for money”) one’s house to others on a short-term basis.

For your reference.

See the following articles:

["House Sharing and Car Sharing"](#)

["Zipcars"](#)

Necessary Action: Circulate this Technical Advisory to all appropriate agency staff.

Please note that this Technical Advisory is intended to be educational and is not legal advice upon which you should rely. Please seek any legal opinion you may need from a qualified attorney.