Ridesharing, Transportation Services and Insurance

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The economic recovery has been very slow for the past few years. Although the unemployment rate is improving, millions of people are still out of work. While many have found part-time employment, others have stopped looking for work, and many of those who are working are seeing a reduction in their take-home pay.

Due to the economic conditions, folks are looking for untraditional sources of income, either to supplement current income or to provide entirely new income. Owners of automobiles are finding ways to earn extra income by allowing others to rent their vehicles while they are not being used or offering "pay-for-ride" services.

Vehicle sharing programs or ridesharing peer-to-peer networks are growing rapidly. Companies such as Rideshare, Lyft, Uber, RelayRides, FlightCar, and Zimride operate throughout the country. These companies offer transportation services through smart phone apps to connect vehicle owners looking to make some money off their cars to operators or passengers who need a vehicle to use or someone to drive them somewhere. There are also hundreds of peer-to-peer vehicle sharing networks operating on the Web and around the country.

According to an article published by the Massachusetts Association of Insurance Agents, "These types of vehicle sharing programs are likely to get much larger and much more common before their full effect becomes clear. But venture capitalists are not waiting. Uber raised $258 million from Google Ventures and Lyft raised $60 million from another venture firm as well as selling Enterprise Rent-A-Car, its Zimride service, for an undisclosed price."

Two types of services exist. In one type, such as Sprideshare or Relayrides, the vehicle owner rents his or her vehicle to others when the vehicle is not in use. In the second type, the vehicle owner actually provides transportation services in exchange for a "donation." These services are provided through a platform provided by the Transportation Networking Company (TNC), such as Uber or Lyft. The platform allows the driver to be connected to a potential rider through his or her iPhone, iPad or Droid. The company is not a transportation company. It only provides a network so that drivers and riders can be connected.

The complex insurance issues

How are these services covered by traditional Personal Auto Policies? The answer may be "they're not." Many non-ISO policies exclude vehicles while rented to others, although the ISO Personal Auto Policy does not have such an exclusion. Due to the lack of a rental exclusion, insurers using the ISO form are concerned about this new exposure because the ISO form provides coverage for anyone using "your covered auto." To address this concern, ISO introduced a new exclusion endorsement in Oct. 2013.

The endorsement is PP 23 16 10 13 Personal Vehicle Sharing Program Exclusion Endorsement. The exclusion applies to all of the PAP coverage (liability, medical payments, uninsured/underinsured motorist and physical damage) while the covered auto is enrolled in a personal vehicle sharing program under the terms of a written agreement; and being used in connection with such personal vehicle sharing program by anyone other than you or any "family member."

While this exclusion applies to an operator other than you or a “family member,” it would impact physical damage coverage while the vehicle is being operated by the renter. It is very probable that an insurance company would non-renew a policy if it became aware that the vehicle was being rented, or it might add a “vehicle rented to others” exclusion.

How would the Personal Auto Policy respond to using the vehicle to transport others for a “donation?” Would the vehicle be a “public or livery conveyance?” All sections of the ISO Personal Auto Policy exclude coverage while a vehicle is being used as a public or livery conveyance. There is an exception for a share-the-expense car pool.

The term “public or livery conveyance” is not defined by the policy. The term livery conveyance refers to the transporting of people or goods for hire. It includes conveyance by taxi service, motor carrier or delivery service.

The term “livery conveyance" means a vehicle used indiscriminately in transporting the public and not limited to certain persons and particular occasions or governed by special terms. [Stanley v. American Motorists Ins. Co., 195 Md. 180, 186 (Md. 1950)]

Based on this definition, holding a vehicle out to the public to haul others for a fee would constitute “public or livery” use. This exclusion appears in every coverage part of the ISO Personal Auto Policy. Not only would a carrier exclude coverage for this exposure, it would probably set the policy up for non-renewal as well. They just aren’t getting the rate for this exposure.

According to Robert Passmore, senior director of personal lines policy at the Property-Casualty Insurers Association of America, "These TNCs are really a commercial endeavor. TNCs give strangers rides for a fee, and the drivers are getting paid. That would generally trigger the livery exclusion."

Some policies do not use the “public or livery conveyance” wording. Some exclude “carrying people or property for a fee.’ Others exclude “receiving compensation for transporting people or property.” These exclusions are broader than the “public or livery” exclusion. For example, coverage would be excluded any time an insured receives a fee for using the vehicle, such as for pizza delivery.

What is in the driver’s agreement?

Using the Lyft Terms of Service, let’s see the agreement the driver enters into. The terms make it clear that “Lyft does not provide transportation services, and Lyft is not a transportation carrier. It is up to the driver or vehicle operator to decide whether or not to offer a ride to a rider contacted through the Lyft platform.”

Lyft has an insurance policy that provides drivers excess liability insurance up to $1 million per occurrence. The policy offers protection **over a driver’s existing insurance** while such driver is transporting riders on a trip arranged through the Lyft Platform. The coverage is limited to liability only, not collision, comprehensive or wear and tear damage. Since this is excess insurance, do the limits “drop down” if the driver does not have insurance, or is the driver responsible for all losses below the excess limit? Is the coverage provided while the driver is on the way to pick up a rider or after the rider is dropped off?

The driver is solely responsible for any and all liability which results from or is alleged as a result of the operation of the vehicle the driver uses to transport riders, including but not limited to personal injuries, death and property damages. What type of policy would cover “any and all liability”?

The driver agrees to indemnify and hold Lyft, its officers, directors, employees, agents and any third parties harmless for any losses, costs, liabilities and expenses (including reasonable attorneys’ fees) relating to or arising out of the driver’s use of the service, including:

1. The breach of the agreement

2. The violation of any law or the rights of a third party
3. Any allegation that materials submitted or transmitted by the driver violate the copyright, trade mark, trade secret or other intellectual property
4. The ownership, use or operation of a motor vehicle
5. Any other activities in connection with the service

The Indemnity is applicable without regard to the negligence of any party, including any indemnified person. Would a typical Personal Auto Policy cover this contractual assumption?

The driver and Lyft are independent contractors, and no agency, partnership, joint venture, employee-employer or franchisor-franchisee relationship is intended or created by the agreement. The driver would be responsible for any self-employment tax or other taxes related to the business. The driver should also obtain a CGL policy and workers compensation coverage.

Since operating a vehicle for public transportation is subject to special licensing and other regulations, any fines or penalties for violating the regulations would be borne by the driver. Also the driver would bear any expense to comply with the regulations.

Since the Personal Auto Policy excludes the exposure, the driver would need to purchase business auto coverage, which could cost $1,000 per month or more.

A TNC addresses gaps in coverage
Recognizing the serious gap in coverage, Transportation Network Company Uber, began offering new driver coverage as of March 14, 2014. An article in *San Francisco Bay Guardian OnLine* provided background on the change.

> "Transportation Network Companies, more commonly known as 'rideshares,' have operated in legal limbo regarding their insurance since their creation. This came to a head on New Year's Eve with the death of six-year-old Sofia Liu, who was killed in a collision with an Uber car driven by a man named Syed Muzzafar. Uber claimed in a blog post that because Muzzafar was not ferrying a passenger at the time and only using the app to search for fares, that he was not officially covered by their insurance.

It was an insurance gap that left the driver on the hook for the death of a little girl and the injuries of her family. San Francisco Municipal Transit Agency Taxi Director Christiane Hayashi estimated the lawsuit to be at around $20 million, based on her experience. No amount has been specified by either party as of yet, but so far Uber has not compensated the family for Liu's death.

Now it seems there's a glimmer of hope that future collisions may be covered.

As Uber wrote on their blog March 14, 2014:

> *"In order to fully address any ambiguity or uncertainty around insurance coverage for ridesharing services, Uber is becoming the first and only company to have a policy in place that expands the insurance of ridesharing drivers to cover any potential 'insurance gap' for accidents that occur while drivers are not providing transportation service for hire but are logged onto the Uber network and available to accept a ride."*

The policy will cover $50,000/individual/incident for bodily injury, $100,000 total/incident for bodily injury and $25,000/incident for property damage, according to their blog post.

The blog specifies that the money will not kick in if a driver's personal insurance covers a collision. When we contacted Uber's spokesperson, Andrew Noyes, to offer proof of this, he declined.

Uber has also promised insurance coverage before, in the form of their $1 million policy. But still, many pedestrians and passengers, like Claire Fahrbach, have filed suit with the company when Uber declined to pay for their medical coverage. Fahrbach was walking down Divisadero when an Uber car hit a fire hydrant, sending it flying into her. Her injuries were substantial, and she had to quit her two jobs. She immediately left San Francisco to live with her parents for financial and medical support. Her hospital bills are steep, and she is currently tangled in a lawsuit with Uber.

When we asked Noyes if the new policy agreements would allow Uber to pay out insurance to the many injured passengers and pedestrians suing Uber for coverage, Noyes would only speak off the record. But in case you're wondering, it all basically amounted to "no comment."

Uber's lack of coverage extends well beyond Fahrbach and her injuries, with drivers nationally left uninsured to various degrees. Popular car insurance provider Esurance wrote about this on its blog Feb. 17, 2014:

> *"Though TNCs are now required to carry $1 million in liability insurance, this coverage is designed to protect riders and pedestrians and pay for damages to other vehicles. The policy doesn't have to cover the driver's car or the driver's injuries (and it doesn't kick in at all unless the TNC driver is found at fault). And because of the livery exclusion, the driver's standard personal insurance likely won't cover accidents either. So, instead of adding to their income, the TNC driver could be left holding the bag.*
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> *Though we can't speak for all insurance companies, the livery exclusion is pretty universal. According to our definitions of coverage, TNC drivers would need commercial insurance since a personal auto policy through Esurance doesn't cover both personal and commercial use of a vehicle. In all states except California, we're unable to offer a standard policy to TNC drivers. And in California, the driver's standard coverage doesn't apply during a ride-share trip.*

Notably, a coalition of rideshares, including Lyft and Sidecar and a handful of insurance companies, banded together to develop new insurance policies. The group's work is ongoing, though the intent looks positive -- new insurance policies specific to Transportation Network Companies developed by a coalition of industries would be a great step for driver, passenger and pedestrians alike.

But for now, commercial and personal insurance policies rarely, if ever, cover TNC drivers. And Uber's new insurance? It's great, as long as Uber follows through.

ODI creates consumer alert about TNCs

Concerned about this new exposure, Ohio Department of Insurance (ODI), issued the following consumer alert on April 16, 2013.

CONSUMER ALERT: Transportation Networking Companies (TNC)

Insurance Gaps May Exist for TNC Drivers and Passengers

COLUMBUS – Ohio Lieutenant Governor and Insurance Director Mary Taylor has issued a consumer alert to highlight potential insurance implications for Ohio drivers participating in transportation networking company (TNC) services.

TNCs are companies that offer transportation services for a fee using an online method or an application (such as smartphone apps) to connect potential passengers to drivers using their personal vehicles.

"Ohioans considering these types of services should weigh all factors including any coverage gaps that may exist," Taylor said. "While the driver may have insurance, his or her policy may or may not provide all the coverage needed should an accident occur."

The Ohio Department of Insurance wants Ohioans to be aware of the insurance gaps that may exist for TNC drivers and passengers. Most personal auto insurance policies contain exclusions when a person uses their personal vehicle for commercial purposes; such as carrying a person for a fee. Personal automobile insurance is not intended to cover people who are using their vehicles for commercial purposes.

While TNCs may provide liability insurance, they may not provide medical payments coverage, comprehensive, collision, uninsured and underinsured motorist (UM/UIM) coverage, or other types of coverage to fully protect TNC drivers and passengers.

If you are a driver considering employment with a TNC, Taylor offers these tips:

- Review your personal auto insurance policy and the TNC program's insurance policy.
- Contact your agent, broker or insurance company about potential gaps in your personal automobile or the TNCs' policy.
- Consider buying a commercial automobile insurance policy that includes coverage for bodily injury or property damage to you and others, and/or for damage caused by an uninsured or underinsured motorist while you are driving passengers for payment.

If you have additional questions regarding your coverage as a TNC driver, call the Ohio Department of Insurance consumer hotline at 1-800-686-1526 for assistance. Insurance information is available at www.insurance.ohio.gov. For the latest insurance information, you can follow the Department on twitter @OHInsurance and on Facebook at www.facebook.com/OhioDepartmentofInsurance.

Agents who want to be proactive can send a copy of the ODI alert to personal auto customers to warn them of the risks and potential consequences.

Ridesharing is in the news daily, with continuous new developments that have the potential to impact established industries such as taxi, limo services and car rental companies. Also, with more people sharing cars, there will be fewer cars to insure. This could reduce the size of the auto insurance market because more cars being shared means fewer cars being insured.

The times, they are a changin' and the industry will have to change with them.