



DAVE JONES
Insurance Commissioner

April 7, 2014

Michael R. Peevey, President
California Public Utilities Commission
505 Van Ness Avenue, 5th Floor
San Francisco, CA 94105

Dear Commissioner Peevey:

The California Department of Insurance (CDI) held an investigative hearing on March 21, 2014, relating to insurance issues and Transportation Network Companies (TNCs) such as Uber, Lyft, Sidecar and Wingz. The full agenda, background documents, and audio of the hearing are available on the web at <http://www.insurance.ca.gov/video/0030VideoHearings/tnc.cfm>.

CDI recommends the California Public Utilities Commission (CPUC) enact additional regulations and amend existing regulation to address insurance coverage gaps in California related to the operation of TNCs.

Underlying these findings and recommendations is the conclusion that as long as TNCs are encouraging non-professional drivers to use their personal vehicles to drive passengers for a profit, a risk for which personal automobile insurance is not available, TNCs should bear the insurance burden.

Finding 1: Drivers' existing personal automobile 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.

TNCs are under the mistaken impression that personal automobile insurers cover now, planned to cover, or will cover the risk of TNC-related for-hire transportation.

Instead, CDI finds that personal automobile insurers never planned or intended to underwrite for this risk, which did not exist when the current policies were written. Insurers did not incorporate for-hire use when developing their rates. Adding this new TNC exposure to the personal automobile insurance "pool" may increase personal automobile insurance rates. The fact that some exclusions in personal automobile

insurance policies may not be clear on this point should not be misinterpreted as an agreement to cover this new TNC risk.

One TNC in our hearing argued that the entire requirement for automobile insurance should be on the driver, and not the TNC. However, we have determined based on testimony from insurance trade associations and our direct communications with auto insurers and brokers that the owners of personal vehicles cannot currently purchase insurance that will cover livery use of the vehicle.¹ And that most if not all auto insurers have no plans to file for riders or endorsements to enable drivers to purchase this additional coverage as a part of their personal auto insurance.

Recommendation 1: Refine definition of “when providing TNC services” in the CPUC regulation

There are three distinct period associated with TNC-related livery services. The definition of “when providing TNC services” should cover these three periods:

- Period 1: App Open → No Match
- Period 2: Match Accepted → Passenger Pick-Up
- Period 3: Passenger in the Car → Passenger has safely exited the vehicle

Recommendation 2: Require \$1 million primary commercial liability insurance during all three periods

California Insurance Code §11580.1 (b) (1) specifies the minimum financial responsibility limits for private passenger vehicles in California:

- \$15,000 for injury/death to one person
- \$30,000 for injury/death to more than one person
- \$5,000 for damage to property

These limits are simply too low for drivers who are operating their vehicle for a livery purpose. The California Department of Insurance recommends that commercial liability insurance be required as follows:

- Period 1: Primary commercial liability insurance in the amount of \$1,000,000²
- Period 2: Primary commercial liability insurance in the amount of \$1,000,000

¹ CDI has been advised that (1) insurers will not sell commercial insurance for livery purposes to a driver unless his or her car is registered commercially and has a “Transportation – Charter Party” (TCP) permit; and (2) the CPUC does not allow a car with a TCP permit to be driven for a TNC.

² \$1,000,000 combined single limit for bodily injury and property damage.

- Period 3: Primary commercial liability insurance in the amount of \$1,000,000

TNCs make a “moral hazard” argument against requiring the TNC to provide insurance during Period 1, including: (1) drivers may be running personal errands; (2) drivers may have multiple applications open at the same time; (3) drivers with low limits on their personal automobile insurance policy will turn on the application in the event of an accident to secure more robust coverage; and (4) drivers start to look more like employees or independent contractors if the TNC covers this period. Even if a driver is running errands during Period 1, if that driver has the app open, the TNC benefits from the driver showing availability to provide rides to customers. TNCs are best positioned to address most or all of the "moral hazard" issues listed above, as opposed to shifting the cost of the lack of insurance to passengers, pedestrians or other drivers.

Insurance companies and brokers tell CDI that Californians cannot purchase either (1) personal automobile insurance that covers driving passengers for hire, or (2) livery insurance on a personal vehicle. While the TNCs argue that some personal automobile insurer might file an endorsement for Period 1, no such endorsement has been filed and insurers testified that they do not plan to file such an endorsement.

The only solution to cover this insurance gap, short of mandating personal lines insurers cover it, is to have the TNCs bear this risk. CDI concludes that personal auto insurers should not be mandated to cover a risk which is associated with the business model of the TNCs.

Two witnesses at CDI’s March 21 hearing testified that Period 1 is the most dangerous part of a TNC trip, especially in light of the “surge pricing” some TNCs have adopted that might encourage drivers to rush to a certain part of town to benefit from the higher fares available. At least one death and several injuries have already resulted from a collision with pedestrians in California while a driver was driving for a TNC during period 1, according to testimony at our hearing. The CPUC regulation should be amended to require TNCs provide primary commercial liability for period 1.

Recommendation 3: TNCs should carry additional coverages that protect drivers and passengers

TNCs should be required to carry \$1,000,000 in uninsured/underinsured motorist coverage because it is important to protect both drivers and passengers. A driver who purchased this coverage on a personal automobile insurance policy may find that his or her personal automobile insurance company denies claims because the driver used the car for a livery purpose.

TNCs should also be required to carry comprehensive and collision that mirror what the driver has purchased on his or her personal automobile insurance policy, subject to a reasonable deductible, perhaps not more than \$1,000. A driver who purchased this coverage on a personal automobile insurance policy may find that his or her personal automobile insurance company denies claims because the driver used the car for a livery purpose. This would also cover lien holders that require comprehensive and collision coverage to secure the lender's interest in the vehicle

The CPUC should require that TNCs provide disclosures to advise TNC drivers who do not have comprehensive and collision coverage that their car will not be covered by the TNC's insurance in the event of an event that would normally trigger collision or comprehensive coverage.

Recommendation 4: Require effective notice to personal automobile insurers

Drivers should know, before they begin driving for a TNC, if their personal automobile insurer will cover any of the risks related to TNC activity. The current CPUC regulations require the TNCs to obtain a copy of the driver's personal automobile insurance policy. CDI recommends that the driver also be required to notify his or her personal automobile insurer of the driver's affiliation with a TNC, and that the TNC be required to have the driver's notification to his or her personal automobile insurer on file before authorizing the driver to provide rides. It should be noted that some personal automobile insurers may not wish to insure vehicle owners who drive for TNCs. The driver should be made aware of the potential of losing his or her personal automobile insurance coverage by driving for a TNC.

Recommendation 5: TNCs must share "app" data with insurers after accidents

TNCs should be required to share "app" data with the personal automobile insurer during the insurance company's investigation of an accident, so personal automobile insurers can have more information about whether the driver was performing TNC services at the time of the accident. This requirement should be disclosed to the TNC driver.

Recommendation 6: Evidence of coverage

The CPUC should require the TNCs to provide to the TNC driver evidence of coverage from the TNC which the driver can share in the case of an accident during a TNC-covered period.

Recommendation 7: Disclosure about "private clients"

Taxis and charter party carriers tend to develop over time "private clients" who schedule rides directly with the driver, outside of the normal dispatch channels. Because the

insurance for taxis and limos is in effect 24/7/365, the driver and the passenger have coverage during these rides. But, the CPUC-required TNC insurance is in effect only when the driver is performing a TNC activity. If a TNC driver picks up a “private client” outside of the TNC app, it is likely no insurance would be in effect, because the driver is using his or her personal vehicle for a livery purpose. TNCs should be required to provide prominent disclosures about this risk to both drivers and passengers.

Recommendation 8: Delay new insurance requirements

Some time may be needed to secure this expanded coverage. We recommend that the additional coverage requirements set forth above be delayed 60 days to allow the TNCs time to secure the additional coverage.

Legislative Recommendation 1: Legislature should isolate TNC use from personal automobile insurance

Personal automobile insurers are concerned about the duty to defend their insureds, while establishing that the insured used the vehicle for a livery purpose outside the scope of the personal automobile insurance. CDI is concerned about consumer complaints that personal automobile insurers are cancelling the personal automobile insurance of drivers who are driving for TNCs, because those insurers do not insure commercial risks. The Legislature could enact a statute similar to Assembly Bill 1871 (Jones 2010), related to personal vehicle sharing, which holds harmless an owner’s personal automobile insurer for losses that occur when the vehicle is being used in a car-sharing program. This would allow Californians to keep their personal automobile insurance when they are using their car for personal or commute purposes, but place the entire insurance burden on the TNCs for Periods 1-3.

Legislative Recommendation 2: Revisit the “ridesharing” and “casual carpooling” statutes

CDI has considered whether any TNC use should be covered under the casual car pooling (or ridesharing) provisions of California law or insurance contracts. The CPUC’s decision to regulate TNCs made it clear that these services are for-hire common carriers, and thus not casual carpooling. However, casual car pooling is a type of activity that would benefit from more clarity in the law and potentially different treatment. CDI offers to work with the CPUC and the Legislature to better define “incidental” trips, “share-the-expense,” and “car pooling” in personal automobile insurance policies. This would allow apps to match not-for-profit drivers with casual riders, promote the share economy, and encourage fewer vehicles on California roadways.

Please contact Senior Staff Counsel Jennifer McCune at (415) 538-4148 or Deputy Commissioner Chris Shultz at (916) 492-3589 if you have any questions.

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Sincerely,



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Insurance Commissioner

Cc: Commissioner Michael Florio
Commissioner Carla J. Peterman
Commissioner Michael Picker
Commissioner Catherine J.K. Sandoval
Assemblymember Susan Bonilla
Assemblymember Adrin Nazarian
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