

**United Policyholders**

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February 20, 2015

Commissioner Dave Jones
California Department of Insurance
300 Capitol Mall, Suite 1700
Sacramento, CA 95814

Jennifer Gardner, Staff Lead
Sharing Economy (C) Working Group
National Association of Insurance Commissioners
1100 Walnut Street, Suite 1500
Kansas City, MO 64106

VIA EMAIL: commissionerjones@insurance.ca.gov; jgardner@naic.org

Re: Exposure Draft - TNC Insurance Principles for Legislations and Regulators

Dear Commissioner Jones and Ms. Gardner:

Please accept the comments below regarding the Sharing Economy (C) Working Group (“Working Group”) Exposure Draft #898022v1 - TNC Insurance Principles for Legislators and Regulators (the “Draft”) from United Policyholders (“UP”).

UP is a non-profit advocacy organization that serves as a voice and information resource for insurance consumers in all 50 states. UP aims to assist the Working Group in finalizing this important guiding document for insurance regulators and legislators considering rules related to TNCs.

We appreciate your and the Working Group’s recognition that TNCs and commercial ridesharing initiatives present unique challenges in light of the various groups of involved consumers, the various phases of services provided to riders, and the innovative nature of this relatively new industry.

The involved groups include: (1) TNC drivers during all phases of availability to accept and ferry passengers; (2) Passengers who in the event of injury rely on the driver to have insurance coverage, and; (3) TNCs that purchase insurance for their operations. And as the draft outlines, three distinct phases of services: Period 1, 2 and 3.

Regardless of what has transpired up to this point in accident claims arising from TNC operations up to this juncture, the question of whose insurance will cover Period 1, and whose insurance will be primary during periods 2 and 3 is squarely within the Working Group’s ambit and appropriately addressed in the exposure draft.

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Drivers

As the Draft appropriately recognizes, consideration should focus on the ISO “livery exclusion” which excludes insurance coverage, as a general matter, for a driver’s use of a personal vehicle for commercial purposes, and the ISO Personal Automobile Policy (“PAP”) which excludes coverage for a driver’s liability for: “...bodily injury or property damage arising out of the ownership, maintenance or use of a vehicle while it is being used as a public or livery.” *See Draft at pp.5-6; The Insurance Services Office Inc. (2014, December) “Ride-Sharing Arrangements through Transportation Network Companies.”* Note, however, not every insurer uses ISO forms or without modifications, so there may be as many versions of the “livery exclusion” as there are insurers.

While stakeholders have suggested that the Draft should look more broadly at a sample of PAP exclusions, we believe that the ISO form is representative of the types of exclusions found in most PAPs which would deny coverage during Period 1 – “app on, no match.” That said, we do not believe that all commercial purposes or livery exclusions do, in fact, exclude coverage during Period 1, as evidenced by claims where personal auto policies have already covered losses arising out of TNC operations. However, we do believe it is a helpful exercise for the NAIC to discuss potential issues and analyze hypothetical scenarios and likely outcomes.

There is a shared recognition by TNCs, insurers, and legislators that Period 1 presents unique coverage issues. *See, e.g., California Assembly Bill 2293 (Bonilla).* Due in part to a tragic death in San Francisco involving a TNC driver during Period 1, where coverage was tendered, stakeholders are moving quickly to address these unique risks going forward. One TNC has implemented a “backstop” insurance program to provide coverage for drivers who find themselves denied coverage during Period 1. We commend this approach, provided a market develops/exists for drivers to purchase affordable, quality insurance for Period 1. At least one insurer is now offering pay-by-the-mile coverage, a product designed specifically to cover drivers during Period 1.

Regulators must move quickly to establish oversight of these types of new products to ensure they provide value and appropriate coverage and that the companies selling them are adequately capitalized, licensed and compliant. Attention must be paid to any “other insurance” type language in these policies that purports to govern interplay with other policies; be they the driver or rider’s personal policy, or the TNC’s policies.

Passengers

Passenger/riders generally equate a TNC ride with a taxi or limo ride, generally assume the TNC, (like a taxi or limo), and/or the driver, (like a taxi or limo driver) is fully insured and regulated. Because most passenger/riders use TNC apps to access TNC ride services, they have a reasonable assumption that the TNC has ultimate responsibility for their safety. Given that TNCs have been given some freedom to contractually limit their liability for insuring drivers during period one, the draft appropriately recognizes that passengers and prospective passengers may need notice of that fact.

TNCs

As the Draft notes, the TNCs themselves provide insurance coverage through a master liability policy during Period 2 (“app on, match”) and Period 3 (“passenger in car”). Policies currently being sold to TNCs are of the manuscript variety, meaning they are not ISO forms, and written by surplus lines companies. They are written specifically to cover TNC activities. While some TNCs have demonstrated a sophistication with respect to insurance, TNCs should implement adequate risk management protocols and disclose same to regulators, drivers, and passengers.

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We suggest the Working Group address ongoing review of TNC manuscript policies with the intent of reaching a clear understanding of how the policies are designed, what safeguards are in place, which entity has regulatory authority and where remedies (*i.e.*, state court; mediation/arbitration) may be sought if a dispute arises.

Thank you for your leadership on this important issue and for considering these letter comments. We appreciate the leadership of Commissioner Jones and the Working Group for their continued hard work on the Draft.

Sincerely,

A handwritten signature in black ink, appearing to read "Amy Bach". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

Amy Bach, Esq.
Executive Director

cc: Dan Wade, Esq.
Staff Attorney