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ADDITIONAL INFORMATION

TO MEMBERS OF THE COMMERCIAL AUTOMOBILE COMMITTEE

FOR THE MEETING OF:

Friday, October 23, 2020 at 10:30 a.m.

**CAC
20.05 Transportation Network Services Coverage (TNC)**

Attached for the Committee's review is an overview of the types of TNC services, insurance requirements, considerations and recommendations for discussion. (Docket #CAC20.05, Exhibit #2)

WENDY BROWNE
Vice President – Business Operations

Attachment

Boston, Massachusetts
October 15, 2020

Transportation Network Company (TNC) Coverages in the Commercial Residual Market

Types of TNC Services:

1. On-Demand Ride-Hailing – Transportation of People

Ride-hailing is a term to describe the booking of rides and paying for that service through a smartphone app/website with a transportation network company (TNC) such as Uber or Lyft.

2. On-Demand Delivery of Goods

This service allows for the immediate or scheduled delivery of a product to a consumer through the use of a smartphone app/website with a transportation network company such as Uber Eats, Grubhub and DoorDash for food delivery, Instacart for delivery of groceries, or TaskRabbit for general delivery of goods. Typically, the person delivering the goods is not an employee of the provider of the goods, but rather an independent contractor of the TNC.

3. Car Sharing

Car Sharing is a model of car rental where cars can be rented for short periods of time, often by the hour. Many renting organizations are commercial businesses, such as Zipcar and car2go. Peer-to-peer car sharing allows individual owners to rent out their personal vehicles through a transportation network company such as Turo and Getaround (previously known as Drivy).

Through the peer-to-peer truck sharing platform COOP by Ryder, fleet owners are able to share idle trucks and trailers with other transportation businesses in its networks.

Insurance Requirements:

Massachusetts General Law Chapter 175, Section 228 requires, among other provisions, the following:

1. A transportation network driver who is logged onto the transportation network company's digital network and is available to receive transportation requests but is not engaged in a pre-arranged ride shall have automobile liability insurance that provides per occurrence, per vehicle coverage amounting to at least:
 - \$50,000 of coverage per individual bodily injury
 - \$100,000 of total coverage for bodily injury
 - \$30,000 of coverage for property damage
 - Uninsured motorist coverage to the extent required by Section 113L
 - Personal injury protection to the extent required by Section 34A of Chapter 90

The insurance may be held by the transportation network driver, the transportation network company or a combination thereof.

2. When a transportation network driver is engaged in a pre-arranged ride, the driver shall have automobile liability insurance that provides at least \$1,000,000 in per occurrence per vehicle coverage for death, bodily injury and property damage, uninsured motorist coverage to the extent required by Section 113L, and personal injury protection to the extent required by Section 34A of

Chapter 90. The insurance may be held by the transportation network driver, the transportation network company, or a combination thereof.

3. Coverage under an automobile insurance policy maintained by the transportation network company shall not be dependent on a personal automobile insurer first denying a claim nor shall a personal automobile insurer be required to first deny a claim.
4. In every instance where insurance maintained by a transportation network driver to fulfill the insurance requirements in the previous subsections has lapsed, failed to provide the required coverage, denied a claim for the required coverage or otherwise ceased to exist, insurance maintained by a transportation network company shall provide the coverage required by said previous subsections, beginning with the first dollar of a claim, and shall have the duty to investigate and defend the claim.
5. Insurers that write automobile insurance may exclude any and all coverage afforded under the policy issued to an owner or operator of a vehicle for any loss or injury that occurs while a driver is providing transportation network services or while a driver provides a pre-arranged ride. This right to exclude all coverages may apply to any coverage included in an automobile insurance policy.
6. Such exclusions shall apply notwithstanding any requirement of said Section 34A of said Chapter 90 and Section 113L. Nothing in this section implies or requires that a personal automobile insurance policy provide coverage while the transportation network driver is logged on to the transportation network company's digital network, while the transportation network driver is engage in a pre-arranged ride or while the transportation network driver otherwise uses a vehicle to transport riders for compensation. Nothing shall preclude an insurer from providing coverage for the transportation network driver's vehicle if the insurer so chooses to do so by contract or endorsement.

Considerations:

Private Passenger Type Classification:

Pursuant to Rule 61 – Eligibility of the Commercial Automobile Insurance Manual, private passenger type vehicles that are used as a public livery or conveyance are ineligible for this classification. Specifically, Rule 61 defines eligibility for this classification as follows:

Automobiles of the private passenger or station wagon type that are owned or leased under contract for a continuous period of at least 12 months by (1) partnerships, (2) corporations, (3) unincorporated business associations, or (4) other legal business entities with a federal employee identification number. This section does not apply to:

1. Automobiles that are used as a public livery or conveyance. Refer to Section V – Public Transportation of this manual
2. Automobiles that are rented to others without a driver. Refer to Rule 120 – Leasing or Rental Concerns in Section VII – Special Types and Operations of this manual

Accordingly, vehicles engaging in TNC activities are not eligible for the private passenger type classification and should be classified appropriately (i.e. car service, etc.).

Ride Hailing:

The risk attributes of a private passenger vehicle classified as a private passenger type are markedly different than the risk attributes of a public vehicle providing transportation to members of the public. Allowing this activity to be endorsed onto a private passenger type vehicle significantly increases the exposure to the pool.

There are programs in the voluntary commercial market that offer short term rental vehicles to operators that drive for a TNC, but do not use their own vehicle in the TNC operation.

Ride-hailing is a public livery or conveyance activity and therefore, pursuant to Rule 61, is not eligible for a private passenger type classification and should be classified accordingly (i.e. car service, etc.).

For public vehicle classifications, while ride-hailing activities are not excluded by definition, the statute requires that in instances where the driver does not maintain coverage, coverage will be provided by the TNC. Therefore, the TNC coverage should be primary, and Servicing Carriers should handle claims accordingly.

On-Demand Delivery of Goods:

Similar to ride-hailing, vehicles engaged in TNC activities for on-demand delivery of goods are considered a public conveyance and are not eligible for the private passenger type classification (as conveyance includes the transportation of goods) and should be classified appropriately (i.e. car service, etc.).

Car Sharing:

CAR recently implemented a requirement that all operators of a vehicle be listed on a ceded policy. A car sharing program would result in unknown drivers, with unknown experience operating a vehicle insured in the residual market. Furthermore, the use of the vehicle could be different than the intended use described in the policy.

Recommendations for Ride-Hailing and On-Demand Delivery of Goods Activities:

1. Risks participating in the on-demand delivery of goods be considered and classified in the same manner as those engaging in ride-hailing activities.
2. An endorsement be drafted for use with private passenger type classifications that notes the exclusion of coverage for TNC activities.
3. An endorsement be drafted for all public vehicle classes that may engage in TNC activities to stipulate that the coverage provided by the TNC is primary coverage when the vehicle is engaged in TNC activities. This endorsement would also apply to any other mixed usage vehicles where TNC activity is present.
4. Update CAR's Manual of Administrative Procedures to include language referencing the responsibility of the Servicing Carrier to determine usage of an insured vehicle during a loss to

ascertain whether the insured vehicle was involved in TNC activity at the time of the loss and to properly handle coverage responsibility for the claim (i.e. TNC coverage is primary).

Recommendations for Car Sharing Activities:

1. Car sharing TNC activity be excluded from the commercial residual market.
2. An endorsement be drafted excluding coverage for car sharing exposure.