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ADDITIONAL INFORMATION

TO MEMBERS OF THE COMMERCIAL AUTOMOBILE COMMITTEE

FOR THE MEETING OF:

Tuesday, May 25, 2021 at 10:00 a.m.

CAC
20.05 Transportation Network Services Coverage (TNC)

Based upon Committee discussion at the last meeting, attached is an updated overview with Committee discussion points and four draft endorsements forms for the Committee's consideration. (Docket #CAC20.05, Exhibit #6)

WENDY BROWNE
Vice President – Business Operations

Attachment

Boston, Massachusetts
May 19, 2021

May 19, 2021

CAR Commercial Automobile Committee Updated Overview and Recommendations for TNC Coverages in the 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 engaged 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.

Committee Discussion to Date:

The Committee has discussed that coverage in the residual market for insureds engaged in public or livery conveyance and on-demand delivery services through a TNC should be limited to public vehicle classifications. Further, the Committee recognized that car sharing activity represents an undetermined exposure to the residual market, and therefore should be excluded in all cases. Finally, the Committee noted that the statute requires certain coverage be maintained by the driver, the TNC, or a combination thereof, while also allowing insurers that write auto insurance to exclude any and all coverage. Accordingly, the Committee agreed that the coverage afforded through the residual market for public vehicle classifications should be considered excess over that afforded by the TNC.

At its most recent meeting, some Committee members suggested that a vehicle-specific endorsement may be an appropriate option to address the exposure from policies that contained both public and non-public classified automobiles. It was noted that this approach could involve additional work for Servicing Carriers and that the volume of multi-classed vehicle policies and system impacts should be researched.

Current Status:

Based on past discussions and its research, CAR has drafted four endorsement forms described below to address TNC activities in the residual market:

1. CR 99 06 XX 21 – Public or Livery Passenger Conveyance and On-Demand Delivery Services Exclusion will be filed for use with all commercial automobile policies except those providing coverage for public automobile classifications. The attachment of this endorsement to all commercial policies, except those with public automobiles will address the need to exclude TNC activities as intended under most circumstances, such as in the case where an individual policy provides coverage for vehicles of multiple classifications, including private passenger types, short term rentals, and/or light trucks.
2. CR 99 07 XX 21 – Public or Livery Passenger Conveyance and On-Demand Delivery Services Exclusion Specified Automobiles – will be filed for use with all commercial automobile policies that provide coverage for both public automobile and non-public automobile classes on the same policy. The attachment of this endorsement will address the need to exclude TNC activities for specific vehicles on a policy.
3. CR 99 05 XX 21 – Vehicle Sharing Program Exclusion will be filed for use with all commercial automobile policies.
4. CR 99 04 XX 21 – Public or Livery Passenger Conveyance and On-Demand Delivery Services Other Insurance Condition will be filed for use with all public classifications. It stipulates that the public transportation auto liability coverage provided by the ceded policy is excess over the coverage provided by the TNC when the auto is engaged in TNC activities. There is no change from prior recommendations.

Committee Discussion Points:

The Committee should discuss the following items in order to provide direction relative to the level of coverage to be afforded in the residual market.

- Based on concerns raised at the last meeting, and reiterated during subsequent communications to staff, the Committee should discuss and confirm to what extent coverage in the residual market is appropriate for public classified risks engaged in ride hailing and delivery of goods through a TNC. That is, the Committee should consider whether incidental use is permitted (with the provisions of the Other Insurance Condition applying), or whether coverage should be limited to vehicles classified as car service and/or those declaring intent to engage in such TNC activities.
- Servicing Carriers were asked to comment on resources required to implement a vehicle-level exclusion endorsement for policies with both vehicles classified as public and vehicles classified as non-public. Staff has received feedback from two Servicing Carriers that implementation would be cost-prohibitive. Note that CAR data identifies 724 ceded policies covering public vehicles and including 556 non-public classified exposures.

COMMERCIAL AUTO
CR 99 06 XX 21

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**PUBLIC OR LIVERY PASSENGER CONVEYANCE
AND ON-DEMAND DELIVERY SERVICES EXCLUSION**

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM
MASSACHUSETTS GARAGE INSURANCE POLICY COVERAGE FORM
TRUCKERS COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

A. Changes in Covered Auto Liability Coverage

The following exclusion is added:

Public or Livery Passenger Conveyance and On-Demand Delivery Services

This insurance does not apply to any covered "auto" while being used:

1. As a public or livery conveyance for passengers. This includes, but is not limited to, any period of time a covered "auto" is being used by an "insured" who is logged into a "transportation network platform" as a driver, whether or not a passenger is "occupying" the covered "auto"; or
2. By an "insured" who is logged into a "transportation network platform" or "delivery network platform" as a driver to provide "delivery services", whether or not the goods, items or products to be delivered are in the covered "auto".

However, this exclusion does not apply to business activities performed by an "insured" that are directly related to the Named Insured's business listed in the Declarations.

B. Changes in Physical Damage Coverage

The following exclusion is added:

Public or Livery Passenger Conveyance and On-Demand Delivery Services

We will not pay for "loss" to any covered "auto while being used:

1. As a public or livery conveyance for passengers. This includes, but is not limited to, any period of time a covered "auto" is being used by an "insured" who is logged into a "transportation network platform" as a driver, whether or not a passenger is "occupying" the covered "auto"; or
2. By an "insured" who is logged into a "transportation network platform" or "delivery network platform" as a driver to provide "delivery services", whether or not the goods, items or products to be delivered are in the covered "auto".

However, this exclusion does not apply to business activities performed by an "insured" that are directly related to the Named Insured's business listed in the Declarations.

C. Changes in Auto Medical Payments

If Auto Medical Payments Coverage is attached, then the following exclusion is added:

Public or Livery Passenger Conveyance and On-Demand Delivery Services

This insurance does not apply to:

"Bodily injury" sustained by an "insured" "occupying" a covered "auto" while it is being used:

1. As a public or livery conveyance for passengers. This includes, but is not limited to, any period of time a covered "auto" is being used by an "insured" who is logged into a "transportation network platform" as a driver, whether or not a passenger is "occupying" the covered "auto"; or
2. By an "insured" who is logged into a "transportation network platform" or "delivery network platform" as a driver to provide "delivery services", whether or not the goods, items or products to be delivered are in the covered "auto".

However, this exclusion does not apply to business activities performed by an "insured" that are directly related to the Named Insured's business listed in the Declarations.

D. Changes in Uninsured and/or Underinsured Motorists Coverage

1. If Uninsured and/or Underinsured Motorists Coverage is attached, and:
 - a. Contains, in whole or in part, a public or livery exclusion, then the following exclusion in Paragraph 2. does not apply.
 - b. Does not contain a public or livery exclusion, then the following exclusion in Paragraph 2. is added.

2. Public or Livery Passenger Conveyance and On-Demand Delivery Services

This insurance does not apply to any covered "auto" while being used:

- a. As a public or livery conveyance for passengers. This includes, but is not limited to, any period of time a covered "auto" is being used by an "insured" who is logged into a "transportation network platform" as a driver, whether or not a passenger is "occupying" the covered "auto"; or
- b. By an "insured" who is logged into a "transportation network platform" or "delivery network platform" as a driver to provide "delivery services", whether or not the goods, items or products to be delivered are in the covered "auto".

However, this exclusion does not apply to business activities performed by an "insured" that are directly related to the Named Insured's business listed in the Declarations.

E. Changes in Personal Injury Protection Coverage

1. If Personal Injury Protection, no-fault or other similar coverage is attached, and:
 - a. Contains, in whole or in part, a public or livery exclusion, then the following exclusion in Paragraph 2. does not apply.
 - b. Does not contain a public or livery exclusion, then the following exclusion in Paragraph 2. is added.

2. Public or Livery Passenger Conveyance and On-Demand Delivery Services

This insurance does not apply to any covered "auto" while being used:

- a. As a public or livery conveyance for passengers. This includes, but is not limited to, any period of time a covered "auto" is being used by an "insured" who is logged into a "transportation network platform" as a driver, whether or not a passenger is "occupying" the covered "auto"; or
- b. By an "insured" who is logged into a "transportation network platform" or "delivery network platform" as a driver to provide "delivery services", whether or not the goods, items or products to be delivered are in the covered "auto".

However, this exclusion does not apply to business activities performed by an "insured" that are directly related to the Named Insured's business listed in the Declarations.

F. Additional Definitions

As used in this endorsement:

1. "Delivery network platform" means an online-enabled application or digital network used to connect customers:
 - a. With drivers; or
 - b. With local vendors using drivers for the purpose of providing prearranged "delivery services" for compensation. A "delivery network platform" does not include a "transportation network platform".
2. "Delivery Services" includes courier services.
3. "Occupying" means in, upon, getting in, on, out or off.
4. "Transportation network platform" means an online-enabled application or digital network used to connect passengers with drivers using vehicles for the purpose of providing prearranged transportation services for compensation.

COMMERCIAL AUTO
CR 99 07 XX 21

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**PUBLIC OR LIVERY PASSENGER CONVEYANCE
AND ON-DEMAND DELIVERY SERVICES EXCLUSION
SPECIFIED AUTOMOBILES**

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM
MASSACHUSETTS GARAGE INSURANCE POLICY COVERAGE FORM
TRUCKERS COVERAGE FORM

The provisions of the Coverage Form apply to the auto(s) listed below as modified by the endorsement.

A. Changes in Covered Auto Liability Coverage

The following exclusion is added:

Public or Livery Passenger Conveyance and On-Demand Delivery Services

This insurance does not apply on either a primary or excess basis to any covered "auto" while being used:

1. As a public or livery conveyance for passengers. This includes, but is not limited to, any period of time a covered "auto" is being used by an "insured" who is logged into a "transportation network platform" as a driver, whether or not a passenger is "occupying" the covered "auto"; or
2. By an "insured" who is logged into a "transportation network platform" or "delivery network platform" as a driver to provide "delivery services", whether or not the goods, items or products to be delivered are in the covered "auto".

However, this exclusion does not apply to business activities performed by an "insured" that are directly related to the Named Insured's business listed in the Declarations.

B. Changes in Physical Damage Coverage

The following exclusion is added:

Public or Livery Passenger Conveyance and On-Demand Delivery Services

We will not pay for "loss" to any covered "auto while being used:

1. As a public or livery conveyance for passengers. This includes, but is not limited to, any period of time a covered "auto" is being used by an "insured" who is logged into a "transportation network platform" as a driver, whether or not a passenger is "occupying" the covered "auto"; or
2. By an "insured" who is logged into a "transportation network platform" or "delivery network platform" as a driver to provide "delivery services", whether or not the goods, items or products to be delivered are in the covered "auto".

However, this exclusion does not apply to business activities performed by an "insured" that are directly related to the Named Insured's business listed in the Declarations.

C. Changes in Auto Medical Payments

If Auto Medical Payments Coverage is attached, then the following exclusion is added:

Public or Livery Passenger Conveyance and On-Demand Delivery Services

This insurance does not apply on either a primary or excess basis to:

"Bodily injury" sustained by an "insured" "occupying" a covered "auto" while it is being used:

1. As a public or livery conveyance for passengers. This includes, but is not limited to, any period of time a covered "auto" is being used by an "insured" who is logged into a "transportation network platform" as a driver, whether or not a passenger is "occupying" the covered "auto"; or
2. By an "insured" who is logged into a "transportation network platform" or "delivery network platform" as a driver to provide "delivery services", whether or not the goods, items or products to be delivered are in the covered "auto".

However, this exclusion does not apply to business activities performed by an "insured" that are directly related to the Named Insured's business listed in the Declarations.

D. Changes in Uninsured and/or Underinsured Motorists Coverage

1. If Uninsured and/or Underinsured Motorists Coverage is attached, and:
 - a. Contains, in whole or in part, a public or livery exclusion, then the following exclusion in Paragraph 2. does not apply.
 - b. Does not contain a public or livery exclusion, then the following exclusion in Paragraph 2. is added.

2. Public or Livery Passenger Conveyance and On-Demand Delivery Services

This insurance does not apply on either a primary or excess basis to any covered "auto" while being used:

- a. As a public or livery conveyance for passengers. This includes, but is not limited to, any period of time a covered "auto" is being used by an "insured" who is logged into a "transportation network platform" as a driver, whether or not a passenger is "occupying" the covered "auto"; or
- b. By an "insured" who is logged into a "transportation network platform" or "delivery network platform" as a driver to provide "delivery services", whether or not the goods, items or products to be delivered are in the covered "auto".

However, this exclusion does not apply to business activities performed by an "insured" that are directly related to the Named Insured's business listed in the Declarations.

E. Changes in Personal Injury Protection Coverage

1. If Personal Injury Protection, no-fault or other similar coverage is attached, and:
 - a. Contains, in whole or in part, a public or livery exclusion, then the following exclusion in Paragraph 2. does not apply.
 - b. Does not contain a public or livery exclusion, then the following exclusion in Paragraph 2. is added.

2. Public or Livery Passenger Conveyance and On-Demand Delivery Services

This insurance does not apply on either a primary or excess basis to any covered "auto" while being used:

- a. As a public or livery conveyance for passengers. This includes, but is not limited to, any period of time a covered "auto" is being used by an "insured" who is logged into a "transportation network platform" as a driver, whether or not a passenger is "occupying" the covered "auto"; or
- b. By an "insured" who is logged into a "transportation network platform" or "delivery network platform" as a driver to provide "delivery services", whether or not the goods, items or products to be delivered are in the covered "auto".

However, this exclusion does not apply to business activities performed by an "insured" that are directly related to the Named Insured's business listed in the Declarations.

F. Additional Definitions

As used in this endorsement:

- 1. "Delivery network platform" means an online-enabled application or digital network used to connect customers:
 - a. With drivers; or
 - b. With local vendors using drivers for the purpose of providing prearranged "delivery services" for compensation. A "delivery network platform" does not include a "transportation network platform".
- 2. "Delivery Services" includes courier services.
- 3. "Occupying" means in, upon, getting in, on, out or off.
- 4. "Transportation network platform" means an online-enabled application or digital network used to connect passengers with drivers using vehicles for the purpose of providing prearranged transportation services for compensation.

Schedule

Description of Automobile

Vehicle Identification Number (VIN)

COMMERCIAL AUTO
CR 99 05 XX 21

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

VEHICLE SHARING PROGRAM EXCLUSION ENDORSEMENT

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM
MASSACHUSETTS GARAGE INSURANCE POLICY COVERAGE FORM
TRUCKERS COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

A. Changes in Covered Auto Liability Coverage

The following exclusion is added:

Vehicle Sharing Program:

This insurance does not apply to any "covered" auto while enrolled or participating in a vehicle sharing program under the terms of an express agreement.

B. Changes in Physical Damage Coverage

The following exclusion is added:

We will not pay for "loss" to any covered "autos" while enrolled or participating in a vehicle sharing program under the terms of an express agreement.

C. Changes in Auto Medical Payments

If Auto Medical Payments Coverage is attached, then the following exclusion is added:

Vehicle Sharing Program:

This insurance does not apply to any "Bodily Injury" sustained by an "insured" "occupying a covered "auto" while enrolled or participating in a vehicle sharing program under the terms of an express agreement.

D. Changes in Uninsured And/Or Underinsured Motorist Coverage

If Uninsured and/or Underinsured Motorist Coverage is attached, then the following exclusion is added:

Vehicle Sharing Program:

This insurance does not apply to any covered "auto" while enrolled or participating in a vehicle sharing program under the terms of an express agreement.

E. Changes in Personal Injury Protection Coverage

If Personal Injury Protection, no-fault, or other similar coverage is attached, then the following exclusion is added:

Vehicle Sharing Program

This insurance does not apply to any covered “auto” while enrolled or participating in a vehicle sharing program under the terms of an express agreement.

F. Additional Definitions

As used in this endorsement

1. “Vehicle Sharing Program” means an online-enabled application or digital network used to connect owners of commercially insured vehicles with business entities seeking to rent those vehicles.
2. Vehicle Sharing Programs do not include leasing or rental companies.

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COMMERCIAL AUTO
CR 99 04 XX 21

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PUBLIC OR LIVERY PASSENGER CONVEYANCE AND ON-DEMAND DELIVERY SERVICES

OTHER INSURANCE CONDITION

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM
MASSACHUSETTS GARAGE INSURANCE POLICY COVERAGE FORM
TRUCKERS COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

A. Changes in Covered Auto Liability Coverage

The following is added to the **Other Insurance** Condition in the Business Auto Coverage Form and the **Other Insurance – Primary and Excess Insurance Provisions** in the Truckers Coverage Form and supersedes any provision to the contrary:

The Coverage Form's Covered Auto Liability coverage is excess over insurance provided by a "transportation network company" when the covered "auto" is being used:

1. By an insured who is logged into a transportation network platform as a driver, whether or not a passenger is "occupying" the covered "auto" and whether or not the driver is driving to provide a prearranged ride; or
2. By an insured who is logged into a "transportation network platform" or "delivery network platform" as a driver to provide "delivery services", whether or not the goods, items, or products to be delivered are in the covered "auto".

B. Additional Definitions

As used in this endorsement:

1. "Delivery network platform" means an online-enabled application or digital network used to connect customers:
 - a. With drivers; or
 - b. With local vendors using drivers for the purpose of providing prearranged "delivery services" for compensation. A "delivery network platform" does not include a "transportation network platform".
2. "Delivery Services" includes courier services.
3. "Occupying" means in, upon, getting in, on, out or off.
4. "Transportation network company" means a corporation, partnership, sole proprietorship or other entity that uses a digital network to connect riders to drivers to pre-arrange and provide transportation.
5. "Transportation network platform" means an online-enabled application or digital network used to connect passengers with drivers using vehicles for the purpose of providing prearranged transportation services for compensation.