



NATALIE A. HUBLEY
PRESIDENT

COMMONWEALTH AUTOMOBILE REINSURERS

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RECORDS OF MEETING

COMMERCIAL AUTOMOBILE COMMITTEE – FEBRUARY 17, 2021

Members Present

Mr. Thomas DePaulo – Chair	Cabot Risk Strategies, LLC
Ms. Kristina Broskey	MAPFRE U.S.A. Corporation
Ms. Annmarie Castonguay	The Hanover Insurance Company
Ms. Sheila Doherty	Doherty Insurance Agency, Inc.
Mr. Bryan Hurwitz	The Norfolk & Dedham Group
Ms. Mary McConnell	Safety Insurance Company
Ms. Sharon Murphy	Acadia Insurance Company
Mr. John Olivieri, Jr.	J.K. Olivieri Insurance Agency, Inc.
Mr. Thomas Skelly, Jr.	Deland, Gibson Insurance Associates, Inc.
Mr. Barry Tagen	Pilgrim Insurance Company
Mr. Mark Winiker	A-Affordable Insurance Agency, Inc.
Mr. David Zawilinski	Arbella Insurance Group

Substituted for:

N/A

Not in Attendance:

N/A

20.01 Records of Previous Meeting

On a roll call vote, the Committee unanimously voted to approve the Records of the Commercial Automobile Committee meeting of October 23, 2020. The Records have been distributed and are on file.

19.05 Commercial Residual Market Issues

Ms. Wendy Browne reviewed the commercial issues under consideration by the Committee, providing a current status of activities to address those issues. She noted that at today's meeting the Committee will continue to discuss Transportation Network Company coverage, finalize modifications to the standards for validation of radius and geographic classification and begin its discussions relative to agent commissions for taxi, limousine, and car service classes.

Ms. Browne advised that, at its last meeting, the Commercial Program Oversight Committee discussed the issue of binding authority of an ERP. This issue directly pertains to the handling of applications where forms are required to enable the Servicing Carriers to evaluate eligibility and appropriately classify the business. Accordingly, a reference has been added to item IX. Producer

Management in anticipation of further discussion at a future meeting of the Commercial Automobile Committee. Specifically, the Committee will discuss the consistent handling of commercial automobile residual market applications with regard to the receipt, or lack of receipt, of required forms and documentation.

19.08 Radius of Operation and Rating Territory

At the Committee's last meeting, it was noted that one of the Servicing Carriers, in its Annual Report, stated that risks such as contractors, farmers, church buses and van pools often have difficulty substantiating records that demonstrate radius and geographic characteristics, as is currently required by the established Standards for Determining and Validating Radius Class and Geographic Classification. The Committee agreed that the Standards should be amended to exclude the validation requirements for those classes that do not have the ability to substantiate this information and directed staff to review the Standard to determine required modifications.

Ms. Marian Adgate stated that staff's analysis of the principal garaging and principal operation validation requirements included in the Standards was distributed as Additional Information. Included in the exhibit was a data review of the specific classes identified, along with staff's recommendations, including proposed updates to the Manual of Administrative Procedures. She noted that for the farmers, church buses and van pools classifications, the exposure/premium volume is low, and the exposures fall mainly in the local radius category. For contractors and school buses, although the exposure/premium volume is more substantial, 98% of the exposures also fall into the local radius category. Accordingly, staff is recommending that Servicing Carriers use their discretion to evaluate and determine radius and geographic classification.

Further, to document this recommendation, Ms. Adgate reviewed proposed amendments to Chapter X – Servicing Carrier and Exclusive Representative Producer Standards and Forms of the Manual of Administrative Procedures. Language allowing for such discretion has been added to the Standard as Section C.4., entitled Exceptions. She further noted that a CAR Bulletin will be published to announce the modifications made to the Standard.

The Committee agreed that since most of these risks operate on a local radius, the volume of errors that could be identified through established validation efforts should be low. Therefore, on a roll call vote, the Committee unanimously voted to recommend to the Governing Committee the proposed modifications to Chapter X of the Manual of Administrative Procedures, as presented.

Ms. Adgate presented the Committee with one further update to Chapter X of the Manual of Administrative Procedures. Updates to the NF-PPT Certification Form are proposed to assure that the form included in Chapter X corresponds to the form that was recently placed on file by the Division of Insurance. On a roll call vote, the Committee unanimously voted to recommend to the Governing Committee the proposed modifications to Chapter X of the Manual of Administrative Procedures, as presented.

Finally, Ms. Browne presented the Committee with a status report relative to staff's review of the RadiusCheck software program for use as an information sharing tool to assist Servicing Carriers in validating radius and geographic classification. She noted that CAR has prepared a test file and is currently working out the licensing issues for that test. Further information on the results of the test is expected to be available for the next meeting.

19.14 Agent Commissions

Ms. Natalie Hubley stated that the Committee had previously recommended to the Governing Committee that, beginning with CAR's next rate filing, an agent commission rate of 8.34% of premium be filed for all classes except for the taxi, limousine, and car service classes. Additionally, at its January 19, 2021 meeting, the Commercial Program Oversight Committee recommended that the Taxi/Limousine/Car Service Program be combined with the full Commercial Servicing Carrier Program. At today's meeting, the Committee should consider the commission rate for the taxi, limousine, and car service classes of business.

Ms. Hubley stated that attached to the Notice of Meeting was an exhibit reflecting the taxi, limousine, and car service dollars at the commission rates underlying the current July 1, 2020 rates. The exhibit also reflects what those commission dollars would be using the 8.34% rate filed for all other classes, and the rate impact for the taxi, limousine, and car service classes, as well as the overall premium impact to the full commercial book. Ms. Hubley advised that to accommodate the varying commission rates, the current taxi, limousine, and car service Servicing Carriers write separate policies for risks that include multiple classifications of business. Ms. Hubley further noted that when commissions were last discussed for the all other commercial classes, members had agreed upon a consistent rate for all classes, as Servicing Carriers had commented on the difficulties that their internal processing systems would have in setting up separate commission rates for individual classes. She requested that the Servicing Carriers comment on the feasibility of separate rates for the taxi, limousine, and car service classes under the combined program.

Committee discussion focused on the significant impact of moving from the current commission rates to that recently recommended for all other classes. Several members commented that while the current commission level for the car service class appear low, adoption of the 8.34% commission rate appears excessive. Others agreed that while the 8.34% commission rate would be a significant increase, the increase is mainly attributed to the low rate for the car service class. Current taxi, limousine, and car service Servicing Carriers commented that the taxi and car service classes require similar resources to manage. After discussion, the members favored a consistent rate for the taxi, limousine, and car service classes, but requested further analysis to evaluate an appropriate rate. To assist the Committee in its evaluation, staff was directed to provide average premium and commission per exposure data from 2014 to the present for the next meeting.

20.05 Transportation Network Services Coverage (TNC)

Ms. Browne stated that at its last meeting, the Committee recommended the adoption of several staff recommendations for addressing TNC activities in the commercial residual market. The recommendations are consistent with the statutory insurance requirements, address coverage eligibility and limit the exposure to the pool of risks engaged in ride hailing, on-demand delivery of goods, and car sharing services. She noted that attached to the Additional Information notice was an exhibit which provided three recommended endorsement forms and proposed changes to several Commercial Automobile Insurance Manual rules.

The recommended endorsement forms to be filed include:

- An endorsement that notes the exclusion of coverage for TNC activities for use with private passenger type classifications. It is staff's intention to adopt AIB's endorsement form CA 23 45 11 16 – Public or Livery Passenger Conveyance and On-Demand Delivery Services Exclusion. Staff will review and update the endorsement's applicable coverage forms to ensure that the appropriate forms for the Massachusetts residual market are listed.

- An endorsement that notes the exclusion of coverage for vehicle sharing activities that will be filed for use with all vehicle types. AIB does not currently have an endorsement of this type on file, so staff has drafted endorsement form CR 99 05 XX 21 – Vehicle Sharing Program Exclusion Endorsement for use with all policies.
- An endorsement for all public vehicle classes that may engage in TNC activities which stipulates that the coverage provided by the TNC is primary when the vehicle is engaged in TNC activities. AIB also does not currently have an endorsement of this type on file, so staff has drafted endorsement from CR 99 04 XX 21 – Public or Livery Passenger Conveyance and On-Demand Delivery Services Other Insurance Conditions for use with all public vehicle classes, including any other mixed usage vehicles where TNC activity may be present.

Ms. Browne noted that for the two endorsements that are currently not on file, CAR will either coordinate their adoption with the AIB, or CAR will file the endorsements on its own.

In response to a member's question regarding the statutory insurance coverage required for transportation network drivers, Ms. Browne advised that either the transportation network company or the transportation network driver, or a combination of both, are required by statute to provide insurance coverage depending on whether the driver is engaged or not yet engaged in a pre-arranged ride. This includes liability coverage of \$50,000 per individual/\$100,000 total coverage for bodily injury and \$30,000 of coverage for property damage and uninsured motorist coverage when the driver is not yet engaged in a pre-arranged ride and \$1 million liability coverage per occurrence when the driver is engaged in a pre-arranged ride. She further noted that when a risk is operating as a TNC, and the policy is placed in the residual market, the TNC policy would provide primary coverage and the CAR residual market policy becomes excess over the TNC policy. She noted that CAR's Manual of Administrative Procedures will be updated to include language stating the responsibility of the Servicing Carrier to perform its due diligence in determining whether the insured vehicle was involved in TNC activity at the time of the loss.

To clarify questions raised regarding the definition of what it means to be engaged in TNC usage, Ms. Browne stated that as soon as the driver is logged in to the app, the residual market policy becomes excess.

Mr. Steve Torres, CAR counsel, further indicated that TNCs make a distinction between several points in time, with coverage keyed off those points in time. These include when the driver is offline and the driver app is off, logged in to the app but not paired with a rider, and matched with a rider and is either en route to pick up the rider or transporting a passenger in the vehicle. The recommended endorsements are designed to provide this definition, to ensure consistency with statutory requirements and to assure that CAR's exposure is appropriately minimized by specifying that any coverage provided by the residual market would be in excess of the coverage provided by the TNC.

Ms. Kristina Broskey questioned whether the vehicle sharing exclusion endorsement would apply to all car sharing activity type businesses, including those such as Turo car sharing as well as Uber Freight, and if so, would the endorsement then also apply to classes other than the private passenger types and light trucks. She noted that there is often confusion between short term rental programs and vehicle sharing programs.

Ms. Browne indicated that, in general, this endorsement is meant to apply to all vehicle types, specifically noting that idle tractor trailers are commonly placed into vehicle sharing programs. However, that type of usage results in unknown drivers and unknown vehicles being associated with residual market policies, which does not meet the requirements for all operators to be listed and vehicles specified. Ms. Browne indicated that staff will review Rule language pertaining to short term rental and vehicle sharing programs to determine if further clarifications are warranted.

Ms. Broskey also questioned whether the Public or Livery Passenger Conveyance and On-Demand Delivery Services – Other Insurance Conditions endorsement would be required on all public auto exposures, rather than just those that the Servicing Carrier is aware of being involved in TNC activities. She noted that the wording added to Rule 75 indicates that the endorsement should be attached to the policy when it contains vehicles classified as public transportation that also engage in on-demand delivery services. She recommended that this endorsement form be attached to all public classes as the Servicing Carrier may not always know at the outset of the policy whether the insured is, or will be, involved in TNC activities.

Lastly, Ms. Broskey requested clarification on how it was determined that the car service classification be used for the on-demand delivery of goods, specifically referring to businesses that own their own vehicles and that are used for delivery. She questioned whether food delivery by a TNC is viewed as a different exposure than food delivery by a private passenger vehicle owned by a business and asked whether a rate analysis was performed in determination that the delivery of goods should be included with the car service classification as opposed to some other type of classification.

Ms. Browne indicated that the definition of public livery and conveyance includes the delivery of goods in addition to on-demand passenger conveyance and therefore was based on eligibility, rather than on rate review. Coverage for the individual engaged in delivery of goods for his/her employer would be provided under the employer's non-owned coverage. Ms. Browne further noted that to address this issue, CAR is considering the addition of further non-owned classification categories such as for food delivery services. Ms. Hubley further indicated that staff will investigate Ms. Broskey's concerns and respond at next meeting.

Finally, Ms. Browne noted that the exhibit also identified proposed modifications that will be required to the Commercial Automobile Insurance Manual relative to the new TNC endorsements, including the following:

- Modify Rule 20 in Section II – Common Coverages and Rating Procedures of the Manual to indicate that vehicles engaging in TNC activities are to be classified and rated in accordance with Section V – Public Transportation of the Manual.
- Add Rule 43 to Section II of the Manual to specify that the Vehicle Sharing Program Exclusion Endorsement must be attached to all residual market policies. The vehicle sharing program does not include leasing and rental companies.
- Modify Rule 61 in Section IV – Private Passenger Types of the Manual to indicate that vehicles engaged in public or livery passenger conveyance and on-demand delivery services through a transportation or delivery network services company are not eligible for the PPT classification and that the Servicing Carrier will attach the Public or Livery Passenger Conveyance and On-Demand Delivery Services Exclusion to any policy with a PPT vehicle.
- Add Rule 75 to Section V – Public Transportation of the Manual to specify that the Public or Livery Passenger Conveyance and On-Demand Delivery Services – Other Insurance Condition Exclusion must be attached to all residual market policies that contain vehicles classified as public transportation.

She further requested that the Committee consider whether there is sufficient activity in the market to necessitate the need for the Public or Livery Passenger Conveyance and On-Demand Delivery Services – Other Insurance Condition Endorsement to be attached to residual market policies classified under Section III – Trucks, Tractors and Trailers and Section VII – Special Types and Operations of the Manual and requested that members provide feedback to staff. Ms. Browne stated that it is staff's intention to update the Commercial Automobile Manual and provide it to the Committee for final review at the next meeting.

Finally, although it is unlikely that risks written on the Garage Coverage Form would engage in TNC activities, Ms. Browne requested members to provide staff with feedback on whether this type of activity is occurring in the marketplace. If so, the endorsements can be amended to indicate that the endorsements also apply to the Garage Coverage Form.

MARIAN ADGATE
Corporate Documentation Specialist

Boston, Massachusetts
March 3, 2021

ATTACHMENT LISTING

Docket #CAC21.02, Exhibit #1

Attendance Listing

**COMMERCIAL AUTOMOBILE COMMITTEE MEETING
 MEETING ATTENDEES
 FEBRUARY 17, 2021**

Individual's Name

Company / Agency

PLEASE PRINT

Thomas DePaulo	Cabot Risk Strategies, LLC
Kristina Broskey	MAPFRE U.S.A. Corporation
Anmarie Castonguay	The Hanover Insurance Company
Sheila Doherty	Doherty Insurance Agency, Inc.
Bryan Hurwitz	The Norfolk & Dedham Group
Mary McConnell	Safety Insurance Company
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Barry Tagen	Pilgrim Insurance Company
Mark Winiker	A-Affordable Insurance Agency, Inc.
David Zawilinski	Arbella Insurance Group
Monique Miller	AIB
John Magadieu	Arbella Insurance Group
Mary Ellen Thompson	Division of Insurance
Kathy Cormier	MAIA
Pete Barton	Safety Insurance Company
Benjamin Hincks	TSH & D – CAR Counsel
Steve Torres	TSH & D – CAR Counsel
Marian Adgate	CAR Staff
Mark Alves	CAR Staff
Wendy Browne	CAR Staff
Shannon Chiu	CAR Staff
Timothy Costain	CAR Staff
Richard Dalton	CAR Staff

**COMMERCIAL AUTOMOBILE COMMITTEE MEETING
MEETING ATTENDEES
FEBRUARY 17, 2021**

Individual's Name

Company / Agency

PLEASE PRINT

Timothy Galligan	CAR Staff
Matt Hirsh	CAR Staff
Natalie Hubley	CAR Staff
Cheryl Kopas	CAR Staff
Daniel Mason	CAR Staff
John Metcalfe	CAR Staff
Katy Proctor	CAR Staff
Lynne Rosenburg	CAR Staff
Alison Ruggiero	CAR Staff
Robin Tigges	CAR Staff