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ADDITIONAL INFORMATION

TO MEMBERS OF THE COMMERCIAL AUTOMOBILE COMMITTEE

FOR THE MEETING OF:

Tuesday, July 20, 2021 at 10:30 a.m.

CAC

20.05 Transportation Network Services Coverage (TNC)

Based upon Committee discussion to date, staff has researched several alternative approaches to address TNC coverage in the commercial residual market. Attached is an updated overview describing each alternative, including benefits and drawbacks of each. Also included are four draft endorsement forms intended to implement the various approaches. The Committee should consider the benefits and drawbacks of each approach to provide direction to staff with respect to a recommended solution for further development. (Docket #CAC20.05, Exhibit #7)

WENDY BROWNE
Vice President – Business Operations

Attachment

Boston, Massachusetts
July 15, 2021

CAR Commercial Automobile Committee Updated Overview and Alternatives 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. 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.

Committee Discussion to Date:

The Committee has discussed and agreed upon the following points:

- There needs to be an avenue for TNC coverage in the residual market.
- Ceded insureds that engage in public or livery conveyance and/or on-demand delivery services through a TNC should be limited to public vehicle classifications.
- 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 coverage afforded through the residual market for public vehicle classifications should be considered excess over that afforded by the TNC.
- Peer-to-peer car sharing activity represents an undetermined exposure to the residual market, and therefore should be excluded in all cases.

To date, Committee members have suggested several alternative approaches for addressing TNC coverage on policies that contain both public and non-public classified automobiles. Below is a description of the alternatives discussed, including benefits and drawbacks of each. Also included is a number of draft endorsement forms intended to implement the various alternatives. The Committee should consider the benefits and drawbacks of each approach to provide direction to staff with respect to a recommended solution for further development.

Alternative Approaches for Policies with Public and Non-Public Classes:

1. Class-Specific Exclusion Endorsement:

For policies with both public and private passenger type vehicles, the Servicing Carrier would attach an endorsement (to be developed) that indicates that private passenger type vehicles are excluded from engaging in TNC activities.

Benefit: this solution would ensure that coverage in the residual market would be afforded only to those vehicles classified as public, with that coverage being defined as excess over coverage afforded by the TNC.

Drawback/Concern: Counsel has expressed concern with a class-specific endorsement, as classification is not defined as part of the policy language. To date, staff has not identified a class-specific form adopted in the voluntary market that accomplishes this objective.

2. Vehicle-Specific Exclusion Endorsement:

For policies with both public and private passenger type vehicles, the Servicing Carrier would attach the CR 99 07 endorsement form, identifying all vehicles on the policy that are not classed as public. The Servicing Carrier would also attach the CR 99 04 Other Insurance Condition form indicating that TNC coverage that is afforded in excess over that afforded by the TNC.

Benefit: this solution would ensure that coverage in the residual market would be afforded only to those vehicles classed as public, with that coverage being defined as excess.

Drawback/Concern: implementation of an endorsement form requiring listed vehicles has been described as cost-prohibitive. In addition, Servicing Carriers have expressed concern that the intended use of the vehicle is not always known at policy inception, and that use may change during the policy term. To address this, an additional disclosure notice may be needed with the new business application, and required at renewal, advising the insured of its responsibility to notify the insurer of a change to the vehicle's intended use.

3. Buy-back Endorsement:

The Committee directed staff to investigate a buy-back option to enable coverage to be excluded unless it is proactively purchased. The pollution broadened coverage option available in the commercial residual market most closely matches the intent. However, in this case the pollution exclusion is expressly defined in the policy form. Other examples reviewed in the voluntary private passenger market are similar. Other issues to consider also include the excess nature of the TNC coverage and appropriate pricing methods. More analysis would be needed to determine the feasibility of a buy-back approach.

Benefit: this solution will ensure that coverage provided is appropriately priced.

Drawback/Concern: employing a buy-back endorsement is also vehicle-specific, resulting in similar cost-prohibitive implementation. Also, this approach would afford coverage inconsistently among non-public classes.

4. Other Insurance Condition Endorsement:

Under this approach, for all policies with vehicle(s) classed as public, the Servicing Carrier would attach the CR 99 04 endorsement form.

Benefit: this solution is the least cumbersome to implement. While it exposes the residual market to unintended coverage, the exposure is minimized due to the excess nature, and due to the minimal volume of mixed-classed policies.

Drawback/Concern: this solution exposes the residual market to unintended coverage, and affords coverage inconsistently among non-public classes.

Current Endorsement Status:

Based on past discussions, CAR has drafted the 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.

Additional Discussion Points:

The Committee should discuss whether a disclosure notice should be developed to advise insureds of the obligation to notify the insurer of changes in vehicle usage during the policy period. In addition, the Committee should discuss the appropriate form of such notice.

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.