



NATALIE A. HUBLEY
PRESIDENT

COMMONWEALTH AUTOMOBILE REINSURERS

101 Arch Street, Suite 400 Boston, Massachusetts 02110
www.commauto.com 617-338-4000

NOTICE OF MEETING

COMMERCIAL AUTOMOBILE COMMITTEE

A meeting of the Commercial Automobile Committee will be held virtually via Zoom video conferencing software, on

WEDNESDAY, APRIL 26, 2023, AT 10:00 A.M.

If you plan to attend this session and are not a member of this Committee, please RSVP by completing the Visitor Security Form located in the Contact Us/Visitor Information section of CAR's website. CAR will then forward to you, via email, meeting access information. Please do not share access information provided by CAR but refer others wishing to attend the meeting to CAR's Visitor Security Form.

MEMBERS OF THE COMMITTEE

Mr. Thomas DePaulo – Chair
Cabot Risk Strategies, LLC

Ms. Kristina Broskey
Ms. Annmarie Castonguay
Ms. Mary McConnell
Ms. Sharon Murphy
Mr. John Olivieri, Jr.
Mr. Tiago Prado
Mr. Thomas Skelly, Jr.
Mr. Barry Tagen
Mr. Mark Winiker
Mr. David Zawilinski

MAPFRE U.S.A. Corporation
The Hanover Insurance Company
Safety Insurance Company
Acadia Insurance Company
J.K. Olivieri Insurance Agency, Inc.
BRZ Insurance, LLC
Deland, Gibson Insurance Associates, Inc.
Pilgrim Insurance Company
A-Affordable Insurance Agency, Inc
Arbella Insurance Group

AGENDA

CAC

23.01 Records of Previous Meeting

The Records of the Commercial Automobile Committee meeting of March 15, 2023 continued to March 29, 2023 should be read and approved.

CAC

23.03 CAR Conflict of Interest Policy

The Chair will read a statement relative to CAR's Conflict of Interest Policy.

CAC

22.05 AIB Commercial Automobile Insurance Manual and Endorsement Changes

At its last meeting, staff was directed to review the Rules of Operation and Manual of Administrative Procedures to address concerns raised by Servicing Carriers regarding the workload and cost to upgrade the policy forms that may not have been contemplated in the most recent RFP. Staff will advise the Committee regarding its review.

In addition, the Committee will continue discussion of the specifications for the program upgrade. To that end, staff will review its analysis of the MA Garage Coverage Form on file for CAR and the Auto Dealers Coverage Form together with the Auto Dealers MA Mandatory Endorsement as well as updates to the schedule of required form changes. The analysis and the schedule of forms will be distributed as additional information prior to the meeting.

CAC

23.04 Eligibility of Peer-to-Peer Vehicle Sharing Programs

At the March 15, 2023 meeting, CAR had received correspondence from Mr. Nick Fytrilakis, from the Massachusetts Association of Insurance Agents (MAIA), requesting the opportunity to introduce to the Committee an issue regarding the eligibility of risks engaged in peer-to-peer vehicle sharing programs to be ceded to CAR, as MAIA members are unable to secure coverage in the standard market. (Docket #CAC23.04, Exhibit #1). It was noted that the residual market currently excludes vehicle sharing programs, as outlined in CAR Manual Rule 43 and Endorsement CR 99 05 02 22 required to be attached to all ceded policies. (Docket #CAC23.04, Exhibits #2 and #3). Excerpts from the October 23, 2020 and February 17, 2021 meeting records reflecting prior Committee discussions are attached for Members' reference. (Docket #CAC23.04, Exhibit #4)

The Committee should be prepared to begin discussion of this issue.

Other Business

To transact any other business that may properly come before this Committee.

Executive Session

The Commercial Automobile Committee may convene in Executive Session in accordance with the provisions of G.L. c. 30A, § 21.

TIMOTHY GALLIGAN
Actuarial and Statistical Services Director

Attachments

Boston, Massachusetts
April 13, 2023

From: [Nick Fyntrilakis](#)
To: [Hubley, Natalie](#)
Cc: [Kathy Cormier](#); [Irene Morrill](#)
Subject: 3/15 Commercial Auto Committee Meeting Request
Date: Friday, March 10, 2023 1:33:34 PM
Attachments: [image001.png](#)
[image002.png](#)

CAUTION: This email originated from outside of CAR. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good afternoon Natalie,

I would like to request through Commercial Auto Committee Chairman DePaulo that MAIA is provided the opportunity to raise an issue regarding the rental program TURO and similar programs App based rentals at the 3/15 meeting. I have received several concerns from members of MAIA who are not able to secure coverage for their clients that are utilizing this program.

TURO is an app-based program where an individual can rent out their vehicle. In essence, it is a car rental agency but via an app and with an individual's vehicle. Since the operator experience is unknown, naturally the standard market will not write this business. CAR has exclusions which prohibit vehicle sharing – which I understand. But shouldn't those engaging in this practice be able to purchase a commercial policy and be rated like a car rental agency would? We understand that there is nuance to this issue – but hope to find a resolution which ensures agents can offer appropriate coverage to their clients.

Thank you,

Nick Fyntrilakis
President and CEO
nfyntrilakis@massagent.com
508.634.7352
www.massagent.com



This document is not a legal opinion and should not be relied upon as such. The intent of this document is to provide a general background regarding the topic or topics discussed, not to provide legal advice. Producers and agencies should consult an attorney regarding specific situations and specific questions with respect to the topic or topics covered in this document. Neither the Massachusetts Association of Insurance Agents, Number One Insurance Agency nor any of its employees shall be responsible for any errors or omissions regarding any statements made in this document, nor any errors or omissions regarding any statutes, regulations, court rules, and/or any other government documents cited in this document.

This email message, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message. We use virus scanning software but exclude all liability for viruses or anything similar in this email or any attachment.

Determine the value of the automobile and divide by \$100. Apply the stated amount rate to this value to determine the stated amount premium.

E. Agreed Value Basis

Physical Damage Coverages may be written on an agreed value basis which provides that in determining the actual cash value of an automobile to be insured, no deduction shall be made to reduce the value of the automobile to less than the agreed value in the event of a loss. Agreed value means the value of the automobile as determined by agreement between the insurer and the policyholder. As a condition to this coverage, the insurer shall be permitted to inspect the automobile at the time of application. The following procedures apply when rating this coverage:

1. An appraisal is to be made to establish the current market value of the automobile. The cost of said appraisal shall be borne by the policyholder.
2. Multiply the stated amount premium obtained by a factor of 110%.

RULE 43. VEHICLE SHARING PROGRAM EXCLUSION ENDORSEMENT

The Servicing Carrier will attach the Vehicle Sharing Program Exclusion endorsement form CR 99 05 to all policies. A vehicle sharing program means an online-enabled application or digital network used to connect owners of commercially insured vehicles with business entities or others seeking to rent those vehicles.

RULE 44. PUBLIC OR LIVERY PASSENGER CONVEYANCE AND ON-DEMAND DELIVERY SERVICES EXCLUSION ENDORSEMENT

The Servicing Carrier will attach the Public or Livery Passenger Conveyance and On-Demand Delivery Services Exclusion Form CR 99 06 to all policies, except those policies providing coverage for public automobiles classified in accordance with Section V – Public Transportation of this Manual

RULE 45. AUDIO, VISUAL AND DATA ELECTRONIC EQUIPMENT

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 or others seeking to rent those vehicles.
2. Vehicle Sharing Programs do not include leasing or rental companies.

Records of October 23, 2020 Meeting

20.05 Transportation Network Services Coverage (TNC)

Ms. Browne stated that distributed as Additional Information was an updated overview of the types of Transportation Network Company (TNC) services currently available, including on-demand ride-hailing, on-demand delivery of goods, and car sharing. She described applicable statutory insurance requirements for these services and the insurance coverage and requirements for the transportation network company and the transportation network driver. The exhibit also provided additional information to be taken into consideration by the Committee in its discussions.

Ms. Browne noted that pursuant to Rule 61 – Eligibility of the Commercial Automobile Insurance Manual, vehicles that are used as a public livery or conveyance are ineligible for the private passenger type classification. Accordingly, vehicles engaging in TNC activities such as ride-hailing and on-demand delivery of goods would not be eligible for the private passenger type classification and should be appropriately classified as car service. Additionally, for ride-hailing, since 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 would significantly increase the exposure to the pool.

Regarding car sharing, Ms. Browne noted that 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.

Based upon insurance requirements and other considerations, Ms. Browne requested the Committee to consider several recommendations for ride-hailing and on-demand delivery of goods activities, as follows:

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

Ms. Browne also requested that the Committee consider recommendations for car sharing activities, as follows:

- Car sharing TNC activity be excluded from the commercial residual market.
- An endorsement be drafted to exclude coverage for car sharing exposure.

It was the consensus of the Committee that staff's recommendations be implemented, particularly as these recommendations are consistent with the statutory insurance requirements and will limit the exposure to the pool of this type of risk. Accordingly, the necessary updates to CAR's manuals and procedures, as well as drafts for the necessary endorsements, will be provided for the Committee's review at a future meeting.

Records of February 17, 2021 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.