Insurance for Sharing

Rhode Islanders are fast becoming familiar with the Sharing Economy and the disruption in the marketplace that comes with it. The insurance industry is no exception. In fact, of all the policy and legal implications surrounding the Sharing Economy, issues relating to how, whether and when insurance will cover a claim or loss potentially touch *all* participants in this new business model, and therefore are the most important to resolve.

The Sharing Economy connects the supply and demand chain primarily through a digital platform allowing people to "share" just about anything they own. For example, you can "share" your home through Airbnb or seats in a car with Uber, Lyft, or Sidecar. Most recently, it has been reported that Amazon may be seeking your assistance in delivering its orders. These are just a few of the more popular Sharing Economy opportunities, and all of them have insurance issues.

Transportation Network Companies ("TNC"), such as Uber, Lyft, and Sidecar, are at the forefront of the Sharing Economy and the topic of much discussion. A TNC allows everyday citizens with access to a car to connect with customers who are in need of transportation for a fee through a mobile app on a smart phone. The consumer downloads a free application, stores his/her credit card information, and then clicks the app to catch a ride. Seems simple enough and there are many who praise TNCs as convenient, quick, and affordable transportation alternatives. But the myriad issues arising out of these relationships (between and among the TNC, the driver, the customer, and the government) are beginning to present themselves. They span the legal and policy spectra, such as employment status of the drivers, consumer protection in the form of regulatory and licensing, questions regarding fair competition, and insurance coverage protecting the driver and customer.

This new business model and the technology that drives it challenges established insurance coverage precepts. For example, most private auto insurance policies include exceptions to coverage when those private drivers are involved in an accident while engaged in a commercial enterprise, but the TNC model turns private drivers into commercial drivers by pressing an app on a smart phone. The potential for legal and regulatory disputes that can (and do) result are obvious.

TNCs are popular and fill a consumer need, so it is unlikely that they are going away. Will the insurance industry and its stakeholders adapt? Can they resolve how coverage can be provided at an appropriate price and risk? This question has led to the development of new terminology in the insurance industry, such as Phase 1, 2, and 3. These phases refer to the specific periods of time in a TNC driver's point of transit. In general, Phase 1 is that period of time when a TNC driver turns on the TNC app in order to receive a call from a customer seeking a ride, but has not received a call; Phase 2 is when the TNC driver is called and en route to pick up a customer; and Phase 3 is when the customer has entered the vehicle and is being transported to his/her destination by the TNC driver. These phases form the basis for debate among interested parties as to when a driver's private insurance policy no longer covers the vehicle and when the commercial coverage applies and, more importantly, how much coverage is required.

Legislators, regulators, insurers, and the TNCs are attempting to work through these and other coverage issues as they arise. For example, California and Seattle, Washington have formulated laws identifying minimum insurance coverage for all TNC affiliated drivers. Likewise, Massachusetts state officials are trying to finalize a comprehensive bill to regulate TNCs. Of the multiple bills filed in Massachusetts, Governor Baker's House Bill No. 3351 ("An Act Establishing Department of Public Utilities Oversight of Transportation Network Companies") is touted as the most comprehensive. In addition to setting requirements as to a TNC driver's suitability (i.e., age and background check), the bill sets forth minimum insurance coverage. Proposed § 11H would require the TNC company and/or the TNC driver to maintain adequate insurance coverage for all phases, but the minimum insurance coverage would increase for the "prearranged ride" period. The "prearranged ride" period is the time "that begins when a transportation network driver accepts a requested ride through a digital network, continues while said driver transports the transportation network company rider, and ends when said rider departs from the vehicle." For this phase, the TNC and/or driver would be obligated to maintain coverage of at least $1 million in per occurrence coverage for death, bodily injury, and property damage, and uninsured motorist coverage and personal injury protection to the extent already required by law.

Even though the law is still in draft form, that is not stopping the industry from solving the problem on its own. It has been reported that United Services Automobile Association ("USAA") has been approved to provide "Gap Protection" in Massachusetts as of November 21, 2015 for TNC coverage effective after January 7, 2016. This Gap Protection allows USAA members in Massachusetts to purchase rideshare gap protection for policy holders driving for TNCs.

There is activity in Rhode Island as well. This this past legislative session saw a bill proposed in the House of Representatives concerning TNCs – H6342 Jan. Sess. (R.I. 2015). Proposed H6342 would have made licenses required for TNCs placing them under the regulatory authority of the Rhode Island Division of Public Utilities and Carriers (the "PUC"). Among the requirements suggested, H6342 would have also required certain automobile liability insurance coverage for the entire period a TNC driver is logged into the TNCs digital network. The bill was held by the House Corporations Committee for further study. Additionally, the Rhode Island Department of Business Regulation – Insurance Division (the "Division") issued Consumer Alert 2014-4 warning of the potential insurance gaps for drivers and passengers of TNCs. (It is also of note that the Division issued Consumer Alert 2015-8 regarding Home Sharing Rentals.)

As the Sharing Economy becomes more mainstream and expands into other areas of the market – i.e., Amazon's pilot program to pay private drivers to deliver packages – the "old" economic model continues to be tested, particularly in historically heavily regulated areas such as insurance. Although the story is still unwritten in Massachusetts and Rhode Island, the next six to nine months promise to be exciting as these matters shake out.

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