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September 9, 2013

RE: Transportation Networking Companies (TNCs) – Insurance Issues

Dear Ms. Zafar:

You asked for additional guidance from the Personal Insurance Federation of California (PIFC), regarding the insurance issues surrounding TNCs. The CPUC has stated in its proposed decision that TNCs are charter-party passenger carriers and that TNCs are engaged in the transportation of persons for compensation. Further, the CPUC is contemplating requiring that TNCs, as a condition of doing business, arrange a substantial commercial insurance policy that would cover the acts of TNC drivers.

It is critical that the CPUC rulemaking draw a bright line distinction between commercial and private passenger auto insurance. We generally agree with the CPUC's proposed approach to the regulation of TNCs and support the requirement that TNCs obtain commercial insurance coverage for their operations. As we have indicated in our prior comments, all TNC arrangements that we have reviewed to date involve a commercial risk not contemplated under personal lines auto policies.

Although most personal lines auto policies exclude coverage while the insured "vehicle is being used to carry persons for a charge," they generally have a limited exception when the use of the private passenger car is on a "share-the expense basis." Some TNCs assert their services should fall within this limited exception, which was really designed only to allow coverage for true carpool arrangements where a passenger splits the cost of gasoline but the driver is not seeking net income. In any claim circumstance, an insurance carrier would, of course, fully assess the situation for possible coverage under a personal policy. However, PIFC has not seen a TNC arrangement where the facts resemble a private passenger use that qualifies for the "shared expense," or any other, exception to the "carrying persons for a charge" exclusion. PIFC believes the transactions that are the subject of the CPUC's pending rulemaking are generally commercial in nature, and therefore not subject to coverage under standard private passenger auto insurance policies.

The CPUC also is grappling with whether a TNC's commercial insurance requirement should involve primary or excess insurance. PIFC would support eliminating reference to both "primary" and "excess," and simply imposing a commercial insurance requirement, which would apply when the car is being used in a TNC situation. If the CPUC imposes an "excess" liability insurance requirement, PIFC is concerned this would imply that private passenger auto liability insurance policies are likely to provide benefits. Coverage litigation would be the inevitable outcome when a commercial excess carrier would face a large claim, and then sue the TNC driver's private passenger auto carrier. If a private passenger auto insurance carrier ultimately decides to offer a TNC commercial endorsement to a private passenger auto policy, that carrier and a TNC's commercial insurance carrier can coordinate proceeds. But, under no circumstances should the CPUC rulemaking provide any assurance that private passenger auto proceeds will be available.

While focus on liability insurance has been foremost, PIFC emphasizes the need for TNC drivers to know that their private passenger auto insurance policies are also unlikely to pay for the repair of their own vehicles under their collision and comprehensive coverages. While we understand the CPUC's focus on liability insurance, PIFC certainly does not want TNC drivers to be left without means to repair their own vehicles following any crash that occurs while the vehicle is being used to carry persons for a charge and any limited exception to that exclusion doesn't apply.

PIFC also notes that the ALJ's suggested language requires "per-incident coverage for incidents involving TNC vehicles and drivers...and shall be available to cover any and all claims related to the incident." This perhaps is too broad of a requirement, and may include incidents that insurance does not normally cover. The California Insurance Code defines automobile insurance as coverage "against hazards incident to ownership, maintenance, operation, and use of an automobile." This narrows "incidents" to what would normally be covered by auto insurance. PIFC suggests that the insurance requirements for TNCs should do the same so that it only applies to auto related incidents. PIFC also believes that there should be more thought given to when the commercial policy would attach. The proposed language says this coverage should apply the entire time the driver is available to pick up passengers. This, likewise, may be broader than appropriate. Perhaps a more appropriate trigger would be when the driver is dispatched to pick up a rider.

Thank you for reaching out to PIFC for its input on this issue. Please contact Kara Cross at 916-442-6646, if you would like to further discuss.