Insurance Law Implications of the Shared Economy

by

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I. INTRODUCTION

Over the last decade, we have witnessed the unprecedented growth of the shared economy. Once a tool to provide niche services to contained networks of individuals, the shared economy now services a diversified range of companies, running the gamut from transportation to lending. Like many emerging industries, the intersection between the shared economy and insurance issues became apparent as the various shared economy companies gained customers and, consequently, potential liability issues. This article first discusses the shared economy, with a focus on the ride sharing and home sharing industries. We then discuss insurance coverage issues in the ride sharing industry, including gaps in insurance coverage, the regulatory responses to those gaps, the coverage currently provided by ride sharing companies, insurance products targeted at the ride sharing economy, and insurance coverage for liability faced by ride sharing companies. Finally, we discuss similar insurance coverage issues in the home sharing industry, including gaps in insurance coverage and the various sources of coverage for liability arising out of home sharing.

II. WHAT IS THE SHARED ECONOMY?

A. Overview

The shared economy, which has alternatively been referred to as the "collaborative economy," the "peer-production economy," the "access economy," the "on-demand economy," or the "peer-to-peer economy," can be defined as the marketplace of peer-to-peer networks that facilitate a "direct exchange of money between individuals in return for goods and services."[1] It is distinguished from traditional business models in that it effectively blurs the distinction between the company offering the product and the consumer that purchases the product. In the shared

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[1] Alexandra Chang, *Regulation Won't Kill the Sharing Economy. We Just Need New Rules*, Popular Sci. (July 8, 2014), http://www.popsci.com/article/technology/regulation-wont-kill-sharing-economy-we-just-need-new-rules.

economy model, the dichotomy between consumer and producer is effectively removed, allowing consumers to become part-time or flexible producers of whatever commodity they have and directly offer that commodity to other consumers.

Although the shared economy rose to prominence in the transportation and housing industries, it has rapidly spread, and continues to proliferate new companies designed to take advantage of peer-to-peer moneymaking opportunities.[2] According to Pricewaterhouse Coopers, global revenue from sharing services could hit $335 billion by 2025.[3]

Just a few companies that have changed the way consumers think about specific industries, in addition to ride sharing and home sharing companies, include: 1) Instacart—connecting individuals to provide grocery shopping and delivery services; 2) TaskRabbit—connecting individuals to provide all manners of homework such as cleaning and errands; 3) HelpAround—connecting home healthcare workers to those in medical need; 4) Co-working spaces (*i.e.*, WeWorks, the Alley)—connecting individuals to shared working space; and 5) Peer to Peer lending and Crowdfunding (*i.e.* Kickstarter)—connecting individuals to transfer money.

As the shared economy has grown and continues to expand into different industries, each of these shared economy industries have faced and will continue to face insurance law implications. For example, TaskRabbit, an online marketplace that connects individuals to perform odd jobs, initially faced customer insecurity about available insurance for bodily injury and property damage when a "Tasker" was performing a job.[4] As a result, TaskRabbit now offers the "TaskRabbit Guarantee," an insurance plan that offers $1 million per occurrence for losses arising from property damage or bodily injury as a direct result of a Tasker's negligence.[5] The "TaskRabbit Guarantee," also provides up to $10,000 per occurrence for losses arising from theft of a user's property.[6] To date, the ride sharing and home sharing industries have arguably been the only industries to directly intersect with insurance legislation, insurance litigation and new insurance products. This article delves into these insurance issues in the ride sharing and home sharing industries. However, as the shared economy expands and offers new services, the insurance implications that have already hit the ride sharing and home sharing industries will likely impact all shared economy industries.

B. The Ride Sharing Industry

Ride sharing allows individuals to provide transportation services using their personal vehicles to other individuals through the use of web platforms and smartphone technology. A ride sharing company is often referred to as a transportation network company (TNC), which is defined as "an organization that arranges transportation for a fee using a technology platform

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[2] Matt Villano, *What's Next For the Sharing Economy*, Entrepreneur (Nov. 21, 2014), https://www.entrepreneur.com/article/239233 (last visited Dec. 6, 2016).

[3] *The Sharing Economy—Sizing the Revenue Opportunity*, PriceWaters Cooper (Global Analysis 2014), http://www.pwc.co.uk/issues/megatrends/collisions/sharingeconomy/the-sharing-economy-sizing-the-revenue-opportunity.html.

[4] Joshua Brustein, *TaskRabbit Adds Insurance to Make Trusting Strangers Easier*, Bloomberg (July 10, 2014), https://www.bloomberg.com/news/articles/2014-07-10/taskrabbit-adds-insurance-to-make-trusting-strangers-easier (last visited Dec. 6, 2016).

[5] https://www.taskrabbit.com/guarantee.

[6] https://www.taskrabbit.com/guarantee.

such as a mobile application (app) or website."[7] The two most widely used TNCs are Uber (currently available on every continent, except Antarctica, and more than 140 U.S. cities) and Lyft (currently available in at least 60 locations).[8]

TNCs provide the technological platforms to connect drivers with potential passengers who are searching for a ride.[9] The rider is then connected "with drivers using their phones' GPS, much like a taxi company's dispatch system would send the nearest available cab."[10] Eliminating the need for physical payment, riders pay for the ride sharing service at the end of their ride using their credit card that is linked to the ride-sharing application.[11] The TNCs then take "varying percentages of fares."[12]

Unlike traditional transportation services, TNCs do not own their own vehicles.[13] The TNCs contend that they function primarily as a technology platform that connects potential passengers with drivers through a smartphone application.[14] For example, Uber refers to its drivers as "partners" and advertises the concept of being "an independent contractor" to potential drivers.[15] In multiple courts, both in the U.S. and globally, Uber has argued that "because it does not own any vehicles or employ any drivers, but rather simply connects independent contractor drivers with consumer demand, it should not be regulated by existing transportation company laws."[16] For example, in *O'Connor v. Uber Technologies, Inc.*,[17] Uber contended the following:

> In this litigation, Uber bills itself as a "technology company," not

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[7] *See* Nat'l Ass'n of Ins. Comm'rs, Transportation Network Company Insurance Principles for Legislators and Regulators (2015), http://www.naic.org/documents/committees_c_sharing_econ_wg_exposure_adopted_tnc_white_paper_150331.pdf [hereinafter "NAIC White Paper"].

[8] NAIC White Paper at 2. *See also* https://www.uber.com/cities/. There are a number of smaller TNC's that employ variations on the traditional ride sharing model using carpooling, car sharing and even extra seat sharing in an individual's car. These companies include, among others: Relay Rides, Via, Ridejoy, Getaround and JustShareIt. Since all of these companies are faced with the substantially similar insurance concerns, this article will focus on the two biggest companies: Uber and Lyft.

[9] John G. Browning, *Conning the IADC Newsletters: Emerging Technology and Its Impact on Automotive Litigation*, 81 Def. Couns. J. 83, 84 (2014); *see* Manzo v. Uber Techs., Inc., 2014 U.S. Dist. LEXIS 95106, at *1 (N.D. Ill. July 14, 2014).

[10] John G. Browning, *Conning the IADC Newsletters: Emerging Technology and Its Impact on Automotive Litigation*, 81 Def. Couns. J. 83, 84 (2014).

[11] Stephanie Francis Ward, *'App' Me a Ride*, A.B.A. J., Jan. 2014, n.4, at 13.

[12] Stephanie Francis Ward, *'App' Me a Ride*, A.B.A. J., Jan. 2014, n.4, at 13.

[13] John G. Browning, *Conning the IADC Newsletters: Emerging Technology and Its Impact on Automotive Litigation*, 81 Def. Couns. J. 83, 84 (2014).

[14] John G. Browning, *Conning the IADC Newsletters: Emerging Technology and Its Impact on Automotive Litigation*, 81 Def. Couns. J. 83, 84 (2014).

[15] *See* Uber, https://www.uber.com/drive/ (last visited Dec. 1, 2016).

[16] *E.g.*, City of Columbus v. Uber Techs., 2014 Ohio Misc. LEXIS 11, at *5–*6 (Ohio Mun. Ct. Apr. 30, 2014). *See* Michael Carney, *As Uber Fights to Maintain its technology company classification in India, the rest of the world watches*, Pando, https://pando.com/2015/02/20/as-uber-fights-to-maintain-its-technology-company-classification-in-india-the-rest-of-the-world-watches/ (last visited Nov. 29, 2016). *See also* Mark Scott, *In Europe, Is Uber a Transportation Service or a Digital Platform?*, N.Y. Times (Nov. 27, 2016), http://www.nytimes.com/2016/11/27/technology/uber-europe-court-ecj.html.

[17] O'Connor v. Uber Techs., 82 F. Supp. 3d 1133 (N.D. Cal. 2015).

> a "transportation company," and describes the software it provides as a "lead generation platform" that can be used to connect "businesses that provide transportation" with passengers who desire rides. Uber notes that it owns no vehicles, and contends that it employs no drivers. Rather, Uber partners with alleged independent contractors that it frequently refers to as "transportation providers."[18]

Since virtually every U.S. state, major city, and country has different regulations for transportation services and legal distinctions, this issue is being globally litigated. Governments are trying to determine how to regulate this new industry, including determining required insurance limits, which typically vary by state and jurisdiction, as well as how to fill obvious insurance coverage gaps.

C. The Home Sharing Industry

1. The Current Leader in the Industry Is Airbnb

The home sharing industry connects people who want to travel with people who have available accommodations they would like to rent. While the home sharing industry includes several online rental services such as HomeAway, FlipKey, HouseTrip, and Roomorama, the current leader of the home sharing market is Airbnb.

Founded in San Francisco, California in August of 2008, Airbnb defines itself as a "trusted community marketplace for people to list, discover, and book unique accommodations around the world." Since its founding, Airbnb has hosted over 60 million guests in more than 34,000 cities and 191 countries. Overall, Airbnb claims more than two million listings worldwide.[19] Airbnb operates an internet website through which "hosts" can enter into agreements with "guests" to rent accommodations on a short-term or long-term basis. Airbnb does not own, manage or operate any of the properties, and is not a party to the rental agreements. It does not charge an upfront fee for hosts to post a listing on its website, but instead makes money by charging hosts and guests a service fee that is a percentage of the cost of the rental. An important feature of the Airbnb business model is that the content for the rental listings is created entirely by the hosts, and Airbnb does not verify, review, or edit any of the information provided.[20] Despite Airbnb's popularity, many urban areas have some form of legislation regulating or prohibiting short-term rentals.

For example, many jurisdictions already prohibit short-term rentals through their zoning regulations, which typically contain definitions that allow or prohibit short-term rentals based on the size, type, and location of the property, while other jurisdictions regulate short-term rentals based on duration. In addition, some jurisdictions require hosts to obtain a business license, and in some locations hosts must provide their business license information in listings or in the short-term rental property. Short-term rentals are also typically required to ensure that their property complies with building, fire, and safety codes, with some jurisdictions requiring inspections

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[18] *O'Connor*, 82 F. Supp. 3d at 1137 (internal citations omitted).

[19] *See About Us*, Airbnb, https://www.airbnb.com/about/about-us (last visited Nov. 29, 2016).

[20] Airbnb, Inc. v. City & Cnty. of San Francisco, 2016 U.S. Dist. LEXIS 155039, at *2 (N.D. Cal. Nov. 8, 2016).

before hosting a guest. Other jurisdictions even require hosts to follow certain health and hygiene standards relating to food, bed sheets, and towels.[21] The applicable regulations in San Francisco, New York, and Chicago, three of the largest cities in the home sharing industry, are discussed in more detail below.

2. San Francisco, California

From 1981 to 2014, San Francisco banned short-term rentals due to concerns that short-term rentals would reduce the city's affordable permanent housing. In 2015, Ordinance 218-14 repealed this ban and imposed conditions on short-term rentals. One of the main conditions requires that a permanent resident who wishes to rent property first register with the city, which requires proof of liability insurance, tax payments, usage reports, and compliance with municipal codes. The host must obtain at least $500,000 in liability insurance that specifically covers losses arising from short-term rentals, unless such insurance is provided by the service or platform through which the rental is coordinated. In 2015, San Francisco also enacted Ordinance 130-15, which created the Office of Short-Term Residential Rental Administration and Enforcement to administer and enforce these regulations.[22] These two ordinances together effectively legalized short-term rentals in San Francisco, as long as the rental properties are registered with the city.

Shortly thereafter, on August 11, 2016, San Francisco enacted Ordinance 178-16, which makes it a misdemeanor to collect a fee for providing booking services for an unregistered rental unit.[23] The misdemeanor is punishable by a fine of up to $1,000 per day per listing and imprisonment for up to six months. Due to the significant impact the ordinance would have on their business models, Airbnb and HomeAway filed for a preliminary injunction barring enforcement of the ordinance, arguing that it would require the company to monitor and verify information provided by third-party hosts. On November 8, 2016, Airbnb was denied the preliminary injunction.[24] As a result, Airbnb has agreed to help San Francisco develop measures to verify the registration status of short-term rentals.[25]

3. New York, New York

New York is Airbnb's largest market with about $1 billion in transactions each year and over 40,000 property listings.[26] In 2010, New York enacted a law that made it illegal for a host to rent out an entire property for less than 30 days if the host was not present, but permitted rentals of less than 30 days if the host was present. The 2010 law was rarely enforced and often ignored. As short-term rentals gained in popularity, complaints emerged about the loss of tax revenue, the

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[21] *To Host or Not To Host: The Shared Housing Question*, Practical Law Real Estate, Nov. 1, 2016.

[22] *Airbnb, Inc.*, 2016 U.S. Dist. LEXIS 155039, at *4.

[23] Ordinance 178-16, City of San Francisco, Aug. 11, 2016.

[24] *Airbnb, Inc.*, 2016 U.S. Dist. LEXIS 155039, at *32.

[25] Following the November 8, 2016, denial, John Coté, communications director for the San Francisco City Attorney stated, "We're encouraged that Airbnb appears to be taking steps to meet their requirements under the law. We look forward to them coming into full compliance. San Francisco has a housing crisis on its hands, and we need to protect residents so their homes aren't illegally converted into de facto hotels." Elizabeth Weis, *In Shift, Airbnb Agrees to San Francisco Regs*, USA Today (Nov. 11, 2016), http://www.usatoday.com/story/tech/news/2016/11/14/shift-airbnb-agrees-san-francisco-regs/93805068/ (last visited Dec. 10, 2016).

[26] *See New York Imposes Stiff Fines on Short Term Rental Operators*, Practical Law Real Estate, Nov. 1, 2016.

safety of the guests and other tenants, disturbances, and diminishing affordable housing.[27]

On October 21, 2016, New York enacted a new law that imposes significant fines on hosts of short-term rentals. The new law prohibits advertising short-term rentals for a period of less than 30 days for entire properties if the host is not present and includes fines of up to $7,500 against the hosts.[28] The new law applies to any unit in a permanent residence with three or more units, but does not apply to one- or two-family homes or temporary residences like hostels. It also does not apply when the host is present while renting the property to a guest. Airbnb immediately filed suit after the new law was enacted to prevent enforcement. On November 22, 2016, shortly after the decision in San Francisco, Airbnb settled its lawsuit.[29]

4. Chicago, Illinois

This year, Chicago enacted an ordinance that imposes registration and licensing requirements, booking surcharges, and reporting requirements on residential rental platforms. Under the Chicago ordinance, there are two types of internet providers for the short-term rental market: a rental intermediary and a rental advertising platform.[30] A rental intermediary typically requires the guest to make a payment to the host for the rental through its website, while an advertising platform has the host coordinate directly with the guest for the rental payment instead of the guest making the payment through the website. Under the ordinance, a rental intermediary must pay a license fee of $10,000, plus an additional $60 per rental listed on its platform. An advertising platform must pay a license fee of $10,000 if the platform has 1,000 or more short-term rentals listed, or $5,000 if the advertising platform has 999 or fewer short-term rentals listed.[31] The ordinance also requires that rental intermediaries obtain commercial general liability insurance with limits not less than $1 million per occurrence. The ordinance requires that an intermediary also provide $1 million in commercial general liability insurance for guests, but rental advertising platforms do not have the same requirement.[32]

Thus far, the major home sharing companies have not challenged the new ordinance. However, on November 4, 2016, Keep Chicago Livable, a non-profit corporation, and Benjamin Thomas Wolf filed a lawsuit challenging the new ordinance in the United States District Court for the Northern District of Illinois.[33] The lawsuit alleges that the ordinance "operates as a *de facto* and in some cases outright ban on the use of internet home sharing services."[34] Furthermore, it alleges that the new ordinance "violates the constitutional rights of Chicagoans to speak and communicate freely and anonymously on the internet, to use their own property, to have privacy, and to not be subject to arbitrary and discriminatory enforcement of the laws."[35] The lawsuit seeks an injunction preventing the city from implementing the new law, which is set to take full

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[27] *New York Imposes Stiff Fines on Short Term Rental Operators*, Practical Law Real Estate, Nov. 1, 2016.
[28] N.Y. Mult. Dwell. Law § 121.
[29] *See Airbnb Loses Communications Decency Act Argument in San Francisco, Wins Temporary Block*, Practical Law Real Estate, Nov. 28, 2016.
[30] Chicago Municipal Code § 4-13-100.
[31] Chicago Municipal Code § 4-5-010.
[32] Chicago Municipal Code § 4-13-220.
[33] Keep Chicago Livable and Benjamin Thomas Wolf v. City of Chicago, Case No. 1:16-cv-10371 (N.D. Ill. Nov. 4, 2016).
[34] *Keep Chicago Livable*, Complaint [Doc. No. 1] at 2.
[35] *Keep Chicago Livable*, Complaint [Doc. No. 1] at 2.

effect on December 19, 2016.[36]

III. INSURANCE COVERAGE IN THE RIDE SHARING ECONOMY

A. The Traditional Personal Automobile Policy Does Not Provide Coverage for TNCs

As noted above, ride share drivers are not licensed transportation service providers like chauffeurs or cab drivers. The Insurance Services Office (ISO) countrywide personal automobile policy currently excludes liability coverage for any "insured," or "for that insured's liability arising out of the ownership or operation, of a vehicle while it is being used as a public or livery conveyance."[37] Other common livery exclusions exclude damages arising out of the "ownership, maintenance, or use of a vehicle while it is being used: 1) to carry persons for a charge; 2) for commercial purposes; 3) for compensation; 4) for a fee; or 5) for hire."[38] Livery exclusions typically apply to medical payments, personal injury protection, collision and comprehensive, as well as uninsured/underinsured motorist coverage.[39]

A vehicle is generally considered a "public or livery conveyance" if the vehicle is presented to the general public for transportation services at the time of the actual accident.[40] In such accidents, the "public and livery conveyance" exclusion will likely apply to exclude coverage. That being said, and in accordance with the rule that exclusions are strictly construed against the insurer, a "single use of a vehicle for hire has been held not to make out use as 'a public [or] livery conveyance.' "[41] Thus, while a TNC driver that regularly transports passengers "for hire" would likely fall within the exclusion, a TNC driver that transports passengers in isolated instances may be able to argue that the "public and livery conveyance" exclusion should not apply even if the TNC driver is transporting a passenger at the time of the accident.

As discussed in Section III.D below, the largest TNCs, such as Uber and Lyft, have responded to the livery exclusion issue by providing some form of liability insurance. While this limited form of liability insurance offers a partial solution, the point at which the vehicle is being used to provide a service still remains uncertain.[42]

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[36] *Keep Chicago Livable*, Complaint [Doc. No. 1] at 3.

[37] NAIC Whitepaper at 7 (*citing* The Insurance Services Office, 2014. "Ride-Sharing Arrangements Through Transportation Network Companies.").

[38] NAIC Whitepaper at 7.

[39] NAIC Whitepaper at 3–4.

[40] *See* St. Paul Mercury Indem. Co. v. Knoph, 87 N.W.2d 636, 637 (Minn. 1958) ("The sole question presented below was whether defendant was using his car as a public or livery conveyance at the time of the accident."); Resolute Ins. Co. v. Mize, 221 Ark. 705, 255 S.W.2d 682 (1953) (determining that commercial use of vehicle prior to accident was immaterial to applying the exclusionary clause, absent evidence of such use at time of accident); Leonard v. Travelers Ins. Co., 183 So. 2d 447 (La. Ct. App. 1966) (finding the livery exclusion provision inapplicable where vehicle was not being used as a public or livery conveyance at the time of accident); Wall v. Great American Indem. Co., 46 So. 2d 655 (La. Ct. App. 1950).

[41] New York Cent. Mut. Fire Ins. Co. v. Byfield, 126 A.D.3d 704, 5 N.Y.S.3d 214 (2015) (quoting N*ational Grange Mut. Ins. Co. of Keene, N.H. v. Cervantes*, 17 A.D.2d 1002, 1002, 234 N.Y.S.2d 97 (1962)).

[42] NAIC White Paper at 4.

B. The Life Cycle of a TNC Ride

The TNC ride can be separated into three distinct periods:

Period 1—The driver has logged into the TNC application but is not yet matched with a passenger.[43]

Period 2—The driver has accepted a passenger's ride request but the passenger has not yet entered the vehicle.[44]

Period 3—The driver has picked up the passenger and the passenger is occupying the TNC driver's vehicle.[45] Once the driver drops off the passenger at the final destination, the driver may either turn off the TNC application completely or be back in Period 1, with the application enabled but a ride request not yet accepted.[46]

Prior to state legislation addressing insurance laws that target TNCs, there were clear coverage gaps in the coverage provided by the TNCs. For example, Uber only provided coverage to drivers if an accident occurred during Period 3, when a driver was transporting a passenger.[47] Furthermore, Uber only provided coverage if the driver's personal carrier first rejected the claim pursuant to the policy's livery exclusion.[48] Accordingly, there was a potential gap in coverage during Periods 1 and 2, because during those times the driver was arguably using their personal vehicle for commercial purposes, but was not physically transporting a passenger. These gaps in coverage were highlighted on New Year's Eve 2013 when an Uber driver fatally struck a six-year old girl in California.[49]

At the time of the New Year's Eve accident, the driver was in Period 1 because the driver was logged into the application but was not on his way to pick up a passenger.[50] Uber denied that its policy applied because the driver "was not providing services on the Uber system during the time of the accident."[51] The California legislature responded by introducing a bill that would require TNCs to provide commercial coverage during Periods 1–3.[52] Uber also responded to the

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[43] NAIC White Paper at 4 (describing the time periods of a TNC service).
[44] NAIC White Paper at 4 (describing the time periods of a TNC service).
[45] NAIC White Paper at 4 (describing the time periods of a TNC service).
[46] NAIC White Paper at 4 (describing the time periods of a TNC service).
[47] *See* Ron Lieber, *The Question of Coverage for Ride Service Drivers*, N.Y. Times (Sept. 5, 2014), http://www.nytimes.com/2014/09/06/your-money/auto-insurance/offloading-the-risk-in-renting-a-car-ride.html.
[48] Alexander B. Traum, *Sharing Risk in the Sharing Economy: Insurance Regulation in the Age of Uber*, 14 Cardozo Pub. L. Pol'y & Ethics J. 511, 526 (2016).
[49] Alexander B. Traum, *Sharing Risk in the Sharing Economy: Insurance Regulation in the Age of Uber*, 14 Cardozo Pub. L. Pol'y & Ethics J. 511, 526 (2016).
[50] Alexander B. Traum, *Sharing Risk in the Sharing Economy: Insurance Regulation in the Age of Uber*, 14 Cardozo Pub. L. Pol'y & Ethics J. 511, 526 (2016).
[51] Alexander B. Traum, *Sharing Risk in the Sharing Economy: Insurance Regulation in the Age of Uber*, 14 Cardozo Pub. L. Pol'y & Ethics J. 511, 526 (2016).
[52] Alexander B. Traum, *Sharing Risk in the Sharing Economy: Insurance Regulation in the Age of Uber*, 14 Cardozo Pub. L. Pol'y & Ethics J. 511, 526 (2016).

accident by expanding its insurance coverage to cover any gaps in coverage in Period 1.[53] An Uber spokesperson stated shortly thereafter:

> In order to fully address any ambiguity or uncertainty around insurance coverage for ride-sharing services, Uber is becoming the first and only company to have a policy in place that expands the insurance of ride-sharing drivers to cover any potential "insurance gap" for accidents that occur while drivers are not providing transportation service for hire but are logged onto the Uber network and available to accept a ride.[54]

The 2013 New Year's Eve accident highlights the major coverage gaps that exist if the TNC does not provide appropriate insurance coverage for the TNC drivers during all TNC activities (Period 1 through 3), or the TNC driver's personal coverage is inadequate.[55]

C. Regulatory Responses to the Gaps in Insurance Coverage

1. The National Association of Insurance Commissioners

The National Association of Insurance Commissioners (NAIC) arose out of the National Insurance Convention of 1871 to address and handle the uniform taxation and regulation of insurance between the states.[56] The NAIC describes itself as:

> [T]he U.S. standard-setting and regulatory support organization created and governed by the chief insurance regulators from the 50 states, the District of Columbia and five U.S. territories. Through the NAIC, state insurance regulators establish standards and best practices, conduct peer review, and coordinate their regulatory oversight.[57]

Since the 1950s, the states have adopted model and uniform insurance laws drafted by the NAIC.[58] On March 31, 2015, the NAIC adopted a white paper on insurance coverage issues in

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[53] Beth Winegarner, *Uber Expands Drivers' Insurance After Fatal Crash*, Law360 (Mar. 14, 2014, 8:15 PM), http://www.law360.com/articles/518869/uber-expands-drivers-insurance-after-fatal-crash.

[54] Beth Winegarner, *Uber Expands Drivers' Insurance After Fatal Crash*, Law360 (Mar. 14, 2014, 8:15 PM), http://www.law360.com/articles/518869/uber-expands-drivers-insurance-after-fatal-crash.

[55] NAIC White Paper at 3.

[56] In 1869, the Supreme Court held that "issuing a policy of insurance is not a transaction of commerce." Paul v. Virginia, 75 U.S. 168, 183 (1869). As a result of this decision, the states were tasked with the taxation and regulation of insurance. *See* Nat'l Ass'n of Ins. Comm'rs, "State Insurance Regulation," at p.2 (2011), http://www.naic.org/documents/topics_white_paper_hist_ins_reg.pdf. The states also had to address and handle uniform insurance regulation among the states and in turn, the National Insurance Convention of 1871 was convened. *Id*. at p.1. The National Insurance Convention of 1871 evolved into the NAIC. *Id*.

[57] About the NAIC, http://www.naic.org/index_about.htm.

[58] Reversing precedent, in 1944 the Supreme Court held that insurance was in fact commerce. United States v. South-Eastern Underwriters Ass'n, 322 U.S. 533, 553, 64 S. Ct. 1162, 88 L. Ed. 1440 (1944) (overturning *Paul v. Virginia*, 75 U.S. 168 (1869)). This decision was seen as an assault on the state's authority over the insurance industry. *See* Susan Randall, *Insurance Regulation in the United States:*

the ride sharing economy (hereinafter, "NAIC White Paper").[59] The NAIC White Paper provides an overview of the TNC insurance landscape and a host of potential state-based regulatory solutions.[60]

In particular, the NAIC White Paper identified the limitations and coverage gaps in the TNC insurance model and determined that the simplest solution was either that the driver purchase commercial coverage or the TNC provide full coverage for all three TNC Periods.[61] The NAIC White Paper acknowledged that, since neither a complete change in the TNC business model nor adequate coverage under a traditional personal automobile policy seemed likely, a hybrid coverage model would need to be developed.[62] The NAIC recognized that:

> These hybrid insurance products, adding some level of coverage for TNC activities onto [personal automobile policies], are being developed as this paper is being written. … They are being introduced by innovative insurers willing to take on the calculated risk and be the first to gain market share in an evolving and growing space. Because the products are not being standardized but are being developed by different insurers, they will likely establish coverage via different methods for different time periods. The new products present many concerns for insurance regulators, including, but not limited to, the cost for the new hybrid coverage.[63]

Assuming that hybrid policies and coverages would become available, the NAIC suggested that state regulators and legislatures require TNCs and TNC drivers to share the burden of insuring TNC activities.[64] As a practical matter, the NAIC proposed the following

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Regulatory Federalism and the National Association of Insurance Commissioners, 26 Fla. St. U. L. Rev. 625 (1998). In response, Congress enacted the McCarran-Ferguson Act in 1945. *Id*. The McCarran-Ferguson Act declared that the business of insurance would still be subject to state law and that federal antitrust laws will not apply to the "business of insurance" as long as there is state regulation on the issue. *Id*. 15 U.S.C. §§ 1011–1015 (1994).
Shortly thereafter the NAIC drafted model laws to "demonstrate that the states were regulating insurance and to preclude federal intervention." Randall. (Generally, derivations of the model law now are known in the states as the Unfair Trade Practices Act.) *See*, *e.g.*, Pa. Stat. Ann., tit. 73 §§ 201–207 (West 1993 & Supp. 1997); La. Rev. Stat. Ann. §§ 51:1401–1419 (West 1987 & Supp. 1995); Fla. Stat. §§ 501.201–.213 (1997). By the 1950's, most states had adopted the proposed model laws. *Id*.

[59] "NAIC Adopts Ride-Sharing White Paper," (Mar. 31, 2015), http://www.naic.org/Releases/2015_docs/naic_adopts_ride-sharing_white_paper.html.

[60] "NAIC Adopts Ride-Sharing White Paper," (Mar. 31, 2015), http://www.naic.org/Releases/2015_docs/naic_adopts_ride-sharing_white_paper.html.

[61] NAIC White Paper at 3.

[62] Don Eigler, *NAIC Adopts Ridesharing White Paper for State Policymakers*, Insurance Journal (Mar. 31, 2015), http://www.insurancejournal.com/news/national/2015/03/31/362714.htm (last visited Dec. 2, 2016).

[63] Don Eigler, *NAIC Adopts Ridesharing White Paper for State Policymakers*, Insurance Journal at 14 (Mar. 31, 2015), http://www.insurancejournal.com/news/national/2015/03/31/362714.htm (last visited Dec. 2, 2016).

[64] Don Eigler, *NAIC Adopts Ridesharing White Paper for State Policymakers*, Insurance Journal at 16 (Mar. 31, 2015), http://www.insurancejournal.com/news/national/2015/03/31/362714.htm (last visited Dec. 2, 2016).

requirements, or some combination of those requirements, to spread the burden and close the coverage gaps:

• TNC drivers should maintain coverage in Period 1 and TNCs should maintain coverage in Period 2 and Period 3;

• TNC drivers should maintain primary coverage up to a certain limit (for example, $100,000) while TNCs should maintain excess coverage that pays for accidents resulting in damages above the primary limit; or

• TNC drivers should maintain primary coverage in Period 1 up to a certain limit (for example, $100,000) while TNCs should maintain excess coverage in Period 1 and primary coverage in Periods 2 and 3.[65]

The NAIC White Paper also stated that regulators must decide what amounts and kinds of insurance to require of the TNCs and the TNC drivers.[66] To determine the appropriate amount of insurance, the NAIC recommended that state regulators and legislators look to other states for guidance.[67] As to coverage types, the NAIC found that liability coverage, uninsured/underinsured motorist coverage, comprehensive and collision coverage, and medical coverage should all be required and provided by either the TNC's policy or the TNC driver's policy.[68]

2. State Insurance Regulations of the Ride Sharing Economy

a. Overview

Starting in 2014, California and Colorado became among the first states to enact statutes regarding insurance coverage and disclosure requirements directed at the ride sharing economy.[69] Since then, approximately 35 states have enacted some version of a TNC statute.[70] These TNC

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[65] Don Eigler, *NAIC Adopts Ridesharing White Paper for State Policymakers*, Insurance Journal at 16 (Mar. 31, 2015), http://www.insurancejournal.com/news/national/2015/03/31/362714.htm (last visited Dec. 2, 2016).

[66] Don Eigler, *NAIC Adopts Ridesharing White Paper for State Policymakers*, Insurance Journal at 16 (Mar. 31, 2015), http://www.insurancejournal.com/news/national/2015/03/31/362714.htm (last visited Dec. 2, 2016) (California requires $1 million in TNC insurance while a passenger is in a TNC vehicle (2014 Cal. Legis. Serv. Ch. 389, A.B. 2293) (amending Cal. Pub. Util. Code § 5433).).

[67] Don Eigler, *NAIC Adopts Ridesharing White Paper for State Policymakers*, Insurance Journal at 16 (Mar. 31, 2015), http://www.insurancejournal.com/news/national/2015/03/31/362714.htm (last visited Dec. 2, 2016).

[68] Don Eigler, *NAIC Adopts Ridesharing White Paper for State Policymakers*, Insurance Journal at 16 (Mar. 31, 2015), http://www.insurancejournal.com/news/national/2015/03/31/362714.htm (last visited Dec. 2, 2016).

[69] Cal. Pub. Util. Code §§ 5432 & 5433; Colo. Rev. Stat. Ann. §§ 40-10.1-601 to 40-10.1-608 (2015).

[70] Ala. Code § 32-7C-2 (2016) (Alabama); Ariz. Rev. Stat. Ann. § 28-4038 (2016) (Arizona); Ark. Code Ann. §§ 23-13-709 to 23-13-711 (2015) (Arkansas); D.C. Code Ann. § 50-301.29C (2016) (District of Columbia); Ga. Code Ann. § 33-1-24 (2015) (Georgia); Haw. Rev. Stat. § 431:10C-703 (2016) (Hawaii); Idaho Code Ann. §§ 41-2517 to 41-2521 (2015) (Idaho); 625 Ill. Comp. Stat. 57/10 (2015) (Illinois); Ind. Code §§ 8-2.1-19.1-8 to 8-2.1-19.1-9 (2015) (Indiana); Iowa Code § 321N.4 (2016) (Iowa); Kan. Stat. Ann.

statutes divide the insurance requirements into periods that correspond with Periods 1 through 3 of the TNC ride life cycle discussed in Section III.B above.

b. Required Insurance Coverage in Period 1

During Period 1, the majority of states require that either the driver's personal automobile policy or the TNC's policy provide primary automobile insurance in the amount of at least $50,000 for death and bodily injury per person, $100,000 for death and bodily injury per accident, and $25,000 for property damage.[71] Some states require the same minimum limits for bodily injury but require a $30,000 minimum liability limit for property damage,[72] while other states provide lower minimum liability limits.[73] The majority of states do not require additional coverage during Period 1, such as physical damage coverage or uninsured/underinsured motorist coverage.[74]

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§§ 8-2708 to 8-2710 (2015) (Kansas); 601 Ky. Admin. Regs § 1:113 (2016) (Kentucky); La. Rev. Stat. Ann. §§ 45:201.6 to 201.9 (2016) (Louisiana); Me. Rev. Stat. tit. 24-a, §§ 7303 to 7305 (2015) (Maine); Md. Code Ann., Pub. Util. § 10-405 (2015) (Maryland); Minn. Stat. § 65B.472 (2015) (Minnesota); Mo. Rev. Stat. §§ 379.1702 to 379.1708 (2016) (Missouri); Mont. Code Ann. §§ 69-12-343 to 69-12-345 (2015) (Montana); Neb. Rev. Stat. Ann. §§ 75-333 to 75-341 (2015) (Nebraska); N.H. Rev. Stat. Ann. § 376-A:8 (2016) (New Hampshire); N.M. Stat. Ann. §§ 65-7-8 to 65-7-10 (2016) (New Mexico); N.C. Gen. Stat. § 20-280.4 (2015) (North Carolina); Nev. Rev. Stat. Ann. §§ 690B.470 to 690B.495 (2015) (Nevada); N.D. Cent. Code §§ 26.1-40.1-01 to 40.1-11 (2015) (North Dakota); Ohio Rev. Code Ann. §§ 3942.02 to 3942.04 (2016) (Ohio); Okla. Stat. tit. 47, §§ 1025–1029 (2015) (Oklahoma); R.I. Gen. Laws §§ 39-14.2-14 to 39-14.2-15 (2016) (Rhode Island); S.C. Code Ann. §§ 58-23-1625 to 58-23-1635 (2015) (South Carolina); Tenn. Code Ann. § 55-12-141 (2015) (Tennessee); Texas Ins. Code Ann. §§ 1954.051 to 1954.101 (2015) (Texas); Utah Code Ann. § 13-51-108 (2015) (Utah); Va. Code Ann. § 46.2-2099.52 (2015) (Virginia); Wash. Rev. Code Ann. § 48.177.010 (2015) (Washington); W. Va. Code §§ 17-29-8 to 17-29-10 (2016) (W. Virginia); Wis. Stat. Ann. § 440.48 (2015) (Wisconsin).

[71] *See, e.g.*, Ala. Code § 32-7C-2(a)(2)(a) (2016) (Alabama); Ark. Code Ann. § 23-13-709(a)(1)(A) (2015) (Arkansas); Haw. Rev. Stat. § 431:10C-703(c)(1) (2016) (Hawaii); Idaho Code Ann. § 41-2519(2)(a) (2015) (Idaho); 625 Ill. Comp. § Stat. 57/10(b)(1) (2015) (Illinois); Ind. Code § 8-2.1-19.1-8(3)(A) (2015) (Indiana); Kan. Stat. Ann. § 8-2708(b)(1)(A) (2015) (Kansas); Ky. Rev. Stat. § 281.655(12) (2015) (Kentucky); Iowa Code § 321N.4(2) (2016) (Iowa); La. Rev. Stat. Ann. § 45:201.6(A)(1) (2016) (Louisiana); Me. Rev. Stat. tit. 24-a, § 7303(2)(A) (2015) (Maine); Mo. Rev. Stat. § 379.1702(2)(a) (April 2017) (Missouri); N.H. Rev. Stat. Ann. § 376-A:8(II)(a) (2016) (New Hampshire); N.M. Stat. Ann. § 65-7-8(B)(2016) (New Mexico); N.C. Gen. Stat. § 20-280.4(a)(2)(a) (2015) (North Carolina); Ohio Rev. Code Ann. § 3942.02(A)(2)(a)(i)–(iii) (2016) (Ohio); Okla. Stat. tit. 47, § 1025(B)(1) (2015) (Oklahoma); R.I. Gen. Laws § 39-14.2-14(b)(1) (2016) (Rhode Island); Tenn. Code Ann. § 55-12-141(c)(1) (2015) (Tennessee); Texas Ins. Code Ann. § 1954.052(1) (2015) (Texas); Va. Code Ann. § 46.2-2099.52(C)(1) (2015) (Virginia); W. Va. Code § 17-29-8(b)(1) (2016) (W. Virginia); Wis. Stat. § 440.48(1)(2)(b)(1) (2015) (Wisconsin).

[72] *See, e.g.*, Colo. Rev. Stat. Ann. §§ 40-10.1-601 to 40-10.1-608 (2015) (requiring $50,000 to any one person per accident, $100,000 to all persons in any one accident and $30,000 for property damage).

[73] *See, e.g.*, Ariz. Rev. Stat. Ann. § 28-4038 ($25,000 per person; $50,000 per accident; and $20,000 property damage); Neb. Rev. Stat. Ann. § 75-334(1)(a) ($25,000 for death and personal injury per person; $50,000 for death and personal injury per incident; and $25,000 for property damage).

[74] *But see* Kan. Stat. Ann. § 8-2708(b)(1) (2015) (requiring the primary insurance to meet the minimum coverage requirements where required by statutes relating to uninsured and underinsured motorist coverage and motor vehicle liability insurance coverage); Me. Rev. Stat. tit. 24-a, § 7303(2)(B)–(C) (2015) (requiring the minimum limits of medical payments and uninsured and underinsured motorist coverage required by the state's auto statutes); Md. Code Ann., Pub. Util. § 10-405(a)(2)(i) (2015) (requiring personal injury protection and uninsured coverage pursuant to the limits described in the state's auto statutes); N.C. Gen. Stat. § 20-280.4(a)(2)(b) (2015) (requiring combined uninsured and underinsured

c. Required Insurance Coverage in Periods 2 and 3

For Periods 2 and 3, from when the TNC driver has accepted a ride to when the passenger is dropped off, most states require a minimum limit of liability of $1 million for death, bodily injury and property damage.[75] However, some states deviate from this standard requirement. For example, on the higher end, Rhode Island, Minnesota, Nevada and North Carolina[76] require a minimum limit of liability of $1,500,000 during this period. Alternatively, and on the lower end, Arizona requires a minimum limit of liability of $250,000 per incident[77] and Kentucky only requires $300,000 in liability coverage and $50,000 in property damage coverage (for a seven seat vehicle or less).[78]

d. Disclosure Requirements

TNC laws in most states also contain disclosure requirements to protect and notify TNC drivers and passengers about the insurance protections in place. Specifically, TNCs may have to disclose to the driver the amount and type of coverage provided by its policies and that the driver's personal automobile policy may exclude coverage when the driver is providing a TNC service.[79] For example, the California TNC statute includes the following disclosure requirements:

> (a) A transportation network company shall disclose in writing to participating drivers, as part of its agreement with those drivers, the insurance coverage and limits of liability that the transportation network company provides while the driver uses a vehicle in connection with a transportation network company's online-enabled application or platform, and shall advise a participating driver in writing that the driver's personal automobile insurance policy will not provide coverage because

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motorist coverage, with limits for combined uninsured and underinsured motorist bodily injury coverage equal to at least the bodily injury liability limits of the policy).

[75] ***See, e.g.***, Cal. Pub. Util. Code § 5433(b)(1) (2015); Colo. Rev. Stat. § 40-10.1-604(2) (2014); D.C. Code Ann. § 50-301.29C (2016); Ga. Code Ann. § 33-1-24(b)(3) (2015); Idaho Code Ann. § 41-2519(3)(a) (2015); 625 Ill. Comp. Stat. § 57/10(c)(1) (2015); Ind. Code § 8-2.1-19.1-8(4)(A) (2015); Kan. Stat. Ann. § 8-2708(c)(1)(A) (2016); La. Rev. Stat. Ann. § 45:201.6(C)(1) (2016); Me. Rev. Stat. Tit. 24-a, § 7303(3)(A) (2015); Mont. Code Ann. § 69-12-343(3)(a)(i) (2015); Neb. Rev. Stat. Ann. § 75-333(1)(a) (2015); N.D. Cent. Code § 26.1-40.1-03(1)(a) (2015); Okla. Stat. tit. 47, § 1025(C)(1) (2015); S.C. Code Ann. § 58-23-1630(C)(1) (2015); Tenn. Code Ann. § 55-12-141(d)(1) (2015); Texas Ins. Code Ann. § 1954.053(1) (2016); Utah Code Ann. § 13-51-108(1)(b) (2015); Va. Code Ann. § 46.2-2099.52(B)(1) (2016); Wash. Rev. Code Ann. § 48.177.010(1)(b)(ii)(A) (2015); Wis. Stat. § 440.48(1)(c)(1) (2015).

[76] Minn. Stat. § 65B.472 subd. (2)(c)(1) (2015); Nev. Rev. Stat. Ann. § 690B.470(1)(a) (2015); N.C. Gen. Stat. § 20-280.4(a)(3)(a) (2015); R.I. Gen. Laws § 39-14.2-14(c)(1) (2016).

[77] Ariz. Rev. Stat. Ann. §§ 28-9551 to 28-9558 (2015).

[78] Ky. Rev. Stat. Ann. § 281.655 (2015).

[79] ***See, e.g.***, Ark. Code Ann. § 23-13-709(b)(1) (2015); Cal. Pub. Util. Code § 5432 (2015); Colo. Rev. Stat. § 40-10.1-605(1)(h)–(m) (2014); D.C. Code Ann. § 50-301.29C(i)(1)–(2) (2016); Ga. Code Ann. § 33-1-24(h) (2015); Idaho Code Ann. § 41-2520 (2015); 625 Ill. Comp. Stat. 57/10(f) (2015); Ind. Code § 8-2.1-19.1-9 (2015); Kan. Stat. Ann. § 8-2709 (2015); Me. Rev. Stat. tit. 24-a, § 7304 (2015); Md. Code Ann., Pub. Util. § 10-405(f) (2015); Minn. Stat. § 65B.472 subd. 3 (2015); Mont. Code Ann. § 69-12-344 (2015); N.C. Gen. Stat. § 20-280.4(h) (2015); N.D. Cent. Code § 26.1-40.1-02 (2015); Okla. Stat. tit. 47, § 1026 (2015); S.C. Code Ann. § 58-23-1635(A) (2015); Tenn. Code Ann. § 55-12-141(j) (2015); Texas Ins. Code Ann. § 1954.101 (2015); Wash. Rev. Code Ann. § 48.177.010(15)(a) (2015); Wis. Stat. § 440.48(2) (2015).

> the driver uses a vehicle in connection with a transportation network company's online-enabled application or platform.
>
> (b) A transportation network company shall also disclose in writing to participating drivers, as part of its agreement with those drivers, that the driver's personal automobile insurance policy will not provide collision or comprehensive coverage for damage to the vehicle used by the driver from the moment the driver logs on to the transportation network company's online-enabled application or platform to the moment the driver logs off the transportation network company's online-enabled application or platform.[80]

The vast majority of TNC statutes also state that personal automobile policies are not required to provide coverage for TNC services unless the policy was designed for the specific purpose.[81] As further discussed in Section III.E below, this requirement has aided in the creation of a new market of insurance policies designed for the ride sharing industry.

e. California: Setting the Standard for Ride Sharing Legislation

As one of the first states to enact ride sharing legislation, California has set the standard for many states' TNC statutes to follow. In California, ride sharing services are regulated by the California Public Utilities Commission (CPUC).[82] The CPUC was the first state body to regulate TNCs and, in 2013, mandated that TNCs obtain a permit and require their drivers to have insurance coverage.[83]

Prompted in large part by the 2013 New Year's Eve fatal car crash, California also became among the first states to enact TNC statutes that targeted insurance coverage and disclosure requirements.[84] Effective July 1, 2015, the California ride sharing statutes require that TNCs disclose to their drivers in writing that the driver's personal automobile policy "will not provide collision or comprehensive coverage for damage to the vehicle used by the driver from the moment the driver logs on to the [TNC's] online-enabled application … to the moment the driver logs off … ."[85]

The California statute further requires TNCs to insure TNC drivers "from the moment a participating driver accepts a ride request on the [TNC's] online-enabled application or platform until the driver completes the transaction … or until the ride is complete, whichever is later."[86] The California statute breaks down specific coverage requirements by TNC Period as follows:

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[80] Cal. Pub. Util. Code § 5432.

[81] Alexander B. Traum, *Sharing Risk in the Sharing Economy: Insurance Regulation in the Age of Uber*, 14 Cardozo Pub. L. Pol'y & Ethics J. 511, 537 (2016).

[82] Cal. Pub. Util. Code § 5360.5.

[83] CPUC Decision 13-09-045. Additional regulations adopted in 2016 require drivers to undergo inspections and to present trade dress on front and back of the vehicle, among other things. CPUC Decision 16-04-041.

[84] Cal. Pub. Util. Code §§ 5432 & 5433.

[85] Cal. Pub. Util. Code § 5432(b).

[86] Cal. Pub. Util. Code § 5433(b).

Period 1

• TNC insurance shall be primary and in the amount of at least fifty thousand dollars ($50,000) for death and personal injury per person, one hundred thousand dollars ($100,000) for death and personal injury per incident, and thirty thousand dollars ($30,000) for property damage;[87]

• A TNC shall also maintain insurance coverage that provides excess coverage insuring the TNC and the driver in the amount of at least two hundred thousand dollars ($200,000) per occurrence;[88] and

• The insurer providing insurance coverage under this subdivision shall be the only insurer having the duty to defend any liability claim arising from an accident occurring within the time periods specified in this subdivision.[89]

Periods 2 & 3

• TNC insurance shall be primary and in the amount of one million dollars ($1,000,000) for death, personal injury, and property damage;

• TNC shall provide for uninsured motorist coverage and underinsured motorist coverage in the amount of one million dollars ($1,000,000) from the moment a passenger enters the vehicle of a participating driver until the passenger exits the vehicle; and

• The insurer, in the case of insurance coverage provided under this subdivision, shall have the duty to defend and indemnify the insured.[90]

The above insurance coverage requirements can be met by either the driver's personal insurance or by any combination of the TNC's insurance and the driver's insurance.[91] However, a TNC can only meet its insurance obligations under the statute through a policy obtained by a TNC driver if "the transportation network company verifies that the policy is maintained by the driver and is specifically written to cover the driver's use of a vehicle in connection with a transportation network company's online-enabled application or platform."[92]

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[87] Cal. Pub. Util. Code § 5433(c)(1).
[88] Cal. Pub. Util. Code § 5433(c)(2). California is one of the only states to require excess coverage during Period 1.
[89] Cal. Pub. Util. Code § 5433(c)(3).
[90] Cal. Pub. Util. Code § 5433(c)(3).
[91] Cal. Pub. Util. Code § 5433(c)(3).
[92] Cal. Pub. Util. Code § 5433(b)(4).

D. Coverage Provided by the Ride Share Companies

TNCs have responded to events like the 2013 New Year's Eve fatal car crash and state legislation by providing insurance that is intended to protect both TNC drivers and passengers. Below is a description of the insurance coverage currently offered by Uber and Lyft in each distinct TNC Period.

Period 1

During Period 1, Uber offers a liability policy that provides $50,000 of coverage per accident per person for bodily injury, $100,000 of coverage per accident for bodily injury and up to $25,000 of coverage for property damage.[93] According to Uber, this coverage meets or exceeds the third-party liability insurance requirements of every state.[94] However, this coverage only applies if it is "necessary," meaning that Uber maintains this policy on the driver's behalf only if the driver does not "maintain applicable insurance of at least this amount."[95]

Like Uber, Lyft also offers a liability policy that provides $50,000 of coverage per accident per person for bodily injury, $100,000 of coverage per accident for bodily injury and up to $25,000 of coverage for property damage.[96] This coverage applies only if a driver's personal automobile policy does not respond.[97]

Periods 2 & 3

During Periods 2 and 3, Uber maintains a separate automobile liability insurance policy on the TNC driver's behalf with a limit of $1 million per accident.[98] Notably, this coverage takes precedence over any personal auto coverage that the TNC driver may have. Uber also provides $1 million in uninsured/underinsured motorist injury coverage so that if another motorist causes an accident, but does not have adequate insurance, the Uber policy covers bodily injury of anyone in the rideshare vehicle.[99] During this period, Uber also provides contingent collision and comprehensive insurance, which covers physical damage subject to a $1,000 deductible. However, this coverage is only applicable if the TNC driver maintains personal auto insurance that includes collision coverage for the vehicle.[100]

Lyft maintains a similar automobile liability insurance policy on the driver's behalf with a limit of $1 million per accident.[101] The policy is intended to be the primary policy for the TNC driver during the period.[102] However, if the TNC driver has their own personal automobile policy or personal coverage for ridesharing, Lyft's policy is purportedly excess to that insurance

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[93] Uber website, https://www.uber.com/drive/insurance/.

[94] Uber website, https://www.uber.com/drive/insurance/.

[95] Uber website, Insurance https://www.uber.com/drive/insurance/, n.2.

[96] https://help.lyft.com/hc/en-us/articles/213584308-Insurance-Policy#!.

[97] https://help.lyft.com/hc/en-us/articles/213584308-Insurance-Policy#!.

[98] https://www.uber.com/drive/insurance/.

[99] https://www.uber.com/drive/insurance/.

[100] https://www.uber.com/drive/insurance/.

[101] https://help.lyft.com/hc/en-us/articles/213584308-Insurance-Policy#!.

[102] https://help.lyft.com/hc/en-us/articles/213584308-Insurance-Policy#!.

coverage.[103] Lyft also offers contingent comprehensive liability coverage, collision coverage and uninsured/underinsured motorist coverage. The contingent comprehensive liability and contingent collision coverage only apply if the driver maintains these coverages in their personal automobile policy.[104] The contingent comprehensive insurance is designed to cover physical damage to the vehicle from a non-collision event.[105] The policy has a $2,500 deductible and a $50,000 maximum for physical damage to the vehicle, and applies whether or not the TNC driver is at fault.[106] The uninsured/underinsured motorist coverage provides up to $1 million per accident and there is no deductible.[107]

The Uber and Lyft websites describe their insurance coverage options and are clear that additional or modified coverage might be necessary depending on what is required by state law. The Lyft website also states that its policies will be available in all U.S. states, "except for those rides originating in New York, or occurring at any time in a New York registered vehicle in markets outside New York, such as New Jersey and Connecticut."[108]

It should be noted that litigants have asserted misrepresentation claims against Uber and Lyft for their statements regarding the scope of their insurance coverage. For example, in *Greater Houston Transportation Co. v. Uber Technologies, Inc.*,[109] taxicab permit-holders in Houston and San Antonio brought suit against Uber and Lyft for tortious interference with business relations, unfair competition, and false advertising. In support of the false advertising claim, the taxicab permit-holders claimed that, contrary to representations on its website, Uber actually maintains an "excess and surplus lines policy" rather than a more carefully regulated taxi/livery or commercial auto insurance policy like those held by taxi companies. The taxicab permit-holders also claimed that "Uber misleads customers about insurance coverage by emphasizing that the 'vast majority of personal insurance policies cover' drivers between trips."[110] Finally, the taxicab permit-holders alleged that Uber's insurance policy is "mooted" by the broad disclaimer in Uber's Terms of Service and that Uber's insurance policies offer no security for passengers because Uber lacks an "insurable interest."[111] In response, Uber argued that its "drivers are always covered by either their own personal insurance or Uber's insurance, regardless of whether they are driving a passenger or are between passengers."[112] Uber additionally denied "that it lacks an insurable interest or that its disclaimers would limit coverage in the way claimed by Plaintiffs."[113] Notwithstanding these arguments, the court denied Uber's motion to dismiss the taxicab permit-holders claims, stating that "the scope and extent of Uber's insurance coverage is more

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[103] https://help.lyft.com/hc/en-us/articles/213584308-Insurance-Policy#!.
[104] https://help.lyft.com/hc/en-us/articles/213584308-Insurance-Policy#!.
[105] https://help.lyft.com/hc/en-us/articles/213584308-Insurance-Policy#!.
[106] https://help.lyft.com/hc/en-us/articles/213584308-Insurance-Policy#!.
[107] https://help.lyft.com/hc/en-us/articles/213584308-Insurance-Policy#!.
[108] https://help.lyft.com/hc/en-us/articles/213584308-Insurance-Policy#!.
[109] Greater Houston Transp. Co. v. Uber Techs., Inc., 2015 U.S. Dist. LEXIS 28867 (S.D. Tex. Mar. 10, 2015).
[110] *Greater Houston Transp.*, 2015 U.S. Dist. LEXIS 28867, at *33–*34.
[111] *Greater Houston Transp.*, 2015 U.S. Dist. LEXIS 28867, at *34–*35.
[112] *Greater Houston Transp.*, 2015 U.S. Dist. LEXIS 28867, at *36.
[113] *Greater Houston Transp.*, 2015 U.S. Dist. LEXIS 28867, at *36.

appropriate at the summary judgment stage at trial."[114]

E. Insurance Products Targeted at the Ride Sharing Economy

In addition to the policies provided by TNCs, insurance companies have introduced novel insurance products that are targeted at the ride sharing economy.

Metromile was one of the first companies to develop an insurance product specifically for the ride sharing economy. In January 2015, Metromile partnered with Uber to provide coverage that, according to Metromile, works "seamlessly with Uber's commercial policy."[115] The Metromile policy provides liability coverage for those periods when Uber's policies may not apply—namely, when the Uber application is off and the driver is engaged in personal use of the vehicle and in Period 1.

In order to provide this coverage, Metromile employs a cellular device that plugs into the vehicle's diagnostic port. The device interfaces with the Uber application to recognize when drivers are transporting Uber passengers and are therefore covered by Uber's provided insurance. Metromile then uses this information to only charge TNC drivers for miles they drive for personal use. Attempting to keep costs low and only charge drivers for those hours outside of the time covered by an Uber policy in Periods 2 and 3, Metromile charges drivers a monthly base rate of $40, and an additional 5 cents per mile for miles driven outside of Periods 2 or 3.[116] The Metromile policy is only available in California, Washington and Illinois, and only in conjunction with Uber.[117]

Geico also offers a "hybrid auto policy" that provides coverage when the rideshare application is off, when it is on with no passengers, and when it is on with passengers.[118] The Geico policy does not require that the driver use a specified TNC as it aims is to replace the driver's personal automobile policy by providing comprehensive coverage whether the driver is acting in a personal capacity or in a professional capacity for a TNC. The Geico policy provides liability coverage and first party coverage and is currently available in Virginia, Maryland, Texas, Georgia, Connecticut, Ohio and Pennsylvania.[119]

Rather than offer a whole new policy to replace the driver's personal automobile policy, some insurance companies are offering an endorsement or extension on their existing personal auto insurance product. For example, Farmers offers an endorsement, entitled "Farmers Rideshare," to extend a driver's personal auto insurance coverage through Period 1 until a driver "accept[s] a ride and the rideshare company's full commercial liability coverage applies in Periods 2 & 3."[120] Farmers Rideshare coverage ends when a passenger gets in the car.[121] This

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[114] *Greater Houston Transp.*, 2015 U.S. Dist. LEXIS 28867, at *36–*37.

[115] https://www.metromile.com/uber/.

[116] https://www.metromile.com/uber/.

[117] https://www.metromile.com/uber/.

[118] https://www.geico.com/ridesharing-insurance/.

[119] *See also* Kim Lyons, *Progressive will offer insurance to Pennsylvania Lyft drivers under pilot program*, Pittsburgh Post-Gazette, March 13, 2015, http://www.post-gazette.com/business/career-workplace/2015/03/13/Progressive-will-offer-insurance-to-Lyft-drivers-under-pilot-program/stories/201503130186.%20%20Pr.

[120] https://www.farmers.com/carideshare/.

endorsement costs TNC drivers an additional 25% on their existing auto coverage and is available in Arkansas, Arizona, Colorado, Kansas, Minnesota, Ohio, Oklahoma, Texas, Utah and Wisconsin.[122] Erie Insurance Company has taken a slightly different approach and has lifted the exclusion on ridesharing from their business use designation on its traditional personal auto insurance policy.[123] Each of these models demonstrates the developing nature of these types of insurance products targeting the ride sharing economy.

F. Insurance Coverage for Liability Faced by Ride Sharing Companies

Although most of the insurance coverage issues in the ride sharing economy have focused on coverage for the TNC drivers and/or their passengers, the TNCs themselves also face potential liability and, therefore, insurance coverage issues.

For example, in *Search v. Uber Technologies, Inc.*,[124] a passenger brought an action against Uber and the TNC driver after the driver allegedly stabbed the passenger following an altercation. The passenger alleged negligent hiring, training, and supervision, negligence under *respondeat superior* and agency theories, and statutory violations. Although the court dismissed the passenger's negligent hiring, training, and supervision claim, the court did not dismiss the *respondeat superior* claim because it could not "determine as a matter of law that [the TNC driver] was an independent contractor."[125] In support of this determination, the court noted allegations that "Uber screens new drivers, dictates the fares they may charge, and pays such drivers weekly" and subjects its drivers to specific requirements, including "the use of the Uber app, standards for the cleanliness and mechanical functioning of their cars, rules regarding tipping, minimum timeframes and acceptance rates for ride requests, and display of the Uber logo."[126]

Similarly, in *Doe v. Uber Technologies, Inc.*,[127] two passengers brought an action against Uber after they were allegedly sexually assaulted by their TNC drivers. The passengers asserted claims for (1) negligence and negligent hiring, supervision, and retention, (2) fraud, (3) battery, (4) assault, (5) false imprisonment, and (6) intentional infliction of emotional distress. The passengers brought claims (3) through (6) against Uber under a theory of *respondeat superior*. Uber sought to dismiss the claims relying on *respondeat superior* on the ground that there is no employment relationship between Uber and the TNC drivers. The court disagreed, holding that the passengers had "alleged sufficient facts to claim plausibly that an employment relationship

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[121] https://www.farmers.com/carideshare/.

[122] Adam Cecil, *Uber, Lyft, and other rideshare drivers now have insurance options*, PolicyGenius, April 8, 2015, https://www.policygenius.com/blog/uber-lyft-and-other-rideshare-drivers-now-have-insurance-options/. Other examples include "All State Ride of Hire" by Allstate; MetLife's Auto & Home Lyft endorsement; StateFarm ridesharing endorsement; and USAA ridesharing extension of coverage.

[123] Adam Cecil, *Uber, Lyft, and other rideshare drivers now have insurance options*, PolicyGenius, April 8, 2015, https://www.policygenius.com/blog/uber-lyft-and-other-rideshare-drivers-now-have-insurance-options/.

[124] Search v. Uber Techs., Inc., 128 F. Supp. 3d 222 (D.D.C. 2015).

[125] *Search*, 128 F. Supp. 3d at 233.

[126] *Search*, 128 F. Supp. 3d at 232.

[127] Doe v. Uber Techs., Inc., 2016 U.S. Dist. LEXIS 60051 (N.D. Cal. May 4, 2016).

exists."[128] These facts included that "Uber sets fare prices without driver input," "may modify the charges to the customer," "retains control over customer contact information," "retains the right to terminate drivers at will," and "controls various aspects of the manner and means by which drivers may offer rides through the Uber app."[129]

Although many of the liability issues TNCs face are typical of any large company and, therefore, are addressed by standard types of insurance policies, the above cases highlight a specific type of liability that is more particularized to the ride sharing industry—namely claims by passengers against the TNC for intentional torts committed by the TNC drivers. Many liability policies have exclusions for knowing or intentional violations of another's rights.[130] Therefore, when a passenger alleges that a TNC driver acted intentionally or willfully, a TNC's insurer may contend that an exclusion or applicable public policy prohibits it from indemnifying, or even defending, the TNC. However, for purposes of applying exclusions for willful and intentional conduct, courts often distinguish between an insured employer's willful acts and those of its employees and officers. For example, some courts have held that coverage is not barred for an employer's vicarious liability based on the willful actions of a lower-level employee.[131] Indeed, even the intentional acts of high-ranking officials and senior management do not necessarily preclude coverage under an employer's insurance.[132] Accordingly, TNCs have strong arguments in favor of coverage for liability based on intentional acts committed by the TNC drivers, even if the TNC drivers are deemed employees of the TNC.

IV. INSURANCE COVERAGE IN THE HOME SHARING ECONOMY

A. The Traditional Homeowners or Renter's Policies Do Not Provide Insurance Coverage

Traditional homeowners or renter's insurance policies are not designed to cover accidents arising from property rental. Indeed, most insurance companies have exclusions in their standard policies for claims related to regular commercial activity, which means coverage issues may arise if owners rent out their property more than a few times a year. For example, the Standard Homeowners Policy used by Allstate Insurance Company does not cover "bodily injury or property damage arising out of the business pursuits of an insured person when the business is owned or financially controlled by the insured person."[133] Some specific risks associated with renting property include theft, property damage, premises liability claims, personal injury, and even death. A host may also face potential liability for damage occurring in the common areas of

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[128] *Doe*, 2016 U.S. Dist. LEXIS 60051, at *11.

[129] *Doe*, 2016 U.S. Dist. LEXIS 60051, at *11.

[130] *See, e.g.*, Complaint at Ex. D, UMG Recordings, Inc. v. Am. Home Assurance Co., No. CV04-4756 (C.D. Cal. June 1, 2004) (policy excluding coverage "for any act committed by the insured with knowledge and intent that it violated the rights of others … .").

[131] *See, e.g.*, Fireman's Fund Ins. Co. v. City of Turlock, 170 Cal. App. 3d 988, 1001, 216 Cal. Rptr. 796 (1985), *disapproved on other grounds in* Vandenberg v. Superior Court, 21 Cal. 4th 815, 88 Cal. Rptr. 2d 366, 982 P.2d 229 (1999).

[132] *See* Dart Industries, Inc. v. Liberty Mut. Ins. Co., 484 F.2d 1295, 1298–99 (9th Cir. 1973) (holding that coverage would not be barred for liability arising from willful act of president unless board of directors or other senior management either authorized or ratified president's wrongful act).

[133] *See Allstate Insurance Company Standard Homeowners Policy*, p. 23, http://docs.nv.gov/doi/documents/home_policies/AllStateForms/AP1.pdf.

a residential building. Ultimately, several factors affect the availability of insurance coverage for home sharing, including whether the homeowner occupies the property while renting, how many people the homeowner hosts, and how often the property is rented.[134]

B. Insurance Coverage Provided by the Home Share Companies

1. Introduction

The primary source of coverage for hosts that rent their property through established home share companies are policies purchased and maintained by the home share companies on behalf of their hosts. The following is a description of the insurance coverage provided by Airbnb and HomeAway, two of the largest companies in the home share industry.

2. Insurance Coverage Provided by Airbnb

When Airbnb first launched, it offered no insurance coverage for hosts. Instead, hosts could require a security deposit, and then use the deposit to reimburse the costs of accidents or property damage. However, Airbnb now offers a "Host Guarantee" and "Host Protection Insurance" that provide more protection than the prior security deposit model. The "Host Guarantee" provides hosts with a $1 million guarantee from Airbnb for damages to a host's possessions or property. However, the "Host Guarantee" is not a true insurance policy and does not cover cash and securities, collectibles, rare artwork, jewelry, pets, or, notably, personal liability. It also does not cover loss or damage to property due to wear and tear.[135]

In order to fill the gaps in the "Host Guarantee," Airbnb also provides a "Host Protection Insurance" policy through Lloyd's of London. Under the policy, Airbnb is the policyholder responsible for the policy premiums and the hosts are the insured parties. The policy provides primary liability coverage of up to $1 million per occurrence in the event of third-party claims for bodily injury or property damage. It also covers landlords and homeowners associations, as well as damage to common areas, but is subject to a $1 million cap per listing location. The policy contains numerous exclusions, including exclusions for assault, battery, sexual abuse, fungi, bacteria, acts of terrorism, product liability, pollution, and asbestos. While the Host Protection Insurance policy provides considerably more coverage for hosts than the Host Guarantee, the coverage is only provided if the incident occurs during a scheduled stay, and therefore would not cover incidents prior to or after the scheduled booking, even if the guest arrived early or left late.[136]

3. Insurance Coverage Provided by HomeAway

HomeAway offers HomeAway Assure, an insurance product from CBIZ Inc., designed to specifically protect against the risks in the vacation rental business. HomeAway Assure provides both personal and commercial liability and is not supplemental to a homeowner's policy, so it effectively can replace a homeowner's policy. Indeed, the HomeAway Assure policy extends to

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[134] *See* Ron Lieber, *Home-Sharing? Don't Ignore Liability*, N.Y. Times (Apr. 20, 2012), http://www.nytimes.com/2012/04/21/your-money/home-insurance/home-sharing-dont-overlook-your-liability-your-money.html.

[135] *See What is the Airbnb Host Guarantee?*, Airbnb, https://www.airbnb.com/help/article/279/what-is-the-airbnb-host-guarantee?topic=250 (last visited Nov. 30, 2016).

[136] *See Host Protection Insurance*, Airbnb, https://www.airbnb.com/host-protection-insurance (last visited Nov. 30, 2016).

the property whether it's unoccupied, or occupied by a guest, friend, family member, or the owner. The HomeAway Assure policy also provides business income protection.[137]

C. Special Products Targeted at the Home Sharing Economy

In addition to the insurance products provided by the home share companies, insurance companies have also started offering insurance products targeted at property owners that regularly rent their properties. For example, this year Allstate began offering a new product targeted at the home sharing industry called "HostAdvantage." Although it is only offered in some states, this home-sharing endorsement is targeted at homeowners insurance customers who regularly rent out their homes on a temporary basis. Allstate's HostAdvantage endorsement purportedly helps fill the gaps that may exist in a typical homeowners policy and can be added to an Allstate homeowners policy for around $50 per year.[138]

Lexington has also responded to home sharing exposures by developing its own endorsement called LexShare HOME Rental Coverage. The LexShare HOME endorsement is available as an endorsement to the LexElite homeowners policy. The endorsement increases coverage for property damage, theft of personal property, tenant-caused damage to landscaping, as well as $100,000 liability coverage for small watercraft such as jet skis, canoes, and kayaks. Additionally, the LexShare HOME endorsement provides $5,000 for loss by theft of jewelry, watches, precious, and semiprecious stones; $7,500 for loss by theft of silverware, goldware, platinumware, and firearms; $4,500 on trailers or semitrailers; as well as $4,500 on certain electronic accessories. Finally, the LexShare HOME product also includes a broad definition of "residence premises," which purportedly extends coverage to other structures on the premises, such as a converted garage apartment.[139]

Due to the recent introduction of these insurance products, there has been no significant litigation addressing their terms or identifying potential gaps that may still exist for liability arising out of the home sharing economy. As policyholders assert claims under these policies in the coming years, additional insurance coverage issues may arise.

V. CONCLUSION

As the above demonstrates, the proliferation of the shared economy into countless new industries will continue to create gaps in insurance coverage and corresponding responses. These responses may take the form of explicit regulation, specialized insurance products, or a combination of the two. Suffice it to say, as the shared economy expands, so too will the insurance issues and implications faced by both companies and customers taking part in what is undeniably a new way of doing business.

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[137] *See Protect Your Vacation Rental Business*, CBIZ Specialty Insurance, http://cbizspecialtyinsurance.com/files/2013/09/HomeAway-Assure-Program-Brochure.pdf (last visited Dec. 2, 2016).

[138] *Allstate Offers Home-Sharing Insurance Endorsement in Michigan*, Insurance Journal (August 25, 2016), http://www.insurancejournal.com/news/midwest/2016/08/25/424512.html (last visited Dec. 2, 2016).

[139] *LexShare HOME Rental Coverage*, Lexington Insurance, http://www.lexingtoninsurance.com/content/dam/lexington-insurance/america-canada/us/documents/brochures/lexhs-lexsharehomerentalcoverage-brochure.pdf (last visited Dec. 2, 2016).