Free market . l oluti .

CONTENTS

R STREET POLICY STUDY NO. 28
October 2014

BLURRED LINES: INSURANCE CHALLENGES IN THE RIDE-SHARING MARKET

R.J. Lehmann

INTRODUCTION

The world of property/casualty insurance long has been divided into two separate and entirely circumscribed hemispheres: the personal and the commercial. Personal lines policies – primarily home and auto insurance, but also coverage for renters, motorcycles and boats – are largely standardized, sold directly or through agents and, in many states, are subject to strict regulation of rates and forms. By contrast, commercial lines policies – directors and officers, general liability, commercial auto, inland marine – are bespoke to individual firms' needs, sold through brokers and, as business-to-business transactions entered into by presumably competent parties, are largely unregulated (with the notable exception of workers' compensation).

However, a new range of services made possible by improved communications technology and ubiquitous smart phone applications are beginning to blur these once-clear lines of demarcation. These peer-to-peer markets connect potential buyers and sellers in ways that were not previously possible.[1] Largely by offering convenient pricing, payment, marketing and screening services, these match-makers make it possible for many heretofore amateur providers to deploy their capital and labor in productive ways.

Each of these new services presents potential risks to property or creates potential liabilities for those who opt to use them, either as consumers or producers. Three specific areas of the peer-production economy – ride-sharing, car-sharing and space-sharing – have offered some of the thorniest coverage questions for personal lines insurers, for regulators and for the general public. As a growing number of private individuals look to earn ancillary income streams by renting out rooms or entire properties, by renting out their cars or by providing ad hoc livery and limousine services, what are the consequences for the home and auto insurance markets? Do personal lines policies offer liability coverage when amateurs turn professional? Who should provide coverage – the peer production service, or the individual drivers and renters? And what thresholds should be set for when and how much coverage must be obtained to ensure that consumers are appropriately protected?

The future of these services depends crucially on finding answers to these and other questions. This paper looks to explore some of the pressing insurance issues within one specific subset of the peer production economy – ride-sharing – and will conclude with some broad recommendations about ways both regulators and market participants could address those issues in the months and years ahead.

RIDE-SHARING SERVICES

A century before ride-sharing, there were jitneys. Within a year of driver L.P. Draper accepting a nickel for what many consider the first automobile jitney ride in history, in Los

1. Andrew Moylan and R.J. Lehmann, "Five principles for regulating the peer production economy," R Street Institute, July 2014. http://www.rstreet.org/wp-content/uploads/2014/07/RSTREET26.pdf

Angeles in July 1914, a wave of ad hoc semi-professional auto drivers swept the nation, reaching a peak of 62,000 jitney operating in 175 U.S. cities.[2] As historian Carlos Schwantes put it:

> The jitney, in short, was widely perceived as a liberating new form of transportation for the common man. It was, proclaimed one enthusiast, "a new page in the history of locomotion when convenience and economy came together for the first time.[3]

Alas, just as quickly as they arrived, jitneys were soon regulated into oblivion. Greeted with massive resistance from lawmakers, regulators and incumbent streetcar interests, jitneys were slapped with orders to cease and desist, required to drive onerous minimum hours, limited to certain routes, made to submit to licensing and to post significant public bonds, which served as a form of insurance coverage.

Much of the story of jitneys rings familiar in the rise of ride-sharing services. Although the term has many potential meanings, we define ride-sharing as those for-profit services that connect potential riders with amateur drivers who are not licensed to operate a taxicab or limousine. Applications like Hailo, FlyWheel and Taxi Magic also allow consumers to book rides through their smart phones, but make use of existing livery fleets who generally already have full commercial auto insurance coverage. Similarly, car-pooling services like NuRide, CarPooling.com and Carma – in which drivers aren't paid – do not raise the same kinds of coverage questions as do explicitly commercial enterprises. Finally, we will not consider here the insurance challenges posed by true "car-sharing," as offered by services like RelayRides, FlightCar and GetAround, in which individuals make their personal vehicles available for rent by other drivers.

Some of the major ride-sharing services, also known as transportation network companies (TNCs), include:

Uber – Founded in March 2009 in San Francisco,[4] Uber initially focused on higher-end limousine and black-car services provided by full-time professional drivers, before moving into the ride-sharing market in late 2012 as part of the launch of its lower-cost UberX service, which initially used only hybrid vehicles.[5] It is by far the largest TNC, operating in dozens of U.S. cities and multiple countries abroad, including Germany, the United Kingdom and Australia. As with other ride-sharing services, users summon Uber cars using a smartphone application and the entire trip, including tip, is charged to their credit card. The service is perhaps most notable for pioneering "surge" pricing, in which rates fluctuate based on local demand and the number of cars available in a given area.[6] Uber drivers – whether taking part in one of the company's livery or ride-sharing services – must go through an extensive, three-stage screening process that includes searches of federal, state and local criminal databases, and must have no history of DUIs, hit and runs, fatal accidents, reckless driving, violent crimes, sexual offenses, gun-related violations or resisting or evading arrest. As of June 2014, Uber was valued at $18.2 billion,[7] with early investors that include Lower Case Capital, First Round Capital, Menlo Ventures, Benchmark, Goldman Sachs and Google Ventures.

Sidecar – Sidecar is a TNC launched in San Francisco in February 2012.[8] Unlike Uber, which uses a shared pricing algorithm, Sidecar drivers set their own prices, although the company does offer a "suggested donation" and takes a 20 percent cut. Potential riders choose among potential drivers based on what type of vehicle they are driving, their estimated time of arrival and the driver's historical ratings.[9] Drivers and passengers are required to rate one another at the end of each trip. Sidecar raised $10 million in August 2013 from Union Square Ventures, along with funding from Correlation Ventures, Avalon Ventures and SoftBank Capital.[10]

Lyft – Originally launched in May 2012 as an auxiliary service of the then-five-year-old car-pooling application Zimride, Lyft quickly outgrew its former corporate parent by offering a lower-cost competitor to Uber's black car service.[11] By mid-2013, the name of the company was formally changed to Lyft and the Zimride service was sold to the

2. Matthew Mitchell and Michael Farren, "Share rides, spare regulation," *Los Angeles Times*, July 12, 2014. http://www.latimes.com/opinion/op-ed/la-oe-mitchell-jitneys-uber-ride-share-20140713-story.html

3. Carlos A. Schwantes, "The West Adapts the Automobile: Technology, Unemployment, and the Jitney Phenomenon of 1914-1917," *The Western Historical Quarterly*, Vol. 16, No. 3, pp. 307-326, July 1985. http://www.jstor.org/discover/10.2307/969130?uid=3739256&uid=2&uid=4&sid=21104692729823

4. Michael Arrington, "Uber CEO 'Super Pumped' About Being Replaced By Founder," *TechCrunch*, Dec. 22, 2010. http://techcrunch.com/2010/12/22/uber-ceo-super-pumped-about-being-replaced-by-founder/

5. Ryan Lawler "Look Out, Lyft: Uber CEO Travis Kalanick Says It Will Do Ride Sharing, Too," *TechCrunch*, Sept. 12, 2012. http://techcrunch.com/2012/09/12/uber-ride-sharing/

6. Uber, "What is surge pricing and how does it work?," https://support.uber.com/hc/en-us/articles/201836656-What-is-surge-pricing-and-how-does-it-work. Accessed Aug. 1, 2014.

7. David Goldman, "Uber valued at $18.2 billion," *CNN Money*, June 6, 2014. http://money.cnn.com/2014/06/06/technology/innovation/uber-funding/index.html

8. Press Release, "SideCar Connects Drivers and Passengers One Ride at a Time," Yahoo Finance, June 26, 2012. http://finance.yahoo.com/news/sidecar-connects-drivers-passengers-one-131500215.html

9. Fred Wilson, "Sidecar," AVC.com, Feb. 19, 2014. http://avc.com/2014/02/sidecar/

10. Liz Gannes, "With $10M Funding From Union Square Ventures, Sidecar Turns On Ride Marketplace," ReCode, Feb. 19, 2014. http://recode.net/2014/02/19/with-10m-funding-from-union-square-ventures-sidecar-turns-on-marketplace-model/

11. Kim-Mai Cutler, "Zimride's Lyft Is Going To Give Uber Some Lower-Priced Competition," TechCrunch, May 22, 2012. http://techcrunch.com/2012/05/22/zimrides-lyft-is-going-to-give-uber-some-lower-priced-competition/

holding company of Enterprise Rent-A-Car.[12] Like Uber, Lyft offers drivers a pricing algorithm based on time and distance, but the company also has experimented with "happy hour" pricing in which fares fall when there is a surplus of vehicles in a given area. Like Sidecar, it formally regards payments to its drivers as "donations" that are fully negotiable. Users log in to the application with their Facebook accounts and drivers in most markets identify themselves with large pink moustaches that are attached to their vehicles. Following each ride, both drivers and passengers have an opportunity to rate one another and any driver who doesn't maintain at least a 4.5 rating is barred from the service. [13] In April 2014, Lyft was valued at roughly $700 million following a $250 million capital infusion from Andreessen Horowitz, Founders Fund, Coatue Management LLC, Alibaba and Third Point Management.[14]

The preceding is not intended as an exhaustive list. Smaller services like Summon, Gett and Wingz also have entered the market, but their geographic footprint remains quite limited. In addition, a number other services who currently compete in markets in Europe, Asia and Australia have expressed some interest in entering the U.S. market, but as yet, none have commenced operations here.

WHO IS LIABLE?

Unlike traditional taxi and limousine services, ride-sharing companies insist that they are not common carriers. Instead, they assert the law should regard them as providers of an "interactive computer service." Essentially, the argument goes that they are, much like dating sites, simply match-making services that connect independent drivers with potential riders. Lyft and Sidecar further support this argument by asserting they do not set the terms of any transaction, and simply offer "suggested donations" that riders may, or may not, provide to drivers. As such, they assert immunity from liability, as spelled out in Section 230 of the Communications Decency Act of 1996:

> No provider or user of an interactive computer service shall be held liable on account of—
>
> (A) any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected; or
>
> (B) any action taken to enable or make available to information content providers or others the technical means to restrict access to material described [above].[15]

Each of the major ride-sharing companies makes explicit in the terms of service offered to potential drivers and riders that they do not offer "transportation services." For example, Lyft's TOS reads:

> Lyft does not provide transportation services, and Lyft is not a transportation carrier. It is up to the driver or vehicle operator to decide whether or not to offer a ride to a rider contacted through the Lyft Platform, and it is up the rider to decide whether or not to accept a ride from any driver contacted through the Lyft platform. Any decision by a user to offer or accept transportation once such user is matched through the Lyft Platform is a decision made in such user's sole discretion. Lyft offers information and a method to connect drivers and riders with each other, but does not and does not intend to provide transportation services or act in any manner as a transportation carrier, and has no responsibility or liability for any transportation services voluntarily provided to any rider by any driver using the Lyft Platform.[16]

Uber's terms and conditions include similar language:

> The company does not provide transportation services, and the company is not a transportation carrier. It is up to the third party transportation provider, driver or vehicle operator to offer transportation services which may be scheduled through use of the application or service. The company offers information and a method to obtain such third party transportation services, but does not and does not intend to provide transportation services or act in any way as a transportation carrier, and has no responsibility or liability for any transportation services provided to you by such third parties.[17]

Some services go further still. In addition to disclaiming its status as a transportation carrier, Sidecar argued in testimony to the California Public Utilities Commission that it is, fundamentally, "a noncommercial enterprise." While conceding that it does not meet traditional definitions of a

12. Ken Yeung, "Lyft founders sell Zimride, their carpooling startup, to Enterprise Rent-a-Car's parent company," The Next Web, July 13, 2013.

13. Patrick Lane, "A sense of place," *The Economist*, Oct. 27, 2012. http://www.economist.com/news/special-report/21565007-geography-matters-much-ever-despite-digital-revolution-says-patrick-lane

14. Kurt Wagner, "Lyft Raises $250 Million for Domestic, International Expansion," *Mashable*, April 2, 2014. http://mashable.com/2014/04/02/lyft-funding-round/

15. 47 U.S. Code § 230, "Protection for private blocking and screening of offensive material," Cornell University Law School, http://www.law.cornell.edu/uscode/text/47/230#FN-1

16. Lyft, "Terms of Service," July 28, 2014. https://www.lyft.com/terms

17. Uber, "Terms and Conditions," May 17 2013. https://www.uber.com/legal/usa/terms

non-profit, Sidecar argued that California statutes providing a regulatory carve-out for various kinds of car-pooling operations offer “no definition or any guidance on how to interpret the term ‘profit.’”[18] The company proposed using the AAA’s average annual cost of vehicle ownership ($8,776) as a benchmark, such that any driver whose revenues derived from ride-sharing do not at least meet that threshold should be exempted from “commercial” status:

> By its enforcement actions and policy, the CPSD has apparently chosen to interpret essential and undefined terms such as “profit” as narrowly as possible. The CPSD’s position is that only “incremental” or “variable” profit (i.e., on a per-trip basis) should be considered; however, any economist or small business owner would agree that a reasonable and practical construction of profit and a commercial enterprise is the total expenses of operation (i.e., the fixed and variable or aggregate costs). Simply put, there’s no profit where total costs exceed income.[19]

Each of the major TNCs also expressly disclaims any liability for accidents or other torts that may occur during a ride arranged through their applications. In the terms and conditions for users of its UberX service, Uber notes:

> The company may introduce you to third party transportation providers for the purposes of providing transportation. We will not assess the suitability, legality or ability of any third party transportation providers and you expressly waive and release the company from any and all any liability, claims or damages arising from or in any way related to the third party transportation provider.[20]

Lyft’s disclaimer reads, in part:

> We do not screen the participants using the services in any way. As a result, we will not be liable for any damages, direct, indirect, incidental and/or consequential, arising out of the use of Lyft or the services, including, without limitation, to damages arising out of communicating and/or meeting with other participants of Lyft or the services, or introduced to you via Lyft or the services. Such damages include, without limitation, physical damages, bodily injury, death and or emotional distress and discomfort.[21]

Sidecar’s terms of service assert:

> To the maximum extent permitted by applicable law, in no event shall Sidecar, its affiliates, agents, directors, employees, suppliers or licensors be liable for any direct, indirect, punitive, incidental, special, consequential or exemplary damages, including without limitation damages for loss of profits, goodwill, use, data or other intangible losses, that result from the use of, or inability to use, this service, including without limitation any rides facilitated by the service.[22]

These lines of argument already have been challenged on several fronts, and it is fair to say it will ultimately be up to the courts to determine the degree to which they hold water. Some legal experts have expressed skepticism. Timothy Alger, a partner with Perkins Coie in Palo Alto, Calif., told the *ABA Journal* in January 2014:

> If you’re engaging in branding or giving them the tools of the trade, like GPS devices or equipment to process transactions, you may be moving out of the role of being a pure publisher under Section 230. If a service is setting the price from Midtown to Wall Street at $10, then under the law that might be considered something that is not just a publisher’s role.[23]

In one of the earliest tests of the immunity defense, in December 2013, Judge Edward Chen of the U.S. District Court in San Francisco refused to dismiss a putative class action brought by drivers who allege Uber fails to disclose to consumers that it claims a portion of each gratuity, allegedly in violation of California law.

In the suit, the drivers claim that Uber incorrectly classifies them as “independent contractors,” asserting that they are employees who are made to follow any number of specific requirements and whose “services are fully integrated” into Uber’s business. They cited a choice-of-law provision in their agreements providing that disputes would be settled under California law, adding that California statutes also require they be reimbursed for work-related expenses. [24]

Uber contends in its defense that the drivers – who, in this case, were not amateurs participating in the UberX program, but professionals employed by livery companies – were told explicitly as part of their agreements that they would be

18. David E. Phillips and Jose Guzman Jr., “OPENING COMMENTS OF SIDECAR TECHNOLOGIES, INC. AND SIDE.CR, LLC,” California Public Utilities Commission, Jan. 28, 2013. http://www.taxi-library.org/cpuc-2013/sidecar.pdf

19. Ibid.

20. Uber, “Terms and Conditions,” May 17, 2013. https://www.uber.com/legal/usa/terms

21. Lyft, “Terms of Service,” July 28, 2014. https://www.lyft.com/terms

22. Sidecar, “Terms of Service,” http://www.side.cr/terms Accessed Sept. 15, 2014.

23. Stephanie Francis Ward, “‘App’ me a ride: Internet car companies offer convenience, but lawyers see caution signs,” *ABA Journal*, Jan. 1, 2014. http://www.abajournal.com/magazine/article/internet_car_companies_offer_convenience_but_lawyers_see_caution_signs/

24. Judge Edward Chen, “Order granting in part and denying in part defendants’ motion to dismiss,” *O’Connor v. Uber*, Dec. 5, 2013. http://pdfserver.amlaw.com/ca/Uber-orderonmotiontodismiss.pdf

treated as independent contractors, that Uber disclaims the creation of any employment relationship and that control over the drivers was exercised by their livery companies, not Uber. Chen concluded that there were "sufficient allegations about control to make the existence of an employment relationship plausible on its face." However, he also noted other factors weigh against that finding, such as the fact that drivers are paid by the job and provide their own cars. [25] Laying out why the contractor question may prove especially thorny as the case proceeds to trial, Chen added:

> Perhaps potentially even more persuasive, counsel for Defendants represented at oral argument that Uber has no control over the drivers' hours, which geographic area they target for pickups, or even whether they choose to accept a passenger's request for a ride. If this proves to be the case, Plaintiffs' assertion of an employment relationship would appear to be problematic.[26]

Of course, even if the drivers are found to be independent contractors, that would not end the debate about whether ride-sharing firms are potentially liable for their actions. Many taxicab drivers are independent contractors, as well, including the majority of the 25,000 yellow cab drivers and 30,000 livery drivers employed in New York City, according to a 2007 report from the Brennan Center for Justice.[27]

There also have been several lawsuits challenging the ride-sharing companies' assertion that they are not liable for accidents experienced by drivers who use their service. Most notable of these is the suit filed in January 2014 against Uber and driver Syed Muzaffar by the father of Sophia Liu of Union City, Calif. The six-year-old Liu died New Year's Eve of 2013 in San Francisco after she was struck by a car driven by Muzaffar while crossing an intersection.[28] Muzaffar, who was charged with vehicular manslaughter by San Francisco police, was an Uber partner driver but "was not providing services on the Uber system during the time of the accident," the company said in a statement, adding that his account was immediately suspended following the accident.[29]

In the suit, filed in California Superior Court in San Francisco, Liu's father asserts that Muzaffar was Uber's "agent and/or employee and/or partner," and that the company is liable for his actions under the "principals of *respondeat superior*, agency, ostensible agency, partnership, alter-ego and other forms of vicarious liability." To establish an agency relationship, the suit points to Uber's application and screening process for drivers, that the company reserves "the right to remove or delete drivers from their system at their discretion" and that the company therefore is "entirely in control of who can use their system as either a driver or user."

Moreover, the suit cites Muzaffar's use of the Uber app as a proximate cause of the accident, and charges the company knew or should have known that drivers' use of the app violated state law barring the use of electronic devices "to write, send, or read a text–based communication" while driving. According to the suit, Muzaffar was logged in to the app at the time of the accident and indicated he was available to provide rides through either the Uber or UberX service. While he was not currently in transit either transporting a rider or on his way to pick up a rider, the suit claims that Uber would stand to benefit from his being logged in "by demonstrating the large number of available drivers which are logged on to the Uber app."

> Uber…derive[s] an economic benefit from not only having users transported by drivers collecting a portion of the charge for transportation, it derives an economic benefit, and competitive advantage, by displaying the location of available vehicles near the user's location…Therefore, regardless of whether a driver actually has a user in their car, is on the way to a user who has engaged the driver through the app, or simply is logged on to the app as an available driver, Uber…derive[s] an economic benefit from having drivers registered on the service.[30]

In its response, Uber offered 22 separate arguments of defense, as well as a general defense that it denies "each and every material allegation of the complaint," including that Muzaffar was ever an Uber employee or that the ride-sharing app played any role in the accident.

> At the time of the accident, Mr. Muzaffar was operating his own vehicle and was not transporting a rider who requested transportation services through the Uber app, en route to pick up a passenger who requested transportation services using the Uber app, or receiving a request for transportation services through the Uber app. At the time of the accident, there was no reason for Mr. Muzaffar to interact with the Uber app. Moreover, Mr. Muzaffar was not – and has never been

25. Ibid.

26. Ibid.

27. Annette Bernhardt, et al., "Unregulated Work in the Global City," Brennan Center for Justice, New York University School of Law, June 11, 2007. http://www.brennancenter.org/sites/default/files/legacy/d/download_file_49380.pdf

28. Victoria Colliver, "Girl killed, 2 injured crossing S.F. street," *San Francisco Chronicle*, Jan. 1, 2014. http://www.sfgate.com/bayarea/article/Girl-killed-2-injured-crossing-S-F-street-5106116.php

29. Andrew Noyes, "Statement on New Year's Eve Accident," Uber, Jan. 1, 2014. http://blog.uber.com/2014/01/01/statement-on-new-years-eve-accident/

30. Complaint, *Liu v. Uber Technologies Inc.*, California Superior Court – San Francisco County, Jan. 24, 2014. https://www.documentcloud.org/documents/1009476-uber-liu-update.html

– an employee of any of the companies. [31]

The company added that running the app while driving was not akin to texting, as the "only information displayed on the screen was a GPS-generated map with his location - akin to the information displayed by a smartphone map application."[32]

If the courts ultimately find that Uber and other TNCs do not have even vicarious liability for accidents experienced by drivers using their services, the full exposure – and full burden of insurance coverage – would fall on the drivers themselves. But that outcome would raise another, perhaps even more crucial question: under such circumstances, who would agree to share rides?

WHO PROVIDES COVERAGE?

Most personal auto policies exclude coverage for any vehicle while it is being used "as a livery conveyance."[33] Representatives of several of the nation's largest auto insurers – including State Farm, Allstate, Progressive, USAA and Liberty Mutual – each confirmed to R Street that their current standard personal lines policies would exclude coverage for commercial use. Exclusions commonly take a form similar to the following, drawn from a standard policy offered by Progressive:

> EXCLUSIONS - READ THE FOLLOWING EXCLUSIONS CAREFULLY. IF AN EXCLUSION APPLIES, COVERAGE WILL NOT BE AFFORDED UNDER THIS PART I.
>
> Coverage under this Part I, including our duty to defend, will not apply to any insured person for:
>
> 1. bodily injury or property damage arising out of the ownership, maintenance, or use of any vehicle or trailer while being used:
>
> a. to carry persons or property for compensation or a fee;

It is customary for policies to cover vehicles used in carpools, and the California Legislature has even passed legislation encouraging coverage for "car sharing" arrangements under which a car owner may take a nominal fee in exchange for loaning a car to a friend. However, major auto insurers surveyed by R Street uniformly reported that they limit the definition of car-pooling and car-sharing arrangements to ones in which costs are shared by the driver or owner and passengers or renters. The driver or owner must not earn a profit on the ride. The Personal Insurance Federation of California – which represents State Farm, Farmers, Liberty Mutual, Progressive, Allstate and Mercury General – reiterated this understanding in written testimony submitted in January 2013 to the California Public Utilities Commission.[34]

> Finally, with respect to California Insurance Code §11580.24, the legislature encouraged car sharing programs (i.e., renting out one's personal vehicle to another driver), as long as the owner does not earn more than the annual cost of owning the vehicle from the car sharing program. In doing so, it shielded private passenger car insurers from any liability by shifting the responsibility for coverage to the private vehicle ridesharing program. The issue before the CPUC is not ridesharing, but instead using a private passenger vehicle in a livery service. This is clearly not covered under a standard policy; if an accident occurs, coverage would not exist.[35]

Further complicating coverage for non-profit ride-sharing programs is that some states, such as Alabama, still maintain "guest passenger" statutes. These provide that drivers are not liable for injuries sustained by guest passengers except in cases of "willful or wanton conduct" on the part of the driver.[36] Once relatively common across the country, nearly all guest passenger statutes have been repealed.

The fact that personal lines auto insurers do not presently offer coverage for ride-sharing has prompted regulators to issue consumer bulletins warning about potential coverage gaps, including from insurance regulators in Alaska, Connecticut, the District of Columbia, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Nebraska, Nevada, New Jersey, New Mexico, Ohio, Pennsylvania, South Carolina, Tennessee and Utah.[37] But this lack of coverage also is problematic in other ways, not the least because the TNCs' business model is built on drivers procuring their own coverage.

As part of an expansion effort, Uber in November 2013

31. Uber Technologies, "Answer and affirmative defenses," Liu v. Uber Technologies Inc., California Superior Court – San Francisco County, May 1, 2014. http://www.scribd.com/doc/222241859/Uber-s-response-to-wrongful-death-suit-from-new-year-s-even-death-of-sofia-liu

32. Ibid.

33. Dan Brown, "Rideshare Programs 'Driving' Up Insurance Risks," *Mondaq Business Briefing*, Feb. 6, 2014. http://www.dentons.com/en/insights/alerts/2014/february/5/rideshare-insurance-issues

34. Kara Cross, "Re: Rulemaking 12-12-0011," Personal Insurance Federation of California, Jan. 28, 2013. http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M042/K159/42159023.PDF

35. Ibid.

36. Tim Violet, "Auto Law Compendium," The Harmonie Group, 2013. http://www.harmonie.org/user_documents/Auto%20Law%20Compendium%2011-14-11.pdf

37. Property Casualty Insurers Association of America, " Transportation Network Company (Ride Sharing) Issue Status," Center for Insurance Policy & Research, Aug. 8, 2014. http://www.naic.org/documents/cipr_events_140819_tnc_issue_status.pdf

announced a partnership with car-markers Toyota and General Motors and a number of consumer lenders to offer discounts and attractive financing terms to buyers who agree to become Uber drivers.[38] At the micro-site established by Uber lending partner Santander for those interested in the program, drivers are explicitly directed that while they would need to obtain commercial auto insurance to participate in the UberBlack or UberSUV programs, those interested in UberX need only "standard vehicle insurance."[39]

The TNCs also clearly indicated their belief that coverage would be provided by personal lines insurers, in that the initial $1 million liability insurance policies taken out by Uber, Lyft and Sidecar – in part, to satisfy requirements set by the California Public Utilities Commission – were structured to be excess of loss, riding on top of coverage provided by the driver's primary insurer. [40] In May 2014, Lyft did announce a partnership with MetLife Auto & Home to develop individual insurance products for its drivers, with MetLife spokesman Shane Winn quoted saying:

> As a major provider of auto and home insurance products to consumers in the U.S., MetLife Auto & Home is pleased to be partnering with Lyft to explore insurance solutions that can enhance the protection Lyft drivers and users receive.[41]

But as of the time of this publication, no products from this project had yet been filed in any state.

In the absence of personal lines insurance products to cover ride-sharing risks, drivers would theoretically be forced to turn to the commercial auto insurance market. However, rates for commercial auto insurance to cover livery services are unlikely to be affordable for most part-time drivers, running in the range of $8,000 to $10,000 annually.[42] By contrast, according to the National Association of Insurance Commissioners, the average annual personal auto insurance rate in the United States in 2011 was $797.[43]

Regulatory requirements for minimum coverage limits also differ radically between personal and commercial auto insurance markets. A review by R Street of average minimum required limits finds that, while state-mandated personal insurance limits average $25,000 per-person for bodily injury, $50,000 for per-accident bodily injury and $15,000 for property damage done to other vehicles, typical requirements for limousine and other livery drivers are $100,000 for per-person bodily injury, $300,000 for per-accident bodily injury and $50,000 for third-party property damage. In some states, the liability requirements for livery coverage are as high as $1 million[44] or even $1.5 million[45] per event.

California Insurance Commissioner Dave Jones proposed a potential solution – subsequently adopted, in part, under a law signed in September 2014 by Gov. Jerry Brown – that coverage could be parsed between commercial and personal policies during different phases of a shared ride. In recommendations delivered to the California Public Utilities Commission in April 2014, Jones proposed three periods during which commercial insurance for uninsured/underinsured motorists, with a minimum liability limit of $1 million, must be procured:

- Period 1: App open → No match
- Period 2: Match accepted → Passenger pick-up
- Period 3: Passenger in the car → Passenger has safely exited the vehicle[46]

Questions were raised about whether the original $1 million liability policies each of the major ride-sharing firms obtained to meet regulatory requirements would actually offer full coverage through each of the three periods. Primarily designed to cover any vicarious liability the TNCs might face, the policies did extend coverage to drivers as additional insureds, but included exclusions in cases where drivers are found negligent. The policies also did not provide collision or comprehensive coverage to those same drivers.

The TNCs also pushed back against legislative proposals in California to hold them liable during the so-called "Period 1." But as the Liu case demonstrates, that is a question that is likely to be answered by the courts. Common carriers like taxis and limousines are held to a heightened standard of care, even when not currently transporting passengers. If courts apply similar standards to TNC drivers, then potential liability during Period 1 – potentially exacerbated by driv-

38. Travis Kalanick, "Financing 100,000 Entrepreneurs," Uber, Nov. 25, 2013. http://blog.uber.com/financing100000entrepreneurs

39. Santander Consumer USA, "Getting Insurance," Calling All Drivers, 2014. http://uber.santanderconsumerusa.com/insurance/

40. Jon Brooks, "Confusion Over Insurance for 'Ride-Sharing' Drivers," KQED NewsFix, Nov. 19, 2013. http://blogs.kqed.org/newsfix/2013/11/14/who-pays-when-ride-share-driver-crashes

41. Thomas Harman, "Lyft, MetLife Auto in Partnership Toward Development of Protection for Rideshare Drivers, Passengers," A.M. Best Newswire, May 7, 2014.

42. Yahoo! Answers, " Why is livery insurance so hard to get and so expensive?," https://answers.yahoo.com/question/index?qid=20111011181951AA3rpBE

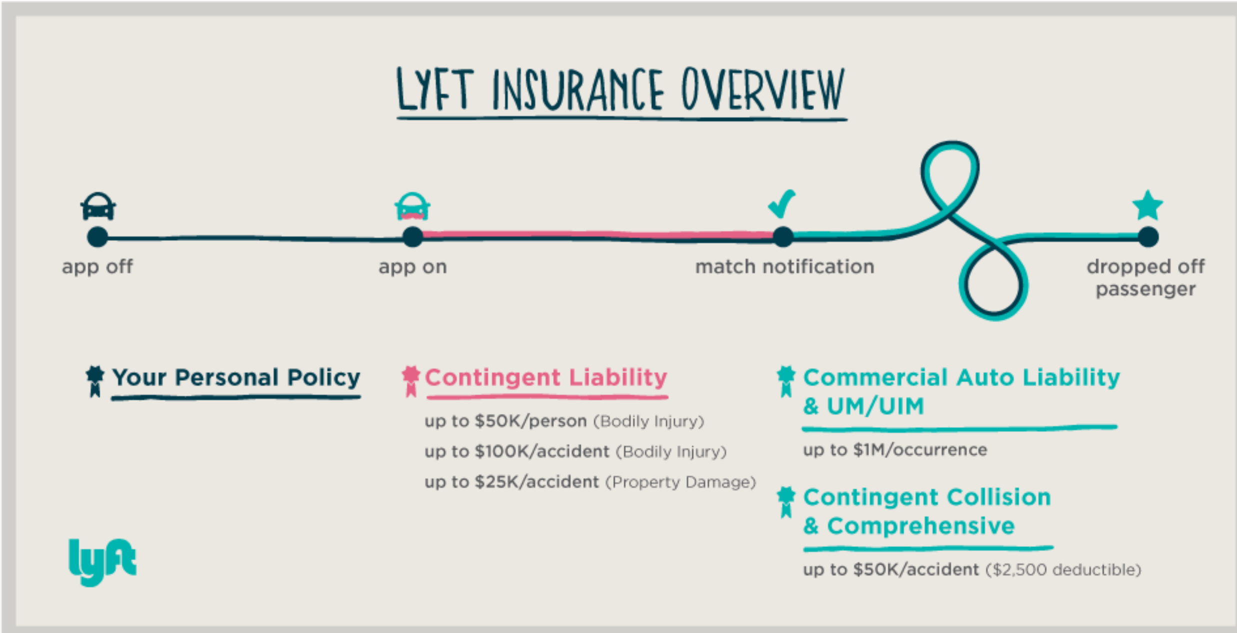
43. National Association of Insurance Commissioners, "2010/2011 Auto Insurance Database Report," Dec. 30, 2013. http://www.naic.org/Releases/2013_docs/20102011_auto_insurance_report_now_available.htm

44. City of Houston, "Proposed Changes to Chapter 46 of the Code of Ordinances Related to Vehicles-for- Hire," April 22, 2014. http://www.houstontx.gov/ara/regaffairs/Final_Chapter_46_Joint_Committee_Presentation_April22_2014.pdf

45. Research Underwriters, "On Your Side: Research Underwriters Works to Reverse New Coverage Requirements," April 28, 2014. http://www.researchunderwriters.com/news/your-side-research-underwriters-works-reverse-new-coverage-requirements

46. Dave Jones, "Letter to Michael R. Peevey," California Public Utilities Commission, April 7, 2014. http://www.insurance.ca.gov/0400-news/multimedia/0030VideoHearings/upload/CDI-CPUC20140407.pdf

FIGURE 1: LYFT INSURANCE OVERVIEW



Source: Lyft

ers rushing to a part of town experiencing "surge" pricing – could be significant.

There also are ways in which the most optimistic predictions of a truly transformative ride-sharing market may have troubling implications for insurance coverage. For instance, many have pointed to the growth of reasonably priced ride-sharing programs reducing the need to own one's own car. As financial journalist Felix Salmon put it:

> Most cars spend most of their time just parked, taking up space and performing no useful function. If we could all drive the same number of aggregate miles but with a substantial reduction in the number of cars on the road, that would benefit everybody. That's the promise of Uber, and Lyft, and even of Zipcar: they're freeing up space on the streets by making it less necessary for people to own their own rarely-driven vehicles.[47]

But people who do not own their own cars also typically do not buy auto insurance. In the 12 U.S. states with no-fault systems for auto liability, that could lead to some thorny coverage questions for riders who do not have coverage of their own. A rider who is uninsured would have to attempt to collect from a driver's policy. If the driver's policy does not include coverage for uninsured or underinsured drivers, that would require passengers to tap state uninsured claims funds. In Michigan, which uniquely requires all drivers to carry uncapped personal injury protection benefits, the end result could be potentially large claims against the quasi-public and already cash-strapped Michigan Assigned Claims Facility.[48]

To their credit, the major ride-sharing services have looked to respond to such concerns with enhanced insurance coverages. In March 2014, Uber announced an updated policy that would extend the $1 million of coverage for driver liability (as well as an identical amount for uninsured and underinsured motorists) to serve as primary coverage when a ride-sharing trip is actually in progress. They also began offering contingent comprehensive and collision coverage for drivers of up to $50,000 per incident. [49]

Uber said its coverage would be in effect from the time a ride is accepted until the rider is safely dropped off, thus effectively covering Periods 2 and 3, as outlined by Commissioner Jones. The company expressed confidence that most personal policies would respond to Period 1 of a ride-sharing trip, noting the driver's insurance company in the Liu case had offered the policy limits. However, given what it called "the novelty of this growing and innovative form of transportation," Uber conceded "there may be language in some policies in some states where ambiguity remains about whether personal insurance will cover the time between trips." Thus,

47. Felix Salmon, "The economics of 'everyone's private driver," *Medium*, June 1, 2014. https://medium.com/@felixsalmon/the-economics-of-everyones-private-driver-464bfd730b38

48. Pete Kuhnmuench, "Insurance industry rightly cautious of paid ride-sharing," *Lansing State Journal*, Aug. 15, 2014. http://www.lansingstatejournal.com/article/20140815/OPINION04/308160003/Pete-Kuhnmuench-Insurance-industry-rightly-cautious-paid-ride-sharing?nclick_check=1

49. Nairi Hourdajian, "Eliminating Ridesharing Insurance Ambiguity," Uber blog, March 14, 2014. http://blog.uber.com/uberXridesharinginsurance

the updated policy will cover up to $50,000 per-person of bodily injury, $100,000 per-accident of bodily injury and $25,000 of property damage, in the event a driver's personal policy did not respond. [50]

Similarly, Lyft announced it has taken out a policy with Virginia-domiciled surplus lines writer James River Insurance Co., a subsidiary of Bermuda-based Franklin Holdings Ltd., which is currently rated A- by A.M. Best Co.[51] The terms, which Lyft outlines in a graphic on its website, match those of the Uber policy almost identically (see Figure 1).

RECENT STATE AND LOCAL LAWS

Given the host of issues raised by the growing popularity of ride-sharing services – including, but by no means limited to, insurance coverage – many state and local governments have taken steps in recent months to clarify their regulatory treatment.

The simplest path, arguably, is the one taken by the cities of Fayetteville, Ark.; Ann Arbor, Mich.; Kansas City and St. Louis, Mo.; Memphis, Tenn.; and Austin, Dallas, Houston and San Antonio, Texas; as well as by the Nebraska Public Service Commission, the New Mexico Public Regulation Commission, the Pennsylvania Public Utility Commission and the Virginia Department of Motor Vehicles, among others – orders informing the TNCs that they must immediately cease and desist operations.

Below is a summary of other (more thoughtful and measured) bills and ordinances passed thus far.

Cities

Baton Rouge, La. – In June 2014, the Baton Rouge Metropolitan Council voted to permit TNCs to operate, free of the licensing, inspections and rate-setting regulations of the Taxicab Control Board. TNCs are required to perform background checks and vehicle inspections and must not accept any drivers with a history of DUIs or drug offenses. Drivers are not permitted to accept "street hails."[52] The ordinance does not establish any specific insurance requirements.

Birmingham, Ala. – In July 2014, the Birmingham City Council revised its transit code to permit ride-sharing services to operate within the city.[53] However, drivers would be forced to obtain a business license as a transportation service, obtain a certificate of public necessity, undergo regular vehicle inspections by the city and abide by the same pricing schedules and minimum mandatory fares as taxis. Drivers also would be required to carry full-time commercial auto insurance, even if they are only driving on a part-time basis.

Chicago, Ill. – In May 2014, the Chicago City Council passed an ordinance that divides ride-sharing drivers into two categories, those who work less than 20 hours per week and those who work more than 20 hours per week. Both would have to earn chauffeur's licenses and undergo background checks and vehicle inspections, but the licensing fee for the former is $10,000, while for the latter, it's $25,000. The ordinance also allows the city to cap "surge" price increases.[54] TNCs are required to maintain $1 million of "primary noncontributory coverage" for themselves and their drivers from ride acceptance until the end of the ride, but would have to meet only the state minimums for personal coverage during other periods that drivers are logged in.

Columbus, Ohio – In July 2014, the Columbus City Council approved an ordinance allowing ride-sharing services to operate legally within the city. Drivers would be subject to criminal background checks and would have to obtain letters of good standing and proof of vehicle ownership or permission from the owners.[55] The ordinance requires TNCs provide at least $1 million of commercial liability coverage for drivers and $1 million of uninsured or underinsured motorist coverage. The companies also must match the comprehensive and collision coverage drivers carry on their personal policies.[56]

Milwaukee,Wis. – In July 2014, the Milwaukee Common Council approved an ordinance legalizing ride-sharing services, but requiring drivers to submit to background checks from the Department of Public Works and pay to obtain the same operating permits as taxi drivers. The DPW also would inspect TNC-affiliated vehicles, but at less than the twice-yearly schedule required of taxis. Proof of insurance, with the same minimum coverage requirements as taxis, would be required to obtain a permit, and driving without

50. Ibid.

51. A.M. Best Co., "A.M. Best Revises Outlook for Ratings of JRG Reinsurance Company, Ltd. and Its Affiliates," BusinessWire, May 20, 2014. http://www.businesswire.com/news/home/20140520006857/en/A.M.-Revises-Outlook-Ratings-JRG-Reinsurance-Company#.VBtaqRaaVuM

52. Rebekah Allen, "EBR Metro Council opens door for ride sharing companies," *The Advocate*, June 25, 2014. http://theadvocate.com/home/9548462-125/taxi-limo-companies-oppose-effort

53. Joseph D. Bryant, "Uber in Birmingham? Council approves revised regulations, company says rules still make Birmingham impractical," *The Birmingham News*, July 29, 2014. http://www.al.com/news/birmingham/index.ssf/2014/07/uber_in_birmingham_council_app.html

54. Mary Ann Ahern, "City Council Passes Regulations on Rideshare Industry," NBC Chicago, May 29, 2014. http://www.nbcchicago.com/blogs/ward-room/chicago-city-council-rideshare-uberx-lyft--260974811.html

55. Mike Bowersock, "Columbus City Council To Regulate Uber, Other Ride-Sharing Services," NBC4i, July 21, 2014. http://www.nbc4i.com/story/26075613/uber-regulated-by-city-council

56. Rick Rouan, "Lyft, Uber want to keep Columbus license applications secret," *The Columbus Dispatch*, Sept. 3, 2014. http://www.dispatch.com/content/stories/local/2014/09/02/Uber-sues-city-to-keep-insurance-policy-private.html

a permit would be subject to a progressive series of fines. The ordinance also abolished the city's cap on taxi licenses, which was previously set at 420.[57]

Minneapolis, Minn. – In July 2014, the Minneapolis City Council approved an ordinance that allows TNCs to apply for licenses to operate within the city, in exchange for licensing fees to cover the cost of additional inspectors and other regulation. Ride-sharing drivers would not need individual vehicle licenses, but would be subject to the same background checks and vehicle inspections as taxis. The ordinance also updated taxi regulations to allow for older vehicles in the fleet, and both taxis and TNCs will pay surcharges to finance incentive programs for more wheelchair and handicapped access.[58] The ordinance requires the TNCs to maintain commercial policies of at least $1 million per occurrence, which would cover vehicles while they are "active."

New Orleans, La. – In September 2014, the New Orleans City Council approved changes to modestly liberalize its limousine regulations, dropping the minimum fair to $15 for sedans and $25 for SUVs and eliminating a three-hour minimum for limo trips. Ostensibly a nod to Uber's higher-end services – UberBlack and UberSUV – the changes still do not permit ride-sharing by drivers without a livery permit, and the city retained a requirement that permitted services must have at least two stretch limousines in their fleets. A separate ordinance that would have defined ride-sharing, only to expressly forbid it, was considered and tabled. [59]

Seattle, Wash. – In July 2014, the Seattle City Council passed an ordinance requiring TNCs and their drivers be licensed and repealing rules passed earlier in the year that capped the number of ride-sharing cars at 150 for each TNC service. The new ordinance also calls for issuing 200 new taxi licenses, the first increase since 1990, but transforms the licenses into medallions. As part of the new rules, ride-sharing companies would have to maintain $300,000 of liability insurance, the same level required of taxis and limousines. The coverage would be required from ride acceptance through the end of a ride. [60]

57. Don Walker and Jason Silverstein, "Milwaukee Common Council unanimously lifts cap on taxi permits," *Milwaukee Journal-Sentinel*, July 22, 2014.

58. KARE 11 Staff, "Mpls. City Council OKs Uber, Lyft," KARE 11, July 18, 2014. http://www.kare11.com/story/news/local/2014/07/18/mpls-city-council--oks-uber-lyft/12841855/

59. Mark Waller, "New Orleans City Council passes rules for Uber and similar apps, but the road ahead remains unclear," *The Times-Picayune*, Sept. 4, 2014. http://www.nola.com/business/index.ssf/2014/09/new_orleans_city_council_passe.html

60. Lynne Thompson, "Seattle council gives nod to compromise rules for ride services," *The Seattle Times*, July 14, 2014. http://seattletimes.com/html/localnews/2024071072_tncscouncilxml.html

States

Colorado – In June 2014, Gov. John Hickenlooper signed S.B. 125, which authorizes ride-sharing services to operate in the state, provided they obtain permits from the Colorado Public Utilities Commission. The measure requires vehicle inspections, but does not subject ride-sharing drivers to the same background checks as taxi drivers. TNCs will be required to provide $1 million of primary liability insurance coverage, effective whenever a driver is logged-in to the app.[61]

Connecticut – In May 2013, Gov. Dannel Malloy signed S.B. 235, calling on the Department of Transportation and Department of Motor Vehicles to study regulation of ride-sharing services, including mandatory insurance coverage, and submit a report with recommendations by Feb. 1, 2015. [62]

North Carolina – In August 2013, Gov. Pat McCrory signed H.B. 74, the Regulatory Reform Act of 2013. Among its provisions was a statewide ban preempting municipalities from regulating or licensing "digital dispatching services for prearranged transportation services for hire." The bill specifically bans requiring TNCs be licensed to operate, provided they do not directly own or operate vehicles within a given city; requiring any particular pricing schedule; or setting minimum rates, minimum waiting periods or minimum ride times.[63]

Rhode Island – In July 2014, Gov. Lincoln Chafee signed H.B. 8298, which creates an 11-member legislative committee to study ride-sharing and its impact on the state's Public Motor Vehicle Act. [64]

In addition, at press time, other ordinances to deal with ride-sharing were still pending in Cincinnati, Ohio and the District of Columbia, as well as bills in the legislatures of New Jersey, Pennsylvania and Virginia.

Vetoes and compromise

A pair of recent state-level bills, each vetoed by their respective states' governors, highlight the terms of the ride-sharing debate, as it pertains to insurance issues.

In Arizona, Gov. Jan Brewer in April 2014 vetoed H.B. 2262, which had support from the ride-sharing companies but

61. Andy Vuong, "Colorado first to authorize Lyft and Uber's ridesharing services," *The Denver Post*, June 5, 2014. http://www.denverpost.com/business/ci_25907057/colorado-first-authorize-lyft-and-ubers-ridesharing-services

62. Connecticut Legislature, "Bill Status Report for Substitute for Raised S.B. No. 235," May 17, 2013. http://www.cga.ct.gov/asp/cgabillstatus/CGABSPrint.asp?selBillType=Bill&bill_num=SB00235&whichyear=2013

63. General Assembly of North Carolina, Session Law 2013-413 House Bill 74, Aug. 23, 2013. http://www.ncleg.net/Sessions/2013/Bills/House/PDF/H74v5.pdf

64. State of Rhode Island General Assembly, "2014 -- H 8298," July 1, 2014. http://webserver.rilin.state.ri.us/BillText14/HouseText14/H8298.pdf

the enmity of the insurance industry.[65] The bill would have required the TNCs to conduct background checks and vehicle inspections of ride-sharing drivers, who would be classified as a form of livery service. It also required $1 million of commercial insurance, as well as uninsured or underinsured driver coverage, to cover ride-sharing activities.

However, the bill limited the definition of livery activities as only those that occur during a trip. This would have the effect of requiring personal auto insurers to extend coverage during periods when a driver is logged in to a ride-sharing app, waiting to be called for a potential passenger. Insurers cried foul, and Gov. Brewer ultimately agreed.

At the other end of the spectrum, insurance industry interests strongly backed and ride-sharing companies opposed H.B. 4075 and its "trailing" bill H.B. 5331, before Illinois Gov. Pat Quinn vetoed both in August 2014.[66] The first bill would require ride-sharing services to abide local taxi pricing guidelines and limited TNC drivers to ten hours per week, among other regulations. It would require TNCs to be responsible for coverage any time a ride-sharing app is turned on, require disclosures about coverage to drivers and riders and codify that personal auto insurers may exclude coverage for ride-sharing. The trailing bill set the required minimum liability coverage at $350,000.

In his veto message, Quinn cited a preference for local control over the for-hire transportation market, saying the measure "would have limited the ability of home rule units of government to adopt alternative approaches that best fit local needs."[67]

Given the nature of these internecine battles in various state legislatures, it could be taken as a sign of a encouragement that the nation's largest state – with the most extensive penetration of ride-sharing services – was able to settle on a regulatory framework that, in its final form, drew at least tacit endorsements from both insurers and ride-sharing companies alike.

A.B. 2293, signed in September 2014 by California Gov. Jerry Brown, was the end result of a lengthy and, at times, contentious deliberative process by Golden State lawmakers.[68] The measure enshrines the state's California Public Utilities Commission as regulator of the TNCs. It also requires TNCs to provide $1 million of liability coverage from when a ride is accepted until a passenger is dropped off.

But as part of a compromise orchestrated by Brown's office, the final of the version of the bill dropped a requirement included in earlier versions that TNCs also provide $750,000 of coverage for any period when the app was turned on, but no ride had yet been accepted. Instead, drivers will be required during such periods to have $50,000 of per-person bodily injury coverage, $100,000 of per-accident bolidy injury coverage and $30,000 of coverage for property damage. In addition, TNCs would take out a $200,000 excess policy for their drivers to cover accidents that might pierce those individual policy thresholds.

What's more, the final bill promised regulatory relief to allow insurers to bring new products covering ride-sharing exposures to market more quickly. That marks a particularly welcome development, given the strictures of introducing new personal insurance products under the regulatory regime established by California's 26-year-old Proposition 103.

Lyft welcomed the bill's passage on its company blog:

> The legislation creates a clear pathway in the market for new insurance products specifically designed for the Lyft community. In the meantime, Lyft will continue providing strong insurance coverage, including our $1 million liability coverage that acts as primary to a driver's personal policy from the moment a driver accepts a ride request until the ride has ended in the app.
>
> This important step forward is thanks to the thousands of Lyft community members who combined forces with groups like Mothers Against Drunk Driving and the National Down Syndrome Society to tell our state leaders that California needs ridesharing. We will continue to work with the insurance industry, including our partnership with MetLife Auto & Home, to develop modern, innovative insurance solutions tailored for the Lyft community.[69]

The measure also earned praise from the Association of California Insurance Companies:

> "Once again California is leading the way in forging public policy to meet the needs of new innovations. We applaud Governor Brown for signing this important legislation and Assemblywoman [Susan] Bonilla for championing it through the legislative process," said Armand Feliciano, ACIC vice president.

65. Astrid Galvan, "Brewer vetoes controversial ride-sharing bill," Associated Press, April 24, 2014. http://www.washingtontimes.com/news/2014/apr/24/brewer-vetoes-controversial-uber-bill/

66. Erin Carlson, "Quinn Vetoes Uber Bill In a Win for Ride-Share Companies," NBC Chicago, Aug. 25, 2014. http://www.nbcchicago.com/blogs/ward-room/Quinn-Vetoes-Ride-Share-Bill-Illinois-Uber-272566381.html

67. Ibid.

68. Josh Richman, "New Uber, Lyft, Sidecar insurance rules signed into law by Gov. Jerry Brown," *San Jose Mercury-News,* Sept. 17, 2014. http://www.mercurynews.com/business/ci_26554062/new-insurance-rules-uber-lyft-and-sidecar-into

69. Lyft, "Lyft Calls for Modern Insurance Solutions," Aug. 29, 2014. http://blog.lyft.com/posts/2014/8/29/lyft-calls-for-modern-insurance-solutions

> "Assemblywoman Bonilla and Governor Brown brought stakeholders together and were able to reach a middle ground that most of the parties, including Uber and Lyft, could support. Consumers can be confident when using TNCs that they are protected and there will be greater transparency on insurance matters for TNC drivers. Personal auto insurance policies will be protected from commercial activities, and a pathway for new insurance products has developed with reasonable insurance limits, and flexibility to allow for continued innovation."[70]

Given its endorsement by both sides of this debate, in the largest state, with the most consequential ride-sharing markets, the compromise forged in California could very well mark a turning point of the TNC insurance debate. Though there remain a host of legal and regulatory issues surrounding TNCs that will no doubt still need to be settled, when it comes to a workable insurance framework, California might very well have set a model that can be replicated across the country.

CONCLUSION

Examining the insurance issues that ride-sharing services currently face across the country, an obvious question comes to mind: why doesn't the insurance industry simply create new products to accommodate this new and growing risk? This paper began by laying out the historical divisions between the personal and commercial lines of property and casualty insurance. While there long have been both market and regulatory reasons for such products to be formally segregated from one another, it is nonetheless the case that, in the auto insurance market, there is significant overlap among writers of both personal and commercial coverage. According to data provided by SNL Financial, among the top 20 writers of personal auto insurance coverage in 2013, cumulatively representing more than 80 percent of the market, 15 also were writers of commercial coverage. Nine companies would count among the top 20 in both lines of business (see Table 1).

Clearly, the problem isn't that personal auto insurers are completely unwilling to write commercial coverage, nor that commercial auto insurers are totally unfamiliar with personal auto insurance coverage. One could imagine personal insurance products brought to market that included optional riders or endorsements – priced separately, to ensure the risk was appropriately rated and underwritten – that would extend coverage for ride-sharing activities, or new "hybrid" policies that include select features of both personal and commercial auto products.

70. Association of California Insurance Companies, "California Governor Signs Bill Fixing TNC's Insurance Gaps," Sept. 17, 2014. http://www.pciaa.net/LegTrack/web/NAIIPublications.nsf/lookupwebcontent/A648E3D5AA13862D86257D560076FD1?opendocument

TABLE 1: 2013 MARKET SHARE OF AUTO INSURANCE WRITERS

	Personal		Commercial	
Company	Share (%)	Rank	Share (%)	Rank
State Farm	18.5	1	1.6	15
Berkshire Hathaway Inc.	10.2	2	1.8	13
Allstate Corp.	9.9	3	1.3	21
Progressive Corp.	8.5	4	6.6	2
Farmers Insurance Group	5.4	5	1.2	23
USAA Insurance Group	5.0	6	0.0	N/A
Liberty Mutual	5.0	7	5.7	4
Nationwide Mutual Group	4.0	8	5.7	3
American Family Mutual	1.9	9	0.2	79
Travelers Cos.	1.8	10	7.4	1
Hartford Financial Services	1.3	11	2.1	9
Auto Club Exchange Group	1.3	12	0.0	N/A
Erie Insurance Group	1.2	13	1.3	18
MetLife Inc.	1.2	14	0.0	N/A
Mercury General Corp.	1.2	15	0.4	54
CSAA Insurance Exchange	1.1	16	0.0	N/A
Auto-Owners Insurance Co.	1.0	17	2.1	8
Auto Club Insurance Assoc.	0.9	18	0.0	N/A
MAPFRE	0.8	19	0.5	42
Integon National Group	0.7	20	0.5	45

SOURCE: SNL Financial

Thus far, Lyft's pending project with MetLife Auto & Home notwithstanding, such products have not come to market. Discussions with major auto insurance underwriters suggest four major reasons why:

1. **Legal uncertainty** – There remain significant questions that will play out in the courts regarding the degree to which TNCs retain vicarious liability for accidents involving ride-sharing drivers. Moreover, it remains uncertain whether drivers who are logged in to ride-sharing apps, but not either transporting a rider or en route to pick one up, will be held to the heightened standards-of-care traditionally applied to common carriers like taxicabs and limousines.

2. **Underwriting uncertainty** – Insurers and their rating bureaus, such as the Insurance Services Office, have decades of data on personal driving behavior and a host of ancillary factors – from credit scores to zip codes – on which to base rates. Meanwhile, commercial auto insurers have a good handle on the sort of exposures they take on when they underwrite taxi

and livery services, and are aided in their underwriting and rate-setting decisions by licensing requirements that serve to screen out some of the worst potential risks. By contrast, ride-sharing – that is, professional transportation offered by unlicensed, amateur drivers – is a brand new risk for which credible underwriting data does not yet exist. The elements that make one a "safe" driver for the purposes of a personal auto insurance policy may not be identical to those required of a driver for-hire.

3. **Regulatory uncertainty –** In some states, it is not legally permissible to include commercial exposures as a part of a personal lines policy. In nearly all states (Illinois is a notable exception), insurers must file their personal auto insurance products with the insurance regulator and provide some actuarial justification for the rates that are charged. In particularly onerous regulatory environments, such as California's Prop 103 regime, only those rating factors that are expressly permitted by statute may be used in setting rates for a personal lines insurance policy. All of these issues confound the ability of insurers to bring innovative products to market quickly.

4. **Market uncertainty –** It remains unclear just how large the ride-sharing market will become and whether demand for new products would justify the expense of creating them. Polling conducted in August 2014 found that, even among residents of urban areas where Uber or Lyft are already operating, just 14 percent had ever used a smartphone application to order a ride.[71] Moreover, depending on the legal and regulatory framework that evolves, it may prove more cost-effective, thanks to economies of scale, for TNCs to purchase "master policies" that cover all of their drivers, rather than having each driver purchase his or her own coverage.

Thus, the answer to the question posed at the beginning of this section is that, when insurers become convinced that the liabilities, regulatory barriers, rating and underwriting factors and market demand presented by ride-sharing services merit new products, new products will be brought to market.

If history is any guide, such products likely will originate in the excess and surplus lines market, where underwriters do not face the strictures of regulated forms and rates that hamper innovation in the admitted market. Alas, such companies also do not enjoy the protection of guaranty fund coverage.

Alternatively, the TNCs could form captive insurance companies to cover their drivers' risks, or ride-sharing drivers could form their own mutual insurance company to offer coverage not readily available on the open market. Indeed, there is precedent for exactly that. The insurance group known today as the Magna Carta Cos. was founded in 1925 as Public Service Mutual Casualty Insurance Corp., specifically to serve the taxicab industry.[72]

In the meantime, we offer the following five recommendations for state and local lawmakers, as they examine insurance challenge in the ride-sharing industry:

1. **Disclosure:** As part of their terms of service, transportation network companies should be required to disclose, both to users and to drivers, what insurance coverage exists, what party is responsible for procuring it and any significant exclusions. Lawmakers may also consider requiring disclosure of the identity of the insurance carrier, its financial strength rating and whether it is an admitted market or surplus lines writer.

2. **Uniform coverage requirements:** The minimum liability limits for bodily injury, physical damage and uninsured/underinsured driver coverages should be uniform across for-hire transportation services, whether they are taxicabs, limousines and livery drivers or ride-sharing services. In some cases, equalizing coverage requirements will require lowering current limits for livery coverage, which frequently are set higher than those for taxicabs. There may be good reasons for some differences in the regulatory treatment of different forms of transportation, but liability coverage is not obviously among them.

3. **Common law standard-of-care:** Whether the so-called "Period 1" – when a driver is logged-in to a ride-sharing app but is not in-transit to or driving with a customer – ought to be defined as a part of the definition of ride-sharing, and thus subject to the same liability insurance requirements as the rest of a trip, is a matter that should be settled by local precedent in a given jurisdiction. Where courts find that ride-sharing drivers are subject to the same heightened standard-of-care requirements during Period 1 as other common carriers, it makes sense to define that period as a part of the ride. Where courts determine that Period 1 driving is not commercial activity, or is more akin to a motorist's use of a personal GPS device, it likely makes sense to exclude it from the definition of ride-sharing.

71. Michael Ramlet, "Poll: Uber, Lyft and Taxicab Apps," *The Morning Consult*, Sept. 18, 2014. http://themorningconsult.com/2014/09/poll-uber-lyft-taxicab-apps/

72. Magna Carta Companies, "Welcome," https://www.mcarta.com/en/welcome.jsp Accessed Sept. 25, 2014.

4. **Underwriting freedom:** Insurers who do not judge ride-sharing to be an appropriate or profitable risk to underwrite should be free to exclude coverage for those services, or to deny or cancel coverage to applicants who are ride-sharing drivers. The alternative would be to force carriers to take on risks that are not appropriately priced, thus potentially driving up rates for all auto insurance consumers.

5. **Product flexibility:** State lawmakers and regulators should ensure their statutory framework is sufficiently flexible to allow new products to be filed that do not strictly meet the definitions of "personal" or "commercial" coverage. Given the paucity of experience data for these new risks, such flexibility ought to include (particularly in the early going) the ability to consider alternative rating factors crafted to meet the unique needs of the ride-sharing market. For instance, insurers may wish to introduce enhanced "telematics" devices that track not only how many miles an insured is driving, but how many of those miles are logged while logged in to one or more ride-sharing services. Alternatively, insurers might look to base rates in part on the average scores ride-sharing drivers receive from customers.

Insurance coverage represents just one of what are a host legal and regulatory issues that must be resolved as ride-sharing grows in popularity. Moreover, while early efforts by lawmakers to address such issues are necessarily responsive to the structures presented by existing ride-sharing apps, services may evolve in the future with radically different business models.

For instance, even if Uber and Lyft ultimately are found not to be immune from liability as "interactive computer services," that doesn't preclude some future application – perhaps one with a more peer-to-peer structure, like that of Craigslist or the original Napster – from mounting a similar defense. Similarly, even if services like Sidecar are found not to meet the definition of not-for-profit "car sharing," there is no assurance that other qualifying services won't gain in popularity. None of the insurance industry's concerns about risks posed by ride-sharing would be assuaged by the knowledge that drivers were just breaking even on each transaction.

The rise and fall of the jitneys offers an instructive cautionary tale. An overzealous regulatory response, particularly one motivated by rent-seeking incumbents, can crush a new and innovative industry in its cradle. The ride-sharing market offers an opportunity to run the jitney experiment over again. The answer is not to eschew any **and all** regulation, but to act modestly and cautiously, imposing new rules only where they genuinely address real consumer harms.

Given a commitment on the part of policymakers to limited, effective government, we believe ride-sharing and other emerging disruptive technologies should have every opportunity to thrive.

ABOUT THE AUTHOR

R.J. Lehmann is senior fellow, editor-in-chief and co-founder of the R Street Institute. He is author of the R Street policy papers: "Government sources of systemic insurable risk," "The value of conservation compliance to hunters and anglers," "Reforming Michigan's auto insurance market," "Medical cost containment in the Wisconsin workers' compensation market" and the 2012 and 2013 editions of R Street's Insurance Regulation Report Card, and was co-author of the R Street policy study "Five principles for regulating the peer production economy." He is also author of the James Madison Institute's "Ten reforms to fix Florida's property insurance marketplace — without raising rates" and co-author of the John Locke Foundation's "Spotlight on NC's auto insurance system: Seven things to understand."

Prior to joining R Street, he was an award-winning business journalist who spent nine years covering the insurance, banking and securities industries. He served as deputy director of the Heartland Institute's Center on Finance, Insurance and Real Estate. He previously was senior industry editor with SNL Financial, leading the news service's coverage of the Dodd-Frank Act, the Patient Protection and Affordable Care Act and legislative and regulatory developments at both the state and federal level. Prior to that, he spent six years with the A.M. Best Co. as manager of their Washington bureau.

He is a three-time award winner from the American Society of Business Publication Editors and was the youngest-ever winner of a first place prize from the New Jersey Press Association. He also is the former public affairs director of the Independent Institute in Oakland, Calif., and the former state chapters coordinator of the Republican Liberty Caucus.

His writings have appeared in the San Francisco Chronicle, Wall Street Journal, Reason, Roll Call, CQ, The Hill, Townhall.com, American Spectator, Orlando Sentinel, Travel Weekly and Folio magazine, among other publications.