

PARK STRATEGIES, LLC

February 27, 2015

Honorable Neil D. Breslin
President, NCOIL
New York State Senate
Capitol, rm 414
Albany, New York 12247

Representative Matt Lehman
Chair, Property Casualty Insurance
Indiana General Assembly
200 W. Washington
Indianapolis, Indiana 46204

Dear President Breslin and Chairman Lehman:

On behalf of the Taxicab, Limousine & Paratransit Association (TLPA), the largest representative organization of livery service providers in the United States, I want to commend and thank the National Conference of Insurance Legislators (NCOIL) for its close attention to and public discussion of the issue of transportation network companies. I want to also extend my personal thanks for having been allowed to participate in the TNC panel discussion held during the NCOIL Annual Meeting in 2014.

Let me also commend Representative Michael Stinziano of Ohio for his work on the issue of TNCs and his efforts to bring the Proposed Model Act to Regulate Insurance Requirements for Transportation Network Companies and Transportation Network Drivers to the Property Casualty Committee for consideration at the upcoming NCOIL meeting in Charleston.

The bill seeks to address a number of issues that are and have been of great concern to the taxi and livery industry, and should be to all those entrusted with the public's safety. However, it does not expressly support the existing regulatory paradigm for insurance relating to livery operators, under which thousands of taxi and livery operators work each day and which was put in place to provide maximum safety and security to the riding public and others on the road. Instead, it gets bogged down in the confusion that the TNCs have created by controlling the tone and tenor of the public policy conversation, and then tries to manage those issues. So

we would like to establish the simple fact that the proposed legislation could be a single-page, one-sentence measure:

“All persons engaged in the business of livery, inclusive of the time the person intends to use the vehicle as a livery vehicle to the time such vehicle is no longer actually or intended to be used as a livery vehicle, shall be covered by commercial automobile insurance (of whichever extent a regulatory body requires).”

As TLPA has argued before NCOIL, the NAIC and other venues, the current regulatory system for insurance is based upon a strong understanding of the livery business in the United States, adequately protects passengers and drivers alike, and does so in a transparent manner. As written, however, the bill buys into the business model of a couple of companies and seeks to establish public policy based upon that flawed model.

So much is going into the subjects of how often drivers use vehicles for TNC activities, to whether they are part time or can otherwise afford commercial insurance and other matters that are changing daily, rather than into the actual activity—ferrying persons unknown to the operator from point A to point B for profit. For example, while the bill allows for personal lines automobile insurance carriers to avoid both indemnity and defense obligations for TNC activities, it cannot be concluded that these carriers will not incur some costs or ultimate exposures. Any expense of a personal lines carrier related to a TNC matter will necessarily be shifted to its policyholders.

If a personal lines carrier were to be allowed to disclaim and deny defense, and the insurance “provided” by a TNC were to deny coverage for whatever reason (this is already an issue which has been subject of litigation) then an incident will become uninsured. Where then shall an injured driver or passenger or third party turn for compensation?

The TNCs, as the owners of the insurance policies and the engagement relationship with the TNC drivers (really an employment relationship but one which is not acknowledged as such, and for which workers compensation insurance is not provided), are almost completely and unilaterally responsible for determining whether an incident is provided coverage. Therein lies an inherent conflict of interest even without investigating whether the TNC, under its own business model, has an adequate insurable interest to justify it providing insurance to the TNC driver. The proposed legislation could provide critical clarity by stating:

“There shall be a presumption that a transportation network company’s providing of insurance to network operators is evidence of an insurable interest

of the company in the actions and property of the network operators, and responsibility for such actions.”

The TNCs would most certainly object to such language, but not for the reasons that might first come to mind. The TNCs have effectively argued that they have to be cautious about providing coverage, or taking responsibility, for operator actions because the operator may be working for multiple TNC apps at the same time, or may be ghost-driving passengers ostensibly under the app but through their own private arrangements. Aside from the question, again, about whether any insurance may attach to such incident in this case, it explodes the myth that TNC operators are just part-time drivers looking to make a few extra dollars. The reality is that the TNC operator has very effectively and quickly become a master manipulator of the system handed to them, and now this legislation and other laws and regulations already promulgated are guaranteeing these operators a codified competitive advantage.

The TNC debate has only focused on what can be done to encourage the TNC companies and their selected business plans, rather than what is best for all livery drivers, the general public and other motorists. Plus, the legitimate livery operator, paying thousands more for commercial automobile insurance coverage because the law requires him/her to, has been left out of the discussion entirely.

Many parties, including passengers, vehicle owners who are not TNC operators but whose vehicles may be used for such purposes, and personal lines insurance carriers and their millions of insureds, are being asked to adjust to the contortional character of the TNC business plan, rather than asking—demanding—TNCs to adapt their business model, operating plans and structures to the rule of law as it pertains to insurance for livery operators. For example, instead of tilting the competitive landscape towards the favor of the TNCs by imposing far less onerous insurance rules upon them and their drivers, why not engage in a discussion of whether the Period One concept, involving the operating of a livery vehicle without a passenger and prior to accepting a rider or responding to a rider’s request for a ride (whether that request is a street hail or utilization of an app) does not need to be covered by commercial insurance. If no commercial insurance during Period One is a valid concept, then why not include within the model act a provision freeing ALL livery operators from the confiscatory chains of commercial insurance premiums by requiring commercial coverage only when actually engaged in the business of responding to a call for service or actually providing such service (Periods Two and Three of the TNC business model).

It should also be noted that the proposed legislation has not been coordinated with the most important governmental agents in the TNC discussion: the transportation regulators. NCOIL,

Page 3

Serio to Breslin, Lehman

and the NAIC, should develop consensus public policy with those who are involved the most with the oversight of all providers of transportation services, and who know the public safety needs the best. Taxi commissions, public utility boards and others who are best informed in the area of livery should be directly involved with NCOIL in its deliberations on any measure involving TNCs, as well as with the NAIC as it develops its white paper on TNCs. TLPA has asked the NAIC to engage the International Association of Transportation Regulators in discussion on the white paper, and urges that NCOIL do the same with respect to this proposed act.

TNCs are largely evading the existing insurance requirements and trying to compel legislators and regulators to establish an entirely new legal paradigm simply to accommodate their business model. TLPA, while appreciating the efforts undertaken to craft this proposed legislation, very strongly urges a reconsideration of NCOIL's approach to the TNC issue and a re-draft of this legislation in a manner that more accurately reflects the fact that the TNC marketplace is not any different than the established livery market.

Sincerely,

Gregory V. Serio
Partner