

Share and Share Alike

Peer-to-peer technologies are allowing individuals to offer rides in their cars to people for a fee, and to rent their houses to strangers. For adjusters, claims arising out of these new shared economies are anything but simple.



Welcome to the so-called “shared” or “peer-to-peer” economies, where technology brokers arrangements with individuals willing to perform a service for a fee.

Consumers like the new technology for its ease, cost savings and simplicity. But claims scenarios arising out of these business transactions are anything but simple.

Increasingly, adjusters are being called upon to navigate the tricky world of insurance claims generated by nebulous and largely unregulated shared or peer-to-peer economies.

“Bring it on,” said Fred Plant, senior vice president of the Atlantic region at ClaimsPro and president of the Canadian Independent Adjusters Association (CIAA). “In the adjustment business, we love anything new because the answers aren’t on the shelf and they really call on the expertise of what adjusters do. They underscore the necessity of keeping good notes, digging into everything and making sure you have a good understanding of the situation.”

Coverage Issues

Uber and Airbnb are two well-known, real-world examples of shared economies. Politicians, litigators and journalists are now becoming familiar with their innovative, disruptive business models, which have gener-

ated a great deal of public discussion. Debate often focuses on insurance coverage in the new world of peer-to-peer technology and services.

To understand the insurance coverage issues, consider Uber drivers, who operate in 260 cities and 45 countries around the world. Uber drivers must be 21, own their own four-door sedan and carry their own *personal insurance policies*. Which raises the basic question: If an Uber driver crashes the car while taking passengers to a destination for a fee, will their own personal insurance policies cover the damage to the driver’s car or liability for the passenger’s injuries?

It’s an open debate right now.

In Ontario, language in Section 3 of Ontario’s OAF 1 Standard Auto insurance application asks a very direct question about auto use: “Will any of the described automobiles be rented or leased to others, or used to carry passengers for compensation or hire, or haul a trailer, or carry explosives or radioactive material?” (While this is an Ontario example, the issues apply across all provinces in Canada).

If yes, the driver may request from the insurer an OPCF 6A policy endorsement, which gives permission “for the automobile to be used to carry passengers for compensation or hire.”

Deborah Sherren of Cunningham Lindsey believes that service-for-hire

situations require commercial insurance policy endorsements such as the OPCF 6A. “It comes down to whether or not you believe Uber is a taxi service or not,” she said. “While it could be called a ride-share program many argue that if you are taking someone to a destination that you had no intention of going yourself and you are charging for that service, then you are a taxi service.”

Uber denies this characterization of its internet-based service. Recently Uber won a case in an Ontario court against the City of Toronto, which attempted to argue that Uber was a “taxicab brokerage” and should be licensed accordingly. The judge noted that a taxicab license did not apply to Uber drivers under the City’s regulations, and a limousine service license would apply to Uber drivers only if they “accept” calls in any manner to arrange transportation. But Uber’s app allows Uber drivers to *decline* a ride request, meaning Uber is not required to carry a license as a ride broker.

Licensing aside, the insurance coverage issue revolves around whether people are informing insurers about the change in use of their personal cars or homes. Adjusters say individuals offering services in the shared economies may not wish to disclose to insurers that they are using their vehicles or homes for commercial pur-

poses to avoid paying higher commercial policy premiums.

But “the fundamental rule of informing insurers applies across all insurance lines,” said Plant. “The Golden Line threading through all of these situations is utmost good faith.”

Estoppel

Potential disputes about coverage raise a major issue for adjusters when it comes time to adjust a shared economy claim – estoppel.

Estoppel is “a bar created when someone by his action, or lack of it, indicates he will not exercise a right he has,” according to the Insurance Institute’s Dictionary of Insurance. In the context of shared economies, adjusters must be careful that insureds do not assume there is coverage just because a claim is under investigation.

“As an independent adjuster, I would immediately escalate any suspicion I had regarding a potential commercial use vehicle – pizza delivery, courier drivers [who tend to use their own personal vehicles],” said Sherren. “I would send out a non-waiver and escalate it to the company right away.”

A non-waiver form allows the insurance company to investigate the claim on a without-prejudice basis, notes Sherren. “Nothing that I am doing implies that I am covering your car,” she explained. “If adjusters don’t investigate without prejudice or ask insureds to sign a non-waiver before they do that appraisal of the vehicle, then that could be considered an estoppel, because they implied there was coverage when there may not be.”

Tammie Norn of Proformance Group Insurance Solutions said she always counsels adjusters to carry non-waiver forms with them when they go out to meet with an insured or to a scene to investigate any claim.

Not everyone will sign the form on the scene, Norn said. “Sometimes the insureds will get scared off by that [non-waiver], and they won’t want to sign it because they think we are automatically going to deny the claim,

but that’s not the case, obviously,” she said. “We are investigating coverage.”

If a client refuses to sign the non-waiver, the next step is to provide the insured with a reservation of rights letter. “That basically says, ‘We’ve explained this to you, you chose not to sign the non-waiver, so we are providing you with this letter to say we are



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going to continue to investigate,” said Norn. “However, by virtue of the fact that we are investigating does not necessarily mean there is coverage. That would be the first and foremost thing we would need to do as an adjuster.”

Vicarious Liability

Another ambiguity around shared economy claims is the relationship between people offering the services

and the business organizations offering the internet-based, peer-to-peer technology. Who exactly is liable – or vicariously liable – in the event of a claim?

A class action lawsuit raising a legal question about the relationship between Uber and its third-party drivers was allowed to proceed to trial in San Francisco in September 2015. Basically, the case asks the following question: Are Uber drivers “employees” of Uber, or are they independent contractors?

Case law or regulation around this issue would be of interest to adjusters because of the potential vicarious liability issue, Norn said.

“I am always looking for other parties that may be liable,” Norn said. “If it’s my insured who is the host [Uber] driver here, and we’ve got an injury to a passenger and they are suing our driver, my mind automatically goes to Uber as well. I am certainly going to be considering the viability of bringing them into the action from a vicarious liability perspective.”

Ultimately, adjusters say, fact-finding will play a role in how insurers adjust their coverage to suit shared or peer-to-peer economies. Plant says it’s a well-known axiom among insurance lawyers who collect information from adjusters that “those with the best notes win.”

“Adjusters have never been the ones to develop policies,” said Plant. “But underwriters do use the experience of adjusters to see what they intended to cover and what they didn’t intend to cover. They use that information to develop future policies.” 🍁

More information about the impact of shared economies on insurance is available in the CIP Society Trends paper, ‘Uber: Ride Sharing and Liability Bearing,’ available at www.insuranceinstitute.ca. For adjusters seeking to learn more about emerging risks, The Insurance Institute of Canada now offers a three-course Risk Management Certificate Program.