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From: "Martyn B. Hill"

Date:06/17/2014 7:42 PM (GMT-06:00)

To: (Undisclosed)

Subject: Uber/Lyft Insurance Deficiencies

Per your request, I've tried to summarize some of the points that I've made in various prior documents. In that vein, I've attached several source document to prove and/or to provide better evidence of the summary points that I'm making below (though such documents often refer to additional evidence previously shared, which can be supplemented if anyone wants to do so). Those referenced documents include:

- 1) FYI 2 – Nana Barnett, Lyft Driver SA News Article
- 2) 6/17/2014 Uber/Lyft Insurance Crackdown in California
- 3) #316376--Draft 8 of TLPAs paper on Insurance (Executive Summary not included)
- 4) #317736—Backup Memo on James River Only being Surplus Lines, and the distinctions

My summary points as to the insurance deficiencies and uninsured risks created by the Uber/Lyft business model are as follows:

- 1) Uber/Lyft by their own admission explored an insurance policy that would have covered more of the risk that their business model created (as with Lloyds), but decided not to do so because it would have eaten into their profits. (see 6/17/2014 Insurance crackdown article above)
- 2) Uber/Lyft instead chose James River ("JR") because JR could be entirely controlled by the contractual relationship between Uber/Lyft on the one hand and JR on the other. Thus, JR's obligations are to Uber/Lyft by contract and not to third parties who may be injured by conduct or omissions which should give rise to insurance coverage.
- 3) An "Admitted" insurance company has an obligation to write insurance on forms approved by the insurance departments of each respective state, to provide financial information and participate in a guaranty fund; and to follow state promulgated claims handling procedures to assure that injured victims who are the alleged beneficiaries of such insurance coverage are able to recover from such insurance carriers; and the failure to properly process and pay a claim is subject to the jurisdiction and oversight of the insurance regulatory board. This is why every jurisdiction which licenses taxicabs or other public transportation has historically required (and as best we know continues to require) insurance coverage by "Admitted" insurance companies.
- 4) James River is not an "Admitted" Carrier in Texas (and to the best of my knowledge not in any state in the USA); they are only a "Surplus Lines" insurer, meaning that they don't fall under the jurisdiction of any state's insurance commission, and they can pretty much do as they like, since the relationship is between the surplus lines insurer and their contracting insured; NOT for the benefit of third parties. The Texas Department of Insurance's website explains the distinction as follows: *"The Texas Department of Insurance by law does not regulate surplus lines insurers as they do the authorized insurers. The rates and policy forms are not subject to TDI review or to most Texas insurance laws. This gives surplus lines insurers maximum flexibility to provide a market for unusual, large or hard-to-place risks."*
- 5) Thus, the Uber/Lyft business model through James River as a surplus lines carrier allows their driver contract to trump and thereby circumvent the rules, regulations, and claims handling procedures established by state insurance commissions, respectively. This represents an epic shift from the historical obligation by "for hire" transportation companies to secure insurance from "Admitted" carriers, because cities and states have viewed such insurance as for the benefit of passengers and injured third parties, not for the transportation carrier or dispatch service.
- 6) Despite creative marketing by Uber/Lyft that their model deserves to operate outside a licensed environment due to a \$1.0 million insurance policy, their driver contract delegates the entire responsibility for securing

insurance and for determining coverage to the driver, not to Uber/Lyft. In fact, the driver contract makes securing such insurance an “express condition” of Uber/Lyft having any contractual obligation to the driver.

- 7) Uber/Lyft publicize that their drivers personal policy will provide insurance, and that, if not, the James River policy will provide \$1.0 million as an “excess” with drop down provisions. However, because James River is not an Admitted Carrier; only a Surplus Lines Carrier; and is not subject to state insurance jurisdiction over claims handling, JR’s only obligation is under the driver contract. Technically, if the driver breaches the obligation to secure the proper insurance, JR avoids liability because the driver will have committed a prior breach of the driver contract. During the honeymoon period, JR may pay as Uber/Lyft so instruct; but they can legally avoid coverage if they so choose based on the contract business model offered by Uber/Lyft-JR.
- 8) In fact, within the JR Policy itself, JR reserves the right to only respond to a claim if (a) JR voluntarily decides to do so; or (b) if a “Final Adjudication” is had which confirms that the driver’s personal insurance did not cover the claim (likely many years down the road, and after the statute of limitations has expired).
- 9) Having an insurance policy is not the same as having insurance coverage for the perceived risk. Uber/Lyft have had many revised insurance policies, each time claiming that the most current endorsement solved the discovered deficiencies of the past insurance policy. In early 2014 Lyft offered a Revision 5 insurance policy; Uber filed an insurance policy as of April, 2014; and both have since claimed “newer and better coverage” – though such “newer and better” policies are at this point a trade secret. What we know based on history is that after each new policy is released/analyzed, its failures are revealed and Uber/Lyft quickly announce that they have a newer and better policy.
- 10) Based on the latest revealed policies (current as of April, 2014), and subject to the policy and contractual conditions noted above, the conditional, excess coverage only purported to cover a claim during the time after the driver “accepted” a trip offer, was en route to that pickup point, actually picked up the passenger and during the time that the passenger was being transported to his/her destination. It did not offer any coverage during the time that the driver was looking for a trip (the most dangerous time period), nor the time that the driver is returning to base or his preferred location for securing the next trip. The “for hire” exclusion on personal insurance is not just “during hire” but during the period that the vehicle is available or “for hire”. This gap is the major thrust of 18 state’s warnings that the Uber/Lyft insurance model has serious flaws.
- 11) Supposedly Uber/Lyft have pursued a new and better insurance that covers, though in significantly reduced levels of insurance, the period while the App is “On” but no passenger is in the vehicle. This alleged insurance policy has not been released publicly, if it exists at all; and even if it does exist, because it is offered by JR as a Surplus Lines Carrier, only with obligations through the driver contract, the policy is more fluff than substance as explained above.
- 12) Regardless of Uber/Lyft’s latest claims as to such new insurance policy, they do not even purport to provide any insurance coverage during the time that a driver is transporting Uber/Lyft’s passengers but for some reason the App is in the “Off” position, nor during the transportation of an Uber/Lyft driver’s repeat business customer who contacts the driver directly; nor while and Uber/Lyft driver transports a street hailed passenger which may well occur immediately after the Uber/Lyft driver drops off an Uber/Lyft passenger at a popular pickup/drop-off spot, as just one example.
- 13) This “App Off” risk is a very real and repeated every day. As just a few examples, Houston City Councilman Pennington shared during an open Council session that he used Uber in Chicago, but then he clarified that at the airport he got into an Uber vehicle as another Uber passenger was exiting, but didn’t run it through the Uber App – presumably because it would have taken longer and been inefficient. Of course, the driver saved the Uber 20% fee by transporting the Councilman without going through the Uber App. As another example, Nena Barnett (article attached as FYI 2) explained that she was a Lyft driver, but her iPhone went dead while she was en route to pickup a passenger, so she found him without the App, and intended to transport him without the App (because she didn’t have time to recharge her iPhone) – all of which would have been performed without Uber/Lyft JR insurance; and with no personal insurance due to the “for hire” exclusion on personal insurance policies.

- 14) Uber/Lyft have emboldened their drivers to drive without “for hire” licenses, to ignore ordinance obligations, and to believe that the Uber/Lyft legal/lobbying team will pay their fines and attack the ordinances. Free of such restrictions, it is not only foreseeable but an absolute certainty that these same drivers will operate under the Uber/Lyft umbrella, including confusion over insurance, and run their repeat business customers and street hailed customers through their personal vehicles, during App Off, with no insurance coverage whatsoever. Uber/Lyft don’t care what the drivers do during App Off, so long as Uber/Lyft have no direct exposure – as this quid pro quo entices drivers to join Uber/Lyft and thereby free themselves from insurance and ordinance requirements under the licensed taxi model.
- 15) Uber/Lyft understand the risk and the likelihood that such drivers will operate their personal business and street hails, which explains why Uber implemented an “Auto Log Off” procedure which terminates the App quickly during non-App operation, and why Uber/Lyft have tried to develop procedures to avoid any possible exposure to themselves. See the article “Once Friendly Territory, California Looks to Toughen Rules for Uber, Lyft”.
- 16) Uber/Lyft have effectively loaded the proverbial gun by allowing drivers to shoot inside the city limits, handed it to their drivers for a percentage of the revenue from “App On” shooting; emboldened the drivers to believe that they can ignore local laws that prohibit shooting inside the city limits; but then avoiding responsibility for “App Off” shooting injuries by the same drivers within the same city limits. More people are killed by cars than by guns, so if an App cannot trump local gun laws, an App should not trump vehicle for hire laws, especially those requiring financial responsibility for injuries caused by negligent conduct.
- 17) It is nearly impossible for law enforcement to detect whether a passenger is being transported during App On or App Off. Only TNC’s like Uber, Lyft and their drivers have such information. Uber/Lyft take no responsibility for their drivers who perform “for hire” transportation during App Off, and they do not even claim to offer such insurance coverage. Their business model, however, thrives on the opportunity they afford drivers to operate outside the law, under the umbrella, and void of financial responsibility. Therefore, there is no logical, enforceable solution to assuring that drivers have commercial automobile insurance during “for hire” transportation other than to require 24/7 commercial automobile insurance for all vehicles which operate as “for hire”.

Let me know if you or anyone else needs any additional documents or backup materials, etc.  
Marty

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