

NATIONAL OFFICE

49 South Maple Avenue | Marlton, NJ 08053

Telephone: (856) 596-3344 | Toll free: (800) 652-7007 | Fax: (856) 596-2145

Email: info@limo.org

Websites: www.limo.org | www.nlaride.com | www.riderresponsibly.org

**STATEMENT OF THE NATIONAL LIMOUSINE ASSOCIATION
RELATING TO TRANSPORTATION NETWORK COMPANIES**

EXECUTIVE SUMMARY

The National Limousine Association (NLA) believes that the underlying purposes for regulating the passenger transportation industry should be applied in the public interests to all operators of passenger transportation. This includes Transportation Network Companies (TNCs).

The public and regulatory interaction with TNCs continues to suffer from misperceptions that affect the safety of the public, the consumer rights of the passengers, the fair treatment of TNC drivers, and the fair application of laws towards bona fide operators of passenger transportation.

Some TNCs have elected not to uphold the same duties as bona fide passenger transportation operators and claim that they are merely providing a web-based application that introduces drivers and passengers. Since many facts belie this assertion, the NLA is opposed to treating TNCs as if they are outside of the traditional passenger transportation industry, and thus exempt from having to comply with legal and insurance requirements, which are designed to protect passengers, drivers, and the public.

The National Limousine Association (NLA) has carefully examined the burgeoning segment collectively referred to as Transportation Network Companies (TNCs) and has adopted the following position.

1. Scope.

TNCs are diverse as to the extent to which they self-regulate or implement requirements upon their drivers. For the purpose of this statement, the NLA defines a TNC as an organization that provides for-hire, on-demand or pre-arranged passenger transportation services using an online-enabled software application (app) to connect drivers.

In order to qualify as a driver, some TNCs require that an applicant attest that he has obtained the necessary operator's license and auto insurance; many TNCs do not independently verify this. Some TNCs permit drivers to participate in the TNC's network with a personal operator's license and personal auto insurance rather than commercial auto insurance. Some TNCs do not obtain the necessary authorities to operate at airports as either a taxi or as chauffeured transportation.

Our position relating to TNCs as set forth in this Statement strictly concerns those TNCs that:

- a. dispatch passenger transportation assignments to drivers who either use their own personal vehicles, or who use an employer's vehicle beyond the scope of the employment relationship;

- b. do not independently verify the validity and currency of the operator's license and auto insurance of an applicant;
- c. do not require a driver to maintain commercial auto insurance; or
- d. do not obtain the necessary authorities to operate at airports, as a taxi, or as chauffeured transportation.

2. Insurance.

The NLA observes that critical members of the TNC industry do not maintain adequate insurance.

One example of the level of coverage required for a bona fide chauffeured transportation operator is in California where the Public Utilities Commission requires every carrier of passengers to carry \$750,000 per vehicle in insurance coverage for payments against personal bodily injuries and damage to property. This is the minimum level of coverage, which applies to vehicles with a seating capacity of seven passengers or less; the required coverage increases to \$5,000,000 for an operator that has any vehicle in its fleet with a seating capacity of 16 passengers or more,

The NLA notes that there is considerable state-by-state variation in commercial insurance requirements; but regardless of state law, bona fide passenger carriers are required to carry appropriate commercial insurance for the protection of drivers, passengers and third parties. Because of this requirement, a member of the public that brings a claim will be able to access adequate resources to obtain restitution. By contrast, some TNCs expressly permit drivers to perform commercial transportation activities on the TNC's behalf, including waiting for a passenger or returning from a passenger trip, with only personal liability or automobile insurance.

a. Personal Auto Insurance Carriers May Not Cover A Claim For A For-Hire Transportation Event.

Personal auto insurance is for personal use and is not, as a product, designed to cover commercial usage. While there is a business-use exception that permits an employee to use his own vehicle for business use while enjoying coverage, in most cases, this expressly excludes vehicles that are themselves the business. Personal auto insurance will most likely not cover a vehicle that is used to carry passengers for a fee. Likewise, if a driver has his app turned on and is therefore seeking passengers, if a driver is waiting for a passenger, or if a driver is returning from a passenger trip, most personal auto insurance policies will not cover those activities, absent a specific rider.

Thus, if an accident leads to a claim, a personal auto insurance carrier may deny coverage on a personal auto insurance policy.

The informal opinion of the National Association of Insurance Commissioners (NAIC) is that, if a vehicle, covered only by personal auto insurance and engaged in the for-hire transportation of passengers, was involved in an accident, there is a high probability that the carrier would deny coverage, drop coverage, or both in turn. In that same informal opinion, the NAIC suggested that a for-hire vehicle is operating outside of the scope of personal auto coverage the moment that a driver's TNC app is turned on. Thus, even when the driver is not actually hauling a passenger, he is acting in a commercial manner due to the fact that his TNC app is activated, thereby signaling his availability to be dispatched.

Even TNCs that claim to offer insurance for passenger trips may be referring to insurance products that could leave substantial gaps when compared to a commercial auto insurance policy like the policies that many NLA members prefer. California, as an example, has expressly codified the premise that a driver's

personal automobile insurance will not cover ridesharing activity unless the policy specifically states that it will do so.

In one well-reported event, a TNC-dispatched driver crashed into another vehicle, and the TNC passengers suffered serious injuries to their heads, necks and backs. The TNC-dispatched driver's insurance company responded that it would not cover the accident because the drivers' personal auto policy did not cover his commercial passenger transportation trips.

b. Passengers and State and Local Governments May End Up Paying For Costs of Damages and Injuries That Imperfect Insurance Policies Don't Cover

The victim of a TNC-dispatched driver's negligence could become a substantial expense to the state. State funds, the NLA notes, are not unlimited. But, such as they are, they are funded in part by the taxes dutifully paid by bona fide passenger carriers.

One party that often does not appear to experience much liability for the negligence of a TNC dispatched driver is the TNC itself. In several cases, TNCs have disavowed liability on the pretense that the TNC is merely a software app and not the passenger carrier.

Some TNCs do carry insurance. In some cases, these are primary auto insurance policies, but they sometimes have gaps when compared to a typical driver's commercial auto insurance policy. In some other cases, these policies may only provide secondary insurance after a driver's insurance policy is invoked.

Thus, sometimes there may be a substantial gap in coverage that may leave some victims uncompensated by the party at fault. If a TNC-dispatched driver incurs liability while driving his own vehicle and does not have his own commercial auto insurance, then, on that basis, a member of the public may be injured without access to proper restitution from the TNC or the driver, depending upon the scope of coverage of other policies.

Since some TNCs have already denied responsibility on the basis that the driver is independent and does not work for the TNC, it therefore stands to follow that the driver, acting independently, is working directly for the passenger. The NLA is concerned that an innocent victim could bring claims against the passenger(s) of the TNC-dispatched vehicle, having no proper redress from the driver. In fact, such suits are already becoming a fact of life. In *Lawrence v. Uber Technologies, Inc.*, for example, a bicyclist was struck by a car door operated by a TNC-dispatched driver. The bicyclist filed suit against the TNC, the owner of the vehicle, and the passenger.

The NLA therefore additionally questions whether the passenger that steps into an under-insured vehicle fully understands that the passenger may have adopted the liabilities that the driver, the driver's personal auto insurance carrier, and the TNC might have abandoned.

3. Safety.

The bona fide passenger transportation industry has historically been held to a duty of care toward the passenger and public. This duty of care requires a person to adhere to a standard of reasonable care while performing any act that might foreseeably cause harm to others if handled negligently. Unlike the bona fide passenger transportation industry, some TNCs attempt to suggest that the duty of care does not apply to them.

While many TNCs profess that they conduct a criminal background check, many do not independently verify the driver's attestation relating to the currency of his operator's license or the sufficiency of his

auto insurance. In San Francisco, a TNC driver allegedly punched a pedestrian. A pedestrian child was struck and killed by a TNC driver in San Francisco. Another pedestrian was struck with an injury to her leg – thereafter, the TNC and the driver’s auto insurance denied responsibility. News agencies have published stories of passengers alleging that they have been physically or sexually assaulted by TNC drivers in the metropolitan areas of Seattle, Los Angeles, Washington, D.C., and Boston among perhaps others.

Concededly, these unfortunate events could have happened at bona fide transportation entities. However, the NLA believes that the incidences described here are reported in higher proportion in TNCs than in regulated transportation industries such as taxi and chauffeured transportation. The NLA further believes that perhaps some of these events could have been avoided if TNCs faced the same regulations and duty of care as other regulated transportation industries.

But perhaps most importantly, unlike bona fide passenger transportation operators, some TNCs may not accept responsibility for the conduct of their drivers on the pretense that the TNC is merely providing an app, not the car and driver.

4. False Advertising.

The NLA believes that the majority of the passenger public are misled or kept unaware of critical facts that would otherwise affect their consumer behavior. First, most passengers that summon a TNC-dispatched vehicle probably believe that the TNC is the carrier.

Second, most passengers either believe that the driver has proper commercial auto insurance or that the TNC has proper commercial auto insurance that will fully cover a trip. In fact, as discussed above, this may not always be the case. Most passengers probably do not believe that they may enjoy personal risk exposure when hiring an under-insured commercial driver.

Most passengers are probably also unaware that the tip or gratuity that TNCs charge does not necessarily make its way in full to the driver. This has been the subject of enforcement actions by states’ attorney generals, including New York. Bona fide chauffeured transportation operators disburse the entire gratuity or tip to the driver or else clearly inform the passenger as to the portion of a gratuity or tip that is being retained as a service charge.

One prominent TNC advertises cars that work through its app as its “fleet.” *O’Connor v. Uber Technologies, Inc., et al.* If it is not true that these cars and drivers are under the TNC’s control, then there may be a misperception that the cars and the drivers are under the direct control of that TNC. However, if it is true that the car and the driver fall within the TNC’s “fleet,” then this constitutes additional evidence that the relationship between the TNC and driver are not independent, but, more properly, employer and employee.

5. Independent contractors.

Some TNCs believe that they are neither engaging an employee nor an independent contractor.

There is now much evidence that brings this into question. Some TNCs direct drivers in how to perform their work, including where to go, when to get there, and where to deliver a passenger. Some TNCs direct the driver as to how much to charge. The driver in those cases does not have any independence on these matters. Some TNCs have disciplinary rules and procedures, and provide guidance on conduct, dress, and customer care.

In addition, TNCs collect payment from the customer and remit payment to the driver. Some TNCs provide financing or financing insurance for a driver's acquisition of a car.

The jurisprudence on independent contractors is well established. On the basis of the foregoing facts, some of these TNCs are enjoying the benefits of using a TNC-dispatched driver's services, but without the responsibility of employment laws that protect drivers, employment taxes, or unemployment insurance payments.

a. Tax implications.

As a consequence, these TNCs do not withhold state or federal income tax. The states incur costs for passenger transportation, including maintenance of bridges and roads, police enforcement of safety laws, and administrative costs associated with regulatory industries like taxis and bona fide chauffeured transportation. These costs are borne in part by the taxes paid by bona fide chauffeured transportation operators.

b. Unemployment insurance.

Unemployment is a social burden that affects local, state, and federal government. For this reason, bona fide employers are expected to maintain unemployment insurance premiums through their state unemployment insurance commission. Some TNCs do not maintain any unemployment insurance on the grounds that drivers are merely using the TNC's software app, the driver is not working for the TNC as an employee or independent contractor.

c. Workers compensation.

In addition, and perhaps most critically, these drivers do not benefit from worker's compensation coverage, another critical social net that is designed to protect employees and society from the problems associated with destitution.

d. Overtime.

The courts and the U.S. Department of Labor have concluded that dispatchers that: accept payments from passengers, deduct from payments for administrative costs, and give assignments regularly to drivers, are employers. At the time of this writing, a suit is currently pending before the federal court in the Northern District of California, see *O'Connor v. Uber Technologies, Inc., et al.* While, at the time of this writing, the parties have entered into a settlement agreement with the hopes that the court will approve that agreement, the settlement does not negate the legal proposition that economic control and direct supervisory control are strong indicia that drivers should be entitled to the legal protections that come with an employer-employee relationship.

6. Numerous Jurisdictions Have Interceded With TNCs.

NLA's position on this issue is shared by a significant number of pro-active jurisdictions. To NLA's knowledge, partial or complete cease and desist orders or regulatory actions have been issued or considered at one time or another by the cities of Anchorage, Auburn, Austin, Boston, Cambridge, Dallas, Chicago, Detroit, Eugene, Los Angeles, Minneapolis, Panama City Beach, Philadelphia, San Antonio, San Francisco, Seattle, Tuscaloosa, the District of Columbia; the Commonwealth of Virginia; and the States of Maryland, Michigan, Nevada, New York among perhaps others. While this list continues to change, and many of the aforementioned jurisdictions later withdrew their regulatory or enforcement initiatives, at the time of this writing the sheer numerosity of jurisdictions that have, in some way,

expressed concerns about the conduct of some TNCs demonstrates the significance of the current problem.

7. Unfair Competition Practices.

A class action has been filed in New York alleging that Uber's software algorithm that sets trip prices based upon rider demand and driver availability, which can sometimes lead to surge pricing, constitutes an unlawful use of a market dominant position to set prices in an anti-competitive manner in violation of antitrust laws.

The NLA opposes any instance where competitors within the passenger transportation industry coordinate in any way regarding prices. Such conduct injures not only other transportation providers, but also passengers and the public at large.

8. NLA's Position.

Bona fide passenger carriers adhere to a duty of care towards passengers and the public. NLA believes that the common law principle of a duty of care, along with regulatory and insurance requirements, should be applied to TNCs as well in order to further the interests of passengers, drivers, and the public.

NLA believes that local, state, and federal government enforcement agencies should take the necessary measures to enforce existing rules and that local state and federal lawmakers should promulgate the necessary laws to protect the public against any TNCs that: a.) do not require their drivers to maintain the operating authorities that are required of taxis or chauffeured transportation; b.) do not require their drivers to maintain the proper commercial auto insurance that is required of all other passenger transportation; c.) do not themselves maintain the necessary commercial auto insurance required of other forms of commercial passenger transportation; or d.) attempt to deny liability for the actions of their drivers which they have clearly directed and profited from on the pretense that they are not responsible for the acts or omissions of their drivers.

Respectfully,

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