

February 15, 2015

Members of the Oklahoma Senate Insurance Committee

RE: Support for Senate Bill 436 – Transportation Network Companies

Via email

Chairman Brown and Members of the Senate Insurance Committee:

The National Association of Mutual Insurance Companies (NAMIC) truly appreciate your offices' willingness to hear our support for Senate Bill 436, which pertains to transportation network companies (TNCs).

We are the largest property/casualty insurance trade association in the country, serving regional and local mutual insurance companies on main streets across America as well as many of the country's largest national insurers. The 1,400 NAMIC member companies serve more than 135 million auto, home and business policyholders and write more than \$196 billion in annual premiums, accounting for 50 percent of the automobile/homeowners market and 31 percent of the business insurance market. In Oklahoma, we have 141 members doing business in the state, representing 39 percent of the marketplace.

NAMIC's members appreciate the importance of business innovation and we support the development and growth of transportation network companies (TNCs) and other "sharing-economy" business endeavors. In this letter, we will provide suggestions on how to improve the bill in order to resolve the potential for complex legal issues surrounding the insurance aspects of TNCs.

NAMIC's Position on TNCs and sharing economy activities

NAMIC believes that TNCs, like all other business operations, need to take full responsibility for the legal liability exposure and public safety risks posed by their business activities. Since the TNCs are engaged in a new form of commercial transportation, it is reasonable and appropriate for them to be required by state law to be responsible for all the commercial transportation liability issues created by their business activities.

The TNC commercial transportation model requires TNC drivers to transport TNC passengers for hire in the TNC driver's private vehicle. Since the TNC driver's activities are clearly commercial in nature, the TNC driver's private passenger automobile insurance policy is most likely not going to provide a duty to defend or any insurance coverage for the commercial transportation use of the TNC driver's personal automobile. Consequently, the TNC commercial transportation model creates an "insurance coverage gap" which poses a legal liability exposure problem and public safety risk for the TNC service driver, TNC passengers, and the general public.

State Legislatures throughout the nation have been working on passing pro-consumer protection legislation to address this "insurance coverage gap", in a way that is pro-business innovation, pro-consumer-protection, and pro-business responsibility. In the two states that have enacted laws to date (California and Colorado) and in all the states evaluating proposed legislation, elected officials have focused their attention upon making sure that there is a clear demarcation between commercial auto activities and private passenger auto activities, so that TNC activities don't become an unnecessary insurance rate cost-driver for private passenger auto insurance consumers.

From a public policy standpoint, NAMIC believes that TNC legislation should set forth clear and specific insurance coverage requirements for TNC commercial activities, expressly acknowledge the legal and practical distinction between private passenger use of a motor vehicle and commercial transportation use, and protect private passenger auto insurance consumers from having to subsidize the standard business operational costs of TNC commercial activities. Additionally, state regulation of TNC activities is also administratively practical, because state regulation of the TNC industry will facilitate statewide uniformity in consumer protection.

NAMIC is encouraging State Legislatures across the country to pass legislation that thoroughly addresses the following TNC insurance coverage public policy elements:

- 1) "Sharing economy" business innovation, like the TNC industry, should be encouraged, but it must be thoughtfully regulated to address liability exposure created by these evolving business models. Clear guidelines for TNC insurance requirements are necessary to protect consumers and facilitate the growth of a healthy and sustainable "sharing-economy" business sector.
- 2) Legislation should safeguard private passenger automobile insurance products and consumers from legal uncertainty created by the TNC business model, by expressly protecting the enforceability of private passenger automobile policy language that excludes insurance coverage and the duty to defend for "livery" or "for hire" operations of a motor vehicle, and which preserves the ability of auto insurers to engage in appropriate risk-based insurance rating and underwriting practices.

- 3) Legislation should clearly define the TNC activity and TNC insurance requirements, so that there is no legal ambiguity that could lead to costly litigation for private passenger automobile insurers and their consumers. TNC activity, like other commercial transportation endeavors, have a higher risk of loss exposure so there should be a “bright-line” standard that defines the scope and duration of TNC activities. Both the California and Colorado laws, and the clearly emerging national trend defines the TNC activity as being tied to the TNC driver logging on/off the TNC app. NAMIC suggests that the TNC activity definition should be “the period of time when a driver is logged onto the TNC’s app to the time the driver logs off the app or the ride is completed and the passenger has exited the vehicle, whichever is later.” This “bright-line” approach provides reasonable clarity for all interested parties, and a practical and discernable legal standard to resolve disputes over whether the driver was engaged in a TNC activity at the time of the accident/incident.

As for the specific TNC insurance requirement, in an effort to reduce the potential for protracted and costly insurance coverage litigation, NAMIC recommends that TNCs and/or TNC drivers be expressly required to have in effect primary insurance coverage that specifically covers the TNC activity as defined in the legislation, including the sole duty to defend the TNC driver for accidents/incidents arising out of or relating to the TNC activity. The TNC insurance coverage and/or TNC driver’s insurance coverage should be primary without requiring any denial of coverage from the TNC driver’s private passenger automobile insurer.

In regard to specific coverage limits, NAMIC believes that coverage limits should be left to the sound discretion of the Legislature, but we suggest that they should be at least equivalent to and similar to other livery requirements, and at a minimum comparable to private passenger automobile financial responsibility coverage limits.

- 4) TNCs should be required to disclose to TNC drivers that the TNC driver’s private passenger automobile insurance may not provide any insurance coverage or a duty to defend for TNC activities, and disclose to consumers information about TNC and/or TNC driver’s insurance coverage and coverage limits. TNCs should be required to provide proof to consumers and regulators that the TNC and/or the TNC drivers are in compliance with the required TNC activity insurance coverages. NAMIC believes that TNCs should be required to maintain commercial coverage in case the TNC driver’s insurance coverage for TNC activities fails to comply with state law, or is cancelled, non-renewed or lapses.
- 5) The legislation should require TNCs to promptly cooperate with the TNC driver’s private passenger automobile insurer and any insurer providing the TNC driver with insurance coverage for TNC activities, if there is an incident/accident arising out of or relating to the TNC activity, and that TNCs should be required to retain all TNC activity records and digital logs for the length of the state civil statute of limitations, plus two

years for evidentiary purposes in automobile accident civil lawsuits. TNCs should also be required to provide timely copies of information and documentation relating to the TNC driver's TNC activities and any accidents/incidents during the TNC activities to the driver's private passenger automobile insurer and any insurer providing the TNC driver with insurance coverage for TNC activities.

NAMIC's Position Regarding Senate Bill 436

We appreciate Sen. Quinn's leadership on Senate Bill 436. This legislation shares widespread support from the insurance industry. It provides much needed clarity regarding the obligations of what liability policies providing coverage for TNC activities. It also protects current provisions in personal automobile liability insurance policies, making it clear that these policies without further endorsements or policy language do not provide coverage to TNC drivers. SB 436 also anticipates litigation issues that might arise from TNC operations, outlining obligations of certain parties stemming from possible claims.

We appreciate your efforts. Thank you for taking time to hear our concerns. Please let me know if you have questions or comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul Martin". The signature is written in a cursive style with a large initial "P" and "M".

Paul Martin
Director – State Affairs
Southwest Region