

## SUCCESS IN THE SHARING ECONOMY INSURANCE MARKET

### CONTACT

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### ABOUT THE AUTHOR

Jack Reid, AmWINS Brokerage – Los Angeles, CA, Robert Wright, AmWINS Brokerage – San Francisco, CA, Gary Grindle, AmWINS Brokerage – Farmington, CT, and Brooks Cochran, AmWINS Brokerage – Nashville, TN, contributed to this article and are part of the AmWINS core of specialized brokers in the sharing economy insurance space.



ON YOUR TEAM.

The explosive growth of the sharing economy presents tremendous opportunity for retailers to market insurance and risk management services to a new breed of businesses. However, success in this rapidly growing and constantly evolving sector requires retailers to establish solid partnerships with brokers who have the knowledge, experience, and market access to obtain creative, effective insurance solutions from underwriters.

### EXPLOSIVE GROWTH

The sharing economy – sometimes called the gig economy, peer-to-peer economy or on-demand economy – refers to businesses offering goods and services through digital platforms that match consumers and providers. This space is growing explosively: [data from Statista](#) forecasts that adults in the sharing economy will reach 86.5 million participants by 2021, nearly double what it was in 2016.

Ride-sharing transportation network companies (TNCs), such as Uber and Lyft, as well as home-sharing companies, such as Airbnb and VRBO, are among the well-known brands of the sharing economy. However, there are countless more, and new startups form every day, offering services that include:

- “Dockless” scooter and bike sharing, which allows consumers to rent a device where they find it and leave it anywhere they want
- Car sharing. Beyond the people-moving services of Uber, Lyft, and others, car sharing adds a new dimension—and new insurance complexity—by matching car owners with renters for short-term use
- Goods sharing, which involves lending personal items for a fee
- On-demand delivery of products, such as food
- Other on-demand services that match independent contractors/freelancers with businesses and homeowners requiring specialized assistance

### REGULATION AND INSURANCE IMPACT

#### Communications Decency Act

Internet-enabled firms, which encompass virtually all of the new economy, rely on the Communications Decency Act and its critical section 230 (CDA 230), originally passed in 1996. Section 230 had two purposes: the first was to “encourage the unfettered and unregulated development of free speech on the Internet,” as one judge put it, and the other was to allow online services to implement their own standards for policing content and provide for child safety.

Over time, the applicability of the CDA has been expanded to serve the interests of firms such as Uber, which states that it is a marketplace for services and not responsible for the acts of their subscribers or service providers. The fundamental idea is that firms like this merely arrange contacts that connect independent contractors to consumers.

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This leads to the next foundation-level set of decisions applying to the sharing economy: the relationship of the platform to the independent contractor. Courts are struggling with this question, and there are many different regulatory bodies with some level of influence over it. There are literally billions of dollars of tax revenue at stake. This is a fluid area right now, with numerous courts considering cases and appeals that will have significant impact on many firms.

## **TNCs**

Overall, regulation of the shared-services space is growing. To date, every state except Oregon has at least some statewide regulation over TNCs. Although many states follow a common model, there are critical differences, including whether a state requires admitted paper or whether self-insurance (with a bond or self-funded SIR) of minimum financial responsibility is allowed. And when it comes to regulation of other types of sharing services, retailers may contend with a diverse patchwork of rules not just at the state level, but the local level, as well. Navigating this complex space is difficult, particularly when looking to insure a service provider with nationwide reach.

As a result, there are many insurance issues that arise for both users and providers of shared services. For instance, in ride-sharing, three distinct time periods impact insurance coverage:

Period 1: During which the driver has the TNC's app on and is available to pick up a passenger

Period 2: During which the driver accepts a ride request, then drives to pick up the passenger

Period 3: From when the passenger enters the vehicle until the passenger exits the vehicle

Some state regulations combine periods 2 and 3 and also require higher limits of insurance while the driver is actively engaged in a ride. All TNC insurance agreements cover periods 2 and 3; however, they vary on their approach to period 1 as to whether they provide primary or excess coverage and at what limit.

## **Graves Amendment**

One important consideration for TNCs is the applicability of the Graves Amendment (49 U.S.C. § 30106). The amendment is part of a federal highway bill signed in 2005 that bars vicarious liability claims against car rental companies for injuries caused by their customers, unless the company's negligence contributed to injuries. Car-sharing companies have been determined to fall under this amendment. Retailers should ensure that they fully understand this amendment, assess whether it applies to their customers' operations, and be sure that customers have practices in place (driver vetting, contract design, etc.) to best protect themselves against any vicarious liability claims that are made.

## **Ancillary Services**

There are other questions related to activities that are ancillary to the core service being brokered by the service provider. For instance, dockless scooter and bike providers typically use contracted individuals to relocate devices from end-use locations to central rental spots. How does the shared-service providers' coverage apply to automobile accidents or other injury or damage that occurs during this transport process?

## **Employment Law**

Additionally, there is uncertainty over how employment law and the requirement to provide employment benefits will be interpreted as it relates to contracted individual providers. Uber launched "Driver Injury Protection" in 2018 to try to get ahead of the game, but regulators have clearly signaled a push to apply employment and workers' compensation standards to shared-services providers where an employment-like relationship could be argued. In 2018, a ruling by the Supreme Court in California—a state traditionally leading the way in insurance trends—made it much more difficult for employers in the state to treat their workers as independent contractors. This type of uncertainty is anathema to underwriters seeking to manage the risk they agree to insure.

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## Telematics

At the same time, technology is being increasingly used to gain better understanding and underwriting control. For instance, the same personal devices that consumers use to gain access to shared services can provide telematics capability to create “performance-priced” insurance. In the case of ride sharing, sensors in a phone can measure driving behavior and create a safety score, making it possible to tailor premiums based on this score, as well as on geolocation factors such as distance driven and location of trips. Coverage periods can also be limited to the start and end of the rental period.

## KEY QUESTIONS

Demand for coverage tailored to shared-service providers continues to increase, but thus far supply exists solely within the E&S market. These markets are experienced in creating customized policies to meet providers’ specific needs. Retailers approaching this space may find it difficult to navigate. It can be a challenge to find underwriters who truly understand the market and have the appetite and creativity to offer effective insurance solutions.

As a result, it is essential that retailers partner with a wholesale broker that can provide the market access they need. However, not all firms are created equally. Retailers should be asking brokers several key questions about programs proposed for sharing economy customers. These include:

- Do you know the states in which you require admitted coverage?
  - Finding an admitted market that is writing hired and non-owned auto on sharing economy business is extremely challenging
- What customization can you provide? In ride sharing, will the underwriter provide “symbol 10” on the commercial auto policy, and what does the language describing that look like?
  - Access to symbol 10 on non-admitted paper opens up the market to retailers in ways most may not have considered
- What is the claims experience of the third-party administrator (TPA) in this space? Additionally, how do you legally set up a self-insured retention with a TPA handling the claims for primary auto? Do you know the most important parts of a service agreement and how to avoid issues from arising?
- Do you have access to attorneys that are well versed in this space?
  - The most important advice that insurance brokers can offer is that these companies engage experienced legal counsel. These firms must be familiar with the latest labor law, CDA 230, and the Fair Credit Reporting Act. They must also be familiar with the latest developments on user agreements and terms of use.
- For ride-sharing risks protected by the Graves Amendment, how does the insurance program apply to claims that are made and does it offer primary insurance protection? What services, such as driver vetting, does the insurer or wholesaler provide?
- Who is primary and who is contingent during all the different periods of the sharing-service contract?
  - Regardless of liability assigned by the contract, in a severe claim, attorneys will go after all deep pockets. How does the service provider’s policy respond?
- Do you have an occupational accident market for 1099 workers?

## CONCLUSION

Very few carriers – and even fewer E&S brokers – truly understand the shared-services space. It is a fast-moving, constantly changing market, making it essential that retailers choose a broker that has established deep business relationships with a number of companies. The best brokers will also be able to provide or refer legal and reference resources and offer a team of vertical specialists who have proven capabilities.

As risk advisors, AmWINS brokers can assist retail brokers in obtaining customized and comprehensive coverage for their insureds in the rapidly expanding and evolving shared-services space.

