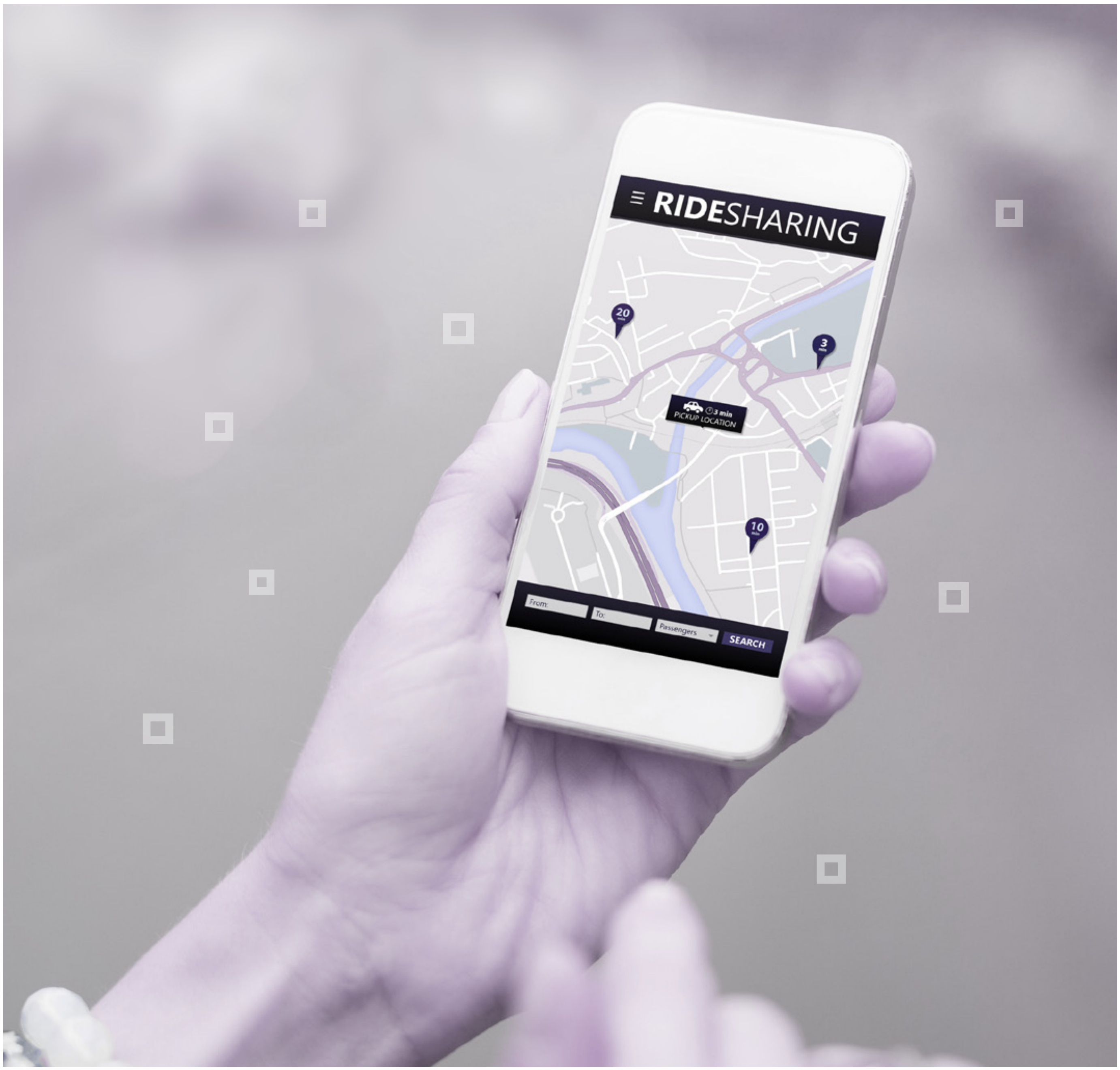
LIABILITY INSURANCE AND THE SHARING ECONOMY



LIABILITY INSURANCE
AND THE SHARING ECONOMY

Sponsored By AXA XL

The unique structure of companies in the sharing economy space has created both uncertainties and new opportunities for managing and mitigating risk. These uncertainties can hinder growth for companies when consumers and employees lack confidence they are fully protected. Fortunately, sharing economy companies now have options of insurance products, and insurance partners that are designed for – and understand – their unique risks.

ABOUT
THE SHARING ECONOMY

The sharing economy facilitates peer-to-peer transactions through a community-based online platform or a smartphone application. The industry has experienced meteoric growth over the past decade, disrupting traditional business models and requiring workers, regulators, and insurance companies to adapt.

"The market [sharing economy] emerged over the past decade, but more so even over the past five years it really began to gather speed," said Chris Kopser, president of US global risk management at AXA XL. "These are companies growing at the fastest rate of any industry we have ever experienced. We routinely now see companies in this space going from concept startup, to multi-billion dollar valuations in only a handful of years. This is unheard of outside of this space."

"... projections have the sharing economy growing from approximately $15 billion in 2014 to $335 billion by 2025.[1]"

Examples of sharing economy companies include rideshare companies like Uber and Lyft, rental companies like Airbnb and VRBO, delivery companies like GrubHub and DoorDash, and on-demand labor companies like TaskRabbit and Takl. The commonality between all these organizations is how they facilitate access to property and services by using technology to easily connect participants on both sides of the business exchange.

As a whole, the industry's growth rate shows no signs of slowing down. In fact, projections have the sharing economy growing from approximately $15 billion in 2014 to $335 billion by 2025.[1] This dramatic growth is, and will continue to be, largely driven by the millennial generation which recently overtook baby boomers as the largest population group in the United States. Research suggests the industry is ideally suited for millennials because, among other reasons, they are more open to sharing belongings and less concerned about their legal responsibilities in a sharing environment.[2]

1. PricewaterhouseCoopers (PwC), "The Sharing Economy: Consumer Intelligence," (2015)
2. Jonathan Winkle, Reineke Reitsma, Gina Fleming, Xiatong Duan, Chris Collins, Rachel Birrell, Forrester Research, "Millennials Drive the Sharing Economy," (January 29, 2018)

COMMON ISSUES
WITH THE SHARING ECONOMY

Independent workers are the engine behind the sharing economy's success. Some estimates have independent workers accounting for upwards of 40 percent of the labor market in the United States by 2020.[3] While sharing platforms do not account for all of these workers, they have been responsible for a change in perception around the feasibility and possibilities of engaging in this type of work.

According to Kopser, the stigma of doing part-time work has virtually vanished. "Part-time work used to be looked down upon, but today people embrace it because it gives them a lifestyle they love," he said.

In fact, many sharing economy workers express a high level of job satisfaction. But working as an independent contractor does have its challenges.

"… independent contractors often take on substantial personal risk… [they] are frequently underinsured, underestimate their own risk, and are often undereducated about how insurance applies to their work."

One significant challenge is that independent contractors often take on substantial personal risk. Without employee benefits and commercial insurance protections typically offered as an employee of a company, research suggests sharing economy workers are frequently underinsured, underestimate their own risk, and are often undereducated about how insurance applies to their work.[4]

Take workers compensation, for example. In the United States, you have to be an employee of a company to qualify for workers compensation insurance. Specifically, that means submitting a W2 wage and tax statement with the IRS.

"The nature of a sharing economy employee is they are an independent contractor, they are working for themselves and do not have the protections of workers compensation insurance," said Kopser. "This is a significant area where traditional insurance does not apply [to sharing economy] workers."

The reality is sharing economy workers often operate multiple platforms in the same day. For example, someone could drive for Uber, then two hours later drive for Lyft, two hours later for GrubHub, and two hours later for DoorDash. The ability to work for any company, on their own terms, is what truly makes them independent.

3,4. Christina Goldschmidt & Emily Stone, Cake & Arrow, "Insurance in the Age of the Gig Economy," (December 2017)

"Independent Contractors wouldn't be entitled to workers compensation benefits. It's not necessarily that there is a gap in coverage, or in insurance, it's just that those people are choosing not to be employees of one organization."

"They are deciding who to drive for and who they want to invest their time with. They can opt in and opt out at any given point and it could be for multiple companies in a day," said Kopser. "So they wouldn't be entitled to workers compensation benefits. It's not necessarily that there is a gap in coverage, or in insurance, it's just that those people are choosing not to be employees of one organization."

Kopser continued: "This creates a difficult challenge for providing workers compensation to these independent contractors. Which company would they be assigned to receive coverage?"

The U.S Department of Labor (DOL) agrees. An April 2019 opinion letter issued by the DOL to provide guidance on who qualifies as an employee under the Fair Labor Standards Act (FLSA) stated that service providers working for a virtual marketplace are in fact independent contractors.[5] The opinion is significant because it is contrary to DOL guidance under the Obama administration which said it would likely classify them as employees.[6]

Another example where there can be some confusion is with regards to auto insurance. Auto statutes specifically require all drivers carry their own personal auto liability insurance. What is happening, however, is insurance claims are being denied by personal auto liability carriers because the independent contractor did not notify the carrier they were driving for commercial purposes.

"What happens is the state says that someone needs to be responsible for the third-party exposure, and that is falling back on these shared economy platforms," said Kopser.

This creates a whole new dynamic. Auto insurance is typically a two-party relationship between the owner of the vehicle and the insurance carrier. In these circumstances the relationship becomes tripartite – the platform company, the driver, and the insurance company. This is a different situation that needs to be addressed.

In fact, the sharing economy has created a variety of unique insurance and risk management circumstances. "When I think of sharing economy I think there is a need in the market, a growing increase in changes, from a regulatory compliance perspective, that our customers need help to get ahead of," said Kopser. "We really want to be able to fill that gap and help our customers find solutions."

5. U.S Department of Labor, Wage and Hour Division, (April 29, 2019)
6. Benjamin Sachs, onlabor, "New DOL Guidance on Employee Status: News for Uber or Lyft?," (July 15, 2015)

INSURANCE NEEDS
OF THE SHARING ECONOMY

As mentioned, the sharing economy business model creates a unique set of insurance and risk management challenges. One of these challenges is the speed at which many of these companies operate.

> **... these companies move fast and they demand their partners move equally fast with them. From an organizational structure it changes the way we think about how we are structured to partner with sharing economy companies."**

"In our experience, sharing is a great way to describe this business because there is a lot of work that needs to be completed," said Kopser. "We've begun to use the term velocity for this business. Now that may seem like an oxymoron coming from an industry not known for speed, but these companies move fast and they demand their partners move equally fast with them. From an organizational structure it changes the way we think about how we are structured to partner with sharing economy companies."

One area that this is particularly evident is the processing of claims. For example, It is not uncommon for a rideshare company (e.g. Uber, Lyft) to have expected annual auto liability losses in the billions of dollars, a circumstance that would be very uncommon outside of this space.

"Some of these companies go from $0 to $1 billion in claims seemingly overnight," said Kopser. "Historically, to have an insured with loss picks in that range is very, very rare. I think you'll see it more commonly as these platforms continue to grow and become more successful."

It is this type of exponential growth which requires an insurance partner that is structured and organized in such a way that it can collaborate with those customers, grow with them, and have the infrastructure to respond.

"We are all learning as we go because we are seeing new things, and experiencing regulatory issues we had not seen before," Kopser said. "Take auto as an example, the concept of a TNC (Transportation Network Company) did not exist more than five years ago, nor did the regulations to manage it. Now we help facilitate that for our clients. It touches a lot of aspects of the business and it's fun because of its rapid pace, newness and growth."

THE FUTURE OF INSURANCE AND THE SHARING ECONOMY

Big picture, the sharing economy business model is changing the way the insurance industry thinks about insurance. The speed and scale at which these companies are growing, and the quantity and richness of data that they provide creates new insurance opportunities.

> **The data-richness of these sharing economy programs is going to enable new insurances, on-demand insurance, it's going to change how people actually think about insurance," said Kopser. "It is forcing it to become more responsive."**

"It's a blessing and a curse, right? On the downside, insurance carriers must have the scale to deal with it. On the upside it opens opportunities for the insurance industry. The data-richness of these sharing economy programs is going to enable new insurances, on-demand insurance, it's going to change how people actually think about insurance," said Kopser. "It is forcing it to become more responsive."

To illustrate, think about the typical insurance process. An insured has an annual renewal and a once-a-year discussion with its insurance partners. A summary of any changes that occurred with the company is developed and evaluated by the insurer in order to create a renewal program and pricing for the next year.

The data-richness of sharing economy businesses is beginning to, and will ultimately, flip this model on its head. In the not-too-distant future, there will be insurance policies that turn on and then expire in minutes. You can purchase insurance in real time and obtain coverage only as needed.

"The sharing economy will bring and enable a very different way of conducting insurance," said Kopser. "The ability for an insurance company to evaluate risk at a much more granular, and real-time, basis is a benefit for the insurance company and the consumer. Whether it's a commercial customer or an individual consumer, you can pay only for what you need when you need it."

CONCLUSION

Finally, the success of the insurance industry has always hinged on its ability to work with customers, be creative, and find solutions that fit a business's specific needs. In order for this to successfully occur it requires a partnership based on trust between the insurer and the insured.

"When you think of the sharing economy you think sharing of information," said Kopser. "As our marketplace continues to grow and evolve at a rapid pace, there's an opportunity for us to learn from each other, for us to grow with each other, and I think it's important when we're talking about long-term partnerships that you are getting involved at the ground level and being part of the solution and not the problem."

Kopser continued: "When I think of how XL specifically started out as an insurance company there was a need in the market for risks that were unable to find insurance. So we formed to fill that need," he said. "So when I think of sharing economy, and now AXA XL, I think a lot about how these programs, and emerging risks, have a need that's not being met by many of our competitors. AXA XL's identity is to be in tune with the marketplace and customer needs and designing solutions to fill those needs."

ABOUT AXA XL:

AXA XL is a division of AXA Group providing products and services through four business groups: AXA XL Insurance, AXA XL Reinsurance, AXA XL Art & Lifestyle and AXA XL Risk Consulting. In the US, the AXA XL insurance companies are: AXA Insurance Company, Catlin Insurance Company, Inc., Greenwich Insurance Company, Indian Harbor Insurance Company, XL Insurance America, Inc., XL Specialty Insurance Company and T.H.E. Insurance Company. Not all of the insurers do business in all jurisdictions nor is coverage available in all jurisdictions. Information accurate as of July 2019.

A BEAUTIFUL DAY IN THE NEIGHBORHOOD?

Peer-to-peer transactions facilitated by the sharing economy have afforded consumers great convenience and availability of goods and services. According to AXA XL, the sharing economy – projected to be a $335 billion industry by 2025 – is growing faster than any industry the insurer has ever experienced.

However, companies have experienced some growing pains that have led to serious losses associated with employment, trade practices, intellectual property, cyber/privacy, business practices and fiduciary risks. Here are some examples from Advisen's database of losses for different sharing-economy services.

Delivery

Loss: $8.75 million
Category: Employment
Year: 2015

Postmates Inc. settled a federal class-action lawsuit to resolve wage and hour claims related to the company's alleged misclassification of couriers as independent contractors. There were more than 264,000 class members. Under the settlement, Postmates agreed to change some of its practices, including offering couriers occupational accident insurance.

Rental

Loss: $275,000
Category: Business practices risks
Year: 2018

Portland, Oregon settled a lawsuit with the vacation rental website HomeAway and its affiliates over unpaid lodging taxes. The city argued HomeAway allowed homeowners to rent out their homes as vacation rentals online, but failed to collect lodging taxes usually paid by hotels.

Rideshare

Loss: $32.5 Million
Category: Trade Practices Risks
Year: 2014

Uber Technologies settled federal class-action litigation brought by customers who alleged the ride hailing service misrepresented the quality of its safety practices and the fees it charged passengers. Uber was alleged to have misrepresented a $1 fee it charged customers and fell short of industry practices when it came to background checks and safety.

On-Demand

Loss: $585,500
Category: Employment
Year: 2015

CrowdFlower Inc. faced a federal class-action under the Fair Labor Standards Act. The company's CEO and CTO were also named as defendants. Nearly 20,000 workers alleging they were shorted on minimum wage pay settled with the crowdsourcing labor company.