

An Analysis of the Obligation to Notify Insurers of Increasing Risk: A Case Study of Online Car-Hailing

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Abstract: In recent years, China's sharing economy has developed rapidly, with online car-hailing gradually becoming a primary mode of daily travel for many individuals. However, due to legislative shortcomings and delays, judicial practices differ significantly in addressing car-hailing insurance issues. Insurers frequently refuse to pay claims, citing violations of the obligation to notify insurers of increased risks, leading to inconsistent judgments across regions. This paper takes the phenomenon of online car-hailing as a starting point to examine legislative deficiencies and explore pathways for improving the risk increase notification system.

Keywords: Risk increase notification obligation; Online car; Insurance Law Article 52

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1. The proposal of the problem

In February 2022, the Sharing Economy Research Center of the State Information Center released the "China Sharing Economy Development Report (2022)," which revealed that the financing amount in the transportation and travel sector reached 48.5 billion yuan in 2021, a year-on-year increase of 321.7%. This highlights the significant market potential of online car-hailing services. As online car-hailing becomes increasingly popular, its associated legal issues have garnered attention from the academic community.

Unlike ordinary private vehicles and standard passenger cars, numerous ambiguities persist in applying insurance law to online car-hailing services. Article 52 of the Insurance Law, which addresses the "obligation to notify of increased risk," has been a focal point of scholarly research. The unique characteristics and complexities of online car-hailing have reignited debates surrounding this provision.

In practice, some insurance companies invoke Article 52 of the Insurance Law to deny claims made by online car-hailing owners. Key questions include whether such refusals are justified, how to assess significant risk increases, and how to safeguard the rights of affected victims. Diverging opinions among local courts exacerbate these issues.

This paper focuses on the obligation to notify of increased risks in the context of online car-hailing, critically examining legislative gaps, promoting the unification of judicial standards, and fostering the standardized development of the online car-hailing industry and the broader sharing economy.

2. The theoretical basis of the risk increase notification obligation

It is generally recognized that there are three theoretical bases for the insured's obligation to notify of increased risks: the principle of balance of consideration, the principle of maximum good faith, and the principle of change of circumstances.

The principle of balance of consideration emphasizes the need to maintain a fair balance between the risk assumed by the insurer and the premium paid by the insured ^[1]. Since the insured and the subject matter of the insurance exist in different environments, the insurer lacks direct knowledge of the risk probability associated with the insured subject matter. The insurer often relies on the "law of large numbers" to evaluate the likelihood of such events and determines a premium rate proportionate to the risk through actuarial calculations. The premium charged by the insurer forms a reciprocal relationship with the risk of the subject matter insured ^[2]. By ensuring the premium aligns with the product of the probability of the risk and the potential loss, the principle of balance of consideration is achieved within the insurance contract. For example, private vehicles generally have shorter driving times, with drivers exhibiting more focused attention. In contrast, business bus drivers often engage in transportation as an occupation, which may involve distractions such as using mobile phones to "accept orders," thereby increasing the objective risk probability on the road.

The principle of maximum good faith reflects the broader principle of good faith in civil law. Articles 7 and 509 of the Civil Code stipulate the contractual obligation of good faith. In an insurance contract, significant asymmetry exists between the insurer and the insured regarding the facts and legal application concerning the subject matter of insurance. This asymmetry necessitates heightened good faith obligations, summarized in theory as the "principle of maximum good faith." This principle primarily addresses the issue of information asymmetry inherent in specific insurance contracts. When the insurer offers a policy to the applicant, it bases the offer on available information, often without considering changes in the insured risk during the contract's performance. After the contract is established, a significant increase in the insured risk may disrupt the balance of consideration originally maintained by the contract.

The principle of change of circumstances can be viewed as an extension of the principle of good faith. When a contract is concluded, the rights and obligations of the parties are typically based on the prevailing circumstances. If, after the contract's formation, relevant facts concerning the parties' rights and obligations change due to one party's actions or unforeseen events, the terms of the contract may need to be adjusted to uphold fairness and justice in civil law. Article 52 of the "Insurance Law," which provides for the insurer to "increase the premium or terminate the contract," is a specific application of the principle of change of circumstances.

3. The identification of significant risk increases in online car booking

3.1. The operation mode of online car-hailing

Currently, the business model for online car booking can be categorized into three types: vehicles owned by online car-hailing platforms, vehicles provided by rental companies, and private cars. Vehicles owned by online car-hailing platforms or rental companies are typically insured for their respective operations, resulting in fewer disputes in practice ^[4].

The third business model involves private car owners registering as drivers on online car-hailing platforms and quickly forming transportation contracts with users through transaction matching on the platform. Compared to the first two models, this study primarily focuses on this third type of online car-hailing, examining issues such as whether the nature of the vehicle has changed and whether the degree of risk has increased.

3.2. The judgment of significant risk increases in online car booking

3.2.1. Identification of significance

A significant increase in risk refers to a situation where the insurer decides to raise the premium or cancel the insurance contract. If the increase in risk is minor and does not disrupt the balance of consideration within the insurance contract, the insured is not obligated to notify the insurer of the increased risk. Therefore, China's "Insurance Law" explicitly requires that the risk increase must reach a "significant" degree. Some scholars argue that only when the increase in the risk of the

insured subject reaches a qualitative change from a quantitative one can it be deemed to have exceeded the scope of risk covered by law or contract.

When engaging in online car booking, the nature of the vehicle may change. In the event of an accident, the insurer may refuse to provide coverage due to the insured's failure to notify them of the increased risk. Whether a private vehicle used for online car booking constitutes a significant change in the nature of use—and thus an increase in risk—requires specific judgment. This involves determining whether the change meets the “significant” threshold.

Although Article 4 of the “Judicial Interpretation of the Insurance Law (IV)” considers factors such as the purpose, scope of use, environment, and modification of the insured subject, as well as the change in user or manager and the duration of increased risk, it does not define the “significance” of the increase. The draft of the “Judicial Interpretation of the Insurance Law (IV)” included a provision for the “significance” of risk increases. This standard aligned with the requirement under Article 16 of the “Insurance Law” for truthful disclosure by the insurance applicant, meaning the risk increase should be beyond what the insurer could reasonably expect at the time of underwriting.

If the increased risk is substantial enough to influence the insurer's decision to continue the insurance contract or adjust the premium rate, it should be deemed a significant increase in risk. However, the final version of the “Judicial Interpretation of the Insurance Law (IV)” by the Supreme People's Court omitted this standard, leaving the identification of “significance” legally ambiguous. Consequently, the judgment of “significance” still relies on academic interpretation and judicial discretion. It is therefore essential to further clarify the legal standard for determining “significance”^[6].

3.2.2. Identification of sustainability and unpredictability

The criterion of sustainability requires that the increased risk of the insured subject matter persists over a period of time. If the risk fluctuates only temporarily and subsequently returns to its original state, it cannot be deemed an increased risk under insurance law. The element of unpredictability requires that the risk increase must be unforeseen and not accounted for by the insurer at the time the contract was concluded. If the increased risk had been anticipated, the balance of consideration in the contract would remain unaffected, and thus it cannot be categorized as an “increase in risk”^[7].

In practice, certain courts fail to apply proper reasoning when determining the significant increase in risk associated with online car booking. In some cases, they neglect these two elements entirely^[8], focusing instead solely on the fault of the online car booking system based on the significance of the operational risk increase. Scholars generally agree that the requirement of sustainability is not controversial; as long as the online car can be classified as an operational vehicle, even if it is not actively engaged in operation at the time of the accident, courts may uphold the insurer's claim under Article 52 of the “Insurance Law”^[9].

Regarding unpredictability, it is often interpreted that risks not specified in the contract at the time of its formation are considered non-contractual. This interpretation tends to favor the protection of the insurer significantly.

4. Reflection on the refusal of full compensation for breach of obligation

As analyzed above, both in theory and in practice, when private cars are registered for online car-hailing services and put into operation, they are often deemed to cause a significant increase in risk, thereby exempting insurance companies from compensation liability under Article 52 of the “Insurance Law.” The second paragraph of this article stipulates that if the insured fails to fulfill the obligation to notify the insurer of the increased risk, and an insured event occurs due to the significant increase in risk, the insurer is fully exempted from liability. This provision implies that no insurance benefits are payable, rather than merely reducing the compensation proportionately. While this legal effect imposes a punitive measure on the insured for failing to notify the increased risk, the punitive effect is excessively amplified^[10]. Consequently, insured individuals who fail to fulfill the notification obligation face the risk of total compensation denial, even when the increased risk is causally linked to the occurrence of the accident.

In current practice, private cars entering the online car-hailing sector face a heightened risk of claim denial by

insurance companies. Article 52, paragraph 2 of the “Insurance Law,” which exempts the insurer from liability when the insured fails to notify the increased risk, neglects the interests of the insured and contradicts the original purpose of the insurance. Furthermore, the lack of clarity regarding whether the insurer must remind and explain the obligation creates additional challenges. For instance, it remains unclear whether the insured, irrespective of their subjective awareness, should face full claim denial. Similarly, if the insurer knows or should have known about the change in the vehicle’s usage but fails to provide any indication, whether the insurer should still be exempt from liability warrants further consideration. Applying a rigid “one-size-fits-all” approach does not address these complexities and may lead to more disputes.

Therefore, it is essential to explore protective measures that balance the interests of both parties in the insurance contract, ensuring that the rights of the insured are adequately safeguarded ^[11].

5. The improvement of the obligation to notify the increase of risk

5.1. Risk increase clause in specific insurance contracts

When concluding an insurance contract, insurance companies often incorporate Article 52 of the “Insurance Law” as a contractual term. Although this provides a legal basis and appears to reasonably allocate the rights and obligations of both parties, challenges arise in practical application. An analysis of over 100 online car insurance dispute judgments across the country reveals that specific behavioral clauses in insurance contracts are rarely referenced to assess the significance of increased risk. Instead, assessments predominantly focus on the insured’s post-incident behavior.

For online car owners, using their vehicles for self-driving trips inherently carries greater risks than routine usage. However, such behavior does not typically constitute a significant increase in risk based on general experience. Subjectively, online car owners may find it challenging to distinguish between the risks associated with online car operations and other driving behaviors. If insurers deny claims on this basis, it creates a psychological imbalance for the insured and is likely to result in disputes.

To address this issue, insurers could consider detailing specific behaviors of the insured that may lead to increased risk at the outset of the contract. By clearly defining the boundaries of the insured’s permissible behavior through explicit agreements, insurers can establish a concrete basis for evaluating the significance of any risk increase. This approach would serve as an essential reference in resolving disputes related to risk assessment ^[12].

5.2. Introduction of the principle of proportionality to reduce the risk of total refusal of claims

The principle of proportionality initially emerged in public law, primarily used to assess the legitimacy of administrative actions, and was later adopted in private law to balance the interests of private law entities ^[13]. In the context of the obligation to notify increased risk, once the insured fulfills this obligation, the insurer may either increase the premium or cancel the insurance contract in accordance with the agreement, thereby maintaining the balance of consideration inherent in the insurance contract. However, when the insured fails to fulfill the obligation of notifying increased risk, and the change in the nature of the insured vehicle is causally linked to the occurrence of the accident, a total refusal of compensation breaches the principle of consideration balance. Thus, introducing the principle of proportionality can help restore this balance.

Regarding online car-hailing, insurers may refuse to compensate for insured accidents occurring during operational periods. However, for accidents occurring during non-operational periods, insurers should assume liability proportionately. Similarly, for semi-operational online car-hailing activities, the insurer should also bear proportional liability. The specific proportion of liability should be determined by considering factors such as the insured’s degree of subjective fault, frequency of operation, and charging standards. Additionally, judicial discretion should be allowed to ensure the protection of weaker parties while upholding the integrity of the law ^[14].

6. Conclusion

This paper addresses the prevalent online car-hailing insurance disputes, focusing on the challenges in applying Article 52 of the “Insurance Law” to such cases. First, it examines the theoretical basis for the obligation to notify increased risk, clarifying the three foundational principles of the system. Second, it investigates the criteria for determining the significance of increased risk, referencing practical online car-hailing scenarios. It identifies a tendency in judicial practice to prioritize the protection of insurers in the application of Article 52^[15]. Third, it critiques the legal consequences of fully denying compensation due to a breach of the notification obligation, concluding that greater protection for the insured is necessary. Lastly, the paper proposes improvements to the implementation of the risk increase notification obligation in online car insurance, including specifying risk types in contract terms and introducing the principle of proportionality to mitigate the risk of total compensation refusal. These measures aim to balance the rights and obligations of both parties and contribute to greater consistency in judicial decisions.

Disclosure statement

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