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Samuel R. Marshall
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To: The Honorable Members of the House Insurance Committee

From: Samuel R. Marshall

Re: Some insurance concerns with ride-sharing proposals

Thank you for holding this hearing. We realize this may not be the best time to ask for your attention to what seems a somewhat esoteric issue – but then again, there is never a convenient time to raise inconvenient issues, so all we can ask is that all sides and all perspectives work together to figure this out.

We respect the "coolness" factor in what Lyft and Uber propose: Using smart phone applications and technology to get drivers and riders together, and expanding the pool of potential drivers, with payment done over those smart phones – it feels like neighbors doing a few odd jobs for other neighbors, and with the convenience of the internet for getting together.

I'm not sure that justifies the astronomical market valuations being given to Lyft and Uber, and I'm not sure their proposed ride-sharing programs will change urban and suburban landscapes or diminish car ownership, and that they will become the Amazons (literally and figuratively) of transportation. For all the hype and marketing, their proposal is pretty simple in concept although questionable in execution:

- They are counting on a large number of qualified people using their own cars to become part-time cab drivers, and being sufficiently available and reliable at all hours to make them an easy and plentiful source of transportation for total strangers in all areas and at all hours. We've all done part-time jobs to supplement our incomes. But I question how many people want to be part-time cabbies, because I've never thought driving in traffic with a stranger in the backseat of my car is a particularly enjoyable way to make a few extra dollars.

That's not my direct concern – I'm an insurance guy, so my concern is that outfits like Lyft or Uber take full responsibility for the insurance their cab drivers are required to have.

So far, neither company wants to do that. They've both made applications to the Public Utility Commission that amount to smoke and mirrors. I'll give a quick overview:

- The PUC requires that "passenger carrier" applicants – whether Lyft and Uber, or any other cab company – affirmatively show they have insurance. That's meant to be a direct requirement, and for good reason: Consumers deserve the safeguard of readily-identifiable and accessible insurance when riding in (or being in an accident with) cabs.

- Lyft and Uber go in the opposite direction. Don't be misled by their talk of $1 million in coverage. That is only excess coverage, not primary or even secondary coverage.

- Instead, they count on the auto insurers of each of their drivers to be the primary insurers. They do this despite knowing those insurers all have exclusions for this type of activity – what is known as the "livery exclusion." They do this without having any meaningful way of verifying the ongoing primary coverage of their drivers. And they do this without any notice to the insurers they count on for primary coverage.

That makes no sense. It means every claim will become a two-tiered one, with the claimant having to ferret out which insurer – the primary or excess one – has responsibility. That will be confusing for claimants, a needless expense and risk for primary insurers, and a challenge for the courts.

It isn't just the degree of difficulty, either – it is the potential for gaps and uncertainty in any coverage. Neither Lyft or Uber provide coverage when their drivers are available but between trips, or returning from trips – and Lyft may not provide coverage except when the rider is in the car. Under standard livery exclusions, however, the drivers' personal insurers won't be covering them during these times, either: We're not going to cover a driver while he is driving around looking for rides, or coming back from that – that's all part of being a cab driver, and that's an insurance requirement for the cab company.

You've heard us many times about every line of insurance: Predictability and stability are the cornerstones of a good insurance market. That's true for us – it is the key to being able to properly underwrite and rate risk. That's why it is troubling that Lyft and Uber don't work with their drivers' primary insurers, and don't make sure coverage is clear. It is also true for consumers: They need to know where to go to get claims resolved, and they need to know there will be coverage.

We get portrayed as a wet blanket when we raise these questions, that these details can be resolved later, and we shouldn't stand in the way of such a popular innovation with a bunch of nerdy, bureaucratic questions about insurance.

But the reality – for Lyft and Uber drivers and riders and the public, if not for Lyft and Uber themselves – is that the old advertisement is true: Who insures you doesn't matter until it does.

It goes back to our point at the outset: For all the marketing coolness of these programs, we're talking about part-time cab drivers using their own cars. Asking that they have verifiable insurance isn't unreasonable; just the opposite, it'd be irresponsible to not make sure.

For whatever reason, neither Lyft nor Uber want this scrutiny. They are trying to block our Protests to their PUC applications, and they don't do much in the way of reaching out and working with our industry.

The frustration is that these insurance concerns could be easily addressed. All Lyft and Uber have to do is provide primary coverage – not excess coverage – when their drivers are carrying passengers, or are "on app" and open for business. And they should let the driver's personal auto insurer know. Yes, it may mean some insurers will decline to continue coverage for the driver, or will change the rates – especially with the uncertainty and new type of liability exposure. But that's better learned up-front for all involved.

Given Lyft's and Uber's market valuations, they can afford this. And given their market aspirations, you'd think they would want to do this: They'll gain credence with drivers and riders alike if the insurance issues are resolved.

There are legislative ways to clarify this, and we hope you look into these. We are strong believers in competition and innovation. That shouldn't be – and doesn't have to be – an either/or proposition with the insurance cornerstones of predictability and stability we noted at the outset.

We understand the need for rules and regulations to change as technology and ideas do. But for all the hoopla surrounding Lyft and Uber, there is no justification to change the insurance requirements – and certainly no reason to allow them to evade those requirements.

A stronger case could be made to tighten the insurance requirements given the nature of these programs, with part-time drivers in personal cars. These programs count on new demographics and usage patterns among drivers and riders alike. That's generally when you want more, not less, public protection – including true clarity and accessibility of insurance.

Again, thank you for the opportunity to be part of this. I am happy to answer any questions, and we look forward to working with you, and with outfits like Lyft and Uber, as this unfolds.