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To: The Honorable Members of the House Committee on Consumer Affairs

From: Samuel R. Marshall

**Re: Ride sharing regulation in Pennsylvania**

This is the third time we've testified before state bodies on this – in June before the House Insurance Committee, in August before the PUC, and now here.

We'd also include being a party to the PUC's September proceedings reviewing the applications filed by Uber and Lyft to operate on a permanent basis, because that provided a chance to examine their services from every perspective, and for everybody to ask questions of each other, and then submit briefs before two judges whose standards match your own: To ensure that these services operate in way that fulfills a public need while also protecting the public.

We've learned a lot in each forum. With all deference to the legislative and general PUC hearings, the most instructive ones were the two trials before the PUC's administrative law judges and the briefs that followed. That was the first time we had a chance to question Uber and Lyft officials, and they had a chance to question us and the taxi companies. It was adversarial, as trials are: Uber and Lyft were the Applicants, and we were the Protestants. But it was also oddly collegial, as both sides got to know each other and the questions weren't so much to trick or defeat each other as to learn what Uber and Lyft are really doing, and for them to learn what our objections are.

Today, we'd like to share the lessons we've learned, lessons we hope will be among your keystones in crafting legislation.

**First, ride sharing regulation shouldn't be either pro- or anti-Uber and Lyft.**

We appreciate the innovation these companies provide, but that doesn't mean they should be allowed to set their own rules without regard to basic standards of consumer protection and disclosure that should hold true for any innovator. Uber and Lyft boast of being "disruptive" – that's today's buzzword for outfits that meet old needs in new ways. In some ways, that's the trait of a healthy and evolving market, and government should do all it can to encourage it. But you are better served rewarding innovators, not disrupters. And in doing so, you need to ensure that the new services come with the timeless qualities of consumer protection, proper disclosures and fair competition.

You can establish a regulatory framework that brings Uber and Lyft into the market under terms that don't stifle them, but don't leave problems down the road, either. Other states have done this, and the PUC and a number of draft bills we've seen here do so. Despite Uber's protestations of the PUC judges' September 24 decision denying its application, they did, too: Yes, they denied Uber's application, but they set forth some pretty common-sense conditions for approval that are being implemented across the country.

**Second, make sure insurance is in place.** I'm an insurance guy, so that's big to me – whether you have insurance isn't important until it is, and then it is paramount. It is a matter of consumer protection: Government generally doesn't let in new products or services without making sure they work, and without making sure consumer safeguards are in place from the outset, no matter how much hype surrounds the new products or services. When you are talking about a new form of public transportation – a new form of taxi services – proper insurance is an essential consumer safeguards, along with qualified drivers and decent cars.

We'll leave it to others to set the amount of insurance, although it would presumably at least equal whatever is required for taxis. We recommend flexibility in who provides the insurance – it could come from an insurer selected by the ride sharing company or the driver or some combination, and that will evolve as experience comes in. But there are two related absolutes you need to ensure:

- First, the ride sharing company should have an affirmative responsibility to make sure its drivers have proper coverage; and

- Second, the coverage should apply from the moment the driver has logged on to his application until he has discharged a passenger or logged off, whichever is later.

That has been debated in other states as well as here. Uber and Lyft have suggested their coverage should be contingent, that it should only apply if the driver's personal auto insurance doesn't cover a claim, at least when the driver is only logged on but has yet to match up with a passenger. Be wary of that: Veritably every personal auto policy has a livery exclusion, meaning it will NOT cover claims when the insured auto "is available for hire" – and that is how our industry construes being "on app" or "logged on."

As Uber and Lyft admitted in their PUC hearings, their goal is to get drivers on the road when and where they otherwise wouldn't be – late at night, when the bars close, in bad weather, at airports and in new neighborhoods. That's when the demand is highest, not when somebody is going to the grocery store in a Saturday morning.

Yes, some auto insurers may cover this – but only through a special endorsement or rider with an added premium. And some may non-renew or decline to insure somebody who becomes a ride sharing driver without his sponsoring company having coverage at all relevant times.

Some say this isn't fair to Uber and Lyft, that they will be in danger of a driver being perpetually logged on and dropping his private insurance. That doesn't add up: The driver who drops this coverage will be reported to PennDOT, with his registration suspended his insurance rates going up the next time around – and Uber and Lyft will find him out soon enough, too. Further, this is something Uber and Lyft can police: If a driver is always logged on but rarely accepts rides, they will know it and be able to terminate him.

In any event, how is this unfair to Uber and Lyft? Who else should be responsible for making sure insurance is in place during all three stages? Those companies correctly assume responsibility for checking the qualifications of their drivers and their cars – why not their insurance as well?

**Third, make sure Uber and Lyft fully disclose their insurance programs, and the insurance issues, to their prospective drivers.** A person who becomes an Uber or Lyft driver should know just what insurance those companies are providing – who the insurer is, how to contact it, what the coverage is and when it applies. Equally important, the potential driver should understand the potential risks to his personal auto insurance. Depending on the insurer, and depending on the coverage his ride sharing company provides, a person becoming a driver may jeopardize his personal auto coverage or his rate, or he may face a surcharge. He may face financial exposure he hadn't anticipated, again depending on the coverage his ride sharing company provides. And he may run into problems with any lender or lessor of his car.

In the PUC hearings, Uber and Lyft distanced themselves from their drivers' insurance issues, saying they didn't want to interfere in their drivers' private contracts. Telling a potential driver about these concerns isn't interfering – it is protecting him. Uber and Lyft are bringing in a new type of taxi driver – a nonprofessional. That's great, but that highlights the need for meaningful disclosures: These drivers generally don't have experience as commercial operators, and they may not have thought about gaps in coverage or ramifications on their personal auto policies or car leases and loans.

We're not suggesting Uber and Lyft be responsible for giving their drivers specific opinions on these issues. But they should be advising – and even requiring – their drivers to notify their personal auto insurers and lenders. That's the best way of ensuring that the drivers know the full ramifications they are accepting.

**Fourth, make sure Uber and Lyft properly educate and train their drivers and their own offices in handling claims.** The proceedings before the administrative law judges were alarming. Neither Uber nor Lyft was able to describe any standard procedure for how their drivers should report claims, or what information they give their drivers on insurance contacts in the event of a claim. They weren't clear about giving their drivers an insurance card to share in the event of an accident (or a traffic violation). And neither of them was clear about how consumers should file claims, even on such basic issues as whether the claim should go to Uber and Lyft or their insurer. That, combined with the uncertainty they create by not providing primary coverage despite knowing auto insurers have livery exclusions, means pursuing a claim will be needlessly chaotic and expensive for consumers.

Uber and Lyft drivers should know what to do in the event of an accident – they should have the requisite insurance information and be able to provide it on the spot to passengers and other claimants. That's not hard to do, and it recognizes that insurance is only as valuable as it is accessible.

**Finally, make sure the PUC checks into whatever coverage Uber and Lyft provide.** Again, the proceedings before the administrative law judges were alarming. Uber and Lyft described insurance coverage where the insurer doesn't check the drivers or cars it is insuring and doesn't handle the claims; it sounded more like a fronting arrangement for self-insured plans than a true insurance plan where liability is shifted to the insurer. That's not necessarily bad or good – what is necessary is that it be disclosed to and examined by the PUC in reviewing an application.

That's important in assessing the fiscal soundness of any insurance coverage, especially if dealing with surplus lines insurers who aren't covered by the Guaranty Association. It is equally important in assessing the education and training of Uber and Lyft drivers in understanding their coverage and in how they are to share information on claims processing with passengers and other claimants. That goes to the cornerstones we noted above, and the need to make sure that the insurance ride sharing companies offer is accessible and understandable, and that its drivers understand that.

We've seen some of the grassroots campaigns and rallies that have sprung up on this issue, most notably the Uber campaign calling for immediate passage of "legislation that establishes common sense regulations for ridesharing" and the taxi driver protest outside Chairman Godshall's office.

The question is what constitutes common sense regulation. We think other states – notably California and Colorado, and soon Washington, DC - have provided a sound blueprint for Pennsylvania legislation. We also think the PUC did so in its July 24 Order, and we think the PUC's administrative law judges did so in their decision denying Uber's Application – where the judges detailed the public protections Uber should provide. And we think the cornerstones noted above should be part of any common sense approach.

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Uber and Lyft may not agree – taxi companies may not agree – and you may not agree. Still, the conversation has to start somewhere, and we offer these recommendations in that spirit.