

vii. Affidavit of Gregory Serio

I, **GREGORY V. SERIO**, hereby declare that the following is true and correct.

I. Professional Background

1. I am a former Superintendent of Insurance (now known as the Superintendent of Financial Services) for the State of New York, serving from 2001 to 2005 (predecessor to the superintendent of financial services, which was established in 2011). In that capacity, as the chief insurance regulator for the State, I was responsible for the regulation of all forms of insurance transacted and regulated within the State of New York, including primary and excess insurance. As Superintendent, I was also responsible for the development of public policy directives in all areas of insurance, the enforcement of provisions of the state's Insurance Law, and the development of opinions on interpretations of the Insurance Law and insurance contracts. Further, I was responsible for investigating and settling market-related disputes and controversies, including consumer complaints, complaints of unfair competition, and similar matters brought before the New York State Department of Insurance. Finally, I was responsible for assuring a vibrant insurance market characterized both by the widespread availability and affordability of insurance.
2. As Superintendent of Insurance, I was also a member of the National Association of Insurance Commissioners ("NAIC"), an organization of state and territorial insurance regulators from the United States, serving as the venue for discussing major issues in insurance regulation, overseeing the prudential safety and soundness of the American insurance system and insurers operating within that system be they domestic (New York-based), foreign (outside of New York but incorporated within the United

States), or alien (from other countries) insurers, and coordinating with other financial supervisors and insurance regulators from other countries. Further, as a member of the NAIC I served as chairman of the Federal Affairs Committee, responsible for the coordination of state insurance regulator relations with federal legislators and regulators. I also served on the International Commission on Holocaust Era Insurance Claims (“ICHEIC”), where, as a commissioner, I oversaw the work of its chairman, former United States Secretary of State Lawrence Eagleburger and coordinated with the body of American insurance commissioners to work in concert with survivor groups and insurers in settling insurance-related claims of American Holocaust survivors and their families.

3. My tenure as Superintendent commenced upon my confirmation to the position by the New York State Senate on May 9, 2001, acting upon my nomination by Governor George E. Pataki in April 2001.
4. Prior to my appointment and confirmation as Superintendent, I served as First Deputy Superintendent of Insurance for New York State. In this capacity, I was the chief operating officer of the New York Insurance Department, responsible for the day-to-day operations of the second largest insurance regulatory organization in the United States. This role included assisting the Superintendent in the execution of the duties of the office, as described in paragraph 2 above. I held this position from January 1995 until my selection as Superintendent in May of 2001.
5. For two years, from January 1995 to April 1997, I also served in a dual capacity as First Deputy Superintendent and General Counsel to the New York Insurance Department, reporting both to the Superintendent of Insurance and the counsel to the

Governor. As General Counsel, I served as the chief legal officer of the Department, and oversaw the operations of the Counsel's office, advising the Superintendent, other Department personnel, the insurance industry and, where requested, the state's legislature and judiciary, on the legal aspects of critical insurance issues, legal matters before the Department or in which the Department was involved, and developing counsel's opinions, circular letters, and regulatory positions routinely issued by the Department.

6. Throughout my career with the New York Insurance Department I was heavily engaged in matters concerning automobile insurance, taxi/livery insurance, commercial automobile insurance and related issues. I oversaw the drafting and implementation of significant changes to New York's no-fault automobile insurance regulations and formed the Taxi/Livery Task Force to deal specifically with issues relating to the insurance needs of that industry.
7. Preceding my decade-long tenure at the New York Insurance Department, I served as chief counsel to the New York State Senate Standing Committee on Insurance from June, 1989 to January, 1995 and legal advisor to the State Senate on insurance issues. In these positions, I was exposed to a wide variety of issues before the Legislature and oversaw the development and negotiations of legislation, as well as any floor debates on such legislation; directed committee investigations and reports; and, interacted with all facets of the insurance industry and insurance consumer groups. Prior to joining the Senate Standing Committee on Insurance, I served as chief counsel to the Senate Deputy Majority Leader, the Honorable John R. Dunne, who was a significant figure in insurance legislative and regulatory matters, including

being a co-founder of the National Conference of Insurance Legislators (which I served as a member on behalf of the New York Senate) and author of major insurance legislation in New York over a period of twenty years inclusive of his chairmanship of the Senate Standing Committee on Insurance.

8. As partner in the firm of Park Strategies, LLC and its subsidiary, The Compass Company Consultants, LLC, I provide advice and consulting services in the area of insurance to insurance companies, insurance policyholders, insurance regulators, and insurance licensees, including agents and public insurance adjusters, among others. My practice includes strategic planning, expert consulting and testimony, management consulting, legislative representation, regulatory enforcement, and representation in all areas of insurance and risk management to the industry and insurance consumers.
9. I have been a practicing attorney in New York (with bar admission in Connecticut as well), having served in the firm of Rivkin, Radler, Dunne and Bayh of Uniondale, Long Island, New York, where I worked on asbestos, Agent Orange, and other environmental insurance defense matters on behalf of insurance company clients. I also worked on medical malpractice defense matters. I was also of counsel to the firm of Crane, Kelley, Green and Parente of Albany, New York, and was in the individual practice of law in Albany, New York.
10. I was educated at the State University of New York at Albany, where I earned a Bachelor of Arts in 1983. I earned my Juris Doctor from the Albany Law School of Union University in 1986. I am admitted to the Bars of and authorized to practice law in the states of New York (1987) and Connecticut (1986).

11. In addition to my roles within insurance regulation and consulting, I have also been involved in insurance and risk management academia: I served as an adjunct professor of public policy at C.W. Post College of Long Island University, teaching health policy and administration, including risk management and liability issues; I have served as a member of the Global Advisory Council of the Mississippi State University College of Business and Industry's risk management and insurance program, and have served the International Center for Enterprise Preparedness ("InterCEP") of the New York University as an unpaid advisor; and I am currently a member of the board of trustees of the College of St. Rose School of Business and chairman of the Huether School of Business Advisory Council. I have also written numerous articles on the topics of risk management and insurance coverage. I have also served as a guest lecturer at Columbia University and the Albany Law School of Union University, focusing on insurance and reinsurance issues.
12. I have served as a consulting and/or testifying expert witness in a number of judicial and quasi-judicial matters over the past several years and have testified before administrative and legislative bodies on dozens of occasions. In summary, I have served as an expert for policyholders, shareholders, regulators, and law firms as well as insurers engaged in complex insurance litigation; and I have testified before both houses of the United States Congress, before the Senate and Assembly of the State of New York, the legislature of the State of Maryland, and local governments including the City of New York.

II. Opinion

1. I have been asked by plaintiff's counsel to review the relevant documents in this matter and to issue an opinion as to the nature of the insurance coverage purported to be held by, and to the validity of various claims and representations of insurance coverage made to the customers and transportation companies associated with, a company or companies known as UBER or RASIER ("UBER") and related entities.

BACKGROUND

2. UBER is a group of companies that is engaged in an "unlicensed transportation business" in many of the large urban areas of the United States. These transportation companies utilize a wireless smartphone application to connect riders/customers with drivers of transportation vehicles without respect to the nature, credentialing, or condition of such vehicles. The riders/customers are charged a fee by UBER for the transportation service through the smartphone application, and UBER then compensates the driver/transportation company a percentage of the overall fee charged. Since it does not provide actual transportation services, UBER is not licensed as a transportation service provider and, thus, not regulated by State or local authorities as traditional customer transportation companies, such as taxi or "black car" businesses.
3. As an "unlicensed transportation company" UBER does not have to follow the rules of State or local authorities for licensed transportation companies, especially with respect to insurance protection, driver training and qualification, vehicle safety and government reporting. Further, UBER relies upon similarly-situated unregulated and

unlicensed entities actually providing the transportation services marketed and arranged by it to be successful.¹

4. UBER and similar service companies are known to be part of the burgeoning “sharing economy” which is characterized in part by the transition of personal property, such as an automobile or apartment, to some temporary commercial purpose. The sharing economy and the expediting of such transitions has been greatly enhanced by the proliferation of digital technology, including hand-held devices, such as iPads, iPhones and similar devices, and a now-massive digital marketplace. Many of the services of those purveying in the sharing economy and within the digital marketplace have done so without due regard for critical legal, regulatory, risk management, finance, and operational issues that are all necessary considerations for a bona fide commercial enterprise.
5. My experience as the chief insurance regulator in the State of New York, as a longtime member of the NAIC, and as an attorney and consultant specializing in the areas of risk management and insurance, has allowed me to become quite familiar with State and local mandatory insurance requirements for the livery business in New York’s large cities. My experience has also made me knowledgeable of the risks and hazards faced by drivers, passengers and the general public who are participants in or subject to the livery industry and the particularized risks faced by insurance companies who are engaged in the writing of commercial transportation insurance policies.

¹ One of the complexities of UBER’s business model is determining if UBER actually provides any transportation services. It states that it relies on its “driver partners” but understanding these driving partners to be independent contractors it is unclear whether those actually providing such services are employees or could be considered agents of UBER.

UBER'S INSURANCE REPRESENTATIONS

6. In the course of my review of the materials in this case, I have reviewed a document entitled, "Uber Policy White Paper 1.0" as well as several advertisements issued by UBER and its affiliated companies. It is apparent that UBER has issued representations that a certain amount of insurance is provided by UBER for, ostensibly, the benefit of rider/customers of the transportation services it arranges and through which the customer is served. For example, the white paper contains the following provision:

"In the absence of regulatory clarity, Uber will implement safeguards in terms of safety and insurance that will go beyond what local regulatory bodies have in place for commercial transportation.

1. At minimum, there will be a \$2,000,000 insurance policy applicable to ridesharing trips. This insurance applies to any ridesharing trip requested through the Uber technology platform."²

7. Also in the course of my review, I have examined two insurance policies that have been made public by UBER that indicate a policy period from December 21, 2013 to December 21, 2014. These policies are issued by the James River Insurance Company. Both policy forms contain the number CA43600143. My review indicates that these insurance policies do not provide the amount and extent of the insurance claimed by UBER in its publications.

² This appears to be in conflict with the policy language and representations on the UBER website as well as other white paper revisions, all of which indicate a coverage limit of only \$1 million for liability and \$2 million for combined uninsured/underinsured coverage.

THE UBER INSURANCE POLICY

8. The insurance policy referenced by UBER is what is known as an excess and surplus lines policy (“ES”). These policies are written by insurers that are not necessarily licensed to do business in the state in which the policy will be issued. The ES market is one that is subject to a bare minimum of insurance regulation, as opposed to traditional personal, taxi/livery or a commercial auto insurance policy, which are heavily regulated by State authorities for product pricing, policy scope and form language and unfair claim settlement protections. ES markets generally provide insurance to large commercial enterprises, ones which contain sufficient internal legal and risk management resources to protect themselves from potentially unfair insurance company practices, and only for risks that are allowed to be “exported” to the ES market by the local insurance regulator. Rarely do ES carriers insure individuals and rarer still do ES carriers provide automobile insurance or taxi/livery insurance of the nature provided passengers in the traditional marketplace. There are rules in each state which govern the circumstances under which an entity may access the ES market.
9. Insurance considerations for taxi and livery operators are not only an issue for insurance regulators. Government agencies charged with regulating the taxi and livery market similarly have minimum limits of liability insurance coverage which need to be maintained by those operating taxicabs. In Houston, Texas, for example, the city requires minimum bodily injury protection for each person of \$30,000, property damage minimum limits of \$20,000 and minimum per accident coverage of

\$60,000. These limits are imposed in order to protect the general public by providing certain amounts of financial security. Operators are also required to provide in-depth information concerning their carriers, policy provisions, list of insured autos, and other pertinent information.

10. The safety net of protections to the riding public comes in when the local regulatory authorities interact with the state insurance regulators to assure seamlessness in that net. As superintendent of insurance, I interacted regularly with the chairman of the New York City Taxi and Limousine Commission, and our staff routinely engaged to assure that there were no gaps in coverage, no lapses in coverage, no inappropriate coverages or any other risk to the public as a result of an operator not adhering strictly to the regulatory rules concerning insurance coverages.

11. UBER is inappropriately marketing its James River coverage as a protection for the drivers and passengers which are doing business with UBER. This is not only clear from the plain meaning reading of the policy language, but given the lower level of regulatory oversight for the ES market, individuals may experience difficulty should the circumstances arise that the individual may have to attempt to file a claim against such ill-fitting insurance. If such difficulties arise, there are both numerous issues as to how or if the policy will actually provide coverage of the kind and in the amount expected by a transportation service provider or passenger or mandated by law. Further, given both the uncertainties in the coverages and the fact that it is written with perfunctory regulatory oversight, there is little an insurance regulator may be able to do to assist an injured or aggrieved individual. In the traditional auto

insurance market, state regulators possess a significant array of tools to use to ensure that claims are honored in accordance with the coverages in the policy.

12. Of greatest concern is that the James River policy actually insures RASIER, an apparent subsidiary company of UBER of unknown role or responsibility and an entity largely unknown to the end user of UBER's services. It appears that the coverage in the policy is only applicable if RASIER is found liable to the third party for the injuries sustained in the accident. Given the unclear role of RASIER in the process of retaining and operating the ride referral system, it is difficult to imagine how a driver or a passenger would be able to prove that RASIER was responsible for the injuries sustained in an accident. Of course, this concern is in addition to the foundational problem of this coverage not being in sum or substance the kind of coverage normally carried and relied upon by transportation service providers.
13. The Schedules attached to the RASIER policy does name drivers "who have entered into a contract with one or more of the Named Insureds prior to the time of the 'accident,'" this coverage exists only when the accident was caused in whole or in part by the actions of RASIER. Thus, if the driver causes the accident solely, there does not appear to be any coverage afforded to anyone by the RASIER policy.
14. This lack of meaningful coverage becomes critical when one examines the UBER contracts with its transportation entities. The UBER service agreements with the drivers or their companies simply require that the drivers carry the minimum insurance required by law. These contracts do not even require that the driver or the company carry commercial automobile insurance. State auto insurance mandates usually provide very low insured limits. Further, it appears that many drivers may

only carry private personal auto coverage. However, standard personal auto insurance forms issued nationwide contain an exception to coverage when the personal auto is used as a public or livery conveyance or in any other commercial manner. In the worst case scenario, there may be no insurance coverage at all for an accident in one of the UBER vehicles, and at best, the coverage may only be minimal, and not of the substance and limits enough to compensate a driver or passenger for injuries.

THE UBER DISCLAIMERS

15. My review of the UBER passenger contract is an additional source of concern about whether any insurance coverage exists from UBER. This contract contains the following disclaimer:

“The company (UBER) may introduce you to third party transportation providers for the purposes of providing transportation. We will not assess the suitability, legality or ability of any third party transportation providers and you expressly waive and release the company from any and all liability, claims or damages arising from or in any related to the third party transportation provider.”

16. Further, UBER has similarly onerous disclaimers in its transportation provider contracts, which severely restrict the driver or the transportation company from ever having the opportunity to hold UBER liable for damages or injuries sustained.

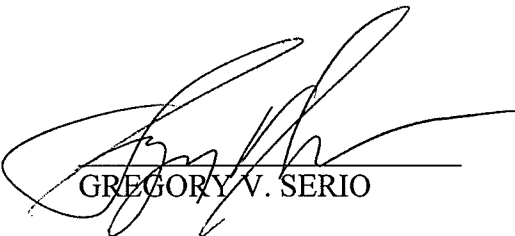
17. Given the restrictive language of the James River policy, UBER appears to have completely locked out any opportunity for anyone to access this coverage by preventing anyone from successfully claiming that UBER or RASIER is responsible

for any injuries from any auto accident occurring on any of the trips that it arranges. All the while, UBER represents to the general public that it fully backs up its transporters with \$2 million in insurance coverage.

18. It is my opinion that should any accident arise during a trip organized and arranged by the UBER companies, the passenger and driver would face an extraordinarily difficult legal challenge to ever have the change to hold UBER or its insurance policy responsible.

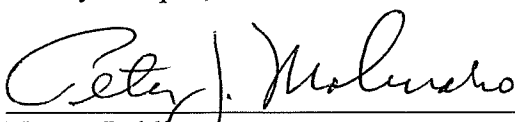
19. There may well be a place for UBER-type services in the digital age, and traditional transportation service providers may well have to revisit their business plans to compete in the 21st-century taxi/livery marketplace. The pathway to the future, though, is not a roadway rutted with regulatory ignorance or commercial subterfuge. UBER and related entities cannot gain an upper hand in the commercial market by ignoring or flouting critical financial security laws, rules and regulations. They must abide by the rules of the road as they have been carefully crafted and enforced, and it appears that they do not abide at this time.

Dated: Albany, New York
April 8, 2014



GREGORY V. SERIO

Sworn to before me this
8th day of April, 2014



Notary Public

PETER J. MOLINARO
NOTARY PUBLIC STATE OF NEW YORK
No. 02MO6186279
Qualified in Albany County
My Commission Expires April 28, 2017

List of Reviewed Materials

1. UBER/RASIER Insurance Policy
2. Amended UBER/RASIER Insurance Policy
3. UBER's Advertised Insurance Coverage
4. Driver Terms/Conditions/Contract dated August 2011
5. TLPA/PDH Paper: "Dangerous Details in the Fine Print: How Uber, Lyft and Sidecar Are Shifting Risk and Avoiding Responsibility"
6. UBER Passenger Contract
7. Lyft Passenger Contract
8. UBER/James River Dec Page for Policy Number CA43600143
9. UBER White Paper
10. City of Houston Insurance Filing Form-TaxiCab from City of Houston Administration & Regulatory Affairs
11. Affidavit of Mary E. Vaught