

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF
CALIFORNIA

Order Instituting Rulemaking on
Regulations Relating to Passenger
Carriers, Ridesharing, And New Online-
Enabled Transportation services

Rulemaking 12-12-011

**COMMENTS OF CHRISTOPHER DOLAN ESQ. AND THE DOLAN LAW FIRM
ON AMENDED PROPOSED DECISION MODIFYING DECISION 13-09-045**

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Christopher B. Dolan, and the Dolan Law Firm (Dolan) hereby files further comments regarding the Commissioner Peevey's Revised Proposed Decision Re Agenda Item #13072 (Rev. 1) set for hearing 7/10/2014 as Quasi Legislative Item #40.

Dolan brings a unique, real world, perspective to these proceedings meriting careful consideration

Dolan is the only party to this proceeding which actually deals with the day-to-day impact that transportation services have on people who are injured and killed such as the economic damages including medical expenses (past and future), lost wages (past and future) as well as non-economic damages such as pain and suffering, emotional distress, the impact of being disabled for life and, in cases such as Sofia Liu's the loss of a loved one through a wrongful death action. Dolan, as one who decides, on behalf of those injured in traffic collisions, when to file a lawsuit, and as the only party to these proceedings who litigates these cases, is in the best position to discuss what rules and regulations will reduce litigation and foster fairness and what action will reduce the costs to society imposed by this form of transportation service

Dolan recently finished a trial in San Francisco Superior Court (on June 25, 2014) involving injuries to a pedestrian struck by a taxi cab (Luxor). The pedestrian suffered non-surgical soft tissue injuries (damage to the pudendal nerve) leading to a complex pain syndrome and a mild

traumatic brain injury resulting in hundreds of thousands of dollars in medical bills (past and future) and additional hundreds of thousands of dollars in lost wages (past and future). The injuries occurred to a 35 year old female management consultant – a person representative of the face of today’s San Francisco. After five years of litigation, costing over a million dollars in costs and fees by both sides, a Jury, after a four week trial, voted 11-1 to award 3.2 million dollars in damages. The case was defended by lawyers retained by the insurance company for Luxor. Luxor’s insurance company will be responsible for fulfilling the judgment. The plaintiff in this case was not a party to the transportation transaction and her injuries are representative of the real world damages, as assessed by sophisticated jurors, which are caused by transportation companies.

Sofia Liu’s death, occurring in period one, provides a concrete example of how Commissioner Peevey’s Amended Proposed Decision is an offense to the California Public he is sworn to protect.

Dolan represents the family of Sofia Liu in their pursuit of Justice. Sofia Liu was killed on New Year’s Eve and her mother and brother were critically injured, when a Uber X driver, operating in what has now been defined as “period one” ran them down in a cross walk. The last thing Sofia’s mother saw before her daughter was killed was the Uber X driver looking down at his cell phone.

The decisions which the Commission will make have a real world impact and reflect not only on the Commission’s credibility as a protector of the rights of Californian’s but, also, act as an indication to the injured public as to how California’s primary regulatory body values life. I welcome the Commissioner to meet with myself and the Liu family before committing to this unwise course of conduct so as to hear from them the impact that Uber X and its driver has had on their life and so he can explain to them why, in the interests of providing a greater profit margin to the company which was the instrument behind her daughter’s death, the Commission values her daughter’s life in the amount of \$100,000.00. The decision rendered by the CPUC should be one made in favor of protecting and valuing human life, not advancing a new transportation dispatch system.

Dolan disagrees with the characterization of the TNC operations as a “new industry.”

The industry which is at issue is the transportation industry. It has evolved over time from the horse to the stage coach, Hackney carriage, Hansom cab, train, automobile, bus, zeppelin, and airplane. What is new is the method of dispatch. But this is a novelty not a novel industry. When we moved from the telegraph to the telephone the stage coach and train did not become new industries. Likewise, when the telephone, radio or cell phone allowed for central dispatch of taxi’s no new industry was born. New Technology seems to be seductive and self-designating as a “new industry.” The provision of transportation services is the industry; the application is just a new dispatch service.

Dolan disagrees with the proposed “race to the bottom” of consumer protection

Commissioner Peevey, without explanation, has used as his metric for insurance coverage, the lowest level of consumer protection provided by a regulated common carrier, the City of Los Angeles. However, the Commissioner fails to note that On June 10, 2014, The LA City Council passed a resolution calling for The City of LA to back AB 612 (Nazarian) which would, as a matter of law, make TNC’s Charter Party Carriers and therefore, subject to the Charter Party Carrier requirements including the provision of commercial, primary, insurance.

http://clkrep.lacity.org/onlinedocs/2014/14-0002-s73_reso_06-10-14.pdf This would, by default, require these Charter Party Carriers to follow CPUC General Order 115-F and carry a minimum of \$750,000.00 in commercial insurance at all times and, additionally, provide workers compensation and a plethora of other consumer protections.

<http://docs.cpuc.ca.gov/PUBLISHED/Graphics/575.PDF>

The LA insurance requirements are amongst the lowest of any region or municipality. This is akin to setting California’ educations standards to those of Arkansas

The Commissioner proposes to have this lowest level of protection provided to the citizens of the state of California yet fails to recognize that LA regulations provide greater consumer protections of other types not required of the TNC’s. For a list of said regulations see;

http://ladot.lacity.org/stellent/groups/departments/@ladot_contributor/documents/contributor_web_content/lacityp_028081.pdf.

Choosing the LA taxi insurance standards is irrational. The CPUC requires that all Charter Party Carriers carry a minimum of \$750,000.00 of insurance. Therefore, the CPUC would be regulating a weakening of consumer protection by requiring a like service to provide *less* insurance protection. This, solely because the method of dispatch is different. TNC drivers act just like other Charter Party Carriers in engaging in pre-arranged transportation services. If anything, the lack of professional drivers and consumer protections provided by taxi regulations mandates that a higher amount of insurance be provided.

UBER has its headquarters in San Francisco. In San Francisco taxi passengers are covered by no less than \$1,000,000.00 in insurance protection. As UBER is in San Francisco the San Francisco model should be adopted. It is the amount of insurance in the geographical area that they started their operations and wherein their own corporate employees work. The CPUC is charged with providing consumers with the highest degree of safety and protection not the lowest. The race to the bottom will lead to other Charter Party Carriers seeking a similar downward adjustment.

The Proposed CPUC decision will have the effect of reducing protection to all Californian's from all transportation service providers.

As a matter of pure market economics, and study of the statements of Travis Kalinick, Uber is “at war” with the established taxi transportation system. He unabashedly has set the tone for Uber which is to “crush” the competition and is deliberately manipulating price so that Uber fares are below that which would be charged by a taxi. Make no mistake; if Uber is allowed to continue to operate in this largely unregulated environment, the established taxi system will be dead within 12-14 months. At that time, Uber and its owners will have the public over a barrel; they will control pricing, availability of disability access vehicles, and they will be able to manipulate supply of vehicles thereby engaging in their predatory surge pricing. The taxi industry, with its regulated fare structure, designed to provide an ample supply of vehicles while providing a reasonable profit, will cease to exist along with its public safety and price protections. Why would anyone buy a medallion, register its drivers, provide workers compensation insurance,

cameras in vehicles, or meet any of the safety regulations which are inequitably applied to taxi's and not TNC's? The answer, they won't. The CPUC will have, by its actions, and the fiction of this new industry, undo centuries of consumer protection, all for the benefit and profit of a few owners of these services.

The CPUC should defer to the Insurance Commissioner's recommendations

The original proposed decision tracked the recommendations of the California Insurance Commissioner (The Hon. Dave Jones, Esq.). Commissioner Jones is best positioned to evaluate the need for, and amount of, insurance which is required to achieve a balance between profitability and safety\ accountability. While the PUC regulates industries ranging from telephone to gas distribution, transportation is but one facet of the Commission's role in maintaining a viable commercial infrastructure while protecting public safety. The sole role of the Insurance Commissioner is the determination of the type, nature, cost and amount of coverage best protects Californian's in the area pricing insurance and spreading risk among the various stakeholders affected by the imposition of insurance requirements.

Commissioner Jones' determination/recommendation was reached after months of study and following open and public investigatory hearings. Commissioner Jones, as the duly elected Constitutional Department Official, provided a strongly worded recommendation as to what California needed in the way of Insurance Protection. Commissioner Jones recommendation should be given great weight and deference. The current proposed rules are clearly right out of the Uber playbook. The CPUC hands the industry what it wants to protect its shareholders at the cost to consumers and the government.

If the Commissioners Amended Decision is adopted it will make the municipalities, counties and State of California the insurer of those harmed by TNC conduct.

In the Liu case the Liu family had no private insurance. The City and County of San Francisco and MediCal are having to absorb the cost of the medical treatment provided to the Liu family. This is not an isolated event. In any instance where an uninsured/under insured driver causes injury the financial burden to provide for medical care and unemployment insurance falls upon

the municipal, county and State government. Uber seeks to externalize its costs of operations to the general public. The \$100,000.00 proposed by the CPUC is woefully inadequate to cover the losses of even a relatively straightforward leg or hip fracture (common with pedestrian injuries) as these types of collisions can result in over \$100,000.00 in medical care for transportation, emergency services, surgery and rehabilitation. Based on 20 years of experience Dolan can say that the average hip fracture or leg injury requiring an open reduction and internal fixation results in a compensatory award in excess of \$150-200,000.00. The injured party and the public will be absorbing these costs.

The elimination of Medical Payments Coverage will shift the costs associated with the TNC operations on to the injured party and the taxpayer

In the initial Proposed Decision the CPUC had adopted the Insurance Commissioner's recommendation to require TNC's to have medical payments coverage. This was the appropriate decision. As to the other forms of insurance which were recommended, medical payments coverage would provide for a minimum amount, equal to the deductible of most individuals private healthcare insurance and/or annual limits, to assist an individual injured at some point in the transportation cycle. Again, without explanation, the Commissioner recommends deletion of this very important coverage. The result of this is a shifting of these costs to either the private health insurance of the injured party or upon the public trust which provides indigent parties healthcare free of cost to them but paid for by the taxpayer. The medical payments coverage mandate should be re-instituted.

The unaccounted for elimination of uninsured/underinsured motorist coverage from the proposed Decision and Rules will result in a greater shifting of the costs of the enterprise to the public and/or to those who have personal insurance

The prior iteration of the proposed Decision and Rules provided for underinsured and uninsured motorist protection. As the Commissioner knows, California maintains a minimum insurance requirement of \$15,000.00 per person, \$30,000.00 per occurrence. Drivers are not required to have underinsured-uninsured motorist coverage. Without any justification the current proposed

rule eliminates this coverage completely. This increases the potential for burden shifting for both economic and non-economic injuries to the injured party and the general public.

Uninsured/underinsured motorist coverage protects both the driver and the passenger in the TNC business model. By eliminating this protection the Commissioner amplifies the impact of the externalization of costs, expense and loss away from the business enterprise and on to the general public. If a TNC vehicle is struck by an uninsured/underinsured driver then all those within the vehicle who are injured will be devoid of adequate insurance coverage. Again, the burden to compensate for those losses will be borne by the general public, not the TNC which is profiting to the tune of hundreds of millions of dollars and, in the case of Uber, has a market valuation in excess of \$17,000,000,000.00 This Commissioner would have a family, making less than \$40,000,00 per year (as in the case of the Liu's) bear the extreme hardship and financial loss of the over \$186,000 in medical bills, funeral expenses, and emotional damage while the \$17,000,000,000.00 Uber giant walks away and washes its hands with an insurance payment of \$100,000.00 for the death of a child. This is shameful.

What the Commissioner fails to recognize, or more likely ignores, is the likely result of the elimination of the TNC supplied uninsured/underinsured coverage which is the injured party turning to their own underinsured/uninsured motorist coverage. In the event of a TNC related collision where either driver is at fault, and the passenger is injured in an amount which is greater than the insurance carried by the responsible party, if they carry uninsured/underinsured motorist coverage on their own vehicle, even though they are not in their own vehicle at the time of the collision, they will turn to their own insurance company which will have to both defend against that claim and/or pay any indemnity payments for the harms caused. This will be a loss which will be factored into, and [passed along to the private insurance pool which sets its rates at an amount sufficient to cover all losses and achieve a reasonable profit. Therefore we will all be paying for the costs of insuring against underinsured/uninsured TNC operators and/or other drivers. Moreover, this will lead to greater litigation as the injured party not only must first pursue, and exhaust, the negligent party's insurance, they then must institute a legal action against their own insurance company. If that insurance company is believed to have acted in bad faith then another legal proceeding against that carrier will be instituted.

TNC provided insurance in period one *must be primary*

The original Proposed Decision, had the TNC sponsored insurance as primary. The New Proposed Decision makes it excess. This is an unjust shifting of the costs of defense to the private insurance carriers and, ultimately, through the systems of ratings and actuarial analysis to all of us who maintain private insurance on our vehicles. Again, there is no justification provided by the Commissioner as to why this gift is bestowed on the TNC industry. Any insurance called for in period one must be primary. Failure to do so will lead to more, not less litigation as policyholders sue their insurance companies for denials of coverage and insurance companies sue each other for declaratory relieve on who's coverage applies (if anyone's).

Imposing the burden for greater insurance coverage will not hamper growth, sustainability or innovation

In April of 2014, without the mandate of any regulatory body, and on its own initiative, Uber instated a \$1.00 per ride "safe rides fee." <https://support.uber.com/hc/en-us/articles/201950566>

Despite this per-ride fee Uber's popularity and profitability, by its own admission, has skyrocketed. This is the rational economic way to spread the costs of insurance and loss among the group of users of a good or service so it reflects its true cost and therefore allows the free market to determine the utility of the service or good. Uber states that this fee will be used to underwrite the costs of background checks and insurance among other things. How can Uber state, with a straight face, that imposing greater costs and burdens with safety and security will thwart innovation or growth? It is pure hypocrisy for them to do so.

Uber takes 20% of the fare and, then, in addition, defers the costs of its operation by collecting this \$1.00 per ride "safety and security fee." Uber is poised to raise its percentage of fare profit to 25%. What Uber and others want is not freedom from crippling, prohibitive, regulation but freedom from responsibility and freedom to increase profitability.

The proposed regulation will lead to more litigation

As a lawyer currently involved in a case against UBER wherein the injury occurred in period 1,

and the driver carried only \$15,000.00 in insurance, I can tell you that the lesser the amount of insurance coverage involved, the greater frequency and complexity of litigation. When there is \$1,000,000.00 in coverage the vast majority, I would hazard to guess over 98%, of all claims will be covered under that level of coverage. A coverage limit of \$100,000.00, as referenced above, will cover only those injuries which are the most routine (a fractured extremity with surgery is a case that has a minimal value in excess of \$100,000.00). With an inadequate amount of available insurance lawyers will sue the TNC to try and pierce the corporate veil and/or to establish that the driver was an employee/agent rather than an independent contractor. Likewise, issues of defective products, inadequate training and supervision, independent negligence through the creation of surge zone based speed incentives will be tried before the courts. Drivers will be sued to obtain access to their individual assets to compensate the losses not covered by insurance. Bankruptcy filings by those drivers will, likewise, rise as they seek to protect their assets from judgment in these civil suits. These claims and actions would not be filed in court the fund of available insurance was as recommended by the Insurance Commissioner and as originally proposed by Commissioner Peevey. One need only look at the lawsuit Dolan has brought on behalf of the LiU family to see these legal issues being actively litigated. Uber's attorneys moved to, and obtained, transfer of the Liu claim to the Complex Civil Division therein indicating that the inadequacy of insurance will lead to multiple, and complex, legal actions. I can definitively state that the Amended Proposed Decision will lead to a litigation explosion rather than a reduction. Dolan's lawsuit is already being used as a model in multiple jurisdictions.

Conclusion

The race to the bottom harvesting from the body of protection the vital protections recommended by the Insurance Commissioner, and previously proposed by the Commissioner is a breach of the public trust and a gift to the TNC industry. An application of fundamental public social policy, and rational economics traditionally employed to protect consumers and the public in general form shouldering the harms caused by a good or service, demands that the Commissioner re-affirm the previously proposed limits and endorse the recommendations of Commissioner Jones.

If the Commission does not have the will to do so, then it should mandate insurance in period one and defer to the authority and experience of the insurance commissioner to set those limits.

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Respectfully Submitted;

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