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Outside Counsel

Taxis and Ride-Sharing: Meeting New York City's Car Service Needs

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New York City residents need many different forms of daily transportation services, including New York City taxis and those provided by Uber and other car sharing companies.¹ A decision last month by the Court of Appeals² and New York City officials' proposal of a cap on the growth of car-sharing companies Uber and Lyft,³ now temporarily on hold,⁴ are clarifying and raising legal questions surrounding city transportation services.

The existing car service industry in New York City consists of approximately 70,000 for-hire vehicles including black and livery cars⁵; of these, some 26,000 are provided by Uber⁶ and of those, some 19,000 are Uber black cars or "about 65 percent of vehicles in the black car industry."⁷ In addition, there are some 13,000 yellow taxis. Stated simply, all of these car service companies are needed to meet the ever increasing car service transportation needs of New York City residents.

Taxi of Tomorrow

Last month the New York Court of Appeals in *Greater New York Taxi Association v. New York City Taxi And Limousine Commission*⁸ found that the Taxi and Limousine Commission (TLC), in selecting the Nissan NV200 as New York City's official Taxi of Tomorrow, had not exceeded its authority under the City Charter or intruded upon the New York City Council's domain. This represents the successful conclusion to an eight-year effort to replace the Checker Cab. As the court noted, "Anyone reminiscing about New York City public transportation from the 1960s through at least the 1980s will probably evoke an image of Checker cabs...the iconic American taxicab that was valued by owners for its durability and was appreciated by passengers for its large rear seat and trunk space."

The Checker cab was last produced in 1982 and eventually replaced by the equally iconic stretch Ford Crown Victoria during the period 2000-2007 which was "the only commercially available vehicle model that has complied' with the taxi vehicle specifications.

The court noted the circumstances giving way to the Taxi of Tomorrow program. "With Checker...standing out as a notable exception, car manufacturers typically did not and do not design and produce vehicles with the intention that they be used as taxis. Instead, medallion owners would buy a passenger car meeting certain specifications and then 'hack-up' that vehicle by adding a partition, roof light and other required equipment...The use of passenger vehicles is less than ideal because taxis are subjected to long hours and rough driving conditions...Additionally, the use of hacked-up passenger vehicles may pose safety risks.

The TLC started the Taxi of Tomorrow (ToT) program in 2007 with considerable input from taxi industry stakeholders including drivers, medallion owners and passengers "with the idea of designing a vehicle that would be manufactured primarily for use as a taxi, rather than retro-fitting passenger vehicles for that purpose"⁹

The NV200 Contract

The TLC's request for proposals issued in 2009 for a manufacturer of original equipment to provide a taxi to meet certain design specifications attracted seven bidders, narrowed down to three models which after public and industry input resulted in the selection of the Nissan NV200. The idea was that each taxi owner would be required to purchase the NV200 to replace an existing vehicle as it was retired.

The Department of Citywide Administrative Services entered into a 10-year exclusive supply contract which provided specifications, a maximum retail price but no minimum and, in addition, required Nissan to furnish a wheelchair-accessible version and a hybrid version as needed by taxi owners. Significantly, the contract provided that "If a vehicle superior to the NV200 becomes available after five years, the TLC may provide notice to Nissan and terminate the [contract] unless Nissan modifies the NV200 or designs a new vehicle to match or exceed the specs of the superior vehicle." Id.

ToT Challenged

Interested parties challenged the TLC's selection of the NV200. The petitioners asserted, as the court noted, "that the regulations challenged here are beyond the TLC's authority because they mandate a single gas-powered model as the City's official taxi vehicle, rather than setting specifications that could potentially be met by other makes and models."

Clearly, and it is conceded, the TLC has the power to pick one vehicle. "Petitioners acknowledge that the TLC has the authority to enact rules with stringent specs that can only be met by one model at the time the rules are enacted." In addition, "petitioners do not dispute that the TLC has the authority to approve the use of a single vehicle model as part of a pilot project for limited periods of time." Petitioners sought to shift the decision-making power to the City Council and away from the TLC.

The Court of Appeals sided with the TLC. "Thus, the limited issue presented here is whether the TLC had the authority to require the use of a particular vehicle make and model as a taxi, as opposed to requiring taxi vehicles to meet certain specs, without the City Council

explicitly specifying such authority, or whether the TLC intruded on the City Council's domain by enacting the ToT rules."

Noting that City Council granted the TLC extremely broad authority to enact rules, including the ToT rules, and that the City Charter granted the TLC equally broad authority including "guidelines for the TLC to consider, such as 'safety, and design, comfort, convenience, noise and air pollution control and efficiency in the operation of vehicles,'" the Court of Appeals conducted an analysis pursuant to [Boreali v. Axelrod](#),¹⁰ its seminal case addressing the proper delegation of power, finding that "Given the broad statutory powers granted to the TLC to set policy as guided by enumerated safeguards and guidelines, the TLC did not exceed its authority or intrude on the City Council's domain in violation of the separation of powers doctrine by enacting the ToT rules."

The Uber Revolution

Uber and Lyft allow customers to order car service by using a smartphone app enabling them to locate an available Uber or Lyft vehicle. The app also allows the customer to rate the drivers who are licensed, insured and may own the vehicle, all while paying less for short-term transportation and avoiding the need to hail a cab. This revolutionary concept has been well received in many markets worldwide and attracted extraordinary sums in venture capital.¹¹

It had been reported that New York City officials may be "proposing to cap [the growth of Uber and Lyft],"¹² an idea now temporarily on hold.¹³ Uber, Lyft and other ride sharing economy companies¹⁴ are seen as providing "a real convenience for residents of neighborhoods that are poorly served by taxicabs, as well as a needed source of income for thousands of full-time and part-time drivers. A heavy-handed cap on new services would create new problems."¹⁵

In addition to accommodating local interests Uber may be required to evolve into a more traditional model.¹⁶ This is so because of recent decisions by U.S. District Judge Edward Chen in the Northern District of California¹⁷ and by the California Labor Commissioner,¹⁸ both of which have found Uber drivers to be employees or presumptive employees. Assuming Uber drivers are ultimately found to be employees and protected by California Labor Law can New York State and other states be far behind?

Endnotes:

1. See Joshi, "Taxis: Yellow, Green and Black: Competition & Evolution," City Law, New York Law School, Vol. 21, No. 3 (May/June 2015). There are many ride-hailing companies in New York City including "Uber, Lyft, Gett, Hailo, Curb, Way2Ride, Ride Ling, Bandwagon."
2. *Greater New York Taxi Association v. New York City Taxi And Limousine Commission*, __N.Y.3d__, 2015 WL 3885462 (N.Y. 2015).
3. See The Editorial Board, "Limiting Uber Won't End Congestion," www.nytimes.com (July 17, 2015) ("Anybody who spends time in a car or bus in Manhattan knows that traffic congestion isn't getting better and, indeed, may be getting worse. City officials say that car

services like Uber and Lyft are partly to blame"); Flegenheimer, "City Hall, in a Counterattack, Casts Uber as a Corporate Behemoth," www.nytimes.com (July 20, 2015) ("At issue is a City Council initiative, promoted by [Mayor Bill de Blasio], that would limit the growth of for-hire vehicle companies like Uber to 1 percent, pending a citywide study of traffic patterns").

4. See Flegenheimer, "De Blasio Administration Dropping Plan for Uber Cap, For Now," www.nytimes.com (July 22, 2015) ("The de Blasio administration has backed away from its fight with the app company Uber, agreeing on Wednesday to drop for now its plan to place a cap on the number of vehicles Uber operates in New York City").

5. See Joshi, Taxis: Yellow, Green and Black: Competition & Evolution, *City Law*, New York Law School, Vol. 21, No. 3 (May/June 2015).

6. Issac and Singer, "California says Uber driver is employee, not a contractor," www.nytimes.com (June 17, 2015).

7. See n. 4, *supra*.

8. *Greater New York Taxi Association v. New York City Taxi And Limousine Commission*, 2015 WL 3885462 (N.Y. 2015).

9. *Id.*

10. *Boreali v. Axelrod*, 71 N.Y. 2d 1 (1987).

11. See note 3. Dickerson and Hinds-Radix, "Apartment and Car Sharing: A Disruptive Internet Revolution," *NYLJ*, Aug. 12, 2014.

12. See n. 3, *supra*.

13. See n. 4, *supra*.

14. There are many ride-hailing companies in New York City including "Uber, Lyft, Gett, Hailo, Curb, Way2Ride, Ride Ling, Bandwagon"(See n. 3, *supra*).

15. See n. 1, *supra*.

16. See Ruiz, "Share Economy On Edge Over Worker Status," www.law.com (July 13, 2015) ("The sharing economy is at a crossroads. In the face of litigation and political pressure, many companies built on a labor force of independent contractors are considering whether to reclassify their worker as traditional employees").

17. See *O'Connor v. Uber Technologies, Inc.*, 2015 WL 1069092 (N.D. Cal. 2015)(Uber drivers are presumptive employees; jury trial required). See also: Todd, "Uber Loses Arbitration Bid in Driver Suit," www.therecord.com (June 10, 2015) (mandatory arbitration clause in driver contracts unenforceable).

18. See *Berwick v. Uber Technologies*, State Case Number 11-46739 EK, Order, Decision Or Award Of The Labor Commissioners dated June 3, 2015 (finding a former driver to be

Uber's employee). See also Isaac and Singer, "California Says Uber Driver Is Employee Not A Contractor," www.nytimes.com (June 17, 2015).

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