NYC TAXI AND LIMOUSINE COMMISSION

PUBLIC COMMISSION MEETING

held on Thursday, January 10, 2008

40 Rector Street
Fifth Floor
New York, New York
9:30 a.m.
PRESENT:

MATTHEW W. Daus, Commissioner/Chair
ELIAS AROUT, Commissioner
EDWARD GONZALES, Commissioner
JEFFREY KAY, Commissioner
HOWARD VARGAS, Commissioner
CHARLES FRASER, General Counsel
CHAIRMAN DAUS: We are going to get started. Would everybody please take their seats.

I am pleased to announce that Commissioner Gonzales has replaced Noach Dear's seat to add a little more balance to this side.

First and foremost, happy new year, everybody. 2007 was quite a year. I am confident that 2008 will be even more interesting and exciting. We are going to do our best to make that happen.

I would like to proceed on the agenda to Item 1, the Chairman's report.

First, we have -- you may have heard in the news that we have a new oversight and supervisor, Deputy Mayor Ed Skyler. He was promoted by Mayor Bloomberg to be Deputy Mayor for Operations.

The TLC will be coming under his watch, and we are very much looking forward to working with Ed.

On the medallion sale front, we are continuing to see some progress on starting to roll out those accessible medallions. We have 18 accessible medallion
closings that have been held to date since the
auction in November, and we have 16 additional
accessible taxis on the road.

Also, just to remind everybody,
the industry, that we are scheduled to hold our
last and final medallion sale, which will
involve 87 accessible medallions, on or before
June 30, 2008. When we have details on exact
dates and times, we will let you know.

On the TPEP, Taxi Technology
customer service enhancements, we have at this
point .62 percent of all taxicabs are equipped,
and the roll-out is still proceeding smoothly.

We have our data still shows
that there is an increase in credit card tips.
It is averaging still around the 20 percent
range, which is better than it was before.

On the Taxi Technology issue,
the bankruptcy issue -- we reported this a few
times before -- on the advice of counsel, we
are extending the compliance deadline for those
folks who had contracts with Taxi Technology to
the inspection cycle beginning on or after
March 1st, 2008 so at the regularly scheduled
inspection for March 1st and thereafter, you
will be required to be in compliance.

Now, as things change, obviously on the legal front with the bankruptcy pending, we will let you know.

At the last meeting, I had reported there were some issues with credit cards and the systems being used and employed by the drivers. I am happy to report that we have noticed a slight improvement. Our data has indicated that there is an average 13 percent increase in credit card usage from November through December, including the point at which we had some media attention sparked inadvertently by some comments that I had made at the last meeting.

First of all, I want to thank the media. I think that helped a little bit, and I also want to thank the industry, the medallion owners, that we have seen some slight improvement over there. It is still an issue.

We are going to remain vigilant and continue to monitor very closely the progress of the roll-out, including not only the number of transactions but the prosecution of complaints.
Our goal is ultimately to achieve, if we can, 100 percent compliance. We are exploring right now with counsel and staff enforcement options, including not just ensuring that drivers are using the credit card machines and know how to use them, but also just the entire passenger experience.

We are looking at ways that we can enhance the whole customer service experience between the relationship between the driver and the passenger, not just credit cards, so hopefully we will be reporting more on what we plan to do in the next couple of weeks.

For those of you who haven't heard, there is going to potentially be an Amtrak strike. There may be a strike at midnight on January 29th, and from what we are hearing, the reports, that could extend into January 30th.

We hope obviously it will be averted by then, but it does have the potential to be disruptive to many commuters, to people traveling to and from the city to various points.
In a nutshell, the main thing that is going to happen is that Penn Station is going to be closed. Not only are all the Amtrak lines going to be down potentially, but -- a lot of people don't know this -- Amtrak owns a lot of other tracks so when they go on strike, it does have an impact upon New Jersey Transit and the LIRR.

We are working very closely with OEM. We are providing information to them. We don't have an official role or anything to report at this point other than that we have been working and meeting with them.

To the extent that we do get a role for our industry and how it is going to impact us, we will try to get the information out as soon as we can.

Obviously if Penn Station is closed there may be a lot of empty cabs waiting at the Penn Station taxi line.

To the extent that we can use the TPEP systems to send text messages out to the drivers about what is going on, as well as using our other means of outreach communication, we will keep you apprised of
On the Garden and Transit front,
as you notice, there are still flowers out
there, which is consistent with the warm
temperatures we have been getting the last
couple of days.

I just want to reassure the
industry we are not going to be issuing any
summonses or notices of violation. We realize
over the last couple of days it was cold out
there, but we do encourage you to please try to
take them off at your earliest convenience.

To the extent we can be helpful,
Peter Schenkman is available to assist and give
his advice. There is information on the
Gardens and Transit website as well as our
website, and there is an industry notice which
we have copies in the back which explains how
you need to go about removing the decals.

We are not going to penalize
you, but at your convenience, please try to
take them off, otherwise they will be on there
forever, and the worst that can happen is they
start peeling, they get weathered, and then
they start looking kind of junky, and we don't
want that for our cabs and for the industry.

As promised, our monthly
Accessible Dispatch update, we do have some
information to report on the Accessible
Dispatch 311 project.

Today we are having a hearing on
the demonstration project contract award at the
Mayor's Office of Contract Services. We have
Art Ako (sic) is going to be attending that.
If all goes well, that means some additional
paperwork will need to be submitted to the
Mayor's Office.

Then, after that, the contract
will be sent to the Comptroller for approval
and registration. The Comptroller has 30 days
to review it from that point in time.

If all goes well, we will
probably be done by sometime in mid to late
February and ready to go.

Some of you may have seen on our
website or heard in the press that there is a
final publication that came out from the Design
Trust, which we assisted with. It is called
Roads Forward. We sent it out to all the
Commissioners, and it is available for download
through our website as well as the Design Trust website.

Just to clarify, this is something we got some initial comments from, some pretty strong objections to the first draft from some of our Commissioners.

I think as a result of our Commissioners' input, it has become a much better document, as well as staff input.

Just to clarify, this is not something that we endorse. This is something that we did help with the cost and did engage in the exercise, but it is kind of an outside counsel type of report. This is advice recommendations from people who objectively from the design community -- constituents we ordinarily don't deal with kind of gave us their ideas on what we should do in the industry to improve it.

Some of the ideas have already been implemented under the Bloomberg administration. There are some new ones. We are going to give it a fresh read, and we are going to ask the Commissioners for their thoughts on any of the new ideas that are in
here, but we don't endorse every idea that is
in here.

We basically endorse the
exercise. We participated in the exercise as
many in this room have.

I think it is a very, very nice
professional product, and it really does serve
as a good fact book for the industry in terms
of providing data.

If somebody picks it up and
reads it they will get a good flavor for the
dynamic nature and wonderful history of the
taxi industry.

The New York City -- the CleanYC
clean air stickers and the accessible stickers
which are required, I think, by our laws to be
placed on accessible and hybrid vehicles are
available at our meter shops and other
locations.

There are various authorized
vendors, and you can get all the information
you need from our website on how to get them
and how to purchase them.

Just a reminder that for your
scheduled inspection on or after February 1st
of this year, you are required, if you have an
accessible or clean air vehicle, to have those
stickers in place. There is also an industry
notice in the back explaining that.

Last but certainly not least,
the Taxi of Tomorrow Project, I want to thank
Commissioner Kay. He has taken a very active
role in this project, and it is moving forward
at a rigorous speed.

We have meetings every week on
it, and, as promised to the industry, it is our
goal to create the Utopian taxicab, one that is
going to be workable for everybody and
accessible to everybody.

We have the Detroit Auto Show
coming up on the 15th of January. We have all
the auto manufactures under one roof, and we
are scheduling meetings with very high level
executives from all the motor companies to talk
about the taxi of tomorrow.

I am going to be sending our
First Deputy, Andy Salkin, and Peter Schenkman
to Detroit on the 15th to meet with them.

So we are seeing some progress
on that front, and it is a major and top
priority still for this Commission.

Upcoming Commission meetings,
the next Commission meeting is tentatively
scheduled for Valentine's Day, February 14,
Thursday.

We are back on our regular
schedule, and then the next meeting after that
is tentatively scheduled for Thursday,
March 13th.

Also, for those of you who
follow these things, our rules require that
every two years we hold a review of the leasing
system and the lease caps, and whether they are
equitable or not.

We will probably be holding, as
we have done in the past, a separate public
hearing for that purpose in March. We have to
do this before the end of March under our
rules, and we will.

As soon as we get a date in
March to conduct that hearing, we will apprise
the industry, and we will be asking, in
addition to what is in the rule, we are going
to be asking that several detailed questions be
answered so that we can get a better flavor for
what, if anything, needs to be done on that
front.

That concludes my report.

Any questions?
Okay.

I really am noticing
Commissioner Dear's absence today.

Item 2, the adoption of the
minutes for the December 10, 2007 meeting. Do
we have any objections, modifications,
clarifications to the minutes?

COMM. AROUT: Motion for
acceptance.

CHAIRMAN DAUS: Motion on the
floor. Do we have a second?

COMM. VARGAS: Second.
CHAIRMAN DAUS: All in favor.
(Chorus of "Ayes.")
CHAIRMAN DAUS: Item 3, Base
Licensing. Do we have a rep from Licensing.

MS. STEELE-RADWAY: Licensing
would like to present before the Commission 18
bases with a recommendation for approval.

CHAIRMAN DAUS: Any comments?
Do we have a motion?
COMM. AROUT: Mr. Chairman, if I may, there is one question here. As far as ownership change and name change, Staten Island Speed Incorporated, what is their new name and address, please?

CHAIRMAN DAUS: Staten Island Speed Inc.?

Is that the new name?

COMM. AROUT: That is what they are now, unless they put Staten Island in front of Speed. If you don't have it, I would appreciate it whenever you get it.

MS. STEELE-RADWAY: I will get it to you.

CHAIRMAN DAUS: Is that just an ownership change or name change?

MS. STEELE-RADWAY: Ownership and name change.

I'll be able to provide that.

CHAIRMAN DAUS: Any other questions?

Did we have a motion out there?

COMM. VARGAS: Motion.

CHAIRMAN DAUS: Second?

COMM. AROUT: Second.
CHAIRMAN DAUS: All in favor?

(Chorus of "Ayes.")

CHAIRMAN DAUS: We have a denial also?

MS. STEELE-RADWAY: Licensing would like to present one base with a recommendation for denial with the request that the Commission grants an additional 30 days so they may submit the outstanding items.

CHAIRMAN DAUS: This is an entity that did not provide us paperwork again, correct?

MS. STEELE-RADWAY: They are outstanding with the Department of Finance Clearing.

CHAIRMAN DAUS: Do we have motion to deny?

CHAIRMAN AROUT: Deny.

CHAIRMAN DAUS: Second?

COMM. VARGAS: Second.

CHAIRMAN DAUS: All in favor?

(Chorus of "Ayes.")

CHAIRMAN DAUS: Thank you, Georgia.

Item 4, Proposed Rules for
Public Hearing and Commission Action.

We are going to proceed first with the commuter van decal rules.

If you remember towards the end of 2007, Mayor Bloomberg signed legislation that was proposed by the counsel which required -- which will require us to approve not only locations but the actual stickers that will go on commuter vans so that Enforcement and passengers can more readily identify which vans are legal and which vans are not.

In particular, the legislative intent also involved making sure that we have integrity measures in place so that we do everything that we can to make sure they can't be duplicated by people who want to put bogus stickers on the vehicles.

Do we have any scheduled speakers for the commuter van decal rules?

Does anybody wish to be heard on the decals, commuter van decal rules?

If you would like to speak on the commuter van rules, you can approach the podium.

Nobody is looking to be heard.
There are no speakers for this public hearing.

I think this is a first in TLC history.

Any questions or concerns or comments about the language of the rules from the Commissioners?

Okay. Do we have a motion to approve the rules?

COMM. AROUT: Motion.

CHAIRMAN DAUS: Second?

COMM. VARGAS: Second.

CHAIRMAN DAUS: All in favor?

(Chorus of "Ayes.")

CHAIRMAN DAUS: Unanimously approved. Thank you.

Item 4 B, Medallion Transfer Rules Public Hearing.

Just a few comments before we start. This is a process which, having been the former general counsel, I am very much well familiar with over the years.

Before we get started, I want to talk a little bit about where we were and where we are now.

If you remember, many years ago,
we used to have this process taking place in Long Island City at Licensing, and for those who aren't familiar with it, it is basically tantamount to a real estate closing.

You have papers flying everywhere, the transferring of medallion from one party to another on the open market, and the Commission has various legitimate regulatory interests in getting that done, and an interest and a stake in approving the transfer.

With that said, it came to my attention many years ago that there were some inefficiencies in the process, that it wasn't functioning well, that it was taking too long.

There has been a lot of improvement as a result of transferring that process from Long Island City over here to the Legal Department, streamlining the forms, so we had inefficiencies.

It used to take two, sometimes three months to get these transfers through, and then we really cut the time frame down considerably.

I think that is good for the
market, that you have -- there is nothing worse than when you buy a home you have to wait until the closing six months, eight months because you have all sorts of issues.

You know, same thing with the medallion. You are transferring medallion. People want to become owners, people want to relinquish their assets. Let's make it happen quickly, fast and efficiently.

That being said, I had asked several years ago, actually, that the Legal Department and the agency look at a way to clarify and codify not only the changes that we made, the positive efficiencies and streamlining measures, but for the sake of the industry, just having just uniform structure for years to come that you will be able to not have to deal with changes that you find out second and third-hand because we have hired a new employee that does this stuff.

I think it is very, very important, and the industry approached me asking that we put something in our rules that clarifies these procedures so that there is unity, that it is fair, that everybody knows
what the ground rules are, you know what

paperwork you need to have filed, et cetera, et

cetera.

Also, in addition to that, it

would also bring us into compliance with the

Administrative Procedure Act for the City of

New York.

A lot of the things that we do
can and should be in our rules, and we are
going to need to do that.

Now, there is certain issues,
obviously, that have come up in terms of how

you best do that.

I want to thank the industry,
because the industry has been working with us

for pretty much two years now.

This is something that was done

by the book. We put all the stakeholders in

the room going back a couple of years. We have

had many, many meetings. We have had input

from a lot of different people on these rules.

They are complex.

I want to thank the experts, the

lawyers, the lenders, the brokers who assisted

us in giving us this information.
Obviously there is never going to be a unanimous opinion on what can and should be done.

The long and the short of it is we have one or two regulatory interests. There is an integrity issue. We want to make sure there is not like one person who is in charge of all this that can, you know -- you know, that if they leave you get a new person and the rules change for everybody. That is why we want to codify it, number one.

Number two, the City Council the and Local Law has mandated that us, as an agency, approve these transfers to protect the rights of injured plaintiffs who have judgments; that we need to make sure that people transferring medallions are not looking to avoid paying their liabilities by the transfer of stock or their medallions to third parties so that is something we have been mandated to enforce.

In addition to that, we want to just codify our streamline procedures and make sure in the interest of transparency and good government that everybody knows what the rules
That being said, before I turn it over to Chuck, I don't have an intention today on asking my Commissioners to vote on this. I have had discussions with most of them. These are very long, detailed rules. They are very complicated.

Even though it has taken two years to get here and we have done everything by the book, there is still some elements where I think we could hopefully resolve some issues and do what we think is the most objectively best thing on behalf of the Commission to come up with a fair system.

We are looking forward to hearing your comments on it today, but this isn't the end of the process. After the public hearing, we will reconvene and see if there is away that we can either reach a compromise or come up with something that makes sense for all of us.

If not, the Commissioners in the near future will have to do the right thing. I think at some point we are going to have to pass some type of rules to
comply with CAPA so we are going to have to put something in the rules.

We have gotten your comments, we have read them.

I would now like to turn it over to Chuck who has some revisions he is going to make based on those comments, and that he is going to propose to us, and then we are going to go right to the public hearing.

MR. FRASER: The proposals were published for comment on October 24th, and we received three written comments. Based on one of those comments, staff is recommending one revision. Section 180.1 of the proposed rules details the requirements for medallion transfer including the documentation that must be submitted.

Staff recommends the addition of a new paragraph in section 180.1 that would provide that where a medallion transfer would require a new taxicab to be hacked up, the transferor must notify the taxicab technology service provider for that taxicab at least three weeks before the transfer. Such notification would enable the service provider
to ensure that its hardware is either returned
or transferred to the new taxicab pursuant to
an assignment of the service provider's
contract with the medallion owner.

Copies of this revision have
been distributed to the Commissioners and are
available to the public in the back of the
room.

CHAIRMAN DAUS: Thank you,
Chuck.

I also want to thank not only
Chuck but Chris Wilson in advance who worked
very hard on these rules. They are very
complex. It was really a yeoman's drafting
exercise for a lawyer, and it was really
painstaking so thank you for all of your hard
work.

The first speaker that we have,
and we are pleased to have you here today,
Roberto Velez, the Chief Administrative Law
Judge from OATH, the Office of Administrative
Trials and Hearings.

Welcome.

MR. VELEZ: Good morning,
Chairman Daus and members of the Taxi and
I am Roberto Velez, the Chief Administrative Law Judge of the Office of Administrative Trials and Hearings, known as OATH, and I am participating in this public hearing to provide some background information about OATH and the nature of cases we adjudicate and the judges who preside over them, because I understand you are considering OATH to hear some of these cases.

CHAIRMAN DAUS: Correct.

MR. VELEZ: I just wanted to let you know that OATH is the City's central tribunal with general jurisdiction to conduct administrative hearings for all city agencies, boards and commissions. OATH was established in 1979 to professionalize the administrative hearing system by functioning as an independent tribunal.

In addition to hearing and deciding cases, we encourage parties to utilize our conference calendar that offers faster and less costly means of resolving many disputes.

At these conferences, an experienced Administrative Law Judge works with
the parties to fashion settlement terms acceptable to both sides.

If that cannot be accomplished, the case is referred to hearing before another Administrative Law Judge.

OATH is a general jurisdiction tribunal; that is, we hear cases from many different agencies, including vehicle forfeitures referred by the Police Department; license and regulatory matters referred by the -- filed by the Department of Buildings; the Taxi and Limousine Commission, and the Department of Health; landlord and tenant disputes referred by the Loft Board, and the Department of Housing Preservation and Development; discrimination complaints brought by the City Commission on Human Rights; contract claims filed by contractors; and civil penalty proceedings initiated by the Conflicts of Interest Board.

And in my prepared remarks I talk about other cases, but the point is, we have a great deal of experience dealing with a variety of cases.

I just want to get to the
judges.

OATH judges must know, interpret and apply laws and rules applicable to many different agencies. Our judges as a matter of course are quick to learn about and hear new types of cases.

For example, as a result of court rulings, the United States District Court's decision in Krimstock v. Kelly vested OATH with the jurisdiction over preliminary retention hearings conducted by the NYPD after they seize vehicles from drivers accused of driving while intoxicated and other crimes.

OATH conducts a prompt preliminary hearing to determine whether the PD may return custody of the vehicle before a court decides a separate forfeiture.

I just wanted to remind the Commission that the Federal District Court requires us to issue these decisions within three business days. We have never missed a deadline.

OATH judges are appointed by me after an extensive recruitment selection process, and the recruitment involves a
rigorous review of credentials, skills and abilities, and a decision-writing competition. They have to write a decision, and I review it to see whether it is good.

OATH administrative law judges are full time managerial employees from a variety of backgrounds of legal experience, including practice in the Law Department, City agencies, Legal Aide, the Attorney General Offices and private firms.

To buttress their independence, OATH ALJs have five-year terms, and they are removable only for cause. OATH's ALJs follow the City Rules of ALJ Conduct as well as the New York State Code of Judicial Conduct. These rules set high ethical standards and restrict activities deemed inconsistent with their judicial positions.

In closing, OATH's general jurisdiction and overall high caliber of our judges provides us with the capacity to adjudicate new types of cases such as the Commission's new tort valuation cases.

Thank you very much.

If you have any questions, I
will be willing to answer them.

CHAIRMAN DAUS: Thank you, Judge.

Any questions?

We have a very long history of involvement with OATH with this agency, and we work very, very well with you, and we want to commend yourself, Chief Judge Velez, as well as I see we have Judge McFall here who we worked for many, many years with.

As you know, our general counsel used to be a judge at OATH.

We are very, very pleased with the results, especially with the transfer of a lot of cases we have been sending recently, and we are really happy with the quality of justice that we get from your independent tribunal.

We thank you for your interest and for assisting us.

MR. VÉLEZ: I look forward to working with you and the Commission.

CHAIRMAN DAUS: Thank you.

The next speaker is Mr. Mel Miller.

MR. MILLER: Commissioner and
members of TLC, I am sorry I wandered in a little bit late, but I didn't take a taxi. I took the 1 train.

The proposed transfer rules, it really is quite difficult to address because of its length and its complexity, and, you know, David Beier on behalf of almost the entire industry did submit an extremely lengthy -- I know, Matt, but sometimes we have to read -- a rather lengthy memo, which sometimes I would admit to all of you on the panel that I had difficulty getting through it and had to start all over.

CHAIRMAN DAUS: Even us lawyers need a couple of cups of coffee.

MR. MILLER: The issue, the transfer rules have two pieces to them. They are an issue of law, but they are also an issue of policy, and sometimes the issues of policy and the issues of law are not exactly the same. For example, we are dealing with an administrative code provision that was adopted in 1971, and it uses the word "transfer" as a generic without any modifier. So does it mean an asset
transfer purely, which is the position I think that the industry has, or does it also include stock transfers which I would submit to this group is really controlled by the Business Corporation Law of the State of New York?

All stock transfers, and I would also argue, if I was arguing in court, that there is total pre-emption on the issue of stock transfers with the agency reserving the right to make sure that the purchases of the stock qualify to operate in the medallion industry very similar to what happens in the restaurant business if you want a liquor license.

Nobody prevents you from transferring the stock if a corporation owns a restaurant; however, the purchasers, in order to qualify for a liquor license, obviously have to get independently licensed.

And that really is the comparison, but the stock transfer itself would not be, in my opinion, subject to the TLC.

Secondly, there is a decision in 1979, an Appellate Division decision. However, I submit to you it was an asset transfer and
not a stock transfer so the issue of stock transfer was never before the court.

Furthermore, actions had already been commenced for personal injuries in those cases if you look at the record on appeal, and it involved the transfer of the 32 medallions, all assets. There was no question raised there about stock transfers.

More importantly, not withstanding the language in the 1971 administrative code and the court decision which is only applicable in the First Department and never went up to the Court of Appeals, and there has been no action brought since, I would argue as a matter of practice the TLC has both not followed the decision of the Appellate Division in 1979.

I don't think, Matt, unless you can tell me differently, there has been hearings to determine contingent liabilities at the TLC or at OATH since 1979, and since 1971 in the adoption of the administrative code provision, the TLC has treated stock transfers and asset transfers differently, and the rules and regulations of the TLC in terms of
transfers, if you transfer stock, you could transfer immediately.

If you transfer an asset, though, the medallion has to be put in storage for one week under your rules. What is the reason for that? To make sure that all administrative fees and fines are paid.

So already the TLC in its rules and regulations recognized the difference between the stock transfer, where liabilities follow the corporate stock, and an asset transfer, obviously, which would extinguish liabilities.

Then there is a question of policy. Does the TLC want to be an arbiter of negligence actions? Because if we follow the procedure outlined -- and let me give you a perfect example. Matt is sitting in the back of a taxicab one day, and somebody hits it in the rear.

Did the cab stop short, did they not stop short, and he has a backache and goes to the doctor and he is out of work for a week.

Some smart lawyer sends out a letter, "I represent Matthew Daus who was
injured in an accident by virtue of your
negligence. We intend to bring a lawsuit for
1 million dollars. Please turn this letter
over to your insurance company."

Very normal. I did it when I
practiced with O'Dwyer & Bernstein before most
of you were born.

The issue is, is that
sufficient? Is that truly what we want here,
to start a change of events, liquidity in the
industry? I doubt it very much.

Secondly, there is nothing in
the rules of the Taxi and Limousine Commission
that I have been able to find which proscribes
any kind of corporate body from owning
medallions assuming the owners of the corporate
stock and the officers qualify to operate
medallions.

So let me give you one example,
and I will conclude my remarks.

Bolton St. Johns Incorporated,
which was the firm I used to be affiliated
with, and I was one of the three major
shareholders, there is nothing in the rules to
prevent us -- let us assume ten years, seven or
eight years ago we were very smart. We knew
the asset was going to increase in value
dramatically, and we bought a mini fleet.

There are only three officers,
only three holders of stock. We all, I will
assure you, qualify under your rules and
regulations to own medallions.

Three years ago I made a
decision at my advanced age to sell my interest
to my two younger partners.

Under the way these rules are
constructed, when I was selling my interest in
Bolton St. Johns, which is a major lobbying
firm, but we owned some medallions, you have a
right to stop that transfer.

I don't think that is the
intention of these rules.

So I think as a practical
matter, we can deal with the problem that truly
gives rise to these rules, which, on occasion,
and just like on occasion in any industry,
somebody tries to defeat possible liability by
overly encumbering their medallions when they
are going to transfer it even using the
corporate form.
There are ways to deal with that issue. Instead of making this body essentially a court of law to decide how much damages may happen when this thing goes to court, if they win, how much the case is really worth, that it really isn't where you are. That is not what the practice of the industry has been. It is not the practice that any Chair or any TLC body has ever believed that the TLC should go.

I conclude my remarks that there are other elements of these proposed rules on estate practice, on the question of creating trusts, and I don't -- which really need to be rethought.

One last example. A person dies. The major asset of the estate is a medallion, and a medallion now is worth, I am told, individually about $420,000. It is the major asset of the estate.

There is a widow who has very, very limited means of income, but her husband at least is getting 2,000, $2,100 a month -- but to give it to Ronnie, maybe $2,300 a month for leasing the medallion -- and that is her only income, and you are forcing her, even
before the estate is settled, you are forcing her to transfer.

I don't think we have to do that. I think that by forcing her to transfer that medallion -- in most instances husbands die earlier -- well, we can't help that -- what you are doing is maybe taking an encumbered medallion that has little equity in it, maybe 50 or $60,000, forcing the transfer and depriving of the widow of what may be a substantial stream of income so she can continue to pay her bills.

I think we have to look at that, we have to look at the trust provisions.

Thank you for giving me more than three minutes. I apologize for being late, and I hope we can deal with the true issues or some of the underlying issues here without taking a Howitzer to deal with an ant.

Thank you very much.

CHAIRMAN DAUS: Before you go, quick question. The Appellate case you are referring to, is that Cab Transportation Corp.?

MR. MILLER: Yes. Cab Transportation Corp. against the TLC, yes.
CHAIRMAN DAUS: You mentioned earlier that on the stock transfer issue --

MR. MILLER: It was not reached in this case. It was purely an asset transfer. It was a transfer of -- I think it is 42 medallions, Matt, it was a transfer of 42 medallions from an individual to corporate, to corporations, but it was not a stock transfer. It was a pure asset transfer. They never dealt with the issue of stock transfer.

CHAIRMAN DAUS: At the beginning of your testimony you referenced a Business Corporation Law. Is there a particular section, or are you referring to the general obligations?

MR. MILLER: No. The Business Corporation Law in New York State, the Business Corporation Law actually sets forth how you transfer stock and what are the implications of a stock transfer.

CHAIRMAN DAUS: Right.

MR. MILLER: I -- look. There is a lot of case law as to when the City can act and not act, and the question of preemption has been an issue in many cases.
Obviously this issue has not
been decided.

CHAIRMAN DAUS: Are you

intending that there may be preemption over the
Local Law provisions?

MR. MILLER: In terms of stock

transfers, definitely. In terms of asset

transfer, definitely not.

I think the City controls the

asset transfer. I do not think they can

control a stock transfer, because when you

transfer stock, liabilities go with the

corporation. You don't extinguish liabilities.

Significant difference.

There is one other allusion, by

the way, into the Administrative Code. When

they are talking about the bond or insurance

requirement, if you look at that provision in

the Administrative Code, it says at the end of

Section 19.512, "liabilities of the vendor or

transferring excess of the amount covered by a

bond or insurance policy which is in effect

pursuant to the Vehicle and Traffic Law of the

State of New York."

Now, let us understand that that
section has been found not to bind the TLC on
the level of insurance. The Vehicle and
Traffic Law of the State of New York does not
require 100 -- to be 100,000 coverage. Nobody
in this room has to take that level of
coverage. That was passed well after the
Administrative Code provision.

So the question of whether that
section as drafted now is any way in conformity
with state law is highly questioned, in my
opinion; not your counsel's opinion. Obviously
we disagree.

COMM. KAY: I just want to say,
unfortunately, I have to leave, but I hope you
can continue to talk with Chuck and the
Commission so as we move forward to possibly
doing something, you raise some very serious
issues I hope we can look at and tie it up in
belt and suspenders as much as we can so we
don't have any unintended consequences.

MR. MILLER: Thank you.

CHAIRMAN DAUS: Thank you, Jeff.

Next speaker will be Mr. Ethan
Gerber.

MR. GERBER: Good morning,
Mr. Chairman. Morning Commissioners. Happy New Year.

CHAIRMAN DAUS: Happy New Year.

MR. GERBER: I am coming today to address you as a negligence defense attorney whose office has defended literally tens of thousands of personal injury claims against taxicabs.

I had a lot to say about the stock transfer rules and how they affect, but I think Mel did an excellent job on that so I won't waste your time.

First off, I want to talk about the necessity of the rules.

My office receives thousands of so-called claim letters a year. The majority of these become what we call dead letters. No suit is commenced before the statute of limitations expires.

Those who have practiced tort law know that is often the case. We send out -- a personal injury client comes in, a retainer is signed, a letter is sent out to the insurance company demanding money. If it takes, it takes. If not, maybe the case goes
away; maybe it doesn't. Maybe they get a quick and cheap settlement.

The requirement that I have to notify -- that the person seeking to transfer has to notify these plaintiff's attorneys and these claimants of a possible issue, and that they could have the power now of holding up a transfer, gives them enormous power, but also gives them an incentive to litigate it even if they had no intention of taking this case all the way. They may have to, in fact, to avoid a malpractice case threatened.

Two. While most claims end in the so-called dead letters, the vast majority of suits are settled well within coverage.

In the calendar years of 2005, 2006 and 2007, one case my office handled out of thousands settled went over coverage. That case was settled and paid.

My clients are self-insured and bonded. The bonding company, Washington International, must pay a judgment up to its coverage in the event an owner is insolvent.

To my knowledge it has never, not once, in the 25 years had to do so.
The fact also remains that the overwhelming vast majority of suits, all of which seek seven figures, seven figure recoveries, in actuality have very little basis in reality.

The Court of Appeals recently in its case of Pommells versus Perez, which is at 4 New York 3d, recently stated that "separating the serious injury cases from the mountains of claims which are not is one of the, quote,"most vexing tasks of the courts."

It also states courts should approach these cases with, quote, "well-deserved skepticism."

The TLC has decided to enter this vexing arena, and with due respect to Chief Justice Velez, OATH judges have no expertise in torts area, let alone in the complexities of actually placing a dollar value on a case.

Judges in New York, unless a jury is waived, are not permitted to do so. Suggestions by a judge to the jury of a dollar value has been held to be usurpation of the jury function and results in reversible error.
There are many issues that will give a litigator pause before entering the arena of OATH. One is the extreme disadvantage I, as defense counsel, whose client wishes to sell a medallion face. If I am to defend an action, how am I to do so without discovery, without Examinations Before Trial, without independent medical exams of the plaintiff, without full and fair inquiry to all the medical records including those of prior lawsuits which I may or may not know about at the time?

I will have no way of knowing any of this information that I would normally do at the time that a personal injury case went to trial.

What is presented here to go in front of OATH is akin to an inquest after default. It would not be a full trial in that I would not have the evidence I need to take my case.

Another is the possibility of collateral estoppel. A Bronx Supreme Court judge recently gave collateral effect to an ALJ's determination of whether a driver
operated his car in an illegal manner by coming
to an abrupt stop.

In other words, an
administrative law judge had a proceeding with
a driver in front of him. The cab corporation,
the cab corporation did not have a
representative in court, and the insurance
company certainly didn't even know about the
situation.

The Bronx Supreme Court Judge
gave collateral estoppel effect. In other
words, the defendant corporation was unable to
defend this case at trial on liability grounds,
and the insurance company had to pay a claim
that normally it would be able to defend.

We are concerned of the
collateral estoppel effect of an OATH judge,
especially because one of the underlying issues
in a tort case in New York State is whether a
plaintiff suffered serious physical injury.

The effect of an ALJ saying that
a case must be reserved and $100,000 over
coverage, what that effect that would have on
whether the case is a serious physical injury
is something that must be required.
There is case law to the effect that even if the law, even if the rules of the body say it has no collateral estoppel effect, that is not determinative.

What is determinative is if the issues are the same and the parties are the same.

CHAIRMAN DAUS: Don't you need an identity of issues on the collateral estoppel?

MR. GERBER: Well, on liability, on the ALJ decision that I suggested, you did have an identity of issues, and that is the negligence of the driver.

I would argue that the rules are much different facing the TLC than faced in court. I wasn't the lawyer on that case. That was an American Transit case.

CHAIRMAN DAUS: It has been many, many years. Collateral estoppel theory, doesn't that deal with multiple litigations of issues like if you litigate an issue of negligence in one jurisdiction, you know, let's say one court, that you go into another court and you make a motion saying the matter has
been fully litigated; for the interest of judicial economy, you make a motion to the judge to adopt collateral estoppel effect for that procedure, but here you have a negligence case where you have to prove duty, breach of duty, cause, proximate cause and damages, and you have a separate proceeding where you are going to be determining whether it is in the best interests of the public under the Local Law to determine whether somebody should be putting a certain amount of money into escrow to protect the plaintiff.

I mean, is your argument that the identity of issues is the damage claim, that you are going to be able to go and take the power away from the jury to make a determination as to pain and suffering because an OATH judge said that you should put a certain amount into escrow?

MR. GERBER: If the rules were adopted, I would certainly be arguing the opposite in court.

What I am suggesting is one of the key determinations before a judge is the issue of serious physical injury. Before a
case is able to proceed in New York under the New York No-fault Law, Article 51 of the New York No-fault law, the court on a motion for summary judgment may have to determine and will have to determine if the motion is made, whether there is a triable issue of fact as to whether the plaintiff suffered a serious physical injury as that term is defined under Article 51.

The argument I could see coming from the plaintiff Bar is that if a full hearing was held and the administrative law judge found that $100,000 excess of the already existing hundred thousand dollars was necessary, that the issue of serious physical injury has already been determined.

CHAIRMAN DAUS: In terms of the actual -- that there was evidence introduced at the OATH hearing, and there may be certain findings, but this is an argument, a case of first impression. You are not aware of any precedent in similar context?

MR. GERBER: What I am aware of is the recent determination by a Bronx Supreme Court judge that the ALJ decision was binding,
precedent on the BI suit, even though the
amounts in question are the fine on a driver,
which is, relatively speaking, nominal.

CHAIRMAN DAUS: Which judge?

MR. GERBER: I have it in my
briefcase. I have the decision. I will give
it to you afterwards.

CHAIRMAN DAUS: An
administrative tribunal, DMV?

MR. GERBER: It was an ALJ --

TLC ALJ, and it was a Bronx Supreme Court
judge. After the hearing I will be happy to
give it to you. I have the decision with me.

CHAIRMAN DAUS: I don't know if
my other colleagues have any questions. I have
a final question for you.

On the issue of -- I don't think
any of us are happy with the fact that -- when
I first came here, I don't know if you remember
Vince Andriksi -- he used to have Jury Verdict
Reporter issues up on his desk.

For those of you who don't know
what that is, this is reports of the amount of
verdicts and the type of injuries involved in
cases around the City, and there are certain
venues where there tend to be higher personal
injury awards than other venues in other
counties of the City.

He basically would conduct a
search to see, "Well, we have a broken hip
here. What are broken hips, what types of
awards are they getting in certain venues?"

It just seemed very -- granted,
it is a nebulous concept for a jury to have to
make those pain and suffering determinations as
it is.

I was never, and I don't think
anyone here is probably comfortable with the
fact we have to make such a difficult decision
that is going to affect the amount of money
that someone is going to, when they transfer a
medallion, put into escrow.

I don't think anyone is happy
with it. I am sure reasonable minds could
differ and you could have five people making
five different decisions as to what is
appropriate.

I guess my question is, assuming
one or more of us are uncomfortable with that,
are there any alternatives short of having that
valuation process either here, OATH, wherever
you do it? Is there any alternative procedure
that the industry would support or that you
would contend could help us get through that
nebulous area? Maybe just putting the whole
amount of net equity in escrow or none of it?
Is there any other ideas?

MR. GERBER: We do have a court
proceeding to set value, which is something I
want to address.

I believe that everything that
is addressed in these issues has already been
addressed, which is one of the reasons why this
really hasn't been a big issue in this industry
in the last 30 years.

We have rules, we have rules of
attachment in New York. Article 62 of the CPLR
gives the plaintiff attorney the ability to
attach assets pre-judgment.

There are ramifications with
doing so, and there are reasons why most
plaintiff's attorneys would not enter that
category, why they won't on a tort case, they
won't seek pre-judgment attachment.

The reason is that the court and
the legislature passing Article 62 recognized
that attachment of an asset, determining what
to do with an asset before there is any
judgment, is a drastic remedy. It is
controlling someone's assets, controlling
someone's liabilities, controlling someone's
financial destiny without any judgment
whateven.

To do an attachment, the
plaintiff's attorney not only must make a
motion and present his evidence, usually within
five to ten days depending on which section of
Article 62 he applies, but he must post a
bond -- he or she -- the plaintiff must post a
bond to cover the eventuality that they are
found wrong and that the plaintiff does not
succeed.

And that bond has to be a
minimum of $500, but can be whatever the
Supreme Court judge doing the attachment finds,
and would award attorney's fees to the
defendant and consequential damages to the
defendant were the plaintiff not to prevail.

Here what we are doing is we are
giving there extraordinary relief to the
plaintiff’s attorney ahead of time, which is going to have -- and I say this as an officer of two different Bar associations -- this will have an extortive effect.

I know my colleagues on the plaintiff Bar. If they can hold up a sale, the demand for settlement will go up. Even if it goes up within coverage, it will go up, because they know they literally have me in a very, very tight position.

They know I want to transfer an asset. They know they have the ability to hold it up, and they will raise their demand.

CHAIRMAN DAUS: That is a fair point.

Are you suggesting, then, that we would meet our obligation under the Local Law by crafting a rule that gives notice to the parties that you have a certain amount of time where we will not transfer, and that you have the ability under the CPLR to bring a separate attachment proceeding which could lead to a court hearing?

MR. GERBER: Absolutely.

CHAIRMAN DAUS: In lieu of us
CHAIRMAN DAUS: My next question is, how does that reconcile with the Cab Transportation court case where the court directed that the TLC hold the hearing? How can we go from the TLC holding a hearing to a Supreme Court judge possibly holding a hearing knowing the CPLR provisions that more likely than not, there is probably a special proceeding which leads to the decision being made on paper?

MR. GERBER: I again reiterate, and I think Mel did a superb job of stating, we are talking about a 1979 case interpreting a statute from before that, which was well before -- one of the things you see in cases concerning taxicabs and assets and piercing the corporate veil that came up over and over again was the under-insurance of taxicabs.

This was a constant refrain by the courts.

A taxicab, as Mel said, now has four times the legal limits imposed on every other New Yorker so there already is protection
for the individual four times greater than any other driver, any other owner of any vehicle.

So there already is protection so the necessity -- so a lot of the decisions that you read before the TLC in its wisdom increased the insurance limits, a lot of the decisions have to do with under-insurance and the fear that people would escape with the liability.

TLC has already raised insurance limits four times -- I mean 400 percent. It went from 10,000 to 25,000 as the DMV, and then it went to 100,000.

Not only 100,000, Chairman --

100/300.

But not only that -- the no-fault limits --

CHAIRMAN DAUS: We are getting into other areas, and there is other cases that say we have the right to do that.

MR. GERBER: I am not suggesting you don't. I am suggesting you take --

CHAIRMAN DAUS: Now I know why there are livery operators in the --

MR. GERBER: I am not suggesting
you don't have that right. I am suggesting
that you are taking care of a lot of problems
that were addressed by the courts.

When you look at a 1979 case
that was determined long before you addressed
these rules, also the no-fault limits have gone
dramatically up --

CHAIRMAN DAUS: We have to move
the hearing along, Mr. Gerber, but I want for
the record to note I strongly disagree with
drawing an analogy between the right that has
been upheld in court for us to, as a condition
of licensure, impose higher liability limits,
no-fault limits --

MR. GERBER: I am not addressing
that.

CHAIRMAN DAUS: I think there
is -- I think there is some that is alluding to
that.

If we could keep the focus of
the discussion on this.

I assume that you and your
client would support legislation that would go
to the counsel that would seek the type of
proposal I just put out there, a notice
requirement and the ability for them to go seek a CPLR attachment proceeding within a certain period of time so we would have a certain number of days where statutorily we would hold up a transaction 30 days, give them notice as prescribed by the CPLR, and then if they don't bring their motion to the Supreme Court to attach assets or whatever other remedies they have, then the transaction will go through without this whole valuation and escrow procedure?

MR. GERBER: I would certainly support remedies compliant with the CPLR.

CHAIRMAN DAUS: We will look into that.

In the comments that come subsequently, if any of you could address that particular concept, I think that would be helpful.

I know we have financial experts and also another lawyer on the Board; Howard is here.

Do you have any questions for Mr. Gerber?

Commissioner Vargas?
COMM. VARGAS: Mr. Gerber, what is the current procedure now for one of our clients who owns a medallion that wants to transfer it, and there are potential lawsuits out there; someone was injured, but the suit wasn't filed yet? What is the process your client currently has to go through to transfer it?

MR. GERBER: In a stock transfer, the insurance company or the bonding company has to issue a letter to the Taxi and Limousine Commission that there are no suits that can exceed coverage. That creates a certain amount of liability potential on the bonding company or the insurance company in issuing that letter. That is why they are very reluctant to issue such a letter, unless it is clear to them in their basis and opinion.

If, upon inquiry, the TLC determines that there is some other action that they are not aware of, the TLC has called in people to make a search at this time of any possible claim based on simply a letter; simply a letter.

I mean, as we know, and I know
you know, Commissioner, that writing a claim letter is the simplest thing an attorney can do. It is determining whether to even proceed with the lawsuit.

I think having the rules, if the rules are going to be passed at all, having it done with simply a claim letter is really tantamount -- it gives a real extortive ability to the plaintiff's attorney.

COMM. VARGAS: But the analogy you just gave was to a stock transfer.

MR. GERBER: Right.

COMM. VARGAS: Let's say if one of your clients is an individual that owns the medallion and wants to transfer, but there was an accident or potential lawsuit. How does that differ?

MR. GERBER: An asset sale differs considerably from a stock transfer, and I agree with Mr. Miller and I agree with this Commission that the TLC has a great deal of power in effecting an asset sale.

The asset sale, the asset sale, the possibility with an asset sale, and why this is something that has always been within
the realm of TLC, is that some dummy
corporation is set up, I simply transfer my
valuable assets out of the existing corporation
into the dummy corporation, and then the
plaintiff and everybody is left holding the
bag.

That is what they are concerned
about.

The stock transfer is something
completely different. I own stock and I am
transferring it. To suggest that there is some
kind of degree of fraud in it, the vast
majority of people -- the vast majority of
stock transfers that I have been involved in in
which I represent a seller is someone wants to
ger out of this industry.

Now the projection of the
medallion value has been very good, as everyone
knows.

When people want to get out,
when people want to sell, there is usually an
economic necessity for wanting to sell.

MR. FRASER: If I may,
Commissioner, I would like to address your
question of what is the procedure now for the
tort valuation.

Since I have been here -- I obviously can't speak to what happened before I got here, but I have been here just about three years -- asset sales and stock transfers are both subjected to the same tort valuation process.

That process involves one of our judges, an Administrative Law Judge, reviewing submission of papers. The determination apparently was made some time ago -- this dates back to the 1979 Appellate case that everyone is referring to -- that requires a hearing.

The determination was made that that would be satisfied with an opportunity to be heard by submission of papers so the submission of papers was made to this judge, Dewey Golkin, who has made this determination of the value of the tort as required by the Local Law as interpreted by the First Department. That has been going on for many years.

The suggestion that I have heard made by a couple of speakers that we are somehow venturing into a new area of tort
valuation is simply not correct.

The other thing I would like to point out is at the very first meeting we had with the industry about this subject, I said very clearly that I am not comfortable, just as Chairman Daus indicated he is not comfortable, with the idea that TLC must do tort valuations.

We don't have that choice, as it currently stands, because it is in the Code, as I said, as interpreted by the First Department.

I said at that very first meeting, I would be very pleased -- let me state that in capital letters, underscored -- I would be very pleased to work with the industry on a legislative solution that would take this away from the TLC.

I don't think our business of regulating the for-hire transportation industry makes us experts at tort valuations, yet that is what the Code requires us to do.

I have invited that right from the beginning. I am glad to hear there is now an interest in proceeding that way.

The last thing I would like to address is the contention that our regulation
of stock transfers is preempted by state law.

We had a legal memorandum submitted to us by Mr. Miller, again, at the very beginning of this consultative process with the industry, and his argument in that memo was exactly that: That the Business Corporation Law preempted our ability to regulate these stock transfers.

We reviewed that memo in my office. We disagreed with the conclusion of the memo. We referred the memorandum to the Law Department. They reviewed it. They disagreed with the conclusion of that memorandum.

This is not based on that 1979 case; this is based on the Business Corporations Law.

The '79 case, as pointed out, had nothing to do with stock transfers; it was purely an asset sale case so that case had nothing to do with that interpretation.

CHAIRMAN DAUS: Any other questions?

Thank you.

Next speaker? I can't really
1 make out the handwriting. I think it is Darid
2 Darcy or David Darcy?
3 MR. DARCY: That is me, but I am
4 not speaking. It is a mistake.
5 CHAIRMAN DAUS: You are
6 withdrawing.
7 Next speaker is Joe Giannetto.
8 MR. GIANNETTO: Good morning,
9 Commissioners. My name is Joe Giannetto. I
10 represent the Metropolitan Taxicab Board of
11 Trade.
12 On behalf of MTBOT, let me start
13 out by extending our wishes to you for a happy,
14 healthy and prosperous new year.
15 MTBOT joins the Committee for
16 Taxi Safety, the Greater New York Taxi
17 Association and the Taxicab Service Association
18 in our strong objection to the TLC's proposed
19 medallion transfer rules. This is an issue
20 that has generated intense debate within the
21 taxi medallion industry, and it has been met
22 with almost universal opposition within the
23 industry, and we ask that the Commission
24 consider these objections very carefully.
25 We believe if these rules are
passed as written, it will have an adverse
effect on the many participants in the taxi
industry for several years to come.

I would like to refer the
Commissioners to a letter sent to the
Commission dated November 30, authored by David
Beier, which was signed by the aforementioned
taxi associations, and which outline numerous
problems associated with the rule change.

While this is a complicated
matter best addressed by the provisions of the
signed letter, simply put, we believe that
general business law already clearly spells out
the rules of stock transfers for taxi
businesses, just the same as it does for any
other business.

Our judicial system enforces
these laws and provides adequate protection for
all parties involved.

These transfer rules would create
a new layer of bureaucracy that would make it
more difficult to conduct general business
transactions within the taxi industry and would
result in delays and other problems that would
act as a disincentive for investment in the
industry.

If you will briefly indulge me, I would like to read into the record select portions of the referenced letter.

"We contend that there is no need for these rules as written. We are confident that we can show to the Commission that there is not a problem that requires these proposed rules; that judgments are paid timely and without fail. We contend that there is a system in place that works, and that is our judicial system."

The following is a brief summary of our main concerns as presented in the letter.

The proposed rules as written are not needed; judgments are, in fact, being paid. The issue of pre-judgment attachment of assets is a major concern. The proposed regulations provide for an escrow over and above insurance amounts prior to any finding of fault and prior to even a Summons & Complaint being filed.

Also, there should be a good faith requirement due from the claimant before a transfer is stopped.

To complete a transfer, borrower
may be compelled to borrow additional funds from
other sources. Borrowers should be allowed to
use equity in their assets in lieu of forced
borrowings.

Moving on, a trust should be
allowed to be the owner of medallions or stock or
membership interest even after beneficiaries are
no longer minors.

Also, proposed rules should
provide that the TLC has some sort of discretion
to grant an extension for good cause related to
hack-up requirements.

Next, LLC and corporate veil
should be protected, and the TLC should not be
allowed to disregard same, as for example by
compelling shareholders to pay PVB tickets before
transfers are completed.

Time periods for the scheduling of
hearings and rendering of decisions must be
faster to prevent harm to the owner of the
medallion.

And, lastly, stock transfers
should not be deemed transfers under these
regulations as the entity owning the medallions
survives the transfer.
We understand that the TLC's interest is to protect the public. Based on our collective experience in the industry, we believe that the system, as it operates today, provides ample protection for the public.

We look forward to working with the Commission in the future on this matter.

Thank you.

CHAIRMAN DAUS: Thank you.

Questions?

The last speaker is, it looks like, J. Bianco.

Is that you?

MR. BIANCO: I am a bit out of line here.

CHAIRMAN DAUS: Could you come up to the microphone, please?

MR. BIANCO: I appreciate you understanding, allowing me to make mistakes with the procedure here.

I have been a cab driver for 40 years now.

CHAIRMAN DAUS: What is your full name?

MR. BIANCO: Anthony J. Bianco.
MR. BIANCO: I would ask your permission just to speak maybe for 10 minutes concerning the industry.

CHAIRMAN DAUS: This is concerning medallion transfer rules?

MR. BIANCO: That is the problem. I started in the industry in 1968. I was a cop then, and there were a lot of robberies so they allowed police officers to work.

1968 was under the control of the Police Department.

This agency has many facets. Your facet is in the legal area. I was on the stand many times 24 years as a cop.

The Police Department works on the streets, knows the streets. The cab driver is a street worker.

There should be a level above you governed by the Police Department, because in there industry, everybody talking here, depends on people like me.

I am an owner. We are told to
buy a cab every five years; give you six years.

That is $28,000. You need another $28,000 to stay in business. Nobody is saying that. That is close to $60,000.

I have a loan on my medallion.

I bought my medallion in 1973 at the height of the Knapp Commission so I was investigated by the Police Department.

I went to Andy Greenbaum. People here know Andy Greenbaum. He said, "They will never believe you. You have cash?"

I had to work. I went through the Department. Cab driver is work.

Andy said, "They'll never believe you at TLC. You are a cop, you got this money," but the Police Department gave me permission, and I signed papers from Andy. He is dead and buried so I can't implicate him. I signed papers, and I was taking a loan from some firm out west just to continue with the process; not worrying about being investigated here.

I was in the Tactical Patrol Force, 1964, during the riots. The words on the street was respect.
I was at areas where people were shot and killed. One of them was a high-powered rifle up in Harlem. We were running across the street, and I forget his name, about 10 feet away from me.

All of a sudden I hear a shot go off. I look down the street, and there's a guy down the block -- this is Harlem -- ran into a tenement with a rifle. Same colored shirt.

Mitchell Renzo, he was completely swung around and went down. It was a military rifle. I thought he was shot. It hit his nightstick. The force of that bullet literally turned him around and he went down.

We went down the block as a peace officer, now. Legally we had no right at all, but we kicked in a few doors. We got the guy. It was a rifle. He was arrested.

When John Lacy created this agency, he created a Nazi structure. He gave peace officer status to people that only enforce. That is a Nazi structure.

As a peace officer in the Jamaica precinct --

CHAIRMAN DAUS: Mr. Bianco, we
certainly appreciate your history and certainly
your service to the PD, but this is a public
hearing concerning medallion transfer rules.
Could you somehow tie your comments into
whether these rules should pass or not?

MR. BIANCO: I am on the verge
of having my medallion taken over by a fleet,
being sold, and a taxi broker making money on
it through the rules and regulations.

Over the years I seen a lot of
decent people forced out of the industry,
street people. I myself as an example, I
picked up Bobby Short, the saloon player that
plays at the Carlisle two months before he
died.

I got out of the cab and opened
the door for him like it was a limo. He looked
at me strangely.

I said, "Hey, you are Bobby
Short." I drove him to 57th street.

On the way there we are talking.
They had this opening down by Columbus Circle,
and they had all these stars.

I said, "Marcellus, working for
Lincoln Center, he should have put you here."
You have been here 35 years and people in the metropolitan area. They deserve" -- I am talking as a cab driver.

It is very important, sir, if you listen.

CHAIRMAN DAUS: Would you be able to sum up whether you are for or against the rules?

MR. BIANCO: That is the problem.

CHAIRMAN DAUS: With all respect, we have procedures.

MR. BIANCO: I understand that, but I am trying to relate something.

Bureaucracy is an agency that reaches a point where eventually it serves its own purpose.

30 years ago I read in the newspapers about the Agriculture Department giving a speech to farmers. The government was going to pay them in order to stabilize prices -- not the plant -- in certain parts of their area in order to stabilize food prices.

It is a very immoral decision because there are people starving to death
around the world, and it would give us a better image.

It also showed that when a farmer asked the executive from the Agriculture Department, "If we don't plant on this part of land, we are going to lose our top soil."

That is what this industry represents. You have to have a layer above you that works on the streets, that works -- look at myself in this conversation. Before I came here, I talked to other people. One fellow was a prisoner in a death camp as a kid, and I asked him, "Boy, you must have a lot of stories as a cab driver."

I looked in his eyes, and over the years I looked in people's eyes for --

CHAIRMAN DAUS: I am sorry, Mr. Bianco, your time has expired. You have not addressed the medallion transfer rules. We certainly -- we appreciate your history and your issues, and we would be happy to talk to you after the meeting.

MR. BIANCO: If you give me that, I would appreciate that.

CHAIRMAN DAUS: We will talk to
Are there any other speakers, anyone else who wishes to be heard on this pressing topic?

MR. SAPPONE: Am I next?

CHAIRMAN DAUS: Our last speaker is Mr. Vincent Sappone, and then we will wrap it up.

MR. SAPPONE: I want to wish everybody a healthy new year here.

All I can say is I hope you guys think it over, and it is good that you are talking to the industry about these transfer rules. It is very good.

The gentleman that got up and spoke, Metropolitan, Mel Miller, they probably got 150 years experience between the organizations, you know, and with LOMTO it is another 80 years, 75 years.

I wasn't prepared for this today. I haven't been prepared for anything lately.

Who is laughing?

I hope you consider and work with the industry, with me included, you know,
and maybe -- let's make it work for everybody. Let's take the hammer out of their hands, maybe put it on the table, hide it for a while.

I am not saying you are beating anybody up; I am just saying let's leave it in the garage.

Let's try to work with each other and come to really a fair conclusion that is good for everybody, everybody.

Anyway, the last thing I want to say, which Matthew, you probably remember them, I didn't get any notification until after it was over with, Willy Bligh, he passed away. I don't know if you know.

CHAIRMAN DAUS: No.

MR. SAPPONE: I didn't know either.

CHAIRMAN DAUS: He was on the board of Melrose, wasn't he?

MR. SAPPONE: Yeah. Before that he had my position. He was the managing director before I stepped in.

CHAIRMAN DAUS: We will try to track down through Melrose his family. That is very, very sad. Willy Bligh was an icon in the
industry.

MR. SAPPONE: He was an industry leader.

Some people liked him, some didn't, but it doesn't matter. He was involved with the industry.

I am sorry to say that LOMTO wasn't even formed.

CHAIRMAN DAUS: That is very sad news. We will try to see if we can reach out to Melrose and to the family and see if we can --

MR. SAPPONE: I am going to do the same thing.

Anyway, as I was saying, I didn't come here prepared. I don't want to make a fool out of myself.

When I read that stuff that you printed up, Mr. Fraser, I think I need two lawyers behind me, no disrespect. It was very long, and go to A to B to C. Okay, whatever.

You know, we should start putting things in my language maybe, you know? Really. This way cab drivers can understand.

CHAIRMAN DAUS: You are talking
to lawyers.

MR. SAPPONE: Maybe make a guy
like you put it together or him.

I mean, very good, very
professional, but I needed a comptroller
looking at it, and then I went to a lawyer who
didn't have time, and one guy put it on his
table --

CHAIRMAN DAUS: Some of the best
lawyers can't figure it out.

MR. SAPPONE: Let's try to work
together, okay?

Have a good new year.

CHAIRMAN DAUS: Same to you.

That is very sad news about
Willy Bligh, very, very sad, and we will try to
see if we can pull something together to honor
his memory.

I would like to just check with
my colleagues for a second and see how you feel
about some of what you have heard.

Basically, you know, my feeling
is that I disagree with certain elements of
what was said. I think we need to and have an
obligation to, given the Local Law and given
the City Charter, the Administrative Procedure Act, we need to put something into our rules at some point. We need to have rules. You cannot not have rules.

If you look at the definition of a rule under the Administrative Procedure Act, a lot of what we are doing needs to be in the rules.

I think it is a good thing for integrity purposes, for stability for the industry.

Now, obviously this dispute seems to me, even though we are saying we are against having rules at all, it seems to me like most of what is being said is "We don't agree with what the TLC has put forward."

But I have to say if we can achieve a compromise and a consensus, that is great. It doesn't always work that way.

I think this is probably one of the most open, transparent processes we have ever had at the TLC. For over two years we have been meeting with the industry. Some of the same comments that were made today were made back then. Our counsel and our staff just
simply didn't agree with them.

That doesn't mean that after
having this debate with the Commissioners that
we may not find that there are other
alternatives that we can pursue.

I think the legislative concept
is an interesting one. We will talk to the
Mayor's Office, and we will talk after the
meeting -- that is a possibility.

I never felt comfortable with
this process from day one. There must be
better ways to do the research now.

I think the Jury Verdict
Reporter is on-line, but who wants to create
extra work for government in a nebulous area
such as this which could have repercussions?

I think OATH is eminently
qualified to do this work if it needs to be
done in accordance with that case and the Local
Law. There is no question about that, and I
think they would do a fantastic job.

However, whether the Local Law
itself has outlived its welcome, or whether it
was put in place at a time when people didn't
even envision what this would become is another
issue.

You know, to the extent that our
counsel feels very strongly that we are
preempted from doing it or not doing certain
things, we will revisit that.

If there is a legislative
solution, we will look at that.

I think we do need to have some
type of rules in place, whether it be the type
of paperwork that we need -- some things are
administrational and don't need to be in the
rules.

To the extent we need to make
sure the licensing criteria is met by
transferees, the new buyers, to the extent that
the Commission should have a role, obviously,
in approving of the new owners to make sure
that they have criminal background checks, that
they meet the requirements for ownership, that
they are ready to go and get their vehicles on
the road and become an owner, I think that is
an important area.

The area of looking out for --
while admirable -- the injured plaintiffs who
have judgments I think is something that was
created by Local Law, and it is a
responsibility that we currently have.

Unless we are able to change the
law, we have to figure out a workable way in
which to meet that obligation.

I do believe that, from
everything I have heard, there are certain
scenarios, even though they may be far between,
where people can use the process of
transferring stock to incur indebtedness,
which, from what I understand, under the Lien
Law would take priority over personal injury
judgments.

I think that is certainly, from
what counsel has advised, a legitimate concern.

We will look into and revisit
the arguments that were raised about the
interaction and the state preemption arguments
with the Business Corporation Law, the General
Obligations Law, the Appellate Division case in
relation to the Local Law.

The question that I think was
raised which is interesting is whether there
are any provisions of State law which may
preempt the Local Law that requires us to do
this analysis, but we do need to pass something
at some point.

        What I would like to do at this
point is ask Chuck, Andy and all the folks in
the industry to maybe let this digest and
settle for a little bit. If the industry feels
that based upon the points here they need to do
any additional research, that you submit it to
our general counsel.

        If we can reach an area of
understanding or compromise on the other
elements of the rules, put the legislative
piece to the side, that would be great, and we
will look at all of our options and explore
them.

        At the end of the day, if we
can't reach an agreement, the Commission, I
would suggest, has to come back objectively and
just take a stand and do what they think is the
right thing.

        That is my proposal to my
colleagues; that we have further meetings after
this with the industry to go over the areas of
disagreement on the trust issue and some of the
these other areas, and we will explore the
possibility of legislation.

If we can't reach a resolution or we can't reach a potential next step on this, then we may need to come back and take a vote on these rules.

Do I have any other input or comments?

Or do you agree or disagree?

COMM. GONZALES: I just have a quick question regarding transfers. How is title really determined? Is it similar to when you purchase, say, a property, there is a title search, liens on houses, that kind of thing, that all kind of comes out at the closing?

Is it similar with a transfer, and then where is the line drawn between, say, a clearance of title and what was discussed here with respect to OATH being involved and looking at claims and things like that?

MR. FRASER: It is very similar to a real estate closing and title transfers.

Our position would be title transfers upon our approval and at the closing, and the tort valuation process, regardless of whether it is done as it is done now with Judge
Golkin, or whether it would be done in court or
any other place, the tort valuation process
occurs before the closing and therefore before
the change in title.

CHAIRMAN DAUS: We also do
check, and this is something we are putting
into the rules, right? About indebtedness to
the City, taxes that are due and so forth that
we want to approve the transfer. There are no
other interests involved here?

MR. FRASER: Not across the
board. We don't look at any debt to the City.
There are certain things, the finance tax, the
transfer tax, we look at unpaid fines to us,
and I believe the rules provide for unpaid
fines to DMV. I am not sure about that, but I
think that is right.

We don't more generally look for
unpaid debts to the City.

CHAIRMAN DAUS: Any other
questions?

I guess the TLC has done such a
good job on taking care of the good title that
I see no one has gone to the business of
issuing title insurance for medallions. We
take that as a slap on our back that we have been doing a good job. We really have had very few issues. We have never really had any major issues since I have been here, anyway, on the medallion transfer front.

We have just had one spat where we had some foreclosures. That was following -- that was around the time of the driver shortage.

For the most part, it has been a process that has improved over the years. That doesn't mean we shouldn't further improve it, but I think it is in the best interest of the agency to put something in the rules now and forever so that we have stability so let's work on that.

It is a new year. We have time to do this. We will get together.

Andy, Chuck and his staff will be in touch with you as well as Samara to sit down and have another meeting on this.

We will talk to the Mayor's Office about the other possibilities. If it makes sense, it makes sense. If not, we may
have to come back and bring it to a vote.

That concludes Item 4, 4 B on the agenda.

We were planning on doing a couple of presentations today. Unfortunately, Ira Goldstein has had a death in his family, and he is not here.

We will be doing the presentation on TPEP enforcement, some of the things we have been doing to make sure the drivers are using the credit cards.

One of the things we did is we did a run of all of those cars that are not using -- have no transactions at all. We have been sending them letters and we will be calling them in, because it is a little odd that there is some equipped cabs that have not had any transactions so that is something we are working on.

He will actually have even more detailed numbers by next month so we will put that presentation back on.

Also, next month we are going to have a presentation by Debra Martin. I spoke to her yesterday on the Design Trust. She will
kind of recap what we have done with this book.

By then the Commissioners and the public will have had a chance to read it fully, and we will do that.

My understanding, Chuck, is we do not have a quorum to hear this appeal, Item 6?

MR. FRASER: That is right. A quorum is five, and with your recusal, we would have three.

CHAIRMAN DAUS: So there you go. We will have to adjourn that case. The parties will be so notified.

I don't have enough votes to close the meeting so the meeting will go on all day. If you want to feel comfortable, we will maybe bring in some lunch.

Seriously, thank you for coming. This was a good debate. We look forward to working with you in the new year.

(Time noted: 11:04 a.m.)
CERTIFICATION

I, HELENE GRUBER, a Notary Public within and for the State of New York, do hereby certify:

THAT the foregoing is a true and accurate transcript of my stenographic notes.

IN WITNESS WHEREOF, I have hereunto set my hand this ___ day of __________, 2010.

______________________________
Helene Gruber, CSR