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November 13, 2014

Via email

Hon. John M. Glynn
Creative Dispute Resolutions, LLC
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Dear Judge Glynn:

As you know, I represent associations formed by, or affiliated with, taxi drivers in Montgomery County, Maryland. As a follow-up to our mediation sessions, I am submitting this position statement, setting forth in more detail where the taxi drivers stand with respect to each of the issues discussed.

1. Reduce and cap leasing/rent cost to \$80.83 per day/\$484.98 per week

Your report should recommend that Montgomery County implement a lease cap of \$80.83 per day/\$484.98 per week. An explanation of Barwood's practices shows that a \$480 lease rate is fair and will pay Barwood the same rate it charges in other circumstances.

Barwood is the costliest carrier in Montgomery County. Its lease rate is \$107.30 per day/\$643.80 per week. That cost is broken by Barwood as follows:

\$64.65 per day/\$388.80 per week for lease of the vehicle
\$19.20 per day/\$115.20 per week for telephone/dispatch service
\$23.45 per day/\$140.70 per week for vehicle liability coverage

If, however, a driver has his own car and PVL, Barwood charges that driver only \$5.00 per day/\$30.00 per week for telephone/dispatch service. Thus, by its own terms, the fair market value of Barwood's dispatch service is \$5.00 per day/\$30.00 per week.

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With respect to insurance, in the District of Columbia, drivers pay \$30 per week for better insurance coverage than that offered by the Montgomery County companies. In Montgomery County, drivers that own their own PVLs and drive for Barwood and others are able to obtain their own better insurance coverage for \$3500 per annum, which is \$11.18 per day using a 6 day/per week calculation.

Therefore, if you were to keep the daily and weekly rate for the lease of the vehicle the same, but lower the dispatch and insurance charges to their market value, the rates would be as follows:

\$64.65 per day/\$388.80 per week for lease of the vehicle
\$5.00 per day/\$30.00 per week for telephone/dispatch service
\$11.18 per day/\$67.08 per week for vehicle liability coverage

TOTAL: \$80.83 per day/\$484.98 per week.

Several cities and localities across the country have implemented lease caps and maximum rent regulations to help improve taxi driver income. Below are examples from Seattle, WA and New York City, NY.

Seattle, WA

City of Seattle Taxicab and for-Hire vehicle Rules
Rule R-6.310.315 – Taxicab Vehicle Lease

In 2008, the Seattle Municipal code (SMC) on Taxicab and for-hire vehicle rules was amended to set a maximum lease rate that owners can charge drivers. Currently, the maximum lease rate that can be charged to a lease driver is \$85 per shift, \$475 per week, or \$1,900 per month.

New York City, NY

New York City Taxi and limousine commission's Chapter 58-21(c) of the TLC rulebook.

New York City introduced the maximum lease rules in 1996 to insure drivers are protected from excessive fees and costs by medallion owners. In 2013, the TLC updated its lease cap rules by barring owners from charging drivers the 5% credit card fee and instead folded the cost of credit card processing into the lease.

Language from the TLC rulebook and a breakdown of the current lease cap rates is as follows:

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Standard Lease Cap Rates. An Owner of a Taxicab can charge a lease rate to a Driver that is not greater than the following Standard Lease Caps:

\$105, for all 12-hour day shifts
\$115, for the 12-hour night shift on Sunday, Monday and Tuesday
\$120, for the 12-hour night shift on Wednesday
\$129, for the 12-hour night shifts on Thursday, Friday and Saturday
\$630, for any one-week day shift for one week or longer
\$737 for any one week night shift for one week or longer.

2. Drivers should be able to determine their own means to accept credit cards, and a 5% maximum charge to drivers should be imposed where a company's terminal is used

As you know, the majority of cab drivers in Montgomery County are forced to pay exorbitant fees to process credit card transactions. Those fees can range from 5% to as high as 7.9% (8.5% in some instances) for Barwood drivers. Your report should recommend that the County set certain standards that must be met and allow drivers the freedom to choose a credit card terminal that best fits their needs. If, however, the drivers are forced to use company terminals, then the county should set the maximum credit card fee at 5%. That type of system is consistent with those in surrounding jurisdictions.

For example, in Alexandria, Section 9-12-32(t)(1) of the Alexandria Virginia Taxi Ordinance mandates a 5% maximum percentage credit card fee if a certificate holder mandates that its affiliated drivers use a specific credit card processor.

It is important to remember that each driver in Montgomery County is treated as an independent contractor. Although the drivers understand the County's need to mandate that credit cards be an acceptable form of payment, as independent contractors, the drivers should be the ones to determine how best to meet such a mandate. It is the drivers, and not the fleet companies, who depend upon the customers' fare to run their business. The City of San Francisco has recognized this very basic idea. Section 1124-(d)(1) of the San Francisco Transportation Code stipulates that a driver has the right to choose a credit card payment processing merchant account service so long as it conforms to the standards placed by the city. No fleet company, under the San Francisco Code, may retaliate against a driver for electing, or not electing, to establish his or her own credit card processing account.

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3. Uniform Contract Requirements

Your report should recommend that the County mandate certain fair contracting principles for all driver-fleet company contracts. As we discussed in the mediation sessions, some drivers lease their vehicles and others own their own vehicles and PVL. No matter what the arrangement, the contracts between the drivers and the companies are contracts of adhesion. To ensure a fair contracting system, and as free a market as possible, your report should recommend the following:

A. In Montgomery County, even if a driver owns his own car and PVL, he must still enter into a contract with one of the five fleet companies and drive a taxi only with those companies' colors and markings. Barwood, for example, requires such PVL holders to contract with it for five (5) years. If the contract is terminated early, that driver must pay a penalty. To ensure a system that will bring a modicum of competition and market pressure on the fleet companies, a PVL holder should be able to terminate his contract at will, and take his services to another company. Again, it is important to emphasize that the drivers are treated as independent contractors. As such, they should be free to choose where to take their services.

B. With respect to drivers who lease their vehicles, you should recommend that the County adopt requirements ensuring the following:

- The lease be in plain language
- No expense may be charged to a driver unless set forth in the lease
- The lease terms may not be changed unless agreed upon by both parties
- Payments may not be required from the drivers more frequently than weekly
- Drivers are given the opportunity to review a proposed lease for seven (7) days prior to signing.

4. Dispute Resolution Process

Your report should recommend that the County mandate that all fleet companies adhere to a County dispute resolution system to resolve all disputes between drivers and fleet companies. These disputes would include, but not be limited to, a termination of the driver's contract without cause, a breach of that contract, and/or the non-renewal of a contract without cause. The resolution system would culminate in arbitration conducted by arbitrators appointed by the driver

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and company under the AAA rules for labor arbitration, and the services of the arbitrators would be paid by the County. In the alternative, the costs for the arbitrators would be borne equally by the driver and company, provided however, that the County mandate that the companies must recognize and adhere to a system whereby drivers may choose to have the company deduct a portion of their payments and forward such to a third-party advocacy organization designated by the driver for purposes of assisting the driver in any arbitration.

5. The County Should Adopt a Regular Review of Chapter 53

Your report should recommend that, every two years, the County review Chapter 53 with meaningful input from both the drivers and the fleet companies. The review will include recommendations to the County Council on: (1) the maximum lease rate, (2) the number of PVLs issued, (3) the meter fare rates, (4) the number of face cards issued to drivers by the County, and (5) on-going technological changes affecting the industry. The goal of this process should be to ensure viable fleet companies, living wages for drivers, and an appropriate level of service for the citizens of Montgomery County.

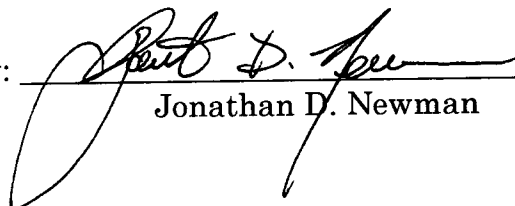
To engage in such a review, the County should set dates for initial meetings between the fleet companies and drivers, the date by which a recommendation must be made to the Department of Transportation, and a date by which the Department of Transportation must make a report on recommended changes to the County Council. The County should also provide, in Chapter 53, that the report of the Department of Transportation shall be adopted by a date certain after its submittal, unless altered or amended by the Council.

Please contact me with any questions.

Sincerely,

SHERMAN, DUNN, COHEN, LEIFER & YELLIG, P.C.

By: _____



Jonathan D. Newman