



Wood LLP

Tax Alert



Robert W. Wood

THE TAX LAWYER

TAXES 6/07/2014

Uber Is Worth \$18.2 Billion---Should Uber, Lyft & Sidecar Pay For Criminal Acts?

Already [worth \\$18.2 billion](#), Uber has had a meteoric rise. Its [reported](#) valuation makes CEO and co-founder [Travis Kalanick a billionaire](#). What's more, it [elevates Uber above venerable transportation giants](#) like Hertz, United Airlines, Fiat and [TripAdvisor](#). Investors may be excited, but I'll bet plaintiffs in lawsuits and their lawyers are too.

Uber and its two competitors Lyft and Sidecar say they are tech companies just taking a fee for putting passengers and drivers together. Uber is more Wall Street, while Lyft cars wear furry pink grill mustaches. Apps make them convenient, some say better than taxis. Drivers aren't employees, at least on paper.

But if you are in an accident, who will you sue, particularly if the liability exceeds the driver's insurance limits? Should it matter who is hurt, passenger or third party? Uber fans and foes alike know of the [tragic death of a 6-year-old girl](#) on New Year's Eve in San Francisco.

Sofia Liu was killed walking across the street by former Uber driver, [Syed Muzzafar](#). He faces charges of vehicular manslaughter with gross negligence and failure to yield. But as legal disputes play out, more recent controversies are over intentional criminal acts like sexual assault and battery.



Lyft car with pink mustache

Accusations against drivers from Uber and its competition include [creepy text stalking](#) and [raping a passenger](#). A Chicago UberX driver was [charged in April](#) with battery for allegedly fondling a passenger. Recently, Daveea Whitmire of San Francisco was charged with two misdemeanor battery counts over allegedly hitting a customer.

Just as with the wrongful death case involving the 6-year-old, civil liability claims seem almost inevitable. And it is not far-fetched to imagine verdicts for injured plaintiffs in some of these situations. After all, for decades in taxi accidents, despite “taxi leased to driver” on the door, plaintiffs sue driver and the cab company.

Often, the legal argument is that the independent contractor arrangement is a sham. The same happens with deliveries. In Texas, Domino’s Pizza is appealing a [\\$32M verdict](#) relating to a delivery driver who killed a 65 year-old woman. The jury found Domino’s (the franchisor) liable. The driver was speeding to meet Domino’s corporate 30-minute delivery policy.

Isn’t that like Uber, Lyft or Sidecar? The wrongful death suit against Uber claims drivers must respond quickly. That may not be Domino’s 30-minute guarantee, but it still could have a legal impact. Still, the courts may say they are simply not responsible. The contracts and the actual course of conduct of the parties count.

So should the status of the injured person. An Uber passenger may assume the risk of ride sharing, but a pedestrian in a crosswalk hasn’t. Many taxicab, limo and package delivery cases raise the age-old line between independent contractors and employees. That line is pivotal on the agency liability a company faces when an *employee* (but not an *independent contractor*) acts up.

Some accidents will occur despite screening by the companies. When accidents happen, the liability could be direct—arguing the company didn't adequately screen drivers—or vicarious. The latter is a type of agency liability. It makes a company liable for the acts of employees. Those two types of liability are both key with ride sharing.

Historically, independent contractor vs. employee characterization questions span medical malpractice cases, tax disputes, worker compensation, unemployment, employment discrimination, sexual harassment, and more. People labeled as independent contractors may be employees. Arrangements may be genuine or mere labels with no chance of standing up against the IRS, other government agencies or the courts.

But the new criminal liability issues are almost all about screening, and that liability is direct. If it turns out courts find that ride share services are putting drivers out there without adequate screening for criminal backgrounds or mental diseases or defects? That liability is direct, and wouldn't depend on whether the driver is an independent contractor or employee.

And as this competitive new industry continues to take off into the land of astounding valuations, liability issues could end up being a sobering check on their growth. Just as the independent contractor v. employee line has moved into franchises too, soon services like Uber, Sidecar and Lyft may end up testing the legal limits of liability.

You can reach me at Wood@WoodLLP.com. This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.