

Facts Matter In Rideshare Cases

By Robert W. Wood

In many cities, if you have a smartphone, you can summon a car in minutes via Uber, Sidecar or Lyft. You may think of them as taxis or limos, but they are actually tech companies, they claim. They just take a fee for putting passengers and drivers together. Clearly, these drivers aren't employees of the companies, at least not on paper.

Besides, neither the companies nor the drivers are likely to think there is an employment or agency relationship *viz.* third parties. So what if a driver has an accident that injures a passenger or a third party, say a child in a crosswalk? Plainly, the first — and perhaps only — recourse is the driver.

They have their own insurance, but a serious or fatal accident can involve millions of dollars of damages, far exceeding most driver insurance policies. And some accidents will occur despite screening efforts by the companies. When accidents happen, the companies — however you choose to view them — are clear targets.

The liability could be direct — arguing that the company didn't adequately screen drivers — or vicarious. The latter is the most explosive, a type of agency liability that makes a company liable for the acts of employees. In one lawsuit, Uber is being sued along with the driver, Djamol Gafurov. Gafurov's insurance policy has a \$750,000 limit. In that sense, adding Uber as a defendant was probably a no-brainer.

Even worse, on New Year's Eve a 6-year-old girl, Sofia Liu, was killed in a San Francisco crosswalk by Uber driver Syed Muzzafar. The girl's mother and brother were also injured. The driver's status with Uber was terminated, but the incident will likely prompt more questions about driver training and compliance for app-based car services.

Now, a wrongful death lawsuit has been filed against Uber. The suit claims that Uber is responsible for Sofia Liu's death, saying that Muzzafar was on Uber's app at the time of the accident. Uber says it isn't responsible and notes that Muzzafar was not carrying a passenger at the time of the accident. The suit is the first wrongful death case and the first involving big damages.

Will Uber be found liable? Some say the Communications Decency Act prevents liability, arguing that these tech companies are just information content providers. But it is not far-fetched to imagine verdicts for injured plaintiffs, no matter how legal niceties are observed. A close parallel can be found in suits involving independent contractors, like many taxi and delivery drivers.

If a taxi injures someone, despite the "taxi leased to driver" on the door, the plaintiff is likely to sue the driver *and* the cab company. Arguing that the independent contractor arrangement is a sham, the plaintiff may prevail. Independent contractor versus employee characterization questions span medical malpractice cases, tax disputes, worker compensation and unemployment matters and more. Even employment discrimination and sexual harassment cases.

As many tax, employment, insurance and labor disputes reveal, workers labeled as independent contractors may actually be employees. Arrangements can be genuine or can be independent in name only, with no chance of standing up against the Internal Revenue Service, other agencies or the courts. If an injured party shows that the driver was *really* an employee, the employer is also on the hook. There are many taxicab, limo and package delivery cases that raise this issue.

In franchise operations, the relationship can be even more attenuated. The facts and circumstances matter, and not all cases come out the same way. In *Viado v. Domino's Pizza LLC*, the court said a franchisor like Domino's *can* be responsible for the conduct of a franchisee's employee in some cases.

One of the direct liability issues for Uber is the vetting process the company uses with drivers. That is a type of direct liability about Uber's own actions. Another question is the extent to which drivers can import agency liability of the type that makes companies liable for the acts of employees.

Such issues are common with newspaper carriers and other deliveries. In Texas, Domino's Pizza is appealing a \$32 million verdict against it relating to a delivery driver who killed a 65-year-old woman. The driver was liable, as was the independent Domino's franchise store that sold the pizza. But the jury found Domino's company (technically, the franchisor) liable too. One reason was because the driver was speeding to meet Domino's corporate 30-minute delivery policy.

Interestingly, the wrongful death suit against Uber claims that drivers must respond quickly, and suggests this rule encourages carelessness. The policy may not be as concrete as Domino's 30-minute guarantee, but it still could have a legal impact. Of course, the entire business model of Uber, Lyft and Sidecar is in its infancy. The courts may say they are simply not responsible.

However, one might look for parallels in the Domino's case, as well as in taxicab and newspaper delivery cases from around the country. Legal issues aside, it seems likely that the cases will turn on their facts. The contracts and the actual course of conduct of the parties are likely to count, as should the status of the injured person.

After all, it may be one thing for a passenger in an Uber car to sue if he or she is injured. One might argue that an Uber *passenger* assumes the risk of ride sharing by signing on. But what about a pedestrian hit in a crosswalk? The pedestrian hasn't agreed to any kind of arrangement with Uber.

Admittedly, though, most involve 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.

It is too soon to say how the Uber, Sidecar and Lyft liabilities will be sorted out. In the short term, though, as multiple cases work through multiple courts, the answer may not be a bright or consistent line.



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