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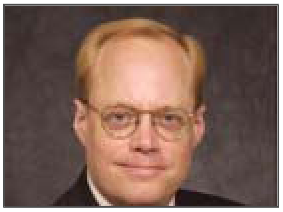

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Will Death Suit Bring Über Big Liability For Uber?

America is a nation of laws and lawyers, yet the law often plays catch-up to technology. Although taxi companies complain of unfair competition, many cities and consumers react favorably to new smartphone ride-sharing choices Uber, Lyft and Sidecar. But if you are in an accident, you may not be so pleased, particularly if the liability is big and beyond the driver's insurance limits.

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 struck while walking across the street with her family. Several family members were injured too. The driver, Syed Muzzafar, faces charges of vehicular manslaughter with gross negligence and failure to yield.

Now, a wrongful death lawsuit has been filed against Uber. The suit claims that Uber is responsible for Sofia Liu's death, saying that Mr. Muzzafar was on Uber's app at the time of the accident. Uber says it isn't responsible and notes that Mr. Muzzafar was not carrying a passenger at the time of the accident. See Statement on New Year's Eve Accident.

Less serious lawsuits have ensnared Uber, Lyft or Sidecar. For example, in one lawsuit, Uber was sued along with the driver, Djamol Gafurov, whose insurance policy has a $750,000 limit. But the new suit is the first wrongful death case and the first involving big damages.

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

The companies claim they merely take a fee for putting passengers and drivers together. The drivers have their own insurance, but a serious or fatal accident can involve millions in damages, far exceeding most driver insurance policies. Some say the Communications Decency Act prevents liability because these companies are information content providers.

But it is not far-fetched to imagine verdicts for injured plaintiffs. A close parallel can be found in suits involving independent contractors like many taxi and delivery drivers. If a taxi injuries 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. The same happens with newspaper carriers and other deliveries, including pizza. In Texas, Domino's Pizza is appealing a $32M 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.

There are taxicab, limo and package delivery cases that raise such issues. 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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