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Big Liabilities For Uber, Sidecar And Lyft?

Are you sick of waiting for a taxi or limo? If you have a smartphone, you may be able to summon a car in minutes via Uber, Sidecar or Lyft. Lyft has the added visual bonus of a furry pink mustache on the front grille. Uber may be a little more Wall Street, but all of them aren't really limos or even taxis, right?



Lyft's distinctive pink mustache (Photo credit: Tribute/ Homenaje)

They are tech companies, they claim, and just take a fee for putting passengers and drivers together. Clearly, these drivers aren't employees of the car services—er tech companies—at least on paper. Besides, neither the companies nor the drivers are likely to even **think** there is an employment or agency relationship *viz.* third parties.

Yet even some drivers themselves may not be entirely complacent. Some Uber drivers have sued claiming the company takes too large a cut of tips. But the biggest legal exposure by a wide margin is accident liability. What if a driver has an accident that injures the passenger or a third party, say a child in a crosswalk?

Plainly, the first—and perhaps only—recourse is the drivers. 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 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. Mr. Gafurov’s insurance policy has a \$750,000 limit. In that sense, adding Uber as a defendant was probably a no-brainer.

Even worse, New Year’s Eve, a [six year old girl was killed](#) in a San Francisco crosswalk by Uber driver Syed Muzzafar. Several in the girl’s family 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. Ultimately, the question is whether companies will 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 the 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. The same happens with newspaper carriers and all manner of delivery personnel. Even pizza delivery.

Domino’s Pizza faces a [\\$32M Verdict](#) over a pizza delivery accident that killed a 65 year-old woman and left her 70 year-old husband with permanent brain injuries. The driver was liable, as was the independent franchise store that sold the pizza. And Domino’s was liable too, in part because the driver was speeding to meet Domino’s 30-minute delivery policy.

Although Domino’s is appealing, worker status and agency questions won’t end here. Uber, Lyft and Sidecar may be in their infancy, and there are various legal bases upon which they can rely for protection. But the law has been sorting out similar issues for decades. The contracts and the actual course of conduct of the parties are likely to count.

Independent contractor v. 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 be employees. Arrangements can be genuine or can be independent in name only, with no chance of standing up against the IRS, 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.

Usually, an agency requires a principal and agent like an employer and employee. As with franchises, services like Uber, Sidecar and Lyft may test the legal limits of liability. Among other factors, many worker status cases look primarily at:

- The employer's control over the worker;
- The worker's opportunity for profit or loss;
- The worker's investment in facilities;
- The worker's skill set; and
- The duration of the relationship.

It is too soon to say how the Uber, Sidecar and Lyft liabilities will be sorted out, and the answer seems unlikely to be a bright line. But the more time that elapses, the more accidents there will be. That means more chances for legal wrangling over how old laws and models apply to the modern age.

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.