

Detangling Liability in Ridesharing Accidents



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I. Introduction

In 2014, there were approximately 160,000 active Uber drivers in the U.S.¹ By 2017 there were more than 1,500,000 Uber drivers worldwide.² With more ridesharing drivers on the road, it is safe to assume that the number of motor vehicle accidents involving ridesharing drivers will increase at a similar rate. As accidents involving ridesharing drivers become more common, finding the correct way to allocate liability between drivers and ridesharing companies for injuries caused in car accidents will become a pressing necessity. Defining the relationship between a rideshare driver and rideshare coordinator, like Uber or Lyft, will have a significant impact on the ultimate allocation of liability for injuries that occur in the ridesharing context. However, there are legal theories that could result in a coordinator being held liable for injuries caused by driver, regardless of how the relationship between driver and coordinator is defined. Legal theories exist that could impose liability directly on the coordinator, but the legal status of the relationship between drivers and coordinators is still of primary importance. This paper will explore how the relationship between the ridesharing driver and ridesharing coordinator can impact how liability is allocated in the event of any injury. Furthermore, this paper will outline the principles that support holding a ridesharing company responsible for the torts committed by associated drivers. Lastly, this paper will explore a variety of legal theories that could be used to assert claims directly against ridesharing companies in the event one of their drivers harms a ridesharing customer or a third-party.

II. Relationship of the Rideshare Driver to the Rideshare Coordinator

Unsurprisingly, the various parties involved in this relationship take different approaches to defining and describing the interplay between a ridesharing coordinators and drivers. For instance, Uber refers to its drivers as “Partners,” emphasizes the

¹ Artyom Dogtiev, *Uber Revenue and Usage Statistics 2017*, Business of Apps (Jan. 9, 2018), <http://www.businessofapps.com/data/uber-statistics/>, (last visited April 17, 2018).

² *Id.*

flexibility provided to “Partners,” and insists drivers are independent contractors.³ Conversely, drivers seeking the enhanced protections that come with being classified as an employee, or injured parties hoping to establish a coordinator’s liability for an injury caused by a driver, focus heavily on the control coordinators exercise over drivers. While the issue of defining the relationship between drivers and coordinators in the employment law context has been frequently litigated and considered by courts, few rulings have been issued on this question as a matter of tort law.⁴ The lack of case law on this issue is likely attributable to quick settlement of tort cases brought by third-parties, and the arbitration provisions passengers are generally subject to. However, as ridesharing moves from a novel, disruptive technology to a commonplace fact of life, we expect to see this question arise more frequently.

The positions taken by ridesharing operators in prior legal disputes over how drivers should be classified for the purposes of employment law give insight into the arguments that ridesharing companies and injured parties are likely to make in the tort context. When these employment questions have been litigated, coordinators typically seek to distance themselves from the transportation aspect of their operations.⁵ Companies like Lyft and Uber have argued they are merely “technology companies” that allow independent drivers to connect with people who need a ride. Some operators go so far as to describe the service they provide as being more like that of a phone book than a transportation service. By casting themselves as mere facilitators, coordinators aim to avoid the legal liabilities attached to operating as a transportation company, including liability for injuries caused by rideshare drivers.

Arguments from ridesharing coordinators aimed at persuading courts their companies are more like a technology company, such as eBay, than a traditional taxi

³ Agnieszka A. McPeak, *Regulating Ridesharing Platforms Through Tort Law*, 39 *Hawaii L. Rev.* 347, 364 (2017).

⁴ See e.g., Ashley L. Crank, *O’Connor v. Uber Technologies, Inc.: The Dispute Lingers – Are Workers in the On-Demand Economy Employees or Independent Contractors?*, 39 *AM. J. TRIAL ADVOC.* 609 (2016).

⁵ See, *Cotter v. Lyft, Inc.*, 60 F. Supp. 3d 1067, 1070 (N.D. Cal. 2015); *O’Connor v. Uber Techs., Inc.*, 82 F. Supp. 3d 1133, 1136 (N.D. Cal. 2015).

service have not been well received. Two Courts in the Northern District of California that considered the issue of the employment classification of rideshare drivers found Uber and Lyft's mere "technology company" arguments to be "fatally flawed" and "obviously wrong."⁶ In reaching the conclusion that rideshare drivers are entitled to the protections afforded to employees, these Courts relied on many of the same factors that prospective plaintiffs are likely to point to, such as the detailed instructions operators provide to drivers on how to conduct themselves, and the fact that drivers are essential to operators generating revenue.⁷

III. Vicarious Liability for Injuries Caused by Rideshare Drivers

As briefly mentioned above, the classification of ridesharing drivers is of primary importance to the question of the apportionment of liability between drivers and ridesharing companies. The answer to the question of how ridesharing drivers are classified is important though not wholly determinative of the issue of whether ridesharing coordinators can be held liable for torts committed by associated drivers. This is because if ridesharing drivers are routinely held to be employees for the purposes of tort law, it will be significantly easier to establish that the ridesharing operator is vicariously liable for injuries caused by drivers.⁸ Typically, the third-party held accountable for someone else's tort is a company that employs the tortfeasor. The tort theory supporting this use of vicarious liability is that it allows for better allocation of risk and cost of injuries between companies, employees and injured third-parties. To better understand the contours of the debate surrounding the apportionment of liability in the ridesharing context, it is necessary to look at the general principles governing the questions surrounding vicarious liability and worker classification. This examination will begin with an explanation of the differences between employees and independent contractors, followed by a brief overview of the tests employed by courts when tasked with making this distinction.

⁶ *Id.*

⁷ *Id.*

⁸ Vicarious liability is the legal concept that permits third-parties to be held liable for the tortious acts of others.

A. Employee vs. Independent Contractor

Simply put, for an employment relationship to exist, the purported employer must have a right to control methods and means by which an employee accomplishes the tasks assigned by the employer. If a company exercises sufficient control to justify imposing the employee classification on workers, then the company will be responsible for injuries caused by the employee in the course and scope of the execution of the employee's duties. Conversely, an independent contractor is a person who is assigned a job to complete, but who is not specifically instructed on *how* to do the job. Contractors are merely provided with what needs to be accomplished and the payment for completing the task. Given that, ostensibly, hiring parties have less control over the actions of an independent contractor than over the actions of an employee, there is less reason to hold hiring parties responsible for the actions of a contractor. The differences between employees and contractors can also be understood by considering where the control over the relationship is found. In the context of an employer/employee relationship, the employer is recognized as having the authority to control the employee's actions. Conversely, a contractor is subject only to the terms of the agreement with the hiring party, not the hiring party's whims over how to complete the agreed upon tasks.⁹

B. The "Control Factors" Test.

While control is the primary consideration in worker classification questions, stating that control is the determinative issue provides little guidance on how to analyze specific relationships. In an effort to clarify the consideration of the question of control, the Supreme Court has analyzed twelve factors relevant to this inquiry.¹⁰ These factors are:

1. The skill required to complete the task;

⁹ It is important to point out that a contractor's actions can be used as a basis for establishing vicarious liability to the same extent as an employee if the tortious actions of the contractor were controlled by the hiring party.

¹⁰ *Nationwide Mutual Insurance Co. v. Darden*, 503 U.S. 318, 323-24 (1992).

2. which party provides the tools necessary to complete the work;
3. where the work is done;
4. how long the relationship between the parties will continue;
5. which party has discretion over when and how long the hired party works;
6. whether the hiring party is permitted to assign additional tasks to the worker;
7. the method used to issue payment;
8. the hiring party's role in providing assistants to the hired party;
9. whether the task accomplished by the worker is part of the hiring party's regular business;
10. whether the hiring party is a company or business, as opposed to an individual;
11. whether the worker receives benefits; and
12. the tax implications related to the hired party.¹¹

These factors can be useful to determine whether sufficient control exists to establish an employee-employer relationship, but they are not the only relevant factors. Other facts courts may consider are the understanding between the parties, and whether the worker is held out to the public in a way that makes them appear to be associated with the hiring party.¹² While the expanding lists of factors can be useful, the large number of factors to be analyzed has led to inconsistent results, which has in turn lead some to the conclusion that the multi-factor analysis “begs the question of employee status as much as answers it.”¹³

Courts considering these factors in the ridesharing context have often focused on the fact that ride sharing companies depend entirely on drivers for the business models to succeed.¹⁴ Additionally, the fact that some ridesharing companies have a policy of

¹¹ *Id.*

¹² See Restatement 2d of Agency § 220(h).

¹³ David Weil, Wage & Hour Div., U.S. Dep't of Labor, Administrator's Interpretation No. 2015-1 at 2 (2015).

¹⁴ See, *O'Connor v. Uber Techs., Inc.* 82 F. Supp. 3d 1133, 1142 (N.D. Cal. 2015).

suspending drivers if they too frequently decline fares supports the notions that drivers do not have an unrestrained degree of control over when and how much they work while logged-in to a ridesharing application. However, given that most other “control” factors weigh against the existence of an employment relationship, and the lack of uniformity in the application of the control factor test, it is unclear if courts are likely to uniformly hold that an employment relationship exists between companies like Uber and its drivers.

C. Additional Considerations for Establishing Vicarious Liability

In the event an employment relationship is found, only the first step of establishing vicarious liability through the *respodeat superior* theory has been accomplished. The second prong of holding a company liable for the tortious acts of an employee requires that the employee be within the “course and scope” of their work at the time the injury is caused. In the ridesharing context, the question of whether a driver can be considered to be within the course and scope of their job is complicated by the different “Periods” of a ridesharing transaction.

The acts of ridesharing drivers can be split into three Periods. The Period in which an incident occurs can have significant impact on the probable division of liability due to the differing degrees of involvement of the coordinator during each Period. For instance, Period 1 is the time where the driver does not currently have a fare, but has their ridesharing application running. Period 2 is the time when the driver has matched with a rider and is driving to the pickup location. Finally, Period 3 is the time where the driver is taking their passenger to their pre-selected destination. While a convincing argument can be made that a driver is within the course and scope of the work they are doing on behalf of a ridesharing service during Periods 2 and 3, it is less clear that injuries that occur during Period 1 can be in any way attributed to the ridesharing coordinator. This is because during Period 1, drivers are free to go where they like, with no input from the coordinator.

IV. Imposing Liability Directly on Ridesharing Coordinators.

Even in the event that the determination is made that ridesharing drivers are independent contractors, there are still a number of ways that a ridesharing coordinator can be held liable for the injuries caused by a driver. The most likely methods for bringing direct claims against ridesharing companies are discussed in the following sections of this paper. One of the most obvious methods of imposing liability directly on the ridesharing company are claims against the ridesharing coordinator for its own negligent acts that can be casually linked to an injury.

a. Direct Liability for Negligent Hiring and Retention

Even in a jurisdiction where ridesharing drivers are deemed independent contractors, ridesharing companies are not wholly protected from liability. This is because companies have a duty to exercise reasonable care in their hiring and retention practices, even where independent contractors are involved. Under a theory of negligent hiring, supervision, and retention, a plaintiff may be able to hold a ridesharing company directly liable if they can prove that an unfit worker caused an injury and the hiring party was negligent in the hiring, training, supervision or retaining of the tortfeasor. The plaintiff asserting such a claim also has the burden of proving that the hiring party knew or had reason to know of a specific risk of harm or hazard and that specific risk of harm resulted in an injury.¹⁵

Ridesharing companies have encountered legal problems with respect to their public representations regarding hiring practices. Importantly, these issues related to the “safety” of a company’s hiring practices are wholly independent from the employee/independent contractor question. In the past, Uber and Lyft frequently touted their “industry leading background checks” for drivers but ultimately these claims created problems when it was revealed that the safety check performed on drivers were not as thorough as advertised.¹⁶ Specifically, Uber paid \$28.5 million to settle claims related to its practice of charging drivers “safe rides fees” in response to allegations that the charge

¹⁵ See, Restatement 2d of Agency § 213.

¹⁶ Ellen Huet, Joel Rosenblatt, *Uber to Pay \$28M to Settle Claims over Its ‘Safe Rides Fee’*, INSURANCE JOURNAL (Feb. 12, 2016), <https://www.insurancejournal.com/news/west/2016/02/12/398528.htm>.

was misleading.¹⁷ Uber also agreed to stop its use of the phrase “the safest ride on the road” and stop referring to its background check process as “the gold standard.”¹⁸ Lyft was faced with a similar situation when it was sued by state prosecutors in California over the language used to describe the safety of its services.¹⁹

b. Negligent Hiring Claims Based on Criminal Acts Committed by Ridesharing Drivers

In perhaps the most high-profile example of a negligent hiring claim brought against a ridesharing company, two women sued Uber after being sexually assaulted by rideshare drivers.²⁰ In *Doe v. Uber Techs., Inc.*, the Court held that both Jane Doe plaintiffs sufficiently pled claims against Uber for fraud arising from claim that the women relied on Uber’s statements regarding driver safety when they accepted rides from the two Uber drivers involved.²¹ However, the Court dismissed one of the plaintiffs’ negligent hiring, supervision, and retention claims based on the fact that the driver who committed the assault had been in the U.S. for less than three years, and there was no information available to Uber to put them on notice of a specific risk of the driver committing a criminal act.²² Ultimately this case was settled for an undisclosed amount after the majority of the plaintiffs’ claims remained intact after Uber’s 12(b)(6) motion.

The *Doe v. Uber* case displays the risks ridesharing coordinators must deal with and the challenges plaintiffs will face with regard to negligent hiring and retention claims. One of the major appeals of the ridesharing model is that it is quick and easy to become a driver. This aspect of the business plan of ridesharing operators could quickly be placed in jeopardy if the background checks required to become a driver became more expansive and expensive. Companies like Uber have long resisted calls to impose a background check that includes fingerprinting prospective drivers, in part because it

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Doe v. Uber Techs., Inc.*, 184 F.Supp. 3d 774 (N.D. Cal. 2016).

²¹ *Id.*

²² *Id.*

would place a hurdle into the simple process of becoming a driver.²³ However, this hiring model poses a significant risk because limiting background checks to a name-based search increases the likelihood that prior crimes or other red-flags will be missed.

Conversely, given that ridesharing operators do take some precautions to ensure the safety of their drivers, plaintiffs asserting negligent hiring claims will often face an uphill battle in establishing the “knew, or should have known, of specific risks” aspect of the claim. This is because if the risk posed by a potential driver’s criminal history or driving record is sufficiently well concealed, the plaintiff will be unable to establish that the information was reasonably available to the ridesharing operator. This defense is essentially how Uber was able to have one of the negligent hiring claims asserted against it dismissed in the *Doe* case.²⁴

c. Negligent Hiring, Training, or Retention Claims Based on Bad Driving, Mechanical Issues, or Intoxicated Driving

Criminal assaults by drivers are a rare, albeit very serious, occurrence. A more common factual scenario that may allow for imposing direct liability against a ridesharing coordinator arises from car accidents that could be attributable to predictably bad driving, or mechanical failure that could have been avoided. The vehicle eligibility requirements for most ridesharing companies are typically quite minimal, though some cities have imposed stricter inspections to ensure that vehicles are safe for the road.²⁵ Generally, a prospective driver’s vehicle must pass a cursory inspection, which is aimed at making sure all safety features on the vehicle, such as taillights and seatbelts are functioning. Similarly, ridesharing companies generally do not require that their drivers show they possess advanced ability behind the wheel, rather they merely require that

²³ Robert Burnson, *Uber Tells Judge Not to Trust Cab Companies in Battle Over Safety*, INSURANCE JOURNAL (May 13, 2016), <https://www.insurancejournal.com/news/west/2016/05/13/408431.htm>.

²⁴ See, *Doe v. Uber Techs., Inc.*, 184 F.Supp. 3d 774 (N.D. Cal. 2016).

²⁵ *Does my vehicle need to get inspected*, UBER, <https://help.uber.com/h/373c9b72-b09d-4604-876b-d8ce203a9b49>. Also, it should be noted that Uber now uses different quality classifications for vehicles and drivers, which correspond to the price of a given trip. UberX is the easiest level to qualify a vehicle for, while UberBlack has a demanding vehicle qualification standard. UberBlack also uses professional drivers who have commercial licenses. Jonathan V. Hall & Alan B. Krueger, *An Analysis of the Labor Market for Uber’s Driver-Partners in the United States* 16-17 (Princeton Univ., Indus. Relations Section, Working Paper No. 587, 2015).

those signing up not have an extensive or recent history of bad driving. Given the relatively relaxed benchmarks to become a ridesharing driver, there is an opening for plaintiffs injured in auto accidents with ridesharing drivers to argue that the ridesharing coordinator will be responsible for some portion of the cost of those injuries. Specifically, when the injuries can be tied to an obvious mechanical problem, or the recurrence of a known bad driving habit.

Additionally, there is some indication that ridesharing companies have struggled to adequately combat risks associated with intoxicated or impaired driving. Last year Uber reportedly faced over \$1 million in fines imposed by California state regulators related to failure to adequately investigate reports of drunk driving that came from Uber customers.²⁶ An investigation by the California Public Utilities Commission, which is responsible for regulating ridesharing companies, found that out of 154 customer complaints related to intoxicated drivers, Uber had failed to adequately investigate or suspend the driver quickly enough in 151 instances.²⁷ In the event a person is injured by a driver that a ridesharing company has reason to know is currently intoxicated, or who has been reported for that problem in the past, that injured person would have a strong negligent retention claim that could be asserted against the company. Whether the driver is considered to be an employee or contractor, if the ridesharing company allows a driver to continue transporting customers while intoxicated, that company will bear some responsibility for injuries caused by such a driver. Currently, ridesharing companies place the responsibility of reporting intoxicated driving on customers, which should result in an immediate suspension of the driver and follow up investigation of the report. However, as revealed by the investigation of the California Public Utilities Commission, these mandatory suspensions and investigations do not always occur.²⁸

d. Common Carrier Liability

²⁶ Steven M. Sweat, Legal Ramifications of Uber Ignoring Drunk Driver Complaints, National Law Review (April 20, 2017), <https://www.natlawreview.com/article/legal-ramifications-uber-ignoring-drunk-driver-complaints>, (last visited April 13, 2018).

²⁷ *Id.*

²⁸ *Id.*

While ridesharing coordinators have taken pains to create circumstances that will make it more difficult for injured parties to hold ridesharing companies liable under vicarious liability theories, other available theories could support recovery even where vicarious liability is not available. Specifically, injured parties could argue that ridesharing platforms are essentially modern day common carriers and as such, owe a heightened, nondelegable duty of care to ensure the safety of passengers. Generally, a common carrier is a company who offers transportation services to the general public. While some states have done away with the common carrier distinction, in other jurisdictions this theory can, and has, been used to effectively argue that ridesharing companies owe a heightened duty to customers.

In the *Doe v. Uber* case, the Court held that the Plaintiffs had alleged sufficient facts to proceed with their claims that alleged Uber was a common carrier at the time they sustained their injuries.²⁹ The *Doe* Court also noted that Uber's liability under this theory was unrelated to the question of whether the driver was an employee or a contractor, because liability arose from the company's alleged failure to meet its duty to protect passengers from harm.³⁰ Thus, plaintiffs in jurisdictions where common carrier claims are still available may be able to establish liability far more easily than in jurisdictions where this theory has been abolished. However, it should be noted that some states, namely Florida, have specifically excluded ridesharing companies from the definition of a common carrier foreclosing this approach to pursuing recovery directly from a ridesharing company.³¹

V. Conclusion

Attorneys who plan to incorporate ridesharing cases into their practice have a plethora of legal theories that will need to be considered. Given that there is little case law to provide guidance on how courts are likely to analyze cases involving ridesharing, it will be incumbent on the attorneys working cases in this field to pursue all available

²⁹ *Doe v. Uber Techs., Inc.*, 184 F.Supp. 3d 774 (N.D. Cal. 2016).

³⁰ *Id.*

³¹ Florida Statute § 627.748.

legal theories. Whether from effective arguments against imposing vicarious liability on ridesharing operators or the establishment of a novel theory of recovery in ridesharing cases, there will be a tremendous amount of precedent set in this field in the coming years. Attorneys who make it a point to stay informed on developments in this area of the law will be well positioned to handle the eventual influx of cases that will correspond to the increased use of ridesharing services.

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