

The Rise of Ridesharing

After only nine years in business, on July 24, 2018, Uber announced its company had reached a milestone—ten billion completed trips.¹ After six years, on September 18, 2018, Lyft announced its company had completed one billion rides.² These companies are changing the way we travel.

In 2014, there were approximately 160,000 active Uber drivers in the United States.³ By 2019, there were more than 3,900,000 Uber drivers worldwide.⁴ With more ridesharing⁵ drivers on the road, the number of car accidents involving ridesharing drivers has grown. Not only are there more drivers on the road, but these ridesharing drivers are spending a significant amount of time on the road without passengers—only having passengers in the car 59 percent of time they are active on the application.⁶ When a ridesharing driver is involved in an accident with no passenger

1. *10 Billion*, UBER (July 24, 2018), <https://www.uber.com/newsroom/10-billion/>.

2. *1 Billion Rides. 1 Billion Connections*, LYFT BLOG (Sept. 18, 2018), <https://blog.lyft.com/posts/one-billion-rides> [archive site: <http://web.archive.org/web/20190102134159/https://blog.lyft.com/posts/one-billion-rides>].

3. Biz Carson, *Why There's a Good Chance Your Uber Driver Is New*, BUS. INSIDER (Oct. 24, 2015), <https://www.businessinsider.com/uber-doubles-its-drivers-in-2015-2015-10>.

4. Mansoor Iqbal, *Uber Revenue and Usage Statistics 2019*, BUS. APPS (May 10, 2019), <http://www.businessofapps.com/data/uber-statistics/> [archive site: <https://web.archive.org/save/https://www.businessofapps.com/data/uber-statistics/#4>].

5. Ridesharing is a term commonly used to describe companies like Uber and Lyft. Other times, these companies are referred to as Transportation Network Companies or Mobility Service Providers.

6. John M. Barrios et al., *The Cost of Convenience: Ridesharing and Traffic Fatalities* 8 (Becker Friedman Inst., Working Paper No. 49, 2019).

in the vehicle, the issues related to apportioning liability between the ridesharing company, the driver, and their respective insurers can be even more difficult to parse than if a passenger were in the vehicle at the time of the crash. These issues are becoming increasingly important as the claims arising from ridesharing crashes can be significant. According to one study, the rise of ridesharing is associated with a 3 percent rise in fatalities for both pedestrians and motor vehicle occupants.⁷

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 is becoming a pressing necessity. A ridesharing company acts as an intermediary—connecting consumers with the desired goods or services—rather than keeping an inventory of its own. With this intermediary business model comes the employee or independent contractor classification battle, one that Uber was staving off prior to its initial public offering. This is evidenced by Uber’s announcement of a settlement with tens of thousands of its drivers over their status the day before Uber went public with an estimated total payout of \$146 million to \$170 million.⁸

Defining the relationship between a rideshare driver, the parent company such as Uber or Lyft, and the insurance companies for these respective parties, will have a significant impact on who is responsible for any financial liability that stems from a crash. However, there are legal theories that could result in a ridesharing company being held directly liable for injuries caused by its driver, regardless of how the relationship between the driver and the company is defined.

Although the issues presented by ridesharing appear novel, and in many ways are unique, the litigation that arose from the introduction of taxis helps frame our approach to allocating liability. Taxi companies have experimented with different

7. *Id.* at 17.

8. Kelly Phillips Erb, *Worker or Independent Contractor? Uber Settles Driver Claims Before Disappointing IPO*, FORBES (May 13, 2019), <https://www.forbes.com/sites/kellyphillipserb/2019/05/13/worker-or-independent-contractor-uber-settles-driver-claims-before-disappointing-ipo/#53325c703f39>.

models, from traditional company-owned cars to a dispatch model with employee-owned cabs. Even in the more modern dispatch model, courts have found an employment relationship to exist, dispelling the notions of taxi drivers as independent contractors.⁹ However, because ridesharing companies offer a technology platform beyond the traditional car service, it is not as simple as assuming courts will follow the paths set by prior courts addressing taxi service litigation.

I. What Is Ridesharing?

We are now in an ever-growing “sharing economy.” Companies are using technology to offer goods and services in real time. Some of the most well-known of these companies are ridesharing companies, like Uber and Lyft. Similar companies offer food delivery, home rentals as an alternative to hotels, or even freelance handyman-like labor, from cleaning to furniture assembly. These online services are becoming more common. In 2015, 72 percent of American adults used at least one shared or on-demand service.¹⁰ Similarly, ridesharing is quickly growing in popularity. In the United States, between 2015 and 2018, the number of people who used ridesharing services more than doubled, growing from 15 percent to 36 percent.¹¹

Ridesharing is a private people-to-people transportation service, where riders are connected with drivers that use their own cars. Unlike traditional taxi or car services, ridesharing exists inside a smart-phone application. To utilize ridesharing, a rider must download the application and create an account. Through the platform and the smartphone’s GPS, the rider may digitally hail a car. This digital hailing offers features that traditional

9. Agnieszka A. McPeak, *Regulating Ridesharing Platforms through Tort Law*, 39 HAWAII L. REV. 347, 364 (2017).

10. Aaron Smith, *Shared, Collaborative, and On Demand: The New Digital Economy*, PEW RES. CTR. (May 19, 2016), <https://www.pewresearch.org/internet/2016/05/19/the-new-digital-economy/>.

11. Jingjing Jiang, *More Americans Are Using Ride-Hailing Apps*, PEW RES. CTR. (Jan. 4, 2019), <https://www.pewresearch.org/fact-tank/2019/01/04/more-americans-are-using-ride-hailing-apps/>.

services do not. Riders may share their ride's location and status with others, allowing a friend or family member to follow along with the smartphone's GPS and the suggested route for the driver.¹² Additionally, if sharing a car, one may split the fare with other passengers through the application.¹³

This book is designed to serve as a guide to the practitioner that deals with ridesharing services, and the evolving nature of ridesharing. We will first explore the regulations that impact ridesharing companies. These regulations were often an afterthought, sometimes put in place after the ridesharing companies were already providing services in a given market. As such, we see a significantly varying regulatory landscape. This landscape can be governed by municipal or state regulations, which may vary from jurisdiction to jurisdiction, and some federal regulations. The impact these regulations have on ridesharing companies and, by extension, litigation involving ridesharing companies can be significant.

This book also explores the nuances of tort litigation involving ridesharing companies. When a ridesharing vehicle is on the road, it can find itself in several different "phases" of operation, whether there is a passenger in the vehicle, the driver is on the way to pick up a passenger, or the driver is waiting for a ride to be requested. In the event of a crash, consideration of the phase in which the accident occurred can all impact both liability for the ridesharing company and insurance coverage. Further, the long-standing dispute as to whether ridesharing drivers are independent contractors or employees will be explored. Outside the context of an employee/employer relationship, several alternative theories of liability have developed by which injured parties have sought to hold the ridesharing applications liable using various tort theories.

12. 5 *Uber App Features You May Not Know About*, UBER (Feb. 2, 2018), <https://www.uber.com/en-AU/blog/5-features/> [archive site: <https://web.archive.org/web/20200228153534/https://www.uber.com/en-AU/blog/5-features/>].

13. *Id.*

One of the most impactful issues related to ridesharing litigation is reaching a conclusion about the insurance coverage that may apply to an accident involving a ridesharing company, and those who drive for the company. We will discuss the insurance coverages that are available for drivers from the ridesharing companies, as well as through primary insurance providers, and the applicability of the various insurance coverages in various phases of ridesharing.

This book also provides practical guidance for litigating a ridesharing case. This includes issues attorneys should consider from the outset of a case, such as issuing effective evidence preservation letters. It also provides examples of effective complaints for different types of claims and a framework for discovery requests to obtain the information needed to prepare a ridesharing case for trial. These materials and discussions will provide attorneys who are new to addressing ridesharing cases with a firm understanding of the unique issues. For attorneys who have previously addressed ridesharing cases, these materials may provide some additional insights to make their practices more effective.

Finally, one of the biggest issues facing ridesharing companies is the ever-increasing drive to utilize and deploy autonomous vehicles. In seeking to use autonomous vehicles, ridesharing companies hope to someday eliminate human drivers and their associated costs, thereby driving up revenues. Some have proposed that a switch to “robot” drivers would also increase safety. However, the use of autonomous vehicles on the road, whether by ridesharing companies or individuals, has created more questions than answers. As regulators have been left to scramble to address autonomous vehicles, several theories and potential solutions addressing liability issues have been raised. We will explore various outcomes of potential liability theories as if they were adopted.