

Colliding Apps: Analyzing Ride-Hailing and Scooter Share Services Injury Laws

By Andrew L. Shapiro



THE GIG ECONOMY IS booming, but, unfortunately California law and court decisions are struggling to keep up.

In Los Angeles, a magnet for millennials pursuing work in the entertainment industry, ride-hailing companies offer the perfect ‘side-gig’ solution—driving for Uber or Lyft.

Such work provides a desirable option for college and university students, out-of-school adults in need of some extra money, those who find themselves between jobs, and just about anyone who just can’t see themselves punching a time clock five days a week. Whatever the motive, driving for these companies can provide an intriguing solution to usually temporary, challenging financial times.



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Unfortunately, the glut of these supposed “independent contractors,” making money per mile, leads to more cars on the road for more hours per day with resulting increases in traffic and a consonant rise in the number of traffic-related injuries and fatalities.

In fact, according to Forbes, preliminary research indicates ride-hailing activity may contribute to an increase of up to four percent in traffic fatalities each year on a nationwide basis.¹

Scooting, Biking and Crashing

But ride-hailing isn’t the only industry suffering from a lack of state regulation.

E-bike and e-scooter (also known as “stand up” or “kick” scooters) companies such as Lime, Bird, and Razor are also seeing increased business. But like the rideshare

industry, a rise in usage and revenue also translates to a rise in serious injury related incidents.

According to the JAMA Network, two California hospitals alone treated nearly 250 emergency room patients because of standing scooter accidents in a recent one-year period. Keep in mind, the report studied two hospitals out of the more than 400 in California.²

Whether it be ride-hailing or e-bike and scooter services, the individuals suffering serious injuries aren’t necessarily the drivers or operators, but also include passengers, pedestrians, and others operating conventional motor vehicles.

For instance, there is the case of an individual knocked over by someone zipping along on a sidewalk on a rented scooter, who suffered serious injuries. The scooter operator

fled the scene of the accident, raising compelling legal questions, despite various California regulations already in place which potentially address these issues.

For example, is the scooter operator solely responsible, or is the company that rents the scooters responsible for negligently entrusting the scooter to the operator and/or negligently placing the scooter in a location where it could be operated illegally?

Or, is the company obligated to help track down the scooter renter to hold that individual responsible? Can the incident be considered a hit and run accident? If there is no liability coverage, will a pedestrian's own uninsured motorist insurance provide coverage?

On the other side of the coin, what happens when a scooter-share customer is seriously injured while riding? Can the company renting scooters be held liable?

All Hail California...or Not

In California, ride-hailing companies like Uber and Lyft are known as Transportation Network Companies (TNCs) and are considered sub-types of charter-party carriers regulated by the California Public Utilities Commission (CPUC).³

The state defines TNCs as "companies that provide transportation services using an online-enabled platform to connect passengers with drivers using their personal vehicles."⁴

In 2015, the CPUC placed certain insurance requirements into effect for ride-hail companies operating in the state. They mandate certain time periods during which different insurance levels apply:

- **Period One**—This period covers the time when an Uber or Lyft driver has the rideshare web application turned on, but the driver has not yet accepted a ride request from a potential

passenger. The TNC is required to have primary insurance of at least \$50,000 per person for death and personal injury to one person; \$100,000 for death and personal injury per incident; and \$30,000 for property damage.

- **Period Two**—A match between a driver and a passenger has been made via the online rideshare app, and the driver is on the way to the pickup point. During this period, the driver must be covered by primary commercial insurance for \$1 million by the driver's insurance policy, provided the TNC verifies that the driver's TNC insurance covers the driver's use of a vehicle for TNC services; or the TNC's insurance policy; or a combination of both the driver and TNC's respective policies.
- **Period Three**—This period covers the time a ride-hailing passenger enters the vehicle, through the time the passenger exits the vehicle. Insurance requirements include all of those carried during Period Two, plus uninsured and underinsured motorist policy minimums of \$1 million. Again, the policy minimums may be satisfied through combined TNC and driver policies.

However, the State of California does not require automobile insurance for individuals operating e-scooters, or the companies that provide sharing services for the devices. The state also doesn't require registrations or license plates. Some cities are requiring scooter companies to provide a commercial general liability policy, but not necessarily a policy that will cover the operators of their scooters.⁵

The Department of Motor Vehicles (DMV) does regulate e-scooter operation to some extent, however.⁶

According to the DMV, "A motorized scooter may be operated

on a bicycle path, trail or bikeway, but not on a sidewalk.”

Further, an individual “shall not operate a motorized scooter without wearing a properly fitted and fastened bicycle helmet, if they are under age 18, unless it is equipped with a brake that will enable the operator to make a braked wheel skid on dry, level, clean pavement; without a valid driver’s license or instruction permit; with any passengers; and while carrying any package, bundle, or article that prevents the operator from keeping at least one hand upon the handlebars.

Finally, operation of a motorized scooter is also prohibited “on the highway with the handlebars raised so that the operator must elevate his or her hands above the level of his or her shoulders in order to grasp the normal steering grip area; and on a highway with a posted speed limit greater than 25 miles per hour (mph) unless it is within a Class II or IV bikeway.

However, a local authority may adopt an ordinance or resolution authorizing operation of a motorized scooter on a highway with a posted speed limit of up to 35 mph.”

In addition, many municipalities in California have their own regulations regarding “dockless” scooter and bicycle operation.

For example, last year, the Los Angeles City Council launched a “One Year Dockless On-Demand Personal Mobility Program” that gives companies like Lime and Bird the go-ahead to apply for permits to deploy thousands of stand-up scooters—up to 3,000 per company—while the city decides how kick scooters should be regulated.⁷

Under this program, operators are prohibited from exceeding 15 mph, and are required to park dockless scooters in an upright position on the outer edge of a sidewalk.

Current Dockless Scooter and Ride-Hail Lawsuits

While the City of Los Angeles’ rules

are better late than never, there is already a class action lawsuit filed in a Central District of Los Angeles Superior Court against Bird, Lime, and scooter manufacturers Xiaomi and Segway, among others.

Most of the class plaintiffs were injured when they tripped over scooters improperly left on sidewalks, were riding defective scooters, or while walking they were hit by inattentive scooter operators. There are 15 causes of action citing, among other causes of action, alleged product liability, negligence, negligence per se, gross negligence, breach of implied warranty of fitness for a particular and/or intended purpose, breach of implied warranty of merchantability, public nuisance, and aiding and abetting assaults.

Courts are also beginning to see more lawsuits against ride-hail companies. Because insurance policy limits can reach seven figures if a passenger, pedestrian or other driver is injured by an Uber or Lyft service operator, settlements rather than jury trials are the typical outcome.

The outcome of a recent lawsuit however, should prove very telling as a potential predictor of future claims.

In *Polanco v. Lyft, et al.*, Christopher Jose Solis was driving a pickup that crashed into multiple pedestrians in Fullerton, California, on February 10, 2019. Solis was charged with driving under the influence and failure to stop at the scene of an accident, among other charges.⁸

Plaintiff Sara Polanco was one of the nine pedestrians who was struck and suffered serious injuries, including a shattered pelvis and a lacerated liver. Polanco’s lawsuit alleges two Lyft drivers were partially responsible for the accident because, initially, Solis crashed into a Lyft vehicle in the process of picking up passengers.

The driver of that Lyft vehicle was allegedly double-parked while looking up directions on his phone. The second Lyft driver then crashed into

Solis's pickup truck, launching it onto the sidewalk. The lawsuit alleges the second Lyft driver had suddenly stopped to pick up Lyft passengers.


The circumstances around the second collision in the chain of events appear to be less than clear. But if Polanco can prove negligence caused her injuries, she could recover several million dollars from insurers for Lyft and/or its drivers, given the policy limits that would apply under Period Two insurance requirements for TNCs from both Lyft vehicles.

In addition, Polanco would be entitled to recover any additional limits which would apply under Solis's policy.

If Polanco also carried underinsured coverage in an amount greater than all applicable liability policies, she could recover additional damages from her own carrier as well.

Decoding the Future

Given the motivation for all parties to settle rather than go to trial, and the relatively few years since the birth of ride-hailing and dock-less scooter and bicycle services, relatively little case law has been established. Considering the unsettled nature of the law in this regard, this area will continue to be a fertile ground for personal injury litigation until more definitive guidance is established.

One thing is certain, whatever the state of the law, California citizens need to be effectively protected from private companies that are profiting from their reckless drivers and operators while putting innocent people in harms way. 

¹ Yvkoff, Liane, Updated: Ubers and Lyfts May Increase Road Deaths, Study Claims. <https://www.forbes.com/sites/lianeyvkoff/2018/10/23/ubers-and-lyfts-causecongestion-in-cities-they-may-also-increase-fatalities/#53e83a0d487f>.

² *Trivedi TK, Liu C, Antonio ALM, et al. Injuries Associated With Standing Electric Scooter Use. JAMA Netw Open. 2019;2(1):e187381. doi:10.1001/jamanetworkopen.2018.7381.*

³ <https://www.cpuc.ca.gov/tncinfo/>.

⁴ <https://www.cpuc.ca.gov/General.aspx?id=3802>.

⁵ <https://www.dmv.ca.gov/portal/dmv/detail/vr/scooters>.

⁶ <https://ladot.lacity.org/what-we-do/dockless-mobility>.

⁷ *Danielle Borgia et al v. Bird Rides, Inc. et al.* (U.S. District Court, Central District of California, Case No. 2:18 CV09685).

⁸ *Polanco v. Lyft, Inc., et al.* (Orange County Superior Court, Case No. 30-2019-01065850-CU-PA-CJC).