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# Calif. Prop 22 Decision Raises Questions for Rideshare Injury Cases in Pa. and Beyond

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Personal Injury

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The recent decision in California upholding Proposition 22 does not immunize the rideshare industry from tort liability. This statute, and efforts by Uber and Lyft to enact similar legislation across the country, raise important questions for wrongful injury cases here in Pennsylvania and nationwide.

Proposition 22 was enacted in California by ballot initiative after gig economy behemoths like Uber and Lyft sunk over $200 million into the campaign. The statute, the App-Based Drivers as Contractors and Labor Policies Initiative, exempts rideshare drivers from numerous state laws around wages, hours, and other employment conditions. Labor advocates immediately challenged the law, arguing that it violated various provisions of the state constitution. On July 25, 2024, the California Supreme Court ruled in *Castellanos v. California* that Proposition 22 was constitutional.

The statute repeatedly describes rideshare drivers as "independent contractors," and as a result, rideshare industry advocates have argued that Uber and Lyft cannot be found vicariously liable for their drivers. In California, as in Pennsylvania and most states, employers are generally not vicariously liable for their independent contractors' negligence. But tellingly, Proposition 22's text wholly focuses on exempting drivers from various aspects of the state's Labor Code and Unemployment Insurance Code, and Department of Industrial Relations regulations. There is no mention of tort liability. Therefore, the likely effect of Proposition 22 is that it exempts drivers from, and only from, Assembly Bill 5: the state statute that governs whether a worker is classified as an employee under the California Labor Code.

In addition, there is still an open question under California law, as in some other states, about whether rideshare companies are common carriers: transportation entities who, in some states, have a duty of utmost care to protect vulnerable passengers—a duty that cannot be delegated to independent contractors. The key trait of a common carrier is that they provide transport to the general public at uniform prices, something which is true of Uber and Lyft. Further, studies show that as rideshare services become more available, car ownership and pollution increase, and use of public transit and taxicabs decrease, especially in high-income cities. For example, at its height, there were around 2,000 registered taxis in San Francisco, while just 848 medallions were renewed last year. Likewise, studies show that since Uber and Lyft launched in Philadelphia, monthly ridership on every mode of local public transit has decreased. Taxicabs are clearly common carriers under California law. If Uber and Lyft are the new default mode of transport, they should be treated as such.

But even if California joins the number of state courts that have defined Uber drivers as independent contractors (typically while ruling upon summary judgment motions), including Arizona, Georgia, and Texas, this would not necessarily hold true in Pennsylvania. Pennsylvania does not have a counterpart to Proposition 22 and has its own robustly developed case law for classifying employment relationships. Pennsylvania's standards include factors such as the employer's right to terminate the worker and the method of compensation, both of which suggest that drivers should be considered employees under state law. Further, Pennsylvania's legal precedent primarily focuses on an employer's right to control its workers, whether or not this right is actively exercised. Uber and Lyft clearly maintain control over their apps, pricing, customer base, and certain aspects of their drivers' performance of duties.

This is precisely why, to date, Uber and Lyft's arguments have fallen short in Pennsylvania. In *Lowman v. Unemployment Compensation Board of Review,* the Pennsylvania Supreme Court held that a former Uber driver was entitled to unemployment benefits because he was not previously self-employed while driving for Uber. If a worker is previously employed as an independent contractor, they do not qualify for unemployment benefits under Pennsylvania's statutory scheme. Although *Lowman* was not a tort case, the analysis that the Supreme Court undertook in examining the conditions of working for Uber, including focusing on Uber's control over its drivers, mirrors the analysis in the realm of vicarious liability. Likewise, in *Razak v. Uber,* the U.S. Court of Appeals for the Third Circuit reversed the U.S. District Court for the Eastern District of Pennsylvania's grant of summary judgment on this issue, holding that there was a genuine dispute of material fact around whether a class of UberBLACK drivers—represented by Keller Lenkner and co-counsel—were employees for purposes of state and federal minimum wage laws, remanding the case for trial. On July 30, a second trial in that case ended in a second deadlocked jury who could not agree on the issue. We at Kline & Specter, along with Morgan & Morgan, successfully argued that these cases demonstrate rideshare companies' control over their drivers while defeating summary judgment in *Robertson v. Uber.*

Most importantly, even if Uber and Lyft are not vicariously liable for their drivers, this does not render them immune to tort claims. There are other viable theories against these companies in wrongful injury cases, including negligent hiring, training, retention, and crucially, negligent supervision. Uber and Lyft currently permit drivers to install dashcams in their vehicles at their own expense, but they do not require it, even though dashcams are legal in every state.

Mandating that drivers install front and rear-facing cameras would be a quick, inexpensive, and effective way for these companies to protect passengers from negligent and intentional torts by drivers and vice versa. It would incentivize safer driving. And it would provide useful evidence to adjudicate fault in motor vehicle accidents. Uber's own U.S. Safety Report found that there were 101 motor vehicle fatalities, 20 homicides, and 3,824 incidents of sexual assault in Uber rides from 2019-2020. Requiring drivers to use dashcams would lead to fewer events like these and provide vital evidence after the fact. It is curious why Uber and Lyft have not made dashcams mandatory, though they impose numerous other requirements on drivers. Do they seek to avoid the truth? Uber and Lyft are transportation giants of our time. And while dashcams are not a silver bullet, they would go a long way toward these companies fulfilling their responsibility to keep the public safe.

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