

# Uber Excited?

Nevada's new laws regarding transportation network companies

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It is New Years Eve, and the young Anderson family traverses a crosswalk in the vibrant and transient city of Las Vegas. They are headed to grandmother's house for a holiday celebration with loved ones. However, unbeknownst to mom, dad and the kids, an inattentive Uber driver operates his Prius while reading a potential passenger notification. Distracted; the vehicle carelessly and violently collides with dad and six year old Holly, causing fatal injuries to Holly and serious and debilitating injuries to dad with medical bills in excess of \$500,000.

Uber, a Transportation Network Company (TNC), immediately denies liability asserting, "While our hearts go out to the family and victims of the accident that occurred in downtown Las Vegas last night ... we can confirm that this tragedy did not involve a vehicle or provider doing a trip on the Uber system." Envision a law where the hiring entity, like Uber or some other TNC, directly benefits from the drivers on their network, but is shielded from liability and risks associated with those benefits.

A near-identical tragedy occurred in San Francisco on December 31, 2013, which resulted in the death of six year old Sofia Liu. Immunity under these facts protected Uber in California, until that state's law changed. Fortunately, the Anderson family scenario will not result in TNCs avoiding liability in Nevada; however, this liability would be severely limited from a coverage standpoint. Efforts by TNCs to limit their obligations continue and have proven successful in various states, including Nevada.

Uber has stated, "[We are] committed to safely connecting riders and drivers."<sup>1</sup> Inherent in Uber's statement rests an irreconcilable enigma. Many legislatures across the nation have enacted regulations governing the use of electronic wireless communication devices, including those that obstruct or reduce drivers' view. In seemingly direct conflict, TNCs instituted digital platforms and business models requiring drivers to communicate with prospective passengers via mobile devices. These companies accept passengers' requests by actively interacting with their mobile device, manually entering the destination address and terminating the ride request upon arriving to destination in a text-like manner. The effect of the company's design model will most likely distract drivers and, as a consequence, create significant risks, including serious injury and death.

As a direct result of the innate dangers tied to TNCs' business model, and the benefits derived from these risks, companies like Uber, Lyft and Sidecar should assume any and all liabilities deriving from their driver's negligence or recklessness conduct. However, TNCs distinguish their responsibility between notification, response and passenger pick up. The "safely connecting" part of Uber's moralistic statement appears inconsistent with its efforts below.

There have been extensive debates regarding TNCs' insurance coverage requirements, and its applicability when a driver has a passenger in the vehicle as opposed to a passenger-free driver. After a hard fought battle, Nevada recently allowed these companies to conduct business in this state. During the 2015 session, the Nevada legislature passed Assembly Bill 175, soon to be codified within NRS 690B Sec. 10. Under Nevada

law, "[e]very transportation network company or driver shall continuously provide, during any period in which the driver is providing transportation services, transportation network company insurance" in the following amounts:

- (a) In an amount not less than \$1,500,000 for bodily injury or death of one or more persons and injury to or destruction of property of others in any one accident that occurs while the driver is providing transportation services.
- (b) In an amount of not less than \$50,000 for bodily injury to or death of one person in any one accident that occurs while the driver is logged into the digital network or software applications service of the transportation company and available to receive requests for transportation services but is not otherwise providing transportation services.
- (c) In an amount of not less than \$100,000 for bodily injury to or death of two or more persons in any one accidents with same conditions as (b).
- (d) In an amount of not less than \$25,000 in any one accident for property damage.

In other words, TNCs or their drivers must only provide 50/100/25 coverage in the event the driver has no passenger occupant, even if drivers have been notified on their smartphones by the passenger and are responding. Conversely, TNCs or their drivers must provide \$1,450,000 additional liability insurance coverage when transporting a passenger.

Obviously, don't confuse coverage with liability. The statute does not appear to limit Uber's or another TNCs' liability in the event of its driver's negligence. Practically, extent of insurance may play a large role toward available compensation and settlement opportunity. All too often financial realities can insulate even the largest of corporations (e.g., bankruptcy, acquisitions, etc.).

Running a transport service necessitates driver availability, response and transport. This drastic coverage disparity ignores two out of the three elements, or, at a minimum, relegates them unimportant in comparison. The Anderson family would be limited to \$100,000 for serious injury and death, rather than \$1.5 million under the facts posited. As attorneys, should we be willing to use a TNC App with these foreseeable consequences? Maybe too much is being made about the coverage disparity since Uber and the others remain liable, it would appear, under either situation. If it makes no difference, why did this become law? Aren't we all Uber excited to find out?

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(Endnotes)

- 1 Retrieved from [www.uber.com/safety](http://www.uber.com/safety).