Can Gig Companies Escape Liability When Customers Get Hurt?

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In Season 3 of Netflix's animated series BoJack Horseman, Todd (Aaron Paul) decides to start a gig economy company called "Cabracadabra." This company provides Uber-like transportation but with only women drivers so that there is a "safe space" for women passengers in the transportation gig economy. Although this idea comes from a cartoon (and may have other problems in concept under various other antidiscrimination laws) it addresses a concern in the gig economy: consumer safety and vicarious liability. In other words, when someone is performing services in the gig economy for a consumer and something goes wrong, where does the consumer turn for recourse? Can gig economy companies avoid all responsibility for the acts of their contractors?

These very questions are being actively litigated in federal court here in San Francisco, where the classification battle between employer and independent contractor is playing out from a different angle – that of vicarious responsibility. In the case, *Jane Doe 1 and 2 v. Uber Technologies Inc.*, two women passengers allege to have been sexually assaulted by their drivers and claim that Uber should be responsible for this under various theories of vicarious liability. Uber specifically maintains that its drivers are not its employees, and therefore cannot responsible for negligent "hiring." In application, this defense would mean that traditional employer vicarious liability would not apply to this segment of the gig economy.

In a different but analogous situation in 2013, an Uber driver hit and killed a pedestrian in the Tenderloin district of San Francisco while he was driving around at night waiting for a fare on his app. The case was widely followed in terms of how its precedent would impact vicarious liability in the gig economy. In the end, even though it disclaimed vicarious responsibility outright, Uber settled the case in 2015 with the details sealed because, according to the SF Examiner, "if the settlement amounts were made public, people would try to take advantage of [the Plaintiff] when he comes into the money when he is older."

So we don't know how the Court would have ruled on vicarious responsibility in the wrongful death matter in San Francisco. It remains an open question, as do many of the important gig economy classification questions being disposed of by settlements. Of note, after this case, California passed a new state law requiring "rideshare" drivers and companies to have liability insurance coverage during all periods in which drivers are using ride-hail applications, including the searching for fares (not just driving a passenger). But that certainly doesn't answer the larger question.

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Uber gets all of the press because of its notoriety and size, but a larger question looms. The gig economy sends contractors to interact with consumers at their most intimate locations: in their homes, in their cars, with their children, and more. There is the potential for a ghastly parade of horribles in terms of what could go wrong, and yet, so long as these workers are classified as contractors, companies will accordingly disclaim any responsibility for their actions. Similar to the way that discrimination claims will be brought against gig companies, vicarious liability cases will continue to be an important angle to consider in the evolution of the gig economy.

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