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The Emergence of Uber, Lyft and Sidecar in North Carolina: An Overview of Key Legal Distinctions Between Digital Dispatch Services and their Traditional Taxicab Competitors

Christian H. Staples, Associate
slk-law.com | cstaples@slk-law.com | 704-375-0057

I. Introduction

By now, most people have at least heard of Uber, Lyft, Sidecar and other modern taxicab alternatives, even if they have not experienced for themselves the innovative services that enable customers to virtually "hail a ride" by logging into a smartphone app and clicking a button.

Known as "digital dispatch services," companies like Uber, Lyft and Sidecar connect passengers with drivers via the Internet and are spreading fast in major cities around the globe, including in cities right here in North Carolina.

Yet, little has been written about the legal issues presented by these services, especially when compared to their traditional taxicab competitors. This article seeks to fill that void by analyzing the regulatory and other legal issues that should be considered by consumers.

II. Governmental Regulation (or lack therof?)

Political subdivisions in North Carolina (*i.e.*, cities, towns and counties) have broad statutory authority to regulate and license businesses and occupations, including vehicles operated for hire and the drivers of those vehicles. *See* N.C. Gen. Stat. § 153A-134(a) (counties) and §§ 160A-194(a) and 160A-304 (cities and towns). The City of Charlotte, for example, has extensive Municipal Code provisions affecting passenger vehicles for hire. *See* Charlotte Code of Ordinances, Part II, Chapter 22 (Vehicles for Hire).

At first glance, Uber, Lyft and Sidecar would seem to be subject to these local ordinances, but they're not. In fact, last year the North Carolina General Assembly passed new laws which expressly prohibit cities, towns and counties from regulating or licensing digital dispatching services like Uber, Lyft and Sidecar. *See* N.C. Gen. Stat. § 153A-134(c) and §§ 160A-194(c) and 160A-304(c)(1). (Note – There is an exception to these prohibitions if the business providing the digital dispatch service owns or operates the vehicles, *see* N.C. Gen. Stat. § 160A-304(c)(1), but in practice this exception does not apply because digital dispatch services have structured their business models so that the companies do not own or operate the vehicles; the drivers do.)

So what, you might ask? Why should I care that Uber, Lyft and Sidecar are not licensed or regulated by the North Carolina cities in which they operate? To answer that question, let's review some key provisions of the City of Charlotte's ordinances that apply to traditional taxicab companies and compare those to the policies of Uber, one of the leading digital dispatch service providers. (In order to keep this article at a manageable length, we will only consider Uber's policies and the City of Charlotte's ordinances governing taxicabs. However, for those curious about the City of Raleigh's ordinances governing taxicabs, they are located within the Code of General Ordinances, Part 12 – Licensing and Regulation, Chapter 2 – Businesses and Trades, Article B – Vehicles or Hire. The policies of other digital dispatch services like Lyft and Sidecar should be readily available on the companies' websites.)

The City of Charlotte's Passenger Vehicle for Hire Ordinances

Perhaps the most notable aspect of the City of Charlotte's ordinances regulating traditional taxicab services is the creation of the Passenger Vehicle for Hire Office (the "PVH Office"). The PVH Office technically is a unit of the Charlotte-Mecklenburg Police Department and works in conjunction with the Passenger Vehicle for Hire Board (the "PVH Board"), the City Council and the City Manager's office to regulate taxicabs. Such regulation includes provisions regarding driver background checks, insurance coverage and vehicle safety, among others.

There is no similar governmental entity like the PVH Board (other than the police, generally) regulating digital dispatching services operating in Charlotte. Thus, digital dispatch services are free to set their own policies to which drivers and customers must adhere. While in many cases digital dispatch services mandate stricter requirements than the PVH Board for drivers' background and qualifications, vehicle safety and insurance coverage, this may not be true in all respects. Moreover, because digital dispatch services are essentially self-regulating, violations of company policy may go unnoticed and uncorrected until brought to the company's attention and corrective action is taken. Operations for Uber, Lyft and Sidecar are all based in San Francisco, California, so the lack of any neutral third-party regulatory authority at the local level could be problematic under certain circumstances.

Pricing

One issue that has received some publicity is the different pricing models employed by digital dispatch services. Rates and other charges for traditional taxicabs in Charlotte are subject to local ordinances and set by the PVH Board. By comparison, digital dispatch services are free to set their own rates and, in some cases, may even accept voluntary donations as payment their services.

In many instances the rates charged by digital dispatch services are lower than those charged by traditional taxicabs, but that's not guaranteed. For example, consider "The Fine Print" at the bottom of Uber Charlotte's website: "At times of intense demand, our rates change over time to keep vehicles available." (https://www.uber.com/cities/charlotte, last accessed June 4, 2014). This dynamic pricing model, or "surge" pricing model as it's sometimes called, follows the laws of supply and demand and can result in increased rates at peak operating times like holidays and weekends when consumer demand is high.

Uber in particular has been criticized for its use of a dynamic pricing model and the method by which it notifies its customers that increased rates are in effect. A recent "Guest Post" on Uber's blog by Bill Gurley, a Board Director at Uber, sought to clarify any confusion. *See* Guest Post, *A Deeper Look at Uber's Dynamic Pricing Model*, Uber Blog, http://blog.uber.com/dynamicpricing, last accessed June 4, 2014. According to Mr. Hurley, users are alerted to increased rates by special "splash screens" within the smartphone app and the user has to confirm his or her knowledge of the increased rate then in effect before entering into the transaction and engaging a driver for pick-up.

Mr. Hurley goes on to note that hotels, airlines and rental car services also use dynamic pricing models based upon principles of supply and demand, and he attempts to defend Uber's pricing policy on that basis. However, in this author's opinion, analogizing those services with digital dispatch services is not really a fair comparison because consumers generally book hotel, airline and rental car reservations weeks and even months in advance of the time when they will actually use those services, and consumers therefore have more time to compare competitors' pricing and other travel options. The average consumer of "on-demand" transportation services generally does not enjoy this luxury of time and in many instances there may be no other options available.

This is not intended to be a critique of Uber's pricing model, but is merely intended to alert consumers to what can happen in the absence of price regulation and oversight.

Insurance

North Carolina law mandates that "every person, firm or corporation engaging in the business of operating a taxicab or taxicabs within a municipality shall file with the governing board of the municipality in which such business is operated proof of financial responsibility as hereinafter defined." N.C. Gen. Stat. § 20-280(a). Such "proof of financial responsibility" is defined as a certificate of liability insurance with the following limits of coverage:

- $30,000 (bodily injury to or death of one person in any one accident);
- $60,000 (bodily injury to or death of two or more persons in any one accident);
- $25,000 (injury to or destruction of property of others in any one accident).

See N.C. Gen. Stat. § 20-280(b); *see* also City of Charlotte Municipal Code § 22-213(a).

Digital dispatch services generally require that drivers carry higher mandatory minimums of coverage, but determining when that coverage applies can be confusing. For example, Uber provides commercial insurance coverage in the amount of $1 million for driver liability and $1 million for UI/UIM motorists, but these amounts are considered "excess" to the driver's personal insurance unless the driver's policy is not available. Moreover, Uber's coverage only applies from the time the driver accepts a trip request through the smartphone app until the completion of the ride.

As of March 14, 2014, when an Uber driver is logged-in and available but between trips, Uber provides contingent insurance coverage in the amounts of $50,000 (per individual per accident for bodily injury) / $100,000 (total for all individuals per accident for bodily injury) / $25,000 (per accident for property damage). These amounts meet or surpass the mandatory minimum levels of coverage imposed by the State of North Carolina on traditional taxicabs. *See* N.C. Gen. Stat. § 20-280(b).

Prior to Mach 14, 2014, however, Uber did not provide insurance coverage when a driver was not transporting a passenger but was logged-in to the app and available to receive trip requests from customers, thereby creating an "insurance gap." Unfortunately, this insurance gap was exposed last New Year's Eve when a 6-year-old girl was struck and killed by an Uber driver who was logged-in to the smartphone app but was not actively transporting a passenger. The young girl's family has filed a wrongful death action naming Uber Technologies, Inc. and the driver as a defendant. *See Liu v. Uber Technologies, Inc.*, docket number CGC-14-536979, filed Jan. 27, 2014, California Superior Court, San Francisco County.

As the foregoing illustrates, the rise of digital dispatch services has in many ways created a conundrum for insurers and drivers alike. While it appears that Uber has rectified the "insurance gap" issue, there remains the possibility of future disputes as new situations arise.

III. Conclusion

Don't get me wrong – Uber, Lyft and Sidecar are a welcome addition to the on-demand transportation industry, especially in larger cities like Charlotte and Raleigh where special events challenge traditional taxicab companies' ability to keep up with high demand. This article is not intended to be a critique of digital dispatch services but merely to highlight some of the legal distinctions of which consumers should be aware.

Notably, the Charlotte City Council's Community Safety Committee recently considered whether digital dispatch services should be regulated under the same or similar ordinances as their traditional taxicab competitors. *See generally*, http://www.wcnc.com/news/local/City-of-Charlotte-259910121.html, last accessed June 4, 2014. It remains to be seen whether the City of Charlotte will ultimately decide to impose some form of regulation and, if so, how it will go about doing that in light of the state law prohibiting it. Nonetheless, digital dispatch services like Uber have a vested interest in working with the City because, by its own admission, Charlotte has been one of the fastest growth locations for its services. *See id*. Expect an update to this article if and when further legislative and/or regulatory action is passed affecting digital dispatch services operating in North Carolina.