Spencer R. Lucas
PANISH | SHEA | RAVIPUDI LLP

Alec M. Clark
PANISH | SHEA | RAVIPUDI LLP

Small text, big consequences

HOW RIDESHARE COMPANIES UBER AND LYFT USE EXCULPATORY CLAUSES TO DODGE LIABILITY

Now years removed from the passage of Proposition 22, most plaintiffs' lawyers are familiar with the typical arguments raised by app-based rideshare and delivery companies – also known as Transportation Network Companies ('TNCs') – to shirk vicarious liability for the actions of their drivers. Arguments of independent-contractor status, aided by the misapplication of Prop 22, have been the bread and butter for defense firms seeking to drive down case value, drive up a plaintiff's litigation costs, and ultimately bind injured parties into outcomes that are less than what justice requires.

While independent-contractor status remains the core of most rideshare-defense litigation strategies, a new argument has emerged of late that TNCs may attempt in your cases: enforcement of exculpatory clauses, or blanket-liability waivers, buried within a TNC's user agreement.

There is a good chance that many plaintiffs' lawyers, much like our clients, are unaware that a blanket-liability waiver exists in most TNCs' terms and conditions. The clauses are embedded deep within the dozens of pages comprising TNC user agreements and, in our experience, these clauses are rarely invoked. But as courts around the country develop more precedent on the independent-contractor analysis, both positively and negatively for plaintiffs, it is inevitable that TNCs will attempt to include auxiliary arguments including enforcement of exculpatory clauses. The plaintiffs' bar must be vigilant in challenging these clauses to ensure not only that our individual clients are not precluded from recovery, but also to avoid dangerous precedent that could unravel the hard work done in fighting against Prop 22 and its equivalents around the country.

The defense argument

Most often, attempted enforcement of an exculpatory clause is brought via motion for summary judgment in cases where the plaintiff is a passenger in a rideshare vehicle. For purposes of this discussion, we focus on the Lyft and Uber cases where a rideshare company is transporting a passenger. However, it is not out of the question that TNCs may raise this argument if a plaintiff is struck by a TNC vehicle while the plaintiff is not actively using the TNC's service. Along this same line of defense thinking, there are numerous examples of TNCs attempting to compel arbitration against a plaintiff that was not using the TNC's service at the time they were injured by a TNC driver, simply because the plaintiff had an account with the TNC.

The defense thinking for compelling arbitration against a plaintiff who was not using their app may also, inappropriately, be extended with respect to exculpatory clauses. Note that this is the only way DoorDash, Uber Eats, Grubhub, or any other delivery TNC service would attempt enforcement of the exculpatory clause because they do not carry passengers.

In the case of a passenger who is injured while using a rideshare, the TNC's argument usually goes like this: (1) Plaintiff claims injury as a result of actions that occurred while the TNC driver was using the TNC platform; (2) As a user of the TNC platform, Plaintiff has been presented with the terms of use for the TNC. On X number of occasions, Plaintiff agreed to the TNC's terms of use. The agreement is therefore controlling in this litigation; (3) Contained within the terms of use in paragraph X is a clear limitation of liability clause that exculpates the TNC of all liability arising out of the use of its platform; (4) Plaintiff is therefore precluded from bringing a separate action against the TNC, but may still bring a claim of up to $1,000,000 under the statutorily required insurance carried by all TNC drivers.

Each of the major TNCs/rideshare companies includes an exculpatory clause in their user agreement:

- **Uber/UberEats/Postmates** cites Section 8 of its Terms and Conditions under 'Limitation of Liability': https://www.uber.com/legal/en/document/?name=general-terms-of-use&country=united-states&lang=en
- **UberFreight** relies upon Section 3 of its Terms and Conditions, titled 'Disclaimers; Limitation of Liability; Indemnity': https://www.uberfreight.com/terms/?country=united-states&utm_campaign=uber301&utm_medium=referral&utm_source=uber.com
- **Lyft** turns to Section 15 of its 'Terms of Service' also titled 'Limitation of Liability': https://www.lyft.com/terms
- **DoorDash** invokes Section 20, titled 'Breach and Limitation of Liability': https://help.doordash.com/legal/document?type=cx-terms-and-conditions&region=US&locale=en-US
- **Grubhub** puts forward its section entitled 'LIMITATION OF LIABILITY' within its Terms of Use: https://www.grubhub.com/legal/terms-of-use

The plain language of these blanket waivers is admittedly daunting and means they must be handled appropriately. While exculpatory clauses in any context are far from absolute, rideshare companies' use of these clauses in conjunction with independent-contractor arguments can make for a dangerous combination if not handled properly.

Luckily, California law is generally favorable for challenging these blanket waiver/exculpatory clauses. As the plaintiff challenging an exculpatory clause, winning even one of the following arguments renders a TNC's exculpatory clause unenforceable.

Arguments against enforcement based upon the clause itself

Inconspicuous clauses are not enforceable

Courts have consistently held that a waiver of legal rights must be clear, prominent, and knowingly agreed to before they will be enforced. If the clause is hidden in dense terms or buried within hyperlinks, such as Lyft's or Uber's, it is likely inconspicuous and therefore unenforceable. In *Leon v. Family Fitness Center (No. 107), Inc.* (1998) 61 Cal.App.4th 1227, the court found that an exculpatory clause contained in a single-sheet front-and-back membership

agreement was unenforceable. The court focused on the lack of attention drawn to the exculpatory clause, specifically that 'a release must not be buried in a lengthy document, hidden among other verbiage, or so encumbered with other provisions as to be difficult to find.' (*Ibid.*)

Conversely, in *Frittelli, Inc. v. 350 North Canon Drive, LP* (2011) 202 Cal.App.4th 35, the court found an exculpatory clause enforceable even though the clause was in the middle of the agreement, because the clause was offset by a large caption stating 'Exemption of Lessor and its Agents from Liability' and also advised that the signing party consult counsel.

The Uber and Lyft exculpatory clauses are contained within giant contracts filled with dense legalese. In Uber's Terms and Conditions, the exculpatory clause is contained on page 21 of 29. In Lyft's Terms of Service, the agreement is contained on page 21 of 48. So, although these exculpatory clauses are set apart with headers like the agreement in *Fritelli*, the Uber and Lyft agreements are incredibly dense contracts that hide the clause within a mountain of other legal text. Call out Lyft and Uber for attempting to backdoor these clauses into their user agreements, unbeknownst to your client.

Exculpatory clauses that violate public policy are void

Even if the exculpatory clause is sufficiently conspicuous, the defense must further establish that enforcement of the clause does not violate California public policy. The seminal case of *Tunkl v. Regents of University of California* (1963) 60 Cal.2d 92, 100-101 provides the framework for analyzing whether an exculpatory clause offends public policy. Rideshare TNCs violate every category that California courts consider, although *Tunkl* only requires meeting 'some' of the following characteristics:

1. Whether the business is suitable for public regulation:

   TNCs are some of the most heavily regulated businesses in California. The California Public Utilities Commission (CPUC) enforces strict licensing requirements, including requirements for background checks, driver training programs, creation of an accessibility plan, and that the TNC provide insurance coverage. All of this data is publicly available on the CPUC website under the 'Active TNCs' section.
2. Whether the service is of great importance to the public:

   Rideshare companies love to mischaracterize the impact of their business, stating they are nothing more than an application that creates a marketplace between a person who wants a ride or delivery and another person willing to perform that service. The reality is that rideshare and delivery TNCs have massive impacts on their respective industries: transportation and delivery services.

   Make no mistake, Lyft and Uber are in the business of transportation, while Grubhub, DoorDash, Postmates, and Uber Eats are in the business of food delivery. These are extremely important services which are a necessity for many members of the public. TNCs are *not* merely technology companies that connect users. And within this space, they are massive players. According to published data from each company, Lyft completed 828,000,000 rides in 2024 while Uber completed more than 12,000,000,000 (33,000,000 trips *every day*).

   The analysis from a district court in Massachusetts in a case against Lyft well articulates rideshare companies mischaracterization of their business:

   '[D]espite Lyft's careful self-labeling, the realities of Lyft's business – where riders pay Lyft for rides – encompasses the transportation of riders. The 'realities' of Lyft's business are no more merely 'connecting' riders and drivers than a grocery store's business is merely connecting shoppers and food producers, or a car repair shop's business is merely connecting car owners and mechanics. Instead, focusing on the reality of what the business offers its customers, the business of a grocery store is selling groceries, the business of a car repair shop is repairing cars, and Lyft's business – from which it derives its revenue – is transporting riders.' (*Cunningham v. Lyft, Inc.* (1st Cir. 2021) 17 F.4th 244; see also *O'Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110 [Holding that Uber mischaracterized its business as being a technology business, when Uber is instead in the business of providing rides].)
3. Whether the service is offered to any member of the public who seeks it:

   Uber and Lyft will let anyone with a credit card and a driver's license sign up for the application. There is no significant barrier to entry.
4. Whether the party invoking the clause has superior bargaining power:

   TNCs are multi-billion-dollar businesses that enter into these types of agreements millions of times a year with their customers. Compared to the average person who enters into this contract, there is a massive disparity in relevant knowledge. Equally, TNCs hold all the bargaining power when presenting customers with these agreements. Either accept the terms or you are not allowed to access the app.
5. Whether the contract is presented an adhesion contract on a take-it-or-leave-it basis, with no opportunity to pay additional fees to obtain protection against negligence:

   As defined by Cornell Law School, 'an adhesion contract exists if the parties are of such disproportionate bargaining power that the party of weaker bargaining strength could not have negotiated for variations in the terms of the adhesion contract. Adhesion contracts are generally in the form of a standardized contract form that is entirely prepared and offered by the party of superior bargaining strength

to consumers of goods and services.'

There is little doubt that a TNC contract is one of adhesion, in which the TNC gains a significant benefit upon offering. Specific to this analysis, the benefit of exculpation lies solely with the TNC and only harms the customer that is presented with the agreement. Equally significant, TNCs offer no room for negotiating any terms of the contract; a consumer cannot buy a version of the TNC's services under which there is not an exculpatory clause in exchange for an additional fee.

6. Whether the person or property of the purchaser is placed under the control of the seller:

In Uber and Lyft passenger cases, this factor is obvious. A person who gets into an Uber or Lyft vehicle is beholden to the conduct of the TNC's agent – the rideshare driver. If that rideshare driver's conduct falls below the standard of care, there is little to nothing that a captive consumer stuck in the back of the rideshare can do to avoid potential harm.

Arguments against enforcement based upon the conduct of the driver

These final two sections detail arguments against enforcement of an exculpatory clause based upon the conduct of the driver. While these arguments are equally viable in rendering an exculpatory clause unenforceable, it is ideal to disprove the viability of an exculpatory clause by either proving it is inconspicuous or it is a violation of California public policy. The reasoning is that, if focused on the conduct of the driver alone, you may pigeonhole yourself into proving a violation of a particular law (negligence per se) or a heightened standard of care (gross negligence) at trial. If you can beat the exculpatory clause on the clause's deficiencies alone, you need only prove garden-variety negligence at trial.

Fraud, willful conduct, and violations of law are not exculpable

Civil Code section 1668 renders unenforceable any exculpatory clause that exempts responsibility for fraudulent, willful, or illegal conduct. If you can prove in your case that the driver acted willfully in hurting your client, or that the driver was negligent per se, the exculpatory clause is voided. It is important to include allegations in your complaint that the driver violated specific Vehicle Code sections to tee up this argument.

Gross negligence cannot be waived

California law defines gross negligence as 'an extreme departure from the ordinary standard of conduct.' (*Eastburn v. Regional Fire Protection Authority* (2003) 31 Cal.4th 1175, 1186-86.) The California Supreme Court holds that it is against public policy to enforce a waiver of liability that removes 'an obligation to adhere to even a *minimal* standard of care.' (*City of Santa Barbara v. Superior Court* (2007) 41 Cal.4th 747, 776-77.) This ruling is the clearest common-law directive that waivers of liability for future gross negligence are unenforceable. Applied to TNCs and our purposes, if the conduct that injured your client rises to the level of gross negligence – or worse, recklessness – then no exculpatory clause can waive your client's right to bring a lawsuit against the TNC.

Importantly, whether conduct constitutes gross negligence is typically a question of fact for the jury, not the judge. (See, e.g., *Franz v. Board of Medical Quality Assurance* (1982) 31 Cal.3d 124, 138; *Hass v. RhodyCo Prods.* (2018) 26 Cal.App.5th 11, 33.) At the summary judgment stage, if there is a genuine dispute concerning the level of negligence to which a TNC driver's conduct rises, summary judgment is inappropriate. In cases where a TNC driver runs a red light, is distracted by his/her phone, is repeatedly ignoring requests from the passenger, or has any other aggravating circumstance, then a triable issue of fact should be found as to whether the driver's conduct constitutes gross negligence. It is therefore crucial, even in the clearest of liability cases, to take the driver's deposition and send written discovery requests with the intent to uncover aggravating circumstances that demonstrate a heightened lack of care. It is also advisable, though not necessary, to allege gross negligence in your complaint.

Final thoughts

Rideshare companies have long relied on the misapplication of Proposition 22, and similar statutes nationwide, as a blanket shield against vicarious liability. Courts in California and beyond have issued mixed rulings, leaving the independent-contractor question unsettled. At the same time, corporate interests are mounting increasingly aggressive campaigns for tort reform, further destabilizing the liability landscape for rideshare litigation. The plaintiffs' bar deserves credit for its persistent efforts to push back against these defenses, but continued vigilance is essential as well-funded industry groups intensify their assault on consumer rights. If rideshare companies begin advancing exculpatory clause defenses with the same frequency as independent-contractor arguments, plaintiffs' lawyers must be equally ready to meet – and defeat – that challenge.

Spencer R. Lucas is a partner and trial attorney at Panish | Shea | Ravipudi LLP *in Los Angeles, whose practice focuses on handling catastrophic personal injury, wrongful death, and sexual- abuse cases. Spencer is a leader in prosecuting cases against ride-share companies and has successfully arbitrated these matters. He is an active member of the Consumer Attorneys Association of Los Angeles and is a member of the American Board of Trial Advocates (ABOTA). Spencer is licensed in California and Washington and tries cases in both venues. Spencer can be reached at slucas@panish.law.*

Alec M. Clark is an attorney at Panish | Shea | Ravipudi LLP *in Los Angeles where he focuses his practice on catastrophic personal injury, wrongful death, products liability, and dangerous-condition cases. Licensed in California and Nevada, Alec received his law degree from the University of San Diego. Alec is a board member of the CAOC New Lawyers Division as well as an active member of the Consumer Attorneys Association of Los Angeles and the American Association for Justice. He can be reached at aclark@panish.law.*