



# Uber Says Sex Assaults By Drivers Not Its Fault

By Erin Coe

Law360, San Diego (April 1, 2016, 10:45 PM ET) -- Uber urged a California federal judge at a hearing Friday to toss a suit by two women who say they were sexually assaulted by Uber drivers after the company skimped on safety, arguing it wasn't the drivers' employer and, even if it was, it can't be held liable for alleged criminal misconduct.

[Uber Technologies Inc.](#) lawyer Josh Cohen of [Clarence Dyer & Cohen LLP](#) told U.S. District Judge Susan Illston that the women haven't shown that the drivers who committed the alleged sexual misconduct are employees of the company, and if they are, the bulk of the case law shows courts have rejected allegations that sexual assault is within the scope of employment.

"Sexual assault is outside the scope of employment and can't be imputed to an employer," he said.

According to Uber's motion to dismiss, California law is clear that in cases of alleged sexual assault, an employer can't be held vicariously liable for an employee's tortious conduct if the employee substantially deviates from the employment duties for personal purposes. Cohen cited cases where employers have been cleared from liability for employee misconduct found to be outside the scope of employment, such as a teacher's alleged abuse of a student or a priest's alleged sexual relations with parishioners.

Judge Illston asked whether the church has been held liable for priests who have sexually assaulted parishioners.

"The church has been held not to be responsible for those sex acts for the personal gratification of the priests who committed the abuse," he said.

The current case **was filed** in October 2015 by two women who were allegedly attacked by Uber drivers in separate instances — one who claims she was sexually assaulted in Boston after an Uber driver took an off-route detour to her destination after dropping off her friends, while the other alleges she was raped in Charleston, South Carolina, on her way home from

a bar. The women assert that Uber sacrificed strict background checks and other safety measures in favor of higher profits.

These two incidents are far from isolated events, the women claim in their suit, saying more than 30 sexual assaults by Uber drivers against passengers have been reported in the media in the last two years alone.

While the complaint asserts that Uber is in fact the employer of the drivers who committed the alleged assaults, the plaintiffs' attorney Jeanne Christensen of [Wigdor LLP](#) argued at the hearing on Friday that regardless of how it classifies its drivers, Uber owes members of the public a higher duty of care as a common carrier. Under California law, a common carrier is "any entity which holds itself out to the public generally and indifferently to transport goods or person from place to place for profit."

"It doesn't matter whether you categorize your drivers as employees or independent contractors because you have a higher duty of care owed under this [common carrier] statute," she said. "When you are in the business of transporting members of the public ... [they] are entrusting their safety with the person taking them from one place to the next ... and on that, you are held to a higher duty of care."

Cohen argued that the common carrier argument fails because there is a distinction between an actual transportation provider and a transportation arranger or broker, which he claims is what Uber is.

"It is at all times a facilitator, an arranger, a tool in which a rider can connect with a driver," Cohen said. "[Uber] is an arranger or broker, not a provider of transportation services, and therefore is not a common carrier."

The judge asked when the common carrier statute is applicable in the case of Uber, which requires the use of an app to connect drivers with riders, and Christensen said it applies when the Uber driver is transporting a customer on the Uber app from one destination to another for money.

But the idea that Uber's status suddenly changes once the rider and driver are connected doesn't make sense, Cohen said.

"The notion that sometimes a company is a common carrier and at other times it is not, exposes the flaw in the [plaintiffs'] argument," according to Cohen.

Judge Illston mentioned at the beginning of the hearing that her preliminary view of Uber's motion to dismiss is that much of it should be denied, noting that the plaintiffs have sufficiently alleged the existence of an employment relationship and a common carrier theory.

Upon taking the matter under submission, the judge said if she ultimately decides the claims should survive the motion to dismiss, a trial would be set for March 27, 2017.

After the hearing, Christensen noted that much of the case law that has been cited for this case isn't applicable in light of app-based companies like Uber.

"The bulk of this case law and common law and statutes came out decades before the Uber technology platform came out," she said. "That's why cases like [**the Uber driver misclassification case**] before Judge [Edward] Chen are going forward before a jury. Courts don't have a neat way to deal with this."

The plaintiffs are represented by Douglas H. Wigdor, Jeanne M. Christensen, Tanvir H. Rahman and Elizabeth J. Chen of Wigdor LLP and Jamie C. Couche of Anderson & Poole PC.

Uber is represented by Josh Cohen and RoseMarie Maliekel of Clarence Dyer & Cohen.

The case is Doe 1 et al. v. Uber Technologies Inc., case number [3:15-cv-04670](#), in the U.S. District Court for the Northern District of California.

--Editing by Emily Kokoll.