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CLIFFORD'S NOTES

A couple was returning home from a first date in an Uber car. When the driver lost his way in Chicago, the passengers tried to offer him some directional help. Instead, the driver, who allegedly had a history of being short-tempered, became upset and forced them to leave the car in an unsafe, dimly lit area. As the young couple walked to the home of a relative at 2 a.m., they were struck by another vehicle in a hit-and-run. That driver was later charged, convicted and sentenced to 17 years in prison.

The female, 20-year-old passenger suffered a traumatic brain injury and is disabled for life. Her date suffered a fractured leg and was unable to return to work or school. The passengers sued Uber. The trial court granted Uber's motion to dismiss on the pleadings.

In a civil lawsuit, the Illinois Appellate Court held that there could be more than one proximate cause for the incident and both Uber, its driver and the man who loaned the Uber driver his car also could be held liable. The appellate court, in reversing and remanding to the trial court, held that these issues were matters for a jury and could not be concluded as a matter of law during the pleading stage. *Kramer, et al. v. Szczepaniak, et al.*, 2018 IL App (1st) 171411. At this writing, defendants have notified the court that they intend to petition the Illinois Supreme Court. The petition would be due March 11.

The plaintiffs' negligence claims against Uber and the driver were based on three theories of liability: common law negligence, statutory negligence and voluntary undertaking. The court on appeal found that the question of proximate cause is a two-part inquiry: The defendant's act or omission must be the cause in fact of the plaintiff's injury and the defendant's conduct must be the legal cause of the plaintiff's injury.

Under Chicago's Municipal Code Section 9-112.010, Uber drivers are required to obtain a chauffeur's license. Plaintiffs alleged the defendant driver was allowed to carry passengers under the Uber app without obtaining one.

The plaintiffs also alleged that Uber breached its duty of care by failing to conduct the appropriate background check on the driver before allowing him "to transport customers despite knowing that [the driver] was mentally and physically unfit and had 'a history of confrontation, wrongful discharges and arguments with other [Uber] customers.' "

Because the trial court dismissed the claims prior to the facts being fully vetted, the appellate court reversed and remanded the case for "liberal



RIDESHARE RESPONSIBILITY

A tragedy, Uber and three theories of liability

By **BOB CLIFFORD**

discovery" to proceed. The appellate court offered numerous examples of previous cases where more than one cause of a plaintiff's injury occurred. "A cause-in-fact analysis does not require a court to pick the last or most significant act of negligence; rather, '[a] defendant's conduct is a material element and a substantial factor in bringing about an injury if, absent that conduct, the injury would not have occurred.'" [citing *First Springfield Bank v. Galman*, 188 Ill. 2d 252, 258 (1999)].

The court held that the question really becomes one of public policy with the touchstone of legal causation being foreseeability. This question, though, could not yet be answered because too many facts are missing in the pleading stage. "[D]rawing all reasonable inferences in favor of plaintiffs, can we say that the danger of being hit by a car was so remote as to be unforeseeable as a matter of law? Our answer is no," the court said.

"[T]he risks of that unfortunate combination is not at all hard to imagine," the court wrote, given that the Uber driver left the young couple in an unfamiliar area with a lack of law enforcement present in the middle of the night near busy streets with limited traffic control devices where people are coming out of bars in various stages of insobriety.

Ridesharing in Illinois and around the world has increased in recent years. Statistics show that in 2017, some 75 million people used ridesharing services; in 2018, that number is estimated to

have jumped to 100 million. Founded in 2009, Uber is considered the dominant ride-hailing app with the ease of transporting from here to there with the tap of a smart phone. Growing every month, it is estimated that Uber operates in more than 60 countries and 400 cities worldwide.

Uber's new CEO announced in 2018 that it would be conducting annual background checks on U.S. drivers instead of just an initial check and that it would hire a company that would regularly monitor criminal arrests in an effort to keep riders safer. That same year, it also was announced that former U.S. Homeland Security secretary Jeh Johnson would join Uber's new Safety Advisory Board as chairman.

If Uber and other ridesharing companies want to play a major role in transporting people safely from place to place, then they must accept responsibility in doing so. CL

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