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Uber Targets Most Calif., Texas Claims In Driver Assault MDL

By [Bonnie Eslinger](#) · [Listen to article](#)

Law360 (June 7, 2024, 10:50 PM EDT) -- Uber urged a California federal judge Friday to toss the majority of claims from plaintiffs in California and Texas in multidistrict litigation seeking to hold the ride-hailing company liable for drivers' sexual assaults, saying it can't be held responsible for the actions of individual drivers under those state's laws.

The sprawling MDL consolidates hundreds of lawsuits alleging that [Uber Technologies Inc.](#) has known since 2014 that drivers were [sexually assaulting passengers](#) but consciously chose not to adopt various safety measures to prevent the assaults, such as mandating the use of video cameras or conducting enhanced background checks using the [FBI](#) database utilized by the taxi industry.

In April, Uber filed [motions to dismiss](#) against the bulk of claims lodged by the plaintiffs in their master, long-form complaints for New York, Illinois, Florida, Texas and California.

U.S. District Judge Charles R. Breyer, who is overseeing the MDL, called for a hearing only on the motions for California and Texas, saying Friday that he chose those two "to sort of get this thing started." His rulings in the Golden State and Lone Star state matters might also have some bearing on other jurisdictions, the judge said.

Much of the time in his San Francisco courtroom on Friday focused on the plaintiffs' cause of action for vicarious liability, with Uber arguing that it can't be held responsible for the sexual assaults allegedly committed by its drivers.

In support of that argument, Uber cited a 1995 [California Supreme Court Case, *Lisa M. v. Henry Mayo Newhall Memorial Hospital*](#) , in which the justices held that "a sexual tort will not be considered engendered by the employment unless its motivating emotions were fairly attributable to work-related events or conditions." The case involved a woman sexually assaulted by an ultrasound technician.

The allegations in the plaintiffs' case do not seem similar, the judge said. In the case before him, the plaintiffs say Uber presented itself as a safe service for people who are vulnerable, such as women alone or intoxicated. And because they encouraged a vulnerable population to use its services, there's a higher risk of those riders being subjected to inappropriate conduct, the judge said.

"This is like a taxi service or a common carrier service that says, 'Hey, take us because we're safe,'" the judge said. "'We want you to come into a random automobile that you've never been in before, with a driver you've never seen before, who has total control of the ride.'"

A lawyer for Uber, Robert Atkins of [Paul Weiss Rifkind Wharton & Garrison LLP](#), said the judge had described the plaintiffs' negligence case, that the company had failed to provide a safe environment.

The motions to dismiss do not seek to toss the negligence claims.

"That's a distinct question from whether or not Uber is legally responsible for the conduct of the driver," Atkins told the court.

The Lisa M. case suggests that the court look at whether the criminal behavior arises from the job duties of the driver.

"What is alleged here is that the driver is engaged in aberrant conduct ... having nothing to do in connection with the service he is supposed to be performing, namely driving from point A to point B," Atkins said.

The vulnerability of the plaintiff is not relevant to the issue of liability, the lawyer said.

"It's not about opportunity. It's not about vulnerability. It's not about time and place," Uber's lawyer said. "The question is, is what the driver did connected with the job function arising from doing the job? As pled, it is quite obviously not the case."

Judge Breyer asked if there would be no liability if a car service that picked up small children from nursery school to drive them home hired a pedophile. Atkins said the car service wouldn't be liable.

"There needs to be a causal connection," Atkins said.

Judge Breyer asked for an example where a court found such a connection, and Uber's lawyer cited a 1946 California Supreme Court case, [Carr. v. WM. C. Crowell Co.](#) , in which an employee working for a general contractor successfully sued his employer after he was injured when a co-worker threw a hammer at him over a workplace dispute. The justices found that the conduct by the co-worker was committed in the scope of their employment.

"That's sort of ridiculous," the judge said.

The question is whether the conduct happened while the person was doing the job or substantially deviating from the job, Uber's lawyer said.

"We need to set aside all the things that's found in negligence: didn't create a safe environment, invited vulnerable people to be in an environment that should have been safer," Atkins said. "Negligence."

A lawyer for the plaintiffs, Sara Peters of [Walkup Melodia Kelly & Schoenberger](#), said the litigation against Uber was about negligence and more.

The lawyer pointed back to the Lisa M. ruling and its caveat that "motivating emotions" that can be attributed to work-related conditions don't fall within the decision.

"It's motivations like power, control, being given job duties that give you special access and caregiving responsibilities, so that you're given the sense you can get away with anything," Peters said.

Taxis are regulated with background checks and safety standards to prevent such foreseeable incidents, Peters said.

"Uber came in and disposed of those standards," the lawyer for the plaintiffs said.

In addition to its bid to toss the cause of action for vicarious liability, Uber also asked the court to drop California claims for fraud and misrepresentation, negligent infliction of emotional distress and violation of the state's unfair competition law, among other causes of action. In its motion related to the Texas long-form complaint, Uber also seeks to drop a claim related to a "common carrier's non-delegable duty to provide safe transportation," misrepresentation claims, and negligent entrustment, among other claims.

According to the master complaint filed by the plaintiffs in February, Uber markets itself as a safe mode of transportation for women, the complaint states, but there have been more than 10,000 sexual assaults since 2014, shortly after the company started allowing drivers without taxi licenses to operate on the platform.

The plaintiffs seek both compensatory and punitive damages, saying the latter should be awarded for Uber's intentional and reckless actions.

In its motions to dismiss, Uber argued that the plaintiffs' bid for punitive damages failed because they could not show that Uber had a specific intent to cause harm.

The plaintiffs are represented by Sarah R. London and Andrew Kaufman of [Lieff Cabraser Heimann & Bernstein LLP](#), Rachel B. Abrams of [Peiffer Wolf Carr Kane Conway & Wise LLP](#), Roopal P. Luhana and Steven D. Cohn of [Chaffin Luhana LLP](#), Sara M. Peters of Walkup Melodia Kelly & Schoenberger and Samantha Hoefs of Nigh Goldenberg Raso & Vaughn, among many others.

Uber is represented by Robert Atkins, Randall S. Luskey, Jessica E. Phillips, Kyle N. Smith, Jacqueline P. Rubin, Caitlin E. Grusauskas, Yahannes Cleary and Andrea M. Keller of Paul Weiss Rifkind Wharton & Garrison LLP.

The case is In re: Uber Technologies Inc. Passenger Sexual Assault Litigation, case number [3:23-md-03084](#), in the [U.S. District Court for the Northern District of California](#).

--Additional reporting by Y. Peter Kang. Editing by Rich Mills.

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Case Information

Case Title

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Case Number

[3:23-md-03084](#)

Court

California Northern

Nature of Suit

Assault Libel & Slander

Judge

[Charles R. Breyer](#)

Date Filed

October 04, 2023

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