

**WINDELS
MARX**

Windels
Marx
Lane &
Mittendorf, LLP

THE DISRUPTIVE TRANSPORTATION TECHNOLOGY MOVEMENT - A LITIGATION PRIMER & ROADMAP

Prepared by Windels Marx Lane & Mittendorf, LLP

July 16, 2014

**Matthew W. Daus, Esq.
Jasmine K. Le Veaux, Esq.
Transportation Practice Group
Windels Marx Lane & Mittendorf, LLP
156 West 56th Street | New York, NY 10019
www.windelsmarx.com**

TABLE OF CONTENTS

EXECUTIVE SUMMARY	1
SUMMARY OF CAUSES OF ACTION	9
I. PERSONAL INJURY LAWSUITS & INSURANCE COVERAGE ISSUES	9
II. LABOR LAW VIOLATIONS & WORKER MISCLASSIFICATION	15
III. CONTRACTUAL CLAIMS	18
A. Breach of Contract.....	18
B. Quantum Meruit.....	18
C. Unjust Enrichment.....	19
D. Promissory Estoppel	19
IV. FALSE ADVERTISING, UNFAIR TRADE PRACTICES & CONSUMER PROTECTION CLAIMS	21
A. Federal Law: The Lanham Act.....	21
B. State Consumer Protection Laws.....	25
C. Federal Law: Telephone Consumer Protection Act, 47 USC § 227.....	26
D. Unfair Competition.....	27
E. Deceptive Acts & Practices	29
V. STATE ANTITRUST CLAIMS.....	33
VI. RACKETEERING – CORRUPT BUSINESS PRACTICES & SCHEME TO DEFRAUD	35
VII. DISABILITY DISCRIMINATION.....	37
VIII. TORTIOUS INTERFERENCE WITH BUSINESS	38
A. Intentional Interference with Contractual Relations	38
B. Interference with Prospective Economic Relations	40
IX. GOVERNMENT ACTIONS	43

A.	Common Law Injunctive Relief	43
B.	Injunctive Relief Prescribed by Statute	45
X.	CONSTITUTIONAL CHALLENGES	47
A.	Constitutional Claims: Equal Protection	47
B.	Constitutional Claims: Takings Clause	48
XI.	ENVIRONMENTAL LAW VIOLATIONS	50
XII.	OTHER LEGAL CLAIMS AND RELIEF SOUGHT	52
A.	Accounting.....	52
B.	Class Certification	52

APPENDIX

CASE BRIEFS	TAB 1
AUTHOR BIOS	TAB 2

EXECUTIVE SUMMARY

The introduction of new “transportation network companies” or “TNCs” has had a “game changing” impact on the traditional transportation industry. TNCs offer smartphone applications (“app(s)”) which provide free online booking for for-hire transportation and/or ridesharing services.¹ Passengers request rides through an app from a private passenger vehicle driven by a non-commercially licensed driver, a commercially licensed vehicle and a commercially licensed driver, or some other configuration of licensed/unlicensed vehicles and/or drivers. Passengers generally pay for such services through a credit card, the information for which is saved electronically in the passenger’s online profile for the app. The fact that anyone may pick-up a passenger, in any type of vehicle, when the app communicates the passenger’s location to a driver, has resulted in an onslaught of potential legal violations of local, state, and federal law.

TYPES OF CLAIMS

The advent of TNCs has raised several public safety and consumer protection issues that are currently being litigated in lawsuits across the nation. There is a panoply of claims, although many of the overarching theories of these claims overlap. Indeed, cases involving TNCs are varied and include the following: (i) personal injury litigation and insurance coverage issues; (ii) labor law violations and worker misclassification claims; (iii) contractual claims; (iv) false advertising, unfair business practices and consumer protection lawsuits; (v) racketeering; (vi) antitrust violations; (vii) disability discrimination; (viii) tortious interference with business; (ix) government actions; (x) constitutional challenges; (xi) environmental law violations; and (xii) other legal claims and forms of relief.

¹ For purposes of this report, we refer to “ridesharing”, although we neither concede nor endorse the proposition that such apps are providing ridesharing services as may be defined by local regulation.

Personal Injury Litigation and Insurance Coverage Issues

Personal injury lawsuits asserted against TNC drivers and/or the TNC itself, are usually filed by a passenger or bystander who has been injured, or worse, during the course of TNC services. The general premise of negligence law is that all citizens have a duty to behave reasonably in the course of their day-to-day actions. When a breach of that duty causes an injury, a negligent act may have occurred. Because passenger carriers must exercise reasonable care when performing their services, the crux of many of these personal injury suits, which also include wrongful death claims, is that a TNC driver, or the TNC itself, breached its duty of reasonable care with respect to some aspect of the services provided. This generally occurs when the driver did not drive safely and thus an accident occurred and/or the TNC did not perform a sufficient investigation of a driver's background before hiring him/her, subjecting the TNC to be held vicariously liable for the driver's wrongful acts. Not only have these types of suits raised issues regarding what is considered "TNC services" (i.e., when the passenger is physically in the vehicle versus when a trip has been booked and the driver is en route to pick-up a passenger), and who is liable for injuries (i.e., the driver, the TNC, or both), but questions about when and whose insurance policies would apply (i.e., the TNCs' commercial insurance or the driver's personal vehicle insurance) must now be reconciled by the courts in these actions.

Labor Law Violations and Worker Misclassification

Drivers have initiated legal action against TNCs for labor law violations particularly with respect to wage and hour issues. In many of these cases, drivers are seeking damages in the form of wages and/or overtime that went unpaid due to their misclassification as independent contractors rather than employees and/or unpaid gratuities that were pocketed by the TNC rather than the drivers. Whether an employment relationship exists within the meaning of state and

federal Labor Law is a question of fact and depends on whether there is evidence that the putative employer has exercised control over the manner in which the worker performs his or her job and whether the worker's services form the core part of what the business does. The lawsuits alleging misclassification argue that drivers are integral to the operation of TNCs and thus, they should be properly classified as employees and eligible for workers compensation and unemployment benefits in the event that they are terminated. Further, drivers argue that TNCs direct drivers not to accept tips because they are included in the service fees automatically charged to customers' credit cards. However, the law in many jurisdictions, as well as industry practice, requires that gratuities be remitted to workers in full.

Contractual Claims

As an extension of the foregoing, drivers have also sued TNCs for failure to comply with terms of their driver agreements concerning wages and gratuities. The breach of contract suits also include claims that the TNCs have been unjustly enriched by the conversion of drivers' gratuities as well as the equitable claims of *quantum meruit* and promissory estoppel, which allow for a claimant to ask the court to enforce a promise, or an offer that was made to and accepted by the claimant, even if the specific agreement at issue does not satisfy the required elements of a legally enforceable contract.

False Advertising, Unfair Trade Practices and Consumer Protection Claims

Plaintiffs have invoked federal statutes such as the Lanham Act, and similar state corollary statutes, to assert, *inter alia*, claims of false advertising. These claims allege that TNCs have made false statements regarding their compliance with the law, which has deceived or has the tendency to deceive the public, thereby resulting in damages in the form of commercial injuries, or money spent to purchase TNC services. The false statements alleged include

misrepresentations TNCs have made regarding insurance coverage and proper licensing of the vehicle and/or drivers with the governing agency. Some TNCs do not comply with many of these costly standards, which allow them to charge a lower fare than transportation companies that do comply with the law, thus deceiving the consumer into thinking that such TNCs are similarly licensed and safe, but cheaper. This, plaintiffs have alleged, has resulted in a decline in profits for the law abiding transportation companies.

In addition to the foregoing, cases have been brought by passengers as well as members of the transportation industry – trade associations, competing taxicab companies and black car/limousine companies – alleging unfair business practices and consumer protection violations. There are numerous state and federal statutes which serve to protect the consumer and to promote fair competition, thus the theories upon which several of these claims are based are varied and broad. Many of the state claims are based on state common law or consumer protection statutes. However, federal consumer protection statutes, such as the Telephone Consumer Protection Act, have also been used to challenge the unscrupulous business practices of some TNCs.

Antitrust Violations

Antitrust laws, also referred to as “competition laws”, are statutes designed to protect consumers from predatory business practices by ensuring that fair competition exists. State and federal laws serve to prohibit: (i) conduct that unreasonably restrains trade or commerce; (ii) attempts to monopolize a particular market; (iii) price discrimination; and (iv) exclusive dealing agreements which may have anticompetitive effects. At least one state law case has been filed which charges a TNC with violating a specific state antitrust statute through price fixing. The price fixing alleged is: (i) charging mandatory prices that have not been approved by the state;

(ii) charging fares that are far below market rate to constitute illegal predatory pricing with which reputable transportation companies are unable to compete; and (iii) charging uniform rates which restrain trade and constitute an effort to monopolize the industry and destroy competition.

Racketeering – Corrupt Business Practices & Scheme to Defraud

The federal Racketeer Influenced and Corrupt Organizations Act, commonly referred to as the “RICO Act” or simply “RICO”, is traditionally used to impose criminal penalties for acts performed as part of an ongoing criminal organization. However, RICO has been used in the context of TNC litigation as a means to assert a civil cause of action for damages to businesses caused by the TNCs’ vast commercial enterprise which flouts for-hire vehicle regulations throughout the world.

Disability Discrimination

TNCs are also being brought to court for allegedly discriminating against passengers on the basis of disability in violation of the federal Americans with Disabilities Act. At least one federal case exists in which disabled passengers and disability rights activists are suing a TNC for refusing to provide service to individuals with disabilities, refusing to have accessible vehicles, and refusing to assist with the stowing of mobility devices.

Tortious Interference with Business

Tortious interference with a business is the intentional, damaging intrusion on another’s potential or existing business relationship. The interference is usually alleged when a defendant induces a contracting party to break a contract or steals customers away from a third party by unlawful means. Within the context of TNC litigation, this claim has been asserted when disruptive TNCs are illegally operating taxicab services without proper permits or insurance, and through this violation, the TNCs are stealing drivers and taking passengers away from legitimate

taxicab companies. As a result, TNCs are interfering with the economic relationship between taxicab companies and their respective drivers and consumers.

Governmental Actions – To Stop Unlicensed For-Hire Operations

Several lawsuits are pending which involve municipalities or government agencies in which the government is seeking a restraining order or an injunction against TNCs to cease operations because they have failed to comply with local regulations. All government agencies and municipalities have enforcement procedures they must follow to punish those that violate the law. However, when it is part of a company's *modus operandi* to “shoot first and ask questions later”, as has been the case with several disruptive TNCs, cities have sought to shortcut enforcement protocol, that may only momentarily curb unlawful TNC operation, by seeking judicial assistance to permanently shut down such unlawful and dangerous business operations.

Constitutional Challenges – Equal Protection & Regulatory Takings

There are also a number of lawsuits in which government agencies or municipalities are being sued for violating state and/or federal constitutional rights that require laws to be enforced equally amongst similarly-situated persons or businesses. Plaintiffs in these cases believe that the government is not adequately or equitably enforcing its laws against TNCs, laws that are equally applicable to all transportation companies. For instance, having different levels of insurance, criminal background checks and other licensing requirements for TNCs as compared to limousines and taxicabs, all of which are engaging in the same exact activity of transporting passengers for hire, raises equal protection of the law concerns for two separate license classifications without a proper rational basis. Also, actions have been commenced alleging regulatory takings of private property (medallion values) without just compensation, for the government's failure to regulate unlicensed ridesharing or TNC type of services, leading to the

devaluation of medallion property right values. The Fifth Amendment of the United States Constitution provides that persons must receive just compensation for the depreciation in value of their property, whether by (i) an actual government acquisition (e.g., paying just compensation to a homeowner if the powers of eminent domain are exercised to demolish his or her property to build a highway), or by (ii) a regulatory taking, caused by government agencies and municipalities enacting extensive regulations or failing to enforce the law resulting in a devaluation of private property (e.g., failure to enforce laws against TNCs resulting in depreciation in medallion values).

Environmental Law Violations

In addition to constitutional requirements, governments must comply with their own administrative procedures when initiating new rulemaking and/or implementing new regulations/legislation. In many cases, an environment assessment of new legislation is required before such laws are implemented. At least one state lawsuit is asking a court to review the procedures by which new TNC legislation was passed in order to ensure that the government agency followed state law procedures for rulemaking and if not, to strike the law as void for failing to comply with the requirement to conduct an environmental quality assessment.

PURPOSE OF THE REPORT

This report outlines the major and/or novel legal claims that have been asserted in TNC litigation across the U.S., including an explanation of potential legal theories upon which TNC and disruptive app litigations may be based. We have first analyzed the most popular, novel and compelling claims that have been used to challenge the operations of disruptive TNCs. Following the summary of the causes of action, in the Appendix annexed hereto, we have compiled case briefs for the most prominent lawsuits in which these legal claims are being

pursued. These lawsuits all relate to at least one of the three largest and most disruptive TNCs operating across the nation: Uber Technologies, Inc. (“Uber”); Zimride, Inc. d/b/a Lyft (“Lyft”); and Side.cr LLC (“Sidecar”). Most of these lawsuits are still pending, and only time will tell whether court rulings will change the course of the TNC movement which has, thus far, moved swiftly and aggressively across the country, disrupting traditional for-hire transportation markets.

SUMMARY OF CAUSES OF ACTION

I. Personal Injury Lawsuits & Insurance Coverage Issues

There have been several cases in which either passengers or bystanders have been injured by a TNC driver during the course of TNC for-hire services. The crux of these claims rest on the legal theory of negligence, but may also include an action for wrongful death when the resulting damages of an alleged breach of duty of care results in death, rather than simply an injury. Below we have summarized the elements of a negligence claim, and liability theories upon which the claim may be based, as well as the elements of a wrongful death claim.

A. Negligence

Negligence is the failure to exercise the level of care that someone of ordinary prudence would have exercised under the same circumstances. It may consist of actions, but can also consist of omissions where there is a duty to act. Negligence involves harm caused by carelessness, and not intentional harm. Five elements are required to prove a case of negligence:

1. The existence of a legal duty to exercise reasonable care. The plaintiff must show that the defendant owed the plaintiff a duty of care.
2. A failure to exercise reasonable care. The plaintiff must show that the defendant breached the duty of care.
3. Physical harm was caused by the negligent conduct. After establishing that defendant breached a duty of care, plaintiff must prove the harm was caused by such breach.
4. Physical harm in the form of actual damages. In order for plaintiff to recover, he/she must show that the defendants breach caused a financial loss.

5. Proximate cause – a showing the harm is within the scope of liability. Plaintiff must prove that the harm was not such a remote consequence of defendant's actions that there should not be any liability.

Negligence cases are very fact specific and all five elements need to be proven before a plaintiff can establish his or her case. Negligence claims were raised in *Jiang Liu, et al. v. Uber Technologies, Inc.* Case No. CGC-14-536979 (California), *United Independent Taxi Drivers Inc., et al v. Uber Technologies, Inc. and Lyft, Inc.*, Case No. BC51387 (California); *Herrera, et al. v. Uber Technologies, Inc., et al.*, Case No. CGC-13-536211 (California) and *Fahrbach v. Uber Technologies, Inc.*, Case No. CGC-13-533103 (California).

The facts which form the basis for the negligence claim in the *Liu* case are as follows: On December 31, 2013, an UberX driver was cruising through San Francisco when he struck a family of three (Mother, Huan Kuang, 39, her son, Anthony Liu, 5, and daughter, Sofia Liu, 7), killing the seven year old daughter, and severely injuring her mother and brother. Uber very quickly denied any involvement in the accident, but has since admitted the driver arrested and charged in the accident, was in fact an UberX partner. However, Uber distinctly notes that the driver was not on an Uber call at the time of the accident. Uber has since terminated the services of the driver, and although Uber has expressed its condolences to the family on its blog, it is distancing itself from the accident or any liability for same.

The Liu family suit alleges that, at the time of the crash, the Uber driver was logged onto the UberX smartphone app and was available to provide rides. As such, Uber is alleged to have breached its duty of care by entrusting the driver to provide transportation services for the company, and by failing to learn, through background checks, that the driver may cause a danger to the public. Further, because he was in the course of providing such services for Uber when

the accident occurred, and Uber requires its drivers to use a smartphone to pick-up trips, such requirement may have distracted the Uber driver and resulted in damages to the family. As such, the company is alleged to be liable for the accident involving the Uber driver.

In *Herrera, et al. v. Uber*, Plaintiffs allege that after an Uber driver arrived to pick them up, and en route to the drop-off location, the Uber driver collided with co-Defendant's vehicle, resulting in, *inter alia*, both Plaintiffs suffering from major concussions. Plaintiffs further allege that when they complained about this incident to Uber, Uber instructed them to file a claim with the Uber driver's personal motor vehicle insurance to seek recompense for their medical care. However, the driver's carrier denied coverage as he did not have a commercial policy, and the driver's personal motor vehicle policy specifically excluded instances of driving for profit. Plaintiffs argue that Uber was negligent in failing to train and supervise the subject driver and its other drivers and, therefore, because subject driver was an employee of Uber, Uber is vicariously liable for the work-related vehicle collision.

In *Fahrbach v. Uber Technologies, Inc.*, Plaintiff was a bystander who was injured as a result of a vehicle accident involving an Uber driver. The suit was brought against the for-hire vehicle ("FHV") driver, the limousine company that the FHV driver was affiliated with, and Uber, because the FHV driver was participating in an Uber trip at the time of the accident. The FHV driver had the required amount of insurance coverage for his state FHV license, but Uber is disclaiming liability based upon their contract with the driver. This was the first case filed that would test the enforceability of Uber's terms and conditions, which seek to absolve themselves of responsibility if an accident were to occur during an Uber trip.

1) Legal Theory of *Respondeat Superior*

Under the doctrine of *respondeat superior*, which is also known as vicarious liability, a principal (for example, an employer) can be found liable for the negligence of its agent (for example, an employee) causing injuries to third parties, if, at the time of the occurrence, the agent was acting within the scope of his or her employment. To establish a principal's liability for the acts of his or her agent, a plaintiff must prove (1) that a principal-agent relationship existed and (2) that the tortious act of the servant occurred within the scope of that employment. It is not every agent whose fault is attributable to a principal, however. In this regard, a non-employee agent is generally nothing more than an independent contractor whose fiduciary duty to his principal may bind the principal with respect to contractual obligations. The actions of an independent contractor are not actions of the principal in all circumstances and for all purposes, as is ordinarily the case when a driver is deemed a servant/or agent.

Plaintiffs raised *respondeat superior* claims in *Ryan Lawrence v. Uber Technologies, Inc.*, Case No. CGC-13-535949 (California). In *Lawrence*, Plaintiff filed a complaint against Uber, driver Eduardo Gondim and Uber passenger Walter Allen Rosenfield, for injuries he sustained while riding his bicycle in a designated bicycle lane. Plaintiff claims that he was hit and injured by the door of the driver's vehicle after the Uber passenger exited the Uber vehicle in a clearly marked bicycle lane. Plaintiff alleges that he suffered injuries to his leg/knee requiring hospitalization and weekly physical therapy, resulting in medical expenses in excess of \$325,000.00 due to Defendants' negligence and Uber's breach of duty of care. This duty was allegedly breached under the theory that Uber was the employer of the defendant driver who wrongfully allowed the Uber passenger to exit the vehicle in a designated bicycle lane, during the course of an Uber trip, which resulted in Plaintiff's injuries.

B. Wrongful Death

In most jurisdictions an action for wrongful death is a purely statutory right which is designed to compensate a surviving spouse and/or next of kin for the pecuniary losses sustained due to a decedent's death. The recoverable damages are not based on the negligent act, but rather, on the survivors' injuries resulting from the decedent's death. To state a cause of action for wrongful death, a plaintiff must show: (i) that the plaintiff has capacity to sue as personal representative of the deceased; (ii) that the plaintiff is the person entitled by statute to damages; (iii) that there are alleged sufficient facts to show in what particular way the defendant or defendants were negligent; (iv) that the defendants' negligence was the proximate cause of death; and (v) damages.

Plaintiffs raised claims for wrongful death in *Jiang Liu, et al. v. Uber Technologies, Inc.*, Case No. CGC-14-536979 (California).

C. Insurance Coverage/Declaratory Judgment

A declaratory judgment is a judicial determination of the rights of respective parties often sought in situations involving insurance policies, contracts, deeds, leases, and wills. A declaratory judgment differs from other judicial rulings in that it does not require that any action be taken. Instead, the judge, after analyzing the controversy, simply issues an opinion declaring the rights of each of the parties involved. Individuals may seek this type of judgment after a legal controversy has arisen, but before any damages have occurred or any laws have been violated.

Although the specific elements may vary from state to state, a declaratory judgment requires a plaintiff to prove: (i) a substantial controversy between the parties; (ii) adverse legal interests; and (iii) that those adverse legal interests are of sufficient immediacy and reality to

justify declaratory relief. Declaratory judgments can be brought in federal court under the Declaratory Judgment Act under 28 U.S.C. § 2201, or in state court under relevant state statutes. This judgment is appropriate when it will “terminate the controversy” giving rise to the proceeding. A declaratory judgment has the force and effect of a final judgment on the matter and may be appropriate if there is specific warning of *intent to prosecute*. If there is a prosecution already in process, generally courts will not issue declaratory relief.

Declaratory relief has been sought in several cases involving TNCs. *See United Independent Taxi Drivers Inc., et al. v. Uber Technologies, Inc. and Lyft, Inc.*, Case No. BC513879 (California); *Goncharov, et al. v. Uber Technologies, Inc.*, Case No. CGC-12-526017 (California); and *Landmark American Insurance Company v. Uber Technologies, Inc.*, Case No. 1:2013-cv-02109 and Case No. 1:13-cv-02103 (Illinois).

In the cases captioned, *Landmark American Insurance Company v. Uber Technologies, Inc.*, Case No. 1:2013-cv-02109 and Case No. 1:13-cv-02103 (Illinois), Landmark American Insurance Company brought two actions against Uber seeking a declaration from the Court that Landmark had no duty to defend or indemnify Uber under a Landmark insurance policy as it relates to Uber’s insurance claims arising from the Ehret case and Yellow Group case, more fully explained below. Landmark alleged that relief sought by Ehret and Yellow Group against Uber was not covered under the policy. A settlement was reached in each of these actions.

II. Labor Law Violations & Worker Misclassification

Many licensed for hire vehicle operators invest much time and legal resources on the issue of how to properly classify their for hire drivers under state and federal labor law. However, TNCs that solicit and hire drivers to provide transportation services through their app(s), may be creating a relationship between their companies and their affiliated drivers which do not comport with legal standards for the independent contractor worker classification category.

Additionally, the contracts between TNCs and their respective drivers, may set forth terms of “employment”, regardless of the driver’s classification as an independent contractor or employee. Entitlement to a wage in excess of the minimum wage and/or the manner in which gratuities are remitted may be outlined in an agreement between a TNC and driver. Below we have summarized the claims that have been asserted by TNC drivers against TNCs. The allegations involve labor law violations, including wage and hour claims and worker misclassification claims.

The classification of workers as independent contractors or employees is important under federal, state and local tax and labor laws. Either classification triggers a specific set of laws to which a putative employer must comply in order to ensure that workers are paid appropriate wages for hours worked, overtime pay, and that they are paid on a regular basis. Further, a putative employer may be required to pay taxes to the state and/or federal taxation department as well as unemployment insurance for workers that are deemed “employees.” Worker classification has become a particularly important topic recently as the Internal Revenue Service (“IRS”) has stepped-up enforcement of rules regarding independent contractors. This increased enforcement has been facilitated by the formation of joint task forces among the Federal

Department of Treasury and the U.S. Department of Labor (“DOL”), as well as between state agencies, to crack down on independent contractor misclassification.

In order to determine whether a person is an employee, and therefore entitled to overtime pay subject to state and federal wage and hour laws, the relationship between the employee and business is examined. Whether an employment relationship exists within the meaning of a specific state law is fact-specific and no one fact is determinative. An employer-employee relationship exists when the evidence shows that the employer exercises control over the results produced or the means used to achieve the results. The most important factor to be considered, however, is “control over the means” by which results were achieved.

Some factors applied by courts/state agencies to determine the amount of control a purported employer had over a worker include:

Behavioral Control

Does the business instruct the worker on when and where to work, what tools to use, which other workers should assist with the work, where to purchase supplies, does the business provide training, and what order or sequence to follow?

Financial Control

Does the business reimburse the worker for expenses related to the job? Can such worker realize a profit or loss?

Type of Relationship

Does the worker get benefits, such as paid sick leave, or a pension?

The more behavioral and financial control that an employer has over a worker, the more likely that such worker would be considered an employee.

The issue of worker misclassification was raised in the class action *O'Connor, et al. v. Uber Technologies*, 2013-cv-03826 (California). Plaintiffs argue that Uber drivers are required to follow a litany of detailed requirements imposed on them by Uber. The drivers are graded, and are subject to termination, based on their failure to adhere to these requirements. Plaintiffs assert that this indicia of control shows that Uber drivers are not, in fact, independent contractors, but rather, employees of the company.

III. Contractual Claims

A contractual claim is a dispute that arises out of an agreement between the parties. Typically, the agreement is in writing and one or both parties have breached a term of the agreement. Where no contract exists, the law recognizes several *quasi* contract claims to allow for recovery where one party received a benefit at the other party's expense. Many of the claims brought by drivers against TNCs are based in contract or *quasi* contract.

A. Breach of Contract

A breach of contract is a legal proceeding where one or more parties to a contract do not fulfill their obligations under such contract. Such breach may be because of non-performance or interference with the other party's performance. To demonstrate a case for breach of contract, a plaintiff must show: (i) the existence of a contract; (ii) that the plaintiff was ready, willing and able to perform; (iii) that the defendant's breach has kept them from performing; and (iv) that the plaintiff has suffered damage.

A breach of a contract can be minor, material, fundamental or anticipatory. In the event of a minor breach, the plaintiff can only recover actual damages and not specific performance. A material breach permits the plaintiff to either compel performance or collect damages. A fundamental breach is so serious that it permits a plaintiff to terminate the contract and sue for damages. An anticipatory breach is an unequivocal indication that the defendant will not perform when performance is due or that non-performance is inevitable. A plaintiff may treat an anticipatory breach as immediate, terminate the contract and sue for damages.

B. Quantum Meruit

In the case where no express contract exists and breach of contract damages cannot be recovered, the legal theory of *quantum meruit* may be available. Though the specific elements

may vary from state to state, generally a plaintiff must show: (i) the performance of the services in good faith; (ii) the acceptance of the services by the person to whom they are rendered; (iii) an expectation of compensation therefore, and (iv) the reasonable value of the services.

C. Unjust Enrichment

Similarly, the theory of unjust enrichment is based on the principle that a person must not be allowed to enrich himself unjustly at the expense of another. A claim for unjust enrichment generally requires a plaintiff to show: (i) the other party was enriched; (ii) at plaintiff's expense; and (iii) that it is against equity and good conscience to permit the other party to retain what is sought to be recovered.

Plaintiffs raised breach of contract, unjust enrichment and *quantum meruit* claims in *Lavitman v. Uber Technologies, Inc.*, Civil Action No. 12-449 (Massachusetts) and *O'Connor, et al. v. Uber Technologies*, 2013-cv-03826 (California). In *Lavitman v. Uber Technologies, Inc.*, Civil Action No. 12-4490 (Massachusetts) taxi driver David Lavitman (who also drives for Uber) filed a complaint accusing Uber of violating a state law which states that “no employer or other person” may take any portion of a worker’s gratuity. The lawsuit refers to a company document that explains how Uber and the driver divide the earnings: “We will automatically deposit the metered fare + 10% tip to your bank account each week.” Plaintiff alleges that customers are regularly assessed a 20% gratuity, but that the company retains as much as half that amount, and thus, Uber is unjustly enriched by this deception. The Plaintiff is seeking class action status.

D. Promissory Estoppel

Promissory estoppel is a quasi-contractual, equitable doctrine that is recognized in most jurisdictions. Under New York law, “[i]n order to establish a viable cause of action sounding in promissory estoppel, a plaintiff must allege: (i) a clear and unambiguous promise; (ii) reasonable

and foreseeable reliance by the party to whom the promise is made; and (iii) an injury sustained in reliance on the promise.”² Typically, a plaintiff may invoke the doctrine of promissory estoppel in two situations: 1) to enforce a promise in the absence of bargained for consideration; and 2) to provide relief to a party where the contract is rendered unenforceable.

Plaintiffs have asserted promissory estoppel claims in *Dundar v. Uber Technologies, Inc.*, Case No. 653400-2013 (New York). Dundar is a licensed New York City taxi driver and Uber driver who alleges that he purchased a 2010 Chrysler in reliance upon Uber’s approved vehicles for Black Car status. Plaintiff further alleges that approximately 1 year after he purchased the 2010 Chrysler, Uber demoted him from Uber Black status to UberX status because Dundar’s 2010 Chrysler no longer qualified for Uber Black status. As a result of the demotion from Uber Black to UberX, Dundar claims he suffered a significant decrease in earnings. Plaintiff further alleges that based upon Uber’s new list of approved vehicles, Plaintiff traded in his 2010 Chrysler for a 2013 Chrysler 300 for a total adjusted sale price of \$60,449.68, and was restored to Uber Black status. Plaintiff then states that approximately four (4) months following Plaintiff’s purchase of the 2013 Chrysler, Uber once again demoted Plaintiff to UberX status because the 2013 Chrysler was removed from Uber’s list of approved vehicles for Black Car status. As such, Plaintiff claims he relied on the representations made by Uber with respect to his vehicle being an approved vehicle, but that this reliance resulted to his detriment.

² *Rogers v. Town of Islip*, 230 A.D.2d 727, 727 (2d Dep’t 1996).

IV. False Advertising, Unfair Trade Practices & Consumer Protection Claims

There are numerous federal and state laws that serve to protect the public from harm. The “public” may include consumers, but also competitors in a given industry. The government has an interest in ensuring, through state and federal statutes that advertising is truthful, that the free market provides for fair competition, and that interstate commerce is not being exploited for purposes of businesses operating illegally, and that businesses are servicing all customers fairly and indiscriminately.

As such, consumers of TNCs as well as competitors of TNCs have asserted a myriad of claims against TNCs to address the issue of unfair business practices and consumer protection. Complaints have been filed by members of the public (industry members and individual consumers) asserting violations of the federal Lanham Act and Telephone Consumer Protection Act. Also, there have been state law corollaries to the aforementioned and common law claims asserted for unfair competition and deceptive acts and practices. We summarize these causes of action below.

A. Federal Law: The Lanham Act

The Lanham Act, 15 U.S.C. § 1051 *et seq.*, principally provides for two distinct causes of action: false designation of origin or source, known as ‘product infringement,’³ and false description or representation, known as “false advertising.” In order to establish “standing”, or the ability to sue under the Lanham Act, one must demonstrate a reasonable interest to be protected against the advertiser’s false or misleading claims, and a reasonable basis for believing that this interest is likely to be damaged by the false or misleading advertising. The “reasonable basis” prong embodies a requirement that the plaintiff show both likely injury and a causal nexus

³ “Product infringement” as referred to herein includes goods and services. Lanham Act, 15 U.S.C. § 1125(a)(1) (emphasis added).

to the false advertising or infringement claim. The most common remedy is a preliminary injunction, though damages, costs, and attorneys' fees are sometimes awarded.

To state a claim of misrepresentation under the Lanham Act, a plaintiff must allege: (i) a false statement of fact by the defendant in a commercial advertisement about its own or another's product; (ii) the statement actually deceives or has the tendency to deceive a substantial segment of its audience; (iii) the deception is material, in that it is likely to influence the purchasing decision; (iv) the defendant caused its false statement to enter interstate commerce; and (v) the plaintiff has been or is likely to be injured as a result of the false statement.

With regard to the first element, false statements of fact (in commercial advertisement) include both those that are literally false and those that, although literally true, are misleading or likely to cause consumer confusion. Courts may presume consumer deception and reliance, the second element, if the defendant made an intentionally false statement regarding the defendant's product, even if the statement entailed little overt reference to plaintiff or plaintiff's product. Materiality in Lanham Act false advertising cases may be established by a showing that the representation was likely to deceive a consumer and influence his or her purchasing decision. Finally, because a likely injury is less certain than an actual injury, a plaintiff need not prove that it has actually been injured to establish the commercial injury necessary for Lanham Act standing, so long as the likelihood of injury is present.

Damages available under the Lanham Act include: (1) defendant's profits; (2) any damages sustained by the plaintiff; and (3) the costs of the action. In some circumstances, a court may award both actual damages and the defendant's profits resulting from the false advertising. The defendant in a false advertising case brought under the Lanham Act will usually try to negate at least one of the elements the plaintiff must show in order to succeed.

TNC cases involving alleged violations of the Lanham Act include *Boston Cab Dispatch Inc., et al. v. Uber Technologies, Inc.*, Civil Action No. 13-10769-NMG (Massachusetts); *Yellow Group, LLC, et al v. Uber Technologies, Inc.*, Case No. 12-cv-7967 (Illinois) and *Greater Houston Transportation Company, et al. v. Uber Technologies, Inc and Lyft, Inc.*, Civil Action No. 14-941 (Texas).

In *Boston Cab Dispatch Inc., et al. v. Uber Technologies, Inc.*, Civil Action No. 13-10769-NMG (Massachusetts), Plaintiffs alleged that Uber's use of an unlicensed dispatch system ignores regulations that are essential to public safety, and that Uber uses a payment system that illegally overcharges customers. More specifically, the Boston Complaint alleges, *inter alia*, that Uber: (i) does not have a regular program of inspecting, licensing and insuring vehicles as required by regulations; (ii) enlists drivers who have not met proper license requirements; (iii) forces consumers to waive their rights to hold Uber accountable for dangerous, offensive, harmful, or unsafe behavior by its drivers; (iv) ignores laws designed to protect consumers with disabilities; (v) does not equip its cars with essential safety protections as required; (vi) claims it is a car service in order to buy less expensive vehicle insurance; (vii) claims it conducts business outside Boston where insurance rates are lower; (viii) deceives consumers by falsely representing that drivers and vehicles are properly insured; (ix) fails to disclose the fare until after the ride is complete; (x) illegally charges a 20% gratuity; and (xii) fails to share required trip data.

Uber filed a Motion to Dismiss, and on February 28, 2014, United States Magistrate Judge Marianne B. Bowler issued a report and recommendation on the motion. The Court recommended dismissing Count I (Misrepresentation of Services in Violation of Lanham Act), finding no explicit misrepresentation; but the Court did find an implicit misrepresentation because Uber taxis charge illegal fares, unlawfully use cell phones, and unlawfully limit payment

options to credit cards. However, even with this implicit misrepresentation, the Court did not find any commercial advertising or promotion because the alleged activity only targeted individual riders. The Court also did not find any harm to the plaintiffs' business because of any misrepresentation. The Court recommended not dismissing Count II (Misrepresentation of Connection, Association, Sponsorship and Approval of Lawful Taxi Association in Violation of Lanham Act) because it can be reasonably inferred that the dispatching of Boston Cabs, with their unique identifying features, created confusion leading some to believe Uber and Boston Cab were affiliated. The Court also found that Uber may have caused damages to Boston Cab because it takes business away from taxis by the use of Uber Black Cars and SUVs.

In *Yellow Group, LLC, et al v. Uber Technologies, Inc.*, Case No. 12-cv-7967 (Illinois), Plaintiffs, Chicago taxi company, Yellow Group, and its subsidiaries and affiliates, filed a claim against Uber for false advertising under Section 43(a) of the Lanham Act and its state law corollary, the Illinois Fraud and Deceptive Practices Act, by misrepresenting its vetting of "fleet partners" and a false association with "fleet partners". On September 30, 2013, the Court issued its Decision and Order with respect to Uber's Motion to Dismiss the Complaint. The Court denied Uber's motion to dismiss for lack of subject matter jurisdiction, as well as its motion to dismiss several of the claims for false advertising, misrepresentation and deceptive practices under the Lanham Act, and the Illinois Fraud and Deceptive Practices Act. However, Uber's motion to dismiss for failure to state a claim for relief was granted as to Uber's alleged statements about the "premium" and "high quality" nature of its services and its representation that it charged standard taxi rates plus a 20% "gratuity." The motion was also granted as to the taxi plaintiffs' claims regarding insurance misrepresentation, and that Uber induced breaches of its agreements with drivers regarding the use of their trademarks.

In *Greater Houston Transportation Company, et al. v. Uber Technologies, Inc., and Lyft, Inc.*, the plaintiffs allege that Uber and Lyft are misrepresenting their services as “ridesharing”, although they are in fact operating “for hire” without following the applicable “for hire” regulations including obtaining licenses, paying licensing fees, obtaining proper insurance, and charging regulated rates. The Complaint references the Cease and Desist letter issued on March 26, 2014 by the City of San Antonio Police Department and the 26 citations that the Houston Administration & Regulatory Affairs Department issued to Uber and Lyft for noncompliance with the Code. Plaintiffs allege that Uber and Lyft have made various misrepresentations, including, referring to their services as “ridesharing”, stating that they can operate legally, and misrepresentations of insurance coverage and safety.

B. State Consumer Protection Laws

There are also state law corollaries to the Lanham Act’s claim for misrepresentation of services. *See* Deceptive Trade Practices Act Violation (Illinois), Consumer Fraud and Deceptive Business Practices Act Violation (Illinois), Consumer Protection Act Violation (RCW). Causes of action under these statutes, though similar to the Lanham Act in terms of elements, are nevertheless distinguishable from the Act because they focus on “consumer protection”, whereas the Act focuses solely on competition related injuries. For example, a state statutory corollary to the Lanham Act was implicated in *Western Washington Taxicab Operators Association v. Uber Technologies, Inc.*, Case No. 14-2-08259-2 (Washington).

In *Western Washington Taxicab Operators Association*, Washington Taxicab Operators’ Association, an organization of Seattle and King County taxicab operators, filed an action against Uber Technologies Inc. for unfair and deceptive practices in violation of Washington’s Consumer Protection Act, resulting from Uber’s violation of taxi and for-hire regulations

imposed by the City of Seattle, King County and Washington State. The Operators' Association claims that Uber deprives its members of fares and tips they expect as licensed drivers, and harms the public interest by depriving the public of the rights and protections provided to passengers within those regulations (trained drivers, safe and properly insured vehicles). The Operators Association seeks damages in the amount equal to the lost fares and tips due to Uber's alleged unlawful dispatch operation, treble damages, reasonable attorneys' fees and costs, and an injunction prohibiting Uber's operations. It appears that this litigation targets Uber Black only.

C. Federal Law: Telephone Consumer Protection Act, 47 USC § 227

The United States Congress passed the Telephone Consumer Protection Act ("TCPA") in 1991. The Federal Communications Commission is charged with issuing rules and regulations implementing the TCPA. The TCPA restricts telephone solicitations and the use of automated telephone equipment. The TCPA limits the use of automatic dialing systems, artificial or prerecorded voice messages, SMS text messages, and fax machines. It also requires fax machines, autodialers, and voice messaging systems to identify and have contact information of the entity using the device in the message. The essence of the TCPA is that a consumer has to give prior express consent before he or she can receive a telephone solicitation. Some general restrictions under the TCPA include:

- Calling residences before 8 am or after 9 pm local time;
- A company must keep a company-specific "do-not-call" list of consumers that must be honored for 5 years;
- Solicitors must honor "National Do Not Call Registry"; and
- Prohibits calls made using an artificial voice or recording.

The TCPA applies to both voice and text messages if they are transmitted for marketing purposes. The TCPA has been interpreted to prohibit the sending of unsolicited text messages to cell phones, with limited exceptions, such as messages with emergency information. Although the TCPA is a federal law, there is a provision in the law allowing a plaintiff to bring suit in state court, if otherwise permitted by the laws or rules of court of such state. The TCPA provides for actual statutory damages ranging from \$500 to \$1500 per unsolicited call/message.

Plaintiffs raised TCPA claims in *Noorpavar v. Uber Technologies, Inc.*, Case No. 2:14-cv-01771-JAK-JCG (California). Plaintiff was an Uber customer who alleges that Uber sent him unauthorized text messages regarding Uber's services; text messages which are charged to Plaintiff under his cell phone plan, despite the Plaintiff notifying Uber that he no longer wanted to receive such messages. Plaintiff is seeking class action status.

D. Unfair Competition

Some states recognize unfair competition as an independent, common-law cause of action, while others have adopted state statutes which directly address unfair competition. Additionally, federal law may apply in the areas of trademarks, copyrights, and false advertising, and a claim for relief in federal court for such a tort must rest on a federal statute.

At common law, an unfair competition claim requires a plaintiff to show: (i) that the defendant's activities have caused confusion with, or have been mistaken for, the plaintiff's activities in the mind of the public, or are likely to cause such confusion or mistake; or (ii) the defendant has acted unfairly in some manner. The doctrine has developed into two broad categories, first, the term "unfair competition" refers to those torts that result in consumer confusion, such as, the source of the product or the "palming off" of a product as those of a rival trader; and second, "unfair trade practices" by extension of the principle that one may not

appropriate a competitor's skill, expenditure, and labor. This has resulted in the granting of relief in cases where there was no fraud on the public, but rather where the plaintiff could show that defendant misappropriated a benefit or 'property right' for commercial advantage.

The essence of unfair competition is the bad faith misappropriation of the labors and expenditures of another, likely to cause confusion or to deceive purchasers as to the origin of the goods. To establish a cause of action for unfair competition, the effort to profit from the labor, skill, expenditures, name and reputation of others must be demonstrated. Courts have determined that to bring an action for unfair competition, that parties need not be actual competitors, or rest a claim solely on grounds of direct competition, but on the broader principle that property rights of commercial value are to be, and will be protected from, any form of unfair invasion or infringement. The courts have thus recognized that in the complex pattern of modern business relationships, persons in theoretically noncompetitive fields may, by unethical business practices, inflict as severe and reprehensible injuries upon others as can direct competitors.

Plaintiffs' asserted claims of unfair competition in the following case(s): *Boston Cab Dispatch Inc., et al. v. Uber Technologies, Inc.*, Civil Action No. 13-10769-NMG (Massachusetts); *Yellow Group, LLC, et al v. Uber Technologies, Inc.*, Case No. 12-cv-7967 (Illinois); *Manzo Miguel, et al. v. Uber Technologies, Inc.*, Case No. 1:2013cv-02407 (Illinois) (see Deceptive Acts & Practices Subsection for summary); *Greater Houston Transportation Company, et al. v. Uber Technologies, Inc., and Lyft, Inc.*, Civil Action No. 14-941 (Texas); *The Yellow Cab Company, et al. v. Uber Technologies, Inc., et al.* (Maryland)

In *Boston Cab Dispatch Inc., et al. v. Uber Technologies, Inc.*, Civil Action No. 13-10769-NMG (Massachusetts), Uber argued in its motion to dismiss that the claim which sets out

a common law claim for unfair competition should be dismissed because it was duplicative of the Lanham Act and chapter 93a claims; however, this request was denied.

In *Yellow Group, LLC, et al v. Uber Technologies, Inc.*, Case No. 12-cv-7967 (Illinois), Plaintiffs asserted a claim against Uber for unfair competition on the basis that Uber requires drivers to violate city and state laws prohibiting use of cellular phones while driving, and causing drivers to violate federal and state regulations that require taxi services to be equally available to members of the disabled community.

In *Greater Houston Transportation Company, et al. v. Uber Technologies, Inc., and Lyft, Inc.*, the plaintiffs allege that Uber and Lyft are operating “for hire” without following the applicable “for hire” regulations including obtaining licenses, paying licensing fees, obtaining proper insurance, and charging regulated rates. As a result, plaintiffs claim that defendants are unfairly competing with plaintiffs and that they have been damaged by Uber and Lyft’s illegal acts because they render the plaintiffs’ licenses and permits useless.

E. Deceptive Acts & Practices

In order to protect the public and to provide a remedy for injuries resulting from consumer fraud, many states have adopted statutes which seek to protect the consumer for deceptive business acts and/or practices. For example, New York’s General Business Law provides that deceptive acts or practices in the conduct of any business, trade, or commerce or in the furnishing of any service in New York are unlawful. Most statutes regarding deceptive business acts and/or practices apply to virtually all economic activity, and seek to secure an honest marketplace.

In most states, the Attorney General or any person who has been injured by reason of any deceptive trade practices violation may bring an action to enjoin such unlawful act or practice

and to recover damages. A plaintiff who brings an action under the statute must prove: (1) that the challenged act or practice was consumer-oriented; (2) that it was misleading in a material way; and (3) that the plaintiff suffered injury as a result of the deceptive act.

Plaintiffs raised Consumer Protection/Deceptive Acts & Practices claims in *Boston Cab Dispatch Inc., et al. v. Uber Technologies, Inc.*, Civil Action No. 13-10769-NMG (Massachusetts); *Yellow Group, LLC, et al v. Uber Technologies, Inc.*, Case No. 12-cv-7967 (Illinois); *Manzo Miguel, et al. v. Uber Technologies, Inc. et al.*, Case No. 1 :2013cv-02407 (Illinois); *Caren Ehret et al v. Uber Technologies Inc.*, Case No. 12-CH36714 (Illinois); *Western Washington Taxicab Operators Association v. Uber Technologies, Inc.*, Case No. 14-2-08259-2 (Washington); *The People of the State of New York v. Lyft, Inc.*, Case No. 451476/2014 (New York) (attorney general brought seeks injunction behalf of the State against Lyft for engaging in deceptive practices in the state); *The City of New York, et al. v. Lyft, Inc.*, Case No. 451477/2014 (New York) (City seeks injunction based on Lyft's violation of local law regarding for-hire vehicle service).

In *Yellow Group, LLC, et al v. Uber Technologies, Inc.*, Case No. 12-cv-7967 (Illinois), Plaintiffs, Chicago taxi company, Yellow Group, and its subsidiaries and affiliates, allege that Uber violates city, state and federal law designed to protect public safety and welfare through the use of deceptive business methods. The Complaint asserts a claim against Uber for false advertising under Section 43(a) of the Lanham Act and its state law corollary, the Illinois Fraud and Deceptive Practices Act, by misrepresenting its vetting of "fleet partners" and a false association with "fleet partners". On September 30, 2013, the Court issued its Decision and Order with respect to Uber's Motion to Dismiss the Complaint. The Court denied Uber's motion to dismiss for lack of subject matter jurisdiction, as well as its motion to dismiss several of the

claims for false advertising, misrepresentation and deceptive practices under the Lanham Act and the Illinois Fraud and Deceptive Practices Act. However, Uber’s motion to dismiss for failure to state a claim for relief was granted as to Uber’s alleged statements about the “premium” and “high quality” nature of its services, and its representation that it charged standard taxi rates plus a 20% “gratuity.” The motion was also granted as to the taxi plaintiffs’ claims regarding insurance misrepresentation, and that Uber induced breaches of its agreements with drivers regarding the use of their trademarks.

In *Manzo Miguel, et al. v. Uber Technologies, Inc.*, Case No. 1:2013cv-02407 (Illinois), a taxicab driver and a livery driver brought suit against Uber on behalf of themselves and classes of similarly-situated persons for unfair competition in violation of the Consumer Fraud Act and Deceptive Business Practices Act. The plaintiffs allege that Uber violates Section 2 of the Consumer Fraud Act and Section 2 of the Deceptive Trade Practices Act by: (i) misrepresenting to passengers that the 20% automatic charge is a “gratuity”, when half of it is retained by Uber, thereby increasing the charge for taxi transportation in excess of standard, metered or permissible amounts; and (ii) publishing false, misleading and confusing representations suggesting that Uber is a transportation service when it is not. Plaintiff further alleges that Uber’s use of its GPS-enabled smartphone application to measure and calculate fares for livery transportation, violates the City’s code, and Uber allegedly misrepresents that its fare charges for livery transportation are lawful, when they are not. Plaintiffs seek class certification and damages in excess of \$50,000. Currently, Uber’s Motion to Dismiss is pending.

In *Ehret, et al v. Uber Technologies Inc.*, Case No. 12-CH36714 (Illinois), Caren Ehret, an Uber customer in Chicago, filed a lawsuit in state court against Uber alleging she was defrauded by Uber. In her complaint, Ehret claims Uber violated the Consumer Fraud Act and

Deceptive Business Practices Act by charging a 20 percent compulsory “gratuity”, but keeping “a substantial portion of this additional charge for itself as its own additional revenue and profit.” The suit also claims Uber passes along to riders “credit-card processing fees in violation of City of Chicago Ordinances/Rules applicable to taxicabs.”

V. State Antitrust Claims

Antitrust laws are designed to protect and promote competition. In addition to federal antitrust laws, there has been a significant increase in state antitrust statutes which complement the federal statutes. For example, the stated purpose of the Maryland Antitrust Act is “to complement the body of federal law governing restraints of trade...in order to protect the public and foster fair and honest intrastate competition”. The Maryland Antitrust Act prohibits four general types of conduct:

- Any “contract, combination, or conspiracy” which “unreasonably restrain[s] trade or commerce”
- Any monopolization or attempt to monopolize “any part of the trade or commerce within the State”
- Several types of price discrimination
- A tie-in or exclusive dealing agreement which may have an anticompetitive effect

In cases where federal jurisdiction may be questionable, state antitrust laws provide an alternative way to bring antitrust claims. Plaintiffs pursued a state antitrust claim in *The Yellow Cab Company, et al. v. Uber Technologies, Inc., et al.* (Maryland) as described below.

In The Yellow Cab Company, et al. v. Uber Technologies, Inc., et al. (Maryland), several Maryland taxicab services and their drivers brought an action against Uber and three Uber drivers alleging that (i) through UberBlack and UberSUV, Uber causes its contract drivers to charge mandatory, uniform prices which do not enjoy state action immunity from antitrust restrictions, (ii) through UberX, Uber causes its contract drivers to charge mandatory, uniform prices so far below the market rate as to constitute illegal predatory pricing with which Plaintiffs are unable to compete; and (iii) through all of its services, Uber employs unregulated surge pricing based upon favorable market conditions, which results in mandatory, uniform price

multiples higher than the prices Plaintiffs can legally charge for the same services. Plaintiffs allege that these actions unreasonably restrain commerce in the vehicle transportation industry in Baltimore City and Montgomery County, constitute well-planned efforts to monopolize the industry, destroy competition for transportation companies and taxicab drivers, and violate the Maryland Antitrust Act.

VI. Racketeering – Corrupt Business Practices & Scheme to Defraud

Although not traditionally used as an unfair business practice cause of action, racketeering claims have recently been asserted against TNCs by competitor businesses in order to aggressively attack the illegal nature of some TNC's operations. The Racketeer Influenced and Corrupt Organizations Act ("RICO") was enacted by Congress in 1970 to combat the infiltration of organized crime into interstate commerce by gaining control of legitimate businesses. Congress included a civil remedy provision that allows private parties to sue for injuries to their business or property caused "by reason of" a defendant's violation of RICO. Under this provision, a private plaintiff may sue in state or federal court to recover treble damages and attorneys' fees caused by a RICO violation. RICO generally outlaws four types of activities:

1. Use or Investment: investing in an enterprise, any income derived from a pattern of racketeering activity;
2. Acquire or Control: using a pattern of racketeering activity, or the collection of an unlawful debt, to acquire or maintain control over an enterprise;
3. Conduct Business Affairs: conducting the affairs of an enterprise through a pattern of racketeering, or the collection of an unlawful debt ; and
4. Conspiracy: conspiring to perform any of the above activities.

In simple terms, a cause of action under RICO requires the plaintiff to plead, and establish by a preponderance of evidence, that: (1) a culpable person; (2) who is employed by, or associated with, an enterprise; (3) which is engaged in interstate commerce; (4) conducts or participates, directly or indirectly, in the enterprise's affairs; (5) by the commission of two or more acts; (6) constituting a pattern; (7) of "racketeering activity" or collection of unlawful

debt;⁴ and (8) such activity caused compensable injury to the plaintiff. The injury to business or property must occur “by reason of” the RICO violation. Generally speaking, a RICO injury is actionable if it is a concrete financial loss, or at the very least, a loss which is not speculative or an indeterminable future loss. The most common form of commercial litigation and RICO claims involve mail or wire fraud.

Plaintiffs have asserted RICO claims in the following cases: *Boston Cab Dispatch Inc., et al. v. Uber Technologies, Inc.*, Civil Action No. 13-10769-NMG (Massachusetts); *Greater Houston Transportation Company, et al. v. Uber Technologies, Inc. and Lyft, Inc.*, Civil Action No. 14-941 (Texas) and *Greenwich Taxi, Inc., et al. v. Uber and Lyft*, Case No. 3:14-cv-733 (Connecticut).

The plaintiffs in *Greenwich Taxi, Inc.* allege RICO violations. The alleged RICO violations are based on the theory that the defendants have used the internet to transmit fraudulent misrepresentations to consumers about fares and to transmit false claims of an association between the defendants and plaintiffs (w/r/t the “partnership” with taxicab drivers). These fraudulent actions, the plaintiffs argue, constitute wire fraud from which Defendants are making a profit, in violation of the RICO statute.

In *Boston Cab Dispatch Inc., et al. v. Uber Technologies, Inc.*, Civil Action No. 13-10769-NMG (Massachusetts), more fully discussed *supra*, the court found that the complaint adequately particularized a scheme to defraud and to deceive sufficient to maintain a RICO claim. However, it also found that the allegation of use of the internet to transmit representations thousands of times for a period in excess of five months did not meet the specificity requirement for stating the time and place of the use of interstate wire communications.

⁴ The collection of unlawful debt is itself a RICO violation without a “pattern of racketeering activity.”

VII. Disability Discrimination

The Americans with Disabilities Act of 1990 (ADA) prohibits discrimination on the basis of disability in employment, state and local government, public accommodations, commercial facilities, transportation, and telecommunications. Through the ADA and specifically through Title 49 of the Code of Federal Regulations, Section 37, the Federal Government has set the floor for the minimum accessible services that must be offered throughout the United States. 49 CFR 37.29 specifically addresses private entities providing taxi service. According to the statute, a passenger cannot be discriminated against due to their disability, which includes “refusing to provide service to individuals with disabilities who can use taxi vehicles, refusing to assist with the stowing of mobility devices, and charging higher fares or fees for carrying individuals with disabilities and their equipment than are charged to other persons.” Some municipalities have taken the standards set by the Federal government through the ADA, as codified in the Code of Federal Regulations, and have the option to expand upon such requirements. New York City, for example, takes a very progressive approach to paratransit services provided within its local jurisdiction.

Plaintiffs in *Ramos, et al. v. Uber Technologies, Inc., and Lyft Inc.* allege that Uber and Lyft are violating the ADA by, *inter alia*, (i) failing to provide wheelchair accessible transportation vehicles for their transportation needs and other accommodating services (such as storage of wheelchairs); (ii) allowing their vehicles-for-hire to deny service to the disabled; and (iii) not offering any training or guidance to vehicles-for-hire that use their service so that they will lawfully meet the needs of the disabled.

VIII. Tortious Interference with Business

Tortious interference with business (also known as tortious interference with contract) occurs when one tries to prevent the performance of a contract between others. This commonly occurs when a competitor makes false statements against a rival company in order to deter customers from doing business with the rival. A claim for interference with prospective economic relations is a separate claim which is distinguishable from the interference with contract claim, because the former does not require the existence of a contract and requires proof of a “wrongful act.”

A. **Intentional Interference with Contractual Relations**

Although the specific elements of intentional interference with contractual relations may vary from state to state, the general elements include: (i) the existence of a valid contract between the plaintiff and a third party; (ii) defendant’s knowledge of this contract; (iii) defendant’s intentional acts designed to induce a breach or disruption of the contractual relationship; (iv) actual breach or disruption of the contractual relationships; and (v) resulting damage.

In California, where this claim has been asserted in *United Independent Taxi Drivers Inc., et al. v. Uber Technologies, Inc. and Lyft, Inc.*, Case No. BC513879 (California), this tort requires only proof of interference (such as interference causing a mere delay in performance), not breach of the underlying contract. An existing, enforceable contract must exist, and where there is no such contract, only a claim for interference with prospective advantage may be pleaded. Intentional interference with contractual relations has also been asserted in *Boston Cab Dispatch Inc., et al. v. Uber Technologies, Inc.*, Civil Action No. 13-10769-NMG.

In *Boston Cab Dispatch Inc., et al. v. Uber Technologies, Inc.*, Civil Action No. 13-10769-NM (Massachusetts), more fully discussed *supra*, Uber argued on its motion to dismiss that Count VI, which sets out a common law claim for interference with contractual relationships, should be dismissed because it derives from the Lanham Act and chapter 93a claims. The Court recommended not dismissing Count VI because not all of the Lanham Act Claims and Ch. 93a claims were dismissed. Uber also argued that Count VI should be dismissed because Plaintiffs did not satisfy the elements of an intentional interference with contractual relationships claim. The Court found that plaintiffs did establish plaintiffs' contractual relationship with its drivers, and Boston Cab's contract with Creative Mobile Technologies, but that the complaint did not show any harm suffered by plaintiffs as a result of Uber's interference with the contracts. Despite this deficiency, the Court recommended not dismissing the Counts and to give plaintiffs the opportunity to seek leave to amend their complaint to demonstrate the harm to the contractual relationships.

In *United Independent Taxi Drivers Inc., et al. v. Uber Technologies, Inc. and Lyft, Inc.*, Case No. BC513879 (California), plaintiffs allege that Uber, Lyft and SideCar have committed intentional or, in the alternative, negligent interference with prospective economic relations. The Complaint requests an accounting of all receipts and disbursements of Defendants from the time that they commenced their operations in Los Angeles, and payment of damages to Plaintiffs (of the amount due from Defendants as a result of the accounting). Plaintiffs allege that defendants are illegally operating taxicab services without the proper permits, licensure or insurance. Through this violation, Defendants are taking passengers away from Plaintiffs, thereby damaging their ability to provide cost-effective transportation in accordance with local regulations.

Plaintiffs claim that this interferes with the economic relationship between Plaintiffs, their members and respective drivers, and the consumers of public transportation.

B. Interference with Prospective Economic Relations

There are two theories upon which a claim for interference with prospective economic relations may be asserted: (i) *intentional* interference with prospective economic relations and *negligent* interference with prospective economic relations. Both impose liability for improper methods of disrupting or diverting the business relationship of another.

i) Negligent Interference with Prospective Economic Relations

To assert a claim for negligent interference with prospective economic relations, the defendant must have owed the plaintiff a duty of care as a matter of law. Although the specific elements may vary from state to state, generally, the courts will consider the following six (6) elements when evaluating a claim for negligent interference with prospective economic relations: (i) the extent to which the transaction was intended to affect the plaintiff; (ii) the foreseeability of the harm to the plaintiff; (iii) the degree of certainty that the plaintiff suffered injury; (iv) the closeness of the connection between the defendant's conduct and the injury suffered; (v) the moral blame attached to the defendant's conduct; and (vi) the policy of preventing future harm.

Among the factors for establishing a duty of care is the "blameworthiness" of the defendant's conduct. For negligent interference, the defendant's conduct is blameworthy only if it was independently wrongful apart from the interference itself (i.e. an act that is proscribed by some constitutional, statutory, regulatory, common law, or other determinable legal standard.)

Further, the above-mentioned six factors place a limit on recovery by focusing judicial attention on the foreseeability of the injury and the nexus between the defendant's conduct and the plaintiff's injury. Following these principles, recovery for negligent interference with prospective economic advantage will be limited to instances where the risk of harm is foreseeable and is closely connected with the defendant's conduct, where damages are not wholly speculative and the injury is not part of the plaintiff's ordinary business risk.

b) Intentional Interference with Prospective Economic Relations

A claim for interference with prospective economic advantage protects the same interest in stable economic relationships as does the tort of interference with a contract, but *does not require proof of a legally binding contract*. The elements of intentional interference with prospective economic relations are (i) the existence of an economic relationship between the plaintiff and some third party, that probably would have benefitted the plaintiff; (ii) the defendant's knowledge of the relationship; (iii) the defendant engaged in wrongful acts such as breach of contract, misrepresentation, or other violations of the law; (iv) actual disruption of the relationship; and (v) the defendant's wrongful conduct was a substantial factor in the damages.

To prove intentional interference with prospective economic advantage, it is sufficient to show that the defendant was certain or substantially certain that the plaintiff's relationship with the third party would be disrupted as a result of the defendant's actions, whether or not the acts were intentional.

Several cases involving TNCs include claims for tortious interference with contractual and/or advantageous relations. *See Lavitman v. Uber Technologies, Inc.*, Civil Action No. 12-4490 (Massachusetts); *United Independent Taxi Drivers Inc., et al. v. Uber Technologies, Inc. and Lyft, Inc.*, Case No. BC513879 (California); *Goncharov, et al. v. Uber Technologies, Inc.*,

Case No. CGC-12-526017 (California); *O'Connor, et al. v. Uber Technologies, Inc.*, Case No. 4 :2013-cv-03826 (California); *Yellow Group, LLC, et al v. Uber Technologies, Inc.*, Case No. 12-cv-7967 (Illinois); *The Yellow Cab Company, et al. v. Uber Technologies, Inc., et al.* (Maryland).

In *Lavitman v. Uber Technologies, Inc.*, Civil Action No. 12-4490 (Massachusetts) taxi driver David Lavitman (who also drives for Uber) filed a complaint accusing Uber of violating a state law which states that “no employer or other person” may take any portion of a worker’s gratuity. The lawsuit refers to a company document that explains how Uber and the driver divide the earnings: “We will automatically deposit the metered fare + 10% tip to your bank account each week.” Plaintiff alleges that customers are regularly assessed a 20% gratuity, but that the company retains as much as half that amount. The Plaintiff is seeking class action status.

In *Yellow Group, LLC, et al v. Uber Technologies, Inc.*, Case No. 12-cv-7967 (Illinois), Plaintiffs, Chicago taxi company Yellow Group, and its subsidiaries and affiliates, allege that Uber, whose business model in Chicago is built upon the use of drivers and vehicles from other licensed transportation companies, avoids or seeks to avoid licensing, registration, and/or compliance with the law. The Complaint also alleges that Uber prohibits plaintiffs from complying with current regulations regarding data collection, including mandated reporting of all payments collected (including fares and extra charges) and whether the fare was dispatched or hailed. Plaintiffs argue that when an affiliated driver does not inform the affiliation of its relationship with Uber, Uber places the affiliation at risk because the licensed affiliation is now unable to ensure that its drivers are in compliance with applicable laws.

IX. Government Actions

State and local government agencies can take action against entities within their jurisdiction for violating local and state laws. Typically, the government agency seeks an injunction, which directs the entity to stop its unlawful practices, as well as civil penalties to discourage other entities from engaging in the same unlawful action.

A. Common Law Injunctive Relief

An injunction, or injunctive relief, is an equitable remedy in the form of an *in personam* court order. There are two types of injunctions: a temporary restraining order (“TRO”) and a preliminary injunction. Both types of injunctions are orders that direct the defendant to do something or require the defendant to refrain from doing something. Courts find prohibitory injunctions easier to administer. Though the specific elements may vary from state to state, in general, there are four elements that must be met for a court to grant a preliminary injunction or a TRO: (i) the moving party’s likelihood of success on the merits; (ii) the likelihood that the moving party will suffer irreparable harm absent preliminary injunctive relief; (iii) the balance of harms between the moving party and the non-moving party; and (iv) the effect of the injunction on the public interest.

In many jurisdictions, a likelihood of irreparable harm with no adequate remedy at law is the most important factor. A judge will consider how likely it is that the injury will come to pass; the nature of the harm; whether it is truly irreparable; and whether the harm, even if likely and irreparable, can be redressed with money damages (in which case a judge will likely find that a TRO or preliminary injunction is not warranted).

The second element - balancing of the harms - is a fact-based analysis of who would suffer the greater harm should the injunction not be granted. If the balance is unclear, however,

then typically courts will more closely examine the likelihood of success of the action, the next element of a preliminary injunction.

The measure of the likelihood of success on the merits can vary from court to court, although no judge will require an action to have a certainty, or even near-certainty of success, before they grant a preliminary injunction. Similarly, a frivolous lawsuit will never be able to satisfy this element. In between the extremes, however, there is less clarity. Some judges will require a probability of success to grant an injunction. Others require merely that the movant has raised a fair question over the existence of a right.

The final element is whether the public interest would be furthered by the granting, or denying, of the preliminary injunction. Depending on the nature of the case, this element may either be a formality, or it may be extremely important. Typically, those cases that challenge a government action are those where the public interest element most often comes into play.

Injunctive relief has been sought in *City of Columbus v. Uber Technologies, Inc.*, Case No. 2014 EVH 60125 (Ohio); *Yellow Group, LLC, et al v. Uber Technologies, Inc.*, Case No. 12-cv-7967 (Chicago); *Greater Houston Transportation Company, et al. v. Uber Technologies, Inc and Lyft, Inc.*, Civil Action No. 14-941 (Houston)

In *City of Columbus v. Uber Technologies, Inc.*, Case No. 2014 EVH 60125 (Ohio), the City of Columbus filed suit against Uber and three Uber drivers, seeking injunctive relief to stop all Defendants from operating in violations of the City's regulations. Uber's Answer is pending and a hearing date has not yet been set. The suit comes after the City Council has been collecting more information about the services of Uber, UberX and Lyft through public hearings.

In *Yellow Group, LLC, et al v. Uber Technologies, Inc.*, Case No. 12-cv-7967 (Chicago), Plaintiffs sought to enjoin Uber from three activities: (i) calculating livery fares by the use of a

smartphone device measuring distance and time; (ii) providing livery services for which fares are not fixed in advance; and (iii) charging a mandatory fee for taxicab rides that exceeds the maximum rates set by law. Plaintiffs' Motion for a Preliminary Injunction was denied on September 30, 2013. The Court ruled that plaintiffs failed to show that injunctive relief was required to prevent the anticipated harm. In reaching this conclusion, the Court cites to plaintiffs' acknowledgment that the Chicago Department of Business Affairs and Consumer Protection (the "BACP"), the agency tasked with regulating ground transportation in the City, has commenced an investigation of Uber, has issued citations to Uber, and that the City has proposed additional regulations to further curtail Uber's business practices.

B. Injunctive Relief Prescribed by Statute

State and local government agencies are often permitted by statute to enjoin entities within their jurisdiction from continuing business practices which violate the laws within the agency's jurisdiction. For example, in New York, the Attorney General of the State of New York, authorized by statute bring an action to enjoin various violation of the State's vehicle and traffic law, business corporations law, insurance law, executive law, and various city codes.

In *The People of the State of New York, et al. v. Lyft* (New York), the Attorney General of the State of New York and the Superintendent of Financial Services of the State of New York brought an action against Lyft to enjoin it from continuing to operate in the State of New York and for civil penalties for its violation of various local and state statutes. The Attorney General and Superintendent allege that Lyft operates as a for-hire vehicle, but does not follow the for-hire vehicles laws prescribed by the State of New York such as, adequate disclosure of fares to passengers and employing drivers with commercial licenses. They further allege that Lyft illegally solicits and sells three excess line group insurance policies issued by an insurance

company not authorized to do business in the State of New York. For these reasons, an action was brought to enjoin Lyft from violating local and state laws, and for an order directing an accounting of profits, disgorgement of profits, and civil penalties of up to \$5,000 for each violation of the New York General Business Law.

Similarly, in *The City of New York, et al. v. Lyft* (New York), the City of New York and The New York City Taxi and Limousine Commission brought an action to enjoin Lyft from promoting, operating or otherwise engaging in the unlicensed “ride-sharing transportation” service, and from advertising and soliciting Lyft Community drivers for its service. The Complaint alleges that Lyft’s services in New York City violates the City’s Administrative Code because, among other things, (i) Lyft does not require New York City Lyft Community drivers to obtain a for-hire driver’s license; (ii) Lyft does not have a license to operate its communications system which dispatches for-hire vehicles; (iii) Lyft does not have a license to operate a base station; and (iv) Lyft does not have a license to operate in New York City. For these reasons, the City of New York and the TLC seek a declaration that Lyft’s operations and solicitation of drivers is unlawful, and an injunction prohibiting Lyft from operating and soliciting drivers.

X. Constitutional Challenges

Protection from unlawful government action is rooted in many state statutes as well as state constitutions. With respect to the latter, the 14th Amendment of the U.S. Constitution, as well as many state constitutions, require that all citizens receive equal protection of the laws. This essentially requires that similarly-situated individuals and business must be treated the same. As new regulations are introduced to address the advent of TNCs, cases have been filed which argue that because TNCs are not a new/innovative service, but rather a re-packaged traditional transportation service, the new laws are treating TNCs differently than, and to the detriment of traditional for-hire vehicle companies. Below we have also summarized the elements of an equal protection cause of action. Similarly, the 5th Amendment of the U.S. Constitution provides that the government may take private property for public use only if it provides just compensation. Physical and regulatory takings may occur, the latter being the theory upon which many for-hire transportation companies have based their claims, as discussed below.

A. Constitutional Claims: Equal Protection

The Equal Protection Clause of the 14th amendment of the U.S. Constitution, as well as similar clauses in many state constitutions, prohibits states from denying any person within its jurisdiction the equal protection of the laws. *See* U.S. Const. Amend. XIV. On a basic level, this requires that a state must treat an individual in the same manner as others in similar conditions and circumstances. The equal protection clause is not intended to provide “equality” among individuals or classes but only “equal application” of the laws. Unless the classification upon which a claimant believes he is treated differently is based on one of the protected classes (*e.g.*, race, travel, alienate, national origin, gender), the government must only prove that it has a rational basis for differentiating between the two similarly situated classes that relates to a

legitimate government interest. Equal protection violations have been asserted in *Taxicab Paratransit Association of California v. Public Utilities Commission of the State of California*, Case No. C076432 (California) and *Illinois Transportation Trade Association et al., v. City of Chicago*, Case No. 1:14-cv-00827 (Illinois).

In *Taxicab Paratransit Association of California v. Public Utilities Commission of the State of California*, Case No. C076432 (California), plaintiff alleges that the California Public Utilities Commission (the “CPUC”) violated its members rights to equal protection under the U.S. and CA constitutions by passing Decision 13-09-045, entered in September 2013, which adopted rules and regulations for TNCs. Specifically, the deviations under the new TNC law from existing requirements imposed upon charter-party carriers regarding insurance and background checks for drivers are alleged to deprive members of the Taxicab Paratransit Association of California (“TPAC”) from the fair application of California laws.

B. Constitutional Claims: Takings Clause

The 5th Amendment of the U.S. Constitution prohibits the government from taking private property for public use without just compensation. *See* U.S. Const. Amend. V. The “taking” can be a literal physical taking or a regulatory taking. A physical taking occurs when the government takes ownership or use of a piece of land or property. A regulatory taking occurs when the government promulgates regulations that devalue the property of private citizens so greatly that it leaves no reasonable economically viable use of the property.

The plaintiff taxi medallion owners in *Illinois Transportation Trade Association et al., v. City of Chicago*, Case No. 1:14-cv-00827 (Illinois), allege that the City of Chicago has violated the 5th Amendment by allowing TNCs to operate in the City. They argue that the effect of allowing TNCs to encroach upon the on-demand for-hire market, without adhering to the same

costly regulations as other on-demand operators, is the depreciation of medallion values to the extent that it leaves no reasonable economically viable use of the property.

Specifically, prior Illinois legal precedent recognizes individual medallions as a property right and holds that the relationship between the City and medallion holders is contractual, not merely regulatory. Medallions have sold for between \$325,000 and \$375,000. On September 13, 2013, the City announced that it would auction 50 medallions at a minimum price of \$360,000. However, plaintiffs allege that this attempt to auction medallions ended on October 18, 2013 unsuccessfully. Plaintiffs argue that the City's decision not to apply the City Taxi Regulations in any meaningful way to the unlawful operations of TNCs has disrupted long-settled expectations and imposed very serious adverse consequences, including the devaluation of the more than 6,800 taxi medallions currently in use in Chicago, which have had a market value of at least \$2.38 billion (6,800 x \$350,000). Plaintiffs argue that this will not only negatively impact medallion owners, but because most owners use such medallions to finance other investments, lenders who hold a security interest in medallions will see a loss in substantial value of the collateral. The drop in value and related uncertainty threatens to cause the credit market that supports financing medallions to freeze, thereby causing a spiral in which medallion values plummet even further.

XI. Environmental Law Violations

When new laws that greatly affect an entire industry are passed, most local laws require that the government conduct some sort of study or analysis to determine the environmental impact of such laws. An example of one such law is the California Environmental Quality Act (the “CEQA”), although many cities and states have similar procedural requirements that a government agency must adhere to with respect to rulemaking.

Under CEQA, all public agencies in California must prepare and certify an environmental impact report (“EIR”) for “any project which they propose to carry out or approve that may have a significant effect on the environment.” (Pub. Res. Code § 21100, subd. California case precedent has held that quasi-legislative actions, such as rulemakings, are approvals of “projects” within the meaning of CEQA and subject to environmental review if a direct physical change in the environment is a “reasonably foreseeable” result of the activity approved by the agency’s action.

Similarly, in New York, the State Environmental Quality Review Act (“SEQRA”) requires a full environmental review prior to “agency...resolutions that may affect the environment,” such as the major transportation policy effected here, and no agency may approve the action until it has complied with SEQRA. The plaintiffs in *Taxicab Paratransit Association of California v. Public Utilities Commission of the State of California*, Case No. S218427 (California) as well as *Black Car Assistance Corp., et al. v. the City of New York*, Case No. Case No. 100327/2013 (New York) allege a violation of this procedural requirement.

TPAC alleges that the CPUC’s Decision has authorized and caused thousands of additional vehicles to engage in commercial operations on city streets providing on-demand passenger services like taxicabs by carving out an impermissible subcategory of charter-party

carriers – the TNC category. As such, the CPUC Decision has effectuated a major and unprecedented restructuring of the passenger-transportation-for-hire industry (taxicabs, limousines and car services) which requires preliminary review of the potential environmental impact, before approval, which the CPUC failed to perform.

The Black Car Assistance cooperation made the similar argument that the New York City Taxi and Limousine Commission (“TLC”) failed to conduct an environmental analysis under the New York State SEQRA statute when it implemented its E-Hail pilot program in December 2012. *Black Car Assistance Corp., et al. v. the City of New York*. The TLC, having failed to garner enough votes for a permanent rule change, voted in December 2012, to approve the E-Hail Pilot Program -- which allows passengers to use their smartphone applications to locate available taxicabs and drivers with the corresponding application to accept the request for transportation. Several TNCs including Uber participate in this pilot program. The plaintiffs argued in the New York Supreme Court, and then again in the Appellate Division, that the TLC’s hasty passage of the pilot was in violation of several procedural requirements, including SEQRA. The New York State Appellate Division ultimately affirmed the lower court’s ruling that the pilot program was properly adopted and did not violate the environmental review requirements or the City’s administrative procedural requirements.

XII. Other Legal Claims and Relief Sought

A. Accounting

An accounting is a legal action to compel a defendant to account for and pay over money owed to the plaintiff but held by the defendant. The elements of an accounting vary under state law but generally require a showing that: (i) a fiduciary relationship existed; (ii) entrustment of money or property occurred; (iii) there is no other remedy available at law; and (iv) a demand and refusal of payment. A plaintiff is not required to show misappropriation or wrongdoing. Provided that the Plaintiff can show the three elements listed above, the burden of proof then shifts to the defendant to establish that any challenged expenditures were made for the benefit of the plaintiff, were reasonable, and that the defendant derived no unfair advantage from the fiduciary relationship.

Plaintiffs pursued an accounting in *United Independent Taxi Drivers Inc., et al. v. Uber Technologies, Inc. and Lyft, Inc.*, Case No. BC513879 (California); *Goncharov, et al. v. Uber Technologies, Inc.*, Case No. CGC-12-526017 (California).

B. Class Certification

The Federal Rules of Civil Procedure govern the certification of a class in connection with class action lawsuits. There are four prerequisites to the certification of a class and the maintenance of a class action under Rule 23 of the Federal Rules of Civil Procedure: (i) that the members of the class are so numerous that the joinder of all class members is impractical, (ii) that there are questions of law or fact common to the class, (iii) that the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (iv) that the representative parties will fairly and adequately protect the interests of the class.

“The policy at the very core of the class action mechanism is to overcome the problem that small recoveries do not provide incentive for any individual to bring a solo action prosecuting his or her rights; a class action solves this problem by aggregating relatively paltry potential recoveries into something worth someone's, usually an attorney's, labor. Fed. R. Civ. P. 23 expresses a policy in favor of having litigation in which common interests or common questions of law or fact prevail disposed of in a single lawsuit whenever feasible.”

Plaintiffs have attempted to obtain class certification in *Goncharov, et al. v. Uber Technologies, Inc.*, Case No. CGC-12-526017 (California); *O'Connor, et al. v. Uber Technologies, Inc.*, Case No. 4 :2013-cv-03826 (California); *Noorpavar v. Uber Technologies, Inc.*, Case No. 2:14-cv-01771-JAK-JCG (California).

APPENDIX

CASE BRIEFS

AND

AUTHOR BIOS

CASE BRIEFS

CALIFORNIA

<u>California</u>	
<i>Fahrbach v. Uber Technologies, Inc.</i> Case No. CGC-13-533103 Superior Court of the State of California, County of San Francisco Action commenced on July 25, 2013	
Plaintiff's Counsel: K. Douglas Atkinson Atkinson & Associates 710 Central Avenue San Francisco, CA 94117 415-793-7819	Defendant's Counsel: John C. Fish Littler Mendelson, P.C. 650 California Street, 20 th Floor San Francisco, CA 94108 415-433-1940 <i>Attorneys for Uber Technologies, Inc.</i> Brian R. McClellan Law Office of Brian McClellan 505 14 th Street, Suite 1210 Oakland, CA 94612 510-457-9940 <i>Attorneys for Djamol Gafurov, SF Limo Car Service Corporation</i> Thomas J. Feeney Carbone, Smoke, Smith, Bent & Leonard 505 14 th Street, Suite 600 Oakland, CA 94612 510-267-7273 <i>Attorneys for Ziad Sleiman</i>
Claims Asserted: Plaintiff is a pedestrian injured when driver on Uber trip hit another vehicle which also struck a fire hydrant. Plaintiffs claims: <ul style="list-style-type: none">▪ Damages for personal injury▪ Negligence	Status: Discovery is taking place

<u>California</u>	
<i>Goncharov, et al v. Uber Technologies, Inc.</i> Case No. CGC-12-526017 Superior Court of the State of California, County of San Francisco Action commenced on July 2, 2013	
Plaintiff's Counsel: Gary P. Oswald Law Offices of Gary P. Oswald	Defendant's Counsel: Eric J. Emanuel Quinn Emanuel Urquhart & Sullivan LLP

100 Tamal Plaza, Suite 140 Corte Mader, California 94925 415-927-5700	865 Figueroa Street, 10 th Floor Los Angeles, CA 90017-2543 213-443-3000
<p>Claims Asserted: Plaintiffs are licensed taxi cab drivers in San Francisco who claim:</p> <ul style="list-style-type: none"> • Violation of Unfair Business Practices; Business and Professions Code § 17200 • Intentional Interference with Prospective Economic Relations • Accounting • Declaratory Relief – Uber and Lyft are in violation of city and state laws • Seeking class certification 	<p>Status: Case management conference set for May 2014 at which time Plaintiffs requests for class certification will be heard. Parties are serving discovery requests.</p>

California	
<i>Herrera, et al. v. Uber Technologies, Inc., et al.</i> Case No. CGC-13-536211 Superior Court of the State of California, County of San Francisco Action commenced on December 17, 2013	
<p>Plaintiff's Counsel: Philip A. Segal Kern, Noda, Devin & Segal 1388 Sutter Street, Suite 600 San Francisco, CA 94109 415-474-1900</p>	<p>Defendant's Counsel: Michael A. King Mellisa R. Meyers Bradley, Curley, Asiano, Barrabee, Abel & Kowalski, P.C. 1100 Larkspur Landing Circle, Suite 200 Larkspur, CA 94939 415-484-8888</p>
<p>Claims Asserted: Plaintiffs are passengers injured during Uber trip who claim:</p> <ul style="list-style-type: none"> • Breach of duty of common carrier • General negligence – motor vehicle • Damages for personal injury 	<p>Status: Uber Answer filed March 3, 2014; case is pending</p>

California	
<i>Ryan Lawrence v. Uber Technologies, Inc.</i> Case No. CGC-13-535949 Superior Court of the State of California, County of San Francisco Action commenced on December 6, 2013	
<p>Plaintiff's Counsel: Scott R. L. Love</p>	<p>Defendant's Counsel: Michael A. King</p>

<p>Jeffrey Scott LLP Four Embarcadero Center, 39th Floor San Francisco, CA 94111 415-216-9190</p>	<p>Mellisa R. Meyers Bradley, Curley, Asiano, Barrabee, Abel & Kowalski, P.C. 1100 Larkspur Landing Circle, Suite 200 Larkspur, CA 94939 415-484-8888</p>
<p>Claims Asserted: Plaintiff is a pedestrian bystander injured by driver on Uber trip who claims:</p> <ul style="list-style-type: none"> • Damages for personal injury • Negligence – motor vehicle; respondeat superior 	<p>Status: Uber’s Answer is pending. Orders to Show Cause issued to determine why default judgment should not be entered against Uber. Hearing on Order to Show Cause scheduled for June 17, 2014.</p>

<p>California</p> <p><i>Jiang Liu, et al. v. Uber Technologies, Inc</i> Case No. CGC-14-536979 Superior Court of the State of California, County of San Francisco Action commenced on January 27, 2014</p>	
<p>Plaintiff’s Counsel: Christopher B. Dolan The Dolan Law Firm 1438 Market Street San Francisco, California 94102 415-421-2800</p>	<p>Defendants’ Counsel: Diane M. Doolittle Morgan W. Tovey Nicole Y. Altman Quinn Emanuel Urquhart Sullivan, LLP 50 California Street, 22nd Floor San Francisco, CA 94111 415-875-6600</p> <p>Ann Asiano Michael A. King Bradwy Curley Asiano Barrabee Abel & Kowaski 1100 Larkspur Landing Circle, Suite 200 Larkspur, CA 94939 415-464-8888</p>
<p>Claims Asserted: Plaintiff is the husband/father of three pedestrians (wife, five year old son and six year old daughter) who were injured, and pedestrian daughter who died after being hit by FHV driver affiliated with Uber and on-call for Uber trip. Plaintiff claims:</p> <ul style="list-style-type: none"> • Damages for personal injury • Wrongful death • Negligence – negligent infliction of emotional distress; motor vehicle; 	<p>Status: Uber filed its Answer disclaiming liability as transportation network provider and based on the theory that defendant driver was not an employee of the company, but rather an independent contractor. Defendant driver’s Motion to Strike Complaint is pending.</p>

negligent hiring, retention and supervision <ul style="list-style-type: none"> • Loss of consortium 	
---	--

California <i>Noorpavar v. Uber Technologies, Inc.</i> Case No. 2:14-cv-01771-JAK-JCG United States District Court – Central District of California Action Commenced on March 11, 2014	
Plaintiff’s Counsel: Dmitry Mazisyuk Mazis & Park 15250 Ventura Boulevard, Suite 1220 Sherman Oaks, California 91403 818-501-3334 Abbas Kazerounian Kazerouni Law Group 245 Fischer Avenue, Suite D1 Costa Mesa, CA 92626 800-400-6808 Joshua B. Swigart Hyde & Swigart 2221 Camino Del Rio South, Suite 101 San Diego, CA 92108 619-233-7770	Defendant’s Counsel: Nick James DiGiovanni Locke Lord LLP 111 South Wacker Drive Chicago, IL 60606 312-443-0634 Martin W Jaszczuk Locke Lord LLP 111 South Wacker Drive Chicago, IL 60606 312-443-0610 Susan J Welde Locke Lord LLP 300 South Grand Avenue Suite 2600 Los Angeles, CA 90071 213-485-1500
Claims Asserted: Plaintiff is an Uber customer who claims: <ul style="list-style-type: none"> • Violation of Telephone Consumer Protection Act, 47 U.S.C. §227. <i>et seq.</i> 	Status: Complaint filed seeking class action status. Uber’s Answer is pending.

California <i>O’Connor, et al. v. Uber Technologies, Inc.</i> Case No. 3:2013-cv-03826 United States District Court – Northern District of California (San Francisco Division) Action Commenced on August 16, 2013	
Plaintiff’s Counsel: Shannon Liss-Riordan Lichten & Liss-Riordan, P.C. 100 Cambridge Street, 20 th Floor Boston, MA 02114 617-994-5800	Defendant’s Counsel: Robert Jon Hendricks Morgan, Lewis Bockus LLP One Market Street, Spear Street Tower San Francisco, CA 94105 415-442-1000

Claims Asserted:

Plaintiffs are former Uber drivers who claim:

- Tortious Interference with Contractual and/or Advantageous Relations
- Unjust Enrichment
- Breach of Contract
- Statutory Gratuity Violation
- Worker Misclassification and Expense Reimbursement Violation
- Unfair Competition in Violation of California of Business and Professional Code §17200
- Seeking class certification

Status: Motion to relate *Ehert* case, discussed *infra*, granted in February 2014. Case management conference set for June 2014. Parties were ordered to mediation. On December 6, 2013, the Court issued an Order enjoining Uber from issuing any agreement containing its standard arbitration provision to “Uber drivers or prospective drivers” until the Court approves revised notice and opt-out procedures. This ruling also stated that drivers in other states can join the suit, since Uber’s licensing agreement includes a clause specifying that all disputes be settled under California law. The court agreed with the plaintiffs’ argument that the arbitration clause could undermine the drivers’ ability to participate in this class action and ordered that Uber provide “corrective notice” about the arbitration clause. Uber drivers should be receiving soon a notice through e-mail that gives them another chance to “opt out” of the arbitration clause so they may be a part of this case. The Court also rejected Uber’s requests to dismiss the drivers’ claims for compensation for their lost tips and for reclassification as employees, which would allow them to recoup expenses for gas and other costs. In seeking to dismiss the suit, Uber cited California law that defines “gratuities” as amounts paid by customers “over and above the actual amount due to the business for services rendered.” The fare each customer pays includes no gratuity, the company argued, because it consists of a single mandatory charge and nothing “over and above” that amount. The U.S. District Judge Edward Chen denied Uber’s motion and found that the two drivers, who seek to expand their case into a nationwide class action, have described practices by the company which, if proven, would violate state law.

California

Taxicab Paratransit Association of California v. Public Utilities Commission of the State of California

Case No. C076432

Court of Appeal of the State of California, Third Appellate District

Action Commenced on May 9, 2014	
<p>Petitioner’s Counsel: Mark Fogelman Ruth Stoner Muzzin Friedman & Springwater LLP 33 New Montgomery St., Suite 290 San Francisco, CA 94105 415-834-3800</p>	<p>Counsel for Real Parties in Interest: Kristin Svercheck, Esq. General Counsel Lyft, Inc. 548 Market Street, #68514 San Francisco, CA 94104</p> <p>Martin A. Mattes Mari R. Lane Nossman LLP 50 California Street, 34th Floor San Francisco, CA 94111 <i>Attorneys for Sidecar Technologies, Inc. and Side.Cr, LLC</i></p> <p>Edward W. O’Neill Davis Wright Tremaine LLP 505 Montgomery Street, Suite 800 San Francisco, CA 94111-6533 <i>Attorneys for Uber Technologies, Inc.</i></p>
<p>Claims Asserted: Plaintiff is a trade association that is seeking writ of review of the CPUC’s decision regarding TNCs, claiming that:</p> <ul style="list-style-type: none"> • CPUC’s decision was not supported in findings • CPUC exceeded its jurisdiction under state law when issuing its decision • CPUC decision violates TPAC’s member’s rights to equal protection under the U.S. and CA constitutions • *Uber, Lyft and SideCar are listed as “Real Parties in Interest” 	<p>Status: Pending consideration by the court</p>

California	
<p><i>Taxicab Paratransit Association of California v. Public Utilities Commission of the State of California</i></p> <p>Case No. S218427 Supreme Court of the State of California Action Commenced on May 9, 2014</p>	
<p>Petitioner’s Counsel: Mark Fogelman Ruth Stoner Muzzin</p>	<p>Counsel for Real Parties of Interest: Kristin Svercheck, Esq. General Counsel</p>

<p>Friedman & Springwater LLP 33 New Montgomery St., Suite 290 San Francisco, CA 94105 415-834-3800</p>	<p>Lyft, Inc. 548 Market Street, #68514 San Francisco, CA 94104</p> <p>Martin A. Mattes Mari R. Lane Nossman LLP 50 California Street, 34th Floor San Francisco, CA 94111 <i>Attorneys for Sidecar Technologies, Inc. and Side.Cr, LLC</i></p> <p>Edward W. O’Neill Davis Wright Tremaine LLP 505 Montgomery Street, Suite 800 San Francisco, CA 94111-6533 <i>Attorneys for Uber Technologies, Inc.</i></p>
<p>Claims Asserted: Plaintiff is a trade association seeking writ of review of the CPUC’s decision regarding TNCs, claiming that:</p> <ul style="list-style-type: none"> • CPUC’s failed to consider environmental impacts of its decision under the California Environmental Quality Act 	<p>Status: Pending consideration by the court</p>

California	
<p><i>United Independent Taxi Drivers Inc., et al. v. Uber Technologies, Inc. and Lyft, Inc.</i> Case No.BC513879 Superior Court of the State of California for the County of Los Angeles Action Commenced on July 2, 2013</p>	
<p>Plaintiff’s Counsel: Dmitry Mazisyuk Mazis & Park 15250 Ventura Boulevard, Suite 1220 Sherman Oaks, California 91403 818-501-3334</p>	<p>Defendant’s Counsel: Eric J. Emanuel Quinn Emanuel Urquhart & Sullivan LLP 865 Figueroa Street, 10th Floor Los Angeles, CA 90017-2543 213-443-3000</p>
<p>Claims Asserted: Plaintiffs are taxicab companies claiming:</p> <ul style="list-style-type: none"> • Violation of Business & Professions Code §17200 • Intentional Interference with Prospective Economic Relations • Negligent Interference with Prospective Economic Relations 	<p>Status: Dismissed in January 2014.</p>

<ul style="list-style-type: none">• Accounting• Declaratory Relief – Uber and Lyft are in violation of city and state laws	
---	--

CONNECTICUT

Connecticut	
<i>Greenwich Taxi, Inc., et al. v. Uber and Lyft</i> Case No. 3:14-cv-733 United States District Court – District of Connecticut Action Commenced on May 21, 2014	
Plaintiff’s Counsel: Mary Alice Moore Leonhardt Moore Leonhardt & Associates LLC 102 Oak Street Hartford, CT 06106 860-727-8874 Glenn E. Coe Rome McGuigan, P.C. One State Street Hartford, CT 06103 860-549-1000	Defendants’ Counsel: Mary Beth Buchanan Bryan Cave, LLP - Ave Americas-NY 1290 Avenue of the Americas New York, NY 10104-3300 212-541-1074 Stephen V. Manning O'Brien, Tanski & Young, LLP 500 Enterprise Dr., Suite 4B Rocky Hill, CT 06067 860-525-2700 <i>Attorneys for Lyft, Inc.</i> Amit B. Patel Quinn Emanuel Urquhart & Sullivan, LLP - IL 500 West Madison St., Suite 2450 Chicago, IL 60661 312-705-7400 Kevin M. Smith Wiggin & Dana One Century Tower 265 Church Street P.O. Box 1832 New Haven, CT 06508-1832 203-498-4579 <i>Attorneys for Uber Technologies, Inc.</i>
Claims Asserted: Plaintiffs are fifteen cab and livery companies asserting: <ul style="list-style-type: none">• Lanham Act claims for misrepresentation of services• Unfair and deceptive trade practices in violation of the state statute, Conn. Gen. Stat. §§ 42-110a, <i>et seq.</i>• Intentional interference with contractual relations• Violations of RICO statute	Status: Defendants’ Answers are pending.

ILLINOIS

<u>Illinois</u>	
<p><i>Caren Ehret et al. v. Uber Technologies Inc.</i> Case No. 12-CH36714 Circuit Court of Cook County, Illinois, County Department, Chancery Department Action Commenced on October 1, 2012</p>	
<p>Plaintiff's Counsel: Hall Adams Law Offices of Hall Adams LLC 33 N. Dearborn St., Suite 2350 Chicago, IL 60602 312-445-4900</p>	<p>Defendant's Counsel: Pro Se</p>
<p>Claims Asserted: Plaintiff is an Uber customer in Chicago who claims:</p> <ul style="list-style-type: none">• Violation of Consumer Fraud Act and Deceptive Business Practices Act due to "gratuity" that does not go to drivers and credit card processing fees being passed along to customers	<p>Status: The suit has been moved to the Northern District of California, discussed <i>supra</i>, as it relates to the <i>O'Connor</i> case. Plaintiff is filing an amended complaint and Uber has been granted leave to re-file a Motion to Dismiss. Hearing set for Motion to Dismiss in August 2014.</p>

<u>Illinois</u>	
<p><i>Illinois Transportation Trade Association et al., v. City of Chicago</i> Case No. 1:14-cv-00827 United States District Court – Northern District of Illinois Action Commenced on February 6, 2014</p>	
<p>Plaintiff's Counsel: Michael L. Shakman Edward W. Feldman Stuart M. Widman Melissa B. Pryor Miller Shakman & Beem LLP 180 N. LaSalle Street, Suite 3600 Chicago, IL 60601 312-263-3700</p>	<p>Defendant's Counsel: William Macy Aguiar City of Chicago, Department of Law 30 North LaSalle Street Suite 900 Chicago, IL 60602 (312) 744-9010 <i>Attorneys for City of Chicago</i> Stephen A. Swedlow Quinn Emanuel Urquhart & Sullivan LLP 500 W Madison St Suite 2450 Chicago, IL 60661 (312)705-7430</p>

	<i>Attorneys for Uber Technologies, Inc. (Movant)</i>
<p>Claims Asserted: Plaintiffs are taxi medallion owners and a Chicago resident and long-time advocate for the rights of disabled persons who assert:</p> <ul style="list-style-type: none"> • Violation of the Takings Clause of the 5th Amendment of the U.S. Constitution • Violation of the “Equal Protection” Clause of the Fourteenth Amendment of the U.S. Constitution 	<p>Status: Defendant’s Answer is pending. Status conference scheduled for June 6, 2014. Three drivers for UberX, Lyft and SideCar (respectively) have filed a joint motion to intervene which is also pending before the Court</p>

Illinois	
<p><i>Landmark American Insurance Company v. Uber Technologies, Inc.</i> Case No. 1:13-cv-02109 United States District Court – Northern District of Illinois, Eastern Division Action Commenced February 6, 2014</p>	
<p>Plaintiff’s Counsel: Michael Smith Knippen Brian C. Bassett Janson Michael Taylor Traub Lieberman Strauss & Shrewsberry LLP 303 West Madison Street, Suite 1200 Chicago, IL 60606 312-332-3900</p> <p>Michael A. Stiegel Carrie A. Hall Paul R. Cogle Zachary J. Watters Michael Best & Friedrich LLP 180 North Stetson Avenue, Suite 2000 Chicago, Illinois 60601 312-222-0800</p>	<p>Defendant’s Counsel: Christopher A. Johnson Daniel A. Johnson Jenner & Block LLP 353 N. Clark Street Chicago, Illinois 60654 312-222-9350</p> <p>Jan A. Larson Jenner & Block LLP 1099 New York Ave., NW Suite 900 Washington, DC 20001 202-639-6046</p>
<p>Claims Asserted: Plaintiff is an insurance company seeking:</p> <ul style="list-style-type: none"> • Declaratory Judgment – no duty to defend/indemnify under insurance policy. 	<p>Status: Settlement reached.</p>
Illinois	
<p><i>Landmark American Insurance Company v. Uber Technologies, Inc.</i> Case No. 1:13-cv-02103</p>	

United States District Court – Northern District of Illinois, Eastern Division Action Commenced August 20, 2013	
Plaintiff's Counsel: Michael Smith Knippen Brian C. Bassett Janson Michael Taylor Traub Lieberman Strauss & Shrewsberry LLP 303 West Madison Street, Suite 1200 Chicago, IL 60606 312-332-3900	Defendant's Counsel: Hall Adams, III Law Offices of Hall Adams 33 N. Dearborn Street Suite 2350 Chicago, IL 60602 (312) 445-4900 <i>Attorney for Defendant Caren Ehret</i>
Claims Asserted: Plaintiff is an insurance company seeking: <ul style="list-style-type: none"> • Declaratory Judgment – no duty to defend/indemnify under insurance policy. 	Status: Settlement reached and case is closed.

Illinois <i>Manzo Miguel, et al. v. Uber Technologies, Inc. et al.</i> Case No. 1:2013cv-05136 Circuit Court of Cook County, Illinois, County Department, Chancery Department Action Commenced February 21, 2013	
Plaintiff's Counsel: Hall Adams Law Offices of Hall Adams LLC 33 North Dearborn Street, Suite 2350 Chicago, IL 60602 312-445-4900	Defendant's Counsel: Stephen A. Swedlow Andrew H. Schapiro Quinn Emanuel Urquhart & Sullivan, LLP 500 West Madison St., Suite 2450 Chicago, IL 60661 312-705-7400
Claims Asserted: Plaintiffs are licensed taxi cab and livery drivers in Chicago claiming: <ul style="list-style-type: none"> • Unfair competition/Violation of Consumer Fraud Act and Deceptive Business Practices Act 	Status: Uber's motion is pending.

Illinois <i>Yellow Group, LLC et al v. Uber Technologies, Inc.,</i> Case No. 12-cv-7967 United States District Court – Northern District of Illinois, Eastern Division Action Commenced on October 4, 2012	
Plaintiff's Counsel: Michael A. Stiegel	Defendant's Counsel: Stephen A. Swedlow

<p>Michael Best & Friedrich LLP Two Prudential Plaza 180 N. Stetson Avenue Suite 2000 Chicago, Illinois 60601</p>	<p>Andrew H. Schapiro Quinn Emanuel Urquhart & Sullivan, LLP 500 West Madison St., Suite 2450 Chicago, IL 60661 312-705-7400</p> <p>John B. Quinn Quinn Emanuel Urquhart & Sullivan, LLP 865 S. Figueroa Street, 10th Floor Los Angeles, CA 90017</p>
<p>Claims Asserted: Plaintiffs are taxi company subsidiaries and affiliates who claim:</p> <ul style="list-style-type: none"> • Lanham Act Violation (False/Misleading Representations of Goods & Services) • Lanham Act Violation (False Representations of Affiliation) • Illinois Deceptive Trade Practices Act Violation • Illinois Consumer Fraud and Deceptive Business Practices Act Violation • Tortious Interference with Contractual Relations 	<p>Status: Status hearing set for May 15, 2014. Uber's Motion to Dismiss on the basis of lack of jurisdiction is pending. In September 2013, Uber's Motion to Dismiss on the basis of failing to state a claim was denied in substantial part. Plaintiffs' Motion for a Preliminary Injunction was also denied.</p>

Illinois	
<p><i>Illinois Transportation Trade Association et al., v. City of Chicago</i> Case No. 1:14-cv-00827 United States District Court – Northern District of Illinois Action Commenced on February 6, 2014</p>	
<p>Plaintiff's Counsel: Edward W. Feldman Miller Shakman & Beem LLP 180 North LaSalle Street Suite 3600 Chicago, IL 60601 (312) 263-3700</p>	<p>Defendant's Counsel: William Macy Aguiar City of Chicago, Department of Law 30 North LaSalle Street Suite 900 Chicago, IL 60602 (312) 744-9010</p> <p>David Michael Baron City of Chicago 121 N. LaSalle Street Room 302 Chicago, IL 60602 (312) 744-9018</p>

	<p><i>Attorneys for City of Chicago</i></p> <p>Stephen A. Swedlow Quinn Emanuel Urquhart & Sullivan LLP 500 W Madison St Suite 2450 Chicago, IL 60661 (312)705-7430</p> <p><i>Attorneys for Uber Technologies (Movant)</i></p>
<p>Claims Asserted: Plaintiffs are a taxi medallion owners and a Chicago resident and long-time advocate for the rights of disabled persons who claim:</p> <ul style="list-style-type: none"> • Violation of the Takings Clause of the 5th Amendment of the U.S. Constitution • Violation of the “Equal Protection” Clause of the Fourteenth Amendment of the U.S. Constitution 	<p>Status: S Defendant’s Answer is pending. Status conference scheduled for June 6, 2014. Three drivers for UberX, Lyft and SideCar (respectively) have filed a joint motion to intervene which is also pending before the Court.</p>

MARYLAND

<u>Maryland</u>	
<i>The Yellow Cab Company, et al. v. Uber Technologies, Inc., et al.</i> Civil Action No. Circuit Court for Baltimore City Action Commenced on July 3, 2014	
Plaintiff's Counsel: George F. Ritchie Jonathan Montgomery Gordon Feinblatt LLC 233 East Redwood Street Baltimore, MD 21202 410-576-4131	Defendant's Counsel:
Claims Asserted: Plaintiffs are several cab companies, cab associations, as well as taxicab drivers who claim: <ul style="list-style-type: none">• Violation of state Antitrust Act• Unfair Competition• Tortious Interference with Contract and Business Relationships	Status: Defendants Answers are pending.

MASSACHUSETTS

Massachusetts	
<i>Boston Cab Dispatch Inc., et al. v. Uber Technologies, Inc.,</i> Civil Action No. 13-10769-NMG United States District Court – District of Massachusetts (removed from state court) Action Commenced on March 11, 2013	
Plaintiff's Counsel: Brody, Hardoon, Perkins & Kesten, LLP One Exeter Plaza Boston, MA 02116 617-880-7100	Defendant's Counsel: Michael Mankes Littler Mendelson, P.C. One International Place, Suite 2700 Boston, MA 02110 617-378-6000 Of Counsel: Stephen A. Swedlow Andrew H. Schapiro Quinn Emanuel Urquhart & Sullivan, LLP 500 West Madison St., Suite 2450 Chicago, IL 60661 312-705-7400
Claims Asserted: Plaintiffs are a taxi dispatch service and manager who claim: <ul style="list-style-type: none">• Misrepresentation of Services in Violation of Lanham Act• Misrepresentation of Connection, Association, Sponsorship and Approval of Lawful Taxi Association in Violation of Lanham Act• Unfair and Deceptive Acts and Practices in Violation of MGL c. 93A §11• Unfair Competition in Violation of MGL c. 93A §11• Common Law Unfair Competition• Intentional Interference with Contractual Relationships• RICO – violation of “use or invest” prohibition• RICO – violation of “interest in or control over prohibition• RICO – violation of “conduct of enterprise” prohibition	Status: Uber’s Motion to Dismiss was granted in part with respect to Plaintiffs’ RICO claims; however, the Court Order allows Plaintiffs the opportunity to move for leave to amend the RICO claims.

Massachusetts	
<p><i>Lavitman v. Uber Technologies, Inc.</i> Civil Action No. 12-4490 Suffolk County Superior Court (by remand from federal district court) Action Commenced on December 18, 2012</p>	
<p>Plaintiff's Counsel: Edward L. M anchor Knudsen, Burdridge & Manchur, P. C. 401 Edgewater Place, Suite 140 Wakefield, MA 01880 781-246-3030</p> <p>Shannon Liss-Riordan Hillary Schwab Lichten & Liss-Riordan, P.C. 100 Cambridge Street, 20th Floor Boston, MA 02114 617-994-5800</p>	<p>Defendant's Counsel: Michael Mankes Littler Mendelson, P.C. One International Place, Suite 2700 Boston, MA 02110 617-378-6000</p> <p>Of Counsel: Stephen A. Swedlow Andrew H. Schapiro Quinn Emanuel Urquhart & Sullivan, LLP 500 West Madison St., Suite 2450 Chicago, IL 60661 312-705-7400</p>
<p>Claims Asserted: Plaintiff is an Uber Driver asserts:</p> <ul style="list-style-type: none"> • Violation of M.G.L. ch 149, §150 • Tortious Interference with Contractual and/or Advantageous Relations • Unjust Enrichment/Quantum Meruit • Breach of Contract 	<p>Status: The suit is ongoing after Defendant failed to prove that they could satisfy the threshold amount in controversy to remove it to federal court.</p>

MISSOURI

Missouri	
<i>City of St. Louis, Metropolitan Taxicab Commission v. Lyft, Inc.</i> Case No. 1422-CC00890 22 nd Judicial Circuit Court of Missouri, St. Louis Circuit Action Commenced April 18, 2014	
Plaintiff's Counsel: Charles Harry Billings 1735 S Big Bend Blvd St. Louis, MO 63101	Defendant's Counsel: Stephen J. O'Brien Dentons US LLP One Metropolitan Square Suite 3000 St. Louis, MO 63102-2741 (314) 241-1800
Claims Asserted: Plaintiff is a city agency seeking: <ul style="list-style-type: none">• Temporary Restraining Order to stop Lyft's illegal operations in the city	Status: Temporary Restraining Order was granted against Lyft. Lyft is currently operating in violation of the TRO. Hearing is scheduled for May 6, 2014.

NEW YORK

<u>New York</u>	
<i>Black Car Assistance Corp., et al. v. the City of New York</i> Case No. 100327/2013 Supreme Court of the State of New York, County of New York Action Commenced on February 14, 2013	
Plaintiff's Counsel: Randy M. Mastro Gibson, Dunn & Crutcher LLP 200 Park Avenue, 47 th Floor New York, NY 10166 212-351-3845	Defendant's Counsel: Michael A. Cardozo Corporation Counsel, New York 100 Church Street, Room 4-313 New York, NY 10007 212-788-0303
Claims Asserted: Plaintiffs are black car and livery groups who sought injunctive relief and damages against the City for: <ul style="list-style-type: none">• Violations of the NYC Administrative Code which requires licenses for communication systems used for arranging pickups and which prohibits drivers from refusing to pick-up passengers without justifiable grounds• E-Hail Pilot Program is not a permissible pilot program as provided in the NYC Charter• TLC failed to follow procedures required for rule changes pursuant to the NYC Administrative Procedures Act;• TLC failed to follow its own regulations regarding the implementation of pilot programs• the E-Hail Pilot Program violated the New York State and New York City Environmental Quality Review Acts• E-Hail Pilot Program violates the New York City Human Rights Laws as it will have a disparate impact on the elderly.	Status: Case closed. On April 23, 2013, the court denied all of Plaintiffs' claims and lifting the temporary injunction against the TLC that had earlier been issued. Plaintiffs appealed to the 1 st Department of the New York Supreme Court, Appellate Division which, on October 29, 2013 unanimously rejected the arguments made by the, thereby affirming the TLC's ability to continue with the Pilot Program as adopted.

<u>New York</u>	
<i>Dundar v. Uber Technologies, Inc.</i> Case No. 653400-2013 Supreme Court of the State of New York, County of New York Action Commenced on October 2, 2013	
Plaintiff's Counsel: Mark Bastian 36 East 20 th Street, 6 th Floor New York, NY 10003 212-387-0381	Defendant's Counsel: John H. Snyder Abaigeal Van Deerlin 555 Fifth Avenue, Suite 1700 New York, NY 10017 212-856-7280
Claims Asserted: Plaintiff is an Uber Driver who asserts claims for: <ul style="list-style-type: none"> • Money Damages – lost earnings and detrimental reliance • Promissory estoppel • Negligent misrepresentation 	Status: Uber's Motion to Dismiss granted with respect to Plaintiff's claim for promissory estoppel and negligent misrepresentation. Plaintiff submitted an amended Complaint April 10, 2014.

<u>New York</u>	
<i>The City of New York, et al., v. Lyft, Inc.</i> Index No.451477/2014 Supreme Court of the State of New York, County of New York Action Commenced on July 10, 2014	
Plaintiff's Counsel: Zachary W. Carter Corporation Counsel of the City of New York 100 Church Street, Rm 5-180 New York, NY 10007 212-356-2607	Defendant's Counsel: Not provided
Claims Asserted: Plaintiff City of New York and TLC assert claims for: <ul style="list-style-type: none"> • Declaratory Judgment – Lyft operating unlawfully/violating local laws • Injunction – to enjoin Lyft's operations 	Status: TRO pending; Lyft's answer is pending

<u>New York</u>	
<i>The People of the State of New York v. Lyft, Inc.</i> Index No. 451479/2014 Supreme Court of the State of New York, County of New York Action Commenced on July 11, 2014	

<p>Plaintiff's Counsel: Eric T. Schneiderman Attorney General of the State of New York Bureau of Consumer Frauds & Protection 120 Broadway, 3rd Floor New York, NY 10271 212-416-8296</p>	<p>Defendant's Counsel: Not provided</p>
<p>Claims Asserted: Attorney General of the State of New York asserts claims for:</p> <ul style="list-style-type: none"> • Injunction – to enjoin Lyft's operations/violations of State and local laws • Accounting • Civil Penalties • Statutory Costs 	<p>Status: TRO pending; Lyft's answer is pending</p>

OHIO

<u>Ohio</u>	
<i>City of Columbus v. Uber Technologies, Inc.</i> Case No. 2014 EVH 60125 Franklin County Municipal Court, Environmental Division, Franklin County, Ohio Action Commenced on April 8, 2014	
Plaintiff's Counsel: Westley M. Phillips City of Columbus, Department of Law 77 North Front Street Columbus, Ohio 43215 614-645-7385	Defendant's Counsel: Erik J. Clark 1335 Dublin Road, Suite 104D Columbus, Ohio 43215
Claims Asserted: Plaintiff is the City of Columbus which seeks: <ul style="list-style-type: none">• Injunctive Relief – enjoining Uber from operating in Columbus, Ohio	Status: Uber's Answer is pending.

<u>Ohio</u>	
<i>City of Columbus v. Lyft Inc.</i> Case No. 2014 EVH 060145 Franklin County Municipal Court, Environmental Division, Franklin County, Ohio Action Commenced on May 5, 2014	
Plaintiff's Counsel: Stephen C. Dunbar City of Columbus Department of Law 77 North Front Street Columbus, Ohio 43215 614-645-7385	Defendant's Counsel: Albert G. Lin Ice Miller LLP 250 West Street Columbus, Ohio 43215 Gregory S. Peterson 2 Miranova Place, Suite 330 Columbus, Ohio 43215
Claims Asserted: Plaintiff is the City of Columbus which seeks: <ul style="list-style-type: none">• Injunctive Relief – enjoining Lyft from operating in Columbus, Ohio	Status: Lyft's Answer is pending.

TEXAS

Texas	
<i>Greater Houston Transportation Co., et al v. Uber Technologies and Lyft, Inc.</i> Civil Action No. 14-941 United States District Court – Southern District of Texas, Houston Division Action Commenced on April 8, 2014	
Plaintiff's Counsel: Martyn B. Hill Pagel, Davis & Hill, P.C. 1415 Louisiana Street, 22 nd Floor Houston, Texas 77002 713-951-0160 Daniel K Hedges Porter & Hedges 1000 Main St 36th Floor Houston, TX 77002 713-226-6641	Defendant's Counsel: Amit B. Patel Quinn Emanuel Urquhart & Sullivan LLP 500 W Madison St Ste 2450 Chicago, IL 60661 312-705-7400 Barrett H Reasoner Gibbs Bruns LLP 1100 Louisiana Ste 5300 Houston, TX 77002 713-650-8805 <i>Attorneys for Uber Technologies, Inc.</i> Lauren Elizabeth Tanner Baker Botts LLP 98 San Jacinto Blvd Suite 1500 Austin, TX 78701 512-322-2544 Caroline Nan Carter Baker Botts LLP 910 Louisiana Houston, TX 77002 713-229-1302 <i>Attorneys for Lyft, Inc.</i>
Claims Asserted: Plaintiffs are taxicab permit holders licensed in Houston and San Antonio and chauffeured limousine services licensed in Houston who claim: <ul style="list-style-type: none">• Violation City for-hire vehicle codes• RICO• Lanham Act Violation (misrepresentation of services)	Status: On April 21, 2014, the Court declined to issue a temporary restraining order sought by Houston and San Antonio cab companies; however, the Court did agree to an expedited hearing on July 15 th , based on plaintiffs' request for a permanent injunction.

<ul style="list-style-type: none"> • Common law unfair competition law violations • Preliminary and permanent injunction restraining Uber and Lyft from operating in Houston and San Antonio 	
--	--

<p>Texas</p> <p><i>Ramos, et al. v. Uber Technologies, Inc., and Lyft Inc.</i> Case No. 5:14-cv-00502-XR United States District Court – Western District of Texas, San Antonio Division Action Commenced on June 2, 2014</p>	
<p>Plaintiffs’ Counsel: Jose Garza Law Office of Jose Garza 7414 Robin Rest Dr. San Antonio, TX 78209 210-392-2856</p> <p>Rolando L. Rios Law Offices of Rolando L. Rios 115 E. Travis Street Suite 1645 San Antonio, TX 78205 (210) 222-2102</p> <p>Judith A. Sanders-Castro Texas RioGrande Legal Aid, Inc. 1111 N. Main Ave. San Antonio, TX 78212 (210)212-3725</p>	<p>Defendant’s Counsel: <i>NOT PROVIDED</i></p>
<p>Claims Asserted: Plaintiffs are three (3) disabled residents of San Antonio and Houston who claim:</p> <ul style="list-style-type: none"> • Violation of the Americans with Disabilities Act (the “ADA”) 	<p>Status: Action filed on June 2, 2014. Responsive pleadings are pending.</p>

WASHINGTON

<u>Washington</u>	
<i>Western Washington Taxicab Operators Association v. Uber Technologies, Inc.</i> Case No. 14-2-08259-2 Superior Court of the State of Washington in and for the County of King Action Commenced on March 24, 2014	
Plaintiff's Counsel: Spencer Nathan Thal General Counsel Western Washington Taxi Club Operators Association 14675 Interurban Ave. South, Suite 307 Tukwila, WA 98168 206-441-4860 Dmitri Iglitzin Schwerin Campbell Barnard Iglitzin & Lavitt LLP 18 West Mercer Street, Suite 400 Seattle, WA 98119-3971 206-257-6006	Defendant's Counsel: Robert Maguire Steven Trummage Rebecca Francis Colin Prince Davis Wright Tremaine LLP 1201 Third Avenue, Suite 2200 Seattle, Washington , 98101 206-622-3150
Claims Asserted: Plaintiffs are the Organization of Seattle and King County taxi operators who claim: <ul style="list-style-type: none">• Breach of Consumer Protection Act – RCW 19.86	Status: Uber's Answer is pending.

AUTHOR BIOS

Matthew W. Daus

Partner

Matthew W. Daus' practice focuses on transportation law, counseling clients on a broad range of matters including regulatory compliance, strategic planning, procurement, litigation, administrative law and public policy. Within this area Mr. Daus coordinates representation on a wide array of legal needs and services representing ground transportation and related businesses. Mr. Daus also practices in the area of employment law, advising employers concerning the hiring and discharge of employees, employment discrimination laws and general personnel and policy matters.

Before joining Windels Marx to lead its Transportation practice, Mr. Daus served as Commissioner and Chairman of the New York City Taxi and Limousine Commission ("TLC") for eight and one half years, appointed by Mayors Giuliani, Bloomberg and the New York City Council. Prior to his tenure as the TLC's longest serving Chief Executive Officer, Mr. Daus served as General Counsel to the Commission and Deputy Commissioner for Legal Affairs since 1998, and before that, as Special Counsel to the TLC Chair - supervising over 75 lawyers and Administrative Law Judges. Mr. Daus also served as General Counsel to the New York City Community Development Agency (now the Department of Youth and Community Development), Special Counsel to the New York City Trade Waste Commission (now the Business Integrity Commission), and as a Prosecutor for the New York City Commission on Human Rights.

In 2010, Mayor Bloomberg and the New York City Council appointed Mr. Daus as a Commissioner of the New York City Civil Service Commission, an independent quasi-judicial agency that hears and decides employee candidate, disciplinary, and involuntary medical leave appeals under the New York State Civil Service Law. Additionally, the President of the New York State Bar Association appointed Mr. Daus to serve on its Committee on Civil Rights.

Mr. Daus serves as a Distinguished Lecturer with the City University of New York's ("CUNY's") Transportation Research Center ("UTRC") at The City College of New York. In addition to lecturing at CUNY on sustainable transportation, transportation policy, and business law. Mr. Daus speaks internationally on a broad range of transportation topics. He also is currently the President of the International Association of Transportation Regulators ("IATR").

Mr. Daus is a member of several non-profit boards serving as

MATTHEW W. DAUS
New York, NY
T. 212.237.1106
F. 212.262.1215

PRACTICES

- TRANSPORTATION
- EMPLOYMENT & EMPLOYEE BENEFITS
- CORPORATE & SECURITIES
- CORPORATE FORMATION & FINANCE
- INFRASTRUCTURE DEVELOPMENT & FINANCE
- LITIGATION & ALTERNATIVE DISPUTE RESOLUTION

EDUCATION

- LL.M., employment law, New York University School of Law, 1997
- J.D., cum laude, Touro College Jacob D. Fuchsberg Law Center, 1992
- B.A., political science, magna cum laude, Brooklyn College, 1989

ADMISSIONS

- New York
- New Jersey
- District of Columbia
- United States District Court for the Southern District of New York
- United States District Court for the Eastern District of New York

President of Community Understanding for Racial and Ethnic Equality ("CURE"), as Co-Chairman of the Brooklyn Economic Development Corporation and board member of Big Apple Greeter and the 2011 World Police and Fire Games. He also served for over eight years on the Board of NYC & Co. (the City's tourism, marketing, convention and visitors bureau) and for several years on the Board of Brooklyn Dreams Charter School.

Jasmine K. Le Veaux
Associate

Ms. Le Veaux is a seasoned litigator, focusing on the areas of complex commercial litigation as well as employment and labor law. She has represented companies and individuals in commercial contract disputes, and State Department of Labor audits, investigations and hearings. She has extensive experience in motions practice; helping clients obtain successful judgments or settlements to litigation matters prior to trial. Ms. Le Veaux represents clients in commercial cases involving:

- breach of contract claims,
- employment relationships,
- wage and hour disputes, and
- worker misclassification issues.

Ms. Le Veaux has also represented debtors in bankruptcy-related litigation, particularly with respect to preference claims and Federal and State WARN Act violations.

As a member of the transportation practice group, Ms. Le Veaux counsels clients on regulatory compliance and various types of transportation-related agreements, contractual disputes and procurements. In addition, she drafts and analyzes proposed legislation and regulations on behalf of clients for compliance with Federal and local laws relevant to the transportation industry.

Prior to joining Windels Marx, Ms. Le Veaux practiced products liability litigation in Washington DC, where she represented pharmaceutical companies in national multi-district litigation cases and class action suits.

In 2008, Ms. Le Veaux was appointed a guardian ad litem by the Family Law Division of the Superior Court of the District of Columbia where she represented minor children in custody disputes. Her dedication to child advocacy has also led Ms. Le Veaux to volunteer as a mentor and tutor for several years. Through her work with PENCIL, a non-profit organization that partners business professionals in private industry with New York City public schools, Ms. Le Veaux established a Law Club for students at Brooklyn's School of Democracy and Leadership. She also volunteers with Children of Promise, NYC, a community-based, non-profit organization that services children of incarcerated parents.

At Georgetown University Law Center, Ms. Le Veaux's honors and achievements include winning first place on both the national and regional level of the Frederick Douglass Moot Court

JASMINE K. LE VEAUX
New York, NY
T. 212.237.1112
F. 212.262.1215

PRACTICES

- BANKRUPTCY-RELATED LITIGATION & TRANSACTIONS
- EMPLOYMENT LITIGATION
- LITIGATION & ALTERNATIVE DISPUTE RESOLUTION
- TRANSPORTATION

EDUCATION

- J.D., Georgetown University Law Center, 2007
- B.A., International Development Studies, Minor: Policy Studies & Social Welfare, Provost's Honors List, University of California, Los Angeles

ADMISSIONS

- District of Columbia
- California
- New York
- United States District Court for the Central District of California
- United States District Court for the Southern District of New York

Competition in 2006, serving as the Chair of the Women of Color Collective, and receiving the Equal Justice America Fellowship in 2005.

Publications:

- Transportation Network Companies (TNCs): *Litigation Marathon or Legislative Sprint to Deregulation?* (July 2014)
- Ridesharing Applications: *Illegal "Hitchhiking-For-Hire" or Sustainable Group Riding?* (May 2013)
- Proposed Model Regulations for Smartphone Applications in the For-Hire Industry (November 2012)
- Important Worker Classification Tips for Transportation Businesses (August 2011)