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Uber's safety claims face new challenges

In the last year, car-hailing company Uber has faced a number of startling, high-profile accusations that its drivers have assaulted or raped passengers.

Uber was banned in the Delhi region of India in December after a passenger accused an Uber driver of raping her. Two Chicago-area drivers were charged last year with sexually assaulting passengers in separate incidents, and an Uber driver in Washington, D.C., was accused of sexually assaulting a woman while she was asleep in the back seat of the car. In Boston, two Uber drivers were charged in as many months with sexually assaulting passengers.

There have been reports of other types of assaults as well, including an allegation that an UberX driver in San Francisco repeatedly struck a passenger in the head and face with a hammer.

Nonetheless, Uber claims on its website to have the "safest rides on the road" and the "strictest safety standards possible."

Additionally, in some markets, Uber charges a \$1 "safe rides fee," which Uber claims is to "support continued efforts to ensure the safest possible platform for Uber riders and drivers, including an industry-leading background check process, regular motor vehicle checks, driver safety education [and] development of safety features in the app."

Uber further claims that its background checks are "often more rigorous than what is required to become a taxi driver."

A handful of lawsuits have been filed in California over the last two months challenging Uber's claim that it has the "safest rides on the road," including three proposed class actions: *Papey v. Uber*

Technologies, 15-cv-00064, (N.D. Cal. filed Jan 6); *Philliben v. Uber Technologies*, 14-cv-05615 (N.D. Cal. filed Dec. 23); and *Sabatino v. Uber Technologies*, 15-cv-00363 (N.D. Cal. filed Jan. 26).

Additionally, the district attorneys for Los Angeles and San Francisco have sued Uber in California Superior Court for allegedly making misleading claims about its driver background checks, among other charges.

According to the proposed class actions, Uber's background checks are anything but industry-leading. The complaints allege Uber uses an online company to perform its checks. All that is needed to become a driver is to complete an online application, provide your Social Security number, upload two pictures of your vehicle, submit registration and proof of insurance and send a form indicating that the vehicle was inspected by a service center.

According to the lawsuits, a number of critical safeguards are missing from Uber's application process. For instance, no one actually meets the applicant, and Uber does not verify that the pictured vehicle is actually owned by the applicant.

Further, nothing is done to verify that the vehicle inspection form was not simply filled out by the applicant. The complaints further allege that applicants are not fingerprinted, and no steps are taken to ensure that the applicant has provided his or her real name or Social Security number.

It is worth noting that one of the drivers alleged to have assaulted a Chicago area woman was using an Uber account under his wife's name with his photo.

In challenging Uber's claims that its background check is

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"often more rigorous than what is required to become a taxi driver," the Sabatino lawsuit contrasts the requirements to become an Uber driver with those to become a taxi driver in San Francisco.

There, a taxi driver applicant must: "(i) attend a seven-hour class on taxi driving; (ii) take and pass an exam administered by the San Francisco Municipal Transportation Agency; (iii) personally appear for an interview by the San Francisco Municipal Transportation Agency; (iv) submit to a Live Scan biometric fingerprint examination; and (v) submit a 10-year printout of the applicant's DMV driving record that is current within 30 days."

The lawsuits also challenges Uber's claims regarding its safe rides fee. For instance, while Uber says the fee is used to provide driver safety education, the complaints allege that Uber does not provide any type of driver training. Rather, Uber offers optional driver training courses to drivers at a fee of between \$40 and \$65.

Uber also claims that the fee goes toward regular vehicle inspections. However, Uber does not itself perform vehicle inspections, and any inspections are conducted at the driver's expense.

While Uber has not yet filed a responsive pleading in any of these lawsuits, Uber's terms and conditions distance itself from any actions taken by its drivers, which Uber considers to be third-party providers.

Uber's terms state that it "does not guarantee the suitability, safety or ability of third-party providers. ... By using the services, you acknowledge that you may be exposed to situations involving third-party providers that are potentially unsafe, offensive, harmful to minors or otherwise objectionable and that use of third-party providers arranged or scheduled using the service is at your own risk and judgment."

Moreover, Uber has another potential safeguard against liability: Uber itself does not actually hire any of its ridesharing drivers. Rather, according to the complaints, Uber has created wholly owned subsidiaries who license the technology from Uber and then hire drivers for the rideshare services.

Ultimately, these lawsuits will likely be another challenge, albeit from a different angle, to Uber's position that it is a technology company, not a common carrier, and should not be subject to the standards and regulations that govern other modes of public transportation.

Whether or not the plaintiffs in these cases are successful, they will have given us more to think about before getting in the back of a stranger's car conveniently hailed by the app on our smartphones.