

Best's Insurance Law Podcast

The Complexity of Rideshare Claims - Episode #180

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Guest Attorneys: Thomas Brown and Patrick DeLong from [Marshall Dennehey Warner Coleman & Goggin](#)

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John Czuba: Welcome to “Best’s Insurance Law Podcast,” the broadcast about timely and important legal issues affecting the insurance industry. I’m John Czuba, Managing Editor of *Best's Insurance Professional Resources*.

Today, we're speaking with Thomas Brown and Patrick DeLong, co-chairs of the Rideshare Liability Practice Group at [Marshall Dennehey Warner Coleman & Goggin](#).

As members of the firm's casualty department, both men are highly experienced in the area of automobile negligence and have handled hundreds of cases involving bodily injury, uninsured motorist claims, and high exposure cases involving wrongful death and catastrophic injuries.

They bring this experience to the emerging area of rideshare liability, where they defend rideshare drivers and insurers in complex, catastrophic rideshare cases. Gentlemen, welcome to our show this morning.

Tom Brown: Thanks, John.

Patrick DeLong: Thanks, John.

John: Today's podcast is the complexity and complications associated with rideshare litigation. Tom, we'll start our questions with you today. First off, can you tell us a little bit about the Rideshare Liability Practice Group at Marshall Dennehey -- why a specific practice group devoted to this area?

Tom: Thanks, John. The primary reason we started the Rideshare Liability Practice Group was to better serve our clients' needs. The sharing economy is a relatively recent development, but it's grown exponentially in a short period of time.

Rideshare platforms like Uber and Lyft make up a significant part of the sharing economy space and are rapidly growing themselves. With the number of rideshare drivers on the roadway, accidents are inevitable and rideshare claims are increasing.

That led to the need for new insurance programs that provide liability coverage for the rideshare industry. The bottom line is rideshare claims are complicated. There are a number of nuances to handling them and they have their own vocabulary. Some states even have their own legislation.

The rideshare industry and its insurance carriers need attorneys who have the knowledge and experience to handle these types of claims. As a full-service insurance defense firm, Marshall Dennehey responded by forming a cutting-edge practice group that specializes in handling all aspects of rideshare claims and litigation.

John: Patrick, what are some of the differences between regular automobile cases and rideshare cases?

Patrick: I would say the primary difference is the complexity of the cases. Rideshare cases often involve multiple parties and different causes of action. There can be multiple claimants or plaintiffs in the same case.

Those plaintiffs or claimants can be drivers and other occupants of vehicles involved in accidents with rideshare vehicles. Plaintiffs or claimants can also be rideshare drivers and rideshare riders.

There are often multiple defendants in the same rideshare case, such as rideshare platform owners, independent drivers and owners of vehicles used in ridesharing, and the insurers who insure the rideshare platforms, drivers, and riders.

I would say another big difference is that rideshare cases also occasionally involve media exposure. As a result, there are brand protection considerations in defending rideshare cases.

Of course, in defending rideshare cases, it's also important to take measures to ensure the protection of the trade secret and proprietary information of the rideshare platform itself.

John: Tom, at what stage does Marshall Dennehey get involved in rideshare claims?

Tom: Marshall Dennehey can be retained at any stage of a claim or litigation. It really depends on the nature of the case and when certain triggering events occur. In less complex cases involving lower damages, often, we're retained by the carrier after the carrier receives notice that a lawsuit has been filed.



In more complex cases, such as cases involving significant exposure, including catastrophic injuries or death, we're often retained shortly after an accident happens, sometimes even before a carrier knows that anyone is making a claim.

The reason for that is evidence disappears. Inspecting and preserving the scene and the vehicles involved in an accident is important. Witness statements have to be taken early on, because witnesses' recollections can change. Sometimes, experts are needed to be retained early on.

We also get involved in responding to time limit and policy limit demands. We can set up pre-suit mediations or global settlement conferences as the need arises. At times, we're even asked to step in at the late stages of litigation approaching trial.

In situations where a case is going in the wrong direction or a carrier becomes dissatisfied with its lawyers, sometimes we're brought in at the end to defend the case through the trial. It can be any aspect of the litigation where we're retained.

John: Patrick, what are the different types of clients the firm defends in rideshare cases, and what are the different types of claims asserted against them?

Patrick: Marshall Dennehey defends rideshare platforms, independent drivers, and owners of vehicles used for ridesharing. We also defend the insurers who insure the platforms, rideshare drivers, and riders.

The causes of action we defend include various vicarious liability claims; negligent hiring, retention and supervision claims; and claims relating to the negligent design of the rideshare application.

We defend independent drivers of rideshare vehicles against automobile negligence claims. We defend owners of rideshare vehicles against vicarious liability claims such as claims brought against them pursuant to Florida's dangerous instrumentality doctrine, for example.

Our firm also defends insurers in uninsured motorist and underinsured motorist cases, as well as we defend insurers in bad faith claims.

John: Tom, what are some of the legal and factual defenses you assert on behalf of your rideshare clients?

Tom: The defenses that are available depend on the client that we're representing. Representing an independent rideshare driver is not too different from representing a driver in a commercial auto case.

The factual defenses would be typically that there was no negligence on the part of the driver, or that there was comparative fault on the part of the plaintiff, or there may be fault on the part of a non-party, which we call in Florida, a Fabre defendant.

Those defenses usually stem from the initial accident investigation, including obtaining information from the crash report, taking statements from parties or witnesses, scene investigation, vehicle inspections, black box downloads, and accident reconstruction.

Other defenses might include the seat belt defense, failure to mitigate damages, and set-offs. There's also some misunderstanding as to what a rideshare driver is. In Florida, a rideshare driver is not a common carrier, so there's no heightened duty and we would argue that the regular negligence standard would apply.

If we're representing a platform, typically, the issues circulate around vicarious liability. The main issue becomes whether or not the driver is an independent contractor versus an employee or an agent of the platform.

The platform would take the position that the riders are independent contractors, and so there's no vicarious liability for their negligence. There may also be immunity defenses if there's legislation passed in a particular state.

Florida has a TNC statute that provides immunity for the platform as long as certain requirements are met. If we're defending the insurance carrier in a UM or UIM claim, there may also be policy or coverage defenses available.

John: Patrick, why do rideshare platform defendants need to be concerned about confidentiality issues on litigation?

Patrick: Primarily because rideshare platforms are high-profile targets of a very high volume of litigation. Confidentiality agreements and protective orders are one way to protect the proprietary and trade secret information of the rideshare platform defendant.

Confidentiality is also important for brand protection. We achieve that goal through the utilization of confidentiality and non-disparagement agreements when cases are resolved.

John: Gentlemen, thank you both so much for joining us today.

Tom: Thanks for having us, John.

Patrick: Thank you.

John: You've just listened to Thomas Brown and Patrick DeLong, co-chairs of the Rideshare Liability Practice Group at [Marshall Dennehey Warner Coleman & Goggin](#). Special thanks to today's producer, Frank Vowinkel.



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I'm John Czuba, and now this message.

Transcription by CastingWords

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