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PERSPECTIVE

Uber and Lyft need to do more during the coronavirus pandemic

By Joseph H. Low IV

The COVID-19 pandemic brings out the best in some people, such as workers from medical professionals to grocery store checkers doing their jobs under hazardous conditions. Some businesses displayed their civic spirit by converting their factories to manufacturer in-demand personal protective equipment and ventilators, although some needed a bit of prodding from the Defense Production Act. Others complied with the government-mandated shutdown at the expense of severe financial hardship. Then, there are the rest: The companies that blithely continue business as usual as if the world is unchanged. Two such companies are Uber and Lyft.

Uber and Lyft were at the forefront of creating an innovative industry that combined technology and transportation in an exciting way. The industry managed to do what the private transportation industry and government failed to accomplish for years: convince drivers that shared transportation is often a better option to get where they need to be than their own vehicles.

People all over the world are now addicted to ride hailing. Uber and Lyft sell a service much like a dating service: It introduces someone who wants to get a ride to someone who wants to give a ride. Through the use of their software they, like a virus, have infiltrated virtually every country, culture and community around the world. Some would say that they and their software have spread faster than a virus and have changed the world and our culture more than any virus.

So many people embraced ride hailing so completely that it took us too long to notice the industry has a dark side: It does not treat its drivers well. Uber's argument is that since it is a technology company, transportation laws don't apply. Despite the California Supreme Court's ruling in *Dynamex* that gave us a bright line rule on the classification of employees vs. independent contractors, Uber and Lyft continue to mumble to themselves like

sleepwalkers that drivers are independent contractors. Uber claims, and any attempt to change that status are met with denial, contempt and frivolous lawsuit defenses.

Now, when most of the country is rallying behind governments' attempts to stop the spread of and deaths from COVID-19, Uber and Lyft see only dollar signs earned under hazardous

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conditions that put both drivers' and their passengers at risk.

It is a time of national crisis. The government has made rules and laws as an attempt to keep us safe. We've been advised by doctors and scientists to keep a six-foot distance from one another. We've been ordered to stay home if our work is deemed "nonessential." The strategy calls for us to all sacrifice now. The idea is really quite simple: The needs of the many outweigh the needs of the few. But try telling that to Uber and Lyft. I believe that there should be some recourse for we the people against the corporate incubators that save the Grim Reaper the walk and will drive him to his destination for free.

Riders get into a ride-hail car full of air that has been swirling around much like water in a fishbowl. The air had perhaps dozens of potentially infected people contribute to its contents that day. The air did circulate through a filter, but that was likely installed when the car was new, possibly many years ago. That filter is now a petri dish breeding years of organisms, which possibly includes COVID-19. Scientists believe that the virus can live about three hours in the air and up to 12 hours on surfaces. So all the virus needs is for one new host to enter that car every 12 hours. Uber says its drivers take about three fares an hour. That doesn't even take into account the surfaces touched by hundreds of dirty fingers every day.

Simple math: COVID-19 wins. Thanks to Uber and Lyft.

Uber and Lyft intentionally give drivers access, communication and directions to new people who may be contaminated with the virus. No one knows who or how many people are asymptomatic carriers. So why would corporations who make their money directly from the hands of individuals

In addition to all of the usual tort causes of action, it seems likely that many of these lawsuits may have a claim for punitive damages. The foundation for the punitive will likely be similar to that of DUI claims. They knew the risks and the potential danger and acted without regard for the consequences.

How will a jury decide who is liable? Will it judge the corporation or the driver? Is it a conspiracy between them both? Should the corporations have disabled the software during this time so that the desperate drivers couldn't find careless riders? And what about the government? The U.S. Department of Transportation has the power to shut down Uber and Lyft. Should it force the issue, which would have already been voluntary if Uber and Lyft actually had a conscience.

Because of the decisions made by drivers and a handful of people who hide behind corporation status, those decisions have severe consequences for us all. Juries will hold them accountable for their intentional and negligent actions. Yes, there will be those personal responsibility types that say there should be an exception to the rule. A type of "rider beware" sort of defense.

These corporations need to do the responsible thing and shut off their apps. That may be a hardship for some people right now, but it doesn't outweigh the many other hardships millions are enduring to keep people alive. If the ride-hail industry keeps enabling drivers to take risks with their and their passengers' safety, I have a solution. I will seek out every single case I can find that resulted in injury or death to innocent riders and drivers. Then I will take the fight to Uber and Lyft, holding them accountable for their decisions.

In the end, we continue to lose our freedom to corporations that are free to threaten our health and safety in exchange for their financial health and safety from bankruptcy. ■

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