

# Who's on the Hook?

Part 1: Litigation and Insurance  
Issues in Ride-Share and Rental  
Car Accident Cases

MATERIALS BY

Andrew Smiley, Esq.

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—New York State—  
**ACADEMY**  
OF TRIAL LAWYERS

Live Streamed  
October 2, 2024  
1pm via Zoom

## WILLIAM M. SAVINO ESQ.

### Insurance Coverage, Complex Business/Corporate Disputes

Highly regarded throughout the legal and business communities, William M. Savino has extensive experience in complex commercial and insurance coverage litigation having spent his legal career litigating in both trial and appellate courts throughout the United States. Most recently, in 2020 Mr. Savino received the distinction from Chambers USA as a “Notable Practitioner” in insurance coverage claims and litigation. As a neutral, he brings a wealth of legal and business experience to the resolution of even the most complex of matters.

Mr. Savino has served as counsel for numerous insurance companies relating to insurance coverage claims and lawsuits ranging from intellectual property liability coverage disputes, and business torts to national, environmental, and primary/excess insurer disputes. His experience also includes handling matters involving municipalities and legislative bodies, as well as working with some of the most well-known, respected law firms throughout the United States.

Mr. Savino is a strong proponent of Alternative Dispute Resolution (ADR). He has significant ADR experience, having represented clients in many mediations and arbitrations, including a recent transcontinental mediation involving multiple pending suits in different forms. His professional experience, coupled with his leadership positions, give him an added dimension and depth, allowing him the ability to effectively negotiate, guiding parties and counsel to a fair and impartial resolution.

He is available to hear cases throughout the New York Metro area and the United States.



### Areas of Experience

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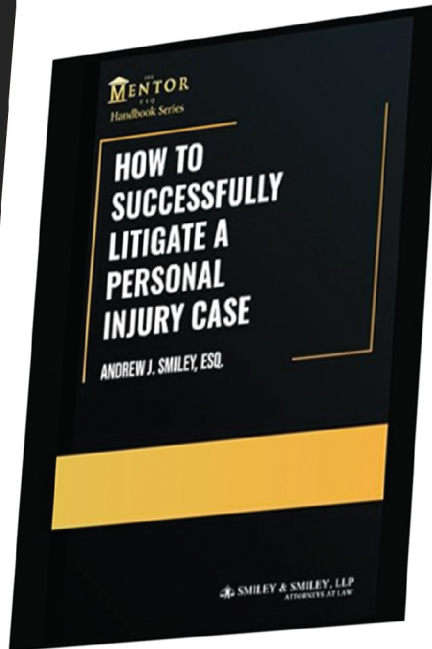


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# HOW TO SUCCESSFULLY LITIGATE A PERSONAL INJURY CASE

ANDREW J. SMILEY, ESQ.

## How to Successfully Litigate a Personal Injury Case: A Practical Guide (The Mentor Esq. Handbook Series) Paperback – December 8, 2022

by Andrew J. Smiley Esq. (Author)

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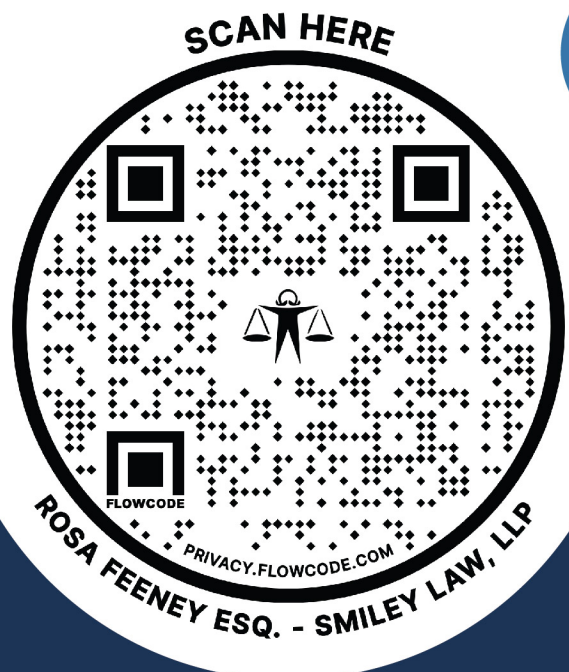
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***CURRICULUM VITAE***

**Education:**

·Brooklyn Law School - Juris Doctorate 1996

Moot Court Honor Society - Vice President/Executive Board (Chair of Trial Division)  
Moot Court Honor Society - Competitor - National Appellate Trademark Competition  
Moot Court Honor Society – Coach, National Trial Team – Regional Champions  
CALI Excellence For The Future Award - Advanced Legal Research  
Judge Edward and Doris A. Thompson Award for Excellence in Trial Advocacy

·Tulane University, New Orleans, LA - Bachelor of Arts (Honors, Psychology) 1993

**Professional:**

· *Smiley & Smiley, LLP*

Managing Partner & Senior Trial Attorney, January 2001 - present

Associate, June 1996 - December 2000

Law Clerk, September 1993 - June 1996

Major verdicts and settlements in plaintiffs' personal injury, medical malpractice and wrongful death litigation

## Andrew J. Smiley, Esq. Curriculum Vitae, Page 2

· *Adjunct Clinical Instructor of Law - Brooklyn Law School, Trial Advocacy Program (1998-2004)*

· *The Mentor Esq. Podcast – A Podcast for Lawyers*

- Founder & Host (2019 – Present)

· *New York “Super Lawyer”*

2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024

### Bar Admissions:

- The United States Supreme Court
- New York State Courts
- United States Eastern District, Southern District & Northern District of New York
- United States District Court of Vermont

### Organizations/Affiliations:

· New York State Academy of Trial Lawyers

- Immediate Past President (May 2018- May 2019)
- President (May 2017 – May 2018)
- President-Elect – (April 2016- May 2017)
- Vice President – 1st Dept. (July 2013-May 2016)
- Executive Committee (May 2019 – present)
- Board of Directors (2013- present)
- Judicial Screening Committee (2013- present)
- Master CLE Instructor (2020 – present)
- CLE Instructor (2013 – present)

· New York City Trial Lawyers Alliance

- Chairman of Board of Governors (July 2017 – July 2019)
- President (July 2015 – July 2017)
- Vice President (June 2013 – July 2015)
- Treasurer (June 2011 – June 2013)
- Secretary (June 2009- June 2011)
- Board of Directors (2000-present)

- Judicial Screening Committee, Kings County Democratic Party (2013)
- New York State Bar Association
- Brooklyn Bar Association
  - Medical Malpractice Committee
  - Supreme Courts Committee
- American Bar Association
- The American Association for Justice

## Andrew J. Smiley, Esq. Curriculum Vitae, Page 3

- Brooklyn Law School Alumni Association
- National Order of Barristers
- Lime Rock Drivers Club
- Porsche Club of America (Connecticut Valley Region)
- Porsche Sim Racing League
- Sports Car Driving Association (SCDA)
- Just Hands Racing Foundation – Board of Directors & Legal Counsel

### Authored Books

Smiley, Andrew J. *How to Successfully Litigate a Personal Injury Case – A Practical Guide*, 2022, The Mentor Esq. Handbook Series – Amazon Best Seller in Personal Injury Law

Smiley, Andrew J. *Successful Trial Skills – A Practical Guide to Jury Selection, Opening Statements, Direct & Cross Examinations and Closing Arguments*, 2024, The Mentor Esq. Handbook Series – Amazon #1 New Release in Trial Practice

### Continuing Legal Education (CLE) Presentations:

(75) *Introducing Evidence and Impeaching Witnesses*, Office of The New York State Attorney General – Legal Education and Professional Development, September 26, 2024

(74) *Walking the Line: Settlement Negotiation Skills & Ethics*, New York State Academy of Trial Lawyers, July 9, 2024

(73) *Novel Negligence Cases – Part 2: How to Successfully Litigate Dram Shop Cases*, New York State Academy of Trial Lawyers, June 5, 2024

(72) *Working with Experts*, Office of The New York State Attorney General – Legal Education and Professional Development, April 2, 2024

(71) *Novel Negligence Cases – Part 3: How to Successfully Litigate Ski Accident Cases*, New York State Academy of Trial Lawyers, March 6, 2024

(70) *Novel Negligence Cases – Part 1: How to Successfully Litigate Personal Trainer and Gym Negligence Cases*, New York State Academy of Trial Lawyers, January 3, 2024

(69) *Litigation Back to Basics – Part 3: Introducing Evidence and Impeaching Witnesses*, New York State Academy of Trial Lawyers, December 6, 2023

(68) *Litigation Back to Basics – Part 2: Working With Experts*, New York State Academy of Trial Lawyers, November 1, 2023

(67) *Construction Site Injury Litigation: Pursuing or Defending Claims Against Site Owners, Contractors, and Other Third Parties*, Strafford CLE/BarBri, October 17, 2023



**Andrew J. Smiley, Esq. Curriculum Vitae, Page 4**

- (66) *Litigation Back to Basics – Part 1: Preparing and Conducting Depositions*, New York State Academy of Trial Lawyers, October 4, 2023
- (65) *Depositions*, Office of The New York State Attorney General – Legal Education and Professional Development, September 28, 2023
- (64) *How to Litigate a Medical Malpractice Case – Part 6: The Trial*, New York State Academy of Trial Lawyers, June 7, 2023
- (63) *How to Litigate a Medical Malpractice Case – Part 5: Pre-Trial Preparation*, New York State Academy of Trial Lawyers, May 3, 2023
- (62) *How to Litigate a Medical Malpractice Case – Part 4: Discovery & Depositions*, New York State Academy of Trial Lawyers, April 4, 2023
- (61) *How to Litigate a Medical Malpractice Case – Part 3: Commencing the Action*, New York State Academy of Trial Lawyers, February 28, 2023
- (60) *How to Litigate a Medical Malpractice Case – Part 2: Expert Selection*, New York State Academy of Trial Lawyers, February 1, 2023
- (59) *How to Litigate a Medical Malpractice Case – Part 1: The Initial Screening*, New York State Academy of Trial Lawyers, January 4, 2023
- (58) *How to Litigate a Construction Accident Case – Part 4: Motion Practice*, New York State Academy of Trial Lawyers, December 7, 2022
- (57) *Preparing for Depositions: Best Practices for Asking and Answering Questions*, Office of The New York State Attorney General, 2022 Legislature Program, December 6, 2022
- (56) *How to Litigate a Construction Accident Case – Part 3: Depositions*, New York State Academy of Trial Lawyers, November 2, 2022
- (55) *How to Litigate a Construction Accident Case – Part 2: Commencing The Action*, New York State Academy of Trial Lawyers, October 3, 2022
- (54) *Trial Series: Part 2 - Opening Statement Webinar*, Queens County Bar Association, September 22, 2022
- (53) *How to Litigate a Construction Accident Case – Part 1: An Overview of New York Labor Law*, New York State Academy of Trial Lawyers, September 7, 2022
- (52) *How to Litigate a Catastrophic Automobile Accident Case – Part 6: The Trial*, New York State Academy of Trial Lawyers, July 6, 2022
- (51) *How to Litigate a Catastrophic Automobile Accident Case – Part 5: Mediation and Settlement*, New York State Academy of Trial Lawyers, June 2, 2022
- (50) *How to Litigate a Catastrophic Automobile Accident Case – Part 4: Expert Depositions*, New York State Academy of Trial Lawyers, May 4, 2022

## **Andrew J. Smiley, Esq. Curriculum Vitae, Page 5**

### Continuing Legal Education (CLE) Presentations Continued:

(49) *How to Litigate a Catastrophic Automobile Accident Case – Part 3: Liability and Damages Experts*, New York State Academy of Trial Lawyers, April 6, 2022

(48) *How to Litigate a Catastrophic Automobile Accident Case – Part 2: Commencing the Action*, New York State Academy of Trial Lawyers, March 2, 2022

(47) *How to Litigate a Catastrophic Automobile Accident Case – Part 1: The Investigation*, New York State Academy of Trial Lawyers, February 4, 2022

(46) *Anatomy of a Trial, a Trial Skills Series – Part 5: Summations*, New York State Academy of Trial Lawyers, January 5, 2022

(45) *Anatomy of a Trial, a Trial Skills Series – Part 4: Cross-Examination*, New York State Academy of Trial Lawyers, December 1, 2021

(44) *Anatomy of a Trial, a Trial Skills Series – Part 3: Direct Examination*, New York State Academy of Trial Lawyers, November 3, 2021

(43) *Anatomy of a Trial, a Trial Skills Series – Part 2: Opening Statements*, New York State Academy of Trial Lawyers, October 6, 2021

(42) *Anatomy of a Trial, a Trial Skills Series – Part 1: Jury Selection*, New York State Academy of Trial Lawyers, September 10, 2021

(41) *How to Successfully Litigate a Personal Injury Case Series - Part 7: It's a Wrap!*, New York State Academy of Trial Lawyers, July 7, 2021

(40) *How to Successfully Litigate a Personal Injury Case Series - Part 6: The Trial*, New York State Academy of Trial Lawyers, June 2, 2021

(39) *How to Successfully Litigate a Personal Injury Case Series - Part 5: Pre-Trial Disclosures and Gearing up for Trial*, New York State Academy of Trial Lawyers, May 5, 2021

(38) *How to Successfully Litigate a Personal Injury Case Series - Part 4: Depositions*, New York State Academy of Trial Lawyers, April 7, 2021

(37) *How to Successfully Litigate a Personal Injury Case Series - Part 3: Your Adversary, the Preliminary Conference and Initial Discovery*, New York State Academy of Trial Lawyers, March 3, 2021

(36) *How to Successfully Litigate a Personal Injury Case Series - Part 2: Early Settlement, Jurisdiction, Venue & Commencing The Lawsuit*, New York State Academy of Trial Lawyers, February 3, 2021

(35) *How to Successfully Litigate a Personal Injury Case Series - Part 1: Getting the Case, Investigation and Ready to File*, New York State Academy of Trial Lawyers, January 6, 2021

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Continuing Legal Education (CLE) Presentations Continued:

(34) *Brick by Brick: Building a Personal Injury Practice*, New York State Academy of Trial Lawyers, December 10, 2020

(33) *Working with Experts to Build Your Case*, New York State Academy of Trial Lawyers, October 8, 2020

(32) *Fitness Industry Liability: Gyms, Trainers and Waivers*, The Mentor Esq. Podcast, September 8, 2020

(31) *Let's Make a Federal Case Out of It: Litigating Personal Injury Cases in Federal Court*, New York State Academy of Trial Lawyers, June 9, 2020

(30) *Crisis Management - The Corona Virus Pandemic*, The Mentor Esq. Podcast, April 9, 2020

(29) *Do You Have a Federal Tort Claims Act Case in Your Office*, New York State Academy of Trial Lawyers, December 10, 2019

(28) *Auto and Truck Claims, Accidents and Litigation 2019 – Evaluating Damages and Use of Experts*, New York State Bar Association, September 9, 2019

(27) *Thoughts and Strategies in the Ever-Evolving Product Liability Litigation – The Plaintiff's Perspective*, The Defense Association of New York, March 12, 2019

(26) *Trial Techniques: Lessons on Dealing with Millennial Jurors; Summations; Requests to Charge and Post-Trial Motions*, The Defense Association of New York, January 31, 2019

(25) *Trial Techniques: Interactive Lessons from the Plaintiff and Defense Perspectives*, The Defense Association of New York, September 17, 2018

(24) *Punitive Damages – What to Plead, What to Prove: Medical Malpractice*, New York State Academy of Trial Lawyers, June 8, 2017 & June 21, 2017

(23) Presenter on Evidence, *2016 Annual Update, Precedents & Statutes for Personal Injury Litigators*, New York State Academy of Trial Lawyers, September 30, 2016

(22) *Medical Malpractice in New York: A View from All Sides: The Bench, The Bar and OCA*, New York State Bar Association, October 11, 2015

(21) *Effectively Using Experts in Personal Injury Cases*, Lawline, October 8, 2015

(20) *Killer Cross Examination Strategies*, Clear Law Institute, April 21, 2015

(19) *Powerful Opening Statements*, Clear Law Institute, January 13, 2015

(18) *The Dram Shop Law: New York Liquor Liability*, Lawline.com, November 20, 2014

## **Andrew J. Smiley, Esq. Curriculum Vitae, Page 7**

### Continuing Legal Education (CLE) Presentations Continued:

- (17) *Killer Cross Examination Strategies*, Lawline.com, November 20, 2014
- (16) *Trial Techniques: Tricks of the Trade Update*, Lawline.com, October 14, 2014
- (15) *Personal Trainer Negligence Update*, Lawline.com, October 14, 2014
- (14) *Trial Techniques – Part 2: Cross- Examination & Closing Arguments*, Brooklyn Bar Association, May 15, 2014
- (13) *Trial Techniques – Part 1: Jury Selection, Opening Statements & Direct Examination*, Brooklyn Bar Association, May 7, 2014
- (12) *Health, Fitness & Adventure Sports Liability*, New York State Bar Association, August 1, 2013
- (11) *Direct Exams: How To Make Your Witnesses Shine*, New York State Academy of Trial Lawyers, May 6, 2013
- (10) *Opening Statements: A Recipe for Success*, Lawline.com, August 7, 2012
- (9) *“You Had Me at Hello”: Delivering an Effective and Powerful Opening Statement*, New York State Academy of Trial Lawyers, April 1, 2012
- (8) *Preparing the Construction Accident Case*, New York County Lawyers Association, March 26, 2012
- (7) *The Nuts and Bolts of a Trial*, New York State Academy of Trial Lawyers, October 24, 2011
- (6) *Personal Trainer Negligence*, Lawline.com, March 22, 2011
- (5) *Trial Effectively Using Experts in Personal Injury Cases*, Lawline.com, May 4, 2011  
*Techniques: The Tricks of the Trade*, Lawline.com, February 16, 2011
- (4) *Practice Makes Perfect: Learn to Practice Like a Pro*, Lawline.com, January 18, 2011
- (3) *Jury Selection 101*, New York State Academy of Trial Lawyers, December 14, 2010
- (2) *Practical Guidelines for Getting Items into Evidence*, Lawline.com, March, 2010
- (1) *Winning Your Case: Trial Skills that Count*, Lawline.com, August 21, 2009

### Television Appearances

#### *Fox News Channel*

- The O’Reilly Factor
- What’s Happening Now with Martha McCallum

**Andrew J. Smiley, Esq. Curriculum Vitae, Page 8**

- America's News Room
- Fox & Friends
- Fox Business Channel
- Neil Cavuto
- Money with Melissa Francis

*CNN -Anderson Cooper 360*

*ET – Entertainment Tonight*

*Bloomberg TV*

*Headline News*

*Tru TV*

*Court TV*

*The Morning Show with Mike and Juliet*

Interests, Hobbies:

High-Performance Driving Events, Lime Rock Drivers Club, Porsche Enthusiast, Sim Racing, Tennis, Lego, Cooking, Yoga





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## ABOUT

# ROSA M. FEENEY

Rosa M. Feeney, Esq., a Partner and Chair of the Insurance and Risk Division at Smiley & Smiley, LLP has been in private practice for over 30 years with a focus on policyholder and plaintiff insurance coverage matters. She serves as an insurance coverage consultant to insurance policyholder's, plaintiffs and attorneys who face insurance issues in personal injury and property damage cases.

Ms. Feeney has successfully handled a multitude of cases from inception and provides end-to-end services, from pre-litigation consultancy, to review, analysis, negotiation, litigation, arbitration and mediation to resolve disputes. She has also litigated numerous Construction, Labor Law, Business owners, Automobile, Homeowner, Life and Disability Insurance cases and serves as lead counsel on several New York State litigations in the State and Federal Courts. Having worked on behalf of insurance carriers for over 20 years and now concentrating on policyholder and plaintiff's insurance coverage matters, she brings a unique perspective and insight to insurance coverage disputes. She has facilitated countless settlements and mediation involving injury claims where insurance issues are involved.

Ms. Feeney is a frequent lecturer on a variety of topics for the NYS Trial Academy as well as other esteemed institutions.

Her areas of Specialization in Insurance Coverage

Litigation including:

Construction and Labor Law

Commercial Insurance Coverage issues

Motor Vehicle Insurance Coverage Issues

including general liability, property damage (1st & 3rd party)

Rideshare Insurance Issues

Uninsured/Underinsured coverage;

Homeowner Insurance coverage issues,

Life Insurance issues

Personal Injury

Disability Insurance

Ms. Feeney, through the Mentor Program at Smiley & Smiley, LLP offers free one-on-one's with other attorneys, insurance broker, property owners, construction industry professionals and many more.

To book your appointment visit:

<https://calendly.com/rosa-feeney-esq-availability>

## **WHO'S ON THE HOOK? PART 1: LITIGATION AND INSURANCE ISSUES IN RIDE-SHARE AND RENTAL CAR ACCIDENT CASES**

### **INSURANCE COVERAGE**

Rideshare companies continue to compete for their market share in the industry and all of these services have led to the evolution of new lines of insurance, to cover the various scenarios encountered when a vehicle is being used in those types of businesses.

As a review of New York insurance requirements, New York's Vehicle and Traffic Law (VTL) requires every owner of a motor vehicle to maintain minimum levels of insurance. Currently New York's VTL requires \$25K per person and \$50K per accident of liability coverage for injury to third-parties, Uninsured Motorist Coverage in the same amounts and Personal Injury Protection (No-Fault) of \$50K. Collision and Comprehensive coverage may also be secured under a personal auto policy for damage to the vehicle itself, however, this coverage is not mandatory.

The insurance needs of a rideshare vehicle differ from the typical taxi or livery in that the rideshare driver is usually operating a personal vehicle, which is used for both the rideshare business and for personal use.

However, if an accident occurs while the rideshare driver is engaged in providing rideshare services in his or her personal vehicle, the driver's personal auto policy may not provide coverage. Use of a personal auto as a taxi or livery vehicle is typically excluded in a personal auto policy by a "livery exclusion." Therefore, the rideshare driver obviously needs supplemental coverage in order to cover any gaps.

In response to this dilemma, the insurance industry has come up with products to cover the rideshare risk and has developed different coverages based upon the stage of use of the vehicle.

You can imagine that whether a driver is using the vehicle for the rideshare business or personal use could change in an instance and deciphering what the driver was doing at the time of the accident could be problematic. Therefore, the insurance and rideshare industry have come up with a system, where the types of insurance available for these rideshare drivers is entirely dependent upon on the stage of the use of the rideshare application, commonly referred to as an App.

The driver of the vehicle downloads the rideshare App, for example the "Uber Driver" App and logs in to receive the identity of potential customers waiting to be picked up or who want food delivered. The phase of use of the App will dictate what coverage applies to protect third parties, the driver, owner and occupants of the rideshare vehicle.

When a rideshare driver has the application off and is presumably using the vehicle for personal use, the driver's personal auto policy should apply to cover any accident. However, once the App is on, the driver's personal insurance policy, which typically contains a livery exclusion, precludes coverage for the accident.

Article 44-B of the New York VTL, sets forth the financial responsibility requirements for “Transportation Network Companies” known as “TNC’s.”

In accordance with New York’s VTL, drivers of the rideshare vehicle are called “Transportation Network Company Drivers” or “TNC Drivers.”

The insurance industry has adopted 4 “Periods” that govern the different types of available coverage. “Period 0” refers to when the App is off. Once the rideshare App is on: “Period 1”, “Period 2” and “Period 3” coverage applies. The three periods are as follows:

- Period 1 is when the Uber App is on and the driver is waiting on a request to pick up a passenger.
- Period 2 is when the driver has accepted the request of a passenger and is on the way to pick up the passenger.
- Period 3 is when the passenger is in the vehicle and ends when the passenger exits the vehicle.

The facts of each case must be reviewed to determine which “Period” the risk falls under and which policy will apply. The rideshare companies can provide a driver log which identifies the applicable Period at the time of the accident.

As of September 25, 2024, the UBER website at the link below directs you to the UBER Certificates of Insurance by State. <https://www.uber.com/us/en/drive/insurance/#table-uber-certificate>. The New York Certificates of Insurance are attached.

Vehicles being operated in New York City are subject to the Taxi and Limousine Commission regulations, which require commercial livery vehicles to maintain \$100,000 in coverage.

Lyft (<https://www.lyft.com/driver/insurance>) currently provides \$50K per person/\$100K per accident and \$25K for property damage for Period 1 and \$1,000,000 liability limits for Period 2 and 3, Uninsured Motorist and also provides Contingent Comprehensive Coverage with \$2,500 deductible.

The website specifically indicates in fine print that *“For rides in the five boroughs of New York City, as well as countrywide rides with livery and TCP drivers, Lyft does not procure any primary liability policy. TLC, livery and TCP drivers procure their own policy.”*

A review of the particular policies for these rideshare vehicles is imperative to get a comprehensive understanding of the applicability and any priority of coverage issues with other available insurance.

There are options available in the market to supplement the rideshare coverage provided by Uber and Lyft, which can be purchased by the TNC Driver. This is an area to explore if you are involved in any case involving a rideshare vehicle and need to identify all available coverage for the accident.



Therefore, in analyzing coverage for rideshare vehicles, you must identify the stage of the use of the vehicle and the availability of any other coverage.

Despite its similarity to the rideshare business, Food Delivery Apps are not subjected to the same New York regulations and may not have any available coverage in some circumstances.

Food Delivery App services do not fall under the definition of TNC under the New York Vehicle and Traffic Law.

“Transportation Network Companies” are defined in New York’s Vehicle and Traffic Law as “a person, corporation, partnership, sole proprietorship, or other entity that is licensed pursuant to this article and is operating in New York state exclusively using a digital network to connect transportation network company passengers to transportation network company drivers who provide TNC prearranged trips.” VTL § 1691 (3).

There is no mention in the VTL § 1691 of food delivery services.

Importantly, New York Insurance Law permits an exclusion in a personal auto policy for use of a vehicle as a “public or livery conveyance” (the livery exclusion discussed above). In order for the vehicle to be deemed a “public or livery conveyance,” goes beyond whether the driver was paid for the transport or received a fee. The vehicle would need to be used indiscriminately in carrying goods for hire. Limited special use of the vehicle for transporting goods does not make the vehicle a livery conveyance.

Historically, New York Courts have rejected the use of the standard livery exclusion in a personal automobile policy to exclude coverage for drivers making food deliveries, such as pizza delivery, in their personal vehicles. The caselaw in this area is, however, very fact dependent.

So, if a food delivery service driver occasionally delivers food through these Food Delivery Apps, would that be deemed use as a “public or livery conveyance”? This is an area that is developing, and only time will tell whether those Food Delivery services will be considered a public or livery conveyance or whether they will be regulated just as the rideshare services.

There are two (2) Senate Bills pending that I am aware of requiring insurance for the Food Delivery driver: (1) New York State Senate Bill 2023-S8706 which requires third-party food delivery services to carry a group policy that covers bodily injury or death for delivery people in qualifying accidents and (2) Primary automobile liability insurance: New York State Senate Bill 2023-S6760 requires delivery network companies to ensure that their drivers have primary automobile liability insurance that covers them while delivering.

Therefore, while the rideshare industry has come under the grips of New York regulators and the New York Vehicle and Traffic and Insurance Law, the food delivery services have not and may leave those drivers and possibly innocent third-parties at risk of having no insurance at all if the personal auto carrier denies the claim based upon the livery exclusion.

It does appear that some insurers are writing Delivery Insurance for drivers and, therefore, anyone handling cases with the involvement of delivery drivers may want to explore whether the driver has purchased any additional coverage.

Coverage for these rideshare and food delivery services is relatively new and remains in flux. Those of us handling auto liability claims should keep a close eye on the new insurance products developed to respond to this need and how this developing area of the law impacts automobile accident litigation.

## **MANDATORY ARBITRATION**

The UBER user agreement contains a mandatory arbitration clause. They argue that if the person making a claim for damages, was the person that solicited the ride through the application, that arbitration is mandatory.

In [\*Mejia v Linares\*, 219 AD3d 1251 \(1st Dept 2023\)](#) and [\*Brooks v Lang Yang\*, 216 AD3d 505 \(1st Dept 2023\)](#), the First Department enforced the arbitration agreements.

The method of electronic consent is called "clickwrap" because it requires users to **click** a hyperlink *if they wish* to view the agreement. On the other hand, Lyft's method of electronic consent is referred to as "scrollwrap" because users may or must scroll through the full text of the agreement before affirmatively indicating their consent. Thus, considering Uber's "clickwrapped" Terms of Use were deemed enforceable.

Various New York trial courts have considered and enforced Lyft's mutual arbitration provision under similar facts to those presented here (*e.g.*, [\*Giliberti v Dixon\*, 2024 N.Y. Misc. LEXIS 3208, 2024 WL 3429839 \[Sup Ct, NY County, July 11, 2024, index No. 153717/23\]](#); [\*Riddell v Hossain\*, Sup Ct, Bronx County, Barbato, J., Apr. 4, 2024, index No. 814630/22E](#); [\*Jackson v Lyft, Inc.\*, 2024 N.Y. Misc. LEXIS 3204, 2024 WL 1509741 \[Sup Ct, NY County, Apr. 1, 2024, index No. 452283/23\]](#); [\*Johnson v New York City Trans. Auth.\*, Sup Ct, Bronx County, Perez, J., Feb. 26, 2024, index No. 809275/22E](#); [\*Garcia v Yu\*, Sup Ct, Kings County, Feb. 15, 2024, Piela Cohen, J., index No. 537310/22](#); [\*Gayle v LaKoretene\*, Sup Ct, Kings County, Feb. 8, 2024, Piela Cohen, J., index No. 507876/23](#); [\*Scarlett v Thompson\*, Sup Ct, Westchester County, Jan. 8, 2024, Ondrovic, J., index No. 57431/23](#); [\*Hinds v American United Transp., Inc.\*, Sup Ct, Nassau County, Dec. 4, 2023, Marber, J., index No. 609998/22](#); [\*Freeman v MTM Fuel Servs., Inc.\*, 2023 N.Y. Misc. LEXIS 25998, 2023 WL 8280553 \[Sup Ct, Bronx County, Oct. 17, 2023, index No. 806157/22E\]](#); [\*Beauduy v Siaka\*, 2023 N.Y. Misc. LEXIS 25916, 2023 WL 8280565 \[Sup Ct, Bronx County, Oct. 23, 2023, index No. 810890/22\]](#); [\*Reyes v Lyft, Inc.\*, Sup Ct, Nassau County, Aug. 16, 2023, \[\\*8\] Daly-Sapraicone, J., index No. 612505/22](#); [\*Coladonato v Lyft, Inc.\*, Sup Ct, Westchester County, Jan. 4, 2023, Lefkowitz, J., index No. 60081/22](#); [\*Williamson v Alexander\*, 2022 NY Slip Op 34503\[U\] \[Sup Ct, Kings County 2022\]](#)).

## **EXCESS COVERAGE UNDER UBER POLICY FOR TLC DRIVER**

With NYC Uber cases, Uber always takes the position that they don't cover the driver at all and that their coverage would only apply above the livery drivers commercial coverage as required by the TLC.

There are 2 arguments. One is a liability issue and one is coverage:

### **Liability**

The argument is that Uber is liable under the doctrine of Respondent Superior. In [\*Uy v Hussein\*, 186 AD3d 1567 \(2d Dept 2020\)](#) the court held that there was a question of fact. I could not find any New York Cases that held the driver was an employee.

The issue you know is one of control, which determines whether a worker is an employee or independent contractor. Uber's platform exercises a high degree of control over the driver: sets driver compensation, collects and distributes the pay, through a rating system that can prevent the driver from using the app, essentially the ability to fire the driver.

[\*In Bongiovi v Pulla\*, 83 Misc 3d 1204\[A\], 2024 NY Slip Op 50653\[U\] \(Sup Ct, Richmond County May 2024\)](#), the Court held that the driver was not an employee of Uber.

### **Coverage**

Whether the driver qualifies as an "Insured," under the Uber insurance policy. A permissive user should be an insured.

The other issue is that they claim they don't kick in until the \$100,000 is exhausted.

## **UNINSURED/UNDERINSURED MOTORIST COVERAGE**

The Uber policy may provide Uninsured or underinsured coverage, but it is likely that if they carry the coverage would be the minimum limits of \$25,000/\$50,000.

## **LOANER AND RENTAL CAR COVERAGE**

### **I. LIABILITY v. COVERAGE**

To obtain a comprehensive understanding of the legal treatment of loaner cars in New York State, it is important to make a clear distinction between **Loaner/Rental Car Liability** and **Loaner/Rental Car Insurance Coverage** issues.

**Loaner/Rental Car Liability** involves the analysis of how the Courts treat the liability of the owner of the loaner car vis-a-vis the injured or damaged plaintiff and how the Court treats the liability between the borrower of the vehicle and the owner of the loaner vehicle.

**Loaner/Rental Car Insurance Coverage** involves the analysis of the policies of insurance that may apply to protect the loaner car company and the borrower of the loaner vehicle.

It is also important to understand the similarities and differences between loaner cars and rental vehicles. While the treatment of these vehicles in the law would logically seem to be similar, the New York Courts and the legislature have chosen to apply the laws quite differently.

## II. RENTAL CAR LIABILITY

**Graves amendment prohibits direct suit against Rental Car Company.**

## III. CONSTRUCTIVE CONSENT

### A. *What Happens When The Rental/Loaner Agreement Only Permit Certain Drivers?*

- *New York is a Constructive Consent State.*

As set forth in Lancer Insurance Company v. Republic Franklin Insurance Company (2<sup>nd</sup> Dept. 2003):

In *Motor Veh. Acc. Indem. Corp. v Continental Nat. Amer. Group* (35 N.Y.2d 260, 360 N.Y.S.2d 859, 319 N.E.2d 182 (1974)), the Court of Appeals held that where the lessee of a rental vehicle permits another person to operate it, the rental company is deemed to have constructively consented to such use, even where the lessee violated the rental agreement by entrusting the rental car to another. The Court of Appeals recently reaffirmed this rationale in *Murdza v. Zimmerman* (99 N.Y.2d 375, 786 N.E.2d 440, 756 N.Y.S.2d 505 (2003)), explaining that its finding of constructive consent in *Motor Veh. Acc. Indem. Corp. v. Continental Natl. Am. Group Co.* (*supra*) "rested, in part, on the public policy concerns surrounding the large number of vehicles placed on the road by businesses that rent cars to others for profit, and the inevitability that these vehicles will 'become involved in their fair share of accidents'" (*Murdza v. Zimmerman, supra* at 380, quoting *Motor Veh. Acc. Indem. Corp. v. Continental Natl. Am. Group Co., supra* at 263). The Court of Appeals has also expressed concern that restricting a rental company's liability as owner of the vehicle to the negligence of authorized drivers only could leave an injured victim without the "recourse of a financially responsible defendant" contemplated by Vehicle and Traffic Law § 388, in violation of the public policy of this State (*Murdza v. Zimmerman, supra*; see *Motor Veh. Acc. Indem. Corp. v. Continental Natl. Am. Group Co., supra* at 264

## IV. COVERAGE FOR THIRD PARTY LIABILITY WITH RENTAL VEHICLES

*The Courts have carved out rules which require rental car companies in New York and New Jersey to provide the minimum levels of insurance required, regardless of any indemnification clause in the rental agreement and whether they have any insurance or are self-insured. ELRAC v. Ward, 96 N.Y.2d 58 (2001); Robinson v. Coia, 848 Ad2d 878, 183 N.J. 25 (2005).*

- *Rental Car Companies/Insurers must provide mandatory minimum coverage in NY. Minimum Coverage Obligations: \$25/50K liability; \$10K property damage.*

- *In New Jersey Rental car companies must provide the minimum mandatory limits (\$15K/\$30K), but the court will enforce “other insurance” clauses, which would make the Encompass primary auto a co-insurer with the rental car company on a primary basis.*

#### **V. COVERAGE FOR THIRD PARTY LIABILITY WITH LOANER VEHICLES**

*As discussed above, the legislature has carved out an exception for liability of a rental car/leasing company through the Graves Amendment, but this does not apply to loaner vehicles, therefore loaner vehicles can be named as direct defendants in bodily injury or property damage claims. Therefore, the question becomes what coverage is available to the borrower and the loaner car company.*

- *Loaner Car Companies/Insurers must provide the mandatory minimums depending on “Other Insurance Clause” language.*

If your insured is in an accident while operating a loaner vehicle, you must look at the loaner company policy as well as his/her personal auto policy to determine the coverage and priority. You must make a comparison of the “Other Insurance” or “No Liability” clauses.



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03/12/2024

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<b>PRODUCER</b> Aon Risk Insurance Services West, Inc. San Francisco CA Office 425 Market Street Suite 2800 San Francisco CA 94105 USA	<b>CONTACT NAME:</b> PHONE (A/C. No. Ext): _____ FAX (A/C. No.): _____ E-MAIL ADDRESS: _____														
	<table border="1"> <tr> <th>INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> <tr> <td>INSURER A: Liberty Mutual Fire Ins Co</td> <td>23035</td> </tr> <tr> <td>INSURER B:</td> <td></td> </tr> <tr> <td>INSURER C:</td> <td></td> </tr> <tr> <td>INSURER D:</td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> <tr> <td>INSURER F:</td> <td></td> </tr> </table>		INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A: Liberty Mutual Fire Ins Co	23035	INSURER B:		INSURER C:		INSURER D:		INSURER E:		INSURER F:
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<b>INSURED</b> Rasier-NY LLC, Rasier LLC, Rasier-CA LLC, Rasier-DC LLC, Rasier-PA LLC, Rasier-MT LLC and Hinter-NM LLC 175 Greenwich Street 47th FL New York NY 10007 USA	INSURER A: Liberty Mutual Fire Ins Co														
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Holder Identifier :

**COVERAGES**      **CERTIFICATE NUMBER:** 570104293695      **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS. **Limits shown are as requested**

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	<b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR  GENL AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER: _____						EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG
A	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY			AS2-665-067247-444	03/01/2024	03/01/2025	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY ( Per person)      \$75,000 BODILY INJURY (Per accident)      \$150,000 PROPERTY DAMAGE (Per accident)      \$25,000
	<b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE DED    RETENTION						EACH OCCURRENCE AGGREGATE
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR / PARTNER / EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below						<input type="checkbox"/> Y / <input type="checkbox"/> N    N / A PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT E.L. DISEASE-EA EMPLOYEE E.L. DISEASE-POLICY LIMIT

Certificate No : 570104293695

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**CERTIFICATE HOLDER****CANCELLATION**

Rasier-NY LLC, Rasier LLC, Rasier-CA LLC, Rasier-DC LLC, Rasier-PA LLC, Rasier-MT LLC and Hinter-NM LLC 175 Greenwich Street 47th FL New York NY 10007 USA	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE  <i>Aon Risk Insurance Services West, Inc.</i>





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<b>INSURED</b> Rasier-NY LLC, Rasier LLC, Rasier-CA LLC, Rasier-DC LLC, Rasier-PA LLC, Rasier-MT LLC and Hinter-NM LLC 175 Greenwich Street 47th FL New York NY 10007 USA	<b>INSURER A:</b> Liberty Surplus Insurance Corporation	
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	<b>INSURER C:</b>	
	<b>INSURER D:</b>	
	<b>INSURER E:</b>	
	<b>INSURER F:</b>	
		<b>NAIC #</b> 10725

Holder Identifier :

<b>COVERAGES</b>	<b>CERTIFICATE NUMBER:</b> 570104293692	<b>REVISION NUMBER:</b>
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A	Business Auto Physical Damage Coverage			AS2-665-067247-454 Auto Physical Damage	03/01/2024	03/01/2025	Comp Deductible \$2,500 CoII Deductible \$2,500

Certificate No : 570104293697

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

CIV.:

-----x  
GWENDOLYN LAU,

Plaintiff,

**VERIFIED  
COMPLAINT**

--against--

QUINGGUO DU and UBER TECHNOLOGIES, INC.,

**PLAINTIFF DEMANDS  
TRIAL BY JURY**

Defendants.  
-----x

Plaintiff, GWENDOLYN LAU, by her attorneys, SMILEY & SMILEY, LLP, complaining of the defendants, QUINGGUO DU and UBER TECHNOLOGIES, INC., hereinafter alleges at all times, upon information and belief as follows:

**JURISDICTION**

1. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §1332, in that this is an action by and between citizens of different States. The amount in controversy exceeds Seventy Five (\$75,000.00) Dollars as to the plaintiff, exclusive of interest and costs.

2. Venue is proper in this district pursuant to 28 U.S.C. §1391(b) because a substantial part of the events giving rise to this claim occurred in this district.

3. Plaintiff demands a trial by jury on the causes of action pleaded herein.

**THE PARTIES**

4. Plaintiff, GWENDOLYN LAU, is a citizen of the State of Texas, domiciled and residing at [REDACTED]

5. Defendant, QUINGGUO DU, (hereinafter referred to as “DU”), is a citizen of the State of New York, domiciled and residing at [REDACTED].

6. Defendant, UBER TECHNOLOGIES, INC., (hereinafter referred to as "UBER") was and still is a foreign corporation, authorized to transact business in the State of New York, with offices and corporate headquarters located 1455 Market Street, 4<sup>th</sup> Floor, San Francisco, CA, with a registered agent located at 28 Liberty Street, New York, New York 10005 for service of process.

7. On June 20, 2021, defendant, DU, was the owner and operator of a certain motor vehicle bearing New York State license plate number T706082C.

8. At all times herein mentioned, defendant, DU, was an employee, Contractor, agent, servant, and/or supervisee of defendant, UBER, and operated the aforementioned motor vehicle within the scope of his employment, retention and/or contract with defendant, UBER.

9. At all times herein mentioned, defendant, UBER, created, operated, implemented, controlled and/or managed a car service, car sharing or ride sharing service ("service") which employed, retained and/ or contracted with the defendant, DU.

10. At all times herein mentioned, defendant, UBER, created, operated, implemented, controlled and/or managed an electronic application or program ("Uber app") associated with the above-described service.

11. At all times herein mentioned, defendant, UBER, communicates and/or otherwise interacts with its employees, agents, servants and/or contractors via the Uber app.

12. At all times herein mentioned, defendant, UBER, required defendant, DU, to follow a specific course of conduct or set of rules in the operation of his vehicle.

13. At all times herein mentioned, defendant, UBER, required defendant, DU, to install, use, and continue to use the Uber app to be hired and compensated for his operation

of his vehicle while in the course of his employment, retention and/or contract with defendant, UBER.

14. At all times herein mentioned, the UBER app allowed defendant, DU, to pick up and drop off passengers in the course of his employment, retention and/or contract with defendant, UBER.

15. At all times herein mentioned, the Uber app matched up the defendant, DU, with potential passengers.

16. At all times herein mentioned, the above-described Uber app gave instructions and/or suggestions to defendant, DU, in the operation of his vehicle in the course of his employment, retention and/or contract with defendant, UBER.

17. At all times herein mentioned, the above-described Uber app instructed defendant, DU, to pick up passengers within the course of defendant DU's employment, retention and/or contract with defendant, UBER.

18. At all times herein mentioned, the Uber app gave directions within the course of defendant, DU's employment, retention and/or contract with defendant, UBER.

19. At all times herein mentioned, defendant, UBER, derived income in the course of its employment, retention and/or contract with defendant, DU, through the usage of the aforesaid Uber app.

20. On or about June 20, 2021, at approximately 11:30 AM, defendant, DU, operated, maintained, managed, and controlled the above vehicle.

21. On or about June 20, 2021, at around 11:30 AM, defendant, UBER, directed defendant, DU, to pick up plaintiff and drive the plaintiff to her chosen destination.

22. On or about June 20, 2021, at around 11:30 AM, the above-described Uber app instructed defendant, DU, to pick up plaintiff and drive the plaintiff to her chosen destination.

23. On or about June 20, 2021, at around 11:30 AM, defendant, UBER, derived income from the above-described transaction.

24. On or about June 20, 2021, at around 11:30 AM, defendant, UBER, maintained control over defendant, DU's operation of his vehicle.

25. On or about June 20, 2021, at around 11:30 AM, plaintiff paid defendant, UBER, money in the course of using the Uber app.

26. On or about June 20, 2021, at around 11:30 AM, the plaintiff hired defendants' vehicle to transport her to a chosen location.

27. On or about June 20, 2021, plaintiff embarked upon defendants' vehicle at 45-01 20<sup>th</sup> Avenue, Queens, New York.

28. On or about June 20, 2021, at around 11:30 AM, after plaintiff embarked in defendants' vehicle, defendant, DU ran a red light, causing an accident and left the scene of the collision.

29. The defendants were negligent and careless in the ownership, operation, management and control of their motor vehicle; in operating their aforesaid motor vehicles at a greater rate of speed than care and caution would permit under the circumstances; in operating their vehicles in a negligent, careless and reckless manner; in failing to operate horns, lights and/or signaling devices; in failing and omitting to provide or give any signal or warning of approach; in failing and omitting to provide and/or make timely and adequate use of brakes, signaling devices and steering mechanisms; in running a red traffic light; and in colliding with another motor vehicle

in violation of the Vehicle and Traffic Laws of the State of New York; and in violating provisions of the Vehicle and Traffic Laws of the State of New York.

30. Solely as a result of the defendants' negligence, the plaintiff, GWENDOLYN LAU, was seriously and permanently injured and was caused to suffer and will continue to suffer great physical pain and mental anguish.

31. The action falls within one or more of the exceptions set forth in CPLR Section 1602.

32. The plaintiff has sustained serious injuries as defined by Section 5102 of the Insurance Law of the State of New York.

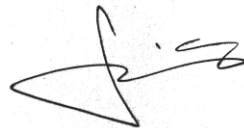
33. The amounts of damages sought in this action exceed the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

WHEREFORE, plaintiff, GWENDOLYN LAU, demands judgment against the defendants, QUINGGUO DU and UBER TECHNOLOGIES, INC., together with the costs and disbursements of this action.

Dated: New York, New York  
February 17, 2023

Yours, etc.

SMILEY & SMILEY, LLP  
Attorneys for Plaintiff



By: \_\_\_\_\_

JASON D. FRIEDMAN  
122 East 42<sup>nd</sup> Street, 39<sup>th</sup> Floor  
New York, New York 10168  
(212) 986-2022

-----X  
GWENDOLYN LAU,

Plaintiff,

--against--

QUINGGUO DU and UBER TECHNOLOGIES, INC.,

Defendants.  
-----X

**PLAINTIFF'S  
REQUEST FOR  
DOCUMENT  
PRODUCTION  
PURSUANT TO  
F.R.C.P. RULE 34**

Plaintiff, GWENDOLYN LAU, through her attorneys, SMILEY & SMILEY, LLP, pursuant to F.R.C.P. Rule 34, requests that the defendants, QUINGGUO DU (hereinafter "DU") and UBER TECHNOLOGIES, INC., (hereinafter "UBER") respond to the following within 30 days of the date of this demand. All references to UBER herein refer to its parents, subsidiaries, affiliates, agents, servants or employees:

**REQUESTS FOR PRODUCTION:**

1. Produce and provide copies of any and all photographs, slides, videotapes, dash cam recordings or other vehicular recording devices or motion pictures in defendant's custody and control depicting:

- (a) The happening of the accident;
- (b) The scene of the accident;
- (c) The plaintiff before during or after the accident;
- (c) Any damage to the defendant's vehicle caused by the accident;

2. Surveillance tapes and photographs of the plaintiff. This is a continuing demand.

3. The names and current address of all persons that witnessed the occurrence alleged in the complaint.

4. Statements of the plaintiff whether oral, written, taped, stenographic, signed or photographic, in the custody or possession of the defendants.

5. Accident reports of the defendants made in the regular course of business.

6. Any estimates, invoices, bills or records for repairs to defendant DU's vehicle for damages sustained in the subject accident.

7. Copy of defendant, QUINGGUO DU's, driver's license.

8. Any and all written reports of the subject incident prepared in the regular course of business operations or practices of the defendants, or any other associated person, firm, corporation or association, or other public or private entity, including, but not limited to, the following:

a. Police or aided reports;

b. Any driver's report, including, any driver's personnel file and driving record, for 5 years prior to the accident to the present;

c. Reports to or from a governmental agency or official, including any MV-104 or any other accident report filed;

d. briefs, reports and statements arising from or conducted in connection with any party's internal investigations or inquiries;

e. reports of investigations conducted by third parties;

f. reports to and by liability insurance carriers regarding the subject accident;

9. Copies of all records maintained by UBER, regarding the subject motor vehicle accident.

10. Copies of all trip logs maintained by the defendants regarding use of the DU vehicle for June 20, 2021.
11. Copies of DU's phone records, including phone calls, text messages, e-mails, notifications and/or pop-ups for June 20, 2021.
12. Copies of any and all notifications, texts, emails, pop-ups, or alerts sent to defendant DU on June 20, 2021.
13. Copies of any promotions, bonuses, or driver incentive programs that were active for drivers using the UBER application from June 17, 2021, to June 20, 2021.
14. Copies of the surge pricing maps for June 20, 2021, made available to defendant DU.
15. Copies of all documents and records of defendant DU's interactions with the Uber application from June 20, 2021, to June 25, 2021.
16. Copies of all policies in effect on June 20, 2021, regarding maximum driver hours allowed for a day, week, and month for all drivers utilizing the UBER application, including defendant DU.
17. Copies of all background investigation of defendant DU and any history of claims relating to defendant DU.
18. Any and all maintenance records on the vehicle operated by defendant DU at the time of the accident for a period of three years preceding the accident.
19. Any and all records of defendant DU's driving history for a period of three years preceding the accident.



20. Any and all telematics and/or analytical data maintained by UBER regarding defendant DU's driving habits, as well as any driver safety scores or data for a period of 30 days preceding the accident.

21. Any and all documents reflecting what rides were pending pickup from 10:30 AM through 12:30 PM on June 20, 2021.

22. Any and all documents reflecting defendant DU's earning goals for the 2 weeks preceding and including June 20, 2022.

23. Any and all telematics and/or analytical data maintained by UBER regarding defendant DU's coordinates on June 20, 2021.

24. Any and all telematics and/or analytical data maintained by UBER regarding accelerometer data, from defendant DU's phone, for June 20, 2021.

25. Any and all telematics and/or analytical data maintained by UBER regarding when DU was logged onto or off the UBER application on June 20, 2021.

26. Any and all ratings and rider comments for defendant DU, whether shared to the driver's Uber profile or sent to Uber directly.

27. Any and all notices ever sent to defendant DU by UBER regarding his driving habits or driver safety.

28. Any and all documents reflecting whether DU's UBER account was ever suspended, restricted, or terminated for any reason at any time.

29. Any and all graphics or images displayed to the driver through the UBER application on June 20, 2021, including the date and times these were displayed.

30. The complete employment file or work-related documents of any type of defendant, UBER pertaining to defendant DU including but not limited to, DU's application for employment

or other work; said driver's resume and/or written past employment history records; motor vehicle records pertaining to DU's 2016 Honda bearing New York registration T706082C; complete records and written results pertaining to the background investigation conducted by UBER on DU; payroll records; W2s; purported independent contractor records, 1099s; criminal history search results; driving history record of DU and the UBER vehicle inspection results.

31. All records and communications between UBER and DU regarding UBER's hiring, retention, suspension and/or firing of DU, including suspension notices; suspension notification from the Uber Platform; applications for reinstatement and reinstatement notices.

32. The correspondence and communications between UBER and the New York City Taxi & Limousine Commission regarding the hiring, retention, firing and/or suspension of DU as an UBER driver.

33. The correspondence and communications between UBER and the New York City Taxi Limousine Commission, pertaining to the motor vehicle crash that occurred on June 20, 2021 which is the subject of this action.

34. The communications between UBER and the New York City Police Department pertaining to the investigation and/or assistance in connection with the investigation surrounding the accident.

35. The documents, records and communications in the possession of UBER showing all UBER trips/calls, including the times of pick-up and drop-off locations of said trips, by UBER Driver DU on June 20, 2021.

36. All documentation maintained by UBER regarding the employment, agency and/or partnership status of DU, to include, but not limited to:

- a. Application for an account on the <https://get.uber.com/drive/website>.

- b. Complete application for uses of the “Uber Platform,” including:
  - i. Commercial Driver’s License information;
  - ii. Background check results;
  - iii. Registration documentation;
  - iv. Driving record; and
  - v. Insurance information.

c. Any further documentation or applications for the defendant, DU, to utilize the UBER application to transport passengers.

37. The Code of Conduct for drivers, including DU in effect on June 20, 2021, promulgated by the defendant, UBER, and./or an UBER affiliated entity.

38. The Quality Improvement Flyers for drivers promulgated by UBER and/or its affiliated entities and in effect on June 20, 2021.

39. The Weekly Pay Statements issued by UBER and/or its affiliated entities to DU from the start of his employment/relationship with UBER until June 20, 2021.

40. The communications between UBER and/or its affiliated entities and DU, pertaining to DU’s performance as a driver utilizing the UBER Application entities. Said communications shall include, but not be limited to, passenger complaints regarding DU and communications by UBER and/or its affiliated entities to DU regarding those complaints pertaining to DU. Such communications are requested from the period from the start of DU’s employment/relationship with UBER until June 20, 2021.

41. The driver Deactivation Policy of UBER and/or its affiliated entities in effect on June 20, 2021.

42. The records of any “Uber Vehicle Inspection” performed by UBER on the

2016 Honda owned by DU and bearing New York registration T706082C.

43. All reports of any internal investigations conducted by UBER and/or its agents regarding the subject accident.

44. The documents and records in the possession of UBER regarding the training received by DU, from the date when he was permitted to use the UBER application to transport passenger.

46. All data and metadata for the UBER Device that was issued to DU by UBER prior to and including the date of the accident.

47. All data and metadata for the UBER Device installed on the Personal Digital Assistant and/or personal smart phone of DU's from the start of DU's employment and/or work with UBER to the date of the accident.

48. Any and all repair and/or maintenance records, including but not limited to, requisitions, invoices, inspection checklists and drivers' reports relating to defendant DU from June 20, 2020 to June 20, 2022.

49. Any and all reports, information, and/or data generated after the accident, which is the subject of the instant litigation, from the defendant, DU's "Crash Data Retrieval System" and/or "Event Data Records" and or similar systems.

50. The version of UBER software utilized in the DU vehicle which was involved in the accident which is the subject lawsuit.

Dated: New York, New York  
June 13, 2023

SMILEY & SMILEY, LLP  
Attorneys for Plaintiff

By:   
\_\_\_\_\_  
ROSA M. FEENEY  
122 East 42nd Street, 39<sup>th</sup> Floor  
New York, New York 10168  
(212) 986-2022  
rfeeney@smileylaw.com

TO: WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP  
Attorneys for Defendant, UBER TECHNOLOGIES, INC.  
150 East 42<sup>nd</sup> Street  
New York, New York 10017  
(212) 490-3000

BARRY McTIERNAN & MOORE LLC  
Attorneys for Defendant, QUINGGUO DU  
101 Greenwich Street, 14<sup>th</sup> Floor  
New York, New York 10006  
(212) 313-3600

**AFFIDAVIT OF SERVICE**

STATE OF NEW YORK    )  
                                  SS.:  
COUNTY OF NEW YORK )

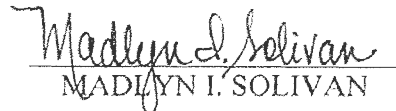
**Madlyn I. Solivan**, being duly sworn, deposes and says:

I am not a party to this action, am over 18 years of age and reside in New York, New York.

On June 14, 2023, I served the annexed **PLAINTIFF'S REQUEST FOR PRODUCTION OF DOCUMENTS, VIA EMAIL**, to:

**Robert W. Berbenich, Esq.**  
**Email: Robert.berbenich@wilsonelser.com**  
WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP  
Attorneys for Defendant, *UBER TECHNOLOGIES, INC.*

**Claire F. Rush, Esq.**  
**Email: Crush@bmmfirm.com**  
BARRY McTIERNAN & MOORE LLC  
Attorneys for Defendant, *QUINGGUO DU*

  
MADLYN I. SOLIVAN

Sworn to before me this  
14<sup>th</sup> day of June, 2023

  
NOTARY PUBLIC

**Michael S. Solomon**  
NOTARY PUBLIC, STATE OF NEW YORK  
Registration No. 02SO6345734  
Qualified in Kings County  
Commission Expires August 1, 2024

Docket No.: 1:23-cv-01424

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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GWENDOLYN LAU,

Plaintiff,

--against--

QUINGGUO DU and UBER TECHNOLOGIES, INC.,

Defendants.

---

**PLAINTIFF'S REQUEST FOR PRODUCTION OF DOCUMENTS**

---

SMILEY & SMILEY, LLP  
*Attorney for Plaintiff*  
122 EAST 42nd STREET, SUITE 3900  
NEW YORK, NEW YORK 10168  
(212) 986-2022

---

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

Civ. No.: 1:23-cv-01424

-----x

GWENDOLYN LAU,

Plaintiff,

-against-

QUINGGUO DU and UBER TECHNOLOGIES, INC.,

Defendants.

-----x

**DEMAND FOR  
PRODUCTION  
OF INSURANCE  
AGREEMENTS**

Plaintiff, GWENDOLYN LAU, through her attorneys, SMILEY & SMILEY, LLP, pursuant to F.R.C.P. Rule 34, requests that the defendants, QUINGGUO DU and UBER TECHNOLOGIES, INC., respond to the following within 30 days of the date of this demand.

All references to UBER herein refer to its parents, subsidiaries, affiliates, agents, servants or employees, the defendants shall provide to the plaintiff, and any other party in the action, proof of the existence and contents of any insurance agreement in the form of the insurance policy in place at the time of the loss or, if agreed to by the plaintiff in writing, in the form of a declaration page, under which any person or entity may be liable to satisfy part or all of a judgment that may be entered in this action or to indemnify or reimburse for payments made to satisfy the entry of final judgment. Information and documentation, as evidenced in the form of a copy of the insurance policy in place at the time of the loss or declaration page, shall include:

1. All primary, excess, and umbrella policies, contracts or agreements issued by private or publicly-traded stock companies, mutual insurance companies, captive insurance entities, risk retention groups, reciprocal insurance exchanges, syndicates, including, but not limited to, Lloyd’s Underwriters as defined in six thousand one hundred sixteen of the insurance law, surplus lines insurers, and self-insurance programs insofar as such documents relate to the claim being litigated;



2. If the insurance policy in place is provided, a complete copy of any policy, contract, or agreement under which any person or entity may be liable to satisfy part or all of a judgment that may be entered in this action or to indemnify or reimburse for payments made to satisfy the entry of final judgment as referred to in this demand, including, but not limited to, declarations, insuring agreements, conditions, exclusions, endorsements, and similar conditions;

3. The contact information, including the name and e-mail address of an assigned individual responsible for adjusting the claim at issue;

4. The total limits available under any policy, contract, or agreement, which shall mean the actual funds, after taking into account erosion and any other offsets, which can be used to satisfy a judgment described in this demand or to reimburse for payments made to satisfy the judgment.

**PLEASE TAKE FURTHER NOTICE:** For purposes of this demand, an application for insurance shall not be treated as part of an insurance agreement.

**PLEASE TAKE FURTHER NOTICE:** You must make reasonable efforts to ensure that the information remains accurate and complete and provide updated information to any party to whom this information has been provided at the filing of the note of issue, when entering into any formal settlement negotiations conducted or supervised by the court, at a voluntary mediation, and when the case is called for trial, and for sixty days after any settlement or entry of final judgment in the case, inclusive of all appeals.

**PLEASE TAKE FURTHER NOTICE:** Pursuant to F.R.C.P. Rule 34, the information provided pursuant to this demand shall be accompanied by a certification by each defendant and by a certification by any attorney appearing for the defendant, sworn in the form of an affidavit or affirmation where appropriate, stating that the information is accurate and complete, and that reasonable efforts have been undertaken and will be undertaken, to ensure that this information

remains accurate and complete.

Dated: New York, New York  
September 18, 2023

Yours, etc.,

SMILEY & SMILEY, LLP

By: *Michael S. Solomon*

MICHAEL S. SOLOMON

Attorneys for Plaintiff

122 East 42<sup>nd</sup> Street, Suite 3900

New York, NY 10168

(212) 986-2022

TO: WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP  
Attorneys for Defendant, UBER TECHNOLOGIES, INC.  
150 East 42<sup>nd</sup> Street  
New York, New York 10017  
(212) 490-3000

BARRY McTIERNAN & MOORE LLC  
Attorneys for Defendant, QUINGGUO DU  
101 Greenwich Street, 14<sup>th</sup> Floor  
New York, New York 10006  
(212) 313-3600

-----x  
GWENDOLYN LAU,

Plaintiff,

-against-

QUINGGUO DU and UBER TECHNOLOGIES, INC.,

Defendants.  
-----x

**DEMAND FOR  
EXPERT WITNESS  
INFORMATION**

**PLEASE TAKE NOTICE**, that pursuant to Federal Rule 26 (b), the plaintiff, GWENDOLYN LAU, by her attorneys, SMILEY & SMILEY, LLP, hereby demand that the defendants, QUINGGUO DU and UBER TECHNOLOGIES, INC., provide the following information:

All references to UBER herein refer to its parents, subsidiaries, affiliates, agents, servants or employees, a statement disclosing in reasonable detail of the following information regarding each person you expect to call as an expert witness at the trial of this action:

1. Identify each person with whom the defendants expect to call as an expert witness at trial;
2. Disclose in reasonable detail the subject matter on which expert is expected to testify;
3. State the substance of the facts and opinions on which expert is expected to testify;
4. State the qualifications of each expert; and
5. A summary of the grounds upon which expert's opinion is based.

Defendants are required to produce the demanded information at the offices of SMILEY & SMILEY, LLP, 122 East 42<sup>nd</sup> Street, Suite 3900, New York, New York 10168 within thirty (30) days after service of of this Demand.

**PLEASE TAKE FURTHER NOTICE** that the party served may submit copies of all documents requested, on or before the return date of this Notice in lieu of personal appearance.

**PLEASE TAKE FURTHER NOTICE** that this is a continuing demand and should any of the information requested become available or known in the future, then you are required to furnish same at such time.

Dated: New York, New York  
September 18, 2023

Yours, etc.,

SMILEY & SMILEY, LLP

By: Michael S. Solomon

MICHAEL S. SOLOMON  
Attorneys for Plaintiff  
122 East 42<sup>nd</sup> Street, Suite 3900  
New York, NY 10168  
(212) 986-2022

TO: WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP  
Attorneys for Defendant, UBER TECHNOLOGIES, INC.  
150 East 42<sup>nd</sup> Street  
New York, New York 10017  
(212) 490-3000

BARRY McTIERNAN & MOORE LLC  
Attorneys for Defendant, QUINGGUO DU  
101 Greenwich Street, 14<sup>th</sup> Floor  
New York, New York 10006  
(212) 313-3600

-----x  
GWENDOLYN LAU,

Plaintiff,

**DEMAND FOR  
ELECTRONIC DATA**

-against-

QUINGGUO DU and UBER TECHNOLOGIES, INC.,

Defendants.  
-----x

COUNSELORS:

Plaintiff, GWENDOLYN LAU, through her attorneys, SMILEY & SMILEY, LLP, pursuant to F.R.C.P. Rule 34, requests that the defendants, QUINGGUO DU (hereinafter “DU”) and UBER TECHNOLOGIES, INC., (hereinafter “UBER”) respond to the following within 30 days of the date of this demand.

All references to UBER herein refer to its parents, subsidiaries, affiliates, agents, servants or employees:

1. All relevant electronically stored e-mails, letters, notes, memoranda, and calendar entries from personal computer(s), laptop computer(s), home desktop computer(s), cellular telephone(s), personal digital assistant(s), or any other device with such storage capabilities;

2. All relevant Instant Message (IM) logs, transcripts, data (.dat) files stored on hard drive(s) including but not limited to personal computer(s), laptop computer(s), home desktop computer(s), cellular telephone(s), personal digital assistant(s), and computer(s) used at the Plaintiff(s)' place of employment;

3. All relevant text messages sent from and received by the defendants which are stored on cellular telephone(s), personal digital assistant(s), or any other similar device(s) with the capability of sending and receiving text messages;

4. All relevant voicemail messages stored on cellular telephone(s), home telephone(s), work telephone(s), personal digital assistant(s), or any other device(s) with the capability of receiving and saving voicemail messages;

5. Data map(s) and/or detailed representation(s) of the type(s) and location(s) of all

electronically stored information (ESI) including but not limited to the following electronic systems:

- a. Servers and other active and dynamic data including but not limited to file servers, email and voicemail servers;
- b. Data management systems including but not limited to backup tapes, financial systems, and disaster recovery systems;
- c. Endpoints including but not limited to desktops, laptops, personal digital assistants, and cellular telephones;
- d. Portable media including but not limited to flash drives, hard drives, CDs and DVDs; and
- e. Data hosted by third-party vendors including but not limited to payroll systems and junk mail filtering systems.

**PLEASE TAKE FURTHER NOTICE**, that in lieu of producing said items at the offices of the undersigned, defendants may submit same by e-mail to the undersigned before the return date of the within Notice.

Dated: New York, New York  
September 18, 2023

Yours, etc.,

SMILEY & SMILEY, LLP

By: Michael S. Solomon  
MICHAEL S. SOLOMON  
Attorneys for Plaintiff  
122 East 42<sup>nd</sup> Street, Suite 3900  
New York, NY 10168  
(212) 986-2022

TO: WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP  
Attorneys for Defendant, UBER TECHNOLOGIES, INC.  
150 East 42<sup>nd</sup> Street  
New York, New York 10017  
(212) 490-3000

BARRY McTIERNAN & MOORE LLC  
Attorneys for Defendant, QUINGGUO DU  
101 Greenwich Street, 14<sup>th</sup> Floor  
New York, New York 10006  
(212) 313-3600

**AFFIDAVIT OF SERVICE**

STATE OF NEW YORK    )  
  SS.:  
COUNTY OF NEW YORK )

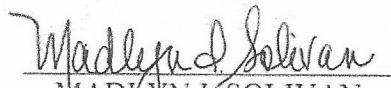
**Madlyn I. Solivan**, being duly sworn, deposes and says:

I am not a party to this action, am over 18 years of age and reside in New York, New York.

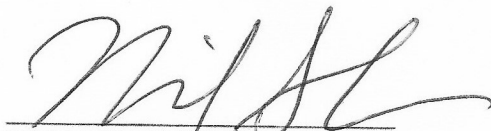
On September 18, 2023, I served the annexed **PLAINTIFF'S DEMAND FOR PRODUCTION OF INSURANCE AGREEMENTS; DEMAND FOR EXPERT WITNESS INFORMATION and DEMAND FOR ELECTRONIC, VIA EMAIL, to:**

**Robert W. Berbenich, Esq.**  
**Email: Robert.berbenich@wilsonelser.com**  
WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP  
Attorneys for Defendant, *UBER TECHNOLOGIES, INC.*

**Sandra M. Bonnick, Esq.**  
**Email: Sbonnick@bmmfirm.com**  
BARRY McTIERNAN & MOORE LLC  
Attorneys for Defendant, *QUINGGUO DU*

  
\_\_\_\_\_  
MADLYN I. SOLIVAN

Sworn to before me this  
18<sup>th</sup> day of September '23

  
\_\_\_\_\_  
NOTARY PUBLIC

Michael S. Solomon  
NOTARY PUBLIC, STATE OF NEW YORK  
Registration No. 02SO6345734  
Qualified in Kings County  
Commission Expires August 1, 2024

Docket No.: 1:23-cv-01424

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

---

GWENDOLYN LAU,

Plaintiff,

--against--

QUINGGUO DU and UBER TECHNOLOGIES, INC.,

Defendants.

---

**PLAINTIFF'S DEMANDS**

---

SMILEY & SMILEY, LLP  
*Attorney for Plaintiff*  
122 EAST 42nd STREET, SUITE 3900  
NEW YORK, NEW YORK 10168  
(212) 986-2022

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A podcast for lawyers and aspiring lawyers hosted by Andrew J. Smiley, Esq.



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