Undercover at Sidecar And Lyft: 100,000 Uninsured Rides and Counting
By Ed Healy, author of The Phantom Cab Driver Phites Back at:
http://phantomcabdriverphites.blogspot.com/

Sidecar and Lyft are venture capital startups that advertise themselves as car-pooling services that use smart-phone apps to connect people who need rides with drivers in the community "who have extra space in their cars." Both companies claim to do intensive evaluations of drivers, including criminal background checks and thorough inspections of the vehicles that provide transportation services through their apps. They also tell their drivers that their cars only need to be covered by "Personal Liability Insurance."

I decided to check out their assertions because I'm the ideal person to do so. I've been an insurance underwriter, a driving instructor, a blogger, and I've logged over a million miles as a cab driver. My research included talking to representatives from the top ten rated insurance companies, interviewing people who have been Sidecar or Lyft drivers or customers, and applying for a driving position at the two companies. Both Sidecar and Lyft initially approved my applications but later changed their minds when I started asking them detailed questions about their contracts and insurance.

What I discovered from my investigation was that almost every claim that Sidecar and Lyft make is either misleading or false. Their interviewing process is a joke. They don't ask for social security numbers and they don't fingerprint the applicants so they can't be conducting criminal background checks. Nor do these companies make mechanical inspections of the cars. In the case of Sidecar, they don't even *look* at the vehicle. Most importantly, insurance companies consider neither Sidecar or Lyft ridesharing services so their cars are required to carry commercial insurance. Since most of their cars don't, they are *uninsured vehicles.*

In reality then, Sidecar and Lyft are illegal transportation for hire services that use double-talk to exploit the underemployed, and subvert laws and regulations designed to protect drivers, passengers and the public. Furthermore, when drivers and passengers accept the terms of service necessary to download their apps, they waive their rights to sue Sidecar or Lyft in perpetuity. Sidecar and Lyft passengers also agree to come to the legal defense (at their own expense) of Sidecar or Lyft if the companies are sued for negligence.

If it looks like a duck and walks like a duck, will it bark if you call it a dog?

Both Sidecar and Lyft have founded their businesses on the deliberate misuse and perversion of ordinary words. To understand how this works, let's first look at what the companies are actually doing and then look at what they say they are doing.

A passenger uses their Sidecar or Lyft app to hail a driver. The driver accepts the ride, picks the person up and drives him or her to a location. The passenger pays a fee based on time and distance. The driver gets paid 80% of the fee and the company keeps 20%. Both the company and the driver make money from the transaction.

In all fundamental ways then, *the service that Sidecar and Lyft provide works exactly like a taxicab*, except for the fact that San Francisco taxis are legal, the drivers are trained and their vehicles are insured.

However, Sidecar and Lyft say that the driver's payment is a "voluntary donation" and that a customer is a "member of the Sidecar or Lyft community." What does this really change? Nothing. As *Tech Crunch* writer Ryan Lawler put it in an article on Lyft,

"... the drivers aren't licensed ... and some would argue that the service isn't legal at all. It circumvents that with the 'donation' bit, but there's kind of an understanding that if you don't give a donation you'll be rated poorly and maybe you'll have a hard time getting rides in the future."

Chris, the Lyft representative who interviewed me for a driving position, told me that if a passenger didn't pay, the driver would never have to pick that person up again. Indeed, a friend of mine tested the voluntary nature of the donation and did not pay two different Lyft drivers. Now she can no longer get a ride if she uses Lyft's app to hail one of their illegal cabs. Chris also assured me that only one passenger in twenty thousand do not pay.

During the driver orientation at Sidecar U, the instructor told me that more then 99% of all customers "donate." If they don't, Sidecar calls them up to ask "what happened?" Sort of like donating to the mafia, no?

Furthermore, Sidecar's terms and conditions state, "If Passenger does not wish to make a donation to Driver, Passenger must expressly choose to donate $0.00 in the app within twenty-four (24) hours of completing the ride. If Passenger does not" [do so,] "Passenger agrees to donate the Community Average Donation to Driver, and ... authorizes Sidecar to charge Passenger's credit card ..."

The instructor at Sidecar U also presented an arcane standard for profitability. She argued that the driver using their app is not considered to have made a profit until his or her car has covered the costs of one year's worth of gas, maintenance and depreciation. Since every car and driver is different, this standard would be hard, if not impossible, to apply uniformly. The costs would increase with usage so the more drivers worked, the longer it would take to cover their car's expenses. This means that the *more* they worked, the *less* they would make ... or some such thing. I didn't quite get it myself.

In order to avoid regulations, Sidecar and Lyft claim that their drivers are not their drivers and, in any case, their drivers don't make a profit—despite the fact that making a profit is the very reason why people are turning their personal cars into taxis. Both companies even advertise that you can make money driving for them.

The Sidecar website says, "Make money with your car. Sidecar lets verified drivers make money giving people rides around town." A Lyft ad says, "Make $22/hr and have fun driving your own car in SF."

Politicians call this "wink wink nudge nudge." Everybody knows that both companies and their drivers are making a profit. Everybody knows that the donation is a fare that needs to be paid. Everybody understands that the companies are speaking with forked tongues in order to circumvent taxicab and other regulations. Most Sidecar and Lyft drivers and their customers apparently think this is awesome. For them, all they are doing is breaking a few old-school rules. It may be too bad for a few legal cab drivers, but it's really cool for everyone else.

Or is it?

What insurance?

No matter what you may think of insurance companies, they are the best b.s. detectors in contemporary culture out of necessity. Millions of their dollars depend upon the precise definition of words.

When I applied for a driving position at Sidecar and Lyft, representatives of both companies told me that I didn't need commercial insurance to be a "community driver" because they were not "commercial enterprises." I called the ten top rated insurance companies in the country to find out if they agreed with this statement. Not one of them did.

Progressive and All State *would* consider insuring my car as a business or commercial risk if I drove for Sidecar or Lyft. Geico, State Farm and AAA would not insure my car at all if I did so. While it's true that auto insurance companies in California are required to cover a "vehicle used in an ordinary car pool on a ride sharing or cost sharing basis," none of the insurers I spoke with considered ~~that~~ what Sidecar and Lyft actually did was ridesharing.

The Geico representative described ridesharing as "people sharing a ride back and forth to work or to an event or to the same location." The cost of the ride should be shared equally by passenger or passengers and the driver. She described this as paying for bridge tolls or gas. If the driver *made a profit* from the ride, it did not make any difference to her if you called the payment a "fee" or a "donation," or if it was "voluntary" or "required". The USAA rep would not cover me if my car "transported individuals" period, and he never even mentioned the exchange of money.

As a former auto insurance underwriter, I understand his point. Regardless of profit or no profit, there would be a higher risk and a greater chance for accidents when a person drove passengers around. One reason for this is that the peak times for business are also the peak times for accidents. Cars driving from place to place during rush hour or on Friday and Saturday nights are much more likely to have accidents than vehicles where friends just drive each other home from work or to a show. In addition, there's an increased likelihood of a crash when one is dealing with different personalities and people partying or drunk, and when one is looking at smart phones to find orders or using navigational systems to find your way in unfamiliar neighborhoods. It doesn't really matter whether you extrapolate your expenses over a year or a day. If you drive people around from place to place, insurance companies require you to have business or commercial insurance.

Let me emphasize this one more time.

The information that Sidecar and Lyft are giving their drivers is false. If the cars using *their apps do not have business or commercial insurance they are NOT insured. In other words, if you are riding in any of their vehicles, you have a 99% chance of not being covered if you are hurt in an accident.*

Umbrellas Shot with Holes?

San Francisco journalists missed the point about Sidecar's and Lyft's lack of insurance. But on September 4, 2012, reporter Zusha Elinson from the online paper*The Bay Citizen*, wrote an article noting the low limits ($15,000-$30,000) of the driver's personal liability insurance and contrasted it to the $1,000,000 liability limit required of San Francisco taxicabs.

On September 6, 2012, Sidecar and Lyft announced that they, too, would provide their drivers with $1,000,000 liability umbrellas. Lyft said that they would carry "excess liability per occurrence with an A++ rated insurer." Sidecar would provide "a Guarantee that is not insurance" subject to "certain conditions, limitations and exclusions, the details of which can be found in our Program Terms, available from SideCar upon request." Both policies would go into effect above the limits of the vehicles "existing insurance." For instance, if an injured party was awarded $100,000, the driver's insurance would theoretically cover the first $30,000 and the umbrella policy would cover the rest.

Since few, if any, of Lyft's and Sidecar's vehicles would actually have "existing insurance" per state law, this raises a few questions:

If a personal liability policy does not cover the vehicle and if the vehicle does not have the commercial insurance required by law, will the excess liability insurance or the Guarantee take effect at all? If they do take effect, the driver would only have the responsibility of paying the first $30,000 in a bodily injury accident and the umbrella policies would pay the rest. If they do not take effect, the driver must pay for everything.

Tracking the $1,000,000 Guarantees

When I applied for a driving position at Lyft, I asked my interviewer what A++ insurer provided the policy and if I could look at it. She told me with annoyance that no one had ever asked that question before. I then asked her if she'd read the policy. She was positively indignant. "No," she snapped. "You can get it from the CEO."

This turned out to be a problem because Lyft's Facebook page showed no link to CEO John Zimmer. I did find a Facebook post from a speech he gave on transportation and asked my questions as a comment. When I checked back later, Zimmer's post and my questions had disappeared.

I then wrote to support@lyft.me and once again asked who the insurer was and if there were any conditions or exclusions.

The next day I received this response from Lyft Admin:

"We appreciate the time you've taken to explore the Lyft community. We approve drivers through an ongoing assessment of several criteria including customer service orientation. At this time, we are adding you to our wait list and may contact you in the future as the community expands.

Thanks for your time and interest,
The Lyft Team"

I'm still waiting to find out the name of that A++ insurer.

I found Sidecar's guarantee at http://www.side.cr/driver_guarantee. I clicked the "Upon Request" link and asked for the details of their conditions, limitations and exclusions.

I hadn't received an answer when I attended Sidecar U five days later so I asked the instructor what the exclusions were. She asked Sidecar City Manager Chris Dally, who was sitting in on the class, if he could answer my question. He assured me that he could and gave me his card.

I called Mr. Dally the next day and asked him about the exclusions.

"I can check on that for you," he said. "I'm not too familiar with what exclusion you're talking about ... It is a little bit of legal speak in there ... It's pretty standard for terms and agreements and things like that ... The things I point you to are terms of usage ... We'll let you know ... So I want to make sure you're feeling comfortable and again no driver should be doing this if they feel uncomfortable ..."

I then asked him if the guarantee was an insurance policy.

“It’s a guarantee,” he said

“Who guarantees it?”

“It’s a guarantee.”

I e-mailed Mr. Dally the next day and asked about the exclusions he had said he would check on.

He wrote back and referred me to support@sidecar.cr.

I sent my questions to that e-mail address. A guy name Max referred me back to http://www.side.cr/driver_guarantee and added:

“I have forwarded this to our legal team to get more information for you regarding the Program Terms. You should hear back from us soon.”

I’m still waiting.

If you were to be a car, what kind of car would you be? And why?

As part of my application process, Sidecar conducted an online video interview with me. The most profound question they asked was:

“**I**f you were to be a car, what kind of car would you be? And why?”

The other Sidecar questions were:

‘“Who are you and why would you make an awesome Sidecar community driver?”
“Where are some of your favorite places to hang out and why?”
“How did you hear about us?”

During a phone interview with Lyft, Chris broke the pattern by asking me if I’d ever had a DUI or a criminal record. He then returned to community ridesharing form to finish up with:

“How would your friends describe your personality?”
“Do you smoke in your car?”
“For a more important question, who would you most want to ride in your car for ten minutes?”

Both companies did check to see if my driver’s license was valid and my auto insurance was up to date and they looked at my vehicle ownership card. Neither company fingerprinted me or asked for my social security number, which are necessities for doing a criminal background check.

I had an “in person” interview at Lyft that lasted three minutes. There was no training session. An interviewer/inspector, who looked more like a fashionista then a mechanic, glanced at my car. She sat in the front seat to see if it was clean and made sure that the lights and turn signals worked before taking my photo standing next to the car. She did not drive the car or ride in it, check the tires, check the VIN #, open the hood, look under the car or do any kind of mechanical inspection.

There was no “in person” interview at Sidecar. Instead, I attended Sidecar U for an hour and a half where most of the time was devoted to explaining how to use the app and noting the best times to drive. The fact that Sidecar was not liable for auto insurance was briefly mentioned and driving safely was encouraged. The instructor told us that Sidecar now had over five hundred vehicles in San Francisco.

I was told to upload a photo of my car to their website where they must have done the mechanical inspection because they certainly didn’t do so in person.

On the basis of these interviews, I was approved at Sidecar, along with eighteen other community drivers. I was also approved at Lyft, although I was later disapproved when I starting asking those nasty insurance questions. The last step in the application process was to download the companies’ apps, which I did not do because I did not agree with the Terms of Service and I refuse to drive my car without insurance.

Terms of Service

I recently became a driver for Desoto Cab in San Francisco. Operations Manager Greg Cochran sat down with me and went over the contract covering our working relationship. He answered all my questions and explained any detail he thought I might not understand. We signed off on every page. This is the way a respectable company does business.

No one at Sidecar or Lyft explains the contracts that their drivers and customers sign. At Lyft I was told that there “was no contract.” Strictly speaking this wasn’t a lie. Both these companies call their contracts “Terms of Service.” Both of these companies make their contracts difficult to find.

There is no major link to the Terms of Service on either website.The only place one can easily find the Terms of Service is on a smartphone. The driver or passenger has to agree to these terms before downloading their apps. The Terms of Service on these apps will print out to over twenty pages of twelve point type.

As to whether these terms can be thoroughly read and understood on a cell phone interface is question. As to whether they can be understood by anyone who isn’t a lawyer is another question. The question of whether or not this obfuscation is deliberate, I’ll leave to the reader to answer.

Do you think many people would agree to be drivers or passengers for Sidecar or Lyft if they knew that they waived their rights to sue these companies in perpetuity? Do you think that the passengers know that they are agreeing to come to the legal defense (at their own expense) of Sidecar or Lyft if the companies are sued for negligence?

Their Terms of Service are prime examples of the double talk and duplicity that permeates the operations of both Sidecar and Lyft.

Both companies assure their drivers that they do not need commercial insurance but the Terms of Service say that the drivers should consult their own insurance companies and that Sidecar and Lyft have no responsibility if the cars and not properly insured.

Both companies advertise that they thoroughly investigate their drivers. As Lyft CEO John Zimmer told a *TechCrunch* reporter:

Lyft “... has an intensive process for evaluating drivers, which includes DMV and criminal background checks, followed by in-person interviews and vehicle inspections. Finally, there’s a two-hour training session for drivers that make it through all that, to help get them familiar with the service and the culture.”

Yet Lyft's Limitation of Liability states (capitalization in original):

"WE DO NOT SCREEN THE PARTICIPANTS USING THE SERVICES IN ANY WAY. AS A RESULT, WE WILL NOT BE LIABLE FOR ANY DAMAGES ... ARISING OUT OF THE SERVICES ..."

Both companies talk warmly of forming communities. But at the same time Sidecar's and Lyft's contracts are, in the words of an attorney I consulted,

"Extraordinarily detailed in their avoidance of responsibility."

Conclusion

In the Wild West of deregulation, the worst elements tend to rise to the top. Sidecar and Lyft appear to be perfect example of this principle/. In fact, they are the best arguments for regulation that I know.

Aside from the dubious behavior that I've mentioned above, I'd like to remind the CPUC that the California Public Utilities Commission issued cease and desist orders to Sidecar and Lyft back in October 2012.

Not only have both companies continued to operate, they've expanded their businesses at a dizzying rate. They are defying your orders and endangering the public by putting thirty or forty illegal taxis on the streets every week with drivers who have not been vetted and vehicles that have not been mechanically inspected and are not insured.

Something has to be done before somebody gets hurt in a serious accident.