No. 26-1640

In the United States Court of Appeals for the Fourth Circuit

WHB 823,
Plaintiff-Appellee,

v.

UBER TECHNOLOGIES, INC.; RASIER, LLC; RASIER-CA, LLC,
Defendants-Appellants.

On Appeal from the United States District Court
for the Western District of North Carolina at Charlotte
Case No 3:25-cv-00737-CRB (The Honorable Charles R. Breyer)

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DISCLOSURE STATEMENT

Plaintiff-appellee WHB 823 is an individual who has no corporate parent and does not issue stock.

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INTRODUCTION

Does Uber hold itself out as providing transportation services to the public for compensation? That is the key question in this appeal. And it's one that even non-lawyers can readily answer: As the court below explained, Uber "clearly" does.

Two consequences flow from this, both of which the district court recognized. One: Because this has long been the "clearly settled" definition of common carrier under North Carolina common law, *State ex rel. Utilities Commission v. Gulf-Atlantic Towing Corp.*, 110 S.E.2d 886, 889 (N.C. 1959), Uber is a common carrier. Two: Because Uber is a common carrier, it owes its passengers a nondelegable duty to transport them safely—a duty that all common carriers (from trains to taxis) have had for over a century. As a result, if a passenger is assaulted by an Uber driver in North Carolina, as the jury found that the plaintiff in this case was, Uber is liable.

The district court's holdings are correct. As several courts have recognized (and as anyone who has ever taken an Uber can attest), Uber is essentially a tech-savvy taxi company. Like a taxi company, Uber holds itself out to the public as providing transportation services to anyone who asks. Like a taxi company, people turn to Uber when they need a ride. So, like a taxi company, Uber qualifies as a common carrier and is liable when its drivers assault its passengers.

In seeking to evade this syllogism, Uber does not deny that taxis are common carriers under the common law. Nor does it deny that taxis owe a nondelegable duty

to transport their passengers safely. Instead, Uber denies reality. It argues that this duty does not apply to Uber because it does not provide transportation services *at all*.

That would come as a surprise to the millions of people who use Uber for transportation. When someone orders an Uber from the Uber app, they know that they are ordering a ride with *Uber*—not bartering with individual drivers. Riders cannot seek out individual drivers even if they wanted to: Uber prohibits them from selecting their own driver or from contacting drivers directly. It is Uber that assigns a driver, sets the fare, and collects payment. And it is Uber that has spent years trying to convince the public to feel safe using its services because passengers aren't stepping into the car of a stranger when using Uber; they are "riding with Uber."

In every relevant sense, then, Uber holds itself out to the public as providing transportation services. It thus qualifies as a common carrier under the common law. Although Uber tries to refute this conclusion by pointing out that it doesn't own its own vehicles or classify its drivers as employees, neither of those facts justifies creating a new exception to the longstanding common-carrier definition. To the contrary, courts repeatedly and universally reject these very arguments.

Rather than point to any case adopting its proposed exceptions, Uber builds its argument atop cases far afield from this one. Its two lead cases, for example, involve companies that plainly do not claim to sell transportation: a sandpit and a whitewater-rafting company. Suffice it to say, Uber is nothing like those companies.

Uber also argues that, even as a common carrier, it may delegate its duty of safe transport to its drivers because they are independent contractors, and because Uber does not operate under a state-granted monopoly. But Uber cites no common-law case holding that a common carrier may escape liability when its workers assault its passengers. The cases uniformly hold that nondelegable means nondelegable to *anyone*, including independent contractors. And as Uber itself eventually concedes, the cases also uniformly apply this nondelegable duty to non-franchised common carriers.

This isn't to say that Uber has this duty in every state. Aware of its common-law status, Uber has lobbied legislatures across the country for exemptions from its common-law duty. But while this strategy has worked in some states, North Carolina isn't one of them. Even as it passed a statute regulating rideshare companies, North Carolina's legislature declined to alter the common-law status quo.

Unhappy with that outcome, Uber now asks this Court to do what the state's legislature refused to do: create a new exception to common-carrier liability for policy reasons. But as a federal court sitting in diversity, this Court's task is to apply state law, not to make state law. The Court should affirm.

STATEMENT OF THE ISSUES

1. **Common carrier:** Did the district court correctly conclude that Uber is a common carrier under North Carolina common law because it holds itself out as providing transportation services to the public for compensation?

2. **Nondelegable duty:** Did the district court correctly conclude that, as a common carrier, Uber owes a nondelegable duty under North Carolina law to transport its passengers safely, a duty that is breached when its drivers assault its passengers?

3. **New-trial request:** May Uber obtain a new trial, based on objections it largely never made below, because the district court excluded evidence under rules that applied equally to both parties?

STATEMENT OF THE CASE

I. Legal background

1. For over a century, the common law has recognized that common carriers owe their passengers a duty to "carry [them] safely." *White v. Norfolk & S.R.R. Co.*, 20 S.E. 191, 192 (N.C. 1894); *accord* Dewitt C. Moore, *A Treatise on the Law of Carriers* 625-26 (1906).[1] Even as technology has changed, this duty has stayed the same. All common carriers, whatever the mode of transportation, must "provide for the safe conveyance of their passengers as far as human care and foresight can go." *Harris v. Atl. Greyhound*

[1] Unless otherwise specified, all internal quotation marks, citations, and alterations are omitted throughout this brief.

Corp., 90 S.E.2d 710, 713 (N.C. 1956) (bus); *see Doe v. Celebrity Cruises, Inc.*, 394 F.3d 891, 907 (11th Cir. 2004) (ship); *Wilson v. Cap. Airlines*, 240 F.2d 492, 494 (4th Cir. 1957) (plane).

This duty arises from the nature of common carriage. "A common carrier is one who holds himself out as furnishing transportation to any and all members of the public who desire such service in so far as his facilities enable him to perform the service." *State ex rel. Utilities Comm'n v. Gulf-Atl. Towing Corp. (GATC)*, 110 S.E.2d 886, 890 (N.C. 1959). Passengers of common carriers "necessarily put their well-being completely in the hands of the carrier, are totally dependent upon the carrier, and will often lack access to evidence of the carrier's behavior." Dobbs' Law of Torts § 262 (2026). To offset this power imbalance, the law assigns common carriers "the most stringent responsibility." *Selma & M.R. Co. v. Butts*, 43 Ala. 385, 388 (1869); *see also Anderson v. Yellow Cab Co.*, 191 N.W. 748, 750 (Wis. 1923) (recognizing that common-carrier duties exist because of their "control" over passengers). By holding themselves out to the public as able and willing to transport all comers, common carriers "assume[] a public duty" to transport them safely. Moore, *A Treatise on the Law of Carriers*, at 19.

2. This duty is the carrier's own. It does not derive from any duty owed by anyone else. *White*, 20 S.E. at 192. And although a common carrier may delegate the tasks required for transportation, it may not delegate the duty itself. William L.

Prosser, Handbook of the Law of Torts 470-71 (4th ed. 1971). A common carrier may not "evade [its] duty" of safe transport "through any device or arrangement," *Pa. Co. v. Roy*, 102 U.S. 451, 457 (1880), including the "use of independent contractors," *Connell v. Call-A-Cab, Inc.*, 937 So.2d 71, 75 (Ala. 2006); *see also id.* at 76 (Lyons, J., concurring). Were it otherwise, common carriers could "escape responsibility" through contractual arrangements, making their duty one of little "practical value." *Roy*, 102 U.S. at 456.

A common carrier is thus responsible for the acts of its workers. When they exercise appropriate care, the carrier is not liable. So it isn't liable, for example, for third-party assaults or accidents that its workers "could not have reasonably foreseen and prevented." *Mills v. Atl. Coast Line R.R.*, 90 S.E. 221, 221 (N.C. 1916). But if a worker "inflict[s] violence on [a] passenger," the carrier has breached its nondelegable duty and is liable to the passenger. *Hairston v. Atl. Greyhound Corp.*, 18 S.E.2d 166, 170 (N.C. 1942); *see Celebrity Cruises*, 394 F.3d at 907 & n.16 (collecting cases). Hence, a railroad company is liable for assaults committed by "any of the train hands," *Lanier v. Pullman Co.*, 105 S.E. 21, 24 (N.C. 1920); a ship is liable for assaults by its crew, *Morton v. De Oliveira*, 984 F.2d 289, 292 (9th Cir. 1993); and a taxi company is liable for assaults by its drivers, *Call-A-Cab*, 937 So.2d at 75; *id.* at 76 (Lyons, J., concurring).

3. Only common carriers possess this nondelegable duty, not private carriers. *See Shoemaker v. Kingsbury*, 79 U.S. 369, 376 (1870). In differentiating between the two,

courts ask if the company "hold[s] itself out" as providing transportation services to the public, either through its "advertising" or its "course of conduct." *Jackson v. Stancil*, 116 S.E.2d 817, 825 (N.C. 1960). A company is a common carrier, for example, if it "solicit[s]" customers for transportation services "from the general public … through advertisements in radio, newspaper, and brochures," *Las Vegas Hacienda, Inc. v. Civ. Aeronautics Bd.*, 298 F.2d 430, 435 (9th Cir. 1962), or if it provides transportation services "whenever called" without any "individual bartering," *Air Evac EMS, Inc. v. Cheatham*, 910 F.3d 751, 764 (4th Cir. 2018).

The relevant question is how the company presents itself to the public, not how it structures its business internally. A company can be a common carrier even if it doesn't own its own vehicles or employ its drivers. *See, e.g., Bank of Ky. v. Adams Express Co.*, 93 U.S. 174, 177 (1876). And a company can be a common carrier even if its services are available to only a segment of the population, because "[t]he public does not mean everybody all the time." *M&R Inv. Co. v. Civ. Aeronautics Bd.*, 308 F.2d 49, 50 (9th Cir. 1962). What matters is whether the company holds itself out to the public as a business that "carr[ies]" customers "indifferently." *Jackson*, 116 S.E.2d at 824.

Applying these principles, it is "well established" that "taxicabs are common carriers." *Hardy v. Ingram*, 126 S.E.2d 55, 56 (N.C. 1962); *see also* 13 Am. Jur. 2d *Carriers* § 16 (2026). Courts thus uniformly recognize that, under the common law, when a

taxi driver assaults his passenger, the taxi company is liable for violating its duty. *See Call-A-Cab, Inc.*, 937 So.2d at 72-73; *Gilmore v. Acme Taxi Co.*, 212 N.E.2d 235, 236 (Mass. 1965); *Smith v. Camel City Cab Co.*, 42 S.E.2d 657, 658-59 (N.C. 1947).[2]

II. Factual background

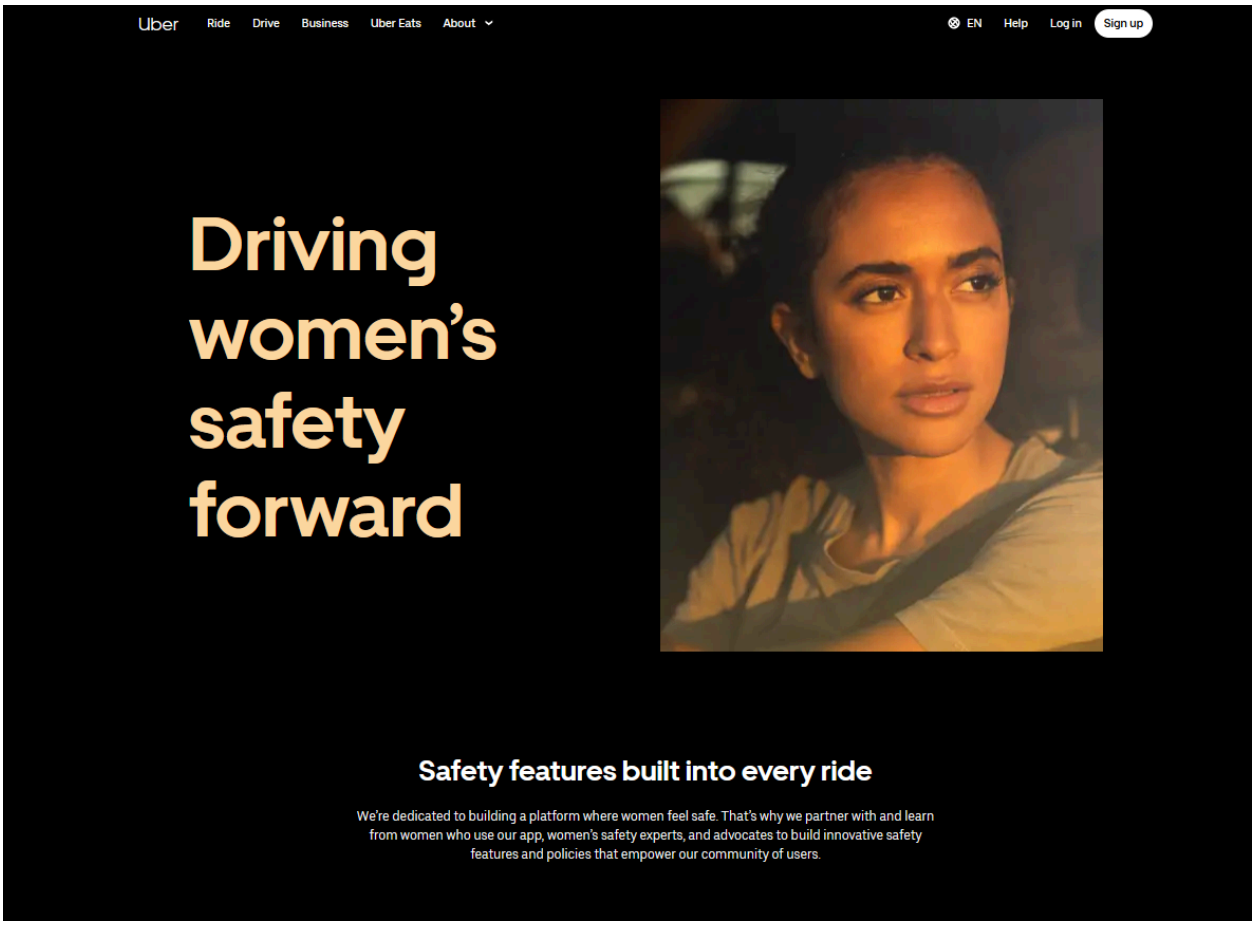
1. Like taxis, Uber "sell[s] rides to people." JA_[MDL5468.Ex.B.at.556:20-557:1]; *see* JA_[MDL5468.Ex.K.at.104:17-19] (Uber's "business is providing rides to passengers."). Early on, it went by the name "UberCab" as it tried to gain traction with the public. *See* Lora Kolodny, *UberCab Ordered to Cease and Desist*, TechCrunch (Oct. 24, 2010), https://perma.cc/ME35-6WEL. By 2013, Uber stopped requiring that its drivers be commercially licensed professionals and began enlisting everyday people, driving their own cars, to carry passengers under the Uber name. *See Uber Policy White Paper 1.0*, Uber (Apr. 12, 2013), https://perma.cc/GM56-4WU8. Its goal was to make Uber "available to everyone everywhere." JA_[MDL5468.Ex.N.at 146:1-3]; *see also* JA_[MDL5468-8.Ex.J.at.45] (Uber aims to make rides globally "available 24/7, 365 days a year").

[2] *See also, e.g.*, *Korner v. Cosgrove*, 141 N.E. 267, 268-69 (Ohio 1923); *Haser v. Pape*, 39 N.W. 2d 578, 582 (N.D. 1949); *Simpson v. Broadway-Manhattan Taxicab Corp.*, 128 S.E.2d 306, 310 (Va. 1962); *Jenkins v. Gen. Cab Co. of Nashville*, 135 S.W.2d 448, 449 (Tenn. 1940); *O'Brien v. Pub. Serv. Taxi Co.*, 178 F.2d 211, 213 (3d Cir. 1949); *St. Michelle v. Catania*, 250 A.2d 874, 875, 878 (Md. Ct. App. 1969); *Co-op Cab Co. v. Singleton*, 19 S.E.2d 541, 542 (Ga. Ct. App. 1942); *Van Hoefen v. Columbia Taxicab Co.*, 162 S.W. 694, 696 (Mo. Ct. App. 1913).

Uber understood that this shift would work only if the public—and particularly women, who are at greater risk of sexual assault—believed that it was safe to step into a stranger's car. *See* JA_[MDL5468.Ex.J.at.14] (recognizing that people would not ride with Uber if they didn't think that it "ensure[s] [its] drivers are safe"). If ordering an Uber felt like hitchhiking, people wouldn't do it. So Uber set out to convince the public that riding with Uber is riding with *Uber*—not whoever happens to be behind the wheel. JA_[MDL5468.Ex.J.at.45].

Uber's advertising drives this theme home. It invites people to "[r]ide with Uber," which will "take you where you need to go." JA_[MDL5468.Ex.B.at.560:6-561:3, 563:17-564:7]. Uber calls its drivers "Uber drivers" and its service "Uber rides," phrases that it has made ubiquitous. JA_[MDL269-1.at.3]; JA_[MDL5475.Ex.4.at. 17]. And Uber markets its safety features as "[r]easons to [r]ide with Uber". JA_[MDL5468.Ex.H.138:9-13]; JA_[MDL5468.Ex.AA.at.2-3]. The message: "[N]o rider" should "feel[] alone in an Uber." JA_[MDL5468.Ex.J.at.53].

Uber makes a particular effort to convince women to "feel safe" in an Uber:



JA_[MDL269-1.at.5]; *see also Driving Women's Safety Forward*, Uber (captured Jun. 19, 2025), https://bit.ly/3V6jWqw. And it specifically markets its transportation services to the intoxicated, telling them that they can "forget about driving" and "[g]o out and enjoy the night," because Uber can get them home safely. JA_[MDL5468.Ex.I.at.75, 152]; *see also* Uber, *Drunk Driving Prevention Means Getting Home Safe*, YouTube (Mar. 19, 2025), https://bit.ly/3WomOPY; Uber, *Don't Look for a Reason to Drive When There Are So Many Reasons to Ride*, Facebook (Dec. 20, 2019), https://perma.cc/Z29V-DL4W. Uber even partners with alcohol manufacturers to

promote Uber rides as a safe way for intoxicated women to get home. JA_[MDL269.at.¶236].

Uber's conduct reinforces its message that passengers are riding with Uber, not strangers. People don't book rides with particular drivers; they book rides with Uber. JA_[MDL5468.Ex.S.at.4-14]. They aren't permitted to "choose their driver," JA_[MDL5468.Ex.T.at.321:16-19], or to contact them outside the app, JA_[MDL5468.Ex.Y.at.3]. To order a ride, a person simply tells Uber where she wants to go. JA_[MDL5468.Ex.P.at.84:9-15]. Uber then says what the ride will cost—at a non-negotiable price set exclusively by Uber, based on Uber's own formula. JA_[MDL5475-21.at.¶37]; JA_[MDL5468.Ex.U.at.346:12-15]; JA_[MDL5468.Ex.U.at.346:3-15]. If the rider purchases the ride, Uber dispatches a driver who will arrive with an Uber sign on the car. JA_[MDL5468.Ex.Q.at 131:16-20, 133:20-134:3]; N.C. Gen. Stat. § 20-280.5(e).

Once the ride begins, Uber stays involved the whole way. It gives drivers a suggested route, tracks the ride by GPS, and will intervene if it detects signs of trouble, such as a long stop or an unexpected drop-off. JA_[MDL5468.Ex.X.at.14:8-15, 16:5-16, 49:13-50:19]. In some cities, Uber has even required in-vehicle cameras. JA_[MDL5468.Ex.F.at.102:18-103:25].

When the car reaches the destination, riders don't pay the driver—they pay Uber. Uber charges the card on file, pockets the fare, allows the rider to leave a tip, sends a receipt, and subsequently pays its drivers on a weekly basis. JA_[MDL5475-21.at.¶25]; JA_[MDL5468.Ex.T.at.323:6-324:4]; JA_[MDL5468.Ex.V.at.232:12-23]; JA_[MDL5475.Ex.1.at.9]; JA_[MD5475.Ex.2.at.3-4]. Uber doesn't give riders a way to contact drivers once the ride is over. JA_[MDL5468.Ex.T.at.324:13-16]. If a rider has a complaint, wants a refund, or needs to report an assault, she deals with Uber. JA_[MDL5468.Ex.Y.at.3-6]. Uber then decides what happens next, including whether the driver may keep driving for Uber. JA_[MDL5468.Ex.Z.at.18].

Uber's safety efforts and public messaging have had mixed results. As a way to convince people to use Uber, they have succeeded remarkably well, with Uber now providing over a billion rides in the U.S. every year. JA_[MDL5475.Ex.4.at.12]. But as a way to protect riders from sexual assault, they have failed. Uber's own safety report disclosed nearly 6,000 reports of sexual assault on Uber rides in the United States in 2017 and 2018, including over 460 incidents of rape, 580 incidents of attempted rape, and 1,900 incidents of unwanted kissing. JA_[MDL5468.Ex.Y.at.8]. The real rates are likely much higher. Between 2017 and 2022, Uber received over 400,000 reports of sexual assault or misconduct, averaging one report every eight minutes. Emily Steel, *Uber's Festering Sexual Assault Problem*, N.Y. Times (Aug. 7, 2025), https://perma.cc/ZL6N-CEZZ. Women are most often the victims, and attacks

"typically occur late at night," "with pickups originating near a bar"—a consequence of Uber holding itself out as a safe ride home for intoxicated women. *Id.*

2. Uber has long known that its business model exposed it to liability as a common carrier. So it sought legislative exemptions from the common-law rule in states across the country. *See, e.g.*, Andrew Zaleski, *Bill to Exempt Uber, Lyft from Common Carrier Status Fails to Pass,* Technical.ly (Apr. 9, 2014), https://perma.cc/V7U7-S2P9. Some states obliged. Florida, Indiana, and Illinois, for example, have all passed statutes overriding the existing common-carrier test for companies like Uber. *See* Fla. Stat. § 627.748(2); Ind. Stat. § 8-2.1-19.1-2; 625 I.L.C.S. § 57/25(e). And Texas explicitly provides that such companies "may not be held vicariously liable for damages" caused by their drivers unless they were "grossly negligent" or failed to fulfill statutory duties. Tex. Civ. Prac. & Rem. Code § 150E.003. But other states, including North Carolina, have declined to create legislative exceptions to the common-law rule.

III. This case

1. For several years, Uber was able to avoid public accountability for sexual assaults committed by Uber drivers against Uber passengers. Until 2018, it required confidentiality as a condition of settlement with sexual-assault survivors, effectively forcing them to stay quiet to keep the public in the dark about the real risks of using Uber. *See* Camila Domonoske, *Uber Will No Longer Force Sexual Assault Survivors into*

Arbitration or NDAs, NPR (May 15, 2018), https://perma.cc/8U8B-PLT5. And when survivors came forward, Uber enforced mandatory arbitration of their claims. *Id.*

That's now changed. Uber ended forced arbitration of sexual-assault claims in 2018 due to public scrutiny, *id.*, and Congress prohibited the practice a few years later, *see* Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act, Pub. L. No. 117-90, 136 Stat. 26, 26-28 (Mar. 3, 2022). As a result, in recent years, thousands of passengers have sued Uber in federal court for sexual assaults by Uber drivers, with many passengers alleging that their drivers raped them, forced them to perform oral sex, or masturbated during the ride. JA_[MDL7079.at.2]. Their claims have been consolidated in a multidistrict litigation in the Northern District of California. JA_[MDL269]. Many of those passengers allege that Uber is a common carrier and so owed them a nondelegable duty to carry them safely. JA_[MDL269.at.¶¶386-400].

Uber selected Brianna Mensing's case as a bellwether.[3] JA_[MDL2375]. Her complaint alleged that, at the end of a late-night Uber ride, her driver turned toward her, groped her upper thigh, and made sexualized comments. JA_[MDL2513.at.¶¶5-9]. Her claims eventually narrowed to focus on Uber's liability as a common carrier. JA_[MDL2513.at.¶11]; JA_[MDL269.at.¶¶386-400]; JA_[MDL5264.at.2-3].

[3] Ms. Mensing has consented for her name to appear in public reporting.

The parties filed cross-motions for summary judgment on whether Uber is a common carrier. JA_[MDL5468]; JA_[MDL5475]. After both sides filed motions and oppositions, the district court issued a tentative ruling, JA_[MDL5670], then granted Ms. Mensing's motion after argument, JA_[MDL5809]. The court held that Uber "clearly qualifies as a common carrier" under North Carolina law because it "holds itself out to the public as a transportation provider" through both its "ubiquitous advertising" and its conduct. JA_[MDL5809.at.1-2]. And the court held that Uber's duty to carry its passengers safely is "non-delegable," meaning it would be liable if the jury found that its driver battered Ms. Mensing. JA_[MDL5809.at.2-3].

2. The common-carrier ruling meant that the jury was asked to decide only whether the battery happened and damages. JA_[4/2/2026.Tr.at.39:20-40:8]. The court thus excluded as irrelevant evidence about Uber's safety record, unless "the door is open[ed]." JA_[4/2/2026.Tr.at.39:20-40:22, 43:9-15]. It also excluded evidence of the driver's background check and ratings from riders. JA_[4/2/2026.Tr.at.43:17-48:3]. At Uber's request, the court admitted evidence that Ms. Mensing used Uber after the ride. JA_[4/2/2026.Tr.at.48:5-49:2].

At trial, Uber argued that the battery never happened. It cross-examined Ms. Mensing at length about her history of substance use, her choice not to report the incident, inconsistencies in her statements, and her later use of Uber. JA_[4/15/2026.Tr.at.125-195]. It played deposition testimony from her former friend

and a treating psychiatrist, and it called a forensic psychiatrist. JA_[4/16/2026.Tr.at.300:15-302:3]; JA_[4/17/2026.Tr.at.432-543]. It also played the driver's deposition. He testified that he didn't recall touching any passenger without consent. JA_[4/16/2026.Tr.at.262:8-263:2, 302:4-9]. The court excluded the driver's statements vouching for his character. JA_[4/16/2026.Tr.at.257:7-265:15]. It also excluded, over Ms. Mensing's objection, evidence of his criminal conviction and Uber's decision to deactivate his account. JA_[4/16/2026.Tr.at.267:11-17].

The court instructed the jury that "Uber is liable if the driver committed a battery against the plaintiff." JA_[4/20/2026.Tr.at.569:11-18]. The jury found that he did and awarded Ms. Mensing $5,000. JA_[4/20/2026.Tr.at.639:20-25].

SUMMARY OF ARGUMENT

I. The district court correctly held that Uber "qualifies as a common carrier" under North Carolina common law because it "holds itself out to the public as a transportation provider." JA_[MDL5809.at.1].

A. Uber does so through both its advertising and its conduct. It invites the public to "[n]ever hail a taxi again" and instead "[r]ide with Uber." JA_[MDL5468.Ex.B.at.560:6-562:3]. And it extends that invitation indiscriminately, allowing anyone over 18 to order a ride. Uber thus pitches itself as a technologically advanced taxi service. Because taxi companies have long been recognized as

common carriers, and Uber holds itself out as providing the same service, it too is a common carrier.

B. Uber's contrary arguments are unavailing.

1. Uber first argues that it isn't a common carrier because it provides no transportation services at all. But its public messaging says the opposite. And understandably so: People pay Uber to obtain transportation, just like they'd pay a train, bus, or taxi. It makes no difference that Uber doesn't own its own vehicles or deems its drivers to be independent contractors. The common law asks how a company holds itself out to the public, not how it structures its business internally.

2. Uber next argues that it isn't a common carrier because it doesn't serve the public indifferently. Every common carrier, however, imposes requirements on its customers. And Uber's are minimal. The record shows that it provides rides to anyone with an account; it does not pick and choose its passengers.

Nor does it matter that Uber uses "dynamic pricing." Many common carriers—from airlines to Amtrak—do too. The law does not require fixed rates, only that a carrier hold itself out as providing services impartially. Uber does.

3. Lacking any foothold in the common law, Uber transitions to an argument that the North Carolina legislature abrogated the common-law rule in a 2015 statute. But in North Carolina, the common law is abrogated only if a statute does so expressly. The 2015 statute doesn't. It simply imposes additional regulatory

requirements on companies like Uber, without purporting to abrogate their common-law liability. That was no oversight. If the legislature wanted to abrogate the common law, it knew what to do. In the same statute, the legislature abrogated common-law employment rules—but not common-carrier status or liability.

II.A. Because Uber is a common carrier, it owes its passengers a nondelegable duty to transport them safely. This duty is breached when a common carrier's worker assaults a passenger. Uber therefore breached its duty to Ms. Mensing when its driver assaulted her.

B. Uber makes three attempts to insulate itself from liability. All fail.

1. First, Uber argues that only common carriers that also possess franchises owe their passengers a nondelegable duty to transport them safely. But it cites no case that actually says this. The cases instead hold the opposite: They make clear that the duty that common carriers owe their passengers is not dependent on any state recognition. It extends to all common carriers. That's because it arises from the relationship between a carrier and its passengers, not a carrier and the state.

2. Second, Uber argues that a common carrier is not liable for assaults committed by its workers if those workers are independent contractors. The whole point of a nondelegable duty, however, is that it cannot be delegated to anyone—including an independent contractor. The U.S. Supreme Court, the North Carolina Supreme Court, other states' highest courts, and treatises all reflect the same rule. As

against these authorities, Uber is unable to identify a single case holding that a common carrier isn't liable for an assault committed by its worker because the worker happened to be classified as an independent contractor.

3. Finally, Uber turns to policy, claiming that it would be "unfair" to impose liability on Uber for assaults committed by Uber drivers against Uber passengers on Uber rides. These arguments are wrong on their own terms. But more to the point, they are directed at the wrong forum. As a federal court sitting in diversity, this Court is not empowered to create exceptions to state law based on its view of good policy.

III. Uber also tacks on an argument that it is entitled to a new trial. But it never objected below to most of the testimony it now challenges, and it doesn't attempt to satisfy the plain-error standard. Regardless, Uber's arguments flunk any standard of review. The trial was fair and any purported error was harmless.

ARGUMENT

I. The district court correctly concluded that Uber is a common carrier under North Carolina law.

The first question on appeal is whether Uber is a common carrier under North Carolina law. North Carolina follows the general common-law rule: A common carrier is "one who holds himself out to the public as engaged in the public business of transporting persons … for compensation." *GATC*, 110 S.E.2d at 889. The district court held that Uber "clearly qualifies as a common carrier" under this definition

because it "holds itself out to the public as a transportation provider" through both its advertising and its conduct. JA_[MDL5809.at.1]. That holding is correct.

A. Uber is a common carrier because it holds itself out to the public as providing transportation.

1. As the district court recognized, "Uber holds itself out to the public" as a transportation provider "through its ubiquitous advertising." JA_[MDL5809.at.1]. Uber broadly invites the public to "[n]ever hail a taxi again," and to instead "[r]ide with Uber" and "[l]et [Uber] take you where you need to go." JA_[MDL5468.Ex.B.at.560:6-562:3]. Uber markets its services as meeting any transportation need: The public should use Uber to "[r]un errands around town," get "to and from the airport," or "[c]ommute to the office." JA_[MDL5468.Ex.E.at.3]. Uber's message is uniform: Whoever you are and wherever you are going, Uber "will take you where you need to go." JA_[MDL5468.Ex.B.at.563:17-564:7].

Uber's advertising does not stop there. Because its business model depends on passengers feeling comfortable entering cars driven by strangers that they cannot personally vet, Uber spends billions of dollars reassuring passengers that it will get them to their destination safely. *Supra* 9-11. Uber tells passengers that "[s]afety is our priority," so they can "[r]ide safely with Uber." JA_[MDL5468.Ex.H.at.136:17-138:24, 142:24-143:20]; JA_[MDL5468.Ex.I.at.39, 66]. As Uber has explained, safety is "a fundamental expectation in transportation." JA_[MDL5468.Ex.J.at.11]. The only

way for it to meet that expectation—to convince passengers that they are safe riding in a car with a stranger—is by "inducing a belief in the minds of the public" that they are not riding with a stranger at all. *Jackson*, 116 S.E.2d at 825. They are "[r]id[ing] with Uber." JA_[MDL5468.Ex.B.at.560:6-19]; JA_[MDL5468.Ex.C.at.3].

2. Uber holds itself out to the public as a transportation provider not only by what it says, but also by what it does. People turn to Uber for the same reason that previous generations turned to taxis. Anyone over 18 can download Uber's app, where they can order an "uberX," "uberXL," or one of the other "Uber" branded rides that Uber offers. JA_[MDL5475.Ex.3.at.8]. When Uber "receives a ride request," it "find[s]" a driver that is "the best match for that request," "dispatches that driver," and "follow[s] along" to ensure that the passenger gets to their destination safely. JA_[MDL5468.Ex.Q.at.131:16-20, 133:20-134:3]; JA_[MDL5468.Ex.X.at.15:19-16:4]; JA_[MDL5468.Ex.T.at.321:5-23]. Uber "set[s] the fare," "collects the fee," and then "disseminates" some portion to the driver. JA_[MDL5468.Ex.U.at.346:3-15]; JA_[MDL5468.Ex.V.at.232:16-17]; *supra* 11-12.

In short: "Uber is, in essence, a technologically advanced taxicab company." *Mahwikizi v. Uber Techs., Inc.*, 2023 WL 2375070, at *4 (N.D. Ill. 2023); *accord Rogers v. Lyft, Inc.*, 452 F. Supp. 3d 904, 916 (N.D. Cal. 2020); *Murray v. Uber Techs., Inc.*, 486 F.

Supp. 3d 468, 475-76 (D. Mass. 2020). And it is "well established" that "taxicabs are common carriers." *Hardy*, 126 S.E.2d at 56.[4]

That is why courts have routinely recognized that Uber is a common carrier under the common law: because there is no principled basis for distinguishing Ubers from taxis. *See, e.g.*, *Murray*, 486 F. Supp. 3d at 475; *Doe v. Uber Techs., Inc.*, 184 F. Supp. 3d 774, 786 (N.D. Cal. 2016). It therefore follows that Uber is a common carrier under North Carolina law.

B. Uber's contrary arguments are unavailing.

Uber does not meaningfully confront this caselaw or offer a principled way to distinguish itself from a taxi company when it holds itself out to the public as providing the same basic service. Instead, Uber first argues (at 26) that it is not a carrier *at all* because it owns no vehicles, employs no drivers, and (it says) is a "mere arranger" of transportation. It then argues that, even if it is a carrier, it's not a *common* carrier because it retains a right to refuse service and because it doesn't charge a uniform tariff.

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[4] *See, e.g.*, *Korner v. Cosgrove*, 141 N.E. 267, 268 (Ohio 1923) ("[A]ll the authorities without exception have declared that public taxicabs … are common carriers."); *Anderson v. Yellow Cab Co.*, 191 N.W. 748, 751 (Wis. 1923); *Yellow Cab Co. v. Eden*, 16 S.E.2d 625, 630 (Va. 1941); *Griffin v. Louisville Taxicab & Transfer Co.*, 188 S.W.2d 449, 450 (Ky. 1945); *Swilley v. Econ. Cab Co. of Jacksonville*, 46 So.2d 173, 176 (Fl. 1950); *Demetrion v. Edwards*, 416 F.2d 958, 960 (7th Cir. 1969); *Anderson v. Yellow Cab Co.*, 329 N.E.2d 278, 280 (Ill. App. Ct. 1975).

Neither of these arguments is persuasive. They are either factually incorrect or legally irrelevant, and both were properly rejected by the district court.

1. Uber is a carrier because it sells rides to passengers.

Uber's lead argument (at 24) is that it isn't a common carrier because it isn't a carrier at all. This argument "strains credulity." *Namisnak v. Uber Techs., Inc.*, 444 F. Supp. 3d 1136, 1143 (N.D. Cal. 2020). "[T]he basic function" of a carrier is to provide "transportation of persons or property." *Beavers v. Fed. Ins. Co.*, 437 S.E.2d 881, 883 (N.C. Ct. App. 1994). That is what Uber does. People pay Uber "to obtain transportation," just like they would pay a train, bus, or taxi. *Las Vegas Hacienda*, 298 F.2d at 435. The company itself admits this. In its own words, Uber "sell[s] rides to people," JA_[MDL5468.Ex.B.at.556:20-557:3], "provides rides to passengers," JA_MDL5468.Ex.K.at.104:1-3], and "offers transportation," JA_[MDL5468.Ex.L.at.390:7]. Uber describes itself as a "transportation system," *Namisnak*, 444 F. Supp. 3d at 1143, that serves as "an alternative option to taxis," and goes so far as to tell the public that they "[n]ever" need to "[h]ail a [t]axi [a]gain," JA_[MDL5468.Ex.B.at.560:21-561:17]. Uber has been so successful at selling rides to the public that its name is now used in everyday parlance as a verb.

Uber protests (at 24) that, despite its statements to the contrary, it is "incapable of transporting" anyone because it has structured its business so that it owns no vehicles and employs no drivers. But neither of those facts—who holds legal title to

vehicles and how drivers are classified for employment purposes—impacts whether a company is a carrier. A carrier need not "own the means of transportation." 13 Am. Jur. 2d *Carriers* § 10; *accord Bank of Ky.*, 93 U.S. at 177; *see also Mann v. Va. Dare Transp. Co.*, 198 S.E.2d 558, 565 (N.C. 1973) (recognizing that a common carrier may "leas[e] its transportation facilities from another … corporation"). And a company can be a carrier even if it contracts with third parties for transportation services. *See, e.g.*, *Bank of Ky.*, 93 U.S. at 177 (common carrier despite "employ[ing] … railroads, steamboats, and other public conveyances" to perform its transportation services); *M&R Inv. Co.*, 308 F.2d at 51 (common carrier even though the "physical operation" of the transportation was performed by another carrier); *Am. Orient Exp. Ry. Co. v. Surface Transp. Bd.*, 484 F.3d 554, 556-57 & n.2 (D.C. Cir. 2007) (common carrier even though company "contracts with Amtrak").[5]

The cases Uber is forced to rely on (at 24) expose how weak its argument really is. Its lead case, *Beavers*, applied the common-carrier definition and held that a whitewater-rafting company that "offered to provide participants" with "adventure" and "thrills"—not transportation—did not qualify. 437 S.E.2d at 883-84. Uber does

[5] Seeking to impose additional limitations on carrier status, Uber offers (at 25) a list of "factors" that it claims to have drawn from *Patterson v. Duke Power Co.*, 36 S.E.2d 713 (N.C. 1946). But *Patterson* simply explains why a passenger transferring between buses should not be considered a passenger "while traveling on the public street for the purpose of making the transfer." *Id.* at 715. In other words, *Patterson* is about when someone is a *passenger*, not when a company is a *carrier*.

not offer rides for the "thrill." It offers them for "[c]ommut[ing] to the office" and "[r]id[ing] to the airport." JA_[MDL5468.Ex.E.at.3]. Uber's other leading case, *Gorden v. Garner*, 493 S.E.2d 58 (N.C. Ct. App. 1997), is equally off point. It held that a sandpit operator that delivered sand to customers did not qualify under the common-carrier definition either because it did not hold itself out as selling transportation services—it held itself out as selling sand. *Id.* at 62. Uber, however, holds itself out as "sell[ing] rides." JA_[MDL5468.Ex.B.at.556:20-557:3].

With no cases on its side, Uber pivots (at 26) to arguing that it is merely an "arranger of transportation." That's wrong too, on both the facts and the law. Uber does not simply arrange transportation for other carriers. It holds itself out to the public as able to provide that transportation itself, and then gets its riders where they need to go: assigning a driver, telling its driver where to go, monitoring the ride, and intervening if warranted. Uber also sets the price, collects the payment, issues the receipt, and pays the drivers. *Supra* 11-12; *see also Doe*, 184 F. Supp. 3d at 786 (rejecting similar argument).

On the law, Uber's own case for this point, *Weade v. Dichmann, Wright & Pugh, Inc.*, 337 U.S. 801 (1949), shows why Uber is wrong. *Weade* involved a Navy steamboat that transported people between Virginia and D.C. *Id.* at 803. The federal government contracted with a private company to perform the tasks required to transport passengers: issuing the tickets, maintaining the vessel, hiring the crew, and

loading and unloading the passengers. *Id.* at 806. Still, the Court held that the government—not the contractor—was the carrier. *Id.* at 806-07. The relevant question was who "held itself out to the public as ready to engage" in "the carriage of passengers," not who did most of the work. *Id.* at 808. Or to use the words of the treatise from which Uber selectively quotes (at 26): A company "can qualify as a carrier … regardless of who actually transports." 13 Am. Jur. 2d *Carriers* § 1 (2026). What matters is "how [the company] represents itself to the world." *Id.* Uber presents itself to the world as a common carrier, so it *is* a common carrier.

Uber next argues (at 27) that how it represents itself is irrelevant because "advertising" matters "only to determine whether the carrier was acting as a *common* carrier"—not whether a company is "a carrier in the first place." That cannot be correct. All common carriers are necessarily carriers too, and a company's advertising can satisfy the common-carrier definition by itself. *Jackson*, 116 S.E.2d at 824. So courts have naturally looked to a company's advertising to help discern what the company actually sells to the public. *See Beavers*, 437 S.E.2d at 883-84; *Las Vegas Hacienda*, 298 F.2d at 435. But even setting that aside, the evidence here is not limited to Uber's advertising. Uber executives describe its services this way. *Supra* 20-21. And

on this point, at least, Uber's advertising is accurate: Uber plainly provides transportation, just like a taxi company. *Supra* 21-22.[6]

Nor does it matter that Uber's Terms of Use try to disclaim common-carrier status. *Contra* Uber Br. 27. As Uber concedes, the relevant question "is not what the carrier declares himself to be" in the fine print of its contracts, but rather "what the facts and circumstances show him to be" communicating to the public. Uber Br. 28; *see also Chan v. Soc'y Expeditions, Inc.*, 123 F.3d 1287, 1292 (9th Cir. 1997) (carrier despite saying that it "acts only as an agent for the suppliers and contractors providing … transportation"); *Woolsey v. Nat'l Transp. Safety Bd.*, 993 F.2d 516, 523 (5th Cir. 1993) (common-carrier test "rel[ies] upon what the carrier actually does," not the "label" it assigns itself). Here, the "facts and circumstances" show that Uber sells rides—and pitches itself to the public as doing so. *See supra* 20-22. Indeed, Uber's own cases recognize that a company can be a carrier even if it describes its services differently in its contracts. *See Starr Indem. & Liab. Co. v. RXO Capacity Sols., LLC*, 2024 WL 2979728, at *6 (W.D.N.C. 2024) (contract language "does not end the fact-intensive inquiry into whether an entity is a … carrier"); *McNeill v. Durham & C.R.*

[6] This does not mean that "any company [that] us[es] transportation-related language" in its marketing is a common carrier. Uber Br. 28. Only those who "hold themselves out" as providing transportation "qualify." *Woolsey v. Nat'l Transp. Safety Bd.*, 993 F.2d 516, 524 n.24 (5th Cir. 1993). To use Uber's example: Toyota sells cars; Uber sells rides. That's the difference.

Co., 47 S.E. 765, 768 (N.C. 1904) (a carrier's duty "exists independently of contract"). Uber's argument that it is not a carrier should therefore be rejected.[7]

2. Uber is a common carrier because it holds itself out as serving all people indifferently.

Beyond denying that it is a carrier, Uber claims that it is not a common carrier because it "reserves the right" to turn away customers, and because it uses a dynamic pricing algorithm. Neither undermines its status as a common carrier.

a. Uber first claims (at 31-32) that it isn't a common carrier because it "gatekeep[s]" its customer base by requiring customers to "register, verify their identity, and accept [Uber's] Terms of Use." But every common carrier delimits its customers in some way—whether "by place," "ability to pay," or imposing "requirements" on them. *Terminal Taxicab Co. v. Kutz*, 241 U.S. 252, 255 (1916). Those limitations do not undermine a company's status as a common carrier. A common carrier "need not be available to every member of the public; it is enough that the service be available on open terms to even a segment of the population." *Air Evac EMS*, 910 F.3d at 764; *supra* 7. So a company may qualify as a common carrier even if it serves only guests at a specific hotel, *M&R Investment Co.*, 308 F.2d at 50, or people working in a specific industry, *Woolsey*, 993 F.2d at 523-24. Uber's "gatekeeping" is

[7] Uber also argues (at 29) that it does not carry "for hire" because riders do not pay Uber for its services. But anyone who has ever used Uber knows that they must pay Uber—directly—for each ride that they take. When a rider orders an Uber, Uber sets the price, collects the payment, and (eventually) pays the driver. *Supra* 11-12.

considerably less onerous than that. Its app is available to anyone over 18, and its "service affects so considerable a fraction of the public that it is public." *Kutz*, 241 U.S. at 255.

Uber insists (at 32-33) that it doesn't hold itself out to the public indifferently because it "retains the absolute right" to deny service. But here, too, "the important thing is what [Uber] does, not what its [contract] says." *Kutz*, 241 U.S. at 254; *see also Flytenow, Inc. v. FAA*, 808 F.3d 882, 885, 892 (D.C. Cir. 2015) (common carrier despite fine print saying carrier could reject passenger "for any or no reason"). Uber "doesn't discriminate," JA_[MDL5468.Ex.L.at.390:14-16], and is legally barred from doing so, N.C. Gen. Stat. § 20-280.3(d). It provides rides to "anybody with an account," JA_[MDL5468-3.Ex.B.at.557:2-3], and "make[s] sure that Uber is available to everyone everywhere," JA_[MDL5468.Ex.N.at.146:1-9]. Uber built its business on that promise, making Ubers a reliable and ubiquitous source of transportation. Uber cannot reap the benefits of holding itself out as available to all comers and then try to avoid the corresponding obligations of doing so by inserting fine print "merely for the purpose of divesting itself of the character and responsibility of a common carrier." *Ariz. Corp. Comm'n v. Reliable Transp. Co.*, 346 P.2d 1091, 1100 (Ariz. 1959).

Although Uber asserts that it "regularly exercises … discretion" to "refuse service to would-be riders," the only record evidence that it points to is a declaration saying that Uber has denied rides to passengers for "inappropriate or unsafe"

behavior. Uber Br. 31-32; JA_[MDL5475-21.at.¶¶26-27]. But the fact that Uber—which provides over a billion rides a year—occasionally refuses to carry disruptive passengers does not transform it into a private carrier. A common carrier is well within its right to exclude disruptive passengers. *See Story v. Norfolk & S.R. Co.*, 45 S.E. 349, 350 (N.C. 1903). And a carrier who holds itself out to the public as accepting all comers is a common carrier even if it makes the occasional "exception[]." *Kvalheim v. Horace Mann Life Ins. Co.*, 219 N.W.2d 533, 536 (Iowa 1974).

Uber contends in passing (at 32) that it is a private carrier because it offers "prearranged" transportation. But that's not what Uber tells its customers. It tells them that they can purchase Ubers "on-demand," without reservations. JA_[MDL5468.Ex.I.at.31]. In any event, many common carriers—like trains and airplanes—prearrange transportation. *See, e.g.*, *Texas & P. Ry. Co. v. Bigham*, 38 S.W. 162, 168 (Tex. 1896). What makes a carrier private is not that customers make reservations in advance. It's that the carrier "make[s] individualized decisions, in particular cases, whether and on what terms to deal." *Air Evac EMS*, 910 F.3d at 764. Uber does nothing of the sort. Its rides are "available on open terms" to all. *Id.* And it "set[s] the fare," JA_[MDL5468.Ex.U.at.346:12-15], without "negotiat[ing]" with customers, JA_[MDL5622.Ex.DD.137:12-17].

That distinguishes Uber from the private carriers in the cases it cites (at 31-32). In each case, the carrier provided services "only by contract specifically negotiated

with the particular shipper." *GATC*, 110 S.E.2d at 891; *see State ex rel. Utils. Comm'n v. Am. Courier Corp.*, 174 S.E.2d 814, 817 (N.C. Ct. App. 1970) (company would "pick and choose the … customers … to serve"); *The Cape Charles*, 198 F. 346, 349 (E.D.N.C. 1912) (vessel entered into individual contract with single customer without "s[eeking] such employment from … others"); *Kutz*, 241 U.S. at 253-56 (company entered into "individual" "bargains" with specific customers without any agreement to "serve the public generally"); *see also Jackson*, 116 S.E.2d at 824-26 (remanding to determine if carrier offered "passenger service" on his planes to the "public generally" or to "special clientele" only "occasional[ly]," by "individual contract").

b. Uber next argues (at 34-35) that it is not a common carrier because it uses a "dynamic pricing model" under which fares change with "marketplace conditions." This, too, is irrelevant. "It is not necessary for one to be classified as a common carrier that [its] rate[s] be fixed." 13 Am. Jur. 2d *Carriers* § 6; *accord Ariz. Corp. Comm'n*, 346 P.2d at 1099; *Woolsey*, 993 F.2d at 524. All that is required is that its rates be "equally available … on the same terms[] to all." *State ex rel. Utils. Comm'n v. Bird Oil Co.*, 273 S.E.2d 232, 239 (N.C. 1981).

Dynamic pricing is wholly consistent with that requirement. Common carriers have long adjusted their rates with market conditions. Railroad companies in the 1800s, for example, would vary their prices as market factors changed, offering "reduced rates to passengers making frequent trips" or "trips for long distances." *ICC*

v. Baltimore & Oh. R.R. Co., 145 U.S. 263, 279 (1892). Today, many common carriers, including Amtrak and airlines, use algorithms to automatically adjust their fares as market conditions fluctuate. *See, e.g.*, Mark Walker, *Travel Math: When Flying Costs as Much as the Train, Who Wins?*, N.Y. Times (Jan. 24, 2026), https://perma.cc/B75A-D5WJ; Melissa Kravitz Hoeffner, *How Does Dynamic Pricing for Airlines Affect Your Travels?*, Forbes (Mar. 11, 2024), https://perma.cc/NG9D-S2QA. They are still common carriers. Nothing prevents a common carrier from charging "different rates for service rendered under varying conditions." *Bird Oil Co.*, 273 S.E.2d at 237. Any common carrier that is "customer-specific" (like a taxi) rather than "route-specific" (like a bus) will "necessarily … accommodate itself to the customer's particular needs." *Brill v. Indianapolis Life Ins. Co.*, 784 F.2d 1511, 1515 (11th Cir. 1986).

That's all Uber does. The company itself explains (at 35) that its pricing model relies on objective criteria (like traffic, weather, driver supply, and rider demand). So the district court was correct to conclude that Uber treats "all people indifferently." JA_[MDL5809.at.2]. Whether a rider is a college student or a CEO, they are all subject to "the same terms." JA_[MDL5809.at.2] (quoting *Bird Oil Co.*, 273 S.E.2d at 239). Uber argues (at 36) that *Bird Oil* is inapposite because the rates there were "fixed." But *Bird Oil* reinforces the longstanding common-law rule that a common carrier may charge "differential" prices where conditions fluctuate. 273 S.E.2d at 237; *see also Baltimore & Oh. R.R. Co.*, 145 U.S. at 275-76.

Uber does not cite a single case holding that a carrier who serves all comers is a private carrier because its prices fluctuate. Instead, it once again relies on cases (at 34) involving carriers that "individually negotiated [contract] terms" and did not "hold[] [themselves] out as willing to provide" services "to the public." *State ex rel. Utils. Comm'n v. Tar Heel Indus.*, 334 S.E.2d 396, 399 (N.C. Ct. App. 1985). In *Tar Heel Industries*, for example, the carrier "dedicate[d] equipment and drivers twenty-four hours a day, 365 days a year," to a single customer, without "holding itself out as willing to provide" that service to anyone else. *Id.* at 398-99. In *Home Insurance Co. v. Riddell*, 252 F.2d 1 (5th Cir. 1958), a farmer who occasionally contracted out his trucks was a private carrier because he "frequently turned down proffered business," deciding in each individual case "whether he would accept a shipment" based on considerations including his "previous relationships" with the customer and whether he needed the trucks for himself. *Id.* at 3-4. And in *GATC*, the company bid on specific contracts and was careful "not to contract with any one that would interfere with" its relationship with its largest customers. 110 S.E.2d at 891.[8]

3. The North Carolina legislature has not expressly abrogated the common-law rule on common carriers.

With the common law firmly against it, Uber argues (at 37) that the North Carolina legislature has displaced the longstanding common-law rules in favor of a

[8] The fact that Uber may occasionally offer rider-specific discounts does not change the analysis. *See Fitchburg R.R. Co. v. Gage*, 78 Mass. (12 Gray) 393, 399 (1859).

special carveout for companies like itself. But in North Carolina, the common law "is presumed to be in force" unless "affirmatively … abrogated or modified by statute." *Price v. Edwards*, 101 S.E. 33, 37 (N.C. 1919). To displace a common-law rule, then, a statute must do so "express[ly]." *Arter v. Orange Cnty.*, 904 S.E.2d 715, 717 (N.C. 2024); *see also* JA_[MDL5809.at.2]. No North Carolina statute does.

Uber points to the 2015 Transportation Network Company statute, which it says (at 37) "confirms that Uber is not a common carrier." But Uber admits (at 44) that the statute simply "reinforce[s] what the common law already establishes." So it is unclear how the statute could matter. If Uber is a common carrier under the common law, it's a common carrier—period. And if it's not, it's not.

Anyway, the statute does not help Uber. It requires companies like Uber to obtain a license from the state. N.C. Gen. Stat. § 20-280.2(a). It also imposes additional regulatory requirements on them: limiting who they may hire as drivers, § 20-280.6(c), requiring them to run a criminal background check and review a driving research report on their drivers every five years, § 20-280.6(b), and requiring them to ensure that their drivers' vehicles display the company's branding while on duty, § 20-280.5(e). Nothing in the statute demonstrates an intent to override the common-law rule distinguishing common carriers from private carriers. As Uber's own expert recognized, the statute is "silent on [this] issue." JA_[MDL5468.Ex.Z.at.32.n.83].

Uber nonetheless appears to argue (at 37-38) that the statute implicitly abrogates the common law by suggesting that it is Uber's *drivers*—not Uber itself—who provide transportation services. But again, any abrogation must be explicit. And if anything, the statute reinforces that *Uber* is the one providing transportation services. That's why it largely regulates Uber—not Uber drivers. The statute requires Uber (not its drivers) to tell customers how much a ride will likely cost. N.C. Gen. Stat. § 20-280.2(a)(1), (2). It requires Uber (not its drivers) to "maintain … records" of its rides. § 20-280.5(c). And it requires Uber (not its drivers) to issue receipts and collect payment. § 20-280.2(a)(3), (4). Far from "confirm[ing]" that Uber "is not a common carrier," the statute confirms the opposite. *Contra* Uber Br. 37.

Looking to the "backdrop" of other North Carolina statutes does not change things. According to Uber (at 41), because a different provision divides transportation companies into "carriers" and "brokers," this Court must read that distinction into the Transportation Network Company statute too. But those definitions apply only "in th[at] Chapter." *See* N.C. Gen. Stat. § 62-3; *Domestic Elec. Serv., Inc. v. City of Rocky Mount*, 203 S.E.2d 838, 842 (N.C. 1974). Regardless, Uber admits (at 41) that it "undisputably is not" a broker, so it is hard to see how this distinction helps Uber. Indeed, Uber would qualify as a common carrier even under these definitions, which (as Uber conceded below) simply codify the common law. *See* N.C. Gen. Stat. § 62-3(6), (7); *Beavers*, 437 S.E.2d at 883; JA_[MDL5707.at.8.n.9].

Contrary to Uber's argument (at 42), it makes no difference that the statute does not "impose common-carrier-type service obligations" on it. A common carrier's duties *arise* from its status as a common carrier; the duties do not *make* it a common carrier. *See N.Y. Cent. R.R. Co. v. Lockwood*, 84 U.S. (17 Wall.) 357, 376 (1873) ("[C]ommon carriers are such by virtue of their occupation, not by virtue of the responsibilities under which they rest."); *accord Circle Exp. Co. v. Iowa State Com. Comm'n*, 86 N.W.2d 888, 894 (Iowa 1957).

If North Carolina wanted to abrogate the common-law rule, it "knew how." *Costanzo v. Currituck Cnty.*, 929 S.E.2d 879, 888 (N.C. 2026). In the very same statute, the legislature abrogated a different common-law rule, establishing a "rebuttable presumption" that drivers for transportation network companies are independent contractors, not employees. N.C. Gen. Stat. § 20-280.8. Unlike other states, however, it did not do the same for the common law of common carriers. *Supra* 13.

The North Carolina legislature's "choice" to abrogate one common-law rule but not another "was purposeful." *Costanzo*, 929 S.E.2d at 888. This Court may not "superimpos[e] provisions or limitations" on the statute that the legislature declined to include. *State v. Williams*, 230 S.E.2d 515, 517 (N.C. 1976).[9]

[9] Uber argues (at 40-41) that the definitions in North Carolina's Motor Vehicle Code implicitly abrogate the common law too, but they "apply" only "throughout [that] Chapter"—not to common-law tort claims. N.C. Gen. Stat. § 20-4.01; *see also Grundey v. Clark Transfer Co.*, 256 S.E.2d 732, 735 (N.C. 1979).

II. As a common carrier, Uber owes its passengers a nondelegable duty to transport them safely.

Because Uber is a common carrier, it owes its passengers a "non-delegable duty … to transport them safely," as the district court held. JA_[MDL5809.at.3]. "[T]hat duty is breached," the court concluded, "when an Uber driver assaults a passenger—regardless of whether the driver" is an "independent contractor under North Carolina law." *Id.*

The district court got it right. Although Uber may delegate the task of driving, it may not delegate its responsibility for passengers' safety. This Court should reject Uber's request to create a common-law exception no court has ever recognized.

A. Uber breaches its nondelegable duty when its driver assaults a passenger.

As a common carrier, Uber has a nondelegable "obligation … to carry [its] passengers safely." *White*, 20 S.E. at 192; *supra* 4-6. That duty is breached when an Uber driver assaults a passenger. As the North Carolina Supreme Court has explained, when a common carrier's worker "inflict[s] violence on [a] passenger," the carrier is liable "just as fully as if the carrier had encouraged the commission of the act" itself. *Hairston*, 18 S.E.2d at 170. Thus, under a straightforward application of North Carolina law, Uber is liable for its driver's assault of Ms. Mensing, just as a taxi company is liable for its drivers' assaults. *See id.*; *Lanier*, 105 S.E. at 24; *White*, 20 S.E. at 191-92; *supra* 7-8 & n.2.

B. Uber's attempts to create an exception to this common-law duty fail.

In resisting this conclusion, Uber cites no case holding that a common carrier lacks a nondelegable duty to transport its passengers safely. Nevertheless, it asks (at 47) this Court to become the first. Its argument is internally inconsistent. It first argues (at 48) that the duty attaches to only a *subset* of common carriers: those with a franchise from the state. But it offers no examples of a court holding that a common carrier is spared this duty simply because it lacks a franchise. Nor would that make sense: The duty arises from how a company holds itself out to the public, not any special recognition from the state.

So Uber turns to a second argument—one that disproves its first. After arguing that non-franchised common carriers owe no nondelegable duty, Uber is forced to admit just a few pages later (at 51) that this isn't so. It concedes that they *do* owe a nondelegable duty of safe transport, but posits that they may—paradoxically—delegate this duty to independent contractors. That is not the rule. Case after case has held that a common carrier is liable for assaults committed by its workers, whether classified as employees or independent contractors. And the real thrust of Uber's argument—that this Court should create a new exception for policy reasons—is particularly inappropriate for a federal court sitting in diversity.

1. A common carrier's nondelegable duty to transport its passengers safely is not limited to franchised common carriers.

The rule that a common carrier owes a nondelegable duty to transport its passengers safely is so clear that Uber cannot deny that at least *some* common carriers owe it. Yet it insists (at 20) that this duty applies only to *franchised* common carriers because, it says (at 49), "the franchise is what provides the whole justification for the nondelegable duty."

That isn't right. A common carrier's nondelegable duty to transport its passengers safely arises not from "legislative fiat," but "by reason of the character of the business they carry on." *Washington ex rel. Stimson Lumber Co. v. Kuykendall*, 275 U.S. 207, 211 (1927). It "grows out of the relationship of carrier and passenger," *Hairston*, 18 S.E.2d at 170, because "by holding themselves out to the public at large," common carriers "t[ake] on a quasi-public character," *Nat'l Ass'n of Regul. Util. Comm'rs v. FCC*, 525 F.2d 630, 640 (D.C. Cir. 1976). "That character, coupled with the lack of control" passengers have "over the safety of their carriage," is what justifies "imposing upon the carrier" a heightened duty to protect its passengers. *Id.*; *accord Lanier*, 105 S.E. at 24; *supra* 5.

This is the reason that courts invariably recognize that common carriers owe a nondelegable duty to transport their passengers safely—without ever pausing to consider whether the carrier is franchised. *See, e.g.*, *Hairston*, 18 S.E.2d at 169-70; *Korner*,

141 N.E. at 268-69; *Dixie Stage Lines v. Anderson*, 134 So. 23, 24 (Ala. 1931). Again, Uber does not cite (nor have we found) any case holding that a common carrier is relieved of this duty just because it doesn't operate under a state-granted monopoly.

The best Uber can do (at 48) is point to cases that refer in passing to the relevant common carrier as possessing a "franchise." None of its cases, however, suggest that a common carrier's nondelegable duty arises from the carrier's relationship with the state. To the contrary, *White* expressly grounded the duty in the relationship between the common carrier and its passengers—not to any statutory authorization. 20 S.E. at 192. And the common carrier in *Mann* was just an ordinary bus company. There's no indication that it possessed an exclusive charter from the state. *See* 198 S.E.2d at 561. What's more, both *White* and *Mann* rely on cases applying this duty without any mention of a government franchise. *White*, 20 S.E. at 192-93; *Mann*, 198 S.E.2d at 565-66.

With no cases on its side, Uber turns yet again to the Transportation Network Company statute, which it says (at 51) permits it to delegate this duty. But the fact that the statute recognizes that Uber may delegate the task of driving to its drivers does not suggest that the statute authorizes Uber to delegate its duty to transport its passengers safely. *See White*, 20 S.E. at 191-92 (recognizing a distinction between delegating the transportation function and delegating the duty owed to passengers). That makes this case unlike *Osborne ex rel. Powell v. Yadkin Valley Economic Development*

District, 865 S.E.2d 307 (N.C. Ct. App. 2021), on which Uber relies (at 51). *Osborne* held that a school board was not liable when a contractor assaulted a student. 865 S.E.2d at 321. But a school board is not a common carrier, so its duty was delegable. *Id.* at 319. Things would have been different, the court recognized, if that case instead involved a "non-delegable dut[y]," as this case does. *Id.*

2. A common carrier may not delegate its nondelegable duty to an independent contractor.

After strenuously arguing that the common law's nondelegable duty is limited to franchised common carriers, Uber then gives the game away. It eventually admits (at 51-53) that *all* common carriers owe their passengers a nondelegable duty of safe transport, thereby acknowledging that even non-franchised common carriers are liable for assaults committed by their employees. Yet Uber goes on to take the counterintuitive position that common carriers may delegate this nondelegable duty to their workers—so long as the workers are classified as independent contractors under state employment law.

No common-law case, however, has adopted this position. The cases uniformly hold that nondelegable duties are, well, nondelegable. A party operating under a nondelegable duty is responsible for the acts of those it relies on in carrying out that duty. *See* Restatement (Second) of Agency § 214; Restatement (Second) of Torts § 409. A nondelegable duty is thus "an exception to the rule of nonliability by a principal for the work of independent contractors." *Medley v. N.C. Dep't of Corr.*, 412

S.E.2d 654, 657 (N.C. 1992). That's the whole point. A nondelegable duty cannot be delegated to *anyone*, "through any device or arrangement." *Roy*, 102 U.S. at 456; *accord Dixie Stage Lines*, 134 So. at 24 (Ala. 1931) ("[A] person is responsible for the manner of the performance of his non-delegable duties, though done by an independent contractor."); *supra* 5-6.[10]

A common carrier's nondelegable duty to transport its passengers safely is simply one flavor of this general rule. *See Roy*, 102 U.S. at 456; *Mann*, 198 S.E.2d at 565. It follows that a common carrier is liable for any intentional torts committed against its passengers by its workers, however they are classified. This is not a controversial proposition. The Supreme Court has said it. *See Roy*, 102 U.S. at 456. Treatises reflect it. *See, e.g.*, Prosser, Law of Torts at 470; Restatement (Second) of Agency § 214 cmt. e. And states apply it. *See, e.g., Call-A-Cab, Inc.*, 937 So.2d at 75; *id.* at 76 (Lyons, J., concurring) (holding a taxi company liable for assault by its driver, whether he "was an employee or an independent contractor"); *Williams v. Pullman Palace-Car Co.*, 4 So. 85, 86-87 (La. 1888) (common carrier liable for assault by worker, even though he was employed by another company). The contrary rule would make no sense. Why would a common carrier's duty—which arises from the relationship between carriers

[10] Uber briefly suggests (at 55) that it cannot be held liable because it contracted away its duty of safe transport. But again: A common carrier's nondelegable duties cannot be contracted away. *See supra* 5-6; *Lockwood*, 84 U.S. at 377.

and passengers—turn on the economic arrangement between carriers and their workers? Uber never explains.

Uber tries to make something of the fact (at 53) that some North Carolina cases use the word "employee" when referring to common-carrier workers who committed assaults. *See Hairston*, 18 S.E.2d at 168; *Williams v. Gill*, 29 S.E. 879, 879 (N.C. 1898). But *Hairston* and *Williams* used the word "employee" because employees committed the assaults. *See Hairston*, 18 S.E.2d at 170; *Williams*, 29 S.E. at 879. *Hairston*'s reasoning, however, made clear that employment status is *not* what triggers liability. A carrier answers for an "assault upon a passenger[] committed by *any* of the train hands," even though it falls "outside of the scope of [the employee's] authority." 18 S.E.2d at 169-70 (emphasis added). In other words, when an employee assaults a passenger, they're not acting as an employee. Yet a common carrier is liable all the same.[11]

Again, Uber cites no case holding that a common carrier is not liable under the common law for an assault committed by one of its workers because that worker

[11] More broadly, the use of the term "employee" in early-twentieth-century cases does not suggest that they turned on employee status. At that time, the term "employee" did not have the specialized meaning it often has today. Rather, "[a]ll work was treated as employment," and the term "employee" was often used as a synonym for "worker." *New Prime Inc. v. Oliveira*, 586 U.S. 105, 114, 117 (2019); *see, e.g.*, *Evans v. Dare Lumber Co.*, 93 S.E. 430, 431 (N.C. 1917) (asking whether a particular "employé" was an "independent contractor").

happened to be an independent contractor.[12] Instead, Uber cites a series of cases (at 52) that establish only that a common carrier is not liable for every harm that befalls its passengers. It is not liable, for example, for injuries to passengers after they disembark. *See White v. Chappell*, 14 S.E.2d 843, 851-52 (N.C. 1941); *Smith v. Camel City Cab Co.*, 42 S.E.2d 657, 659 (N.C. 1947). Nor is it liable for assaults committed by third parties that could not "be reasonably anticipated," or for an accident where the driver was not at fault—because in those circumstances, the carrier, through its workers, has taken appropriate care. *Pride v. Piedmont & N. Ry. Co.*, 97 S.E. 418, 419 (N.C. 1918); *see also Mills*, 90 S.E. at 221; *Wash. Metro. Area Transit Auth. v. Seymour*, 874 A.2d 973, 977-78 (Md. Ct. App. 2005). But when a worker himself commits the assault, the common carrier is liable. After all, as Uber itself acknowledges (at 54), a common carrier is "liable for injuries" that its workers could have "prevented." Uber Br. 54 (quoting *Hairston*, 18 S.E.2d at 169); *see also Mills*, 90 S.E. at 221. A carrier's workers obviously could have "prevented" assaults that they themselves committed.[13]

[12] Uber cites (at 46-47) cases recognizing that a company that is *not* a common carrier is not vicariously liable for the intentional torts of its independent contractors. But Uber *is* a common carrier.

[13] Uber's amici are thus incorrect in arguing that the district court's ruling "abandons traditional fault-based tort principles." Tort Reform Amicus Br. 3; *see also* Technet Amicus Br. 14. A common carrier is liable only if its workers were at fault.

3. Uber's policy arguments are no justification for this Court to craft an exception to North Carolina's longstanding rule of common-carrier liability.

At the end of the day, Uber's arguments sound in policy. According to Uber (at 25, 50), it should be insulated from the normal common-carrier rules because it does not exercise the "degree of control" over its transportation that "traditional" common carriers exercise. Common carriers have tried this move before. In the late-nineteenth century, express companies—which carried goods using transportation they did not own—sought to "evade the responsibility of common carriers." *Block v. Merchs.' Despatch Transp. Co.*, 6 S.W. 881, 884 (Tenn. 1888). Like Uber, they argued that they should not be liable for acts committed by the companies that transported goods on their behalf because they did not "exercise any care or control" over those companies. *Id.*

Courts "uniformly" rejected this argument. *Id.* When a common carrier hires someone else to perform aspects of its transportation on its behalf, the party in the best position to look after the contractor is the common carrier that hired it. *Bank of Ky.*, 93 U.S. at 177. And if common carriers were not liable for the acts of those they contract with, they would have had no incentive to contract with responsible parties, making "common carr[iers] more unreliable." *Id.* at 183. Express companies were thus "subject to all the legal responsibilities" of common carriers, despite using "railroads, steamboats, and other public conveyances" that were not "owned by

them" or "subject to their control." *Id.* at 177. The same should be true of Uber. After all, the company's decision to place its passengers at the mercy of drivers it insists it cannot control makes the company *more* blameworthy, not less.

And Uber *does* exercise significant control over its drivers. The company controls which driver is assigned to each ride. It tells its drivers where to go and follows along every step of the way. *See supra* 11-12. When Ms. Mensing ordered her Uber, she had no input into who would pick her up. Instead, she trusted Uber to send her a safe driver—just like the company assured her it would. *See supra* 9-10.[14]

Uber pleads (at 6) that that this Court should create an exception to North Carolina's common-law rule because (it says) it uses novel technology. As an initial matter, what Uber does is nothing new. It is effectively a taxi company with an app. Taxi companies are liable when their drivers assault passengers, *see supra* 7-8 & n.2, and there's no reason for a different rule for Uber. Like a taxi passenger, an Uber rider is "[e]nclosed" in the vehicle and "completely in the power of the operator." *Anderson*, 191 N.W. at 750. And like taxi companies, Uber presents itself as a "means of safety to those who … traverse the streets … after nightfall." *Korner*, 141 N.E. at 269.

[14] It makes no difference that passengers can "choose from among rival apps and multiple transportation options." Uber Br. 30. That's true of any common carrier. A common carrier's duty arises from the unique vulnerability of their passengers—not the fact that passengers lack other transportation options. *Supra* 5.

Uber may not hold itself out as an alternative to taxis, reap the competitive benefits of doing so, and yet avoid the obligations that taxi companies owe their passengers.

More fundamentally, Uber's policy argument is directed at the wrong forum. "A federal court in a diversity case is not free to engraft … exceptions or modifications" onto state law that the state has not itself recognized. *Day & Zimmermann, Inc. v. Challoner*, 423 U.S. 3, 4 (1975). Federal courts must "apply the governing state law," "giving appropriate effect to all its implications." *Stahle v. CTS Corp.*, 817 F.3d 96, 100 (4th Cir. 2016). No North Carolina court has ever held that companies like Uber are exempt from common-law rules of common-carrier liability. This Court may not create such an exception on its behalf.

Uber protests (at 6) that it is the *plaintiff's* rule that would modify state law because, it says, there are no examples of cases applying North Carolina common law "to companies like Uber." But "[a] state's highest court need not have previously decided a case with identical facts for state law to be clear." *Assicurazioni Generali, S.p.A. v. Neil*, 160 F.3d 997, 1002 (4th Cir. 1998). "It is enough that a fair reading of a decision by a state's highest court directs one to a particular conclusion." *Id.* And here, the fairest reading of North Carolina law is that common carriers owe their passengers a nondelegable duty to transport them safely—no exceptions. A faithful application of that law thus requires treating Uber just like any other common

carrier. *See Roy*, 102 U.S. at 455 (applying the "fundamental" rule of a common carrier's nondelegable duty "to a new state of facts").

There is nothing "radical" or "draconian" about applying this longstanding principle to Uber. *Contra* Uber Br. 2, 19, 56. "[T]he general public has a right to expect" that transportation companies that "solicit their business operate under the most searching tests of safety." *Woolsey*, 993 F.2d at 522. If North Carolina wishes to override this rule and insulate companies like Uber from traditional liability, it can do so. It has thus far declined. This Court should give effect to that policy choice.

III. Uber is not entitled to a new trial.

As an afterthought, Uber makes a brief request for a new trial (at 56-61). Uber collects the rulings that it lost and asks this Court to infer from their number that the trial was "fundamentally unfair." But Uber never presented that theory below, and most of the testimony it now attacks drew no objection. What remains are a few correct evidentiary rulings, applied evenhandedly, that could not have affected the only issue at trial: whether Ms. Mensing's Uber driver battered her.

A. Most of Uber's complaints were not preserved, and Uber never moved for a new trial.

Uber's proposed standard of review (at 21) omits two important limits. First, a party may claim error in the admission of evidence only if it "timely objects or moves to strike." Fed. R. Evid. 103(a)(1). An unpreserved claim receives, at most, plain-error review. Fed. R. Evid. 103(e); *In re Celotex Corp.*, 124 F.3d 619, 630-31 (4th Cir. 1997). Uber

did not object to most of the testimony it now challenges. And because its opening brief "fail[ed] to argue for plain error," Uber has "abandoned any argument that the district court plainly erred." *In re Under Seal*, 749 F.3d 276, 292 (4th Cir. 2014).

Second, Uber never moved for a new trial below. The judgment of whether a trial was unfair overall belongs in the first instance to "the judge who … has the feel of the case which no appellate printed transcript can impart." *Unitherm Food Sys., Inc. v. Swift-Eckrich, Inc.*, 546 U.S. 394, 401 (2006). Uber cannot obtain appellate review of the trial's overall fairness by raising a cumulative-unfairness argument that it never made below. What's more, aside from the two evidentiary issues it challenges, Uber's portrait of a "one-sided" trial appears only in its statement and footnotes. Uber Br. 13-18, 57 n.7. Those points are undeveloped and accordingly doubly forfeited. *See Grayson O Co. v. Agadir Int'l LLC*, 856 F.3d 307, 316 (4th Cir. 2017).[15]

B. The district court properly excluded evidence of Uber's safety record.

Uber argues (at 57) that Ms. Mensing "was allowed to repeatedly break" a "bargain" to exclude safety evidence from both sides. But the court held both parties

[15] They also fail. The juror that the court excused for cause disagreed with the governing law and could not be impartial. JA_[4/14/2026.Tr.95:12-17]; JA_[4/14/2026.Tr.152:23-153:1]. The juror that Uber challenged, by contrast, merely held views about rideshare safety, a question the jury would not decide. JA_[4/14/2026.Tr.166:19-167:7, 178:17-20]. And a three-to-one tally merely measures how often objections lacked merit, not whether the rulings were wrong. *Cf. Liteky v. United States*, 510 U.S. 540, 555 (1994).

to that agreement. It excluded Uber's statistic that most rides end safely because a questionable figure about millions of other rides cannot imply anything about Ms. Mensing's ride. JA_[4/2/2026.Tr.42:13-20]. And the court excluded propensity evidence from both sides, preventing Uber from introducing evidence of the driver's background check, rating, and complaint history to show that he did not commit this battery, JA_[4/2/2026.Tr.43:22-25, 44:14-18], and preventing Ms. Mensing from introducing the driver's criminal conviction or his deactivation by Uber to show that he did, JA_[4/16/2026.Tr.at.267:11-17]; Fed. R. Evid. 404(a)(1). Uber's own authority confirms that a ruling that "ensure[s] that both parties were bound by the same rules does not constitute an abuse of discretion." *Benjamin v. Sparks*, 986 F.3d 332, 345 (4th Cir. 2021).[16]

Uber responds (at 58) that "even after Plaintiff opened th[e] door, the court refused to permit Uber" to answer with its safety evidence. But where is the refusal? Uber doesn't identify one, because it never made a request that the court could refuse. The pages that Uber cites (at 58) for the supposed refusal come from a *pretrial* conference, JA_[4/2/2026.Tr.40:14-43:15], and from a passage of expert testimony that Uber never objected to. JA_[4/17/2026.Tr.at.373:1-9]. It is striking that Uber

[16] Uber's reliance (at 56-57) on *Lindsey v. Normet* fares no better. That case confirmed that due process protects only the opportunity to present an "available" defense. 405 U.S. 56, 65-66 (1972). Under the common-carrier ruling, Uber's safety record was not relevant to any such defense, as Uber agreed. JA_[4/2/2026.Tr. 40:9-15].

would cite a pretrial ruling as proof that the court "refused" its request, when that ruling expressly invited Uber to come back if Ms. Mensing offered safety testimony. JA_[4/2/2026.Tr.40:14-22]. Uber never did.[17]

At any rate, the testimony that Uber identifies (at 57-58) did not put Uber's safety record on trial. Ms. Mensing's statement that she "thought [Uber] was … a safe platform" merely explained why she sat in the front seat at the driver's invitation. JA_[4/15/2026.Tr.at.88:22-23]. Her remark that assaults "keep[] happening to women" explained why she sued, in response to a suggestion that she had fabricated the assault in pursuit of money damages. JA_[4/15/2026.Tr.at.105:6-15]. Uber objected to neither. And Dr. Valliere's testimony abided by the district court's ruling—to which Uber agreed—that she could describe sexual assault as "a crime of opportunity" but not suggest that offenders join Uber as a "preplanned path." JA_[4/16/2026.Tr.at.336:16-338:6]. Indeed, Uber relied on her testimony that offenders act "in places where they won't get caught" to argue that Ms. Mensing's

[17] It's thus not clear what "ruling" Uber asks this Court to hold was an abuse of discretion. If it's the pretrial order, Uber doubly forfeited any challenge to that order by failing to renew its request to admit safety evidence and failing to object to the plaintiff's testimony. *See* Fed. R. Evid. 103(b), 2000 Amendment; JA_[4/2/2026.Tr.40:14-22] (provisional ruling); JA_[4/15/2026.Tr.at.88:22-23, 105:6-15] (failing to object); JA_[4/17/2026.Tr.at.376, 383-87] (same). And if the district court's failure to *sua sponte* admit Uber's evidence were somehow the relevant "ruling," Uber has forfeited even plain-error review.

account was implausible. JA_[4/20/2026.Tr.at.591:17-592:7]. Uber cannot now seek a new trial based on testimony it invoked for its own purposes.

C. The district court excluded only the driver's inadmissible character testimony.

Uber's arguments on the driver's denial also fail. Contrary to Uber's suggestion (at 59) that the jury heard "only Richardson's unelaborated denial," Uber played 27 minutes of his deposition. JA_[4/16/2026.Tr.at.302:4-9]. Over Ms. Mensing's objection, the court admitted testimony about his hospitalization, JA_[4/16/2026.Tr.at.265:22-267:9], and his reaction to the allegations, JA_[4/16/2026.Tr.at.261:17-263:2]. At Uber's urging, it excluded his criminal conviction and his deactivation. JA_[4/16/2026.Tr.at.267:11-17]. And Uber argued all of it in closing. JA_[4/20/2026.Tr.at.590:3-25].[18]

What the court did exclude was the driver's assurance that he "refuse[s] to be a bad role model" for his daughter and that "[n]obody" would say "something negative about [his] character." JA_[4/16/2026.Tr.at.257:7-265:15]; Opening Br. 59. Uber offered that testimony to persuade the jury that a man of the driver's character

[18] Uber additionally misrepresents the record when it claims (at 60 n.8) that the jury was "shielded" from details supposedly undermining Ms. Mensing's credibility. The court permitted Uber to impeach Ms. Mensing with three versions of her fact sheet. JA_[4/15/2026.Tr.at.128-43]. And Uber offered her various Uber profiles through a late-disclosed witness as "an indication of fraud" and never invoked Rule 608(b) below, JA_[4/15/2026.Tr.at.232:7-233:1], which anyway bars "extrinsic evidence." Fed. R. Evid. 608(b).

would not have committed the battery. But Rule 404(a)(1) forbids that inference. Nor was the testimony admissible to support the driver's credibility. Rule 608(a) permits evidence of truthful character only after a witness's truthfulness is attacked. The driver's truthfulness was not, as the court explained. JA_[4/16/2026.Tr.at.258:1-10].

Finally, even if Uber could show error as to the individual evidentiary rulings it challenges, any error was harmless because none could have "swayed" the judgment in any way. *Benjamin*, 986 F.3d at 346.[19] Uber had the full opportunity to attack Ms. Mensing's memory and credibility through cross-examination and the testimony of a psychiatrist. JA_[4/14/2026.Tr.at.125-95]; JA_[4/17/2026.Tr.at.432-543]. The jury rejected those attacks, believed Ms. Mensing, and awarded a mere $5,000. JA_[4/20/2026.Tr.at.634:5-9, 639].

CONCLUSION

This Court should affirm.

Respectfully submitted,

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[19] *Buckley v. Mukasey*, 538 F.3d 306 (4th Cir. 2008), is not to the contrary. The error there "permeate[d] the trial" because the excluded evidence was "essential to [the plaintiff's] failure-to-promote retaliation claim." *Id.* at 319-21. Here, the excluded evidence went to no element of any claim or defense.

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CERTIFICATE OF COMPLIANCE

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