

The Impact of Recent Decisions on Gig Transportation Company Litigation in Pa.

Companies operating in the gig economy, and their defense counsel, should closely monitor new developments and adapt practices to mitigate exposure and limit expenses.

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In the dynamic realm of the gig economy, the legal landscape in Pennsylvania is experiencing continued transformation as the law struggles to keep up with the increased usage of industry giants such as Uber, Lyft, DoorDash, and their contemporaries. These platforms have not only reshaped how we commute and consume services, but they have also sparked a myriad of legal challenges.

One of those challenges involves the ability of these companies to defend themselves against claims of alleged driver negligence following motor vehicle accidents. Gig transportation companies have become an increasingly popular defendant for plaintiffs to target. This is due to both the increase in the various apps over the past decade, as well as a means for plaintiffs to target a deep-pocketed defendant.

In the context of third-party liability claims, gig companies have typically relied upon two methods of limiting their exposure. The first is the enforcement of mandatory arbitration clauses contained within the terms of conditions the companies utilize. These clauses mandate arbitration in a particular forum as the sole means of dispute resolution for all matters, including personal injury

claims. Mandatory arbitration provides companies with a means to obtain a faster and more economically efficient result.

The second method gig companies have used to limit their exposure is based upon the classification of the users driving for the companies. The terms and conditions of these companies make clear that the drivers are not employees but, rather, independent contractors. This distinction has allowed the companies to avoid claims of vicarious liability due to a driver's negligence.

Both the arbitration clauses and the independent contractor argument have been upheld by many courts throughout the country. However, the decisions and rule discussed below will have a continuing impact on the litigation, claims process and potential exposure of gig companies in Pennsylvania. Defense counsel will need to be mindful of these decisions as the law related to gig transportation companies continues to evolve.

'Chilutti v. Uber Technologies': Arbitration Agreement Requirements

On July 19, 2023, the Pennsylvania Superior Court's decision in *Chilutti v. Uber Technolo-*

gies, set a precedent for arbitration agreements. The Superior Court's decision introduced a unique standard, demanding heightened transparency in communicating the waiver of the right to a jury trial to consumers.

In the *Chilutti* case, the plaintiff, Shannon Chilutti utilized Uber's application to arrange transportation to a medical appointment. During the ride, the vehicle was involved in a collision. The plaintiff thereafter filed suit against Uber, alleging various personal injuries. This prompted Uber to seek arbitration, pursuant to the terms and conditions the plaintiff had agreed to when the app was downloaded.

Uber argued that anyone registering for the app received notice during the registration process, explicitly agreeing to Uber's terms and conditions. These terms, containing a binding agreement for individual, nonclass arbitration, were hyperlinked in a different color text on the registration form. The trial court initially granted Uber's motion to compel arbitration, but a subsequent three-judge panel of the Superior Court reversed this decision. Uber sought en banc review, leading to a reargument before the full Superior Court.

The Superior Court, in agreement with the three-member panel, ultimately overturned the trial court's decision and nullified the arbitration order. The majority opinion emphasized Pennsylvania citizens' constitutional right to a jury trial. The court highlighted concerns about the presentation of the arbitration agreement during Uber's registration process, noting that hyperlinks to the terms and conditions were inconspicuous, smaller in font size and were displayed in a nonunderlined blue color.

The court imposed a stricter burden of proof for demonstrating a party's unambiguous assent to arbitration. The court outlined specific requirements for securing informed consent. These included explicit notification on registration websites and application screens about waiving the right to a jury trial, ensuring consumers are fully informed before completing the registration, and displaying the waiver prominently at the top of the first page in bold, capitalized text when agreements are available after clicking on a hyperlink.

The court, departing from standards set forth in several other jurisdictions, not only reversed the trial court order but also set forth a precedent emphasizing the protection of the constitutional right to a jury trial in Pennsylvania, requiring a higher standard for obtaining informed consent in arbitration agreements during the registration process. While this ruling was specific to Uber, it carries significant implications for all companies utilizing similar contractual practices, urging them to adopt more transparent and conspicuous methods to ensure users' understanding and consent.

Moving forward, it is expected that this ruling will create an additional hurdle for gig transportation companies to overcome in their efforts to compel arbitration, leading to protracted litigation of these types of claims.

Employee Versus Independent Contractor Classification

As noted above, a common defense of gig companies to claims of vicarious liability is the classification of drivers as independent contractors, rather than employees. This, of course, serves to limit the number of claims

against and amount paid by gig companies in third-party negligence suits. While several courts across the county have agreed with the classification of independent contractor, rather than employee, Pennsylvania courts have not.

In 2020, in a case of first impression, *Lowman v. Unemployment Compensation Board of Review*, the Pennsylvania Supreme Court held that because Uber “controlled and directed the performance of a plaintiff’s services as a driver-for-hire” and due to the fact that the plaintiff was not engaged in an independently established business, he was deemed an employee for purposes of unemployment benefits. Uber’s argument that the driver was acting in self-employment was rejected. At the time, several commentators noted the decision might impact personal injury litigation in terms of whether a gig company could be sued in an automobile accident case as an employer of the defendant driver. A November 2023 Philadelphia trial court decision confirmed this prediction.

In the case of *Robertson v. Uber Technologies*, the estate of the deceased passenger, Chloe Robertson, accused Uber driver, Daniel Charles, of negligently stopping his vehicle in a hazardous location. The plaintiffs brought several claims against Uber, including claims for vicarious liability as the employer of Charles. Uber filed a motion for summary judgment, arguing that it could not be held vicariously liable for the alleged negligence of its driver, who they alleged was an independent contractor, not an employee. Uber contended that Charles had explicitly signed an agreement stating his nonemployee status, and, as such, the plaintiffs could not establish an employment relationship. The plaintiffs countered

that factors, such as Uber’s control over the driver’s work and the power to terminate, indicated an employee-employer relationship; a matter they believed should be determined by a jury.

Philadelphia Court of Common Pleas Judge Jacqueline Allen denied Uber’s motion. In addition to the claims of negligent hiring, supervision, and retention against Uber, the ruling rejected Uber’s defense, asserting Charles’ status as an independent contractor. The judge’s order, which was given without an accompanying opinion, set the stage for a jury to consider the employee versus independent contractor question, should the case proceed to trial.

This *Robertson* decision, in addition to the *Lowman* case, will continue to be significant reference points for plaintiffs in negligence claims against gig transportation companies. As such, it should be expected that these claims of vicarious liability against gig companies will be permitted moving forward, especially in plaintiff-friendly jurisdictions.

U.S. Department of Labor’s Rule on Worker Classification

In addition to the above-referenced cases, a recent rule from the U.S. Department of Labor (DOL) will give plaintiffs further ammo in their arguments for vicarious liability. On Jan. 9, the DOL released a final rule on worker classification. The rule, which is set to go into effect on March 11, changes the criteria for determining employee status under the Fair Labor Standards Act (FLSA).

The new rule applies the following six factors to analyze employee or independent contractor status under the FLSA:

- Opportunity for profit or loss depending on managerial skill.
- Investments by the worker and the potential employer.
- Degree of permanence of the work relationship.
- Nature and degree of control.
- Extent to which the work performed is an integral part of the potential employer's business.
- Skill and initiative.

No factor or set of factors among this list of six has a predetermined weight, and additional factors may be relevant if such factors in some way indicate whether the worker is in business for themselves, as opposed to being economically dependent on the employer for work. This rule retracted the Trump administration's "Independent Contractor Status Under the Fair Labor Standards Act," which sought to narrow the definition of an employee under FLSA standards.

While this new rule, in the context of third-party negligence suits, would be considered persuasive authority at best, it nonetheless provides an additional argument for plaintiffs in their efforts to target gig companies on claims of vicarious liability.

Conclusion

From arbitration agreement requirements to challenges to vicarious liability defenses and changes in worker classification rules, the legal framework is shifting. This shift creates the potential for increased litigation for gig transportation companies in Pennsylvania.

The *Chilutti* decision will undoubtedly make it more difficult for these companies to force plaintiffs into arbitration, resulting in extended litigation. Further, the *Lowman* and *Robertson* decisions, along with the new DOL rule, will create additional hurdles for gig companies in their efforts to classify users as independent contractors and shield themselves from claims of vicarious liability. Companies operating in the gig economy, and their defense counsel, should closely monitor these developments and adapt practices to mitigate exposure and limit expenses.



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