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Uber attempts to block suit by Philly drivers over employment status



(AP Photo/Jeff Chiu, File)



BY *BOBBY ALLYN*

Ride-hailing service Uber recently settled a \$100 million class-action lawsuit

(<http://www.bloomberg.com/news/articles/2016-04-26/uber-owes-up-to-100-million-in-class-action-settlement-drivers-say-uber-basically-won>) in California and Massachusetts, but one thing didn't change — drivers will remain independent contractors, not Uber employees.

Observers say that's a big win for Uber.

A federal suit filed in Philadelphia aims to change that, although Uber maintains in new court filings that the suit shouldn't be allowed to move forward.

Last time Uber drivers in Philly updated their software on their Uber apps, most of them probably quickly pushed through the fine print.

But in those tiny sentences was a very important section saying drivers cannot participate in a class-action lawsuit. In legal parlance, it's known as an arbitration clause. If drivers have a problem, they have to go through arbitration, a closed-door dispute resolution process.

Uber's attorneys contend this is why the Philly suit should be thrown out. But attorney Jeremy Abay, representing drivers, disputes that.

"Because of those arbitration provisions, many cases get dismissed into arbitration without a judge ever deciding the merits of the case," he said. "And that's the strategy that Uber is employing here."

Uber representatives declined to comment about the latest activity with the case.

A U.S. District Judge in San Francisco ruled in December that some of Uber's arbitration agreements (<http://www.reuters.com/article/us-uber-tech-drivers-ruling-idUSKBN0TS2MA20151209>) are unenforceable largely because drivers didn't have a reasonable opportunity to opt out. Uber then issued a new driver agreement two days later and appealed the judge's order.

Drivers Ali Razak, Kenan Sabani and Khaldoun Cherdoud, the plaintiffs in the Philadelphia case, all opted out of the arbitration clause that came after the judge's order.

Both sides are now in conflict over which driver agreement — and therefore which arbitration agreement — should apply to the three drivers.

Abay said the one that came after the judge's order is the only arbitration clause currently valid, but Uber's attorneys say earlier ones should by default kick in because the December version was declared invalid.

Abay points out that Uber's "position in California directly conflicts with their position in Pennsylvania," since it's relying on it in Philadelphia but fighting it in San Francisco.

Class-action suit awaits day in Philadelphia court

All of this talk about driver agreements and arbitration clauses is far away from the core of the original lawsuit, which might never come up if Uber has its way.

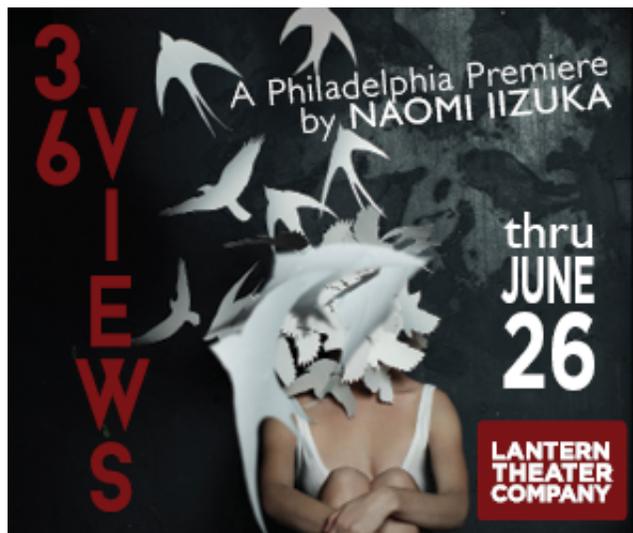
The class-action suit in Philadelphia is a little different from others around the country. This one is representing UberBLACK drivers, the black car and SUV service. It claims UberX, the cheaper Uber, has taken away business from the fancier service. And also, that drivers have been mislabeled as contractors, depriving them from health benefits and Social Security.

The suit could include many more drivers, but Uber argues that they already gave up their right to a day in court when they updated their software.

"And that's what Uber wants: Push the three plaintiffs into arbitration, have those claims resolved, and they're banking on the fact that the remaining won't pursue their claims," Abay said. "That'll it'll be too expensive, too much of a headache for them."

UberX, the cheapest and most popular of its services, is illegal in Philadelphia. But a bill under consideration in Harrisburg would legalize ride-sharing in Philly with a 1 percent tax levied on each ride.

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