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Uber Won't Get Arbitration For Philly Limo Driver Wage Suit

By **Cara Bayles**

Law360, San Francisco (July 22, 2016, 4:43 PM ET) -- A Pennsylvania federal judge on Thursday denied Uber Technologies Inc.'s request to compel arbitration in a wage violation suit brought by a purported class of the ride-hailing company's Philadelphia limousine drivers, ruling those drivers opted out of Uber's arbitration agreement and cannot be forced into it now.

U.S. District Judge Michael Baylson denied Uber's motions to compel arbitration and to stay the case, finding that named plaintiffs Ali Razak, Kenan Sabani and Khaldoun Cherdoud weren't beholden to Uber's arbitration agreement because they'd sent opt-out letters to the company's San Francisco office within 30 days of signing its services agreement. The decision will allow the drivers to move forward with their suit alleging Uber violated state and national labor laws by considering the drivers independent contractors and not employees.

The company has been hit with several similar employment suits, including cases in **California, New York, New Jersey** and **Florida**. Judge Baylson said that both sides in the Philadelphia case had argued, in myriad motions and supplemental exhibits, the significance of these other lawsuits, prompting him to quote "Hamlet" in his order.

"The motions pending in this case bring to mind the dictate, given ... by Polonius to his servant Reynaldo, to '[b]y indirections find directions out,'" he wrote. "When the dust (i.e., numerous filings) settles, plaintiffs have not only alleged, but also demonstrated, that they opted out of Uber's arbitration agreement. Indeed, it is this important factual difference that distinguishes this case from any other and directs the court to its decision."

Uber had argued in both its motions that a decision by California federal Judge Edward M. Chen had nullified Uber's arbitration agreement, which meant the plaintiffs had opted out of a contract that was null, and thus arbitration was still a possibility. Uber said that because the arbitration provision states that questions of applicability should be decided by an arbitrator, not a judge, the court should allow the question to go before an arbitrator, and stay the case. But Judge Baylson was not convinced that Chen's decision, "issued by another court in another jurisdiction," rendered the arbitration agreement null.

Uber also tried arguing that prior driver agreements contained survival clauses that trump subsequent contracts and that this also nullified the plaintiffs' opt-out. But the judge pointed out the most recent arbitration provision, which the plaintiffs had opted out of, has a merger clause that supersedes the original.

The purported class action, first filed in the Court of Common Pleas of Philadelphia in January, alleges that Uber violated the Fair Labor Standards Act, the Pennsylvania Minimum Wage Act and the Pennsylvania Wage Payment and Collection Law by misclassifying its so-called UberBlack limo drivers as contractors, not paying its drivers wages or overtime, and requiring

the drivers to cover their own business expenses. The drivers want the court to change their status to full-time employees and are seeking compensation and business expense damages plus interest, pre- and post- judgment interest, disgorgement of Uber's Philadelphia profits, attorneys' fees and costs.

The drivers' attorney said he was glad the judge decided to publicly air Uber's "ugly history" in Philadelphia.

"We're pleased that Uber will have to answer to a judge and jury sitting in Philadelphia, and not to an arbitrator sitting behind closed doors," he said in an email.

An Uber spokesman declined to comment on the case. Attorneys for Uber did not respond on Friday to requests for comment.

The plaintiffs are represented by Jeremy E. Abay and John K. Weston of Sacks Weston Diamond LLC.

Uber and Gegen LLC, its transportation company in Philadelphia, are represented by Wendy Sue Buckingham, Matthew J. Hank, Paul C. Lantis and Andrew Spurchise of Littler Mendelson PC.

The case is Razak et al. v. Uber Technologies Inc. et al., case number 2:16-cv-00573, in U.S. District Court for the Eastern District of Pennsylvania.

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