Other Shoe Drops: Court Hands Uber Massive Class Action Win After SCOTUS Victory

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It was just a matter of time. After the Supreme Court cleared the way for businesses to use class waivers with their employees and contractors with the *Epic Systems* ruling this past May, many observers expected that the decision would come back to haunt a class of Uber drivers who wanted to litigate a class action misclassification case against the ride-sharing company in court. Earlier today, sure enough, the other shoe dropped.

In a 3-0 ruling, a panel of judges from the 9th Circuit Court of Appeals barred a class of hundreds of thousands of Uber drivers from collectively continuing with their litigation against Uber (*O'Connor v. Uber Technologies*). The case has a long and rocky history, blossoming from a 2013 case filed in California to a massive multi-state effort encompassing over 385,000 current and former drivers. In 2016, it looked as if the case was going to put to bed with a $100 million settlement, but a district court judge rejected the deal as not being fair enough to the drivers.

As we wrote in August 2016, though, Uber might look back and be thankful that the settlement fell apart. "What would happen if that other shoe drops and Uber's arbitration agreement is found to be enforceable?", we wrote. "The size of the class of litigants would plummet…all the way down to approximately 8,000. And that would all but destroy the leverage that the plaintiffs have over Uber. After all, it is highly doubtful that [hundreds of thousands of] individual drivers would take the time to file single-person arbitration claims against the company. The company would be faced with a very small cast of characters continuing with a deflated class action case, and a smattering of individual and relatively modest arbitration claims. The value of the legal claims would be nowhere near $100 million."

And that's exactly what happened. As EL360's Linda Chiem noted, "the drivers had argued that the ride-hailing giant's arbitration agreements were illegal under the National Labor Relations Act, maintaining that even though the arbitration agreements contained opt-out clauses, they were buried deep within the language of the employment agreement and unfairly required drivers to send Uber a written notice, which is 'unconscionable.'" But once the Supreme Court approved the use of class waivers, the die was cast. Today's decision summarily dismissed this argument due to the Supreme Court ruling and otherwise blotted out the class claim that the drivers had been maintaining.

The decision is a big win for Uber, and an expected—but pleasant—turn of events for gig companies everywhere. Those hiring entities with class waivers now have further ammunition regarding their validity and the impact that their presence can have on such large-stakes litigation.

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