



When Does A \$20 Million Settlement Feel Like A Bargain? Uber Shows You How

Insights

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When the news broke today, that Uber had agreed to pay a group of drivers \$20 million to settle a long-running misclassification claim, you could be forgiven for thinking that the deal sounded like a massive blow to the gig economy giant. After all, \$20 million is a substantial sum – no matter how large a company is – and in most cases would be an indication that the paying party had given in to the exorbitant demands of the claimants. But this settlement is different. It resolves a claim that Uber had originally agreed to settle for \$100 million – five times the amount of the final total. How did Uber get such a bargain?

\$100 Million Deal

To understand the full story, you have to go back to April 2016, when we were on the eve of what would have been the nation's first gig economy trial over an allegation of misclassification. About 385,000 current and former Uber drivers were seeking additional compensation from the company, claiming they were misclassified as independent contractors. But the parties struck a \$100 million deal, where the plaintiffs and their attorneys would receive a guaranteed payment of \$84 million, with the promise of an additional \$16 million provided the company's valuation continued to grow through an initial public offering.

Back To The Drawing Board

But the San Francisco-based federal judge overseeing the litigation, U.S. District Court Judge Edward Chen, rejected the proposed deal in August 2016, characterizing the proposed settlement as "not fair, adequate, and reasonable." Although the judge acknowledged that \$100 million was still quite a large sum, he noted that the plaintiffs had previously estimated that the total amount of damages they might recover if they prevailed at trial topped \$850 million. The court saw no reason why a potential 90 percent discount would be justified, especially since Uber stood as much of a chance of losing at trial as the plaintiffs did. Moreover, because the plaintiffs also alleged a claim under California's unique Private Attorneys General Act (PAGA), it was possible for the value of litigation to rise to over \$1 billion in penalties. For this reason, the court determined that the \$100 million deal was actually "relatively modest" when compared to the potential verdict value.

Stars Align In Uber's Favor

A month later, Uber began counting their lucky stars that the deal was shelved. They prevailed in a separate appellate court proceeding that upheld their arbitration agreements, meaning that the claimants in the original litigation were now faced with a substantial roadblock that diminished the

value of their case. As we noted at the time, that decision increased Uber’s leverage in renegotiating the settlement, and was a “significant victory” for Uber. Uber got another piece of good news in May 2018 when the U.S. Supreme Court issued a broad ruling concluding that arbitration agreements could permissibly force employees to file such claims on a one-to-one basis and bar them from joining a class or collective proceeding.

Once the Supreme Court approved the use of class waivers, the die was all but cast for the \$100 million settlement to be gutted. Sure enough, several months later, a panel of appellate court judges barred a class of hundreds of thousands of drivers from collectively continuing with their litigation against Uber, vastly diminishing the value of the case. Now, almost three years after the original deal, the parties agreed to another deal, this time for \$20 million.

\$20 Million Deal Feels Like A Bargain

Their deal – submitted to the court late last night – still needs to be approved by Judge Chen. As Bloomberg explains, this case “turned on whether drivers were essentially forced by their contracts to resolve any conflicts one-on-one, behind the closed doors of private arbitration and forbidden to join forces in class-action lawsuits.” The original claim attacking the opt-out provisions said that Uber’s method for making the option available was too onerous and thereby invalid. But rather than further battle over this issue, the parties reached a proposed resolution they hope the judge will quickly approve.

One of the reasons why Uber agreed to this deal now (and hopes for a quick rubber stamp from Judge Chen): a “hotly anticipated initial public offering coming later this year.” No doubt the company wants this battle off its books before the IPO process kicks into high gear.

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