

Massachusetts Supreme Judicial Court Reconsidering Uber's Pop-Up Terms & Conditions

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In January 2024, the Massachusetts Supreme Judicial Court ("SJC") heard oral arguments in [*Good v. Uber Technologies, Inc.*](#) At issue are Uber's terms and conditions that the ridesharing application provides its users in a pop-up screen and whether this provides customers "reasonable notice" of Uber's terms, including a binding arbitration clause. Starting in 2021, users were given a pop-up notification upon launching the app that advised of Uber's "updated" terms. Customers could then click a link to review Uber's revised terms; however, they were not required to click the link or agree to the terms before booking a ride.

Uber's binding arbitration clause could significantly limit the amount of damages a plaintiff can seek in litigation. In *Good*, the plaintiff seeks to recover approximately \$63 million from Uber following a car accident that left him permanently quadriplegic. Uber had moved to compel Good to arbitration after he filed suit, but the lower court denied the motion after holding that the arbitration "agreement" was not sufficient.

The *Good* matter is the first real test of Uber's terms and conditions since the company was forced to revise them following the SJC's 2021 decision in [*Kauders v. Uber Technologies, Inc.*](#), 486 Mass. 557 (2021). In *Kauders*, the SJC ruled that Uber must provide its customers reasonable notice of the company's binding terms and obtain customers' reasonable manifestation of assent to those terms. However, during the oral arguments in *Good*, the justices remained skeptical of Uber's argument that it had done its due diligence and that its revised terms and conditions were sufficient to create an enforceable contract between the company and its users. While the decision is forthcoming, its impact on other rideshare and online companies could be significant, as Massachusetts, as well as other states, may force all online companies to provide more clarity and direction in their clickwrap agreements to bind their customers to enforceable contracts.

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