State Law Challenges In Enforcing Arbitration Clauses

By **Fabien Thayamballi** (July 14, 2025)

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Businesses that prefer to arbitrate their disputes with customers, employees and other contracting parties must increasingly pay attention to developments in state law that affect the enforceability of arbitration agreements.

Battles of great importance have been playing out in state courts nationwide, although they tend not to attract as many headlines as the U.S. Supreme Court's frequent decisions interpreting the Federal Arbitration Act.

State contract law typically governs the formation and validity of arbitration agreements.[1] Parties seeking to avoid arbitration have therefore argued for stricter requirements, under state law, for enforcing the contractual terms presented to consumers during online transactions, which often include arbitration clauses.

In addition, although the FAA generally preempts state laws that fail to "place arbitration agreements on an equal footing with other contracts," according to the Supreme Court's 2011 decision in AT&T Mobility LLC v. Concepcion, some state courts have endorsed heightened standards for arbitration agreements on the theory that those standards apply equally to other contracts with similar features.[2]

These state law cases can have a profound impact on the enforcement of arbitration agreements — which can mean the difference between a bilateral arbitration and a full-blown class action in court.[3]

Varying results in different jurisdictions can also create complications for many businesses, especially those that sell products and services to consumers through the internet.

A review of recent and pending cases, many of which involve the ride-hailing company Uber, can help illustrate the stakes involved.

Recent and Pending Cases

Pennsylvania

In Chilutti v. Uber Technologies Inc., the Pennsylvania Superior Court dealt a serious blow to arbitration agreements in deciding that Uber could not compel two passengers to arbitrate their personal injury claims.[4]

The court emphasized the importance of the right to a jury trial in the Pennsylvania Constitution and lamented that "corporations are routinely stripping individuals" of this right "in the context of Internet contracts … where the parties are of purported unequal bargaining power."

In the 2023 ruling, the court therefore imposed a "stricter burden of proof" than generally required to show that a consumer has assented to contractual terms, holding that "a court should not enforce an arbitration provision in an Internet purchase agreement unless the court finds that the party agreeing to an arbitration provision was aware that they were

waiving the right" to a jury trial.[5]

To meet this burden, the company must call the consumer's attention to any arbitration provisions in an online transaction by (1) "explicitly stating on the registration websites and application screens that [the] consumer is waiving [the] right to a jury trial," (2) ensuring that the transaction "cannot be completed until the consumer is fully informed of that waiver," and (3) ensuring that the waiver "appear[s] at the top of the first page" of the company's "terms and conditions" in "bold, capitalized text."[6]

These conspicuous-notice requirements would invalidate many existing arbitration agreements, requiring companies to modify their websites and mobile applications to ensure their arbitration agreements are enforceable going forward.

Uber filed a petition with the Pennsylvania Supreme Court, which granted review. The matter was fully briefed earlier this year and, just days ago, was set for oral argument in Philadelphia on Sept. 9.[7]

One of Uber's primary arguments is that conspicuous-notice requirements run afoul of the FAA, which preempts state rules that discriminate against arbitration agreements.[8] The plaintiffs argue, among other things, that the Superior Court's rule is permissible because it "applies beyond arbitration clauses" and is grounded in the requirements for waiving a jury trial in criminal cases and confessions of judgment.[9]

Recent decisions analyzing Chilutti reflect the same disagreement. At least two federal courts have declined to apply Chilutti on the ground that it is inconsistent with the FAA.[10] For now, however, Chilutti remains the law in Pennsylvania state court.

On March 24, the Allegheny County Court of Common Pleas applied Chilutti's heightened standard in Miller v. Festival Fun Parks LLC and held that, because "the registration page where [the plaintiff customer] entered his personal information did not contain any notices regarding the waiver of a jury trial," the company's arbitration clause was unenforceable and the plaintiff's putative class action could proceed.[11]

Massachusetts

In Good v. Uber Technologies Inc., last year, the Massachusetts Supreme Judicial Court rejected a challenge to Uber's arbitration clause that had the potential to upend online contracting on a much broader scale.[12]

The plaintiff argued, among other things, that Uber's app interface did not provide "reasonable notice" of Uber's arbitration clause. Although the interface required the user to check a box stating "I have reviewed and agree to the Terms of Use" and provided a "hyperlink direct[ing] the user to the full text of the terms of use," it did not "require the user to open or scroll through the terms of use."

The plaintiff effectively argued that a clickwrap agreement of this sort was insufficient, and that Massachusetts law mandated something more, such as a "scrollwrap" format in which users "physically scroll through [the] internet agreement" before indicating their consent.[13]

The Massachusetts Supreme Judicial Court rejected this argument, noting that it "confuses reasonable notice with actual notice," and held that Uber's interface satisfied the Massachusetts requirement of reasonable notice.[14]

However, one justice dissented and would have held that, under the totality of the circumstances, Uber's interface was insufficient. Observing that "empirical research ... shows that a hyperlink, without more, is not effective at communicating to a user the scope of a contract's terms and conditions," the dissenting justice "would instead [have] require[d] that the notice interface itself ... alert [the] user as to the scope and significance of the contract the user is being asked to sign."[15]

In the context of Uber's interface, that would require a screen "alert[ing] users that they are entering into a legally binding contract, and that pursuant to the contract Uber is not responsible in any way for ride services procured using the Uber app, including for injury or death resulting therefrom."[16]

The dissent's concern was not specific to arbitration clauses, but rather "unexpected contractual conditions" more generally, including limitations of liability.[17] Its heightened standard would therefore have raised the bar for forming any online consumer contract in Massachusetts.

Although the dissent's view did not carry the day in Good, concerns of this sort could certainly shape the development of the common law and even legislation in Massachusetts and other states.

New Jersey

In Atalese v. U.S. Legal Services Group LP, the New Jersey Supreme Court held in 2014 that any arbitration agreement must contain "clear and unambiguous" language indicating that "arbitration is a waiver of the right to bring suit in a judicial forum."[18]

The court therefore refused to enforce a "contract stat[ing] that either party may submit any dispute to 'binding arbitration,'" reasoning that the references to arbitration alone were insufficient to notify an "average member of the public" that she "is giving up her right to bring her claims in court or have a jury resolve the dispute."[19]

The scope of Atalese was the primary issue raised in another recent Uber case. In McGinty v. Zheng, the New Jersey Appellate Division held in September 2024 that Uber's arbitration provision was enforceable under Atalese because, although it did not expressly state the consumer was waiving the right to a jury, it did say that disputes would "not [be resolved] in a court of law.'"[20]

The appellate division noted that "magic words" were not required, so long as a clear distinction is drawn between arbitration and litigation in court.[21] The plaintiff petitioned for review by the New Jersey Supreme Court, potentially raising the prospect of even more stringent standards for arbitration clauses. The court denied the petition, however, on March 28, 2025.[22]

Atalese will continue to generate substantial litigation. In imposing specific requirements for arbitration clauses, the New Jersey Supreme Court anticipated that its holding might raise FAA preemption issues. It claimed that it was not "singl[ing] out" arbitration clauses for "more burdensome treatment," and was instead enforcing the general principle of New Jersey law that all "waiver[s] of rights" must be "clearly and unmistakably established."[23]

In recent months, the Appellate Division has rejected preemption arguments for this reason and invalidated otherwise detailed arbitration clauses for failing to comply with Atalese.[24]

Federal courts, however, have suggested that whether the FAA preempts New Jersey's heightened standard remains "an important and challenging question."[25]

Notably, in the Pennsylvania Supreme Court, the Chilutti plaintiffs have cited Atalese as support for the Superior Court's heightened standard.[26]

Conclusion

These are just a few examples of state-specific nuances that could arise in litigating motions to compel arbitration. They underscore the importance of carefully considering the choice of law and choice of forum, and of preparing arbitration agreements with these issues in mind.[27] They also underscore the need for strategic thought and advocacy where the law is unsettled or there are arguable conflicts between state and federal law.

Attention to these matters could make a significant difference in the enforcement of arbitration agreements and, as a result, the course and outcome of the dispute.

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[1] See, e.g., AT&T Mobility LLC v. Concepcion, 563 U.S. 333, 339-41 (2011).

[2] Concepcion, 563 U.S. at 339. As the FAA does not apply to transportation workers' employment contracts, see 9 U.S.C. § 1, the enforceability of arbitration agreements in that context turns on state law. See, e.g., Adler v. Gruma Corp., 135 F.4th 55, 69 (3d Cir. 2025).

[3] Am. Exp. Co. v. Italian Colors Rest., 570 U.S. 228, 231, 238-39 (2013) (aspiring class action plaintiffs "can be held to contractually agreed bilateral arbitration").

[4] Chilutti v. Uber Technologies, Inc., 300 A.3d 430 (Pa. Super. Ct. 2023) (en banc).

[5] Id. at 442, 449 & n.23.

[6] Id. at 449-50.

[7] https://www.pacourts.us/assets/opinions/Supreme/out/September2025ArgumentList.pdf; Docket Sheet, Chilutti v. Uber Techs., Inc., No. 58 EAP 2024 (Pa. Supreme Court), available at https://ujsportal.pacourts.us/Report/PacDocketSheet?docketNumber=58%20EAP%202024&dnh=KzjVN%2B2xYQTzzHhh%2FwXQAA%3D%3D.

[8] E.g., Appellants' Brief, Chilutti v. Uber Techs., Inc., No. 58 EAP 2024 (Pa. Nov. 6, 2024), at 2-3, 21 (citing, e.g., Kindred Nursing Centers Ltd. P'ship v. Clark, 581 U.S. 246, 251 (2017)).

[9] Appellees' Brief, Chilutti (Jan. 6, 2025), at 55.

[10] Dieffenbach v. Upgrade, Inc., No. 4:23-CV-1427, 2025 WL 1239328, at *8 (M.D. Pa. Apr. 29, 2025); Happy v. Marlette Funding, LLC, 744 F. Supp. 3d 403, 412 (W.D. Pa. 2024).

[11] Miller v. Festival Fun Parks, LLC, No. 92 WDA 2025 (Allegheny Cty. Ct. Com. Pl. Mar. 24, 2025), available at https://www.law360.com/articles/2316695/attachments/0.

[12] Good v. Uber Technologies Inc., 494 Mass. 116 (2024).

[13] Id. at 136 & nn.30-31.

[14] Id. at 136.

[15] Id. at 148 (Kafker, J., dissenting).

[16] Id.

[17] Id. at 165.

[18] Atalese v. U.S. Legal Services Group LP, 219 N.J. 430 (2014).

[19] Id. at 442, 446-47.

[20] McGinty v. Zheng, No. A-1368-23, 2024 WL 4248446 (N.J. Super. Ct. App. Div. Sept. 20, 2024).

[21] Id. at *8. See also Villeda-Granados v. Uber Techs., Inc., No. A-3979-23, 2025 WL 945621, at *4 (N.J. Super. Ct. App. Div. Mar. 28, 2025) (enforcing Uber's arbitration clause).

[22] McGinty v. Zheng, No. 089942, 2025 WL 1000921 (N.J. Mar. 28, 2025).

[23] 219 N.J. at 443-44.

[24] Little v. Am. Income Life Ins. Co., No. A-3741-23, 2025 WL 1550016, at *6-8 (N.J. Super. Ct. App. Div. May 30, 2025); Wang v. COA 99 Hudson, LLC,No. A-3594-23, 2025 WL 838744, at *4-5 (N.J. Super. Ct. App. Div. Mar. 18, 2025).

[25] Guidotti v. Legal Helpers Debt Resol., L.L.C., 639 F. App'x 824, 827 (3d Cir. 2016); accord In re Remicade (Direct Purchaser) Antitrust Litig., 938 F.3d 515, 526 & n.9 (3d Cir. 2019); Bacon v. Avis Budget Grp., Inc., Civ. No. 16-cv-5939, 2017 WL 2525009, at *6 (D.N.J. June 9, 2017), aff'd, 959 F.3d 590 (3d Cir. 2020); cf. Skuse v. Pfizer, Inc., 244 N.J. 30, 45 (2020).

[26] Appellees' Brief, Chilutti, at 46.

[27] See, e.g., Little, 2025 WL 1550016, at *1-6 (applying Atalese despite Texas choice-of-law clause).