

Their Uber Driver Crashed. A Pizza Order Unraveled Their Injury Lawsuit.

A New Jersey couple sued Uber after a crash left them severely injured. An appeals court ruled that they had agreed to settle disputes out of court when they used the Uber Eats app.



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By Lola Fadulu

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A New Jersey couple was heading home from dinner in an Uber in March 2022 when their driver T-boned another car, leaving them with serious injuries, including spine and rib fractures.

The couple, Georgia and John McGinty, of Princeton, N.J., sued Uber nearly a year later. Now, their effort to bring the case to court could be hampered by a terms-of-service agreement that they say their 12-year-old daughter signed while ordering pizza using Ms. McGinty's Uber Eats account.

A New Jersey appeals court found last month that the agreement's arbitration provision — which says that most disputes between Uber and its customers must be settled privately — was “valid and enforceable,” reversing a lower court's decision that would have allowed the couple's personal-injury lawsuit to be heard by a jury.

The car crash left the McGintys severely injured. Ms. McGinty, 51, had cervical and lumbar spine fractures, rib fractures, a protruding hernia and other injuries. She had numerous surgeries and was unable to work for more than a year, until April 2023. Mr. McGinty, 58, suffered a fractured sternum and severe fractures in his left arm and wrist, and has not regained full use of his wrist.

“This happening was like a bomb going off in our life,” Ms. McGinty said, adding that the crash was devastating to “our health, our emotional well-being, our financial well-being” and “our ability to parent our young child.”

Mr. McGinty said, "We're in constant pain every day."

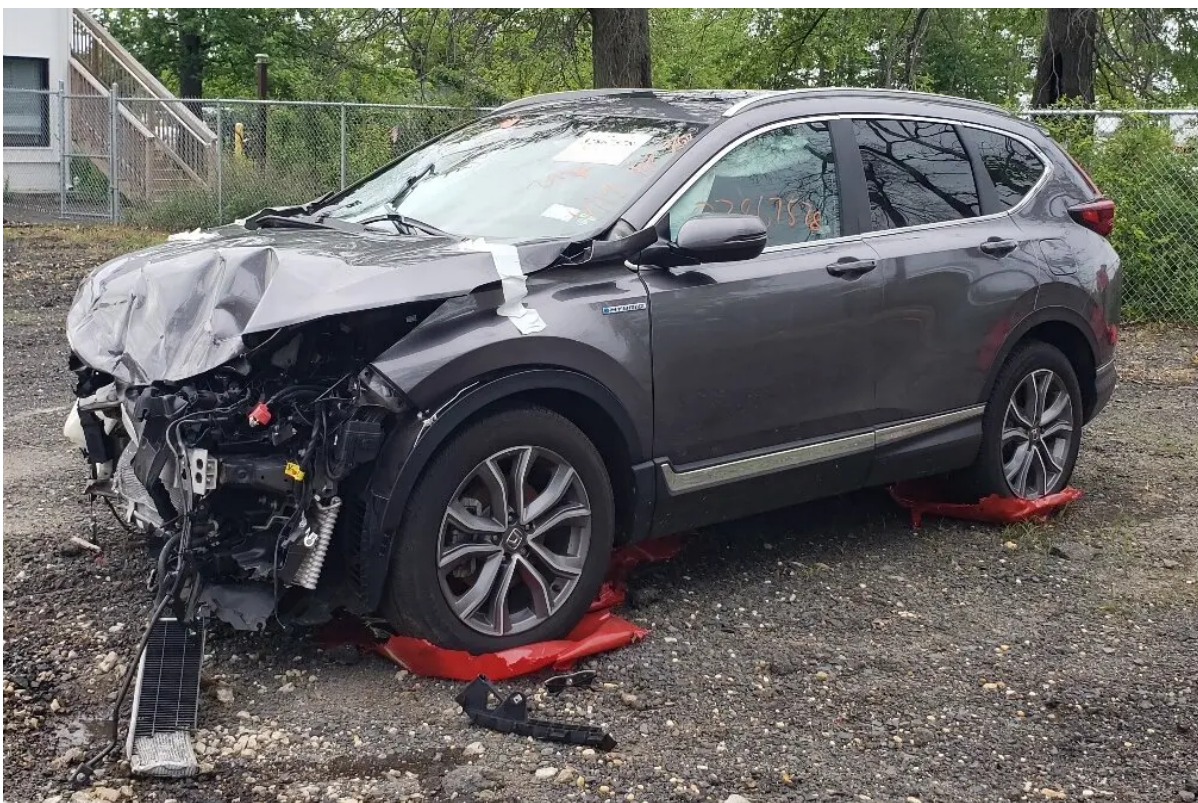
They are seeking damages, though their lawyers declined to specify an amount.

According to the decision, the McGintys said in court that on the evening of Jan. 8, 2022, their daughter asked if they could order food while they packed for a ski trip. Uber's records show that Ms. McGinty logged into her Uber Eats account on her phone and checked a box next to the statement "I have reviewed and agree to the Terms of Use."

The McGintys said they did not recall seeing a pop-up with the terms-of-use agreement, and asserted that it was actually their daughter who had checked the box before placing the order.

After Uber filed a motion to force arbitration and asked that the lawsuit be dismissed, the lower court denied the request, saying that the agreement presented to Uber Eats users did not clearly explain the difference between arbitration and court.

But on Sept. 20, the Superior Court of New Jersey's appellate division reversed that decision. The appeals court argued that arbitration provisions did not always need to have such explicit language, that Ms. McGinty had previously signed agreements from Uber waiving the right to a jury trial and that she had given her daughter the authority to sign the agreement when she handed over her phone.



The car that the McGintys were riding in at the time of the 2022 crash. They said the crash had "devastated" their health and finances. Stark and Stark

Ms. McGinty said she and her husband were “really shocked” by the court’s decision.

“We’re incredulous that the court could interpret things the way that they did — that our daughter’s click through to order a pizza some random night could mean that if we were catastrophically injured in a car accident, that we couldn’t recover for our very serious injuries and the financial harm that was done to us,” she said.

They plan to appeal, but because the three-judge panel was unanimous in its decision, they do not have an automatic right to do so, and the path forward could be challenging, said their lawyer, Evan Lide.

“The reality is, nobody reads those agreements and Uber knows that,” Mr. Lide said, arguing that the company had “stolen my clients’ constitutional right to a jury trial.”

In a statement, Uber referred to the appeals court’s decision, reiterating its argument that Ms. McGinty had already agreed to the terms that included an arbitration provision when she signed up for the Uber app in 2015 and on subsequent occasions.

The company also said that the driver involved in the accident no longer had access to the platform.

The decision comes weeks after Disney backed down from an effort to block a wrongful-death lawsuit by invoking a similar agreement. In that case, a man had sued Disney after his wife suffered a severe allergic reaction and died after eating dishes at a Disney World restaurant that her server had assured her were free of allergens.

Disney initially claimed that he had agreed to arbitration when he signed up for a free trial of the Disney+ streaming service. The company eventually reversed course after a backlash.

Some experts said there were differences between the two cases, largely because there was a clearer connection between the Uber Eats and Uber ride-share apps than between a Disney+ subscription and eating at a restaurant on a Disney World property.

Courts have historically sided with companies in disputes about arbitration agreements, said Ross B. Intelisano, a lawyer who regularly represents plaintiffs in such cases. Arbitration is typically used to settle complicated business disputes, he said, because it is often cheaper and faster than going to court.

But Mr. Intelisano said these agreements were not always clear or presented in a digestible way.

“Who’s going to read a 14-page arbitration agreement on their phone when they’re

ordering Chick-fil-A?” he said.

Ben Farrow, a lawyer who frequently practices arbitration, said he was unsurprised by the appellate court's decision, given the ubiquity of arbitration clauses.

“Arbitration clauses have been on a steady march for quite some time and they're more widespread,” Mr. Farrow said, adding that it had become easier for companies to create terms-of-use agreements, and that more people were consenting to them in order to use online services.

He said it was “really only a matter of time before they started to impact people like this.”

There are several reasons people filing lawsuits may prefer to have their cases heard in court rather than handled in arbitration.

Mr. Intelisano said that juries were more likely than arbitrators to be sympathetic to plaintiffs and to award damages, especially when big companies are involved.

“In a personal-injury case, it's very important for the plaintiff to be able to tell the story to their peers in the community and have the jury decide whether you win or lose,” he said.

Lola Fadulu reports on the New York City region for The Times. More about Lola Fadulu