



From class actions to mass claims: Exploring the mass arbitration phenomenon

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Why should you care about mass arbitration?

Mass arbitration

A plaintiffs' bar strategy to exact huge settlements untethered from the merits of any claim by leveraging the threat of multimillion-dollar upfront arbitration fees through to the simultaneous filing of tens of thousands of nearly identical claims

How did this phenomenon
come to life?

‘Scared to Death’ by Arbitration: Companies Drowning in Their Own System

Lawyers and a Silicon Valley start-up have found ways to flood the system with claims, so companies are looking to thwart a process they created.



By Michael Corkery and Jessica Silver-Greenberg

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How Corporate America’s Favorite Legal Trick Is Backfiring

For decades, companies have used arbitration agreements to shirk responsibilities to their customers and employees — but now the tables have turned.

Driven partly by a legal reformist spirit and entrepreneurial zeal, Mr. Lidow and Mr. Lenkner are leaders in testing a new weapon in arbitration: sheer volume. And as companies face a flood of claims, they are employing new strategies to thwart the very process that they have upheld as the optimal way to resolve disputes.

Companies, in a few instances, have refused to pay the fees required to start the arbitration process, hoping that would short-circuit the cases.



Travis Lenkner’s law firm filed about 2,250 arbitration claims against DoorDash in one day. Lyndon French for The New York Times

What has been done to
tame this beast?

AAA procedures

- 25 similar demands with the same or coordinated representation
- Case-filing spreadsheet with information concerning each individual claim and claimant
- Affirmation that information is true and correct
- Demand for each arbitration
- Flat initiation fee of \$3,125 for individuals and \$8,125 for businesses
- Scaled per-case fees ranging from \$325 to \$100 for the business, decreasing as volume of cases increases
- Additional fees as arbitration progresses

JAMS procedures

- 75 similar demands with the same or coordinate representation
- Arbitration demand for each claimant
- Sworn declaration that the information is true and correct
- Initial filing fee of \$7,500
 - Consumer can be required to pay no more than \$2,500 of that fee
- Process administrator's fees, which vary by administrator
- Case management fee equal to 13 percent of professional fees
- Arbitrator appointment fee of \$2,000–\$3,500

What more can you do to
protect your business?

Mitigating the threat

Restoring balance and fairness to the process

- Check the claims!
- Require informal dispute resolution before proceeding to arbitration
 - Require Notice of Dispute form
 - Allow 60 days to informally resolve before commencing arbitration
- Contractually agree to a bellwether-type resolution of mass claims
 - Each side selects a predefined number of arbitrations – *eg*, 15
 - Only those arbitrations (in this example, 30) are filed in the first instance
 - Those 30 arbitrations must be resolved before additional arbitrations can be filed in batches of 30



Thank you

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