

How do consumers resolve disputes?

Overwhelmingly, disputes between consumers and companies are resolved through informal channels and do not elevate to formal proceedings. Companies have strong incentives to maintain deep, well-informed, mutually satisfactory relationships with customers. Disputes rise to the level of a formal action in court or arbitration only a fraction of the time.

What is arbitration?

Arbitration is a procedure wherein two parties involved in a dispute select an unbiased third person(s) or “arbitrator(s)” to hear both sides and issue a decision. Since the Federal Arbitration Act¹ was passed in 1925, federal law has protected—and the Supreme Court² has confirmed—the benefits of arbitration as a faster and (on average) higher recovery alternative to class action litigation for consumers. “Pre-dispute” arbitration is when consumers and companies agree in advance to resolve a dispute through the arbitration process.

The American Arbitration Association (AAA) limits arbitration fees for consumers, and companies often end up footing the total bill. Today, arbitration provisions can be found in a wide variety of consumer agreements, including those for credit cards, checking accounts, cell phones, cable television, internet access, and even gym memberships.

What is going on?

Dodd-Frank Act § 1028 mandated the CFPB conduct a study on arbitration and authorized the Bureau to write a rule to restrict or even prohibit the use of arbitration if it is “in the public interest and for the protection of consumers” and consistent with the results of the study.

March 15, 2015 | The CFPB released its study, which was highly critical of arbitration and unabashed in its preference for class actions lawsuits. After further review of the study, however, many of the Bureau’s findings have been found to be inconclusive due to small sample sizes and unfair comparisons between arbitration and litigation.

May 5, 2016 | Following its outline of a proposal, the CFPB is expected to announce a rule that will restrict the use of pre-dispute arbitration by banning the use of class action waivers.

Why does it matter?

ARBITRATION

Quicker Resolution | Average Timeframe: 2-7 months

- Document only: 4 months
- Telephone: 5 months
- In-person: 7 months

Lower Costs to Consumers | AAA consumer filing fee cap: \$200. Aside from this nominal fee, companies often cover the entire cost of the arbitration

Higher Recovery | Average of \$5,389

CLASS ACTION

Lengthy Process | Average: 690 days (1.89 years)

- Multidistrict court: 758 days (2.07 years)
- State court: 407 days (1.11 years)

Higher Costs to Consumers | Consumers cover court and attorney costs through contingency fees at an average of 21% (and as high as 63%) of consumers’ cash relief.

Minimal Recovery | Average of \$32.35³

So... Who Really Benefits from Class Actions?

According to the CFPB’s *own* study, **class action attorneys** racked up a whopping **\$424,945,451** during the period studied.

¹ 9 U.S.C. § 2 (stating arbitration agreements “shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.”)

² *AT&T Mobility LLC v. Concepcion*, 131 S. Ct. 1740 (2011) (quoting the District Court decision that asserted plaintiffs would be *better off* under their arbitration agreement than in class action, which “could take months, if not years, and which may merely yield an opportunity to submit a claim for recovery for a small percentage of a few dollars.”)

³ CFPB Arbitration study only provides gross figure of \$1.1 billion for 34 million consumers, which resulted in this calculation.