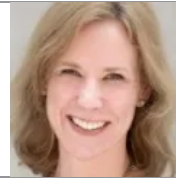




**John C. Coffee, Jr. –
Boeing and the Future of
Deferred Prosecution
Agreements**
By John C. Coffee, Jr.



**Leveraging Information
Forcing in Good Faith**
By Hillary Sale



**The Dark Side of Safe
Harbors**
2 *By Susan C. Morse*

Editor-At-Large
Reynolds Holding

THE CLS BLUE SKY BLOG

COLUMBIA LAW SCHOOL'S BLOG ON CORPORATIONS AND THE CAPITAL MARKETS

Editorial Board
John C. Coffee, Jr.
Edward F. Greene
Kathryn Judge

**Our
Contributors**

**Corporate
Governance**

**Finance &
Economics**

M & A

**Securities
Regulation**

Dodd-Frank

**International
Developments**

**Library &
Archives**

Skadden Discusses the Continued Abuse of Mass Arbitration

By Michael W. McTigue Jr. and Meredith C. Slawe April 22, 2025

Comment

On April 15, 2025, the American Arbitration Association (AAA) distributed an infographic with statistics on mass arbitration in 2024, which could be read to suggest that the consumer mass arbitration process is functioning effectively. Those steeped in defending mass arbitrations, however, recognize that this is not the case.

In many ways, the AAA's data raises more questions than it answers. While the AAA has introduced updated procedures in an effort to address mass arbitrations, there is more to be done to ensure a fundamentally fair process. There is a pressing need for greater transparency and comprehensive reform from arbitration providers and regulators to protect businesses and consumers.

The AAA reported that 82 new consumer and 10 employment mass arbitration cases were submitted in 2024, and it highlighted that only 1% of all consumer cases (and only 2% of employment cases) closed in 2024 after an award. The rest were settled, dismissed or withdrawn prior to award.

But those statistics merely highlight the issue with mass arbitration: The merits of the claims are typically beside the point. Claimants' counsel use the mere threat of aggregate AAA upfront and uncapped administrative and arbitrator fees as leverage to prompt massive settlements prior to adjudication. If more cases reached award, that would signal that cumulative fees were not inhibiting companies from seeking to vindicate their practices in arbitration.

Moreover, the AAA figures do not reflect the reality that most mass arbitration threats are resolved prior to the administration of any cases. It is the aggregate AAA fee exposure that often compels businesses to settle meritless claims early, either informally or through mediation. Recently, at initial conferences involving mass arbitrations, AAA case managers have recited all of the fees that a business could face and then asked the parties whether, based on that exposure, they wished to explore global mediation. Such an approach tacitly legitimizes the notion that fees should be the driver for settlement irrespective of the validity of any claimants or claims.

Current mass arbitration practices would benefit from scrutiny by courts, regulators and arbitration providers, which would likely prompt questions including:

- Are consumers being misled by social media “clickbait” solicitations targeting businesses with frivolous claims?
- Are consumers unknowingly entering into retention agreements with law firms through these ads that might be unconscionable and provide for excessive fees?
- Are arbitrations being threatened and filed against businesses without the claimants' authorization and informed consent?
- Are attorneys conducting the requisite diligence or improperly attempting to shift their burden to vet claimants onto businesses?
- Are lawyers pursuing claims on behalf of facially frivolous claimants, including those who are deceased, fictitious, minor children, in active bankruptcy, and/or who don't even have arbitration agreements with the respondent businesses?
- Are claimants unwittingly breaching their agreements with businesses by, for example, failing to comply with conditions precedent to arbitration (*i.e.*, informal dispute resolution processes) or obligations to engage in good faith?
- Are arbitration demands being artfully drafted to evade application of the jurisdiction of small claims courts (which could otherwise be elected as the forum under the AAA rules and many contracts)?
- What are arbitration providers doing (or not doing), and what can they do, to protect against abuse and to prevent and address improper and unauthorized filings?

- Are companies being subject to extortionate threats based on arbitration fees in an effort to coerce — often successfully — windfall settlements?

On March 25, 2025, the official X page of the Republicans on the House Committee on the Judiciary (@JudiciaryGOP) posted: “Why are plaintiff firms using targeted social media advertising to build frivolous mass arbitration claims to extort quick settlements from great American companies like Fox Corp?”

This one-off message succinctly captured the essence of what is happening many times over against businesses across industries. Hopefully, this is the beginning of much-needed scrutiny for a model that does a disservice to consumers, businesses, arbitration providers and the legal profession at large.

This post comes to us from Skadden, Arps, Slate, Meagher & Flom LLP. It is based on the firm’s memorandum, “The AAA’s Infographic and the Continued Abuse of Mass Arbitration,” dated April 17, 2025, and available [here](#).

Leave a Reply

Your email address will not be published. Required fields are marked *

Comment *

Name *

Email *

Save my name, email, and website in this browser for the next time I comment.