

Arbitration: I Signed What? From Cell Phones to Getting a Job – It's Everywhere

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By Scott Callahan

The right to trial by a jury of your peers is a fundamental American right. It's guaranteed in the Seventh Amendment to the U.S. Constitution.

Lately, though, it seems that right is being chipped away in contract language covering everything from credit cards to cellphones to employment agreements. Buried in the fine print, you will find language that forces you to waive your right to sue in court before a jury of your peers. If you have a dispute, then you will find that you have agreed to resolve the problem outside the courthouse in what is called an arbitration proceeding.



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So what is arbitration? Arbitration is a private way of resolving a dispute where a neutral, third party (often a lawyer or former judge) oversees the claim and decides the final outcome. Arbitration usually is faster and can be more efficient than a trial, and both sides have a say in selecting the arbitrator rather than having their case randomly assigned to an unknown judge. Arbitration also provides a final answer without potentially waiting years for appeals courts to decide.

However, there are some significant drawbacks:

Final decisions are not published or accessible. That can be useful to companies that don't want their dirty laundry aired, such as letting the public know about a history of repeated problems.

- Unless there is outright fraud or corruption, an arbitrator's decision cannot be appealed. So, even if the arbitrator makes a substantial mistake, or is just having a bad hair day, the losing party has no remedy.
- The proceedings are private, outside the view of the public and news reporters, and it is uncommon for the proceedings to be recorded by a court reporter or other means.

• There are questions about impartiality. Many people feel that arbitrators favor the very businesses that force arbitration because they are often repeat customers who provide arbitrators with their income.

Let's look at a few of the real-world situations and disputes that could lead you to forced arbitration instead of an open trial before a jury of your peers:

- You are unemployed and need money. You finally land a job, but are required to sign an employee manual that includes a mandatory arbitration clause. You then get injured at work and realize there's no workers' compensation insurance to pay for your medical treatment or lost wages. Or, maybe your employer has not paid you your sales commissions as agreed. Regardless of the harm you may claim, you've signed away your right to sue in court.
- After years of using a credit card, you learn that the bank has been overcharging fees, interest, and penalties from you and all of its customers. But buried in the fine print is the fact that you waived your right to have a jury hear your case.
- You hire a financial adviser for your retirement investments and sign a contract that includes a hidden arbitration clause. Years down the road, you discover that your adviser stole money or made reckless investments, leaving you with nothing. Despite losing everything, there's almost no chance a jury will ever hear your case.

In all of these scenarios, whether you were fairly treated or deserve compensation are questions that will be decided privately, with no public record and no appeal. You can only hope for the best.

What can you do to avoid this?

Depending on the business or person you are dealing with, it may be possible to negotiate to remove the arbitration clause from the contract, or to just cross it out and still have the contract accepted. Or, in some cases, your best bet may be to find another product or service that doesn't insist on arbitration.

But in most instances, you don't really have an option. The only alternative might be to let your legislator know that you oppose forced arbitration. In today's backlogged and overloaded court system, judge after judge has ruled in favor of businesses seeking more arbitration. What's important is knowing that these agreements exist and realizing what you are agreeing to, and what you are giving up, when you sign a contract.

The information in this column is not intended as legal advice, but to provide a general understanding of the law. Readers with legal issues, including those whose questions are addressed here, should consult attorneys for advice on their particular circumstances.

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