

Study finds that arbitration process yields benefits

By John Flynn Rooney
Law Bulletin staff writer

More than half of the consumers who filed arbitration claims won some relief, while nearly 84 percent of businesses that filed such claims gained some relief, according to results of a recently released study.

The study of 301 arbitrations administered and closed between April and December 2007 by the American Arbitration Association was released Wednesday by the Searle Civil Justice Institute at Northwestern University School of Law.

The report comes amid a policy debate concerning the Arbitration Fairness Act, which was reintroduced in the U.S. House of Representatives last month. The act initially was introduced in 2007 and is aimed at banning most pre-dispute arbitration agreements.

Supporters of the proposed act contend that the legislation is necessary to protect consumers and workers, who typically are unaware that purchase and employment agreements contain boilerplate statements that any future disputes must be resolved through arbitration, rather than litigation.

Opponents of the proposal, however, called arbitration a fair process that allows disputes to be resolved more quickly, less expensively and with less rancor than protracted, costly and adversarial litigation.

The report is titled "Consumer Arbitration Before the American Arbitration Association."

"I think this is an important contribution to the empirical record on consumer arbitration," said Geoff Lysaught, the justice institute's director.

"Access to justice is provided in a relatively inexpensive and expeditious manner, and outcomes are not biased in favor of businesses that arbitrate on a repeat basis," Lysaught added.

The findings in the report include:

- Consumers obtained at least partial relief in 53.3 percent of the arbitrations they filed and recovered an average of \$19,255; business organizations filing claims registered some relief in 83.6 percent of their claims and on average recovered \$20,648.
- On average, consumer arbitrations that were studied took 6.9 months from filing to final awards. Claims filed on behalf of businesses were resolved in 6.6 months on average.
- More than half of the consumers attempted to recover attorney fees in cases where they were awarded damages and were awarded attorney fees in 63 percent of those matters. The average attorney fee was \$14,574 in the cases in which a specific dollar amount was listed for the attorney fees.

"I think one of the most compelling findings of this study is that 98.2 percent of the time the arbitration clauses that come before the AAA in consumer arbitrations either comply in their own right with the protocol or the AAA identifies the violations and takes appropriate corrective action," Lysaught said.

Lisa Rickard, president of the Institute of Legal Reform, an affiliate of the U.S. Chamber of Commerce, issued a statement about the Searle Institute study.

"Congress needs to carefully review studies such as this before it considers bills like the Arbitration Fairness Act, which aims to eliminate an 84-year-old system of consumer justice that has worked well for millions of Americans," Rickard said.

F. Paul Bland, a staff attorney for Washington, D.C.-based Public Justice, formerly known as Trial Lawyers for Public Justice, offered a note of caution, saying that companies pick which arbitration provider they will use.

Bland also noted that the study involves only 301 cases.

"There's no indication how they picked the cases," Bland said in a telephone interview.