

Law Offices of R. Michael Shickich, LLC
Injury Law Firm – 266-5297

FORCED ARBITRATION THREATENS CONSUMERS

A lawsuit or mediation is how most legal disputes are settled. But due to the explosion of forced arbitration, the options of lawsuits and mediations are being made increasingly unavailable to consumers.

In arbitration, a case is decided by an arbitrator instead of by a judge or jury (lawsuit), or by the participants themselves (mediation). Arbitration has been around for years and has long been used by business because it can be quicker than a trial and is confidential. Mediations can be quick and confidential as well, but the results are based upon the willingness of both parties to compromise, and upon the integrity of both parties to do what they agree to do in mediation.

In the past 15 years or so, more and more companies, including banks, cell phone carriers, and brokerage, homebuilder, and credit card companies, have put binding arbitration clauses in their contracts. Settling differences was once the product of informed negotiations between sophisticated parties to a contract. In arbitration, it is a “take-it-or-leave it” non-option for the majority of Americans.

Arbitration is almost always bad for consumers. The fees to file an arbitration case are high, and claimants must pay the arbitrator, who can run hundreds of dollars per hour. Arbitration agreements often limit available remedies and offer no right to appeal. Finally, many arbitrators take the side of business in any dispute: A recent study reveals that one large arbitration organization sided with credit card companies a whopping 94% of the time.

Not only does arbitration disservice the consumer, it is also not easy to avoid. Many companies do not let consumers opt out of arbitration clauses, and those that do often bury the requirements for doing so in the fine print, set impossible deadlines, or otherwise make carrying out the requirements hard to do. The law is also very friendly to arbitration: The Supreme Court has ruled time and again that the Federal Arbitration Act is to be interpreted broadly in favor of arbitration, and most states will enforce arbitration agreements in almost every case.

None of this is good for consumers. Many people cannot bring a claim because they cannot afford arbitration. Those who do bring claims often get less than they should or nothing at all.

Calls are increasing for limitations on arbitration agreements. Some want to limit the kinds of claims that can be arbitrated. Others want to refuse to force arbitration of claims worth less than a certain amount. Still others want to completely ban mandatory arbitration for consumers. These calls for reform have run head-on into the business lobby, which knows that an end to arbitration will cost them money.

Nothing in this article should be construed as legal advice. You must consult with an attorney for the application of the law to your specific circumstances.

R. Michael Shickich is the founder of the Injury Law Firm located in Casper. The focus of his practice is personal injury and wrongful death cases.

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