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Taking the mystery out of filing a AAA consumer-arbitration claim

THE ONLINE ARBITRATION PROCESS MAKES THE DAVID VS. GOLIATH BATTLE SIMPLER FOR THE CONSUMER AND CAN COST LESS THAN SMALL CLAIMS COURT

In recent decades, providers of consumer goods and services for household and personal use have begun incorporating alternative dispute resolution (ADR) processes, such as binding arbitration or mediation into their standard contracts with customers. These contractual provisions, which provide that customers and companies resolve disputes without going to court, are often included in contracts for mobile phones, credit cards, automobile purchase agreements, insurance policies, and other consumer goods and services.

Contracts that provide ADR options for resolving disputes in consumer contracts often have an opt-out period, but if consumers do not choose to opt-out, any claims will be resolved through arbitration, mediation, or evaluation rather than going to court.

For those unfamiliar with ADR for resolution of consumer disputes, resolving such disputes using arbitration or mediation can be less expensive, faster, and more convenient than going to court.

The initial filing process

Technology innovation by modern third-party providers of ADR services has simplified the process of filing an arbitration claim online by consumers and/or their attorneys. For example, at our organization, the American Arbitration Association® (AAA®), a non-profit organization that has facilitated ADR services for more than six million disputes since its establishment in 1926, consumers can file arbitration claims against service providers using the easy-to-navigate AAA WebFile® portal.

AAA WebFile is an online case-management platform that can be used throughout the subsequent dispute resolution process to access and print documents, allow the parties to submit and exchange materials, and use the AAA's Settlement Tool to exchange settlement offers. Consumers can also review the arbitrator or mediator's resume details during the neutral arbitrator appointment process for the case.

The AAA, in particular, has demonstrated a commitment to making consumer arbitration more transparent and even-handed. After the initial case filing, the AAA will conduct an administrative review of the company's consumer arbitration agreement to ensure it meets the minimum due process standards of the Consumer Due Process Protocol (Consumer



Protocol). The Consumer Protocol, developed in 1998 in cooperation between the AAA and representatives from government agencies, consumer interest groups, educational institutions, and businesses, sets forth due process standards for arbitration arising from consumer agreements.

If the AAA's administrative review of the clause determines there are substantial and material deviations from the Consumer Protocol, the AAA will request that the company waive such deviating provision. If the company declines, the AAA can decline to administer the case, and the parties have the option to go to court. Some of the key standards in the AAA Consumer Protocol include:

- Consumers and businesses have a right to an independent and impartial arbitrator and independent administration of their dispute.

- Consumers always have a right to representation.
- Costs of the process for the consumers must be reasonable.
- Location of the proceeding must be reasonably accessible.
- No party may have a unilateral choice of arbitrator.
- Arbitrators should be empowered to grant whatever relief would be available in court.
- All parties retain the right to seek relief in small claims court for disputes or claims within the scope of its jurisdiction.
- Parties to the dispute must have access to information critical to the resolution of the dispute.

The AAA has an online Consumer Clause Registry that was created to provide more access to information about the AAA's consumer arbitration services. The Registry contains a list of businesses that have submitted their consumer arbitration clauses with the AAA and whereupon administrative review, the AAA has determined that the clause substantially and materially complies with the due process standards of the Consumer Protocol. The Registry provides a copy of the registered company's consumer arbitration clause along with contact information for that company.

For a single consumer, the AAA charges a \$200 capped case-filing fee, regardless of whether the arbitration is handled by document review only or via in-person, virtual, or telephonic hearings. In cases where a business is the filing party, either as a claimant or filing on behalf of an individual, the business is responsible for all administrative fees, including filing, case management, and hearing fees, charged by the AAA. Compensation for the neutral arbitrators who resolve cases is not included as part of the AAA's fees and must be paid by the business party involved, unless the consumer voluntarily offers to pay a portion of the compensation post-dispute.

If consumer claimants do not believe they will be able to afford the AAA's fees, they can submit a hardship waiver for the

AAA. Generally, if an individual's gross monthly income does not significantly exceed the federal poverty guidelines, the AAA can decide to waive the consumer party's administrative fees.

Selecting arbitrators and resolving claims

The AAA's Consumer Arbitration Rules provide that the AAA will appoint a single neutral arbitrator to oversee the resolution of their dispute. The AAA's panel of consumer arbitrators have decades of experience in the consumer goods and services industry, and truly understand the nature of business disputes. The roster includes industry experts as well as lawyers and former federal and state judges. To ensure fairness and objectivity, AAA-appointed arbitrators must adhere to a Code of Ethics available to case parties and must sign a Standards of Responsibility agreement every year they serve on the AAA's panel. Arbitrators must also provide a full disclosure to the parties of any potential conflict or appearance of conflict or previous contact between the arbitrator and the parties. The arbitrator's obligation to provide disclosures remains in effect throughout the arbitration. The arbitrator shall have no personal or financial interest in the matter. Additionally, parties also have the opportunity to object to the appointed arbitrator based on partiality or lack of independence; inability or refusal to perform his/her duties with diligence and in good faith; or any grounds for disqualification provided by applicable law – and those objections will be decided by the AAA.

In most instances, resolution of uninsured-motorist disputes in California arise from consumer agreements and as such, are administered as consumer cases by the AAA and other ADR providers, with parties able to request arbitrators with specific expertise in the insurance and auto sectors to oversee those claims.

Diversity among arbitrators

Just like the rest of the country,

providers of alternative dispute resolution services understand the need for greater diversity and inclusion among pools of potential arbitrators. Claimants and respondents alike seek neutral arbitrators and mediators with diverse characteristics, backgrounds, and experiences. As part of the AAA's commitment to strengthening diversity and inclusion, the AAA continues its multi-year undertaking to augment the gender and ethnic diversity of its Roster of Arbitrators and Mediators and increase diverse appointments to hear cases. Executives across every division and region of the organization actively recruit women and minority candidates who meet the criteria established for the AAA and ICDR panels.

After the AAA appoints an arbitrator to a case, parties and their attorneys can submit documents for arbitrators to review online through the AAA system, and, unless the matter is being heard on documents only, hearings related to discovery, evidentiary motions, and witness testimony can be scheduled to be conducted either in person or virtually. Depending on what the parties feel comfortable with, the AAA can accommodate them with in-person or virtual services, or a hybrid of both.

For those that wish to conduct hearings in person, but are concerned about social distancing recommendations in the wake of COVID-19, some AAA hubs, including the ones in Los Angeles and San Francisco, are on schedule to implement a multi-camera, hands-free video conferencing system in which all camera movement and switching are automatically activated by an active speaker's voice – permitting arbitrators and other parties to follow and fully participate in person while sitting in different rooms.

The benefits for the consumer

Many consumer arbitration claims involve small sums of \$1,000 or \$1,200, and if the parties choose to do so under the AAA's rules, they can ask arbitrators to decide the outcome of a case solely on

the basis of submitted documents. This process is considerably shorter and doesn't require the consumer claimants or defendants to miss work. Furthermore, going to small claims court may require consumer claimants involved in smaller claims to pay more in fees during the resolution process.

Since claimants and defendants are both required to engage in preliminary calls during the arbitration process by the AAA and other providers, the majority of arbitration cases are settled prior to conclusion. According to court administrative offices around the U.S., 80 percent to 85 percent of all cases reach a durable conclusion through mediation.

To increase the likelihood of early settlements, the AAA developed its Online Settlement Tool, allowing claimants and defendants to submit up to three settlement offers online.

Furthermore, claimants who choose not to be represented by attorneys can still reap the benefits of resolving their disputes through arbitration. The AAA is one provider that has a specialized administrative team who are experienced

and trained in handling cases involving unrepresented (pro se) parties. Cases handled by this team will receive case management services designed to meet the needs of pro se parties. The AAA strongly recommends that anyone not represented by counsel should consider consulting with counsel. The AAA's Pro Se portal includes links to the American Bar Association and local bar associations, as well as other resources that can put people in touch with attorneys and increase their preparedness.

Thanks to the technological innovations developed by providers of alternative dispute resolution services, more consumers can seek to resolve their disputes with home/personal goods and service providers through arbitration – saving them money and time, and helping them achieve a fair and equitable outcome.

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Christine participates as a trainer for the AAA, and as a speaker at regional and national events on arbitration and mediation. She co-chairs the AAA's national Labor/Management Advisory Task Force and works with various universities and colleges on research and educational initiatives to develop the next generation of arbitrators and mediators.

Neil B. Currie is a Vice President with the American Arbitration Association (AAA). He oversees the AAA's Consumer ADR Administration Group. He is responsible for the AAA's consumer policies and procedures, including rule revisions, consumer panel recruitment, and general consumer programs and materials. He reviews consumer arbitration agreements for compliance with the Consumer Due Process Protocol and developed and oversees the AAA's Consumer Clause Registry. Mr. Currie, a member of the New York State Bar, received a B.A. from the University of Pennsylvania in 1993 and a J.D. from the University of California, Hastings College of the Law in 1996. For more information about the AAA's Consumer Arbitration services, please visit <https://www.adr.org/consumer>