

NATIONAL
CONSUMER LAW
CENTER INC



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Paul Bland, Trial Lawyers for Public Justice, 202-797-8600

New Trap Door for Consumers: Card Issuers Use Rubber-Stamp Arbitration to Rush Debts Into Default Judgments

Consumers Are Blindsided by Sudden Fast-Tracking of Often-Old Disputes, Amid Strong Evidence Arbitrators' Tactics Display Bias

Many Alleged Debts Aren't Even Valid, But There's Money To Be Made by Speeding Debt Collection Into Arbitration Instead of Settlement – Case Studies, Interviewee List Attached

BOSTON – It's a troubling marriage of two anti-consumer practices that have already sparked vigorous protest: out-of-control debt collection tactics plus often-hidden clauses in contracts that nullify consumers' constitutional rights to trial by jury and a day in court.

Now, at least two giant credit-card issuers and one of the nation's largest firms arbitrating their consumer disputes have combined these practices in a disturbing new way: They're using binding, mandatory arbitration primarily as an offensive weapon, by fast-tracking disputes over credit-card debt into rapid arbitration. A number of consumers charge that the banks often do this with little notice, after long periods of dormancy for the alleged debt or over consumers' specific objections -- then force those who don't respond swiftly or adequately into default. The arbitrator often forces the consumer to also pay for the hefty arbitration costs and the card issuer's attorney, making the total tab for consumers several times the original amount owed and many times what it would have been in more traditional debt settlements. So it's a neat pathway to turbo-charged profits for both the card issuer and the arbitrator.

The practice, based on industry data disclosed in several lawsuits, appears to affect tens of thousands of consumers. What's worse, it doesn't seem to matter that it is widely **forcing victims of credit-card fraud to pay debts they clearly don't owe**, or that the boilerplate language of mandatory arbitration clauses deprives those same victims of one of their most basic legal rights. That's because arbitration by definition says a consumer can't go to court to have his or her story heard, even if the alleged "debt" is a result of someone else's criminal fraud and in no way a result of the dunned consumer's actions!

Who's behind this new anti-consumer onslaught? One consumer lawyer who's been tracking the trend, Paul Bland of Trial Lawyers for Public Justice, says that "certain corporate lenders, most prominently MBNA and First USA Bank, are using arbitration with the National Arbitration Forum as a way of pursuing large numbers of claims against consumers." Bland says that NAF's operation "is geared toward rapidly churning

consumers through an industry-friendly process,” where “arbitration awards are regularly entered by NAF against consumers who probably did not even understand that they were defendants in a legal proceeding demanding money from them. And NAF’s process often greatly increases the amounts consumers are deemed to owe.”

“These are smart people who find themselves in situations where they feel blind-sided,” says TLPJ’s Leslie Bailey, who researched many of the cases. Bailey says the process “really moves quickly, without giving consumers a chance to have a proverbial horse in the race. There’s a feeling that what’s at stake is never expressed to them before they suddenly find themselves in default,” and saddled with large costs.

Bland says NAF’s executive director has testified that the firm handles about 50,000 arbitrations of debt collection cases each year. According to documents produced in one lawsuit by NAF itself (see exhibits at the end of this paper), the consumer prevailed in just 87 out of 19,705 arbitrations NAF shepherded to an outcome. So NAF’s client in this example, First USA Bank, prevailed a disturbing 99.56% of the time!

“Only a tiny percentage of consumers read the terms of credit card agreements, which are typically sent out as bill stuffers (statements stuffed in with monthly bills), printed in tiny font and filled with dense legal jargon” that’s often incomprehensible even to highly-educated consumers, Bland says. “And very few consumers understand that they’ve supposedly given up their constitutional rights and agreed that the NAF is the sole forum for any legal claims they may have involving their bank.¹ So when consumers receive notices from or about the NAF, they often believe these are junk mail or some mistake and throw them away.”

National Consumer Law Center advocates have written extensively about the gross unfairness of both abusive debt-collection practices and so-called mandatory arbitration clauses in consumer contracts. Broad outlines of the issues involved can be found on NCLC’s website at these two links:

<http://www.consumerlaw.org/initiatives/model/arbitration.shtml> and
http://www.consumerlaw.org/initiatives/debt_collection/press_release.shtml

Bland says this new wave of problems “is all consistent with NAF’s documented practice of advertising to corporations to the effect that its rules are slanted in their favor.² NAF promises corporations that unlike other arbitration firms it bans class-actions, that it permits ‘little or no discovery’ (in arbitration proceedings), that it has a loser-pays rule that requires any non-prevailing consumer to pay the corporation’s attorneys’ fees, that it lets corporations avoid ‘the risk’ of a jury, and that it ‘will improve [their] bottom line.’ ” It’s a clear conflict-of-interests: NAF reaps millions in business directed to it by credit-

1 In addition to the card-user’s agreement itself NAF’s Code of Procedure, which consumers are supposed to follow in these cases and which NAF says is “incorporated by reference in every arbitration agreement which refers to the National Arbitration Forum,” is itself 17 small-print, double-columned pages long. You can see it in its entirety on NAF’s website at www.arb-forum.com/programs/code/index.asp

2 See NAF promotional materials in the attached exhibits following the case studies.

card companies while NAF sees most consumers just once, an easy temptation to what critics refer to as “repeat player bias” toward big customers.

Case studies and exhibits follow. These cases, supplied and detailed by the public interest law firm Trial Lawyers for Public Justice and based on information provided by consumers, speak for themselves. The consumers involved and their attorneys have agreed to be interviewed. Further exhibits relating to the practices outlined here follow the case studies.

CASE #1 -- Patricia Meisse

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Legg Law Firm, LLC.

5500 Buckeystown Pike

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Summary:

This is a case of a person being forced both to submit to arbitration and abide by the resulting default judgment *even though she had nothing to do with charges that fraudulently were run up in her name*. In other words, she was blameless in a matter that was entirely of someone else’s making but was penalized nonetheless, despite informing those pressing the claims of the problem. Patricia Meisse was a victim of identity theft who tried unsuccessfully to dispute the validity of the debt. She had three separate arbitration awards entered against her and is currently fighting enforcement.

Story:

Ms. Meisse, a physicist at the Nuclear Regulatory Commission, was a victim of identity theft by a relative who was temporarily living with her; the relative had opened at least three credit card accounts under Ms. Meisse’s name (the same individual had also opened accounts using the names of other family members). After the relative moved out, Ms. Meisse began receiving bills on credit card accounts that were not hers. She immediately contacted the credit card company (all three cards were opened with the same company – MBNA) by telephone to inform them of the problem. They agreed to investigate and send her a dispute statement. However she never received such a statement, though she followed up with letters sent via certified mail. At the time the accounts were closed, the total amount owed was approximately \$40,000.

In late 2002/early 2003 Ms. Meisse received a notice of arbitration with the NAF. She objected to arbitration, reiterating her claim that the account was not hers and requesting that MBNA provide her with proof that she was responsible for the debt. One credit company responded that she would need to identify the person who had opened the

account in her name. Ms. Meisse did not provide this information for fear that it could subject her family member to criminal liability. She also did not participate in the arbitration because it was her understanding that she'd be required to travel from her home in Maryland to NAF's Minneapolis headquarters to attend three separate arbitration proceedings. The fact that most consumers reading the NAF arbitration notice assume they will have to travel to Minneapolis is yet another aspect of mandatory arbitration's gross unfairness to consumers.

Awards were entered against her in all three proceedings. The banks were able to obtain default arbitration awards against her without ever proving that she had opened the accounts. After the three default awards were entered against Ms. Meisse, MBNA filed three separate claims in Maryland district court to enforce them.

Ms. Meisse appealed all three awards, but two of the three appeals were denied. The third is pending before the Maryland Court of Appeals, her last avenue of redress. It may well be that she has no legal recourse but to pay the debt in full, plus arbitration costs and attorney fees.

CASE #2 -- Beth Ann Plowman

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5500 Buckeystown Pike

Frederick MD 21703

(301) 620-1016

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Summary:

Ms. Plowman's complaints present a perfect example of how credit card companies and their collection agencies can railroad consumers into arbitration and obtain default judgments against them without providing any adequate process for determining whether the consumer even owes the debt in the first place. There's little incentive for restraint by the card companies; the expense, time and inconvenience of fighting falls almost entirely on the shoulders of even blameless consumers.

Ms. Plowman was a victim of identity theft while traveling on business. She was not notified of the charges accumulating on her card until after the thief had charged over \$26,000 at various locations across Europe. When she was informed of the debt she disputed it, but was never sent any statements showing the charges nor informed whether the card issuer accepted her explanation. She was then contacted by a collection agency that had purchased her account. She explained that the charges were fraudulent and that she was disputing the debt, but the agency ignored her response and arbitration proceedings were initiated against her. A default arbitration award was entered against her. Although there is usually little one can do to overturn such an award, through great effort and the hiring of an attorney she eventually stopped enforcement proceedings against her.

Story:

Beth Plowman last used her MBNA credit card in September 2000 to settle her bill at the EKO Meridian Hotel in Lagos, Nigeria, where she had been staying during a business trip. Several months later, in March 2001, she received a phone call from an MBNA representative, informing her that \$26,296.28 in charges had accrued on her credit card account. During this time she had never received an account statement.

When she asked why they hadn't contacted her sooner, the MBNA representative explained that a person claiming to be Ms. Plowman's sister (she has no sister) had contacted them and asked that they change the billing address on the account, which they had done. MBNA had never contacted Ms. Plowman to verify the change of address or the cardholder's identity.

MBNA representatives continued to call her about the charges over a period of weeks. At no time did MBNA send her any written correspondence about the debt. However they did tell her that the card had been used at "sporting goods" locations across Europe, and that the last bill on the account had been sent to an address in London, England. Although she asked to see copies of her statements with the fraudulent charges, MBNA consistently refused to provide her with any documentation. Finally the phone calls stopped coming, and Ms. Plowman assumed that MBNA understood what had happened and that the dispute about the charges had finally been resolved in her favor. She reported the identity theft to her local police department.

Over two years later, on May 2, 2003, Ms. Plowman received a demand letter from a collections agency, Asset Acceptance, which had "purchased" her debt from MBNA. The letter specified: "If you notify this office in writing within 30 days from receiving this notice, this office will: obtain verification of the debt or obtain a copy of the judgment and mail you a copy of the judgment or verification." She complied with this request by sending a letter on May 30, 2003 explaining the circumstances of her identity theft; the letter was sent express mail with confirmation of receipt, and she received confirmation that it was received within the time specified.

Ms. Plowman never received any "verification of the debt" from Asset Acceptance. Instead, in July 2003, she received a notice of arbitration from the National Arbitration Forum (NAF). She did not know what NAF was or how arbitration was relevant to her ongoing communications with Asset Acceptance concerning her identity theft. Like most consumers, she was unaware that her credit card contract included any arbitration requirement and had never knowingly agreed to submit to arbitration in the event of a dispute with MBNA. But her primary assumption was that she should continue to wait for a response from Asset Acceptance, since presumably once they verified that she'd been a victim of identity theft they'd understand she was not responsible for the debt and there would be no need for arbitration or further action. So, instead of responding to the arbitration notice she called Asset Acceptance.

She reports that the representative there, Mr. James Craig, was extremely rude and belligerent. He denied receiving her May 30th letter in which she had explained the circumstances of her case. On August 4, 2003, she faxed another copy of her letter to Mr. Craig. After re-sending the letter she awaited a response, assuming that Asset

Acceptance would review the letter, investigate the validity of the debt, and send her the “verification” as their letter had promised.

Upon returning from a business trip later that month, Ms. Plowman was shocked to learn that an arbitration award had been entered against her on August 27, 2003. It was only by hiring an attorney to represent her in the enforcement proceeding that she successfully got the claim dismissed.

CASE #3: Eve Curtis

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(617) 527-8087 home; (617) 407-9245 cell
evecurtis@mac.com (preferred contact method)

Attorney contact info:

Yvonne Rosmarin
Law Office of Yvonne Rosmarin
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yrosmarin@abanet.org

Summary:

This is a case about a default award being issued in arbitration against a consumer who reports that she had specifically, and prior to the dispute, opted out of the arbitration process by following the card issuer’s opt-out instructions, but was nonetheless dragged into arbitration and found in default even though the company’s notices of the action were keyed to account numbers that did not correspond to her accounts.

Ms. Curtis opted out of her credit card contract’s arbitration clause by following the instructions provided by the credit card issuer, MBNA. Nonetheless, when her account was closed MBNA instituted an arbitration proceeding against her. Her evidence that she had opted out of MBNA’s arbitration clause was ignored, and an award entered against her for the balance owed, plus costs and fees. She is currently fighting enforcement, but the entire experience has taken a serious emotional toll on her and her family.

Story:

Ms. Curtis opened an MBNA credit card account in 1990. In January or February 1998, the account was closed and replaced with a new MBNA platinum account.

In December 1999, Ms. Curtis received a statement from MBNA that also included notice of a new provision requiring all disputes between the cardholder and MBNA to be resolved through arbitration. The notice specified that the new arbitration provision would take effect in February 2000 unless she notified MBNA in writing by January 25, 2000, that she rejected the amendment to her account.³

³It has been MBNA’s practice to insert arbitration clauses into the fine print of its contracts. Most consumers never read the material sent to them by their credit card companies, and the arbitration provision automatically becomes effective if the consumer continues to use his or her credit card without taking specific action to opt out. By providing consumers with an ostensible

Ms. Curtis sent a letter to MBNA dated January 10, 2000, via first-class mail, in which she rejected the arbitration clause. Her credit-card account was later closed.

In November 2002, December 2002, and February 2003, she received a series of collection notices from a law firm representing MBNA, Wolpoff & Abramson (W&A), regarding an outstanding balance of some \$23,000 from when the account was closed. She did not respond to these letters; her husband was seriously ill at the time and she was not opening much of her mail. In May 2003, Ms. Curtis received a notice of intent to arbitrate from NAF. The account number on the NAF document did not match the account number of any account Ms. Curtis had used. MBNA sought the amount owed plus interest, all arbitration fees incurred, process of service fees, and attorney's fees of \$3,470.45. On June 16, 2003, Ms. Curtis received a second notice of arbitration.

She responded by filing an affidavit explaining that she had rejected the arbitration clause, and including a copy of the letter she'd sent rejecting the clause. The affidavit was sent by certified mail and was received by NAF and W&A July 1, 2003, and June 30, 2003, respectively.

On August 7, 2003, NAF assigned an arbitrator and sent a letter stating that a document hearing would be scheduled. Ms. Curtis received no further correspondence from NAF.

Ms. Curtis received a letter from W&A dated October 1, 2003, stating "As you are aware . . . an Arbitrator has made an Award against you." Ms. Curtis had never received notice of any judgment.

On December 2, 2003, Ms. Curtis received a debt collection letter from a second law firm, Howard Lee Schiff, P.C. The account number on the letter still did not match any account number belonging to her. She sent a letter December 10, 2003, requesting validation of the debt claim. Schiff responded on February 20, 2004, attaching a copy of the arbitration award in favor of MBNA for \$28,316.59.

On June 2, 2004, Ms. Curtis received a summons stating that MBNA had filed a complaint in Massachusetts Superior Court to enforce the arbitration award. On June 21 and June 23, 2004, she filed a response and an amended response denying the allegations in the complaint. She also filed an objection to MBNA's motion to confirm the arbitration award, specifically (1) denying that the account number referenced in the complaint was her account number; and (2) denying that her account was subject to the terms described in MBNA's complaint and explaining that she had rejected the arbitration clause. Court action is pending.

CASE #4: Mary Jo Benson

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Attorney contact info:

Lance Raphael

The Consumer Advocacy Center, P.C.

opportunity to opt-out, MBNA apparently hopes to insulate itself from claims that the provisions are part of a so-called contract of adhesion.

180 West Washington, Suite 700
Chicago, IL 60602-2318
Phone: 312-782-5808

Summary:

This dispute is primarily about procedural bias in arbitration proceedings and so revolves around matters that are technical, but important from a consumer-protection standpoint. Mary Jo Benson had two MBNA credit accounts. She never knowingly agreed to any arbitration clause,⁴ and is fighting in court the enforcement of two arbitration awards entered against her. In addition to her claim that she did not agree to arbitration, she has documented at least two instances of procedural bias that significantly impaired her ability to defend herself against this claim. Ms. Benson has an MBA and feels that if she was taken advantage of by National Arbitration Forum then the average consumer is extremely vulnerable.

Story:

Ms. Benson opened her first account with MBNA around 1986. She eventually signed up for a second card, and her total available credit was raised to about \$65,000.

In 2002 she wrote a letter to MBNA disputing her charges and requesting information about the accounts. When she didn't get a response she sent more letters via certified mail, indicating that she'd await a response before continuing to make payments.

Several months later, after still receiving no response to her letters from MBNA, she received a notice of intent to arbitrate. Since, to her knowledge, her contract with MBNA had made no mention of arbitration, she thought there was a mistake. She sent certified letters to both MBNA and NAF, explaining that she was refusing to submit to arbitration and requesting proof that she had signed a contract agreeing to submit to arbitration. NAF treated her refusal to arbitrate as a "response," and stated that the issues raised in her response would be resolved through arbitration. An arbitration award was then entered against her without her participation, and she received notice of the award in late 2003. When she received the notice by mail, she assumed it was invalid because she'd rejected arbitration. She'd tried to read and understand the arbitration rules and believed she couldn't be forced to arbitrate against her will, or at minimum that MBNA was required to get a court order to compel her to arbitrate. She had no idea that a private company such as a credit card company could seek a lien on her property without her being able to tell her story to a neutral judge.

After the arbitration award against her was entered, her credit rating went down and the claim was assigned to a collections agency. She first learned that MBNA had initiated enforcement proceedings against her when she began receiving letters from the collections agency which included a reference to court hearings that had been scheduled.

A second arbitration award against her has since been confirmed in court. In the hearing on the second account, when Ms. Benson tried to contest the validity of the arbitration award the judge told her she was too late; that she'd failed to contest the award within the 90 days required by law. NAF's communication concerning the award hadn't mentioned that she had only 90 days, however, and even if it had, she had no way of

⁴ Ms. Benson cannot prove that there wasn't an arbitration clause in her credit-card contract and she alleges that MBNA can't prove there was. Given MBNA's apparent practice of altering the terms of its cardholder contracts by hiding new clauses in "bill stuffer" notices that most consumers throw out without reading, she reasonably does not know whether she ever received a new arbitration term or not.

telling when the 90 days would have been deemed to have started. Nonetheless, the judge held that NAF's notice to her was sufficient -- it had been sent via first-class mail -- and confirmed the judgment against her.

Interestingly, while attempting to contest the validity of the arbitration award Ms. Benson contacted a local attorney specializing in arbitration. When she told him an arbitration award had been entered against her after she had refused to arbitrate the attorney advised her that she was correct -- that arbitration cannot take place if one party refuses. But when she later looked at the record of the NAF arbitration in which a judgment had been entered against her despite her refusal, she discovered that the attorney she'd contacted had actually been the arbitrator who had entered the default award against her! The attorney later called her back after reviewing her case and left a message indicating that since the award had already been confirmed by a court, that judgment could only be set aside for "manifest injustice" and he would be unable to help her. She does not know whether he realized he had been the arbitrator in her case.

COMMENTARY ON THE FOLLOWING EXHIBITS:

These documents relating to NAF activities were obtained as part of the discovery phase in several lawsuits. They mostly demonstrate the National Arbitration Forum's own claims about how arbitration limits longstanding consumer remedies to wrongdoing by more powerful players, and thus limits companies' costs. Remember that the same company pandering to the creditors is also supposed to be the "neutral" arbitrator involving these companies.

A number of consumers have argued in court cases -- with some success -- that these documents raise obvious questions about structural bias: How can a firm reasonably project itself as impartial when it vigorously promotes its services to one side in the disputes it will arbitrate? And when it depends on that same side to bring it the bulk of its paid transactions -- literally tens of thousands -- while it will rarely see or depend for revenue on parties from the other side more than once?

The exhibits:

PAGE 11: NAF letter to mortgage company stressing that arbitration "lets you minimize lawsuits, and the threat of lender liability jury verdicts."

PAGE 12: NAF letter to same firm stating that "There is no reason for Saxon Mortgage, Inc. to be exposed to the costs and risks of the jury system."

PAGE 13: NAF brochure extolling arbitration's ability to limit exposure to liability.

PAGE 14: NAF states in its sample Consumer Credit Contract clause (at bottom of page) that any claim related to the agreement, *including one questioning the validity of the arbitration clause itself*, can only be settled in arbitration (and not in court).

PAGE 15: NAF promotional literature stresses arbitration's virtually-impossible hurdle to class actions, a key consumer protection tool when large numbers of people incur harm, and especially small or modest amounts of harm. The literature also boasts that, under NAF arbitration rules (at section labeled "Default Judgment"), any failure of a party to respond to an arbitration claim results in an automatic win for the lender. This is a huge problem for consumers because, as the case studies in this report show, consumers often don't realize the gravity of arbitration in time to respond or they fail to respond for other legitimate reasons.

PAGE 16: NAF letter to potential client boasts about how arbitration "eliminates class actions" and "will make a positive impact on the bottom line."

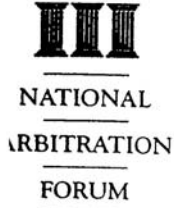
PAGES 17-19: These answers to interrogatories, in a lawsuit filed against First USA Bank and VISA U.S.A., show First Bank's sworn responses stating that the bank has by itself invoked arbitration in about 51,000 cases (page 19) and that, of 19,705 arbitrations where there was an outcome to that point 19,618 of those outcomes, or 99.56%, were those in which First USA prevailed. Credit card-holding consumers won only 87 of those 19,705 cases – less than one-half of one percent.

PAGE 20: NAF promotional literature boasts that arbitration permits "very little, if any discovery," which in courts of law is a valuable and often-irreplaceable way of establishing facts in a case, and also that the loser pays the costs of the proceeding -- a good provision to have if you're on the side known to win an overwhelming majority of arbitration decisions.

PLAINTIFF'S
EXHIBIT
6-19-61

September 23, 1996

Richard E. Shephard
Asst. Gen'l Counsel
Saxon Mortgage, Inc.
4880 Cox Rd.
Glen Allen, VA 23060



Dear Richard:

Thanks for your call last week. It was good talking to you.

Following on our conversation, I am enclosing the **National Arbitration Forum's 1996 Arbitration Overview** for your review.

By adding arbitration language to your contracts, the National Arbitration Forum's national system of arbitration lets you minimize lawsuits, and the threat of lender liability jury verdicts.

We have successfully handled more than 20,000 creditor-debtor and other cases nationwide. You will probably be most interested in the Gammaro case that is enclosed since it involves the National Arbitration Forum in a mortgage transaction.

After you have had a chance to review these materials, I will give you a call. In the meantime, if you have any questions, do not hesitate to contact me.

Sincerely,

Curtis D. Brown, Esq.
Director of Development

CDB/ljs
Enclosures

January 29, 1997

received
2/3/97

PLAINTIFF'S
EXHIBIT
6-19-01



Richard Sheppard
General Counsel
Saxon Mortgage, Inc.
4880 Cox Rd.
Glen Allen, VA 23060

Dear Richard:

Enclosed is the information you requested. As these articles point out, arbitration has great advantages over litigation. There is no reason for Saxon Mortgage, Inc. to be exposed to the costs and risks of the jury system.

When considering arbitration providers, remember, all arbitration is not the same. The Forum's procedures offer the most rational system for lenders and their customers. At the National Arbitration Forum:

Every issue is resolved according to the law.

Every decision is made by a legal professional.

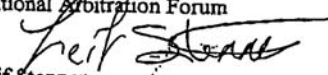
Every award is limited to the amount claimed.

Every claim is decided on its own merits.

To review further information regarding arbitration law and implementing arbitration in your business, give us a call at 800/474-2371.

Sincerely,

National Arbitration Forum


Leif Stennes
Policy Analyst

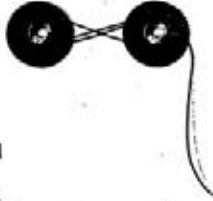
LMS:ls
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One system, nationwide...legal decisions since 1986



Plan now...

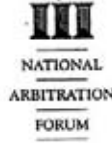
- No lawsuits.
- No exorbitant legal fees.
- No court delays.
- No irrational jury verdicts.



"I must say that, as a litigant, I should dread a lawsuit beyond almost anything else short of sickness and death."
- Judge Learned Hand

"Arbitration can save up to 66% of your legal costs."
- Corporate Cashflow Magazine, Vol. 12, No. 8, p. 7

"I would recommend [the National Arbitration Forum] method of dispute resolution because along with being quick, economical, and unobtrusive, the arbitrators are fair and impartial."
- Thomas DeCicco, CEO
Siemens Energy and Automation



One system, nationwide...
since 1986

1-800-474-2371

National Headquarters: P.O. Box 50191, Minneapolis, MN 55405

Arbitration Starter Kit



Start to eliminate
legal costs and
lawsuits.

...start
now.

Place a simple
clause – an
arbitration
clause –
in every
contract.

Standard Business Contract.

ARBITRATION. The Parties agree that any claim or dispute between them or against any agent, employee, successor, or assign of the other, whether related to this agreement or otherwise, and any claim or dispute related to this agreement or the performance or duties contemplated under this contract, including the validity of this arbitration clause, shall be resolved by binding arbitration by and under the Code of Procedure of the National Arbitration Forum and any award of the arbitrator(s) may be entered as a judgment in any court of competent jurisdiction. Information may be obtained and claims may be filed at any office of the National Arbitration Forum or by mail at P.O. Box 5010, Minneapolis, MN 55405. This agreement shall be interpreted under the Federal Arbitration Act.

Standard Employment Contract.

ARBITRATION. Employer and Employee agree that, for many reasons, court action is both unwise to both, and, therefore, any claim or dispute between them or by or against the other or any agent or employee of the other, whether related to this agreement or otherwise, and any claim related to the relationship or duties contemplated under this contract, including the validity of this arbitration clause, shall be resolved by binding arbitration by and under the Code of Procedure of the National Arbitration Forum and any award of the arbitrator(s) may be entered as a judgment in any court of competent jurisdiction. Information may be obtained and claims may be filed at any office of the National Arbitration Forum or by mail at P.O. Box 5010, Minneapolis, MN 55405.

Standard Credit Contract.

ARBITRATION. Creditor and Debtor agree that (either they _____) any claim or dispute between them, whether related to this agreement or otherwise, including the validity of this arbitration clause, shall be resolved by binding arbitration by and under the Code of Procedure of the National Arbitration Forum and any award of the arbitrator(s) may be entered as a judgment in any court of competent jurisdiction. Information may be obtained and claims may be filed at any office of the National Arbitration Forum or by mail at P.O. Box 5010, Minneapolis, MN 55405. This agreement shall be interpreted under the Federal Arbitration Act. *The debtor may want to exclude remedies related to security interest, which may require "affidavit" or may file some real estate instruments require judicial action.

Consumer Credit Contract.

ARBITRATION. The parties recognize that the cost of legal action is ultimately included in costs to the consumer and, therefore, agree that any claim or dispute between them, whether related to this agreement or otherwise, and any claim related to this agreement, including the validity of this arbitration clause, shall be resolved by binding arbitration by and under the Code of Procedure of the National Arbitration Forum and any award of the arbitrator may be entered as a judgment in any court of competent jurisdiction. Information may be obtained and claims may be filed at any office of the National Arbitration Forum or by mail at P.O. Box 5010, Minneapolis, MN 55405. Participatory hearings will be held in the jurisdiction where this contract is signed. This agreement shall be interpreted under the Federal Arbitration Act.

Act now...

The National Arbitration Forum conducts arbitrations under a uniform Code of Procedure, replacing the court system in every jurisdiction. Awards are fast, affordable, private, predictable, and fair...enforceable as judgments wherever the disputes or claims arise.

- One system, nationwide. Same rules, same procedures – every case, every time.
- Efficient. Strict time lines – decisions are returned within weeks, not years.
- Economical. Low cost – far less than any court action.
- Expert. Decisions by experienced, independent professionals.
- Effective. Arbitration awards are made and enforced in every jurisdiction.

Place an arbitration clause in every contract...

...and take
control.

The samples contained in the brochure are not a substitute for legal advice. Contact an informed arbitration lawyer with any questions or call the National Arbitration Forum for a knowledgeable answer to your own.



ALL ARBITRATION IS NOT THE SAME!

ISSUES	NATIONAL ARBITRATION FORUM	AMERICAN ARBITRATION ASSOCIATION
LIMITS ON AWARDS	Awards limited to amount of claim. Rule 37.B.	No limit. Rule 43.
CLASS ACTION	Consolidation permitted only with agreement of all parties. Rule 19.A.	Rules are silent.
FOLLOW THE LAW	Arbitrators enforce rights under applicable law. Rule 20.A.	Arbitrators do <u>not</u> have to follow the law. Rule 43.
QUALIFICATION OF ARBITRATORS	Attorneys, Law Professors and Judges with 15 years experience, qualified in the local jurisdiction.	Non-attorneys are regularly used.
COST	Fee (\$69 minimum) tied to amount of claim.	Fee (\$500 minimum) tied to amount of claim.
HEARING CHOICES	Choice of hearings to fit type of case: Document Hearing ("summary judgment") or Participatory Hearing. Rules 2.K., 5.D., 25.A.	No document hearing. Full hearing held (with additional payment for arbitrator's fee) <u>even</u> if no response to claim. Rule 30.
"DEFAULT" JUDGMENT	Yes. Failure of party to respond to claim results in <u>admission</u> of the claim. Rule 13.C.	No. Mandatory hearing and \$500 fee even if other party does not respond. Rule 30.
VENUE	Participatory Hearings held where agreement was signed. Rule 32.A.	No uniformity. Location decided by individual arbitrator. Rule 11.
EXPEDITED HEARING	Yes. Provided by Rules. Rule 27.	Yes. Rule 53-57.
CONTROL OF PROCESS	Uniform Rules for administration of process. Rule 2.F.	Interpretation of Rules left to individual arbitrator. Rule 21.

One system, nationwide.....since 1986.

NATIONAL ARBITRATION FORUM P.O. Box 50191 Minneapolis, MN 55405 612/631-1105 or 800/474-2371 Fax: 612/631-0602

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N-R

III
NATIONAL
ARBITRATION
FORUM

January 14, 1999

Robert S. Banks, Jr.
KOIN Center, Suite 1450; 222 S.W. Columbia
Portland, OR 97201

Dear Robert:

A number of courts around the country have held that a properly-drafted arbitration clause in credit applications and agreements eliminates class actions and ensures that credit-related lawsuits will be directed to arbitration, not a jury trial.

All arbitration is not the same. The Forum is one of the two largest arbitration providers in the country for a reason.

- The Forum is nationwide, with arbitrators in every federal judicial district.
- Forum arbitrators make decisions based on the law—not "equity" like some other arbitration providers. At a minimum, they have more than 15 years of legal experience and have arbitrated commercial, financial, and business disputes.
- The Forum's fees are reasonably priced to be accessible to consumers and businesses alike, making it the only system that truly works in consumer disputes.

We have a number of information resources on arbitration law and how arbitration will make a positive impact on the bottom line. Contact Lelee Nelson at 800-474-2371 for a free information packet.

Regards,



Curtis D. Brown
V.P. and General Counsel

CDB/klf
Enclosure

- Minneapolis, MN
- Atlanta, GA
- Brunswick, NJ
- Charlotte, NC
- Pt. Myers, FL
- San Francisco, CA
- Washington, D.C.



MAAPP file
§ 2-II

IN THE CIRCUIT COURT OF
MONTGOMERY COUNTY, ALABAMA

MICHAEL A. BOWNES,)
 Plaintiff,)
)
 v.)
 FIRST USA BANK, N.A.; VISA U.S.A.,)
 INC.; et al.,)
 Defendants.)

Civil Action No. 99-2479-PR

ANSWERS AND OBJECTIONS OF FIRST USA BANK, N.A. TO
PLAINTIFF'S SECOND SET OF INTERROGATORIES

COMES NOW the Defendant, First USA Bank, N.A. ("Bank") and for answer and objection to the Plaintiff's Second Set of Interrogatories, states as follows:

GENERAL OBJECTIONS APPLICABLE TO ALL INTERROGATORIES

1. The Bank objects generally to the interrogatories in their entirety on the grounds that the Plaintiff is required to arbitrate his claims against the Bank and discovery is unnecessary with respect to the arbitration issues. However, because the trial court has expressly authorized discovery on the arbitration issues, the Bank shall furnish its answers without waiver of its objection to discovery and without waiver of its motion to compel the Plaintiff to pursue his claims against the Bank in arbitration.
2. The Bank objects to responding to certain of the discovery requests that seek information related to the merits of this case. Discovery on the merits is improper because (1) this case must be arbitrated and (2) even if this litigation is allowed to go forward in

- FED-247-2000 12/1/11
- (b) In whose favor the claim was resolved and the amount;
 - (c) The name and address of the arbitrator; and
 - (d) The name and address of the arbitration association.

Answer/Objection: All arbitrations have been conducted by the National Arbitration Forum ("NAF"). The Bank objects to furnishing the additional information requested on the grounds that it is irrelevant and immaterial to the arbitration issues pending before the Court and the furnishing of this information will not lead to the discovery of admissible evidence. The Bank further objects to providing the information requested because the rules of the NAF, which is the entity to conduct arbitrations between the Bank and cardmembers, specifically provide that the arbitration proceedings are confidential unless the parties agree otherwise. Without waiver of this objection, please see Exhibit 1 which depicts on a summary basis the number of arbitrations to which the Bank was a party and the outcome.

13. State the number of disputes in which you have invoked arbitration.

Answer/Objection: Approximately 51,000.

14. Fully describe each and every document or thing which this Defendant will rely upon or seek to introduce in defense of Plaintiff's claims with regard to the arbitration clause.

Answer/Objection: The attorneys for the Bank will decide which documents the Bank will rely upon or seek to introduce in defense of the Plaintiff's claims with regard to the arbitration provision.

15. State with particularity each and every document which discloses to

Arbitrations Filed By First USA Bank

<u>Status</u>	<u>Total</u>
Desk Hearing Award-No Response	17293
Desk Hearing Pending Filed by Cardmember	1
Dismissed Per Agreement Settlement	4823
Dismissed-Arbitrator Paid by First USA	59
Dismissed-No Service In 90 Days	23425
Dismissed-Per Request of First USA	25
Dismissed-Without Prejudice	3
Doc Hearing Pending-Arbitrator Appointed	5
Document Hearing Pending	7
Document Hearing-Need Information	1
Document Hearing-Pending Mailing	21
Document Hearing Award	2542
Exception-Extension Granted	1
Exception-Pending Information	1
Participatory Hearing Award	8
Pending Response	391
Pending Service	2905
Stay-Bankruptcy	<u>111</u>
Total Claims	51622

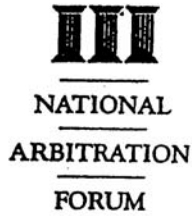
Outcome of Arbitrations

Cardmember prevailed	87
First USA Prevailed	19618
Pending Claims	3066
Expired Claims	28248
Total	51622

Arbitrations Filed Against First USA Bank

<u>Status</u>	<u>Total</u>
Settled	1
Pending	1
Award Against First USA	<u>2</u>
Total	4

Exhibit 1



Minneapolis, MN

Atlanta, GA

Brunswick, NJ

Ft. Myers, FL

San Francisco, CA

Washington, D.C.

CODE OF PROCEDURE

- **ARBITRATORS FOLLOW THE LAW** - Predictable decisions based on legal standards.
- **AWARDS LIMITED** - Awards may not exceed claim for which fee paid
- **UNIFORM NATIONAL SYSTEM** - Same rules, same procedures - every case, everywhere.
- **PROFESSIONALS** - Decisions are made legal professional, not jurors or volunteers.
- **COST CONTROL** - The cost of arbitration is far lower than any lawsuit.
- **LIMITED DISCOVERY** - Very little, if any, discovery and pre-hearing maneuvering.
- **PRIVATE** - Arbitration proceedings are completely private.
- **NO SPURIOUS CLAIMS** - Arbitration procedures discourage lawsuit extortion.
- **LOSER PAYS** - Prevailing party may be awarded costs.