



INTERNATIONAL CENTRE
FOR DISPUTE RESOLUTION®

Mass Arbitration

Agenda

- 01 What is Mass Arbitration?
- 02 Recent Changes to the AAA's Rules
- 03 Merits Arbitration
- 04 Efficiencies, Technology, and other considerations



01.

What is Mass Arbitration?

Mass Arbitration

- *A group of similar Demands for Arbitration filed against or on behalf of the same party or related parties, where representation of all parties is consistent or coordinated across the cases.*
- *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333 2011 – permitted class action waivers in favor of individual arbitration for consumers.
- Consumer/Employment/Workplace threshold: 25 cases
- Non-consumer/employment/workplace threshold: 100 cases



Mass Arbitration

- Rules revised in 2024
- Two stages: Process Arbitrator followed by Merits Arbitrators.
- Process Arbitrator decides non-merits issues.
- Merits Arbitrators decide the merits of each case and render individual awards.

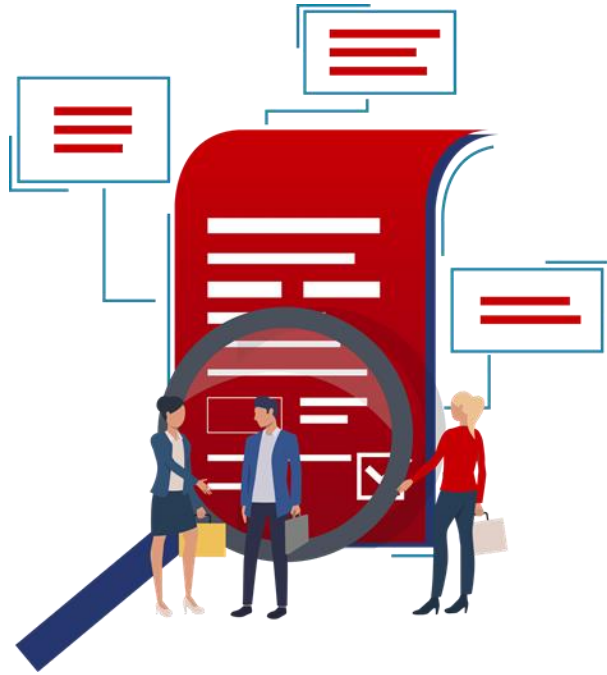


Types of claims

- Consumer
- Employment
- Commercial
- Construction
- International



02. Recent Changes to the Rules



Attestation

Demands and Answers must now include an affirmation similar to that required in the FRCP regarding the truthfulness of information provided therein.



Common procedural objections



- Filing requirements, disputes about application of the arbitration agreement.
- Contractual pre-conditions to filing
- Applicable rules
- Number of cases filed



The Process Arbitrator

Can decide non-merits issues (not limited to):

- Filing requirements
- Contractual pre-conditions to filing
- Payment of AAA fees and/or arbitrator's compensation
- Scope of the mass arbitration (which demands are included)
- Which AAA rules apply
- Any other non-merits issue
- Merits arbitrators are bound by Process Arbitrator Rulings unless the Merits Arbitrator finds that the PA abused their discretion.



03. Merits Arbitration

- Merits arbitrator selection
- Merits arbitrator authority



Merits Arbitrator – Selection



- Merits arbitrators are appointed after the answer deadline has passed and parties are ready to move forward.
- **Consumer** – List or appointment
- **Employment/Workplace** – List
- **Non-consumer / non-employment/ workplace** – List
- Merits Arbitrators may be asked to serve on multiple cases at a time. An individual Oath is required for each case.



Merits Arbitrator – Authority

- Has authority over all issues not decided by a Process Arbitrator, unless they find that the Process Arbitrator abused their discretion.
- Determines the merits of the case.
- Issues the final and binding Award.



Fees



- **New Initiation Fee** - flat administrative fee, not based on the number of cases. Credited to per case fees.
- **Additional Administrative fees** - now staged as cases move through administrative steps.
 - **Consumer** – Per Case Fee, Arbitrator Appointment Fee and Final Fee
 - **Employment/Workplace** – Per Case Fee, Arbitrator Selection Fee and Final Fee.
 - **Non-Consumer and Non-Employment/Workplace** – Per Case Fee, Final Fee.
- **Arbitration Compensation** – paid by the business in consumer and employment/workplace disputes. Split by the parties in non-consumer and non-employment/workplace cases.



04.

Efficiencies, Technologies, and Other Considerations

Efficiencies

- Mediation
- Merits Arbitrator selection
- Agreed-upon scheduling order
- Limited Service Neutral
- Format of hearings
- Number of cases per arbitrator
- Form of award
- Limitations on briefs and motions
- Alternative methods of presenting evidence



Innovative Technology



Experimentation with AI tools is underway!

- The American Arbitration Association offers API Services designed for parties involved in Mass Arbitrations and beyond.
- APIs offer parties the ability to simplify the case-filing process and expedite document exchange, with more on the way.
- Embracing APIs enables parties to significantly streamline and enhance the efficiency of their Mass Arbitration proceedings, resulting in both reduced time and cost.



Other Considerations

- Choice of law
- Contractual modifications to the rules
- Registration of consumer clauses







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