Mass Arbitration Reform Must Focus On Justice

By **Eduard Korsinsky** (May 2, 2025)

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In an era where corporate influence often overshadows consumer rights, Kennen Hagen opened his April 24 Law360 guest article with a premise that is both revealing and flawed: "The core issue is simple: When a company agrees to an arbitration clause, it typically assumes it will face a limited number of claims at any given time."

This assertion forms the bedrock of a proposed approach that could permit corporations to harm thousands, or even millions, of consumers while evading meaningful accountability. Such a vision could allow companies to stifle class actions through arbitration clauses, only to balk at the resulting flood of individual claims they themselves provoked.

Far from offering a real solution, the reforms proposed in Hagen's article — early case filtering, fee shifts and expedited processes — would fortify corporate impunity in the name of efficiency.

This narrative finds echoes in real-world examples, such as the criticized arbitration agreements some companies bind consumers to.

In Keller Heckman v. Live Nation Entertainment Inc., the U.S. Court of Appeals for the Ninth Circuit last year struck down Ticketmaster's amended arbitration agreement, which required customers to arbitrate their disputes with Ticketmaster through arbitration provider New Era ADR Inc., subject to mass arbitration procedures tilted toward the company.

The clause at issue in the case forced customers into confidential, three-at-a-time bellwether arbitrations with severely limited discovery, and gave the company a one-sided right to appeal if an arbitrator granted injunctive relief.

Similarly, in MacClelland v. Cellco Partnership, Verizon Communications Inc.'s arbitration agreement limited consumers to arbitrating 10 cases at time, so the arbitration cases brought by 2,685 customers could have taken as long as 156 years to resolve. In 2022, the U.S. Court of Appeals for the Tenth Circuit found this substantively unconscionable.

Corporate defendants have gone further. In Keller Postman v. Jenner & Block LLP, filed in California Superior Court last December, the plaintiff alleged that the defendant hired a former FBI agent to visit the homes of claimants who had withdrawn their arbitration demands in a mass arbitration against the streaming service Tubi, and that the agent employed harassing and deceptive tactics to extract privileged information.

Such moves underscore the lengths to which some corporations may go to suppress mass arbitration claims.

A License to Harm Without Consequence

Hagen's claim that companies anticipate only a "limited number of claims" glosses over the sheer scope of harm some companies inflict.

There are certain types of corporate wrongdoing that class actions were built to remedy efficiently — from deceptive practices, like Wells Fargo & Co.'s fake accounts scandal, to data breaches exposing millions of consumers' personal information, such as Equifax Inc.'s 2017 massive data breach affecting 147 million consumers.

But by embedding arbitration clauses in contracts, companies block this avenue, forcing consumers into individual arbitration. Hagen's logic suggests that as long as claims stay limited, corporations could harm vast numbers of consumers without facing collective consequences.

When consumers pivot to mass arbitration, companies balk at the costs they themselves invited by choosing this path over class actions. Consider Sega of America Inc. v. Judicial Arbitration and Mediation Services, filed in Los Angeles County Superior Court on Jan. 27, where Sega faced nearly 20,000 claims, culminating in a staggering $39 million invoice from arbitration provider JAMS Inc.

Sega alleged that 8% of these claims were fraudulent. Yet even if that is true, the remaining 92% — over 18,000 claims — suggest the possibility of widespread consumer harm.

Given Sega's global customer base in the hundreds of millions, these 20,000 claims represent a mere sliver of the company's potential exposure in a class action, exposing the hollowness of its cost grievances.

Similarly, in Janie & Jack LLC v. Abbasi, filed on Feb. 24 in the U.S. District Court for the Northern District of California, over 2,000 claims triggered a $3.5 million American Arbitration Association fee dispute.

For a retailer boasting more than 110 stores and hundreds of millions of dollars in annual revenue, this sum pales in comparison to the liability a class action could impose. These cases reveal mass arbitration as a tool not just to compel accountability, but to illuminate the breadth of consumer grievances — precisely what Hagen's reforms would suppress.

Arbitration as a Corporate-Controlled Mirage

Arbitration as practiced by some companies is a mere facsimile of class actions, stripped of consumer safeguards. In Heckman v. Live Nation, Ticketmaster and New Era ADR deployed three bellwether cases to bind thousands, denying nonbellwether claimants access to records, limiting discovery and barring appeals — a process that heavily favored the company.

The Ninth Circuit's opinion in Heckman, issued last October, specifically criticized New Era ADR for prefiling dismissals and corporate-friendly rules that undermine fairness. It noted a "remarkable degree of coordination" between New Era and the defendants.

The court also distinguished New Era from established neutrals like AAA and JAMS. While the latter have operated for decades under relatively transparent rules, New Era was founded in 2020, and its arbitration procedures are more secretive.

The End Result: Corporate Impunity

Hagen's proposed reforms wouldn't mend arbitration — they would entrench corporate dominance. Early filtering and fee shifts would block claims before they were heard, shielding companies that harm millions and leaving consumers without recourse.

The result would be a system where corporations could injure thousands — or even millions — and escape accountabilty. This is the logical consequence of Hagen's vision: arbitration as a tool for claim avoidance, not claim resolution.

A Balanced Path Forward

Mass arbitration has its flaws. Fraudulent claims, if proven, warrant dismissal or sanctions. Yet Hagen's reforms would overcorrect, threatening to bury legitimate grievances in the name of streamlining.

A better approach would bolster arbitration's integrity without sacrificing consumer rights.

Transparent Fee Structures

Providers like JAMS and AAA could cap upfront fees for mass filings, and adopt a sliding scale based on case complexity or party resources. This would balance corporate cost concerns with claimants' access to justice.

Streamlined Verification

Artifical intelligence-powered tools could swiftly identify duplicate or suspicious claims. This approach would preserve efficiency, without imposing onerous barriers on legitimate filers.

Neutral Oversight

Independent panels of arbitrators and legal experts could review mass filings, applying claimant-friendly criteria to ensure meritorious cases advance.

Corporate Accountability

Penalties for overly restrictive arbitration clauses, paired with judicial oversight, would deter manipulative corporate tactics.

Prevent Strategic Class Settlements

Barring companies from pivoting to class settlements mid-arbitration would prevent attempts to undercut claimants' leverage when mass arbitration tilts in their favor. These measures would tackle inefficiencies while safeguarding consumers' ability to seek collective redress. Arbitration should serve as a fair alternative, not a corporate bulwark.

Conclusion

The narrative that companies should face only limited claims, no matter how many people they harm, isn't reform — it's a road map to impunity.

Courts and consumers must dismantle this narrative, and ensure that arbitration delivers justice, not just cost savings for the powerful.

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