CENTER FOR JUSTICE & DEMOCRACY

CJ&D

WHITE PAPER

Number 13 ❖ August 2005

Center for Justice & Democracy
80 Broad Street, Suite 1600
New York, NY 10004
Ph: 212.267.2801
Fx: 212.764.4298
centerjd@centerjd.org
web: centerjd.org

"Fighting to protect the right to jury trial and an independent judiciary for all Americans."

Mandatory Binding Arbitration: Civil Injustice By Corporate America

By Amanda Perwin

Americans have a constitutional right to a trial by jury.[1] However, for the last three decades, the country has experienced a major campaign by the insurance industry, large corporations and political conservatives to take power and authority away from civil juries and diminish the public's right to civil jury trial, so –called "tort reform." While these special interests have met with mixed success meeting their goals through legislation, mandatory binding arbitration offers corporate groups the ability to accomplish exactly the same thing — abolishing jury trials and eliminating the American public's right to sue and hold accountable corporations and others who cause injuries.

Many standard purchase agreements, employment contracts, or even medical insurance agreements now include mandatory binding arbitration clauses, which force unwitting consumers, employees, or patients to forfeit their day in court and with that, many of our only remaining weapons to combat corporate or professional malfeasance are lost.

What is Mandatory Binding Arbitration?

Mandatory binding arbitration is a process by which parties to a contract agree, or at least appear to agree, to submit any dispute to a third party arbitrator, instead of to the courts. Arbitrators are not required to have any legal training. They may be biased, or even under contract with an insurance company, bank or other company. The discovery process, whereby parties obtain information from one another, is extremely limited. Without discovery in arbitration, consumers or employees can have difficulty obtaining access to important documents.

Rules of evidence also do not apply. Arbitrators are not necessarily required to follow the law and they issue no written legal opinions, so no legal precedent or rules for future conduct can be established. Yet their decisions are still enforceable with the full weight of the law even though they may be legally incorrect. And arbitration proceedings are secretive.

Costs must generally be split between the injured victim and the insurance company, including arbitrator's fees which can range between $200 and thousands of dollars per hour. And there is no right to appeal.

Arbitration clauses themselves are usually standard agreements drafted by large corporations and buried within consumer, patient, or employee contracts.[2] Predictably, most arbitration clauses go unread by the consumers they bind. Corporations have control over which arbitrator to use, where the arbitration will take place, and who will pay the costs.[3] When corporations use the same arbitrators again and again, enormous potential for abuse arises, as it does in many areas of arbitration.[4] Although arbitration today is highly regulated, it is not subject to the same oversight, or even the same laws, as the state and federal court system and may even preempt state consumer protection statutes.[5]

Prevalence and Scope of Mandatory Binding Arbitration

Arbitration has become more and more prevalent since1925, when Congress enacted the Federal Arbitration Act (FAA), 9. U.S.C. § 1 et. seq. The Act required judicial enforcement of arbitration clauses pertaining to maritime transactions or transactions involving commerce.[6] Exempt from the Act's reach were "contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce."[7] Beginning in 1991, however, the Supreme Court began to expand the scope of the FAA, when it held that employees with claims under the Age Discrimination in Employment Act (ADEA) could be forced to arbitrate. The decision was based upon an interpretation of the ADEA, and it opened the door to the resolution of statutory claims, rather than just contract disputes, by arbitration.[8]

Then in 2001, the Court expanded to an even greater extent the scope of the FAA in employment contracts in a widely criticized decision. In *Circuit City*, the Supreme Court held that the FAA excluded only those workers engaged in transportation employment.[9] Most employers were subsequently free to insist upon arbitration in the contracts they offered to their employees, leaving employees little choice but to sign or risk losing their jobs. In 2002, the Supreme Court rightly held that the EEOC was free to bring a separate lawsuit for injunctive or monetary relief on behalf of an employee; but even this was a "hollow victory" for aggrieved employees, given how few suits are actually filed by the EEOC.[10]

In addition to the curtailing the rights of employees, mandatory arbitration is widespread – and sometimes widely abused -- in consumer agreements and even in medical insurance agreements. Although courts frequently strike down arbitration clauses as unconscionable adhesion contracts (i.e., grossly unfair),[11] many equally unfair agreements survive judicial scrutiny. In the absence of congressional regulation or judicial consistency on the issue of enforceability, corporations and employers can use arbitration to circumvent the judicial system and many consumer or employee protection statutes. Ironically, most companies, doctors, and insurance providers strongly resist being forced into arbitration themselves, even while they insist that employees and customers fare no worse in arbitration than they do in court.

Admittedly, voluntary arbitration can be both fair and effective. For example, when arbitration is selected as the dispute resolution mechanism in collective bargaining agreements under the National Labor Relations Act, the terms of the agreements are cautiously chosen by both sides (employer and employees) to ensure fairness.[12] It is when unwitting consumers, employees, or patients unknowingly enter into contracts containing one-sided or even abusive arbitration clauses, that the need for further oversight arises.

Unfair Aspects Of Arbitration On Consumers, Employees, And Patients

There are a number of seemingly neutral provisions, (surreptitiously inserted into arbitration agreements), which have detrimental effects on the ability of the average individual to obtain justice. For example, some arbitration agreements do not allow either party to obtain legal representation. While this may seem to affect both parties equally, a corporate defendant, unlike an employee or consumer, has access to its in-house counsel and may seek legal advice prior to the date of arbitration.[13]

Discovery limitations on both parties in arbitration may harm consumers or employees who bear the burden of proof at arbitration. Often, an employee will need documents controlled by her employer; without discovery rules, an employer may withhold the relevant files.[14] Court rules of evidence and procedure, which tend to neutralize imbalances between the parties in court, do not apply in arbitration proceedings.

Finally, whereas victims who go to court typically pay little or nothing up front, with lawyers working on contingency (paid only if they win), arbitration costs must generally be split between the injured victim and the insurance company, including the arbitrator's fees which can range between $200 and thousands of dollars per hour. These costs must be paid up front by the victim, who also may have to travel long distances to get to the proceedings.[15] These costs can be prohibitively expensive for an injured victim who has suffered financial loss, particularly in personal injury cases. Victims who are in need of medical care, who are disabled or perhaps in pain, who can not work, whose family lives are disrupted and who may have major expenses, are in a substantially weaker position than their opposing party in arbitration.

When Arbitration is Secret, Employees and Consumers Suffer

Arbitration proceedings are non-public and are intentionally kept secret both from the press and for purposes of appeal. When attorneys Mary Stowell and Linda Friedman began to work on a sexual harassment and discrimination suit against Solomon Smith Barney in the late 1990's, they found that employees were forced to submit to secret mandatory arbitration. This meant that the allegations would be heard only by the National Association of Securities Dealers, an organization whose members are mostly men. In addition, the proceedings would never be made public, a huge deterrent for large employers facing this type of suit.[16]

Fortunately, Ms. Stowell and Ms. Friedman found a loophole – class actions were not subject to arbitration according to the terms of the agreement, and nearly 2,000 women joined the class. In 1998, the case settled after the Stowell and Friedman found a Solomon database of sexual harassment claims and wage disparities during *court-ordered discovery.* Without the right to their day in court, many of these women would never have known about the suit. Without discovery, the attorneys certainly would never have come across the database that ultimately led to a settlement agreement. Since this and other similar lawsuits, large financial corporations have at least attempted to clean up their acts.[17]

Secrecy in arbitration is disturbing even to professional arbitrators, specifically where the agreement is between a consumer and a large corporation. Arbitrator Celeste Hammond revealed on ABC World News tonight that she had once had a case in which the accused lender had been accused many times of the same abuse, a fact she learned about only by chance but which would remain secret in most arbitrations. [18]

Mandatory binding arbitration remains hidden not only from the public, but also from any higher review such as an appeal. Retired judge Robert Thomas, now an arbitrator, admitted that in some cases, he wished "somebody could have taken another look at it. Because it's a big responsibility, deciding these cases."[19] The fact that nobody, not even another arbitrator, is privy to prior arbitration proceedings leaves room for abuse and substantial injustice.

Credit Card Companies Use Arbitration to Force Consumers Rapidly into Default

Some arbitration proceedings are so secret, even the consumer herself is unaware of them. Beth Plowman, an international health advisor from Damascus, was in the United States when she learned that an identity thief had used her credit card to buy sporting goods all over Europe. She called the collection agency to get the charges dismissed but did not realize she also had to show up for an arbitration hearing. Without even being there, she lost at arbitration and was held liable for $27,240. She had to hire a lawyer to persuade the collection agency to stop pursuing her for the debt.[20]

Unfortunately, Ms. Plowman is not the only consumer to be victimized by her credit card company. At least two major card companies have begun to fast-track debt disputes into mandatory arbitration, often with little notice to the consumer. Consumers who fail to respond quickly or adequately are forced into default – including the many victims of identity theft who should not be liable for their debt. The result? Hefty profits for the credit card companies and arbitrators at the expense of consumers who have no way of knowing about the scheme.[21]

Leslie Bailey, of Trial Lawyers for Public Justice, says of the scam: "These are smart people who find themselves in situations where they feel blind-sided…. [The process] moves really quickly, without giving consumers a chance to have a proverbial horse in the race."[22] The credit card companies, MBNA and First U.S.A. Bank, exclusively hired the National Arbitration Forum (NAF) to arbitrate these fast-tracked disputes, and their profit-boosting plan worked. According to data produced in one lawsuit by NAF itself, the consumer prevailed in only 87 out of 19,705 arbitrations; in other words, in this example, First U.S.A. Bank prevailed 99.56 percent of the time.[23]

Abusive Lending Practices and Arbitration

Sub-prime mortgage loans are loans given to lower income, often desperate borrowers at higher, sometimes astronomical rates and with harsher terms than regular mortgage loans.[24] The practice is easily abused, and unscrupulous lenders protect themselves in part by inserting mandatory arbitration clauses into the loan agreements.[25]

In May 2005, Stella Adams, Board Member of the National Community Reinvestment Coalition (NCRC) and Executive Director of the North Carolina Fair Housing Center, testified before the House Subcommittee on Financial Institutions and Consumer Credit that while state measures have eliminated some abusive sub-prime lending practices, the problem remains widespread and hungry for a national solution.[26] Predatory sub-prime lending has particularly impacted minorities and low-income communities.[27] Studies have even shown that some black borrowers have been quoted higher interest rates than white borrowers for the same loans.[28] Among the solutions recommended by NCRC is the elimination of mandatory arbitration clauses in loan agreements.[29]

Some – but certainly not all – mortgage lenders have eliminated these arbitration clauses in sub-prime loan agreements. Freddie Mac and Fannie Mae, the nation's largest sources of home mortgage loans, have each banned the practice. Fannie Mae admitted that the inclusion of arbitration agreements could be "used in an abusive fashion".[30] Although the ban is a step in the right direction for consumers, it will still not entirely preclude the use of mandatory arbitration clauses in sub-prime loans.[31]

Recently, Countrywide Financial Corp, one of the mortgage industry's most vocal supporters of mandatory arbitration, removed the clauses from all of its sub-prime and jumbo loans, citing pressure from the Fannie Mae and Freddie Mac decisions. Many other large sub-prime mortgage firms, such as Option One Mortgage Corp, New Century Financial Corp., Ameriquest Mortgage Co., and First Franklin Financial Corp. have either abandoned mandatory arbitration clauses or never used them in the first place.[32]

Sub-prime lenders are not the only ones who have been caught engaging in predatory loan practices. "Payday loans" are a device by which so-called "salary-lenders" offer small loans at exorbitant interest rates — one company charged between 438 and 939 percent annually — to low income, desperate customers who live paycheck to paycheck. To avoid state consumer protection laws and obtain federal jurisdiction, these lenders partner with obscure national banks in states other than their own. Of course, all "payday" consumers sign mandatory arbitration agreements in which they give up the right to participate in a class action suit, among other things.[33]

Recently, a payday loan arbitration clause was challenged in a Georgia federal court. The 11th Circuit held on appeal that the clause was enforceable and that class actions could be precluded. A typical, low-income payday customer is unlikely to be able to find legal representation in his or her individual capacity and may be left without a remedy. Without class actions to stop them, payday lenders may be able to avoid litigation altogether.[34]

In the fall of 2005, the U.S. Supreme Court will decide the issue of whether payday arbitration clauses are unconscionable or whether payday lenders may continue to force consumers into arbitration to resolve issues such as the availability of class action or even the illegality of the loan itself.[35] The high court will review a decision by the Florida Supreme Court, which sided with a payday plaintiff in voiding an arbitration clause and allowing the claim to proceed in state court. If the U.S. Supreme Court's prior decisions on arbitration are any indication, however, it seems likely that the lenders will prevail in the fall. As Law Professor Jean Sternlight noted, "The mere fact that they took this case means they aren't that comfortable with the Florida decision."[36]

Overriding Consumer Protection Statutes That Prohibit Arbitration Clauses

Although many state consumer protection laws specifically forbid consumers from waiving their right to a jury trial, some courts have declared these no-waiver provisions invalid under the theory that the FAA was meant to encourage arbitration and thus preempts the state statutes. In 1984, a federal court in Texas declared void a no-waiver provision in the Deceptive Trade Practices – Consumer Protection Act (DTPA).[37] In other words, the DTPA forbid consumers from waiving their rights to a jury trial as part of its general protection of consumers, but this Texas court struck down that provision of the statute, citing the FAA and a so-called national policy in favor of arbitration.

Construction contractors, corporate shareholders, and many employees have also fallen victim to preemption by the FAA even though the relevant state statutes specifically forbid arbitration.[38] Companies lucky enough to be challenged in sympathetic jurisdictions like these can use arbitration to avoid consumer protection statutes altogether.

Arbitration Clauses May Prohibit Class Action Suits

In 2003, the U.S. Supreme Court held that whether or not an arbitration clause allows for class action suits is a matter for the arbitrator to decide according to the terms of the contract.[39] By implication then, arbitration clauses forbidding class suits are permitted, as most federal courts and some state courts had already held.[40] Companies drafting arbitration agreements have increasingly begun to explicitly prohibit class action suits, on the theory that the FAA requires arbitration clauses to be interpreted as are any other contracts.[41]

In reality, a class action suit is often the only practical way a claimant has of bringing his case to court — a fact that has surely not escaped corporate agreement drafters but which is hardly obvious to the average consumer.[42] Nor are companies affected by the ban because it is unlikely that a company would ever attempt to file a class action suit. In fact, the 9th Circuit held in 2003 that class action bans in arbitration clauses are substantively unconscionable because they are so one-sided.[43] Even arbitration supporter Joshua S. Lipshutz admitted in his Stanford Law Review Article on class actions in arbitration, that the voluntary nature of arbitration clauses generally is a "legal fiction" that courts have accepted.[44]

Rather than enforce unfair class prohibitions in arbitration agreements, which have hardly been voluntarily consented to, courts should be striking them down as unconscionable, along with any other obviously unfair provision. Without the intervention of the courts, companies can get away with tremendous abuse just by inserting an extra provision into their standard arbitration clauses.

Arbitration and Medical Malpractice

Mandatory arbitration for medical malpractice claims is extremely unpopular — and some programs have been challenged successfully by patients. For example, in early 2004, Intermountain Health Care reversed a policy of turning away patients who refused to sign mandatory arbitration agreements after a very public battle with patients' advocacy groups in Utah.[45] In 2003, the American Arbitration Association, the largest non-profit dispute resolution company in the country, declared a new policy of refusing to administrate cases involving individual patients without a post-dispute agreement to arbitrate.[46]

A 1998 report released jointly by the American Medical Association, the American Bar Association and the American Arbitration Association, which studied such agreements, entitled *Health Care Due Process Protocol,* found that any alternative resolution process (ADR), like arbitration, must abide by due process considerations and must be fundamentally fair. Specifically, they found:

> The agreement to use ADR should be knowing and voluntary. Consent to use an ADR process *should not be a requirement for receiving emergency care or treatment.* In disputes involving patients, binding forms of dispute resolution *should be used only where the parties agree to do so after a dispute arises.* (emphasis added).

Yet mandatory medical arbitration, has not been entirely eliminated. In February 2005, a California Court of Appeal upheld the clauses in health insurance agreements between employers and employees so long as they are properly disclosed.[47] Similarly, a Guam Superior Court judge recently upheld a mandatory arbitration law for medical malpractice claims before the case can proceed to court.[48] In that case, the patient's attorney described the arbitration requirement as "prohibitively expensive" and "a lot more expensive than going to court," especially because the Guam plan requires a three-person panel rather than a single arbitrator.[49]

Kaiser Permanente is a particularly notorious medical insurance provider whose behavior has infuriated consumers for nearly a decade. In 1997, the California Supreme Court ruled that Kaiser Permanente could be sued for fraud after having been found to have abused the mandatory arbitration system. Kaiser waited so long to consider an insured's medical malpractice claim, the patient died.[50] In other words, because Kaiser could control the timing of the arbitration proceedings in a way they could never control regular litigation, abusive practices emerged and patients suffered.

Shortly after the 1997 suit, Kaiser Permanente abandoned its mandatory arbitration system and replaced it with a new one it promised would be neutral.[51] Never, however, did Kaiser consider making the program voluntary,[52] and while the new mandatory program has made improvements, Kaiser's behavior is hardly admired by patients, who are still forced to give up the right to sue in court.[53]

In 2004, for example, Chant Yedalian, the son of a Kaiser patient who died after Kaiser denied her a bone marrow transplant, joined the fight to demand that Kaiser take back a $100,000 donation it gave to a California ballot initiative aiming to limit the state's Unfair Business Competition Law.[54] Yedalian says Kaiser routinely hid mandatory arbitration clauses from patients, and that he used the Unfair Business Competition Law to go to court vindicate his mother's death.[55]

The proposed changes to the Unfair Business Competition Law would prohibit groups or other individuals from bring suit to prevent injury to third parties – including harm caused when arbitration clauses are hidden. Says Yedalian, "Kaiser should take its money back and not support this anti-patient initiative, which will allow Kaiser and other HMOs to lie to Californians with impunity."[56]

Although large corporations generally favor arbitration, most companies and executives go to great lengths to avoid being hauled into arbitration themselves. And when arbitration doesn't go their way, they are the first ones to run to court. For example:

- When Orkin Extermination Co. lost at a class action arbitration proceeding, they immediately filed a Petition to Vacate Arbitration Award in a U.S. district court. Orkin disagreed with the arbitrator's interpretation of the arbitration clause, and attempted to convince the court that allowing class actions in arbitration would violate due process, and would be contrary public policy, and to the very objectives of mediation.[57] This is only one of many challenges to arbitration awards filed by Orkin in recent years.[58]

- When EMC Mortgage Corp. was ordered by an arbitrator to pay $6 million in punitive damages for having subjected a family to "outrageous" debt collection practices, EMC ran to federal court. The 8th Circuit upheld the award, saying that EMC had insisted on arbitration and had ended up with "exactly what it bargained for."[59]

- A corporate lawyer in Texas wrote an article containing advice for executives laid off after mergers, buyouts, reductions in work force, or bankruptcies: "Execs should determine whether they are subject to a mandatory arbitration agreement if they pursue a wrongful discharge claim against their employers. If they have the ability to sue their employers, they generally will have greater leverage, especially with a prominent employment attorney who puts a company on notice that he will file a suit if the parties cannot negotiate a reasonable severance package."[60]

Conclusion

Most states have a strong state constitutional right to trial by jury in civil cases. But mandatory binding arbitration clauses force employees, consumers and patients to sign away this legal right, and with it, the ability to hold wrongdoers accountable in court.

The startling lack of adequate regulation around the use of mandatory binding arbitration for employees, consumers and patients has led to abusive, unfair results. A predatory lender is never exposed if each time he is dragged into arbitration, the results go unpublished. Consumers injured by negligent corporations could go entirely uncompensated if they are forbidden from bringing class action suits. Medical insurance providers may delay malpractice arbitration proceedings at their leisure – sometimes, until a patient dies. Some of these companies get caught; others don't. Without more intense oversight and regulation, mandatory binding arbitration threatens some of the most important consumer safety mechanisms the nation has worked so hard to develop.

Notes

[1] Seventh Amendment, U.S. Constitution
[2] Standard contracts like these are generally known as contracts of adhesion. The terms of these contracts are never negotiated and are generally not even read by the individuals forced to sign them or else do without the good or service.
[3] Martha Neil, "Litigation over Arbitration: Courts Differ on Enforceability of Mandatory Clauses," *ABA Journal* (January 2005).
[4] *Id.*
[5] 108 A.L.R. Fed 179.
[6] Chad Egan Burton, "*EEOC v. Waffle House*: employers win, again: the U.S. Supreme Court handed employees who sign mandatory arbitration agreements a hollow victory because the EEOC brings so few cases in court," *Defense Council Journal*, January 1, 2004. Page 2.
[7] *Id.*
[8] *Id.*
[9] *Id.*
[10] *Id.*
[11] If a contract is grossly unfair to one party, courts may strike it down as unconscionable. Arbitration agreements, or certain of their terms, are sometimes struck down if the claimant was not properly informed of the clause, if the terms are seen by the judge as too one-sided, or if the agreement generally compromises the rights of one of the parties, usually the consumer.
[12] "Collective Bargaining and Labor Arbitration: An Overview," Legal Information Institute of Cornell University, available at http://www.law.cornell.edu/topics/collective_bargaining.html
[13] *Id.*
[14] *Id.*
[15] Martha Neil, "Litigation over Arbitration: Courts differ on enforceability of Mandatory Clauses," *ABA Journal*, January 2005. Page 4.
[16] "Mary Stowell, Linda Friedman; Co-founders, Stowell & Freidman Ltd," *Crain's Chicago Business*, March 29, 2004.
[17] *Id.*
[18] Betsy Stark, "A Closer Look Fine Print: Arbitration," *ABC World News Tonight with Peter Jennings*, Feb 25, 2005.
[19] *Id.*
[20] Caroline E. Mayer, "Arbitration Left ID Theft Victim with $27.240 Bill," *Washington Post,* Feb. 24 2005.
[21] Media Link Worldwide Inc., "New Trap Door for Consumers: Credit Issuers Rubber-Stamp Arbitration to Rush Debts into Default Judgments, Says NCLC," Feb. 17, 2005.
[22] *Id.*
[23] *Id.*
[24] Kenneth Harney, "Fannie Goes to Bat for Buyers," *Baltimore Sun*, October 10, 2004.
[25] *Id.*
[26] Testimony of Stella Adams, "Solving the Problem of Abusive Mortgage Lending," Committee on House Financial Services Subcommittee on Housing and Community Opportunity Subcommittee on Financial Institutions and Consumer Credit, May 24, 2005.
[27] *Id.*
[28] *Id.*
[29] *Id.*
[30] Kenneth Harney, "Fannie Goes to Bat for Buyers," *Baltimore Sun*, October 10, 2004.

[31] Neil, *supra*, note 1 at 5.
[32] Erick Bergquist, "Countrywide Eliminates Arbitration Clauses; Countrywide Financial Corp.," *American Banker*, March 4, 2005.
[33] Joseph Garrison, "Mafia Should Have Used Binding Waivers," *Connecticut Law Tribune*, " March 28, 2005.
[34] *Id.*
[35] Molly Selvin, "High Court Takes Case on Right to Sue," *Los Angeles Times*, June 25, 2005.
[36] *Id.*
[37] *Commerce Park at DFW Freeport v Mardian Constr. Co.* 729 F.2d 334 (Tex. 1984).
[38] William G. Phelps, J.D., Pre-Emption By Federal Arbitration Act (9 U.S.C.A. §§ 1 et seq.) of State Laws Prohibiting Or Restricting Formation Or Enforcement Of Arbitration Agreements, 108 A.L.R. Fed. 179 (Westlaw 2005).
[39] *Greentree Financial Corp. v. Bazzle*, 539 U.S 444 (2003).
[40] *See* Joshua S. Lipshutz, "The Court's Implicit Roadmap; Charting the Prudent Course at the Juncture of Mandatory Arbitration Agreements and Class Action Lawsuits; The Civil Trial: Adaption and Alternatives," *Stanford Law Review*, April 1, 2005. Page 6. *See also* John P. Furfaro and Maury B. Josephson, "Labor Relations: Class-Action Arbitration in Flux," *New York Law Journal*, April 1, 2005.
[41] *Id.* at 5.
[42] *Id.* at 6.
[43] Furfaro and Josephson at 2.
[44] Lipshutz at 11.
[45] Carey Hamilton, "ICH Backs Down on Arbitration; Health Care Network Agrees to Support Senate Bill Scrapping Mandatory Policy; IHC Backs Bill Against Forced Arbitration," *Salt Lake Tribune*, Feb. 7, 2004.
[46] Health Care Policy Statement of the American Arbitration Administration, available at http://www.adr.org/HealthCare
[47] "Mandatory Arbitration Clauses in healthcare Plans are Constitutional; Viola v. Dep't of Managed Health Care, No. B174455 (Cal. Ct. App. Feb. 1, 2005) – Dex 93438," *Health Law Week*, February 18, 2005.
[48] Steve Limtiaco, "Arbitration Mandated," *Pacific Daily News*, January 11, 2005.
[49] *Id.*
[50] Lisa Perrochet, "Impact is Uncertain, Mandatory Arbitration Dealt a Blow, but Not a Fatal One," *Medical Malpractice Law and Strategy*, July 1997.
[51] Reynolds Holding, "Arbitration Can Be Less Neutral Than You'd Think," *San Francisco Chronicle*, Nov. 29, 1998.
[52] *Id.*
[53] "Son of Kaiser Casualty Who Went to Law School to Vindicate Mother's Death Denounces Funding for Ballot Measure to Gut Accountability," *Newswire*, March 9, 2004.
[54] *Id.*
[55] *Id.*
[56] *Id.*
[57] Joel S. Perwin, Esq., "Defendant's Response to Plaintiff's Application to Vacate Arbitration Award," Case No. 6-05-CIV-671-PCF-KRS (M.D. Fla.) 2005.
[58] See, e.g., *Orkin v. Collier Black*, "Brief of Appellant Collier Black," by Joel S. Perwin, Esq.. Feb. 2005;
[59] Brian Collins, "Court Backs Arbitrator," *American Banker-Bond Buyer*, October 2004.
[60] Rogge Dunn, "The Mother of All Negotiations: Execs Must Have Their Severance Game Plans in Place," *Texas Lawyer*, July 26, 2004.