



**Testimony of Laura MacCleery  
Director, Public Citizen's Congress Watch division  
before the  
House of Representatives Committee on the Judiciary,  
Subcommittee on Commercial and Administrative Law**

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*"I had no idea such a system existed...I had an immediate flashback to the Soviet Union. I thought: this is impossible. I was so proud to become a citizen of this country. It was the happiest day of my life because I knew that individuals have a voice here and this is the country that is run by law."*

– Anastasiya Komarova, victim of mistaken identity pursued for the debt of another person following a National Arbitration Forum (NAF) award<sup>1</sup>

Madam Chairwoman, Congressman Cannon, honorable members of the committee, good afternoon and thank you very much for the opportunity to provide this testimony. My name is Laura MacCleery and I am the Director of Public Citizen's Congress Watch division. Public Citizen has more than 150,000 members and activists nationally. For more than 36 years, the organization has represented consumer interests in Congress, the courts and before executive branch agencies.

We oppose the use of pre-dispute, binding mandatory arbitration for three main reasons. First, it is imposed on consumers and is mandatory rather than voluntary. Second, proceedings and decisions are shrouded in secrecy. And third, it utterly lacks due process and impartiality. For example, there are only very limited grounds for appeal of a decision. Under current case law, decisions which are, in the words of the courts, "silly," "wacky" or contrary to law are routinely allowed to stand.<sup>2</sup> Moreover, binding mandatory arbitration is poisoned by the fact that arbitrators and their firms have a direct financial stake in business-friendly outcomes.

The framers of our Constitution sought to create the public courts, and to enshrine due process in our laws because they understood that secrecy is anathema to democracy and that unfettered power of any kind will become abuse. Binding mandatory arbitration, or BMA, in contrast, disregards fundamental notions of fairness. It is wrong by design.

BMA is imposed on consumers in millions of take-it-or-leave contracts of adhesion for routine matters such as cell phones, employment, cable services, auto loans or credit cards, often without signers' full or even partial understanding of the consequences. The system

lacks basic mechanisms for transparency and accountability and threatens hundreds of hard-won state and federal consumer protection statutes with legal irrelevance.

Once trapped inside this system, each motion or hearing costs the parties more. In one case, an NAF arbitrator's three-page explanation of his decision cost \$1,500. The financial incentives mean that "repeat players" in arbitration, such as large corporations, have a structural advantage over individuals. Given its myriad other oppressive features, it is clear that BMA is designed to produce a stacked deck and to dissuade individuals from pursuing their legal rights.

Even without knowing of its disparate impact on consumers, someone merely appraising BMA in the cold and honest light of first principles would be very hard-pressed to defend this system. To sidestep such questions, its outcomes are pushed as its major selling point. Supporters allege that BMA is more efficient and cost-effective than the courts; the facts do not support these claims.

We recently concluded an eight-month investigation of 34,000 cases of binding mandatory arbitration used by credit card companies and firms that buy credit card debts.<sup>3</sup> Only one state in the country – California – requires any public disclosure whatsoever of arbitration decisions. We used the data from reports made public under California law by the National Arbitration Forum, or NAF.

In the approximately 19,000 cases in which an arbitrator was appointed, we found that:

- Consumers lost a shocking 94 percent of the time and prevailed only 4 percent;
- 90 percent of the cases were handled by a small cadre of 28 arbitrators; and
- the busiest arbitrators process as many as 68 cases in a single day, or one case every seven minutes in a typical workday.

Other findings are in our report, a copy of which I am submitting with my testimony for the record.

We also found that arbitrators decided more than 83 percent of the cases based entirely on documents supplied by companies making the claims, without a hearing or any consumer involvement. In this large subset of cases, arbitrators ruled in favor of business a stunning 99.99 percent of the time and for consumers only twice out of more than 16,000 cases. Our research shows that consumers often either do not receive notice of arbitration or do not understand these letters when they do receive them.

Ronald Kahn, an NAF California arbitrator who has decided 820 cases, recently discussed his work in a California publication.<sup>4</sup> Mr. Kahn's comments confirm that NAF arbitrators routinely rubber-stamp company requests in violation of NAF's own procedural rules.

“Because they're defaults,” Kahn said, “the power of the arbitrator is such that you have no choice as long as the parties have been informed. There's no one there to argue due process.” Kahn’s decisions show the lopsided record these comments suggest: he decided 96.6 percent of cases in favor of business and only 1.7 percent of the time for consumers.

Yet NAF procedural rule 36(B) provides that if a party does not respond to a claim, the arbitrator “will timely review the merits of the Claim for purposes of issuing an Award or Order.” And NAF’s rule 36(E) provides that “[n]o Award or Order shall be issued against a Party solely because that Party failed to respond, appear, or defend.”<sup>5</sup>

So a consumer’s failure to respond should *not* mean that NAF arbitrators would award a bank or other claimant every penny of the amount requested without further review of the merits of a claim. But several consumers interviewed for our report told us that arbitrators confirmed awards where there was *no evidence* that an account even existed beyond the credit card company’s bald assertions.

Identity theft victims profiled in our report all suffered from this kind of appalling indifference to the need for evidence to support credit card companies’ claims. Yet it took time and thousands of dollars for each to attempt to clear their good names. Some are still burdened by the devastation wreaked on their credit ratings.

Curiously, many consumers also told us that they failed to get any notice of the arbitration proceeding until it was too late to appeal the award against them, suggesting that corporations winning arbitration awards wait until the appeal deadline has run out before seeking to enforce the judgment in court. And under the tragic state of prevailing law, even those few who do meet the deadline for appeal cannot appeal on the merits of the case.

NAF’s arbitrator Kahn admitted in the same article that most of his cases – “probably 95 percent” – take only a few minutes. These admissions show that NAF arbitrators’ handling of so-called “default judgments” is sketchy at best. Several recent decisions by New York state judges threw out NAF arbitration awards despite the failure of consumers to appear to contest the claims.<sup>6</sup> After close scrutiny of the meager documents submitted to support the claims, one judge noted that evidence presented in such cases is often riddled with “fatal procedural and substantive defects.”<sup>7</sup>

Of the nearly 34,000 consumer arbitrations NAF identified in California, 99.9 percent were “collections” cases, and more than half involved the cardholders of a single company – MBNA (now a subsidiary of Bank of America). If arbitration firms are acting as part of a debt collections mill, they are, in effect, circumventing regulations that protect consumers under the Fair Debt Collection Practices Act and other statutes.<sup>8</sup> While default rates for collections cases in small claims court may be high, in any court there are far more assurances of due process (including notice to consumers through service of process) than in binding mandatory arbitration.

Indeed, it is an open question whether arbitrators are making awards on the basis of records far too spotty or poorly maintained to support the same claim in court. BMA may be,

in part, an elaborate shell game set up to hide the fact that companies are seeking to collect on debts that have long since run past their expiration date or are otherwise uncollectible under prevailing law. Congress should investigate whether arbitrators are being used as a scrim to conceal these legally dubious practices.

All indications are that the traps for consumers we uncovered in California are typical of the arbitration industry as a whole. The incentives are certainly a constant across all jurisdictions. And another large dataset of nearly 20,000 NAF arbitrations that came to light in an Alabama court case and was described in our report shows an overall decision rate against consumers of 99.6 percent.<sup>9</sup> There are reports, one confirmed by a sworn deposition, that even highly qualified arbitrators such as Harvard Law professor Elizabeth Batholet, who decide cases in favor of consumers, get blackballed by the arbitration companies.<sup>10</sup>

Consumers should be able to use the public disclosures of arbitration firms that operate in California, as lawmakers in that state intended. Yet all of the firms post information to their Web sites in a manner intended to defeat understanding and analysis. To process NAF's records, which were posted one page per case, we converted the files into a searchable, sortable spreadsheet, which is now on our Web site for all to use.<sup>11</sup>

The American Arbitration Association, or AAA, has managed to render its California reports completely impenetrable to analysis by failing in many cases to complete them. Although the reports name the non-consumer party to the arbitration, they fail to say which party filed the case. The column labeled "prevailing party" is left blank in most cases. While the amount of the award is listed, it is not clear from the reports which party received the award.

Any arbitration firm that fails to meaningfully disclose basic consumer information required by law in California – information needed for consumers – should not be able to come before Congress and claim the system is fair, efficient or cost-effective.

Competition among arbitration providers has created a race to the bottom, in which arbitration companies compete to see who can favor corporate interests more. While NAF is notorious for its aggressive marketing, much of which is described in our report, a review of AAA's business practices also shows an exceedingly close identification of the company with its business "clients":

- In its annual reports, AAA refers to the corporations that file cases with it as its "clients and customers."<sup>12</sup> AAA spends, on average, more than \$1 million per year on marketing.<sup>13</sup>
- It asked its Northern California arbitrators, who are supposed to remain "neutral," to help market AAA's services to corporations.<sup>14</sup>
- It intervenes in litigation between corporations that use its services and consumers, taking the side of the corporations.<sup>15</sup>
- In one arbitration case cited in our report, AAA reversed an important internal decision on the permissibility of class actions after the corporate party bitterly complained to AAA's president and not-so-subtly threatened to take its business – and the business of other corporate "clients" – to another arbitration company.<sup>16</sup>

While AAA touts its internal protocols, it does not pledge to always follow them. For example, in 2000, an AAA official acknowledged under oath that the firm does not require compliance with its health care due process protocol, calling them merely advisory: “the Protocol consists of recommended procedures with and compliance with the procedures is voluntary.”<sup>17</sup>

Moreover, the protocols acknowledge serious disagreements among participants along critical fault lines, including: the mandatory or voluntary nature of arbitration, whether there should be judicial review of claims, and whether arbitration should be allowed as a pre-dispute condition of a contract.<sup>18</sup> Because, in development, AAA set aside fundamental questions about the propriety of arbitration, its internal protocols provide no assurance that binding mandatory arbitration, as imposed on consumers and employees in the real world, is just. The protocols are silent where it matters most.

The arbitration firms’ public relations efforts repeatedly rely upon a tiny handful of industry-funded studies, as well as mere slurs. Although NAF maligned our report as “largely fictional,”<sup>19</sup> they have yet to point to a single error in its 70 pages. The report was largely based on NAF’s own published data, which we presume is not fictional.

The studies cited by arbitration firms and their industry defenders typically slant the data two ways. They: 1) focus only on the tiny fraction of claims initiated by consumers; and 2) misleadingly combine voluntary and mandatory arbitration cases into one statistic.

Pointing to arbitration cases filed by consumers, NAF’s Roger Haydock stated that, “in the California data, the consumer prevails in approximately 60 percent of these cases.”<sup>20</sup> This number is misleading. Only 118 of the 33,949 arbitration cases filed with NAF in California were initiated by consumers – a miniscule *one-third of one percent* of all filings. In contrast, 99.6 percent of the claims were filed by the corporate interests. Moreover, it makes sense that the few consumers who *initiate* claims in arbitration would seek, and garner, more positive results than the vast majority of consumers who are forced into the system.

The 60 percent figure is apparently based on an NAF analysis of its California cases for only 2003 and 2004 and should no longer be cited. Our review of all of NAF’s reports to date shows the consumer prevailed in merely 30 of those cases, or 25.4 percent of the total – not 60 percent. Of the remainder, business prevailed in 61 cases (51.7 percent). (Twenty-six cases, or 22 percent, were N/A.)

Moreover, some of the paltry 30 consumers identified as the prevailing party would be unlikely to celebrate a victory. One consumer seeking \$35,820 from First North American National Bank was awarded a mere \$1,110. Another consumer received only \$1,788 from a claim for \$63,338 against JK Harris Company.

A 2005 Ernst and Young study was promoted by the American Bankers Association (ABA) in a press release issued in response to our report. The study, funded by ABA, similarly focused a small number of consumer-initiated claims. As we point out in the report,

the Ernst and Young study included only 226 cases, ignoring the tens of thousands of cases filed against consumers over the same four-year period (2000 to 2004).<sup>21</sup>

Further, its finding that 69 percent of consumers were at least “satisfied” was meaningless: Only 40 consumers were contacted, and a mere 29 responded – or less than 13 percent of the study’s already small sample of 226 cases.

This particular study is also unscientific because, unlike our own study, it is impossible to confirm. Stunningly, it relied entirely on confidential data NAF provided to Ernst & Young.

The ABA also cites an on-line survey by Harris Interactive, which, it claims, demonstrates consumers were satisfied with arbitration and believe it is faster, cheaper and simpler than going to court. This 2005 online survey of 609 adults who had participated in arbitration was conducted on behalf of the U.S. Chamber Institute for Legal Reform, a fierce defender of BMA.

To participate in the survey, respondents had to agree in advance to use BMA in any dispute arising with the survey company – an effective pre-screening of participants that likely establishes a pro-arbitration bias. Even more importantly, the group of 609 people surveyed bears little resemblance to the 19,000 cases from NAF’s California data:

- Only 20 percent were required by contract to use arbitration. *The other 80 percent participated voluntarily.* (We have no objection when arbitration is agreed to by both parties after a dispute arises.)
- Two-thirds of the participants had a lawyer, in contrast to 4 percent in the California data.
- Less than half of the cases involved a dispute between an individual and a business, compared to 100 percent in NAF’s California data on consumer claims.

(Other differences are explained in Appendix A.)

There is a third claim from NAF that has surfaced recently: that consumer outcomes in court and arbitration should be compared. While NAF certainly has all the details, the dearth of in-depth public information on arbitration cases, as the company well knows, makes it virtually impossible to conduct such a study.

NAF claims that in a Department of Justice analysis of 1,196 nationwide court cases from 2001, “seller plaintiffs” won 77 percent of cases they initiated.<sup>22</sup> But as I previously mentioned, consumer-initiated cases are a tiny fraction of the overall picture. And these success rates bear no relationship to our actual findings from the NAF data in California, in which consumers lost 94 percent of the time.<sup>1</sup>

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<sup>1</sup> Buyer plaintiffs prevailed in 61.5 percent of 779 cases they initiated.

To truly compare an arbitration award with a court case is a complicated and demanding task. It requires a nuanced inquiry and identification of two highly similar cases, producing evidence that will necessarily be anecdotal in nature.

We have found such a pair of cases in Alabama. Both cases involved consumer complaints, the same issue and same defendant. There was an award of \$431,000 in the arbitration case conducted by the American Arbitration Association and a jury award of \$435,000 in the court case. The time it took to complete the cases from initial filing to decision was roughly the same – 54 and one-half weeks in one case; 55 weeks in the other. So arbitration was not more efficient.

Yet it *was* far more costly. The court case, filed in Alabama trial court, cost less than \$600, excluding attorney's fees. In contrast, the arbitration case cost \$42,000, excluding attorney's fees. Costs included \$36,000 for the arbitrator – for 120 hours, or three work weeks – at \$300 per hour. The consumer in the arbitration paid the \$6,000 filing fee plus half the arbitrator's fee, or about \$18,000.

The plaintiff in the court case was able to avoid arbitration because she signed a contract with the same termite company in 1988 – before the firm included an arbitration clause in its contracts. She is an elderly widow who receives disability payments and who would have had great difficulty paying a \$6,000 filing fee or the cost of the arbitrator. Indeed, BMA is designed to produce up-front fees that are so high that they dissuade consumers from enforcing their rights under the law. (Further detail on the two cases may be found in Appendix B.)

Any system that lacks transparency and accountability is ripe for abuse. As our report shows, claims by arbitration firms to deliver fairness and cost-effectiveness are merely a misleading marketing ploy. They do advertise, out of one side of their mouths, cost savings from BMA to their business prospects in large companies.<sup>23</sup> In contrast, consumers' sacrifice of their fundamental due process rights and their right to appeal when they are wronged is buried in the tiny print of a form contract and sold on the cheap.

The most efficient system of justice is one that relies on the development of public information and the operation of precedent to deter and expose abuse. When new facts are brought to light in the public courts, and judges issue public decisions that bind others to the law, all of society moves forward and the law progresses.

BMA hides its operations in secrecy, eviscerates due process, and claims, meanwhile, to benefit consumers. It is a fraud on the American people that must be exposed and rooted out. I urge Congress to end these abuses, let the sunlight in, and restore the operation of justice for millions of consumers by passing the Arbitration Fairness Act of 2007 (H.R. 3010 and S. 1782).

Thank you so much for the opportunity to testify. I look forward to questions from the committee.

## Appendix A

Below is a fuller comparison of key and telling differences between the Harris interactive survey participants and NAF’s California data.

<b>Harris Interactive Survey</b>	<b>NAF’s California Data</b>
609 Respondents in a 10-minute online interview.	National Arbitration Forum reports on 19,294 cases in which arbitrator assigned.
20% of consumers required by pre-dispute contract to go to arbitration.	100% of consumers required by pre-dispute contract to go to arbitration.
64% of interviewees filed the complaint.	0.3% of cases filed by consumer.
21% “Other side filed the complaint.”	99.7% of cases filed by business.
16% of cases jointly filed by parties.	0.0% jointly filed.
66.7% of interviewees represented by an attorney.	4 percent of consumers represented by an attorney.
48% of cases involved business and consumer.	100% of cases involved business and consumer.
4% of cases involved allegedly unpaid bills/loans.	100% of cases involved allegedly unpaid bills/loans.
48% said “ruled in my favor.”	4% ruled in favor of consumer.
33% of monetary awards exceeded \$10,000.	41.4% of monetary awards exceeded \$10,000.

The adults in this survey were participants in the Harris Poll Online (HPOL). To participate in HPOL, participants must accept an on-line agreement, a 20-clause list of terms and conditions. Among other things, the agreement requires the settlement of all disputes between HPOL participants and Harris by binding mandatory arbitration in upstate New York. Below is the clause.<sup>24</sup>

**19. Arbitration:** Any controversy or claim arising out of or relating to this Agreement shall be settled by binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association. Any such controversy or claim shall be arbitrated on an individual basis, and shall not be consolidated in any arbitration with any claim or controversy of any other party. The arbitration shall be conducted in Monroe County, New York, and judgment on the arbitration award may be entered into any court having jurisdiction thereof. Either you or Harris may seek any interim or preliminary relief from a court of competent jurisdiction in Monroe County, New York necessary to protect the rights or property of you or Harris pending the completion of arbitration.”



## Appendix B

Below is a fuller comparison of a court case and an arbitration proceeding brought by two different consumers in Alabama against the same termite company. The information was provided by Thomas F. Campbell, a Birmingham, Alabama, attorney who both represented the plaintiff in the court case and the claimant in the arbitration.

	<b>Arbitration</b>	<b>Court</b>
Filing Fee	\$6,000	\$319
Arbitrator fee/Jury Fee	\$36,000	\$100
Issuance of subpoenas	\$0	\$144
No. of days of witness testimony	4	5
No. of non-party witness depositions	6	7
Number of weeks pending before decision issued	54.5	55
Compensation for arbitrator/judge	\$36,000/ 3 weeks	\$112,000/year
Time taken to issue ruling after testimony	30 days	19 minutes

The termite company was accused in both cases of failing to provide treatment services that it was required to provide under a contract with the homeowner (and under Alabama law) and of concealing from the homeowners during annual inspections the true condition of their homes and the true nature of the infestation. In both cases, serious infestation was finally revealed to the homeowners.

The court case was filed by an elderly widow who is on SSI disability and in poor health. She learned of the serious termite problem, requiring up to \$70,000 in repair costs, just after she emerged from bankruptcy.

The arbitration case was filed by a young college professor and his wife, a stay-at-home mom with three young children – a middle class couple who no doubt found it difficult to come up with the funds to finance the arbitration case.

They signed a contract with the termite company in 1999 that was supposed to inspect their house when they bought it, certify it as termite-free, inspect it annually thereafter – and take steps to prevent termite damage. Due to extensive termite damage they discovered subsequently, the young couple had to have their one-story bungalow almost completely demolished. It was torn down “to the floors,” their attorney said. They built a large two-story home on the same footprint using savings, a large construction loan and a lot of sweat equity while living nearby in a rented house. Indeed, they could not afford to live in their rebuilt house. They sold it and eventually left town.

They will owe \$18,000 – their half of the arbitrator’s costs for which a bill was issued in late September, a bill fattened by a unilateral decision of the arbitrator to prolong his work on the case. The arbitrator wrote a longish written decision even though the family and the termite company both asked for a one-line decision. Later, after the deadline for such requests, the termite company asked for a written “reasoned award.” Despite the objection of

the claimants, the arbitrator, James P. Alexander, a Birmingham attorney who represents corporations in employment disputes, issued a 6 and one-half page “abbreviated reasoned award.” The cost for reviewing documents and exhibits and writing the “reasoned award” was \$11,625.

## Endnotes

<sup>1</sup> “Rights at Risk with Binding Arbitration,” ABC 7 KGO-TV, Sept. 27, 2007.

<sup>2</sup> *Wise v. Wachovia Securities Inc.*, 450 F.3d 265, 269 (7th Cir. 2006) and *Major League Baseball Players Assn. v. Garvey*, (per curiam) 532 U.S. 504, 509 (2002).

<sup>3</sup> *The Arbitration Trap: How Credit Card Companies Ensnare Consumers*, Public Citizen, available at [http://www.citizen.org/documents/Final\\_wcover.pdf](http://www.citizen.org/documents/Final_wcover.pdf).

<sup>4</sup> Justin Scheck, “Neutral Takes Path from Construction to Credit Cards,” *The Recorder*, Oct. 2, 2007.

<sup>5</sup> National Arbitration Forum Code of Procedure, Aug. 1, 2007, available at

<http://www.adrforum.com/users/naf/resources/20070801CodeOfProcedure.pdf>.

<sup>6</sup> See *In the Matter of the Arbitration Between MBNA America Bank, N.A., Appellant, v. Calciano, Respondent*. Order denying petitioner’s application to confirm arbitration award is affirmed. Supreme Court of the state of New York, May 24, 2007. 2006-1067 K C.; *In the matter of the Arbitration Between MBNA America Bank, N.A., Appellant v. Walls, Respondent*, Order denying petitioner’s application to confirm arbitration award is affirmed, Supreme Court of the state of New York, May 24, 2007, 2006-1065 K C.; *In the matter of MBNA America Bank, N.A., Appellant, v. Dasilva, Respondent*, Order denying petitioner’s application to confirm arbitration award is affirmed. Supreme Court of the state of New York, June 21, 2007, 2006-1062 K C.; *In the Matter of the Arbitration Between MBNA America Bank, N.A., Appellant, v. Turull, Respondent*. Order denying petition to confirm is affirmed. Supreme Court of the state of New York, June 21, 2007. 2006-1088 K C.

<sup>7</sup> *MBNA America Bank, N.A. v. Paul E. Nelson*, Index No. 13777/06, Civil Court of the City of New York, County of Richmond, Decision of Judge Philip S. Straniere, June 19, 2007.

<sup>8</sup> For just one example, any collection activity by a debt collector must be preceded by a letter that sets out a process for the consumer to both dispute the debt in writing and request verification of the debt. The law also provides that, upon such notice from a consumer, all collection activity must cease until the consumer is sent verification of the debt. See 15 U.S.C. § 1692(g).

<sup>9</sup> *Michael A. Bownes v. First USA Bank, N.A., et al.* Circuit Court of Montgomery, Ala., Civil Action No. 99-2479-PR.

<sup>10</sup> Deposition of Elizabeth Bartholet in *William Carr v. Gateway Inc.*, Circuit Court for the Third Judicial Circuit, Madison County, Ill., Sept. 26, 2006.

<sup>11</sup> Spreadsheet of NAF reports available at <http://www.citizen.org/congress/civjus/arbitration/NAFCalifornia.xls>.

<sup>12</sup> “Proud Past, Bold Future,” American Arbitration Association annual report for 2000, available at <http://www.adr.org/si.asp?id=3445>. See also, “2006 President’s Letter and Financial Statements,” available at <http://www.adr.org/si.asp?id=4661>.

<sup>13</sup> See 990 forms filed by the American Arbitration Association with the Internal Revenue Service for 2002, 2003 and 2004, available at <http://www.guidestar.com>.

<sup>14</sup> Paul L. Van Loon, regional vice president, American Arbitration Association, to Northern California Panelists, Re: Corporate Contacts, Jan. 14, 2000.

<sup>15</sup> See, for example, Amicus Curiae brief of American Arbitration Association in *Circuit City Stores, Inc. v. Saint Clair Adams*, Supreme Court of the United States, October Term 2000, No. 99-1379, Aug. 7, 2000, and Amicus Curia brief of American Arbitration Association in *Green Tree Financial Corp. v. Larkeita Randolph*, Supreme Court of the United States, October Term 2000, No. 99-1235, Supreme Court of the United States, June 8, 2000.

<sup>16</sup> Judge John W. Lungstrum, Memorandum and Order in re: Universal Service Fund Telephone Billing Practices Litigation, Case No. 02-MD-1468, United States District Court for the District of Kansas, May 27, 2005. See also, Letter from William J. Nissen, attorney for AT&T, to William K. Slate II, president CEO, American Arbitration Association, March 7, 2005.

<sup>17</sup> Declaration of Robert E. Meade, senior vice president, American Arbitration Association, in *Kent W. Stahle v. Blue Cross of California, et al.*, Feb. 17, 2000, Case No. BC 218082, Superior Court of California, County of Los Angeles.

<sup>18</sup> On AAA’s Consumer Due Process protocol, see the Reporter’s Notes for Principle 11: “In convening the Advisory Committee which developed this Protocol, the AAA requested that the Committee focus its attention upon due process standards for the conduct of Consumer ADR processes and not directly address the process of forming an agreement to mediate or to arbitrate. Committee deliberations revealed a range of opinions regarding the use of pre-dispute binding arbitration agreements in Consumer contracts.” Available at

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<http://www.adr.org/sp.asp?id=22019#INTRODUCTION: GENESIS OF THE ADVISORY CO>. See also AAA Employment Due Process Protocol, in which Section A gingerly notes wide range of views among participants on judicial review, voluntariness and the timing of agreements to arbitrate. It concludes: “The Task Force takes no position on the timing of agreements to mediate and/or arbitrate statutory employment disputes.”

<sup>19</sup> E-mail from Roger Haydock, managing director, National Arbitration Forum LLC, to NAF panelists, Sept. 30, 2007.

<sup>20</sup> *Id.*

<sup>21</sup> On Nov. 27, 2002, Edward C. Anderson, managing director of the National Arbitration Forum, testified that NAF routinely handled “tens of thousands” of cases a year. Testimony was taken in a deposition in May in *Ebarle v. Household Retail Services et al*, Case No. CGC-02-403708, Superior Court of California, City and County of San Francisco.

<sup>22</sup> Thomas H. Cohen, “Contract Trials and Verdicts in Large Counties, 2001,” Bureau of Justice Statistics, U.S. Department of Justice, January 2005, available at <http://www.ojp.gov/bjs/pub/pdf/ctv1c01.pdf>.

<sup>23</sup> For some examples of arbitrations firms’ activities in marketing their services to business, see pp. 18-20 of *The Arbitration Trap: How Credit Card Companies Ensnare Consumers*, available at [http://www.citizen.org/documents/Final\\_wcover.pdf](http://www.citizen.org/documents/Final_wcover.pdf).

<sup>24</sup> “Harris Poll Online Terms of Use,” available at <http://www.harrispollonline.com/AdultReg.asp?lang=1>.