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Another Court Rejects a Company's Attempt To Avoid Mass-Arbitration Fees

The U.S. District Court for the Northern District of Illinois is the latest court to require a company to pay millions of dollars in fees to adjudicate mass arbitrations. Judge Harry D. Leinenweber compelled Samsung Electronics America, Inc., and Samsung Electronics, Co., Ltd. to arbitrate according to Samsung's Terms & Conditions and ordered Samsung to pay over $4 million in initial fees to the American Arbitration Association (AAA) before the merits of any individual claims are considered.

The Rise of Mass Arbitration

Mass arbitration is a response to the growth of mandatory arbitration clauses and class-action waivers in consumer and employment contracts. It involves hundreds, thousands, or even tens of thousands of coordinated—but individual—arbitration demands filed against the same party and with those claimants usually represented by the same or coordinated counsel.

Because many arbitration providers immediately charge more than a thousand dollars in administrative fees for each arbitration demand, companies that require arbitration to resolve disputes may have to pay millions of dollars up front, regardless of the value or merits of the individual claims. Those initial fees can generate disproportionate settlement pressure on the responding company.

As mass arbitration has taken root, targeted companies have sought ways to mitigate high fees, including bellwether provisions that require test trials before thousands of individual claims are filed, fee-shifting provisions for frivolous or harassing claims, or refusal to pay the initial arbitration fees. Turning to the courts for relief has generally yielded little success for those companies.

The *Wallrich v. Samsung* Decision

In 2022, nearly 50,000 claimants filed with the AAA individual arbitration demands against Samsung for alleged violations of the Illinois Biometric Information Privacy Act (BIPA). The AAA invoiced Samsung its share of arbitration fees totaling more than $4 million. Samsung declined to pay, initially citing discrepancies in the arbitration demands and later citing the AAA rule allowing another party to advance the required payment. The AAA administratively closed the arbitrations for nonpayment.

The claimants then filed suit in federal court to compel Samsung to arbitrate and pay the fees. Judge Leinenweber first concluded that there was a valid agreement to arbitrate, even though some of the claimants "may have been recruited to this action by obscure social media ads." He reached this conclusion because Samsung's Terms & Conditions required "final and binding arbitration" of "[a]ll disputes" with customers. Judge Leinenweber also declined to address Samsung's argument that the coordinated arbitration violates the "collective action waiver" in the Terms & Conditions because the parties agreed that an arbitrator would address such arguments.

Judge Leinenweber ordered Samsung to pay the $4.125 million in arbitration fees. He acknowledged that "[t]he company may not have expected so many would seek arbitration" but concluded that Samsung was not "allowed to blanch at the cost of the filing fees it agreed to pay." He reasoned that "Samsung made [a] business decision here" to arbitrate disputes with customers rather than litigate class actions and "for better or for worse, the time calls for Samsung to pay for it."

In light of the *Wallrich* decision and the continued trend of mass arbitration, companies should engage counsel to review their arbitration agreements, advise them on strategies to mitigate potential mass-arbitration and associated costs, and implement updates to their terms of service.

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