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Outcomes of Arbitration

An Empirical Study of Consumer Lending Cases



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Executive Summary

As the frequency and volume of arbitration clauses in credit-related transactions have grown in recent years, so too has the discussion over the implications of the pre-dispute arbitration agreements between consumers and businesses. Businesses have faced criticism for including these clauses in their contracts, particularly adhesion (or “form”) contracts, supposedly hampering the individual’s right to due process. Proponents of the process note its low cost, speed and fairness to consumers, as well as the reduced burden on an already overwhelmed court system. With respect to consumer benefits, several studies using empirical data from employment and securities arbitration have shown that individuals may do as well or better in arbitration relative to litigation.

Ernst & Young LLP (E&Y) was engaged by Wilmer Cutler Pickering Hale and Dorr LLP to examine the outcomes of contractual arbitration in lending-related, consumer-initiated cases. This study is based on consumer arbitration data spanning four years from the National Arbitration Forum, one of the country’s three leading alternative dispute resolution organizations.¹ Financial support was provided by the American Bankers Association.²

THE OBSERVATIONS FROM THIS STUDY ARE:

- *Consumers prevailed more often than businesses in cases that went to an arbitration hearing.* A review of the consumer-lending cases that faced an arbitration decision shows that consumers are more likely to prevail than the businesses involved in the dispute; 55 percent of the arbitrations were resolved in the consumers favor.
- *Consumers obtained favorable results in close to 80 percent of the cases that were reviewed.* If we expand the definition of consumers who prevailed to include cases where the parties reached a settlement satisfactory to the consumer or the case was dismissed at the claimant’s request, consumers prevailed in 79 percent of the total 226 cases.
- *A substantial majority of consumers surveyed were satisfied with the arbitration process as shown through the 69 percent who indicated that they were satisfied or very satisfied with the arbitration process.*³ A survey of a small random sample of claimants in consumer arbitration cases appears to demonstrate consumer satisfaction with arbitration with respect to resolution, process, cost, and timeliness.

The findings from our study, coupled with a review of studies covering employment and securities arbitration, do not support the allegations that consumers are disadvantaged by

¹ The others are the American Arbitration Association and JAMS, a provider of alternative dispute resolution services.

² The information included herein strictly represents the findings from the study performed by E&Y and does not necessarily represent the views of the American Bankers Association or its members.

³ 69 percent of respondents in the telephone survey of consumer arbitration claimants answered with either a 4 or 5 to the question, “How satisfied were you with the arbitration process?”, where 1 was very unsatisfied and 5 was very satisfied. See *Section IV: Telephone Survey Results* for further details.



mandatory arbitration clauses. In fact, these findings suggest that consumers find the arbitration process beneficial to resolving disputes.

I. Introduction


Arbitration of consumer claims is a topic that has recently been subjected to considerable political scrutiny and public debate. Consumer groups have sharply criticized it as an unfair tactic used by corporations to hinder an individual's legal recourse in resolving disputes. Businesses have responded that it provides a speedy, inexpensive and fair alternative to litigation. While pre-dispute arbitration agreements have been available to consumers for some time, the widespread inclusion of arbitration clauses in the consumer-lending context is relatively recent, dating to the mid 1990s.

The Federal Arbitration Act (FAA), enacted by Congress in 1925, provides that parties may agree to binding arbitration before or after a dispute arises, and limits the right to appeal an arbitrator's decision. In light of the FAA and the federal policy it establishes, the Supreme Court has found that local laws that are inconsistent with or that place special restrictions on arbitration are preempted by the FAA. These cases served to federalize arbitration law, holding the Federal Arbitration Act to be binding in state courts.

Since the mid-1990s, the trend toward including arbitration clauses in consumer agreements has accelerated dramatically. Along with this growth in the use of arbitration clauses comes an onslaught of arguments for and against the practice of requiring consumers to sign pre-dispute arbitration agreements.

A major criticism is that pre-dispute arbitration agreements allegedly require consumers to sign away their right to a jury trial before they are even able to assess the nature and severity of the potential dispute. Such agreements, critics say, are designed to benefit corporations by precluding class action lawsuits and depriving consumers of that right to a jury trial. Although these contracts are mutually agreed upon and frequently offer the opportunity to "opt out", critics argue that the arbitration clauses are often buried in the fine print of the contract, and consumers are often unaware of their implications until a dispute arises. There has also been some debate over the relative costliness of arbitration compared with seeking resolution in court, and over the binding, yet confidential, decisions of arbitrators, which do not serve as legal precedent.

On the other hand, the case for arbitration has been set forth a number of times over the years, several of those times by Congress. In recommending passage of the FAA, the Senate Judiciary Committee found that arbitration allowed parties to "avoid the delay and expense of litigation," and so appealed to "business . . . as well as to individuals." S. Rep. No. 68-536, at 3 (1924). Decades later, a House Committee found that "[t]he advantages of arbitration are many: it is usually cheaper and faster than litigation; it can have simpler procedural and evidentiary rules; it normally minimizes hostility and is less disruptive . . . [and] it is often more flexible in regard to scheduling of times and places of hearings." H.R. Rep. No. 97-542 (1982). More recently still, Congress noted in the Y2K Act that arbitration was useful because "individuals already find [the legal] system inaccessible because of its complexity and expense." Y2K Act, Pub. L. No. 106-37, section 2(a)(3)(B)(iii), 13 Stat. 185 (1999).



This study was designed to test whether the outcomes of credit-related, consumer-initiated arbitration cases support either side of the debate over consumer arbitration by looking to the actual experiences of consumers who engage in the consumer arbitration process.

II. Methodology

A review of existing literature on the subject of mandatory arbitration revealed an unmet need for in-depth empirical analysis of the issue in the consumer context. Elizabeth Hill's 2002 paper, titled *Due Process at Low Cost: An Empirical Study of Employment Arbitration Under the Auspices of the American Arbitration Association*, attempts to fill this need, but focuses solely on employment arbitration cases. The Hill report concludes that American Arbitration Association employment arbitration provides "affordable, substantial, measurable, due process."

Our study reviews and reports on the outcomes in consumer lending arbitration from an analysis of 226 lending-related, consumer-initiated cases filed with the National Arbitration Forum between January 2000 and January 2004. Our study is intended to evaluate outcomes in the arbitration process and does not examine outcomes for comparable cases in litigation. However, some studies in the employment discrimination context have attempted to quantify comparisons of claimant success in arbitration relative to litigation. A 2003 study by Morris Kleiner and Michael Delikat compared employment discrimination cases in the Southern District of New York federal court and employment arbitrations in the securities industries. It found that claimants prevailed in higher proportions in arbitration relative to litigation⁴, that arbitration results were about a third faster, and that median monetary awards were comparable using the two modes of resolution. Kleiner and Delikat also pointed out that few plaintiffs were awarded jury trials in federal court, arguing against the criticism that arbitration prevents claimants from access to jury trials. Other studies confirm that individuals fare better in arbitration than in comparable litigation in the employment context (see Lewis L. Maltby, *Private Justice: Employment Arbitration and Civil Rights*, 30 Colum. Hum. Rts. L. Rev., 29, 46-48 (1998))⁵, and that employees have more favorable outcomes than employers do in employment arbitration cases (see Lisa B. Bingham, *Is There a Bias in Arbitration of Nonunion Employment Disputes? An Analysis of Actual Cases and Outcomes*, 6 Int'l J. Conflict Mgmt. 369, 378 (1995)).

The National Arbitration Forum (NAF), the American Arbitration Association (AAA) and JAMS, a provider of alternative dispute resolution services, account for a large portion of the American arbitration market share, each having large rosters of experienced arbitrators. The National Arbitration Forum, based in Minneapolis, Minn., agreed to provide E&Y with electronic data and access to case files.⁶ While we were not able to clearly determine the percentage of consumer-initiated credit-related cases filed with NAF relative to AAA and JAMS, we believe that the significant number, wide diversity of cases reviewed and time span covered provide sufficient information on which to base conclusions about consumer arbitration

⁴ Claimants were found to have prevailed 46% of the time in arbitration versus 34% in court.

⁵ The Maltby article finds that employees won 63% of arbitration cases filed with the American Arbitration Association (AAA) versus 15% in federal district courts. Though the mean damages awarded were higher from court proceedings than arbitration, total damages received as a percentage of total claims were higher in arbitration than in litigation.

⁶ Pursuant to California Code of Civil Procedure Section 1281.96, the AAA provides publicly available information on California consumer arbitration cases on its Web site. A summary of our findings from review of this information is provided in Appendix A.

generally. In addition, we have no reason to believe that the results of an evaluation of consumer disputes handled by AAA and JAMS would differ significantly from our review of NAF's consumer cases.

The NAF provided electronic data for 250 files, 24 of which were employment-related cases that were excluded from this study. These files included all of the NAF's consumer-initiated files in the period from January 2000 through January 2004. The 226 consumer cases were reviewed in their electronic form and verified against paper documentation. Where electronic data was sparse, it was supplemented with paper file reviews. Data was collected on:

- The nature of the claim
- Input, service, response, and award dates⁷
- Claim and award amounts
- Final status of the case
- Whether the claimant or the respondent prevailed⁸

Where information on attorneys' fees was available in the paper files, such fees were noted. However, inconsistent availability of legal fee data does not allow for an adequate analysis.

In addition to reviewing the file documentation, E&Y conducted a telephone survey of a random sample of claimants, yielding a total of 29 responses.^{9,10} The survey attempted to determine claimants satisfaction with the resolution of their dispute and with the arbitration process, claimant perception of the affordability and timeliness of arbitration, whether or not the claimant used legal counsel, and if so, the amount of the legal fees involved.

⁷ The input date is the date that NAF first documented the case upon receipt of the complete claim. The service date is the date the relevant documents were served to the respondent. The response date is the date a response was received from the respondent party, and the award date is the date of the arbitrator's decision.

⁸ A claimant is noted to have prevailed if the arbitration decision ruled in his favor, or if the case was dismissed at the claimant's request or per party agreement, assuming there was no negative reason for dismissal, such as inability to pay arbitration fees, etc. This assumption is made because once the claim has been filed, there is no incentive for the consumer to agree to a settlement that is not considered satisfactory. For example, there is not monetary savings involved in settlement. In many situations the consumer and business have a prearranged agreement that the fees for arbitration will be paid by the corporation. Where this is not the case, the consumer has already paid the fees prior to the settlements described in this study. In either situation, the consumer is not monetarily penalized. In addition, as shown later in the document, a majority of consumers surveyed indicated satisfaction with the arbitration process, and considered the costs associated with arbitration to be affordable.

⁹ Of the 175 cases that were randomly selected, we did not have current contact information for 71, leaving 104 cases in our sample. Of those, we were able to contact 40 claimants. Of the 40 claimants that were contacted, 29 agreed to participate in the survey.

¹⁰ See Appendix B for a detailed description of the survey methodology and the interview script.

III. File Review Results

As noted above, the study was limited to an analysis of consumer-initiated arbitration cases. Table 1 categorizes the nature of the cases reviewed. The majority of the case reviews can be classified as credit card disputes and chargebacks, or mortgage-related disagreements.

Table 1: Claim Type

Category	Description/Example	Percentage of Total
Ancillary Insurance Product	Disputes over credit, disability, or automobile collision insurance coverage linked to credit card	2.7%
Automobile	Lemon sold by dealer, trade-in/lease term disagreements	6.2%
Bank Account	Savings and checking account transaction disputes	5.3%
Credit Card	Late charge and interest rate disputes, payment not credited to account, etc.	38.9%
Chargeback	Unsatisfactory merchandise/service from vendor – credit requested from credit card company or financing company	8.4%
Layaway Financing	Undelivered computers purchased on layaway financing	2.7%
Loan	Loan agreement disputes; loan type unspecified	7.5%
Merchandise	Defective or undelivered merchandise, etc.	5.3%
Mortgage	Predatory lending allegations, disputes regarding mortgage interest rates, appraisal fees, improper disclosure, etc.	8.4%
Service Agreement	Poor/unfulfilled services, violations of service agreement terms	4.4%
Warranty Agreement	Disputes regarding warranty coverage	2.2%
Other Financial Services	Money wire, convenience check disputes, etc.	4.0%
Unclassified	Other	4.0%
TOTAL		100.0%

The claims were classified as small, medium, or large claims (see Table 2). Small claims are less than or equal to \$15,000, medium claims are greater than \$15,000 but less than or equal to \$75,000, and large claims are greater than \$75,000. The vast majority of claims, 73 percent of the total 226, can be categorized as small claims, followed by 20 percent medium-sized claims, and 7 percent large claims. Additional detailed results of the file review are in Appendix C.

Table 2: Claim Size

Category	Description/Example	Count	Percentage of Total
Small	Less than or equal to \$15,000	166	73.0%
Medium	Greater than \$15,000 and less than or equal to \$75,000	45	20.0%
Large	Greater than \$75,000	15	7.0%
TOTAL		226	100.0%

Table 3. Consumer Outcomes

Consumer Prevailed	Settlement/ Dismissal prior to Arbitration*	Arbitration Decision	Total
Yes	125	53	178
No	4**	44	48
TOTAL	129	97	226

*Cases that were settled after proceeding to an arbitrator have been accounted for as "Settlement/Dismissal prior to Arbitration" as opposed to "Arbitration Decision".

** Cases dismissed by NAF Director due to deficiencies in case or dismissed per claimant request as he or she "could not afford to continue".


Table 4. Consumer Outcomes by Claim Size

Category	Consumer Prevailed	% Prevailed of Size Category	Did Not Prevail	% Lost of Size Category	Total
Small	140	84%	26	16%	166
Medium	27	60%	18	40%	45
Large	11	73%	4	27%	15
TOTAL	178	79%	48	21%	226

In this study, we use two measures to assess the percentage of consumers that “prevailed” in the arbitration process.^{11,12} Under the first measure, a claimant is said to prevail if the arbitration decision favored the claimant, or if the case was dismissed at the claimant’s request or per party agreement. This measure assumes that the consumer was sufficiently satisfied with the settlement to dismiss the arbitration proceedings. Using this measure, consumers prevailed in

¹¹ In most cases, the outcome of the case was clear from the file review. Cases in which the claimant was awarded damages were classified as consumer prevailing. Several of the cases that were dismissed per claimant had written communication from the claimant expressing that the dispute had been resolved to their satisfaction. However, in several cases our reviewers were required to use their judgment in classifying the outcome of the case. For example, in one case, the outcome was coded by NAF as being ‘Dismissed per Claimant,’ but the reason was because the claimant “could not afford to continue”. Therefore, this case was classified as the claimant ‘Did not Prevail’.

¹² Parties are also able to appeal arbitration decisions at the NAF by seeking to reopen the case or have the case results reconsidered. Our review included seven cases in which reconsideration had been ordered and the outcome of the reconsideration was used in our analysis. Unlike in litigation, however, the request is presented to the initial arbitrator and does not proceed to a new decision maker.



178, or 79 percent, of the 226 cases reviewed.¹³ As can be seen in Table 4, consumers prevailed in greater proportions of small, medium, as well as large claims. Consumers prevailed in 84, 60 and 73 percent of small, medium and large claim cases, respectively.

Because the first measure assumes that the consumer prevailed in settlement situations, we thought it would be prudent to include a second measure focusing only on those situations in which the dispute proceeded to the point of an arbitration hearing. Of the 97 cases reviewed where the case proceeded to the point of an arbitration judgment, arbitrators ruled in favor of the consumer in 55 percent of the cases. The businesses prevailed in the remaining 45 percent of the arbitration decisions. These results are summarized in Table 3.

Both of these results refute the conclusion that consumers are harmed by the arbitration process. First, we would expect both parties to prevail approximately 50 percent of the time in the arbitration hearings. Therefore, for cases that reach a hearing, you would expect that each side should be expecting to prevail. If the case were not clear-cut for one side or the other, and assuming the expectations of each side were correct, we would expect that over a sufficiently large number of decisions each side would prevail half the time. Consumers are not losing more often than would be expected according to theory, and therefore these findings do not support claims that the arbitration process is biased against the consumer. In fact, these findings suggest the opposite conclusion, given that consumers prevail in more than half of the cases reviewed.

One also needs to consider whether prior to the hearing consumers are settling. Of the 129 cases that were not resolved by an arbitrator's decision, 118 were dismissed prior to arbitration per claimant request.¹⁴ This percentage of outcomes favorable to consumers indicates that the overall process also does not appear to be biased against the consumer, again, suggesting the opposite conclusion.

Both of these measures independently and collectively support our conclusion that the arbitration process appears to be favorable to the consumer. Consumers appear to be satisfied with settlements accomplished prior to hearings and if a hearing takes place, consumers are not losing a disproportionate number of cases. Therefore, the findings from this analysis do not support claims that the arbitration process is harmful to consumers.

¹³ See Appendix C for detailed information describing the outcome of the cases.

¹⁴ See Appendix A, Table A.2.

IV. Telephone Survey Results

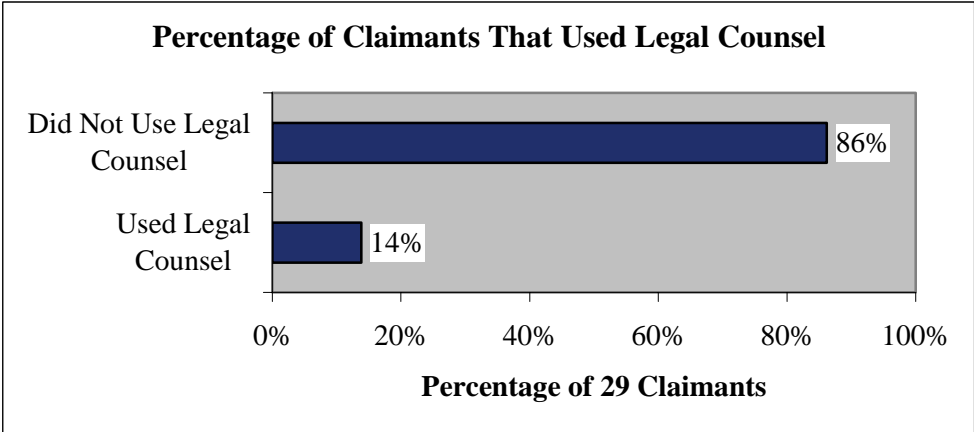
To further explore this issue, we conducted telephone surveys to assess the overall satisfaction of the consumers with the arbitration process. Of the total population of 226 claimant files, we attempted to contact a random sample of 175. We were unable to reach the vast majority of these 175 (we had current contact information for 104 of the 175 cases selected and were able to contact a total of 40 claimants) and obtained 29 responses.¹⁵ Of the 29 claimants whom we were able to interview, 25, or 86 percent, were consumers who prevailed, either through an arbitration decision or through settlement or dismissal. This is not surprising considering that by this measure, consumers prevailed in 79 percent of the total 226 cases we reviewed. In general, the responses appear consistently favorable to arbitration with respect to satisfaction with resolution, process, cost, and timeliness. These results must be viewed in the context of the high percentage of survey respondents who prevailed, as well as the small size of the survey sample.

Figure 1 compares the responses of the 25 consumers who prevailed with those responses of the total 29 respondents for the first four questions in the survey. These four questions attempt to rate consumer perceptions from a scale of 1 to 5, with 1 being least favorable and 5 being most favorable. The average response for the subset of consumers who prevailed for Question 1, regarding satisfaction with the resolution of the dispute, is 4.36, slightly above the overall average of 4.00. For Question 2, regarding satisfaction with the arbitration process, the subset had an average response of 4.21, also above the overall average of 4.00. It is interesting to note that 20 of the total 29 respondents, or 69 percent, responded with either a 4 or 5 to Question 2, indicating that 69 percent of respondents were satisfied or very satisfied with the arbitration process. In Question 3, concerning the costs of the arbitration process, the overall average was 4.29, slightly above the subset average of 4.17. In Question 4, concerning the timeliness of the arbitration process, the average responses for the subset and the overall population were 4.12 and 4.00, respectively.

¹⁵ Two attempts were made to reach each consumer in the sample. Some phone numbers were out-of-date and in other situations the consumers were not available at the time of the survey. Of those calls in which contact was made with the consumer, 73 percent agreed to respond to the survey.



Figure 3: Hiring of Legal Representatives



V. Conclusion

Consumer arbitration continues to be a contentious issue as more and more businesses incorporate the clause into their consumer contracts. Despite the negative attention from the media and various consumer advocacy groups, empirical analysis of arbitration has been limited largely due to the confidential nature of arbitration data. Selected studies using empirical data from employment and securities arbitration have shown that individuals may do as well or better in arbitration relative to litigation.

Our review of consumer-initiated, credit-related arbitration cases supports this result, finding that consumers who face an arbitration decision prevail more frequently than the businesses involved in the dispute, with 55 percent of consumers who faced an arbitration decision receiving favorable outcomes. If we include settlements and dismissals per claimant request or party agreement in the measure of success for the consumers, the proportion rises to 79 percent. We conclude the arbitration process does not appear to be biased against the consumer because they are not settling for unfavorable outcomes prior to hearings, and when the hearing takes place, consumers are not losing a disproportionate number of cases. In fact, one could conclude just the opposite, that consumers receive fair treatment that benefits them.

In addition, a survey of a small random sample of claimants in consumer arbitration cases also appears to reinforce consumer satisfaction with arbitration with respect to resolution, process, cost, and timeliness. The majority of survey respondents did not use legal counsel in arbitration, mitigating the overall cost of arbitration to the individual consumer. Despite this decision to proceed without legal counsel, it appears that consumer outcomes were comparable, if not favorable, relative to businesses.

The results of this study and other similar analyses appear to refute claims that the arbitration process is biased towards the business. It is important to reiterate that the use of arbitration clauses in consumer lending agreements is a somewhat recent phenomenon; this study was based on the limited available information on these types of arbitration cases. Because of the limited data availability, future analysis based on additional information may be valuable for validating the conclusions of this study.

APPENDIX A: American Arbitration Association Data

Pursuant to California Code of Civil Procedure Section 1281.96, the American Arbitration Association (AAA) provides publicly available information on California consumer arbitration cases on its Web site. The AAA compiles this data based on information provided by the parties involved, and does not claim responsibility for the accuracy or completeness of the information supplied by the parties. We reviewed the data provided on the AAA website spanning the time period January 1, 2003 through March 31, 2004. In this appendix we present a subset of data where AAA classified the type of dispute as ‘Banking’; this subset includes 44 consumer banking cases. The Prevailing Party field was largely (95 percent) unpopulated for banking consumer cases, and therefore we are unable to draw conclusions regarding consumer outcome on the basis of this information.

Table A.1 shows that an arbitrator rendered a decision in 39 percent of the 44 cases, while 50 percent of cases were settled per party agreement and 11 percent were withdrawn prior to resolution.

Table A.1: AAA Consumer Banking Case Status

Manner in which Case was Closed	Description*	Count	Percent of Total
Awarded	A case in which the arbitrator has rendered a decision	17	39%
Settled	A case that was closed after the parties reached a mutual resolution of the dispute	22	50%
Withdrawn	A case in which the moving party withdrew its claim prior to resolution	5	11%
Total		44	100%

* As defined on the AAA website.

Table A.2 provides additional detail on the 44 cases, including claim amount, fees, and fee payment allocation. Average claim amount for the 44 cases was \$81,371, though no information was available about the average award amount. Average fee amount for the 31 cases for which such fee information was available was \$1,935. The fee payment allocation columns provide information regarding the portion of the fees paid by the consumer and non-consumer parties, although this information is incomplete.

Table A.2: AAA Consumer Banking Case Detail

Manner in which Case was Closed	Prevailing Party	Claim Amount, \$	Fee Payment Allocation	
			Total Fee, \$	
Awarded		16,325	750	
Settled		75,000	250	50%
Settled		9,999		
Settled		92,435	800	
Settled		10,000		
Awarded		75,000	750	
Awarded		135,000	6,226	50%
Awarded		12,785	750	
Withdrawn		7,252		
Settled		75,000		
Settled		15,000		
Awarded		2,631	125	50%
Settled		7,694		
Withdrawn		12,885	150	
Settled		75,000	375	
Settled		75,000	225	
Settled		75,000	375	
Settled		75,000	225	
Settled		75,000	375	
Withdrawn		12,885	150	
Awarded	Consumer	260,000	8,565	
Awarded		250,000	9,255	100%
Settled		9,000		
Settled		50,000	375	50%
Awarded		300,000	4,275	0%
Awarded		300,000	4,275	0%
Settled		266,875		
Settled		10,001		
Awarded		500	250	50%
Awarded		10,000	250	
Awarded		135,000	6,226	50%
Withdrawn		887		
Awarded		75,000	750	50%
Settled		100,317	5,275	50%
Settled		1,720		
Awarded		2,618	757	25%
Settled		47,744		
Awarded	Consumer	1,642	250	0%
Withdrawn		210,879	536	23%
Settled		200,000		
Awarded		250,000	3,273	
Settled		50,000	375	0%
Awarded		103,576	3,398	100%
Settled		9,695	375	50%
Average		\$81,371	\$1,935	

APPENDIX B: Survey Methodology

B.1: Overview

Random Sampling

A random number generator was used to assign a random number to each of the 226 consumer lending cases reviewed. This list was then sorted by the random number to provide a randomly ordered list of cases. We attempted to call the claimants of the first 175 cases in this randomly ordered list.

Time Zones and Number of Attempts

The contact information collected by NAF showed that the claimants in the random sample of 175 resided in all the time zones across the United States. The sample was broken out by time zone prior to beginning the calls to ensure that we were attempting to reach all claimants at comparable local times. Varying the time, we attempted to call each of these 175 claimants twice, unless we discovered problems in the contact information, such as disconnected phone numbers. In cases where the claimants were reached on the first attempt and asked us to call back at a specific time, we accommodated their requests to the best of our ability, even if this rescheduled time did not fit within our scheduled reattempt time. Table B.1 summarizes the results of our survey attempts.

Table B.1: Summary of Survey Attempts

Table	Count or Percentage
Total Number of Target Respondents	175
Problems with Contact Information	71
Potentially reachable	104
Reached Claimant	40
<i>Responded</i>	29
Participation Rate (Total)	16.6%
Participation Rate (Reached)	72.5%



Roles in Conducting the Survey

The telephone survey included the participation of NAF as well as E&Y staff. Initial contact was made by the NAF employee, with the E&Y employee on the line, who introduced the study and attempted to obtain consent to participate in the survey (Sections I through III of the survey script, see Appendix B.2). Upon receiving consent, the NAF employee directed the conversation to the E&Y employee, who conducted the remainder of the survey (Section IV of the survey script).

B.2: Telephone Interview Scripts

I. CONTACT INFORMATION

NAF Employee:

Hello, this is [NAF Employee Name] from the National Arbitration Forum. This is not a sales call. May I please speak to [Consumer Name]?

- Person has moved or inaccessible: try to find out more information if possible; otherwise terminate the call.
- Person is not available: find out availability and reschedule call.
When is a good time to call [name] _____? [Reschedule a call]
- Person available: I would like to speak with him/her, please.
- This is he/she speaking: continue...

II. Screening

NAF is participating in a study that is being conducted by the national accounting firm Ernst & Young LLP (E&Y). The purpose of the study is to better understand the outcomes of consumer arbitration cases. Also participating in this call is [E&Y Employee Name], a representative from E&Y.

S1. Our records show that you filed an arbitration case with us in the past 4 years. Is that correct?

- Yes-- go to the introduction section
- No – go to S2

S2. [Probe] Our records show ... (provide more details by using the records we have to confirm the eligibility of the person we are contacting)

III. Introduction

We are contacting you to better understand your experience with the arbitration process and to collect some additional information that will be used in the study. We will not address issues specific to your case during the course of this interview. In addition, we want to assure you that your name and specific information about your case will be kept completely confidential, and will not be disclosed in the study.

This interview will take less than 3 minutes. Are you willing to participate in our study?

[E&Y Employee Name], from E&Y, will now conduct the questionnaire.

IV. Questions

E&Y Employee:

Hi, [Consumer Name].

1. Using a scale of 1 to 5, where 1 is very unsatisfied and 5 is very satisfied, how satisfied were you with the resolution of your dispute?

Very unsatisfied ...	To	... Very satisfied	D/K ¹⁶
1 2	3	4 5	0
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

2. How satisfied were you with the arbitration process?

Very unsatisfied ...	To	... Very satisfied	D/K
1 2	3	4 5	0
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

3. Using a scale of 1 to 5, where 1 is very unaffordable and 5 is very affordable, how would you characterize the costs associated with arbitration?

Very unaffordable...	To	... Very Affordable	D/K
1 2	3	4 5	0
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

4. Using a scale of 1 to 5, where 1 is very untimely and 5 is very timely, how would you characterize the timeliness of the arbitration process?

Very untimely...	To	... Very timely	D/K
1 2	3	4 5	0
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

5. Did you hire a legal representative to assist you with the case?

Yes
 No – [skip Q6]

6. If yes, did you spend in legal fees

a) Less than \$2000?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
b) Less than \$1000?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
c) Less than \$500?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
d) Less than \$250?	<input type="checkbox"/> Yes	<input type="checkbox"/> No

Thank you for your participation in this study!

APPENDIX C: File Review Results

Table C.1: Claim Type by Size

Category	Description/Example	Count	Claim Size*			Percentage of Total
			Small	Medium	Large	
Ancillary Insurance Product	Disputes over credit, disability, or automobile collision insurance coverage linked to credit card	6	4	2	0	2.7%
Automobile	Lemon sold by dealer, trade-in/lease term disagreements	14	7	4	3	6.2%
Bank Account	Savings and checking account transaction disputes	12	10	2	0	5.3%
Credit Card	Late charge and interest rate disputes, payment not credited to account, etc.	88	67	17	4	38.9%
Chargeback	Unsatisfactory merchandise/service from vendor- credit requested from credit card company or financing company	19	15	3	1	8.4%
Layaway Financing	Undelivered computers purchased on layaway financing	6	6	0	0	2.7%
Loan	Loan agreement disputes; loan type unspecified	17	11	5	1	7.5%
Merchandise	Defective or undelivered merchandise, etc.	12	9	1	2	5.3%
Mortgage	Predatory lending allegations, disputes regarding mortgage interest rates, appraisal fees, improper disclosure, etc.	19	9	8	2	8.4%
Service Agreement	Poor/unfulfilled services, violations of service agreement terms	10	8	1	1	4.4%
Warranty Agreement	Disputes regarding warranty coverage	5	5	0	0	2.2%
Other Financial Services	Money wire, convenience check disputes, etc.	9	9	0	0	4.0%
Unclassified	Other	9	6	2	1	4.0%
TOTAL		226	166	45	15	100.0%

* SMALL CLAIMS ARE LESS THAN OR EQUAL TO \$15,000, MEDIUM CLAIMS ARE GREATER THAN \$15,000 AND LESS THAN OR EQUAL TO \$75,000, AND LARGE CLAIMS ARE GREATER THAN \$75,000.

Table C.2: Final File Status by Consumer Outcome

Category	Outcome						Total
	Consumer Prevailed			Consumer did not Prevail			
	Settlement/Dismissal prior to Arbitration	Arbitration Decision	Total	Settlement/Dismissal prior to Arbitration	Arbitration Decision	Total	Total
Rule 36 Hearing Award	0	18	18	0	1	1	19
Dismissed per Arbitrator (1)	1	1	2	0	19	19	21
Dismissed per Claimant (2)	117	0	117	1	0	1	118
Dismissed per Forum	0	0	0	2	0	2	2
Dismissed per Party Agreement	5	0	5	0	0	0	5
Dismissed	1	0	1	1	0	1	2
Document Hearing Award (3)	1	15	16	0	9	9	25
Participatory Hearing Award	0	18	18	0	8	8	26
Participatory Order Issued	0	0	0	0	1	1	1
Reconsideration Order	0	1	1	0	6	6	7
Total	125	53	178	4	44	48	226

(1) One case listed as Dismissed per Arbitrator included evidence in the file that the parties settled.

(2) In general, cases dismissed per claimant were counted as the consumer prevailing, however in one case a claimant requested dismissal as the claimant "could not afford to continue". This case is counted as "Consumer did not Prevail".

(3) One case listed as a Document Hearing Award included evidence in the file that the parties settled.

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APPENDIX E: Acknowledgments

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