ACORN, Alliance for Justice, American Association for People with Disabilities, Center for Auto Safety, Center for Responsible Lending, Consumer Action, Consumer Federation of America, Consumer Task Force for Automotive Issues, Consumers for Auto Reliability and Safety, Consumers Union, National Association of Consumer Advocates, Lawyers' Committee for Civil Rights Under Law, National Community Reinvestment Coalition, National Consumer Law Center, National Employment Lawyers Association, Public Citizen, Senator Patrick Leahy, Trial Lawyers for Public Justice, U.S. Public Interest Research Group, Workplace Fairness

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Groups Launch Nationwide Effort to Stop Use of Binding Mandatory Arbitration Clauses

Campaign Includes Educational Web Sites, Call for State and Federal Legislation, Tools to Empower Consumers

WASHINGTON, D.C. – More than two dozen public interest organizations on Thursday launched a nationwide effort to stop the corporate use of binding mandatory arbitration (BMA) clauses, those insidious paragraphs that are tucked in the fine print of an array of contracts and through which millions of consumers unwittingly waive their right to access the courts.

At a press conference, the groups released a 10-point platform for action, which includes the unveiling of two educational Web sites, a call for state and federal legislation, and a campaign to encourage consumers to avoid doing business with companies that use BMA clauses.

There is probably not a single adult in the United States who is not subject to at least one binding mandatory arbitration clause – and most are subject to many. Buried in the fine print of credit card billing inserts, health insurance plans, employee handbooks and even standard purchase contracts, the clauses require consumers to waive their right to go to court if a dispute arises with the company involved in the transaction. Cases are funneled to a costly private legal system that favors companies and operates outside the law; arbitrators are not bound to use legal precedent or even good sense in making their rulings, and an arbitrator's rulings can't be appealed.

This means that homeowners ripped off by a shady mortgage broker, patients denied medical coverage by an HMO, employees victimized by discrimination, and consumers caught in credit card billing scams cannot take their claims to court. The result is the undermining of consumer protection, civil rights and other laws that level the playing field between big businesses and individuals.

"We are starting a campaign to stop the use of binding mandatory arbitration clauses, which Big Business is now forcing on unknowing consumers in billions of pre-printed, take-it-or-leave-it contracts as part of its larger push to avoid oversight and accountability for fraud and deception," said Joan Claybrook, president of Public Citizen. "It is galling that corporations are systematically denying individuals their right to go to court."

"At Trial Lawyers for Public Justice, we have been repeatedly asked for help by consumers and employees who had strong legal claims, but were being forced into arbitration systems badly tilted in favor of corporate defendants," said Paul Bland, staff attorney with Trial Lawyers for Public Justice. "These persons find it hard to believe that something so unfair could happen to them in America, but it happens to people every day. Under our current system, the fine print of BMA provisions in corporate contracts can and does hurt people who have been ripped off by corporate wrongdoing."

"BMA clauses have made the bad car dealerships even worse," said Remar Sutton, president of the Consumer Task Force for Automotive Issues. "It's ironic that car dealers themselves fought and successfully prevented BMA clauses from being in their own agreements with auto manufacturers. From the methods dealerships use to sell financing to the ways dealerships handle a consumer's rebate money, BMA clauses encourage a lawless and reckless selling attitude: 'Why do we care, if there are no consequences to our actions?' "

Tom Greene, of Enterprise, Ala., is a former poultry farmer and a Vietnam veteran. In 1990, Greene built a poultry farm in which he invested heavily. When the poultry processor attempted to force binding mandatory arbitration on him, he refused. Greene was forced out of business and suffered substantial losses.

He described these events at the press conference noting, "Arbitration violates the fundamental liberties our Constitution extends to us as free citizens in this great republic. … As a soldier, a war veteran who has drawn blood in defense of those principles, I could not sign that contract."

Also speaking was Fonza Luke, a hospital nurse technologist who repeatedly refused to sign the binding mandatory arbitration agreement imposed by her employer. But when Luke tried to sue the hospital for race and age discrimination when it fired her after 32 years of service, the federal court refused to hear her civil rights claim and instead compelled her to arbitrate.

The groups' 10-point platform aims to highlight the widespread use of BMAs and provide tools to empower consumers to fight BMA clauses. In it, the groups pledge to:

- Launch two new Web sites to educate consumers about BMA clauses. The first, www.givemebackmyrights.org, explains what BMAs are, where they are found and what they mean to consumers. The second, www.callbeforeyoubuy.com, helps consumers purchase vehicles without being forced into a contract with a BMA clause.
- Conduct a campaign to let consumers know which companies don't use BMA clauses.
- Encourage consumers to close credit cards that have BMA clauses and call on credit card companies to remove BMA clauses from their contracts.
- Encourage homebuyers seeking mortgages to avoid lenders that use BMA clauses.
- Urge consumers to avoid auto dealers and auto financers that use BMA clauses.
- Call for auto dealers to remove BMA clauses from their contracts.
- Provide bill stuffers for consumers to send with their payments to repudiate BMA clauses.
- Urge large membership organizations to insist that partners providing services to their members, such as credit card and mutual fund companies, remove BMA clauses from their group contracts as a condition of offering products to their members.
- Conduct a nationwide campaign promoting the passage of model state laws limiting the use of BMA clauses.
- Call for congressional hearings on BMA clauses and for legislation prohibiting BMA.

"Arbitration was conceived as an informal, expedited process for resolving routine disputes between businesses," said Ed Mierzwinski, consumer program director for the U.S. Public Interest Research Group. "But when used against consumers, arbitration becomes a tool to block consumers from exercising their rights." Consumers often pay steep filing fees to initiate a case (fees can run $750 or more) in addition to half of an arbitrator's hefty hourly charge. Fees often must be deposited up front and can run into the tens of thousands of dollars, he added.

Arbitration panels consist primarily of attorneys who represent or have represented corporations. Because only businesses are repeat users of arbitration, arbitrators have an incentive to rule for the business and against the consumer. Arbitrators have a tendency to split the difference between two parties' positions, so awards tend to be lower than those from judges and juries. And while judges are accountable to higher courts and the public, arbitrators are not legally accountable for errors, often are not subject to oversight and are not required to take legal precedent into account when rendering their decisions.

Arbitration clauses almost always prohibit class actions and often require that hearings be held in locations inconvenient to consumers making the claims. And in a shocking display of hypocrisy, many arbitration clauses allow companies to take consumers to court, even though those individuals cannot sue the companies. Finally, arbitration proceedings are kept confidential, and no legal precedents are set to guide companies' future behavior. Parties are allowed only limited judicial review, if any.

"Consumers Union finds ominous the growing prevalence of fine print clauses in consumer contracts that have the effect of blocking consumers' access to the courts," said Sally Greenburg, senior counsel for Consumers Union. "These binding mandatory arbitration clauses are the stealth weapon of corporations that seek to escape being held accountable in a neutral forum – a court of law – by giving themselves the advantage of binding mandatory arbitration – often without the consumer even knowing she or he has no right to go to court."

Added Linda Sherry, Consumer Action's editorial director, "Consumers are often unaware that they have agreed to binding arbitration. We suggest that you read the fine print of all contracts and service agreements. If you find a BMA clause, vote with your feet and walk away. No deal is worth giving up your right to your day in court."

"Through the cynical use of BMA clauses, corporations are systematically stripping the fundamental right of American consumers to seek justice," said Ira Rheingold, executive director of the National Association of Consumer Advocates. "This blatant attempt to avoid corporate accountability must be stopped before the American marketplace is overrun with corporate fraud and abuse that make Enron and Worldcom the rule, not the exception."

U.S. Sen. Patrick Leahy (D-Vt.) also expressed concern about the widespread use of binding mandatory arbitration clauses.

"Contracts that trick consumers into signing away their legal rights through binding mandatory arbitration clauses buried in the fine print are not the fair way to do business," said Leahy, the ranking member on the Senate Judiciary Committee who has in the past co-sponsored legislation to prohibit these mandatory clauses in credit card holder and car dealer contracts. "It's an abuse that is quickly spreading, and it's time to blow the whistle and start giving consumers a break. I commend the coalition for shining a spotlight on this important consumer issue."

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