

Fairer, Faster, Better II: An Empirical Assessment of Consumer Arbitration

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Fairer, Faster, Better II: An Empirical Assessment of Consumer Arbitration

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EXECUTIVE SUMMARY

Arbitration has been recognized as a lawful and efficient method of dispute resolution at least as early as 1925 when the Federal Arbitration Act was enacted. The Act requires federal and state courts to enforce and uphold arbitration agreements to the same extent as other types of contracts. Arbitration has become more popular over the past couple of decades to resolve disagreements between consumers and businesses, as it is usually faster and cheaper for both parties than going to court.

This report is based on a dataset of 101,244 disputes involving consumers that terminated between January 1, 2014 and June 30, 2020, which we constructed to analyze the differences between consumer arbitration and litigation processes. We first compared the outcomes of arbitrations and litigation involving consumers. We then compared the win rate, award amount, and dispute processing time from initiation to termination for consumer arbitrations and consumer litigation cases that were initiated by consumers and were terminated with awards. Consumer arbitration data came directly from the two largest arbitration service providers—American Arbitration Association (AAA) and Judicial Arbitration and Mediation Services, Inc. (JAMS). Consumer litigation cases came from Public Access to Court Electronic Records (PACER) and were compiled and provided by Lex Machina, a third-party data provider.

Key findings of the report are:

- 1. Consumers are more likely to win in arbitration than in court.** Consumers initiated and prevailed in 44% of all consumer arbitrations that were terminated with awards during January 2014 – June 2020. During the same period, consumers initiated and prevailed in 30% of all consumer litigation cases that were terminated with judgments.
- 2. Consumers receive higher awards in arbitration than in litigation.** The median award in arbitrations that consumers initiated and won was \$20,019, compared to just \$6,565 in litigation they initiated. The mean award to consumers was \$68,198 in arbitration compared to \$57,285 in litigation.
- 3. Consumer arbitration is faster than litigation.** It took a mean time of 299 days for consumers to initiate and terminate a dispute with an award in arbitration compared to 429 days in litigation. The median number of days for consumers to initiate and complete a dispute with an award was 251 days in arbitration compared to 311 days in litigation.
- 4. The majority of disputes involving consumers are settled.** In arbitration, 57% of disputes involving consumers were settled, 22% were dismissed or withdrawn, and 21% terminated with awards during January 2014 – June 2020. In litigation, 85% of cases involving consumers were settled, 9% were dismissed or withdrawn, and 6% terminated with awards during the same period.

In sum, consumers who initiated cases and prevailed during January 2014 – June 2020 had a better chance of winning in arbitration than in litigation. Consumers initiated and prevailed in 44% of all arbitrations that terminated with one prevailing party compared to 30% in litigation. Consumers who initiated and prevailed in arbi-

tration also received higher monetary awards than in litigation. In addition to having better chances to win and higher monetary awards, consumers who initiated and prevailed had their cases resolved more quickly in arbitration than in litigation, both in mean and median number of days. (Table 1)

Table 1.
Consumers who initiated cases and prevailed had better chances to win, had higher award amounts, and required less time in arbitration than in litigation during January 2014 – June 2020

	Cases that consumers initiated and prevailed		
	As % of cases terminated with one prevailing party	Amount awarded to consumers	Time spent from initiation to completion
Arbitration	44.3%	\$68,198 (mean) \$20,019 (median)	299 days (mean) 251 days (median)
Litigation	30.2%	\$57,285 (mean) \$6,565 (median)	429 days (mean) 311 days (median)

OUTCOMES OF ALL ARBITRATIONS AND LITIGATION CASES INVOLVING CONSUMERS

A consumer dispute, resolved either through arbitration or litigation, has three potential outcomes: (1) the dispute is settled at some point during the process on terms that can include monetary payments and/or non-monetary relief (the settlement details may or may not be disclosed publicly); (2) the dispute is dismissed, abandoned, or withdrawn during the process; or (3) the dispute ends in a decision by the adjudicator in favor of one or both sides. We analyzed and compared the outcome pattern between consumer arbitration and litigation cases that were initiated by consumers or businesses and were terminated during January 2014 – June 2020.

Arbitration. Among 24,629 of all arbitrations involving consumers that were terminated during January 2014 – June 2020, 14,024 cases (56.9%) were settled; 5,476 cases (22.2%)

were dismissed, abandoned, or withdrawn; and 5,129 cases (20.8%) resulted in decisions with monetary and/or non-monetary elements. (Table 2)

Table 2.**Nearly 57% of arbitrations involving consumers were settled and over 20% terminated with decisions during January 2014 – June 2020**

	Number of Cases	As % of Terminated Cases*
Terminated cases	24,629	100.0%
Decision	5,129	20.8%
Settlement	14,024	56.9%
Dismissed/Withdrawn	5,476	22.2%

*Note: totals in this and other tables may not sum exactly due to rounding.

Litigation. During January 2014 – June 2020, 76,615 cases involving consumers were terminated in federal courts. Among these terminated cases, 65,038 cases (84.9%) were settled, 6,890 cases (9.0%) were dismissed or ended with other procedural resolutions, and 4,687 cases (6.1%) were terminated by court or jury determinations. (Table 3)

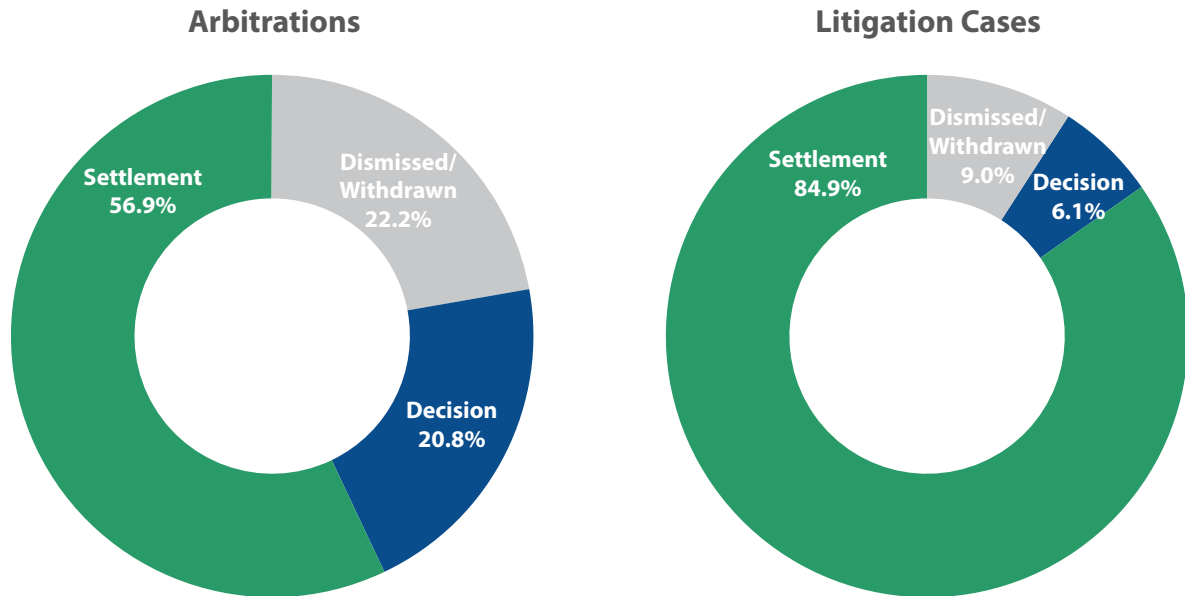
Table 3.**Nearly 85% of litigation cases involving consumers were settled and just over 6% terminated with decisions during January 2014 – June 2020**

	Number of Cases	As % of Terminated Cases
Terminated cases	76,615	100.0%
Decision	4,687	6.1%
Settlement	65,038	84.9%
Dismissed/Withdrawn	6,890	9.0%

Overall, the majority of all consumer disputes, whether in arbitration or in litigation, end in settlement. However, the distribution is widely different between the arbitration process and the litigation process. While less than 60% of arbitrations were settled, almost 85% of litigation cases were settled (a 28-percentage-point difference). While only 9% of litigation cases

were dismissed or withdrawn, over 22% of arbitrations were dismissed or withdrawn (a 13-percentage-point difference). Only 6% of all litigation cases involving consumers were terminated with a court decision, but nearly 21% of all arbitrations involving consumers were terminated with a decision. (Figure 1)

Figure 1.
Most arbitration and litigation cases involving consumers settle, but arbitrations were more likely to result in a decision on the merits during January 2014 – June 2020



DECIDED CASES

Consumer disputes can be initiated by either a consumer or a business and can be terminated with a decision in favor of the plaintiff, the defendant, or both. We reviewed all cases that terminated in a decision (in arbitration or in court) and calculated the share of consumer-claimant cases in which the consumer prevailed. In this report, we use the term “consumer-claimants” to refer to consumers who initiated claims in arbitration or litigation processes.

Arbitration. Among the 5,129 consumer arbitrations terminated by decisions during January 2014 – June 2020, 4,113 identified a prevailing party. The information regarding the prevailing party in the remaining 1,016 arbitrations was

unknown or indicated that there were awards to both parties. Among these 4,113 arbitrations identifying a single prevailing party, consumers initiated and prevailed in 1,821 cases, accounting for 44.3% of decisions. (Table 4)

Table 4.
Consumers initiated and won 44% of all arbitrations that terminated with awards to one party during January 2014 – June 2020

	Number of Cases	As % of Decided Cases with One Prevailing Party
Decided arbitrations with one prevailing party	4,113	100.0%
Consumers initiated and prevailed	1,821	44.3%

Litigation. All 4,687 federal court consumer cases that terminated with decisions during January 2014 – June 2020 have information regarding the prevailing party. Among these

cases, consumers initiated and prevailed in 1,417 cases, accounting for 30.2% of decided cases. (Table 5)

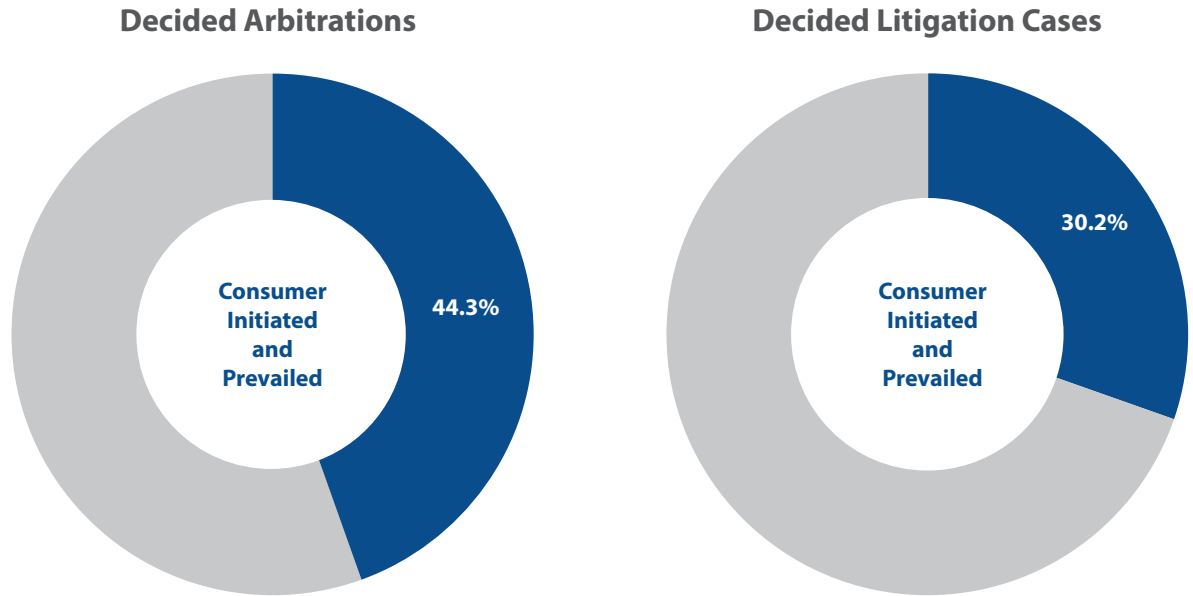
Table 5.
Consumers initiated and won 30% of all litigation cases that terminated in federal court with decisions during January 2014 – June 2020

	Number of Cases	As % of Awarded Cases
Decided cases in federal courts with one prevailing party	4,687	100.0%
Consumers initiated and prevailed	1,417	30.2%

In sum, consumer-claimants were more likely to win in arbitration than in litigation. For consumer disputes that terminated with awards to one party during January 2014 – June 2020, consumers initiated and prevailed 44% of the

time in arbitration compared to 30% in litigation. In other words, the chances for consumers to win in arbitration were almost 1.5 times higher than in court. (Figure 2)

Figure 2.
Consumer-claimants won more often in arbitration than in litigation during January 2014 – June 2020



AMOUNT AWARDED

Consumer arbitration and litigation can be resolved with monetary and non-monetary awards to consumers, businesses, or both. We calculated and compared the distribution of monetary award amounts to consumers who prevailed in consumer-claimant cases in arbitration and litigation.

In consumer-initiated claims that terminated with monetary awards, prevailing consumers received higher awards in arbitration than in litigation. Among consumer-claimant arbitrations that terminated during January 2014 – June 2020, the median and mean awards to consum-

ers were \$20,019 and \$68,198, respectively. The first and third quartiles of award amounts were \$6,740 and \$58,582, respectively. The award amounts to consumers were at least \$150,000 for the top 10% of consumer-claimant arbitrations in which consumers prevailed. During the same period, the median and mean amounts awarded to consumers who initiated litigation were \$6,565 and \$57,285, respectively. The first and third quartiles of award amounts were \$4,108 and \$17,555, respectively. The award amounts to consumers were at least \$64,448 for the top 10% of consumer-claimant litigation cases. (Table 6 and Figure 3)

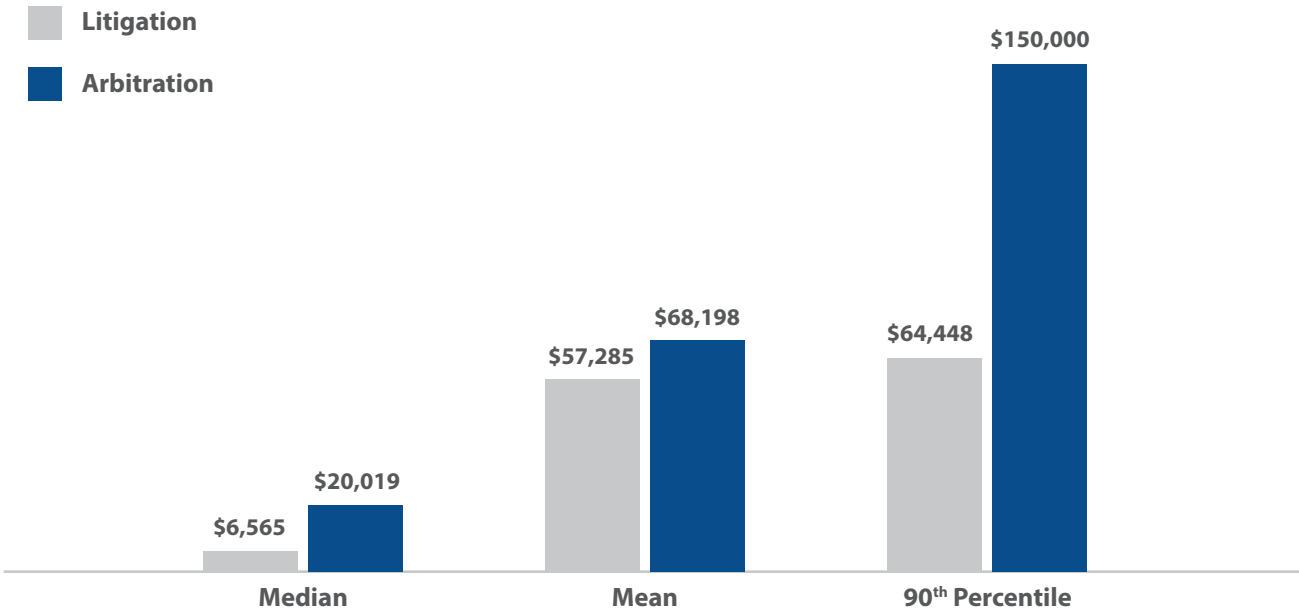
Table 6.
Award amounts to consumer-claimants in arbitrations and litigation cases during January 2014 – June 2020

	Mean	First Quartile	Median	Third Quartile	90 th Percentile
Arbitration (1,688 cases)	\$68,198	\$6,740	\$20,019	\$58,582	\$150,000
Litigation (1,263 cases)	\$57,285	\$4,108	\$6,565	\$17,555	\$64,448

Overall, consumer-claimants received higher awards in arbitration than in litigation:

- The median award for consumer-claimants in arbitration was over three times the dollar amount in litigation, \$20,019 compared to \$6,565.
- The 90th percentile of awards to consumer-claimants in arbitration was over 2.3 times the dollar amount in litigation, \$150,000 compared to \$64,448.
- The mean award for consumer-claimants in arbitration was 19% higher than litigation, \$68,198 compared to \$57,285.

Figure 3.
Consumer-claimants received higher awards in arbitration during January 2014 – June 2020



TIME TO RESOLUTION

Another important feature of arbitration is that it resolves cases faster than litigation. We calculated and compared the dispute-processing time from initiation to termination for disputes initiated and won by consumers in arbitration and litigation. Time was measured by days from the filing date to the date of termination.

Arbitration. The mean and median number of days from initiation to termination were 299 and 251, respectively, where consumers initiated and prevailed in arbitration during January 2014 – June 2020. The first and third quartiles

were 168 days and 368 days, respectively. The top 10% of arbitrations where consumers initiated and prevailed with awards required at least 515 days. (Table 7)

Table 7.
The mean consumer-claimant arbitration terminated with an award in 299 days

	Mean	First Quartile	Median	Third Quartile	90 th Percentile
Arbitrations where consumers initiated and prevailed (1,821 cases)	299	168	251	368	515

Litigation. The litigation process has many steps and therefore usually requires considerably more time than arbitration to resolve a dispute. Half of cases that consumers initiated in litigation in federal court and prevailed during

January 2014 – June 2020 required at least 311 days, with a mean duration of 429 days. The top 10% of litigation cases that consumers initiated and terminated in courts with awards required at least 919 days. (Table 8)

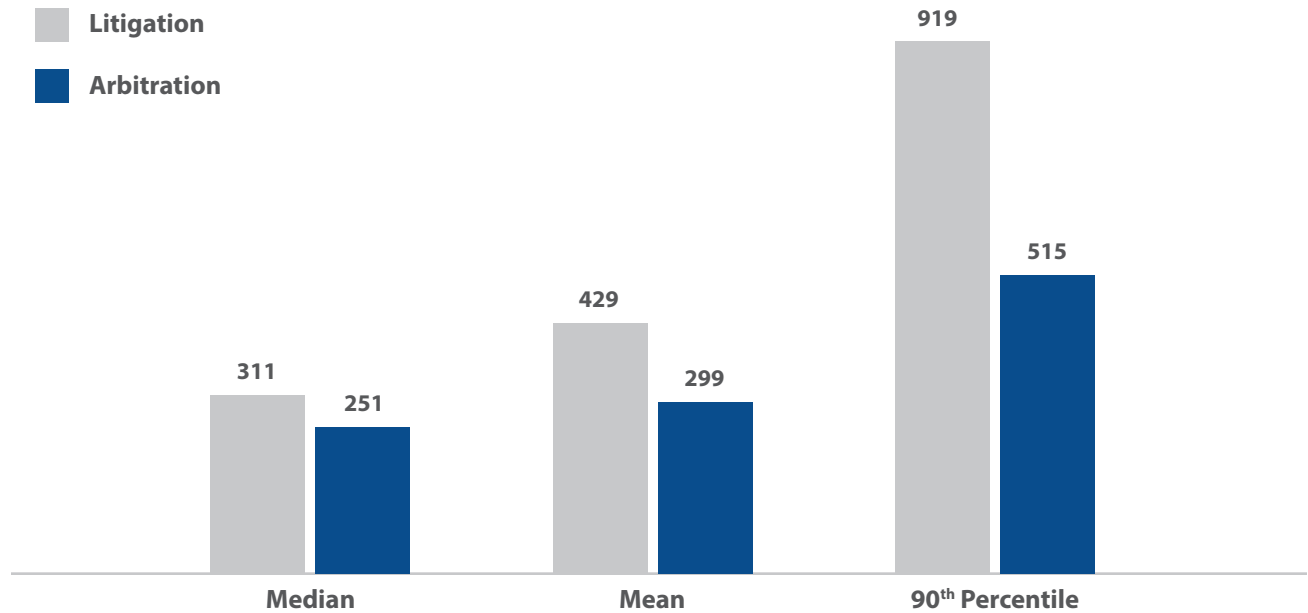
Table 8.
The mean consumer-claimant litigation case terminated with an award in 429 days

	Mean	First Quartile	Median	Third Quartile	90 th Percentile
Litigation cases where consumers initiated and prevailed (1,417 cases)	429	167	311	553	919

Overall, the processing time for consumer-claimants to win awards in arbitration is considerably less than in litigation. The mean processing time from initiation to completion was 299 days in consumer-claimant arbitrations compared to 429 days in consumer-claimant

litigation cases. The median processing time was 251 days in consumer-claimant arbitrations compared to 311 days in consumer-claimant litigation cases. The processing time of the 90th percentile was at least 515 days in arbitration compared to 919 days in litigation. (Figure 4)

Figure 4.
Consumer-claimants received an award faster in arbitration than in litigation



METHODOLOGY

This report compiled consumer arbitrations from AAA and JAMS reports and consumer litigation cases in federal courts from PACER, through Lex Machina, to construct a database to assess consumer disputes in arbitration and litigation. Using this large dataset, we compared the outcomes between consumer arbitration and traditional consumer litigation during the same time period. We also compared the monetary award amount and time spent on consumer disputes in these fora where consumers initiated and prevailed in the dispute.

Arbitration Data. Our analysis of consumer arbitrations relies on two data sources—American Arbitration Association (AAA), the largest provider of consumer arbitration services, and Judicial Arbitration and Mediation Services, Inc. (JAMS).²

We downloaded data directly from the AAA and JAMS websites in August 2020 and in January 2018 to compile a database of arbitrations. Currently, AAA and JAMS provide data for arbitrations terminated through June 30, 2020. Our combined dataset contains arbitrations that terminated between January 1, 2014 and June 30, 2020. Data prior to 2014 are not available. AAA and JAMS do not provide data for ongoing consumer arbitrations. We removed consumer arbitrations with missing data on the initiating party and/or outcome.

Our dataset contains 21,562 consumer arbitrations from AAA and 3,067 consumer arbitrations from JAMS, totaling 24,629 arbitrations that terminated during January 2014 – June 2020. The business and consumer in each case were

² AAA Consumer and Employment Arbitration Statistics, available at <https://www.adr.org/consumer> and JAMS Consumer Case Information, available at <https://www.jamsadr.com/consumercases/>.

assigned as plaintiff and defendant depending on the initiating party. 5,129 arbitrations were recorded with awards, of which 4,113 cases involved awards to only one party. The remaining arbitrations either involved awards to both parties or it was not apparent which party prevailed. Of the 4,113 arbitrations resulting in awards to only one party, consumers initiated and received awards in 1,812.

Litigation Data. Our analysis of litigation cases relies on 76,615 federal court cases that terminated between January 1, 2014 and June 30, 2020. We downloaded litigation data from the Lex Machina portal in September 2020. Lex Machina is a database that collects and organizes federal court data from the federal courts' PACER system.

Our analysis excludes class actions and cases where the plaintiff was a government agency, as these claims are not comparable to individualized consumer arbitrations involving private parties. Additionally, cases terminated with a consent judgment were classified as "settled cases" instead of "awarded cases" because they

embody settlements between the parties. This reclassification was applied to 684 cases. After removing consent judgments, Lex Machina identified 4,687 awarded cases (defendant or plaintiff wins). Of the 4,687 awarded cases, plaintiffs won 1,465 cases. To determine the number of consumer-claimant cases, we manually classified cases won by the plaintiff based on the names of the plaintiff and defendant. Plaintiffs or defendants with companies or organizations in the name were labeled "company," individuals were labeled "consumer." We identified 1,417 cases where the consumer-claimant won. Of these, 1,263 cases have monetary damage amounts. These damages are referred to as "monetary awards" throughout the report. Due to missing data, there is a small discrepancy between the total number of cases used to analyze the award amount and the total number of cases used to analyze the duration of the case from initiation to award.

Our arbitration and litigation datasets exclude insurance cases, healthcare cases, and personal injury cases.

CONCLUSION

The empirical evidence shows that consumer arbitration is an effective process for consumers to resolve disputes. While litigation is a long and often burdensome process with many rules and requirements, arbitration is simpler and more flexible. Using publicly available data from two of the largest consumer arbitration providers and a national litigation database, we constructed a comprehensive dataset to analyze and compare arbitration and litigation matters involving consumers in recent years. Analysis of that evidence shows that arbitration

yields better results for consumers who initiate claims. Arbitration is faster than litigation, taking 299 days instead of 429 days on average for consumers to obtain an award. Importantly, consumers fare better in arbitration, winning 44% compared to 30% of awarded cases for litigation. Moreover, the median monetary award for consumer-claimants in arbitration was over three times the award for consumers in litigation. All told, the arbitration process is faster and more favorable to consumers than the litigation process.

ABOUT THE AUTHORS

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Nam D. Pham is Managing Partner of ndp | analytics, a strategic research firm that specializes in economic analysis of public policy and legal issues. Prior to founding ndp | analytics in 2000, Dr. Pham was Vice President at Scudder Kemper Investments in Boston. Before that he was Chief Economist of the Asia Region for Standard & Poor's DRI; an economist at the World Bank; and a consultant to both the Department of Commerce and the Federal Trade Commission. Dr. Pham is an adjunct professor at the George Washington University. Dr. Pham holds a Ph.D. in economics from the George Washington University, an M.A. from Georgetown University; and a B.A. from the University of Maryland. He is a former member of the board of advisors to the Dingman Center for Entrepreneurship at the University of Maryland, Smith School of Business and the Food Recovery Network.

Mary Donovan, Principal

Mary Donovan is a Principal at ndp | analytics, a strategic research firm that specializes in economic analysis of public policy and legal issues. As a senior economist, she conducts and manages quantitative research across a range of fields including intellectual property and innovation, technology, legal issues, and higher education. Mary is particularly interested in examining the impact of public policies on middle- and lower-income workers and on rural areas. Before joining ndp | analytics, Mary was an Account Executive at the Kellen Company where she provided full-service management, including government affairs work and strategic consulting, to trade associations in the payments and food-business industries. Mary holds a Master's in Applied Economics from the University of Maryland and a Bachelor's in International Relations and French from State University of New York (SUNY) Geneseo. She serves on the Leadership Committee for Upwardly Global, a national nonprofit that helps high-skilled immigrants and refugees rebuild their careers in the United States.



