

# Mass Arbitration: AAA Looks to Reign in Administrative Costs

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Mass arbitration is a recent phenomenon created by enterprising plaintiffs as a direct result of a string of Supreme Court decisions that endorsed the use of class action waivers in arbitration agreements and precluded class-wide arbitration absent a specific agreement.[1] Mass arbitration has targeted some of the largest corporations in America, as well as numerous financial services companies.

Designed to weaponize arbitration agreements against these companies, mass arbitration, in large part, exploits the asymmetries in the administrative fees and costs required to commence an arbitration. Those administrative costs can be staggering. In one example, Uber was forced to pay nearly \$91 million dollars in administrative fees to AAA just to start the arbitration process with over 31,000 claimants.[2] Claimants have successfully leveraged these significant and mandatory fees to extract large settlements from businesses at the outset of cases.

The American Arbitration Association (AAA) recently [released](#) Supplementary Rules and Fee Schedules for Consumer Mass Arbitrations[3] that, on their face, appear to substantially reduce the administrative costs borne by businesses and also streamline the mass arbitration process.

## Changes to Administrative Costs

Under most arbitration agreements, and in an effort to promote fairness (and avoid unconscionability defenses), the business bears a disproportionate share of the administrative costs and filing fees that are due prior to the commencement of an arbitration. On an individual basis, and depending on the arbitration provider, these fees can be quite expensive. But when brought as a mass arbitration, these fees regularly exceed seven figures and are fees that must be paid before the arbitration provider will even consider the merits of the claims. AAA has started to address these costs.

Previously, AAA would require a business to pay a case-filing fee (between \$100 to \$325 a case) depending on the tier.[4] A \$1,400 case management fee was also required to be paid on each case by the business. Under the prior rules, a business faced with 5,000 arbitration demands would be required to pay administrative fees as follows:

**Filing Fee:**  $\$250 \times 5,000 = \$1,250,000$

**Case Management Fee:**  $\$1,400 \times 5,000 = \$7,000,000$

**Total:**  $\$8,250,000$

Under the Supplementary Rules, AAA now requires the business to pay a flat fee of \$8,125 at the outset of a Consumer Mass Arbitration instead of a fee on a per case basis. Notably, the initiation fee would also be for administrative review of the filings, an administrative conference call with AAA, and the appointment of a process arbitrator or global mediator to either try and mediate the cases or address threshold arbitrability issues. If the cases proceed beyond the initiation stage, the business is still required to pay a per-case fee (between \$100 and \$325) depending on the number of cases and an arbitrator appointment fee in the amount of \$425 before a merits arbitrator would be appointed.

Under the new rules, the same business faced with 5,000 arbitration demands will now be required to pay fees as follows:

**Flat Initiation Fee:** \$8,125

**Arbitrator Appointment Fee:**  $\$425 \times 5,000 = \$2,125,000$

**Per Case Fee:**  $\$100 \times 5,000 = \$500,000$

**Total:** \$2,633,125<sup>[5]</sup>

That is more than a 50% reduction in administrative fees the business would owe at the outset of a Consumer Mass Arbitration.<sup>[6]</sup>

## Other Changes to Consumer Mass Arbitrations

AAA also enacted additional changes to the handling of Consumer Mass Arbitrations. For instance, AAA now includes an attestation requirement. This is designed to address issues with inaccurate or fictitious filings. AAA requires Consumer Mass Arbitration claims to “include an affirmation that the information provided for each individual case is true and correct to the best of the representative’s knowledge.” While it remains to be seen how exactly this attestation process will pay out, it does appear to give businesses a chance to challenge frivolous arbitration claims at the outset and during the initial process.

The Supplementary Rules also empower a Process Arbitrator to address a host of procedural issues and challenges, including, but not limited to, disputes over applicable conditions precedent, disputes regarding payment of any administrative fees, disputes concerning filing requirements, whether the cases should be closed and compelled to small claims court, and the type and location of the hearing(s).

## The Takeaway

AAA’s Supplementary Rules to Consumer Mass Arbitrations took effect on January 15, 2024, and we will be monitoring to see how these amended rules make an impact moving forward.

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[1] See, e.g. *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333 (2011).

[2] *Uber Techs. v. Am. Arbitration Ass’n*, 2021 N.Y. Slip Op. 32080 (N.Y. Sup. Ct. 2021).

[3] AAA defines a Consumer Mass Arbitration as one where there are more than twenty-five similar demands for arbitration filed against or on behalf of the same party (or related entities) and where representation of all parties is consistent or coordinated throughout the cases.

[4] The tiers were based on the number of cases: between 1-500, 501-5000, 1501-3,000, and 3,100+.

[5] Once an evidentiary hearing is scheduled the business would likewise owe \$600 per case.

[6] This amount can be substantially reduced even further if the parties can settle the case or the business is able to get the arbitrations dismissed at the initial stage and before the per case fee comes due.

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Jim Sandy