



Significant Shift in Landscape for Consumer Arbitrations

The landscape for consumer arbitrations – particularly debt-collection arbitrations – changed dramatically this week. On July 19, 2009, in settlement of a lawsuit filed by the Minnesota Attorney General, the National Arbitration Forum (the NAF) announced that it would cease administering all consumer arbitrations as of July 24, 2009. On July 22, 2009, in the wake of this announcement, in a prepared statement to the Domestic Policy Subcommittee of the Oversight and Government Reform Committee, the American Arbitration Association (the AAA) confirmed a July 21 *Wall Street Journal* report that "the AAA has placed a moratorium on the administration of any consumer debt collection arbitration programs" until "a series of important fairness and due process concerns" are addressed and resolved. As of now, the AAA will still continue to administer other consumer arbitrations.

What does this mean for lenders that use arbitration agreements in consumer transactions? In addition to modifying arbitration agreements to take into account the recent announcements by the NAF and the AAA, lenders need to consider whether arbitration remains a viable option for certain types of consumer cases, such as debt-collection proceedings. New guidelines for consumer disputes may only serve to eviscerate some of the benefits of arbitration, including faster and cheaper resolution of matters. The unexpected announcements by the NAF and the AAA also counsel in favor of structuring arbitration agreements to take into account the possibility that one or more of the arbitration organizations identified in the arbitration agreement may not be in existence or accepting arbitrations when a dispute arises.

These recent developments may be the tip of the

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iceberg in terms of changes to the landscape of consumer arbitrations. Congress is currently considering bills that would eliminate or limit the use of pre-dispute arbitration agreements in a variety of contexts. These various moving parts counsel flexibility in arbitration clauses in anticipation of potential changes down the road.

For assistance drafting or revising your arbitration agreements, lobbying Congress on arbitration issues or litigating the enforceability of your arbitration agreement, please contact your principal Squire Sanders lawyer or any of the individuals listed in this Alert.

The contents of this update are not intended to serve as legal advice related to individual situations or as legal opinions concerning such situations. Counsel should be consulted for legal planning and advice.

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