

RICHARD M. KATZ
Trial Lawyer

Report From Counsel

Summer 2012

Forced Arbitration Threatens Consumers

A lawsuit is how most legal disputes are settled. But due to the explosion of forced arbitration, the option of a lawsuit is being made increasingly unavailable to consumers.

In arbitration, a case is decided by an arbitrator instead of by a judge or jury.

sophisticated parties to a contract, is now a “take-it-or-leave it” nonoption for the majority of Americans.

Arbitration is almost always bad for consumers. The fees to file an arbitration case are high, and claimants must pay the arbitrator, who can run hundreds of dollars per hour. Arbitration agreements often limit available remedies and

offer no right to appeal. Finally, many arbitrators take the side of business in any dispute: A recent study reveals that one large arbitration organization sided with credit card companies a whopping 94% of the time.

Not only does arbitration not favor the consumer, but it is also

Continued on page four.

In arbitration, a case is decided by an arbitrator instead of by a judge or jury. Arbitration has been around for years and has long been used by business because it can be quicker than a trial and is confidential.

In the past 15 years or so, more and more companies, including banks, cell phone carriers, and brokerage, homebuilder, and credit card companies, have put arbitration clauses in their contracts. Settling differences, once the product of informed negotiations between

Nursing Home Arbitration

One service provider quick to embrace arbitration has been nursing homes. The contracts for many nursing homes contain mandatory arbitration clauses, taking away a family’s right to sue if their loved one is injured or killed.

These clauses are often hidden in the fine print of long admissions documents; sometimes a home will even have the senile elderly person being admitted sign the document. As the accompanying article points out, if a nursing home can force a claim into arbitration, it benefits, avoiding much of the cost caused by its negligence.

Ultimately, we all pay the cost. Most nursing home patients receive Medicare or Medicaid, and when they are injured and the family cannot recover from the nursing home, it is the taxpayer who foots the bill.

Please visit our website: www.katzlawoffices.com

“Freeze” Your Credit to Help Prevent Identity Theft

By now, most people are familiar with the threat of identity theft and the uses to which the thieves might put your stolen identity. This includes using your personal information to charge goods and services on a new bogus credit card.

There are the usual preventive measures you can take, such as keeping personal information close to your vest, using passwords, and shredding financial documents you no longer need. You can also get regular credit reports from the three major credit bureaus, Equifax, Experian, and TransUnion, and/or you can sign up for a credit-monitoring service. These latter actions certainly have some value, but they may go only so far as to help you discover that the “horse is already out of the barn” rather than help you to prevent the theft in the first place.

Another theft-prevention approach that may be less familiar to most consumers is the credit freeze (sometimes called a “security freeze”). Although the term sounds as if you are left out in the cold as far as your credit is concerned, when properly used a credit freeze can give you the comfort of some additional financial security and leave would-be thieves out in the cold instead.

You can put a credit freeze into place by notifying the credit bureaus, providing certain personal information, and paying what should be a modest fee. When the freeze is in place, it stops all potential creditors from seeing your credit report and credit score unless you decide to “thaw out” your credit with the credit bureaus by using a personal identification

number. Since any potential creditor considering a thief’s application for credit using your information will not be able to check your credit report or score while the freeze is on, the creditor will not be able to extend credit, and this will prevent the new bogus account from being created.

Credit freezes are not a fail-safe wall of protection against identity theft, but they do give you another defense in the fight. They also do

not entail significant inconvenience or cost. Even with a freeze in place, you can use any of your existing sources of credit. A credit freeze especially makes sense if you have no plans to apply for new credit any time soon. But even if you do wish to do so, for another reasonable fee you can lift the freeze temporarily for up to 30 days, during which time credit checks can be made in the usual manner by your potential creditors.

Food Poisoning Leads to Large Verdict

One of the largest cases of food poisoning in recent memory has resulted in a substantial jury verdict against the restaurant responsible.

The case involved a fast-food restaurant specializing in breakfast food. More than 125 patrons of the restaurant came down with salmonella poisoning over a three-month period. Salmonella is a dangerous form of food poisoning that can cause those affected to suffer severe stomach pain and diarrhea. Serious cases can require hospitalization and even lead to death.

The salmonella outbreak was traced to several possible sources in the restaurant, including syrup pitchers (which employees said were routinely not washed before being refilled and reused) and a water bath used to warm syrup bottles. A number of restaurant em-

ployees who handled the pitchers also tested positive for the salmonella toxin.

Many of those who had been sickened became quite ill, and several almost died. As a result, a number of the injured customers brought a civil lawsuit against the restaurant. About half of the plaintiffs settled their claims for undisclosed amounts before trial.

The restaurant agreed to pay the remaining claimants’ medical bills and the wages they lost while sick, but it disputed the amount it should have to pay for their pain, seeking to show that at least some of their suffering was attributable to their prior medical problems. The matter was submitted to the jury, which awarded the remaining 10 plaintiffs a total of \$1.4 million for their pain and suffering.

The ABCs of Product Recalls

The Food and Drug Administration (FDA) is the agency charged with ensuring the safety of our drugs, medical devices, cosmetics, and most of our food. If it discovers that some regulated product is dangerous, the FDA may order a recall, a multistep process.

First, a problem must come to the FDA's attention, which can

If consumer reports show a pattern of problems with a product, the product may be recalled.

happen in a number of ways. Often, the company that made the product will submit a report that prompts a recall. At other times, the FDA's inspectors will discover a problem, such as during an inspection of a factory. Or it can happen that other government agencies, like the Centers for Disease Control, will tell the FDA of possible issues.

Finally, many recalls are prompted by reports made by consumers: If consumer reports show a pattern of problems with a product, the product may be recalled.

FDA recalls fall into one of three categories, depending on the level of danger a product poses. Class III recalls are for problems unlikely to be dangerous, such as when a label is done improperly. Class II recalls are more serious, involving products that present a danger, albeit one that is not life-threatening.

Class I recalls are very serious

and are issued when a product presents a danger of serious health problems or death. In order to spread the word as quickly as possible, the FDA widely advertises Class I recalls in the media. Although usually only Class I recalls trigger FDA media alerts, information regarding all levels of recall can be found on the FDA's website.

After a recall has been issued, the FDA will often follow up to see

if the recall has been effective. It may check to ensure that the product has been removed from shelves or that the problem has been fixed. It also makes sure that the defective product has been destroyed.

Whether caused by a mistake or by disregard of the law, defective products are dangerous. FDA recalls protect the public from these dangers.

Scaffold Accidents and Injuries

Construction workers have one of the most dangerous occupations, with thousands of people killed on jobsites every year and many more injured. Some of the most common construction accidents involve scaffolds or other types of lifts. These accidents can be very serious and usually result either from falls due to defective scaffolding or from objects plummeting from scaffolding that injure a worker below.

Unfortunately, suits involving injured construction workers are often more difficult to handle than other kinds of injury cases. An injury or death at a construction site involves the acts of many workers employed by different companies, each of whom is pointing at someone else as the party responsible. The question of liability can turn on whether a party is the property owner, the general contractor, the

subcontractor, or someone else. Because of these complexities, it is vital to have a lawyer involved in a construction injury case ASAP.

If you or a loved one has been injured on a construction site, contact our office and let us go to work for you.

Thank You

Thank you for trusting our firm with your legal needs. If you or someone you know has been injured due to somebody else's carelessness, please call us. We want to help.

Arbitration

Continued from page one.

not easy to avoid. Many companies do not let consumers opt out of arbitration clauses, and those that do often bury the requirements for doing so in the fine print, set impossible deadlines, or otherwise make carrying out the requirements hard to do. The law is also very friendly to arbitration: The Supreme Court has ruled time and again that the Federal Arbitration Act is to be interpreted broadly in favor of arbitration, and most states will enforce arbitration agreements in almost every case.

None of this is good for consumers. Many people cannot bring a claim because they cannot afford arbitration. Those who do bring claims often get less than they should or nothing at all.

Calls are increasing for limitations on arbitration agreements.

Some want to limit the kinds of claims that can be arbitrated. Others want to refuse to force arbitration of claims worth less than a certain amount. Still others want to completely ban mandatory arbitra-

tion for consumers. These calls for reform have run head-on into the business lobby, which knows that an end to arbitration will cost them money.

Beware of Deer Crossing

The combination of a growing deer population and increased urban sprawl has resulted in an increase in the number of collisions between cars and deer. According to the National Institute for Highway Safety, there are 1.5 million such collisions each year, killing some 150 people and costing millions of dollars in property damage.

Know where the deer are in your area. If possible, avoid these areas at dusk and at dawn, when deer are

most active. Deer travel in groups, so if you see one, look for others nearby. When driving in areas frequented by deer, keep your speed down so that you can see and react to them much better. When you can, use your high beams to illuminate the road and the shoulder.

Finally, if hitting a deer is unavoidable, do not swerve. Swerving can result in your car's going into another lane of traffic or off the road entirely.

Actual resolution of legal issues depends upon many factors, including variations of facts and state laws. This newsletter is not intended to provide legal advice on specific subjects, but rather to provide insight into legal developments and issues. The reader should always consult with legal counsel before taking action on matters covered by this newsletter.