

Podcast: *The Consumer Finance Podcast*

Episode: Mass Arbitration Unpacked: Provider Rules, Court Decisions, and the Rise of AI

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Guests: Massie Cooper and Kalama Lui-Kwan

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Chris Willis (00:05):

Welcome to [The Consumer Finance Podcast](#). I'm Chris Willis, the co-leader of Troutman Pepper Locke's Consumer Financial Services Regulatory Practice. And on today's podcast, we're going to be checking in with some of my litigation colleagues to talk about the phenomenon of mass arbitration and recent developments affecting mass arbitrations. But before we jump into that, let me remind you to visit and subscribe to our blogs, [troutmanfinancialservices.com](#) and [consumerfinancialserviceslawmonitor.com](#). And don't forget about all of our other great podcasts: the [FCRA Focus](#), Crypto Exchange, [Payments Pros](#), and [Moving the Metal](#). All of those are available on all popular podcast platforms. And speaking of those platforms, if you like this podcast, let us know. Leave us a review on your platform of choice and tell us how we're doing. Now, as I said, today we're going to be talking about mass arbitration, which in recent years has become a very important phenomenon in the litigation world for consumer financial services companies. And joining me to talk about that are two people very qualified to discuss it, and that is two of my consumer finance litigation partners, Massie Cooper and Kalama Lui-Kwan. Massie, Kalama, thanks very much for being on the episode today.

Massie Cooper (01:14):

Thanks for having us, Chris. We're really excited to be here.

Kalama Lui-Kwan (01:16):

Pleasure to be here. Thanks, Chris.

Chris Willis (01:18):

So let's start by giving the audience some background on mass arbitration. Where did it come from? How did mass arbitration come about? And why have we seen such a massive increase in it, pun intended, in recent years?

Massie Cooper (01:30):

The procedure began as a response to class action waivers and has now become a major strategic issue for companies, consumers, employees, and even the arbitration providers themselves. And lately, artificial intelligence has begun to affect both the scale of these matters and the way they are administered.

Kalama Lui-Kwan (01:49):

That's right. And I think, Chris, the simplest way to describe mass arbitration is this, instead of one class action, claimants' counsel will file hundreds, thousands, or sometimes even tens of thousands of individual arbitration demands based on similar allegations. Each claimant remains an individual party, but the filings are coordinated. The pressure point is usually the contract's fee structure because the company that selected arbitration might have to pay substantial filing and administration fees for each of the hundreds or thousands of arbitrations.

Massie Cooper (02:26):

The basic tension is almost architectural. Many businesses adopted arbitration clauses to avoid aggregated litigation. Claimants' counsel then said, in effect, "Fine, we'll arbitrate every claim individually." And the current developments that we're going to talk about today are about what happens when that literal enforcement creates scale, cost, and verification problems that traditional arbitration rules were not designed to handle.

Chris Willis (02:53):

So speaking of those traditional arbitration rules, when you say that, Massie, I'm thinking about the traditional arbitration providers. And so I'm wondering, how are those ADR providers handling the mass arbitrations that have come their way in such great quantities in recent years?

Kalama Lui-Kwan (03:10):

The first major development is that providers have moved away from treating a mass filing as simply a very large stack of unrelated cases. So for example, AAA's supplementary rules now use a process arbitrator to address threshold and non-merits issues involving questions like whether pre-filing steps were satisfied, which agreement applies, and whether filing requirements were met. After that initial process stage, qualifying cases can move to individual merits arbitrators.

Massie Cooper (03:48):

And the data explains why that architecture matters. The AAA reported more than 104,000 new consumer demands in 2025, spread across 81 mass arbitration caseloads. Yet of those, only 3,665 consumer cases, including older inventories, advanced to the merits phase that year. And of the consumer merits cases closed in 2025, 72% settled and 96% of those settlements occurred before the appointments of a mass arbitrator.

Kalama Lui-Kwan (04:23):

Those numbers suggest that the process stage is not just ministerial. That stage is usually where the parties will obtain rulings on basic procedural disputes, exchange enough information to value the claims, and decide whether a global resolution is rational. As Massie said, the case count dropped from 2024 to 2025, but the number of

unique consumer and employment mass matters stayed roughly stable. So the disputes are not disappearing, they've simply been restructured.

Chris Willis (04:54):

And it's interesting that you say that that process stage results in a lot of dispositions of the cases, which sort of reminds me of the fact of the way class actions resolve in court. They don't usually go to judgment. They resolve frequently even before a ruling on class certification. So I think that's an interesting parallel. Massie, what about JAMS?

Massie Cooper (05:13):

JAMS took a related but not identical approach. Its mass arbitration procedures, which were effective in 2024, require an individual demand and agreement for each claimant, identifying information, and a sworn declaration from counsel that the demand information is true and correct to the best of counsel's knowledge. JAMS appoints a process arbitrator who can resolve preliminary and administrative issues. Unlike some staged models, the default JAMS procedures do not mandate mediation or bellwether cases.

Kalama Lui-Kwan (05:45):

That distinction is important when drafting a clause. Choosing AAA or JAMS is not a minor administrative choice. The incorporated rules might determine the threshold for a mass filing, counsel's attestations, the timing of fees, the authority of a process neutral, and whether batching, test cases, or mediation can occur. So for that reason, a clause should be modeled by companies against the provider's current rules and not copied from a form that predates this entire phenomenon.

Chris Willis (06:17):

It's fascinating that the ADR providers differ so much on how they handle mass arbitrations. What about the court system? Have appellate courts chimed in on the topic and the proper handling of these cases in arbitration?

Massie Cooper (06:29):

There's a growing body of appellate law about who decides fee and administration disputes and what courts can do when the arbitral forum closes cases. One important example is the Seventh Circuit's 2024 decision in Wallrich. After the company did not pay AAA administrative fees and the AAA closed the matters, the court held that the district court could not order the company to pay and continue. In the court's view, the parties had incorporated the AAA's rules, the AAA exercised the discretion those rules gave it, and the agreed process had run its course.

Kalama Lui-Kwan (07:05):

In a 2025 case, one year after that Seventh Circuit decision, the Second Circuit took a similar approach in a matter called Frazier. And in the Frazier case, Second Circuit was deferential to the ADR provider. The ADR provider in that particular matter was JAMS.

The practical lesson from that case is that a petition to compel is not necessarily a vehicle for obtaining judicial review of an administrator's fee decision. And as counsel, for that reason, we need to analyze the exact clause, the incorporated rules, the provider's correspondence, and whether there has truly been a so-called failure to arbitrate under Section 4 of the Federal Arbitration Act.

Massie Cooper (07:53):

And so you really see how quickly the law here has been developing because the next notable decision is less than a year later, which is in May of 2026. The Seventh Circuit decided Bernal. And in that case, the business had declined to register its consumer clause with the AAA, so the AAA closed the claims. And the majority, relying on Wallrich, which we discussed earlier, affirmed denial of a petition seeking to force the company to register and arbitrate. But there was a pointed dissent arguing that non-registration is different from non-payment because only the business could cure it. Whereas in cases where a business fails to pay fees, technically the claimant could front the fees for the business. So in this situation, the dissent said that the majority effectively created a unilateral exit from a bilateral arbitration promise.

Kalama Lui-Kwan (08:45):

And it's that disagreement that shows why clause registration, provider compliance, and post-dispute conduct now all belong on the same risk map as the wording of the arbitration clause itself.

Massie Cooper (09:00):

Before we move on, we can't have a podcast about mass arbitration and not talk about the Ninth Circuit's 2024 Heckman decision. In that case, the court refused to enforce provisions that routed mass claims into a highly coordinated bellwether process. The court there was troubled by the combination of unusual procedures, limited discovery, precedent-like effects across claimants, and the prospect that claimants would be bound by results in proceedings in which they had little participation. And in that case, really, the broader drafting lesson is that efficiency mechanisms still need bilateral fairness. So, a mass arbitration protocol cannot become class treatment stripped of the protections that normally accompany aggregate adjudication.

Kalama Lui-Kwan (09:47):

And the Ninth Circuit case law on mass arbitrations is really interesting and constantly evolving. In 2025, one year after issuing the Heckman decision, the Ninth Circuit issued another mass arbitration decision in a case called Jones. In Jones, the Ninth Circuit held that a respondent could consolidate 7,300 claims in arbitration so that they would all proceed before only one arbitrator. The court's reasoning was that the arbitration agreement incorporated the JAMS rules, and the JAMS rules, in turn, allowed for consolidation. And so the practical result of that decision was that the company had to pay for only one arbitrator, and it avoided the need to pay for 7,300 arbitrations, which would have cost \$12.7 million in filing fees. So the really interesting thing is that the

Ninth Circuit distinguished the consolidation in Jones from the bellwether process in Heckman, suggesting that the former was permissible even though it had serious misgivings about the latter.

Chris Willis (10:53):

That is really interesting, Kalama. And, Massie, you mentioned that we can't talk about mass arbitration without talking about Heckman, which of course is true. But I also feel like we can't talk about mass arbitration without also talking about AI, because, we now have to talk about AI with respect to everything. And so my question is, are firms or ADR providers using artificial intelligence to help manage the sort of large scale of mass arbitrations?

Kalama Lui-Kwan (11:18):

That's a great question, Chris. The most immediate effect of AI is in how it's lowering the marginal cost of managing a claimant roster. AI can help manage transaction data, identify agreement versions, draft individualized content with respect to individual claimants, flag missing documents. It can compare thousands of demands, detect duplicate narratives. Really, Chris, the opportunity is immense.

Massie Cooper (11:48):

But that efficiency creates a verification paradox. The faster a system can generate demands, the more important it becomes to prove that each demand reflects a real client, a real authorization, a covered transaction, and a good faith factual basis to bring a claim. And the provider rules already point in the direction that this has already been flagged by the ADR providers. The JAMS sworn declaration and AAA filing affirmations are not mere paperwork. They are integrity controls for a process in which automation can magnify a single bad data source into thousands of defective filings.

Kalama Lui-Kwan (12:25):

And lawyers cannot outsource professional judgment to the model. ABA Formal Opinion 512 addresses this very issue, and it applies familiar duties to generative AI, duties like competence, supervision, and candor. And what that means in the context of a mass arbitration is that counsel need to understand what data went into the tool, whether client information has been retained or is being used to train a model, how the outputs are validated, and which lawyer is ultimately accountable for the final filing.

Massie Cooper (13:04):

So a sensible protocol has at least five controls. First, verify claimant identity and authority. Second, tie every material allegation to source data. Third, use deterministic duplicate and anomaly checks, not just a chatbot's impression. Fourth, you should independently verify every legal citation and quoted contractual term. And fifth, we should be preserving an audit trail showing the source, model or tool, review steps, and human approval. If challenged, counsel should be able to explain the workflow without improvising.

Kalama Lui-Kwan (13:40):

AI is also entering the administration side of things. AAA published standards in 2025 that emphasize human-centered values, privacy and security, accuracy, accountability, adaptability. AAA also now offers AI-led arbitration rules for certain eligible disputes. And so AI can be used to organize submissions, summarize materials, identify issues, and even draft a proposed award, but a human arbitrator ultimately makes the decision and issues the award. That is not yet a mass arbitration cure-all, but the overlap is obvious.

Massie Cooper (14:31):

But the due process questions are equally obvious. What must be disclosed about AI use? Can the parties challenge an AI-generated summary? How do we test whether a model omitted a key fact or weighted one side's presentation differently? Who sees confidential data? And if an AI-assisted draft influences an award, what record exists for review? Arbitration's flexibility has historically been one of its strengths, but the parties should address these points in a case management order before the system becomes embedded in the decision process.

Chris Willis (15:05):

So given all of these very interesting developments, both with the administrators, the case law, and then the advent of AI, what are some practical takeaways, Kalama, that companies should understand when managing the ongoing threat of mass arbitration?

Kalama Lui-Kwan (15:21):

This will come as no surprise, Chris, but because the law is constantly evolving, I think it's important for companies to set a periodic review of their consumer and employment arbitration agreements. Update those agreements using today's provider fees and mass procedures, and confirm whether the agreements have to be registered with ADR providers.

Massie Cooper (15:44):

I also think it's important for companies to review pre-dispute notice requirements, batching language, limitation periods, severability, governing law, and what happens if the named provider declines administration. The larger trend is that mass arbitration is maturing. Provider rules are supplying structure, courts are policing both contractual consent and procedural fairness, and AI is reducing the cost of processing claims while increasing the premium on verification and transparency.

Kalama Lui-Kwan (16:16):

That's right. So the key question is no longer simply, "Is there an arbitration clause?" The key question is, "What system did the parties actually create? How will it behave at scale? And can it remain fair when technology makes scale nearly effortless? That's where the next generation of mass arbitration disputes will be fought.

Massie Cooper (16:39):

And Chris, thanks for having us. This is obviously a rapidly evolving area of the law and one that we're very interested in, so it was fun to speak with you today about these recent developments.

Chris Willis (16:49):

I'm very happy the two of you came on to talk about it too. And as this area continues to evolve, I'm sure we will have more podcast episodes in the future where the two of you can share even further developments as they continue to occur in this area. So thank you both for being on the podcast today, and thanks to our audience for listening in as well. As I said at the top of the show, don't forget to visit and subscribe to our blogs, troutmanfinancialservices.com and consumerfinancialserviceslawmonitor.com. And while you're at it, why not visit us on the web at troutman.com and add yourself to our consumer financial services email list? That will allow us to send you copies of the alerts and advisories that we release from time to time, as well as our occasional industry-only webinars. And of course, watch your podcast feed every Thursday afternoon for a great new episode of this podcast. Thank you all for listening.

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