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Another arbitration service – FedArb – establishes new mass arbitration protocol

(Reuters) - With high-profile companies like Postmates, DoorDash, DraftKings and FanDuel tangling with the American Arbitration Association over AAA's fee requirements in thousands of individual arbitrations filed against the companies, smaller arbitration services are sensing an opportunity. I told you last month about new rules adopted by the International Institute for Conflict Prevention and Resolution, which has named retired U.S. District Judge Shira Scheindlin of Manhattan as the administrative arbitrator of its new mass claims program, which CPR developed after inquiries from defense lawyers representing companies socked with thousands of arbitration demands.

FedArb, which bills itself as having the best and biggest roster of former federal judges of any arbitration service, also heard from companies staring at the prospect of millions of dollars in upfront arbitration fees from contracts that require workers to bring individual cases at AAA or JAMS. On Monday, FedArb announced the adoption of new protocols to address the phenomenon of mass arbitration.

"We adopted a structure that backends the administrative costs, creates a panel of judges who can adjudicate the claims on a fixed cost basis and also created an MDL type procedure to deal with common issues — again, to create consistency and reduce costs," said FedArb CEO Ken Hagen in an email statement. "We believe it will be a very effective and efficient way to resolve these claims." A FedArb spokeswoman declined to name the companies that reached out to the service.

Under the FedArb rules, companies would pay only a \$100 upfront fee. Within 30 days of the submission of mass filings, FedArb and the parties would have to agree on a roster of five former federal judges (from 10 prospective candidates) to act as arbitrators. The judges' hourly rates would be set at between \$700-\$900, and all of the judges would hear five cases billed at hourly rates, subject to caps depending on the type of case. Subsequent cases would be billed at a fixed rate.

Separately, an MDL-type panel of up to three judges would hear and decide "major issues common to all cases." Parties would pay \$1,000 to set up the panel, with judges billing at their hourly rates. FedArb contends that with its roster of experienced judges and adherence to expedited arbitration rules – including limited briefing and discovery – the service can handle cases quickly and efficiently. FedArb will charge a 6% administrative fee on mass arbitration cases, half of its usual 12% fee.

CPR also invoked the MDL process in its mass arbitration protocols, which call for the resolution of between 10 and 20 test cases that would serve as bellwethers for a mediation aimed at reaching a global settlement to resolve remaining claims. Both the CPR and FedArb processes would strip workers of the leverage of hefty cumulative filing fees in mass arbitration.

I'm aware of only one company, DoorDash, that has attempted to require workers to agree to arbitrate claims at CPR and none that has yet adopted the FedArb program in contracts with workers. But I wouldn't be surprised to find out that other businesses are contemplating a switch.

(Reporting by Alison Frankel)

---- Index References ----

Company: AMERISOURCEBERGEN CORP; DoorDash; DRAFTKINGS INC; FANDUEL INC; POSTMATES INC

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