

**IN THE COUNTY COURT AT LAW NUMBER SEVEN
OF EL PASO COUNTY, TEXAS**

FILED
NORMA L. FAVELA
DISTRICT CLERK

2013 AUG 28 AM 9:43

YVONNE CARDWELL,

§

EL PASO COUNTY, TEXAS

Plaintiff

§

BY _____
DEPUTY

v.

§

CAUSE # 2013DCV0910

§

WHATABURGER RESTAURANTS, LLC. §

And MIGUEL MUNOZ,

§

Defendants

§

**ORDER DENYING MOTION TO COMPEL ARBITRATION WITH
FINDINGS OF FACT AND CONCLUSIONS OF LAW**

FINDINGS OF FACT

1. Plaintiff works as a part time dish washer at Whataburger. She is paid \$7.40 per hour and works approximately 17 hours per week. Her gross income is \$125.80 per week or \$6,541.60 per year. She lives in a shelter for homeless women.
2. Defendant is a limited liability corporation which operates over 700 restaurants in ten states across the nation.
3. Plaintiff, like every other employee of Whataburger, was required, as a condition of employment, to sign an arbitration agreement before going to work.
4. This arbitration policy is long. It contains sixteen fairly lengthy paragraphs of very small type and is located on pages 22 and 23 of a fifty page Employee Handbook. (Tr. p.25).
5. The policy was created solely by Whataburger and not one single word of it was proposed by Plaintiff or negotiated with Plaintiff. The term "negotiate" is defined by the Oxford English Dictionary to mean "communicate or confer for the purpose of arranging some matter by mutual agreement; have a discussion or discussions with a view to some compromise or settlement". Webster's Third New International Dictionary describes it as "to arrange for or bring about through conference and discussion: work out or arrive at or settle upon by meetings and agreements or compromises." Nothing even remotely close to that occurred in this case.
6. There are provisions in the hand book and the acknowledgment forms which may allow Whataburger to modify, revoke, change, or delete the arbitration policy under some circumstances. Employees have no such powers. (Tr. p.29-31)

7. Plaintiff alleged that on or about December 23, 2012 she suffered a serious injury at Defendant's facility while in the course and scope of her employment.
8. Whataburger is a "non-subscriber" and, consequently, there are no workers compensation benefits available to Plaintiff with regards to that incident.
9. Therefore, Plaintiff filed this lawsuit alleging that Defendant was negligent and failed to provide a safe work place. She further alleged that, for multiple reasons, the purported Arbitration Agreement is not a bar to this litigation.
10. Plaintiff, or more likely her lawyers, paid the filing fee and the jury fee. (\$305.00) There are no further forum fees of any nature which will accrue to either party if this case proceeds to trial in this Court.
11. In contrast, there are numerous extremely large fees for Whataburger if this case goes to arbitration. The Court takes judicial notice of the fee schedules attached to this Order which were printed from the American Arbitration Association (AAA) website.
12. According to those documents, the non-refundable filing fees, which must be paid before the final hearing, are dependent on the amount of the claim and are governed by either a Standard Fee Schedule or a Flexible Fee Schedule. The Flexible Fee Schedule is slightly higher, but may be paid out on an extended basis.
13. The filing fees on the standard schedule run from a minimum of \$975.00 to a maximum of \$71,000.00. The flexible schedule runs from a minimum of \$1,075.00 to a maximum of \$75,500.00.
14. The minimum fees apply to claims of \$10,000.00 or less and the maximum fees apply to claims of \$10,000,000.00 or more.
15. In this case, Plaintiff has not pled a specific dollar amount but seeks damages for past and future medical expenses, past and future lost wage earning capacity, past and future physical and mental pain and suffering, and additional compensatory damages for impairment, disfigurement and a limitation on her ability to perform household duties. She also pleads for punitive damages. If this amounts to a claim of over \$300,000.00, the standard fee would be \$6,100.00 and the flexible fee would be \$6,650.00.
16. If plaintiff is claiming more than \$500,000.00, then, regardless of the merits of her claims, the standard filing fee would be \$8,700.00 and the flexible filing fee would be \$9,500.00. (1)

(1) When asked about the cost of the filing fee at the hearing, counsel for Whataburger stated "The filing fee I think is a thousand dollars, yeah". (Tr.p.11)

17. These exorbitant filing fees are only part of the additional (and completely unnecessary) fees that Whataburger is asking to pay. The Website makes clear that Whataburger will have to pay the expenses of the arbitrator (including travel and lodging), an additional administrative fee of \$350.00 per day for each day a hearing is held, an abeyance fee of \$300.00 if the case is not resolved within one year, hearing room rental fees, a \$150.00 fee for a postponement or a continuance, and further provides that AAA reserves the right to set additional administrative fees if necessary.
18. Arbitrator's fees vary and are set by individual arbitrators. This Court has done a brief study and takes judicial notice that they are in the range of \$300.00 to \$400.00 per hour or more and cover study time as well as hearing time. Those fees are billed through AAA which adds its own \$50.00 per hour surcharge on top. A three day trial, with only one day of study and preparation, would exceed \$12,000.00 in arbitrator fees.
19. Notwithstanding those substantial costs, Whataburger filed a Motion to Compel Arbitration and to Dismiss this case. If the Court were to grant that Motion, then; (1) Whataburger would pay the above fees and costs; (2) Plaintiff would lose her constitutional right to trial by jury; and (3) a single AAA arbitrator would act as both judge and jury, in that she (or he) would make all factual findings and decide all questions of law.
20. A hearing was held on this Motion and the parties argued whether the arbitration policy was or was not unconscionable. The Court asked counsel for Whataburger if there was any conceivable reason to pay unnecessary fees other than to "buy" a decider who would be very well paid by Whataburger, supplied by an Association which would be very well paid by Whataburger, in the hope and expectation that the decider would be biased in Whataburger's favor.
21. Counsel for Whataburger first stated that arbitration is less formal. This Court gives no credibility to the argument that Whataburger needs less formality in litigation with its dishwashers.
22. Counsel for Whataburger then stated that arbitration would be more efficient. (2) The Court then offered to immediately set this case for trial. Plaintiff's counsel were willing to accept a quick trial date but counsel for Whataburger stated that he did not have the authority to do so.
23. As Counsel for Whataburger was discussing a possible quick trial setting, he did ask Counsel for Plaintiff if they would agree to a non-jury trial if the case remained in this Court. They agreed. (Tr.p.42).

(2) This is also a dubious rationale. Whataburger is presently in possession of all the money plaintiff is seeking in this suit. She might well be anxious to receive compensatory and punitive damages but Whataburger would never be in a rush to pay them. Certainly Whataburger would not insist on paying \$20,000.00 to the AAA just to expedite a possible recovery for Ms. Cardwell.

24. Therefore, even though Whataburger can have a non-jury trial before a duly elected judge of this court promptly without paying a penny in forum fees, they instead want to pay approximately \$20,000.00 for an AAA arbitrator to set a later hearing. There is no conceivable reason for that request other than Whataburger's belief that it will fare much better, and Ms. Cardwell will fare much worse, before an arbitrator.
25. Assuming that Whataburger acts in its own self interest, the Court must consider the economic realities of this situation. Whataburger would never insist on paying such forum fees in every employee claim unless it had a high level of certainty that it would save more than that by eliminating or limiting employee recoveries.
26. This Court finds that Whataburger, the AAA, and the individual arbitrators are all profiting very handsomely from this arbitration policy. The inescapable conclusion is that those profits come from precluding dishwashers from receiving the compensation they could otherwise obtain in the judicial system.
27. This conclusion is confirmed by the total pretextuality of Whataburger's arguments for arbitration. In discussing informality and expedience, Whataburger continually referred to the costs of attorneys fees. The underlying premise – that litigation results in higher attorney fees – is false. The Texas Rules of Civil Procedure give trial Court Judges broad power to regulate and control litigation (and thereby limit costs) in the pleading stage (Rules 45 through 98); during pretrial procedures (Rules 166-175); the discovery phase (Rules 190-215); and throughout the trial (Rules 262-329). Whataburger's conclusory and totally unsupported allegation that arbitration reduces attorney fees has no credibility.

CONCLUSIONS OF LAW

1. The Seventh Amendment to the U. S. Constitution states:

“In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury, shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of common law.”⁽³⁾

(3) Citing *American Heritage Life Ins. Co. v. Orr*, 294 F.3d 702, 711 (5th Cir. 2002), Whataburger argues that the right to a jury trial only exists if there is a trial. Because the arbitration policy imposed on injured dishwashers prevents them from having any access to the judicial system at all, Whataburger argues that their constitutional rights therefore vanish. This Court does not share the Fifth Circuit's view that constitutional rights should vanish so easily when a large corporation flexes economic power over homeless people.

2. Despite that crystal clear preservation of the right to trial by jury in the original Bill of Rights, national and state legislatures and appellate courts have created, and continually strengthen, a policy favoring arbitration whenever possible (and correspondingly eliminating jury trials whenever possible). Some very prominent legal scholars have strongly disagreed with this trend. Civil Jury Trials R.I.P.? Can It Actually Happen in America? Royal Ferguson, St. Mary's Law Journal, Vol. 40, Number 3, pg. 795-890. (2009)
3. This Court is bound by precedent and can only suggest that Congress, Legislatures, and Appellate Courts reconsider depriving dishwashers of their constitutional right to a jury trial because of the demonstrably dishonest argument that arbitration is more efficient and less expensive.
4. This Court can, however, deny the Motion to Compel Arbitration if it finds the Arbitration Policy is unconscionable. The Court so finds. The facts and the record in this case overwhelmingly show unconscionability.
5. It is hard for this Court to think of anything more repulsive than perpetuating a system that lets large corporations lavishly buy their way out of judicial accountability and into a system more favorable to their side.
6. Another unconscionable part of the policy is paragraph 5.01 which states that all arbitration hearings shall take place in Dallas unless the parties otherwise agree in writing. Obviously, Whataburger employees earning \$7.40 per hour in El Paso would never be able to go to Dallas and bring witnesses there. (4)
7. There was no written agreement to waive the Dallas provision, but counsel for Whataburger conceded, at the hearing, that this particular arbitration could occur in El Paso. (Tr. p.5, 20-21)
8. If Whataburger were ever to use the Dallas requirement to preclude an employee from pursuing a claim, that would be unconscionable. If Whataburger would always waive it and allow employees to have a hearing in their home community, then the Court can think of no reason to have it in the policy other than to discourage employees, and plaintiff's lawyers, from bringing claims in the first place. That is also unconscionable.

(4) Whataburger did not identify the other nine states where it has restaurants, but most of those workers are probably even further away from Dallas.

9. Still another unconscionable part of the policy is the lie contained in paragraph 101, the very first paragraph in the policy which states "Arbitration has the advantages of being less formal and getting the dispute resolved more quickly and at less expense". (emphasis added). In this case Whataburger could proceed to trial more quickly with no costs, but, instead, is asking to pay approximately \$20,000.00 for a slower process so that it can buy an AAA fact finder. If such conduct, which appears to be what the 7th Amendment was designed to prevent, is allowed, then employers should, at the very least, be required to honestly reveal that truth to employees. Affirmatively lying about it in the policy is unconscionable.
10. Plaintiff raises other arguments as to why the arbitration policy is unconscionable which the Court need not consider at this time. Paying approximately \$20,000.00 to purchase a more favorable fact finder and lying to employees about why you are doing it is all the unconscionability this Court needs.
11. Defendant's Motion is DENIED.

Signed and entered this 28 day of August, 2013.


THOMAS A. SPIECZNY, JUDGE

CC: James Tawney
S. Wesley Butler

Fax: 915/532-1759
Fax: 214/922-7101



EMPLOYMENT ARBITRATION RULES

Rules Amended and Effective November 1, 2009

Fee Schedule Amended and Effective May 15, 2013

COSTS OF ARBITRATION (INCLUDING AAA® ADMINISTRATIVE FEES)

This Costs of Arbitration section contains two separate and distinct sub-sections. Initially, the AAA shall make an administrative determination as to whether the dispute arises from an employer-promulgated plan or an individually-negotiated employment agreement or contract.

If a party disagrees with the AAA's determination, the parties may bring the issue to the attention of the arbitrator for a final determination. The arbitrator's determination will be made on documents only, unless the arbitrator deems a hearing is necessary.

FOR DISPUTES ARISING OUT OF EMPLOYER-PROMULGATED PLANS*:

Arbitrator compensation is not included as part of the administrative fees charged by the AAA. Arbitrator compensation is based on the most recent biography sent to the parties prior to appointment. The employer shall pay the arbitrator's compensation unless the employee, post dispute, voluntarily elects to pay a portion of the arbitrator's compensation. Arbitrator compensation, expenses as defined in section (iv) below, and administrative fees are not subject to reallocation by the arbitrator(s) except upon the arbitrator's determination that a claim or counterclaim was filed for purposes of harassment or is patently frivolous.

* Pursuant to Section 1284.3 of the California Code of Civil Procedure, consumers with a gross monthly income of less than 300% of the federal poverty guidelines are entitled to a waiver of arbitration fees and costs, exclusive of arbitrator fees. This law applies to all consumer agreements subject to the California Arbitration Act, and to all consumer arbitrations conducted in California. If you believe that you meet these requirements, you must submit to the AAA a declaration under oath regarding your monthly income and the number of persons in your household. Please contact Case Filing Services at 877-495-4185 if you have any questions regarding the waiver of administrative fees. (Effective January 1, 2003.)

A party making a demand for treatment of a claim, counterclaim, or additional claim as a collective action arbitration will be subject to the administrative fees as outlined in the standard and flexible fee schedules below. Arbitrator compensation is not included as a part of the administrative fees charged by the AAA. Arbitrator compensation in cases involving a collective action claim will be charged in accordance with the determination as to whether the dispute arises from an employer-promulgated plan or an individually negotiated employment agreement or contract.

(i) Filing Fees

Cases Filed by Employee against Employer

In cases before a single arbitrator, a non-refundable filing fee capped in the amount of \$200 is payable in full by the employee when a claim is filed, unless the plan provides that the employee pay less. A non-refundable fee in the amount of \$1,350 is payable in full by the employer, unless the plan provides that the employer pay more.

In cases before three or more arbitrators, a non-refundable filing fee capped in the amount of \$200 is payable in full by the employee when a claim is filed, unless the plan provides that the employee pay less. A non-refundable fee in the amount of \$1,800 is payable in full by the employer, unless the plan provides that the employer pay more.

The employer's share is due as soon as the employee meets his or her filing requirements, even if the matter settles.



There shall be no filing fee charged for a counterclaim. If a determination is made that the dispute arises out of an individually-negotiated employment agreement, the filing fee for a counterclaim will be charged in accordance with the fee schedules below for disputes arising out of individually negotiated employment agreements.

The above fee schedule will also apply where the employer files on behalf of the employee pursuant to the terms of the employer promulgated plan.

Cases Filed by Employer against Employee

In cases before a single arbitrator, a non-refundable fee in the amount of \$1,550 is payable in full by the employer.

In cases before three or more arbitrators, a non-refundable fee in the amount of \$2,000 is payable in full by the employer.

There shall be no filing fee charged for a counterclaim. If a determination is made that the dispute arises out of an individually-negotiated employment agreement, the filing fee for a counterclaim will be charged in accordance with the fee schedules below for disputes arising out of individually-negotiated employment agreements.

(ii) Hearing Fees

For each day of hearing held before a single arbitrator, an administrative fee of \$500 is payable by the employer.

For each day of hearing held before a multi-arbitrator panel, an administrative fee of \$500 is payable by the employer.

There is no AAA hearing fee for the initial Arbitration Management Conference.

(iii) Postponement/Cancellation Fees

A fee of \$150 is payable by a party causing a postponement of any hearing scheduled before a single arbitrator.

A fee of \$250 is payable by a party causing a postponement of any hearing scheduled before a multi-arbitrator panel.

(iv) Hearing Room Rental

The hearing fees described above do not cover the rental of hearing rooms. The AAA maintains hearing rooms in most offices for the convenience of the parties. Check with the administrator for availability and rates. Hearing room rental fees will be borne by the employer.

(v) Abeyance Fee

Parties on cases held in abeyance for one year will be assessed an annual abeyance fee of \$300. A case may only be held in abeyance after the initial filing fees have been paid. If a party refuses to pay the assessed fee, the other party or parties may pay the entire fee on behalf of all parties, otherwise the matter will be administratively closed.

(vi) Expenses

All expenses of the arbitrator, including required travel and other expenses, and any AAA expenses, as well as the costs relating to proof and witnesses produced at the direction of the arbitrator, shall be borne by the employer.



FOR DISPUTES ARISING OUT OF INDIVIDUALLY-NEGOTIATED EMPLOYMENT AGREEMENTS AND CONTRACTS:

The AAA's Fee Schedule, as modified below, will apply to disputes arising out of individually-negotiated employment agreements and contracts, even if such agreements and contracts reference or incorporate an employer-promulgated plan. Arbitrator compensation is not included as part of the administrative fees charged by the AAA. Arbitrator compensation is based on the most recent biography sent to the parties prior to appointment.

ADMINISTRATIVE FEE SCHEDULES (STANDARD AND FLEXIBLE FEE)

The AAA has two administrative fee options for parties filing claims or counterclaims, the Standard Fee Schedule and Flexible Fee Schedule. The Standard Fee Schedule has a two-payment schedule, and the Flexible Fee Schedule has a three-payment schedule which offers lower initial filing fees, but potentially higher total administrative fees of approximately 12% to 19% for cases that proceed to a hearing. The administrative fees of the AAA are based on the amount of the claim or counterclaim. Arbitrator compensation is not included in this schedule. Unless the parties agree otherwise, arbitrator compensation and administrative fees are subject to allocation by the arbitrator in the award.

In an effort to make arbitration costs reasonable for consumers, the AAA has a separate fee schedule for consumer-related disputes. Please refer to Section C-8 of the Supplementary Procedures for Consumer-Related Disputes when filing a consumer-related claim. Note that the Flexible Fee Schedule is not available on cases administered under these supplementary procedures.

The AAA applies the Supplementary Procedures for Consumer-Related Disputes to arbitration clauses in agreements between individual consumers and businesses where the business has a standardized, systematic application of arbitration clauses with customers and where the terms and conditions of the purchase of standardized, consumable goods or services are non-negotiable or primarily non-negotiable in most or all of its terms, conditions, features, or choices. The product or service must be for personal or household use. The AAA will have the discretion to apply or not to apply the Supplementary Procedures and the parties will be able to bring any disputes concerning the application or non-application to the attention of the arbitrator. Consumers are not prohibited from seeking relief in a small claims court for disputes or claims within the scope of its jurisdiction, even in consumer arbitration cases filed by the business.

Fees for incomplete or deficient filings: Where the applicable arbitration agreement does not reference the AAA, the AAA will attempt to obtain the agreement of the other parties to the dispute to have the arbitration administered by the AAA. However, where the AAA is unable to obtain the agreement of the parties to have the AAA administer the arbitration, the AAA will administratively close the case and will not proceed with the administration of the arbitration. In these cases, the AAA will return the filing fees to the filing party, less the amount specified in the fee schedule below for deficient filings.

Parties that file demands for arbitration that are incomplete or otherwise do not meet the filing requirements contained in these Rules shall also be charged the amount specified below for deficient filings if they fail or are unable to respond to the AAA's request to correct the deficiency.

Fees for additional services: The AAA reserves the right to assess additional administrative fees for services performed by the AAA beyond those provided for in these Rules which may be required by the parties' agreement or stipulation.

**(i) Standard Fee Schedule**

An Initial Filing Fee is payable in full by a filing party when a claim, counterclaim, or additional claim is filed. A Final Fee will be incurred for all cases that proceed to their first hearing. This fee will be payable in advance at the time that the first hearing is scheduled. This fee will be refunded at the conclusion of the case if no hearings have occurred. However, if the Association is not notified at least 24 hours before the time of the scheduled hearing, the Final Fee will remain due and will not be refunded.

These fees will be billed in accordance with the following schedule:

AMOUNT OF CLAIM	INITIAL FILING FEE	FINAL FEE
Above \$0 to \$10,000	\$775	\$200
Above \$10,000 to \$75,000	\$975	\$300
Above \$75,000 to \$150,000	\$1,850	\$750
Above \$150,000 to \$300,000	\$2,800	\$1,250
Above \$300,000 to \$500,000	\$4,350	\$1,750
Above \$500,000 to \$1,000,000	\$6,200	\$2,500
Above \$1,000,000 to \$5,000,000	\$8,200	\$3,250
Above \$5,000,000 to \$10,000,000	\$10,200	\$4,000
Above \$10,000,000	Base fee of \$12,800 plus .01% of the amount above \$10,000,000 Fee Capped at \$65,000	\$6,000
Nonmonetary claims ¹	\$3,350	\$1,250
Collective Action Claims ²	\$3,350	\$1,250
Deficient Claim Filing Fee ³	\$350	
Additional Services ⁴		

¹ This fee is applicable when a claim or counterclaim is not for a monetary amount. Where a monetary claim amount is not known, parties will be required to state a range of claims or be subject to a filing fee of \$10,200.

² This fee is applicable where a party makes a demand for treatment of a claim, counterclaim, or additional claim as a collective action arbitration.

³ The Deficient Claim Filing Fee shall not be charged in cases filed by a consumer in an arbitration governed by the Supplementary Procedures for the Resolution of Consumer-Related Disputes, or in cases filed by an Employee who is submitting their dispute to arbitration pursuant to an employer promulgated plan.

⁴ The AAA may assess additional fees where procedures or services outside the Rules sections are required under the parties' agreement or by stipulation.



Fees are subject to increase if the amount of a claim or counterclaim is modified after the initial filing date. Fees are subject to decrease if the amount of a claim or counterclaim is modified before the first hearing.

The minimum fees for any case having three or more arbitrators are \$2,800 for the Initial Filing Fee, plus a \$1,250 Final Fee. Expedited Procedures are applied in any case where no disclosed claim or counterclaim exceeds \$75,000, exclusive of interest and arbitration costs.

Parties on cases filed under either the Flexible Fee Schedule or the Standard Fee Schedule that are held in abeyance for one year will be assessed an annual abeyance fee of \$300. A case may only be held in abeyance after the filing fees have been paid. If a party refuses to pay the assessed fee, the other party or parties may pay the entire fee on behalf of all parties, otherwise the matter will be administratively closed.

For more information, please contact your local AAA office, case management center, or our Customer Service desk at 1-800-778-7879.

(ii) Refund Schedule for Standard Fee Schedule

The AAA offers a refund schedule on filing fees connected with the Standard Fee Schedule. For cases with claims up to \$75,000, a minimum filing fee of \$350 will not be refunded. For all other cases, a minimum fee of \$600 will not be refunded. Subject to the minimum fee requirements, refunds will be calculated as follows:

- > 100% of the filing fee, above the minimum fee, will be refunded if the case is settled or withdrawn within five calendar days of filing.
- > 50% of the filing fee, will be refunded if the case is settled or withdrawn between six and 30 calendar days of filing.
- > 25% of the filing fee will be refunded if the case is settled or withdrawn between 31 and 60 calendar days of filing.

No refund will be made once an arbitrator has been appointed (this includes one arbitrator or a three-arbitrator panel). No refunds will be granted on awarded cases.

Note: The date of receipt of the demand for arbitration with the AAA will be used to calculate refunds of filing fees for both claims and counterclaims.

(iii) Flexible Fee Schedule

A non-refundable Initial Filing Fee is payable in full by a filing party when a claim, counterclaim, or additional claim is filed. Upon receipt of the Demand for Arbitration, the AAA will promptly initiate the case and notify all parties as well as establish the due date for filing of an Answer, which may include a Counterclaim. In order to proceed with the further administration of the arbitration and appointment of the arbitrator(s), the appropriate, non-refundable Proceed Fee outlined below must be paid.

If a Proceed Fee is not submitted within ninety (90) days of the filing of the Claimant's Demand for Arbitration, the Association will administratively close the file and notify all parties.

No refunds or refund schedule will apply to the Filing or Proceed Fees once received.

The Flexible Fee Schedule below also may be utilized for the filing of counterclaims. However, as with the Claimant's claim, the counterclaim will not be presented to the arbitrator until the Proceed Fee is paid.



A Final Fee will be incurred for all claims and/or counterclaims that proceed to their first hearing. This fee will be payable in advance when the first hearing is scheduled, but will be refunded at the conclusion of the case if no hearings have occurred. However, if the Association is not notified of a cancellation at least 24 hours before the time of the scheduled hearing, the Final Fee will remain due and will not be refunded.

All fees will be billed in accordance with the following schedule:

AMOUNT OF CLAIM	INITIAL FILING FEE	PROCEED FEE	FINAL FEE
Above \$0 to \$10,000	\$400	\$475	\$200
Above \$10,000 to \$75,000	\$625	\$500	\$300
Above \$75,000 to \$150,000	\$850	\$1,250	\$750
Above \$150,000 to \$300,000	\$1,000	\$2,125	\$1,250
Above \$300,000 to \$500,000	\$1,500	\$3,400	1,750
Above \$500,000 to \$1,000,000	\$2,500	\$4,500	\$2,500
Above \$1,000,000 to \$5,000,000	\$2,500	\$6,700	\$3,250
Above \$5,000,000 to \$10,000,000	\$3,500	\$8,200	\$4,000
Above \$10,000,000	\$4,500	\$10,300 plus .01% of claim amount over \$10,000,000 up to \$5,000	\$6,000
Nonmonetary ¹	\$2,000	\$2,000	\$1,250
Collective Action Claims ²	\$2,000	\$2,000	\$1,250
Deficient Claim Filing Fee	\$350		
Additional Services ³			

¹ This fee is applicable when a claim or counterclaim is not for a monetary amount. Where a monetary claim amount is not known, parties will be required to state a range of claims or be subject to a filing fee of \$3,500 and a proceed fee of \$8,200.

² This fee is applicable where a party makes a demand for treatment of a claim, counterclaim, or additional claim as a collective action arbitration.

³ The AAA reserves the right to assess additional administrative fees for services performed by the AAA beyond those provided for in these Rules and which may be required by the parties' agreement or stipulation.



For more information, please contact your local AAA office, case management center, or our Customer Service desk at 1-800-778-7879. All fees are subject to increase if the amount of a claim or counterclaim is modified after the initial filing date. Fees are subject to decrease if the amount of a claim or counterclaim is modified before the first hearing.

The minimum fees for any case having three or more arbitrators are \$1,000 for the Initial Filing Fee; \$2,125 for the Proceed Fee; and \$1,250 for the Final Fee.

Under the Flexible Fee Schedule, a party's obligation to pay the Proceed Fee shall remain in effect regardless of any agreement of the parties to stay, postpone or otherwise modify the arbitration proceedings. Parties that, through mutual agreement, have held their case in abeyance for one year will be assessed an annual abeyance fee of \$300. If a party refuses to pay the assessed fee, the other party or parties may pay the entire fee on behalf of all parties, otherwise the matter will be closed.

Note: The date of receipt by the AAA of the demand for arbitration will be used to calculate the ninety (90) day time limit for payment of the Proceed Fee.

There is no Refund Schedule in the Flexible Fee Schedule.

(iv) Hearing Room Rental

The fees described above do not cover the cost of hearing rooms, which are available on a rental basis. Check with the AAA for availability and rates.

(v) Abeyance Fee

Parties on cases filed under the Standard Fee Schedule that are held in abeyance for one year will be assessed an annual abeyance fee of \$300. A case may only be held in abeyance after the filing fees have been paid. If a party refuses to pay the assessed fee, the other party or parties may pay the entire fee on behalf of all parties, otherwise the matter will be administratively closed.

(vi) Expenses

All expenses of the arbitrator, including required travel and other expenses, and any AAA expenses, as well as the costs relating to proof and witnesses produced at the direction of the arbitrator, shall be borne equally by the parties.

FOR DISPUTES PROCEEDING UNDER THE SUPPLEMENTARY RULES FOR CLASS ACTION ARBITRATION ("SUPPLEMENTARY RULES"):

The AAA's Administered Fee Schedule, as listed in Section 11 of the Supplementary Rules for Class Action Arbitration, shall apply to disputes proceeding under the Supplementary Rules.



American Arbitration Association
Dispute Resolution Services Worldwide



International Centre
for Dispute Resolution

The American Arbitration Association (AAA) Offers Two Fee Schedules

The American Arbitration Association is responding to the current economic challenges affecting organizations worldwide, as well as to customers' expressed service needs, by offering parties to arbitration cases the choice of two fee schedules to initiate their cases.

The current economic environment demands thoughtful responses from those who wish to serve their clients effectively. At the AAA, parties have two options for filing cases — under a **Standard Fee Schedule** or the **Flexible Fee Schedule**, available on claims arising under the AAA's Commercial (excluding Consumer cases), Construction, International, and Emergency Rules (for negotiated contracts). Rules.

And to provide parties with further choice, each party to a case may file claims and counterclaims under the same or different fee schedules. One party may use the Flexible Fee Schedule while the other utilizes the Standard Fee Schedule, or both may opt for the same schedule.

The Fee Schedules Compared

Under the **Standard Fee Schedule**, there are two stages at which payment is required: the **Initial Filing Fee** and the **Proceed Fee**. In order to advance the arbitration, parties must pay the **Proceed Fee** after the first hearing. With the **Flexible Fee Schedule**, there are three payment stages: the **Initial Filing Fee**, the **Proceed Fee**, and the **Final Fee**.

Other comparisons between the Schedules are that:

- With the **Standard Fee Schedule**, the first hearing takes place after the payment of the second payment, the **Final Fee**. Under the **Flexible Fee Schedule**, the first hearing is held after the **Initial Filing Fee** (the third payment) is paid.
- The **Initial Filing Fee** is lower under the **Flexible Fee Schedule** when compared to the AAA's **Standard Fee Schedule**.

After payment of the **Initial Filing Fee**, both fee schedules offer parties the opportunity to file an Answer and Counterclaim. Under the **Standard Fee Schedule**, the arbitrator selection process begins at the payment of the **Initial Filing Fee** and the arbitration proceeds until the hearing. Following payment of the **Proceed Fee** in the **Flexible Fee Schedule**, the arbitrator selection process begins and, once the arbitrator(s) is/are appointed, case and claim information are provided in order to proceed with hearings.

AAA Rules Offering the Flexible Fee Schedule

The **Flexible Fee Schedule** is listed with the **Standard Fee Schedule** in several of the AAA's Rules.

To see a list of Rules that offer both schedules, please visit www.adr.org/rules_updater.

Contact AAA Customer Service at 800-778-7879
for additional information.

Effective June 1, 2019

THE AAA OFFERS TWO FEE SCHEDULES

[illegible]

Fees are subject to increase if the amount of a claim by a party or claim is modified after the initial filing date. Fees are subject to decrease if the amount of a claim is reduced or withdrawn in whole or in part before the first hearing.

The minimum fee for any case having three or more arbitrators are \$2,300 for the initial trial fee, plus a \$1,250 final fee. Expedited procedures are applied in any case where no disclosed claim is counterclaimed and a \$7,500 exclusive of interest and arbitration costs.

Parties on cases filed under either the flexible ERS Schedule or the Standard Fee Schedule that are still in the process for one year will be assessed an annual abeyance fee of \$200. If a party is not in compliance with the other party or parties may pay the enforceable portion of the order, thereby the matter will be administratively closed.

For more information, please contact your local AIA Office, case management center, or OGC. Call toll-free at 1-800-778-7879.

Refund Schedule for Standard Fee Schedule

indicated on filing fees collected with the standard fee schedule. For example, for a filing fee of \$25,000, a high-income filing fee of \$500 will be determined. A filing fee of \$600 will not be refunded. Subject to the minimum fee, is will be calculated as follows:

g fees and a minimum fee, will be refunded if the case is settled or withdrawn within five calendar days of filing.

> 50% of the filing fees will be refunded if the case is settled or withdrawn, otherwise, the fee is non-refundable.

* 25% of the fee will be refunded if the case is settled or withdrawn before trial.

Notary Public will be appointed (this includes one who has been appointed) will be granted on awarded cases.

cept and for arbitration with the AAA will be used to calculate and counterclaims.

The rates will be billed in accordance with the following schedule:

Initial Filing Fee	Final Fee
\$0	\$0
\$50	\$50
\$100	\$100
\$150	\$150
\$200	\$200
\$250	\$250
\$300	\$300
\$350	\$350
\$400	\$400
\$450	\$450
\$500	\$500
\$550	\$550
\$600	\$600
\$650	\$650
\$700	\$700
\$750	\$750
\$800	\$800
\$850	\$850
\$900	\$900
\$950	\$950
\$1,000	\$1,000
\$1,050	\$1,050
\$1,100	\$1,100
\$1,150	\$1,150
\$1,200	\$1,200
\$1,250	\$1,250
\$1,300	\$1,300
\$1,350	\$1,350
\$1,400	\$1,400
\$1,450	\$1,450
\$1,500	\$1,500
\$1,550	\$1,550
\$1,600	\$1,600
\$1,650	\$1,650
\$1,700	\$1,700
\$1,750	\$1,750
\$1,800	\$1,800
\$1,850	\$1,850
\$1,900	\$1,900
\$1,950	\$1,950
\$2,000	\$2,000
\$2,050	\$2,050
\$2,100	\$2,100
\$2,150	\$2,150
\$2,200	\$2,200
\$2,250	\$2,250
\$2,300	\$2,300
\$2,350	\$2,350
\$2,400	\$2,400
\$2,450	\$2,450
\$2,500	\$2,500
\$2,550	\$2,550
\$2,600	\$2,600
\$2,650	\$2,650
\$2,700	\$2,700
\$2,750	\$2,750
\$2,800	\$2,800
\$2,850	\$2,850
\$2,900	\$2,900
\$2,950	\$2,950
\$3,000	\$3,000
\$3,050	\$3,050
\$3,100	\$3,100
\$3,150	\$3,150
\$3,200	\$3,200
\$3,250	\$3,250
\$3,300	\$3,300
\$3,350	\$3,350
\$3,400	\$3,400
\$3,450	\$3,450
\$3,500	\$3,500
\$3,550	\$3,550
\$3,600	\$3,600
\$3,650	\$3,650
\$3,700	\$3,700
\$3,750	\$3,750
\$3,800	\$3,800
\$3,850	\$3,850
\$3,900	\$3,900
\$3,950	\$3,950
\$4,000	\$4,000
\$4,050	\$4,050
\$4,100	\$4,100
\$4,150	\$4,150
\$4,200	\$4,200
\$4,250	\$4,250
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\$4,700	\$4,700
\$4,750	\$4,750
\$4,800	\$4,800
\$4,850	\$4,850
\$4,900	\$4,900
\$4,950	\$4,950
\$5,000	\$5,000
\$5,050	\$5,050
\$5,100	\$5,100
\$5,150	\$5,150
\$5,200	\$5,200
\$5,250	\$5,250
\$5,300	\$5,300
\$5,350	\$5,350
\$5,400	\$5,400
\$5,450	\$5,450
\$5,500	\$5,500
\$5,550	\$5,550
\$5,600	\$5,600
\$5,650	\$5,650
\$5,700	\$5,700
\$5,750	\$5,750
\$5,800	\$5,800
\$5,850	\$5,850
\$5,900	\$5,900
\$5,950	\$5,950
\$6,000	\$6,000
\$6,050	\$6,050
\$6,100	\$6,100
\$6,150	\$6,150
\$6,200	\$6,200
\$6,250	\$6,250
\$6,300	\$6,300
\$6,350	\$6,350
\$6,400	\$6,400
\$6,450	\$6,450
\$6,500	\$6,500
\$6,550	\$6,550
\$6,600	\$6,600
\$6,650	\$6,650
\$6,700	\$6,700
\$6,750	\$6,750
\$6,800	\$6,800
\$6,850	\$6,850
\$6,900	\$6,900
\$6,950	\$6,950
\$7,000	\$7,000
\$7,050	\$7,050
\$7,100	\$7,100

This fee is applicable where claim or counterclaim is not for a monetary amount. Where a monetary claim or counterclaim is known, parties will be required to state a range of claims or be subject to a claim in 2000.

12. The WVA may assist the parties with the appointment of a arbitrator or arbitrators.

The Defendant's Confidentiality is not governed by the Suppression Procedure Form filed by a person who is submitting a promotional plan.

The AAA may seek additional fees where procedural services are used. The Rules and are required under the parties' agreement or by stipulation.

Archive June 2010

A non-verifiable and unproven
counterclaim or additional claim.
AAR will promptly remove cases
filing of an Answer which may include
administration of the information and
non-verification of the information.

If a Proceed Fee is not submitted with a Demand for Arbitration, the Arbitration parties

No refund or refund schedule will be provided for the Flexible Fee Schedule below. However, as with the claimant's claim, any refund will be based on the actual amount of the claimant's claim.

A Final Fee will be incurred for all claim hearings. This fee will be payable in advance and will not be refunded at the conclusion of the hearing. The Association is not notified of a cancellation of a hearing until the Final Fee is received.

All fees will be billed in accordance with the following schedule:

Amount of Claim	
Above \$0 to \$49,000	
Above \$50,000 to \$99,000	
Above \$100,000 to \$199,000	
Above \$200,000 to \$299,000	
Above \$300,000 to \$399,000	
Above \$400,000 to \$499,000	\$
Above \$500,000 to \$599,000	\$
Above \$600,000 to \$699,000	\$
Above \$700,000 to \$799,000	\$
Above \$800,000 to \$899,000	\$
Above \$900,000 to \$999,000	\$
Above \$1,000,000	\$
Nonmonetary	
Consent Award	
Deficient Claim Filing Fee	
Additional Service	

underclaim is not for monetary amount Where a monetary claim is required to state a range of claims of the subject matter, the underclaim is not for monetary amount

appointment of an arbitrator for the sole purpose of having

Additional administrative fees for services performed by the parties and which may be required by the parties' agreement

your local AAA office, tax management center, or toll-free 879. All fees are subject to increase if the amount of the initial filing date. Fees are subject to decrease if indicated before the first reading.

three or more arbitrators are \$1,000 for the initial filing and \$250 for the final award.

3. If litigation to pay the Proceed Fee shall remain between the parties to 30 days, postpone or otherwise modify it, through mutual agreement, have held their case in arbitration at a base fee of \$300 if a party refuses to arbitrate may pay the entire fee in full at any time.

of the demand for abortion will be used to calculate

...the ...

100

Hearing Rooms are available at the following locations:

1. The first step in the process of identifying a problem is to recognize that a problem exists. This involves gathering information about the situation and identifying the specific issue that needs to be addressed.