EDOLPHUS TOWNS, NEW YORK
CHAIRMAN

DARRELL E. ISSA, CALIFORNIA
RANKING MINORITY MEMBER

ONE HUNDRED ELEVENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515–6143

Majority (202) 225–5051
Minority (202) 225–5074

Opening Statement

Jim Jordan
Ranking Member
Subcommittee on Domestic Policy

Hearing on
"Arbitration or 'Arbitrary': The Misuse of Mandatory Arbitration to Collect Consumer Debts."

July 22, 2009

Thank you, Mr.Chairman

To be sure, the new challenges consumers face in troubled economic times only underscore the importance of these hearings.

This particular hearing provides an excellent opportunity to discuss and debate mandatory arbitration clauses. This is an important matter and I look forward to having a productive discussion on the many issues surrounding consumer arbitration.

As President Obama's proposed Consumer Financial Protection Agency gains popularity, we must think hard about the ways in which this new Agency would operate.

Mr. Obama's existing proposal is the latest example of the Administration seeking to expand its reach into the private sector. I am particularly concerned that under the new Agency, the Administration would have authority to eliminate mandatory arbitration clauses. This makes for bad policy.

Well-respected academics and experts agree: arbitration is fair, equitable, and necessary.

In 2007, Professor Peter Rutledge told the Senate Judiciary Committee that in a world without pre-dispute arbitration, consumers would face higher costs. Professor Rutledge explained, "[t]he only people who, with certainty, benefit from [the Arbitration

Fairness Act] are the lawyers." In short, it is an undisputed fact that trial lawyers primarily stand to benefit from the elimination of arbitration clauses.

During a House Judiciary Markup, Representative Hank Johnson claimed mandatory predispute binding arbitration clauses leave consumers without choices. But these choices have nothing to do with consumer rights as much as tactics for trial lawyers to make money. Representative Johnson stated, "you can't influence [large corporations] by being nice. You need a jury to get into their pocket."[1]

Unfortunately, justice is the price you pay for your lawyer. In 2008, Mississippi lawyer Dickie Scruggs pleaded guilty to conspiring to bribe a judge and is currently serving a seven-year sentence in federal prison.[2] Bill Lerach and Mel Weiss are each serving time in jail for a criminal conspiracy of paying millions of dollars in illegal kickbacks to lead plaintiffs in class action law suits in order to help the lawyers win the race to the courtroom.[3] Kentucky plaintiffs' lawyers William Gallion and Shirley Cunningham Jr. were jailed and ordered to pay disgorgement of the $30 million they scammed from their clients in a settlement over the diet-drug fen-phen.[4]

Today's oversight hearing is set to focus on consumer arbitration, not the evils of business. If, for example, credit card companies are harming consumers, then a separate hearing is needed. Statistics citing that consumers overwhelming lose in debt collection cases do not necessarily support the notion that arbitration is the enemy.

By way of example, the federal government wins nearly all of its cases to recover unpaid student loan debt. Is the federal government to blame when debtors lose? Is arbitration?

Today's hearing should foster debate on policy directly related to mandatory arbitration. Whether or not arbitration, which provides a dispute resolution service, is good or bad for consumers is an inquiry independent from whether debt collection, as a business, is bad for consumers. Consumers have successfully used arbitration to resolve disputes with businesses.

Debt collection may present serious problems to consumers – but the best evidence available would indicate that those problems are worse in litigation than in

---

[1] House Judiciary Markup of a Resolution and Report Finding Karl Rove in Contempt for Failure to Appear Pursuant to Subpoena and Recommending to the House of Representatives that Mr. Rove be Cited for Contempt of Congress; and Markup of Pending Legislation, July 30, 2008 (statement by Rep. Hank Johnson) (emphasis added).

[2] Ashby Jones and Paulo Prada, *Richard Scruggs Pleads Guilty*, WALL STREET J, March 15, 2008, at A3.

[3] Amanda Bronstad, *Lerach receives maximum sentence*, NAT'L L J, Feb. 18, 2008, *available at*: http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202732106213&slreturn=1 (last visited July 22, 2009); *see also* Nathan Koppel, *Class-Action King Weiss to Plead Guilty to Conspiracy*, WALL STREET J, Mar. 21, 2008, *available at*: http://online.wsj.com/article/SB120601957097151765.html (last visited July 22, 2009).

[4] Associated Press, *Lawyers Convicted of Scam Over Diet-Drug Settlement*, WALL STREET J, Apr. 3, 2009, *available at*: http://online.wsj.com/article/SB123878035734087139.html?mod=djkeyword (last visited July 22, 2009).

arbitration. It is my hope that the Members here today can help our witnesses tailor this hearing to the empirical data available concerning debt collection and consumer cases. Only then can we make progress in providing remedies to consumers.

A flat out elimination of mandatory arbitration is not the answer. To that end, I hope today's discussion also examines feasible alternatives to remedy the issues at hand.

I am also concerned that three of the four witnesses called today by the Majority have benefited from the lawsuit and successful settlement with against the Majority's fourth witness, the National Arbitration Forum. This reality makes it difficult for this hearing to be either fair or informative.

Thank you, Mr. Chairman for holding this very important hearing today. These issues not only affect my home state of Ohio, but also the entire United States. I look forward to hearing from our witnesses.