

FORCED ARBITRATION BY CORPORATIONS SURGES TO UNPRECEDENTED LEVELS

2023



AMERICAN
ASSOCIATION FOR
JUSTICE®

The Association for Trial Lawyers

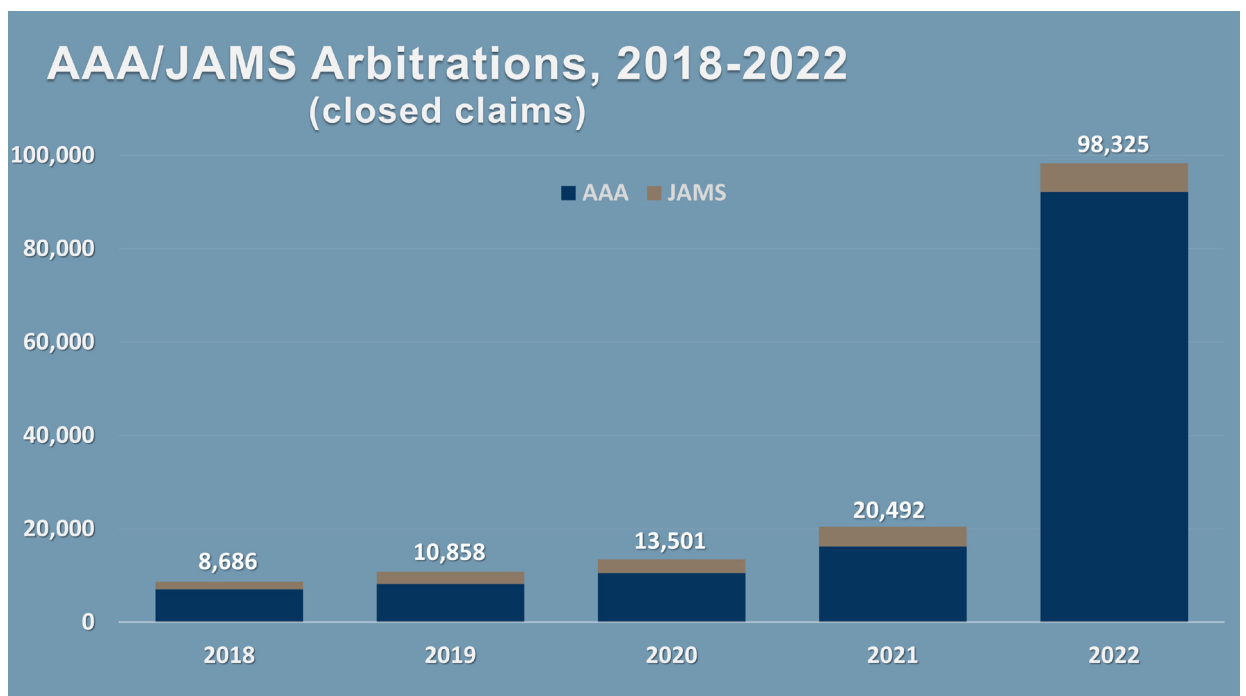
FORCED ARBITRATION BY CORPORATIONS SURGES TO UNPRECEDENTED LEVELS

Highlights

- The number of forced arbitration cases skyrocketed 467% in 2022.
- Win rates for consumers and employees plummeted to just 0.7%.
- Mass arbitrations now make up the vast majority of all forced arbitration cases.

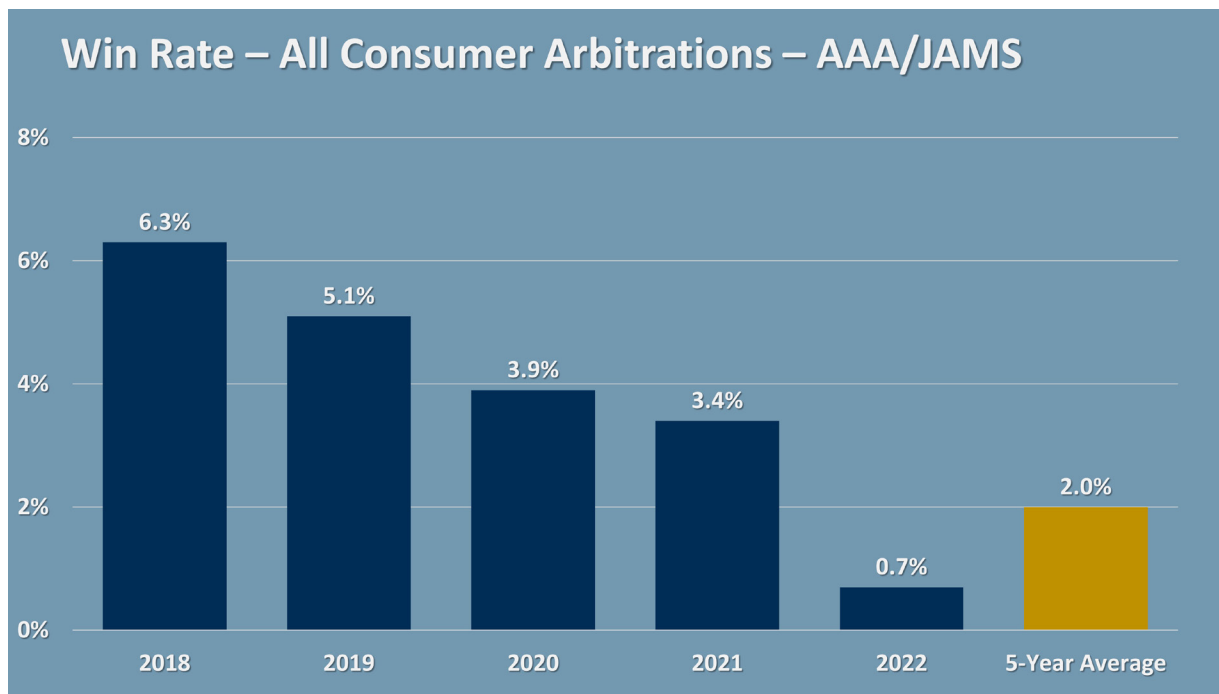
Forced Arbitration Skyrockets

The use of forced arbitration on consumers and employees skyrocketed in 2022 to unprecedented levels. More than 90,000 cases were filed, comprising a 467% surge in cases from the previous year. The total number of cases may be even higher because arbitration providers do not report pending claims, unlike state and federal courts.



Win Rates

While the number of cases skyrocketed, consumers' success rate plummeted. In 2021, consumers were more likely to be struck by lightning than win a monetary award in forced arbitration. In 2022, that win rate was slashed by a factor of five to just 0.7%.

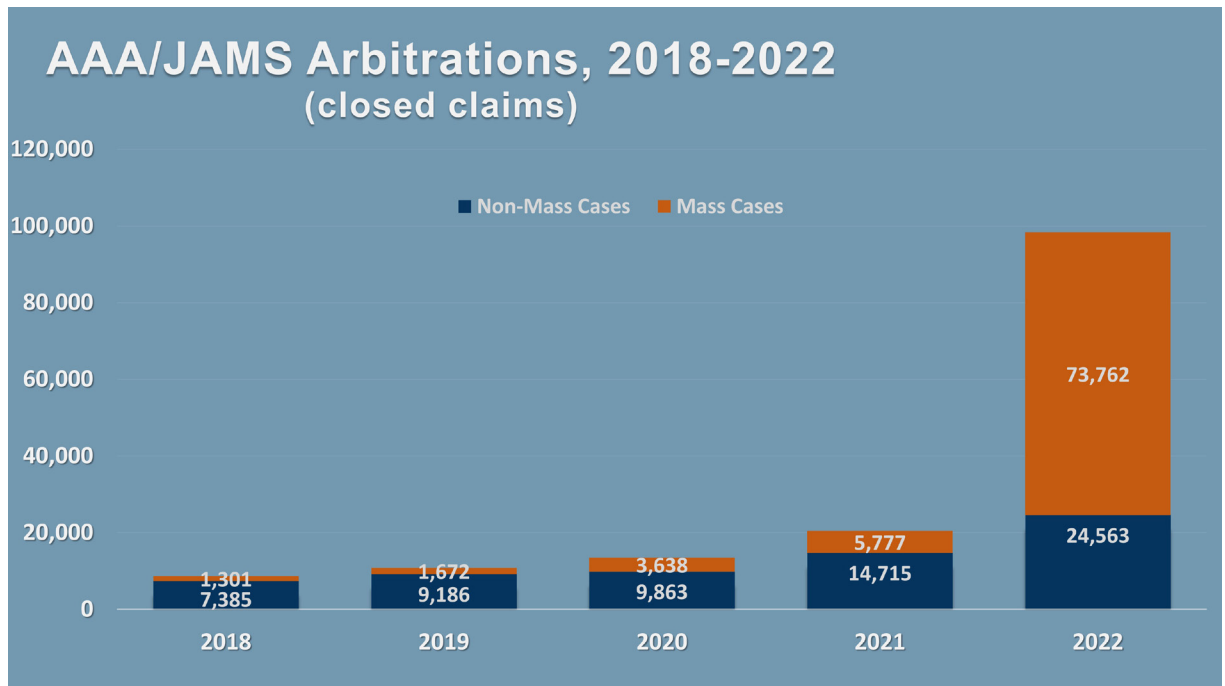


Mass Arbitration

One of the driving factors for corporations' broad adoption of forced arbitration clauses was to eliminate class actions. For decades, class actions have proved a powerful tool for holding corporations accountable, bringing together claims that allege widespread misconduct—such as fraud, breach of contract, and price-fixing—that cannot be pursued on an individual basis. On the surface, forced arbitration appears to eliminate such group actions. However, in recent years consumers have fought back with mass arbitrations—large numbers of individual claims filed at the same time in what effectively is a “mass claim.”

Those mass claims exploded in 2022. Mass cases against just two corporations—TurboTax/Intuit and Amazon—accounted for 58% of all cases at AAA over the last five years.¹ But while the surge in mass claims shows that some consumers have managed to overcome corporate obstacles to joining class actions, it did not result in many

consumer wins. Less than 0.2% of consumers in a mass claim received a monetary award, effectively driving down consumer win rates even further.



The End of Forced Arbitration for Sexual Assault

Across the entire country, just 80 employees won a monetary award through forced arbitration in 2022, making for a win rate of just 1.9%. However, there was positive news for employees in March 2022, when President Joe Biden signed into law the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021. The new law amends the Federal Arbitration Act and allows employees subject to forced arbitration agreements to pursue sexual assault or sexual harassment claims in court. It also allows employees to bring class actions in situations where multiple claims are made.

ENDNOTES

1 In 2021, AAA adjusted its rules regarding group claims. While its definition of what constitutes a group claim is still subject to the discretion of AAA and its arbitrators, we use their definition here: “25 or more similar Demands for Arbitration are filed, whether or not such cases are filed simultaneously.” See: *Supplementary Rules for Multiple Case Filings*, AAA, August 2021, https://www.adr.org/sites/default/files/Supplementary_Rules_MultipleCase_Filings.pdf.

About the American Association for Justice (AAJ)

The American Association for Justice works to preserve the constitutional right to trial by jury and to make sure people have a fair chance to receive justice through the legal system when they are injured by the negligence or misconduct of others—even when it means taking on the most powerful corporations.



777 6th Street, NW, Suite 200
Washington, D.C. 20001
www.justice.org

Copyright © 2023 American Association for Justice®. Reproduction of any kind is prohibited. For more information, please contact AAJ Research at research@justice.org or at (800) 424-2725 or (202) 965-3500, ext. 2811.