

STUDENT NOTES

TOO MUCH PRIVACY FOR REPEAT PLAYERS? THE PROBLEM OF CONFIDENTIALITY CLAUSES AND A POSSIBLE SOLUTION

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ABSTRACT

“Repeat players” are parties that repeatedly resort to arbitration for similar claims and appoint the same arbitrators. Employers or corporations are often times repeat players in arbitration procedures and possess greater economic power than one-time participants. Although being a repeat player is not illegal in itself, there is a fundamental problem with imbalanced advantages arising from one of the parties being a repeat player. The confidentiality clause in the arbitration agreement amplify these advantages and in turn, allow fairness and justice to be sacrificed for privacy and efficiency. Currently, the safeguards that exist in the United States are inadequate. The author believes that there are two possible ways to solve this problem: (1) to allow parties to challenge repeat arbitrators; and (2) to provide an exception to allow “certain aspects of the arbitration” to be disclosed in the form of a “written summary” that contains some required components, such as the reasoning concerning the application of law and the names of the arbitrators. As a result, irregularities and misconduct can be more readily identified in the vacating procedure with the help of such disclosure, and may even be prevented. Ultimately, it is hoped that confidence of one-time players in the arbitration mechanism can be restored.

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