



Dedicated to protecting access to quality healthcare for automobile accident victims

THE CASE AGAINST MANDATORY ARBITRATION

New York auto insurers, with the support and encouragement of the State Insurance Department (SID), are mounting a full court press to strip consumers of the right to sue an insurance company for failing to pay a lawful claim. Instead, on the pretext of “fighting fraud”, they want to force consumers into binding arbitration.

- ❖ Put aside, for a moment, that imposing mandatory arbitration on consumers has historically been opposed by every single consumer organization, from Public Citizen and Consumer Federation of America to Consumers Union to NYPIRG. None support mandatory arbitration.
- ❖ Put aside the fact that mandatory arbitration closes the courthouse doors to consumers but NOT to insurers; they retain the right to go to court and obtain a declaratory judgment, voiding their contractual obligations to the policyholder. It’s entirely a one-way street.
- ❖ Put aside that an arbiter is no better at detecting fraud than a judge, and that mandatory arbitration has never been shown to be a “fraud fighting” tool. The “fraud” claim is a ruse.
- ❖ Put aside that consumers hurt in car accidents (but who fail to meet the threshold of a “serious injury) lost the right to sue when the no fault law was enacted, in return for the promise of swift and certain payment of lost wages and medical care. Now, insurers want to strip consumers of the right to sue when the insurers fail to pay the very benefits that consumers were promised – and paid premiums for.
- ❖ Put aside that in arbitration consumers lose the right to discovery, a critical tool that is vital to see what information is in the adversary’s possession – critical information like medical reports.
- ❖ Put aside that in arbitration, the arbiters are NOT required to follow substantive law, but rather can dispense “justice” as they see fit.
- ❖ Put aside that in no fault arbitration, SID selects and trains the arbiters, tells them how to interpret the law, and has in the past told them it “disagreed” with a Court of Appeals decision that protects consumers.
- ❖ Put aside that in arbitration, the right to appeal is extremely limited, with virtually no opportunity for judicial review, and no development of judicial precedent. No body of case law can develop to interpret the statute and guide judges.

Other than that, we suppose requiring No-Fault claimants to submit to mandatory arbitration isn’t really a bad idea.