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Hot Coffee Reflection

When an individual files a lawsuit against a corporation, the odds are stacked against them. Well resourced corporations have access to more capital, better and more numerous lawyers, and an influence over public opinion; Despite this, some contracts (often those with sign or leave agreements like employment contracts, and credit card contracts) strive to afford these entities even greater protections, by disenfranchising those under contract from taking a lawsuit against the corporation to bring things to a public light. Instead, Mandatory Binding Arbitration Clauses allow for corporations to essentially hire judges for their own internal court hearings, bar individuals from bringing a lawsuit against the company in court, no matter the severity of the crime. I believe mandatory binding arbitration agreements in the way they are being used, while taking a slight burden off of the civil court system, give companies far too much legal protection with the potential to incentivize wrongdoing due to lack of consequences, and disenfranchise those subject to these contracts.

The main takeaway here is, mandatory binding arbitration can only be effective if both parties have equal say in and equal power in the hearing. It is very difficult to find a group of impartial people to decide matters, but if a group can both decide in the moment for arbitration, it can lead to outcomes that will more readily be accepted by both parties. Despite this, MBA is typically added to contracts in the fine print ahead of time on a variety of contracts with much wider scope than an optimal use case, in which an individual first signs away their right to civil recourse, only to then later become aware of doing so. This does not create outcomes which are likely to leave both parties the most satisfied, but rather gives corporations the ability to circumvent lawsuits if they get brought up in the courts, and deal with them internally. Arbitration can work, but only for B2B matters, wherein both parties have equal say in choosing Arbitrators and can work out their problems without requiring potentially expensive court proceedings. In these situations, both parties are actively agreeing at the time of breach to enter into arbitration, and both are able to have equal influence over an arbitrator, who can be chosen much more fairly due to the cost being split. When a large company such as a major creditor or employer drafts a contract for Mandatory Binding Arbitration, they hold all the power to choose the arbitrator, pay the arbitrator, and ensure that the cases are decided in their favor(as they are 90% of MBA cases). This defeats the purpose, leading to the only savings of going to court going directly to the company, as they can never be fairly challenged by the victim. This relates to the many cases of underhanded actions by credit companies using MBA, wherein the right to subject the consumer to these contracts is assumed by the consumer not by careful consideration or by the signing of a contract, but by simply using a service. The barrier to entry is signing away your civil right to access the court system. By creating a society in which success lies upon the ability to build credit, find employment, and make purchases, an assumption of risk based solely upon using a product is a restriction of freedom without potential for individual recourse. These large corporations have created a zero-sum game in which they are always able to gain user consent, and there is no losing outcome for the company. While this is a great move for the companies, it is terrible for the consumers and employees subjected to these contracts. A more fair system would be a system in which arbitration was either handled by a third party entirely, maintaining the integrity of the arbitrators and balancing the power of corporations, or rather making arbitration completely voluntary. This would allow for major cases to go to the courts and become public knowledge, while still giving the option for smaller claims to be handled by arbitrators, at a lower cost to both the company and the injured party. In all situations of arbitration, it would be much more fair if both the company and party were required to agree on an arbitrator, or if an arbitrator were required to remove special interest in the way a public official may be required to, as to retain integrity and the ability to make judgments fairly.