

## [Bach Talk - Forced Arbitration Exposed](#)

UP and the consumer advocate community have been fighting for decades against mandatory arbitration wording in banking and other commercial contracts that force people to use private binding arbitration instead of public courts to resolve disputes. Although some health insurance and most commercial property policies contain mandatory arbitration clauses, you won't find them in home insurance policies and UP is working to keep it that way.

As soon as we heard about a new Texas Farm Bureau home insurance policy under review that dangles a discount in front of the consumer if they agree to waive their right to use public courts to resolve disputes that may arise under the policy, [we weighed in](#) to ask TDI Commissioner Mattax to reject it, and have been publicizing the issue as best we can. It's just such bad public policy and so unfair. So we welcome [his announcement of a hearing to vet the matter publicly](#). **UPdate November 3, 2016: [Texas Farm Bureau pulled the filing in response to opposition from consumer advocates](#).**

On April 5, 2016, my fellow NAIC consumer representative Peter Kochenburger [gave an important presentation to the NAIC on arbitration](#) provisions in insurance policies (see below). Professor Kochenburger cited a Washington state law that prohibits insurance policies from containing arbitration provisions which would apply the laws of other states of depriving the courts of jurisdiction over a claim dispute. See it [here](#).

I joined in Peter's presentation by pointing out to the room full of insurance regulators that the ability to hire a lawyer on a contingent fee and use the public civil justice system is *the most critical protection consumers have to hold powerful insurance companies to their promises and obligations*. I saw heads nodding in agreement. I went on to say "Please, if any policy forms come before your agency for approval that contains mandatory arbitration provisions or forced lawsuit waivers, **disapprove them**. The day UP starts seeing home insurance policies with mandatory arbitration provisions may well be the day we wave the white flag."

Any policyholder or customer that buys a product that comes with mandatory arbitration loses their

constitutional right to use our public courts, judges, and juries to resolve disputes with the business that wrote forced arbitration into their contract. In the work that UP does with and for consumers, the value of juries in protecting consumers could not be clearer. Time after time, when juries hear evidence that an insurance company has exploited its superior economic resources to push a policyholder around, they render an appropriate verdict that re-balances the equation so the consumer gets a fair shake and the insurer is deterred from doing the same thing to another policyholder. And Judges are held accountable for their decisions through extensive record-keeping and the media. But forced arbitration is a private business world where the policyholder is a cog. The potential for unfairness is huge: No juries, no sitting judges, no public records. Arbitrators are paid privately. Arbitrators are business people, not public servants.

The evidence is overwhelming and compelling that mandatory arbitration and bans on class action litigation harm consumers by preventing people from pursuing small dollar amount claims. See the recent study by the [Consumer Financial Protection Bureau](#) and the research by [Public Citizen](#). The New York Times also ran a series on mandatory arbitration. You can find that [here](#). [A recent FINRA study](#) says that not all arbitration cases settle and even less proceed to an award.

UP recently [signed a letter](#) with other consumer groups to the Consumer Financial Protection Bureau demanding a rulemaking on forced arbitration in consumer contracts. [Click here](#) to read the CFPB's recent study on arbitration. 19 Attorneys General [have signed a letter](#) in support of the CFPB's proposed rule. **Update July 10, 2017: [The CFPB issued its final arbitration rule.](#)**