Fairer, Faster, Better III:
An Empirical Assessment of Consumer and Employment Arbitration

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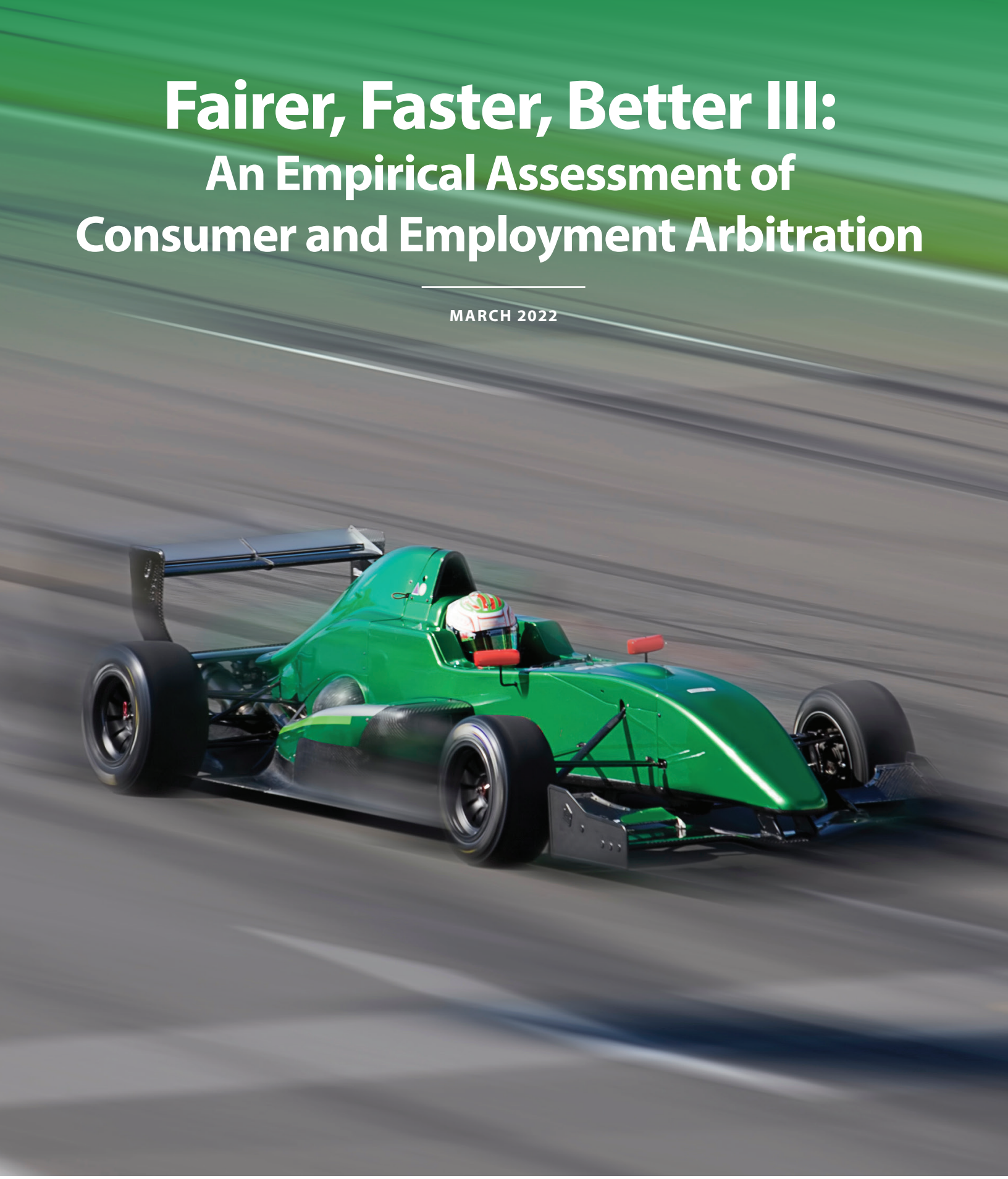

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Fairer, Faster, Better III: An Empirical Assessment of Consumer and Employment Arbitration

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1 Nam D. Pham is Managing Partner and Mary Donovan is Principal at ndp | analytics. Stephanie Barello and Ilma Fadhil provided research assistance. The U.S. Chamber of Commerce Institute for Legal Reform provided financial support to conduct this study. The opinions and views expressed in this report are solely those of the authors.

EXECUTIVE SUMMARY

The popularity of arbitration as a forum for resolving disputes has been rising over the past decades. But there have been few empirical studies comparing the arbitration and litigation processes. This report helps fill that gap. It compiles, analyzes, and compares 67,119 consumer and employment arbitrations with 261,369 consumer and employment lawsuits in federal courts that terminated during 2014-21. This report also offers an update on analyses we conducted on employment and consumer claims in 2019 and 2020, respectively.[2]

This updated analysis of consumer and employment arbitrations and litigations exhibits a similar outcome pattern to our previous analyses—most disputes were settled and only a relatively small portion of disputes terminated with decisions. However, when cases proceed to adjudication, claimants, who almost always were consumers and employees, were more likely to prevail in arbitration than in litigation. Furthermore, consumers and employees who won typically received higher monetary awards in arbitration than in litigation. Arbitration was also faster, on average, than litigation.

Key findings of the report, also found in Table 1, are:

1. **Consumers and employees who initiate cases are more likely to win in arbitration than in court.** During 2014-21, consumers initiated and prevailed in 41.7% of arbitrations that terminated with awards compared to 29.3% of litigations that terminated with awards. Similarly, employees initiated and prevailed in 37.7% of arbitrations that terminated with awards compared to 10.8% of litigations that terminated with awards.

2. **Consumer-claimants and employee-claimants typically receive higher monetary awards in arbitration than in litigation.** During 2014-21, consumers who initiated and prevailed in arbitration were awarded an average of $79,945 ($20,356 in median) compared to an average of $71,354 ($6,669 in median) in litigation. Similarly, employees who initiated and prevailed in arbitration were awarded an average of $444,134 ($142,332 in median) compared to an average of $407,678 ($68,956 in median) in litigation.

3. **Arbitration is, on average, quicker than litigation.** During 2014-21, consumers who initiated and prevailed in arbitration spent an average of 321 days (265 days in median) from initiation to termination of their claim compared to spending an average 439 days (315 days in median) in litigation. Similarly, employees who initiated and prevailed in arbitration spent an average of 659 days (623 days in median) from initiation to termination of their claim compared to spending an average of 715 days (578 days in median) in litigation.

2 Pham, Nam D. and Mary Donovan. 2019. "Fairer, Faster, Better: An Empirical Assessment of Employment Arbitration." ndp | analytics; Pham, Nam D. and Mary Donovan. 2020. "Fairer, Faster, Better II: An Empirical Assessment of Consumer Arbitration." ndp | analytics.

Table 1.

Consumer-claimants and employee-claimants are more likely to win, receive higher monetary awards, and spend less time in arbitration than in litigation

	Arbitration	Litigation
Win rates		
Consumer-claimant prevailed	41.7%	29.3%
Employee-claimant prevailed	37.7%	10.8%
Amount awarded		
Consumer-claimant prevailed	$79,945 (average) $20,356 (median)	$71,354 (average) $6,669 (median)
Employee-claimant prevailed	$444,134 (average) $142,332 (median)	$407,678 (average) $68,956 (median)
Time to resolution		
Consumer-claimant prevailed	321 days (average) 265 days (median)	439 days (average) 315 days (median)
Employee-claimant prevailed	659 days (average) 623 days (median)	715 days (average) 578 days (median)

This study covers arbitrations and litigations during 2014-2021 to include cases that terminated since the COVID-19 outbreak, which impaired business operations, limited courtroom activity, and changed the way Americans live and work. Since the onset of the pandemic, there has been a substantial increase in terminated arbitrations, with employment arbitrations in particular seeing a major increase in the number of arbitrations terminated with awards compared to pre-pandemic levels: employment arbitrations terminating with awards in 2021 more than doubled compared to 2020, and employment arbitrations initiated by employees and terminating with awards in 2021 more than tripled compared to 2020. The unprecedented level of arbitration activity while many courtrooms were closed might have affected the efficiency of the dispute resolution processes in 2020 and 2021. Despite that, the findings in this study are consistent with findings in our previous reports. The three main metrics continue to show that arbitration is better than litigation for consumers and employees. Consumers and employees have a better chance of winning and receiving higher monetary awards in arbitration than litigation. In addition, arbitration allows consumers and employees to reach a resolution faster than litigation (which helps make it less costly than litigation).

BACKGROUND AND INTRODUCTION

Arbitration has been the focus of significant attention among policymakers, businesses, legal professionals, advocacy groups, and researchers in recent years. The system provides a practical and effective dispute resolution forum for individuals and companies. Relative to litigation, its simplicity, speed, and affordability have become attractive features for consumers, employees, and companies alike. While courtrooms were closed or provided limited services due to COVID-19, arbitration's flexibility allowed disputes to continue to be heard.

For all these reasons, arbitration is more effective than litigation. Its proceedings, such as discovery and witness procedures, are much simpler than in litigation. Since the process is less complicated, it takes less time and, consequently, is likely to be less expensive on average than litigation as a mechanism for resolving disputes.[3] Furthermore, arbitration allows both parties to protect their confidentiality; proceedings are held privately and detailed information about the case is not released. Despite these advantages, skeptics have raised concerns over arbitration. Specifically, opponents of arbitration argue that employees and consumers are disadvantaged if they do not go to court and have their case heard by a judge and a jury.[4] They point to the limited recourse for claimants after arbitration because they cannot ordinarily appeal the arbitrator's decision, claim that arbitration clauses favor corporations, and raise concerns over the limited transparency to the public during arbitration proceedings.

Note on the Literature

Many studies cited by critics are anecdotal; only a few empirical studies actually compare the outcomes of arbitration to litigation. Of those, most only analyze and provide statistics of arbitrations and do not conduct original quantitative analyses with a comparable time period of litigations.[5] Without comparing arbitration performance to litigation during the same time

3 For example, Eisenberg and Hill found arbitrations in both civil rights and non-civil rights employment disputes required less than half the time than court cases. Similarly, Colvin stated that time to completion is clearly a desirable feature of a dispute resolution procedure because it reduces costs. In his 2011 study, Colvin showed that the time it took to obtain a resolution after a hearing was about half as long in arbitration as in litigation. More recently, the Federal Mediation and Conciliation Services showed the average time from filing to final decision was about 475 days in an arbitrated case; in contrast, a similar case took 18 months to three years in court. Sources: Colvin, Alexander. 2011. "An Empirical Study of Employment Arbitration: Case Outcomes and Processes." Journal of Empirical Legal Studies. Eisenberg, Theodore and Elizabeth Hill. 2003. "Arbitration and Litigation of Employment Claims: An Empirical Comparison." Dispute Resolution Journal. Eisenberg, Theodore and Elizabeth Hill. 2003. "Arbitration and Litigation of Employment Claims: An Empirical Comparison." Dispute Resolution Journal; Repa, Barbara Kate. "Arbitration Pros and Cons." NOLO, Web accessed on February 23, 2022. https://www.nolo.com/legal-encyclopedia/arbitration-pros-cons-29807.html

4 American Association for Justice. 2019. "The Truth About Forced Arbitration."

5 For example, a 2021 American Association for Justice (AAJ) study used AAA and JAMS arbitration data to calculate annual win rates of consumer and employee arbitrations terminated during 2016-2020. The study shows consumer and employment win rates declined from their peaks in 2018. The study also asserts that AAA and JAMS datasets are biased on arbitrations. But critically, the study did not analyze litigation win rates to support its claim that predispute arbitration agreements are somehow disadvantageous to claimants. Similarly, another AAJ study in 2019 used AAA and JAMS arbitration data that terminated during 2014-2018 to criticize the arbitration system. Without comparing their findings to litigation outcomes, the study asserted that arbitration is neither fairer nor better than litigation for consumers and workers. Sources: American Association for Justice. 2021. "Forced Arbitration During A Pandemic: Corporations Double Down."; American Association for Justice. 2019. "The Truth About Forced Arbitration."

period, claims that the system is unfair or that individuals are disadvantaged in arbitration are dubious. In fact, some researchers explicitly state that they have not found evidence of biases against middle- and lower-income claimants or those arbitrating under predispute agreements.[6]

For empirical studies that compare outcomes in both arbitration and litigation, common metrics include time, award amount, and win rates.[7] With regard to time spent on disputes, studies generally agree that the more straightforward arbitration process is faster, less expensive, and less complex than litigation. The award amounts are less conclusive: several studies have found that the median award is higher in arbitration while the average award is higher in litigation.[8] The claimant win rate is the most contentious of the three metrics commonly used in empirical studies comparing arbitration and litigation, with disagreements starting right at the definition of a win for a claimant. Monetary awards are often considered claimant wins, but there are even disagreements on the size of the award that should be considered a win. Skeptics argue that an award that is relatively small compared to the claimant's monetary demand should not be counted.[9] Once a claimant win is defined, the denominator of the win rate needs to be determined. Some studies use all terminated cases (including settled, dismissed, and withdrawn), while others use the total cases with a winner. Consequently, arbitration and litigation win rates that are defined differently are not comparable.

Arbitration opponents often cite the same few critical studies to claim that employees and consumers win less frequently and receive lower awards in arbitration than in litigation.[10] Many of these studies run into at least one of the following issues: 1) they do not compare the award amount and win rates between arbitration and litigation cases during the same time period, or 2) they rely on small samples which may not be representative of the entire system.[11] In order to make an accurate compar-

6 Hill, Elizabeth. 2003. "Due Process at Low Cost: An Empirical Study of Employment Arbitration Under the Auspices of The American Arbitration Association." Ohio State Journal on Dispute Resolution.

7 Estreicher, Hiese, and Sherwyn and Chandrasekher and Horton provide excellent summaries of findings in the literature in the past thirty years. Sources: Estreicher, Samuel, Michael Heise, and David S. Sherwyn. 2018. "Evaluating Employment Arbitration: A Call for Better Empirical Research." Rutgers University Law Review; Chandrasekher, Andrea Cann and David Horton. 2019. "Arbitration Nation: Data from Four Providers." California Law Review.

8 For example, Eisenberg and Hill found the average award in arbitration was lower than the average award in litigation, but the median award was higher in arbitration than in litigation. Delikat and Kleiner had similar findings; the average arbitration award in the securities industry was lower than the average in U.S. District Court Southern District of New York, but the median award in arbitration was higher. Colvin showed award amounts in arbitration were higher than in litigation. However, he only analyzed arbitration data and then compared his findings with litigation findings in other studies. Sources: Colvin, Alexander. 2011. "An Empirical Study of Employment Arbitration: Case Outcomes and Processes." Journal of Empirical Legal Studies. Delikat, Michael and Morris M. Kleiner. 2003. "An Empirical Study of Dispute Resolution Mechanisms: Where Do Claimants Better Vindicate Their Rights?" Dispute Resolution Journal; Eisenberg, Theodore and Elizabeth Hill. 2003. "Arbitration and Litigation of Employment Claims: An Empirical Comparison." Dispute Resolution Journal.

9 Colvin, Alexander. 2011. "An Empirical Study of Employment Arbitration: Case Outcomes and Processes." Journal of Empirical Legal Studies.

10 For example, Staszak, Sarah. 2019. "Google workers want to outlaw mandatory arbitration. Here's why this matters. Corporations win in arbitration. Workers and consumers win in court." The Washington Post, May 3.

11 When Colvin (2018) asserted that arbitration awards are likely to be significantly smaller than awards secured in court, he also referred back to Colvin and Gough (2015). However, Colvin and Gough (2015) did not compare the award amount between employment arbitration and litigation cases. Rather, they asserted that findings showing award amounts are larger in litigation than in arbitration are well-established in the literature and referred back to Colvin (2011) and

ison of the two systems, it is critical to use the same time period for both the arbitration and litigation analyses. Indeed, the claimant win rate in the federal courts has been volatile and declining dramatically since the mid-1980s; comparisons of findings of different studies that have different time periods and even different win rate definitions could be misleading and meaningless.[12]

Methodology Overview

To analyze the outcomes of arbitration, we construct a large dataset that consists of 67,119 arbitration cases and 261,369 litigation cases that terminated during the same period from 2014 to 2021. We first compared the outcomes of arbitrations and litigation involving consumers and employees. We then compared the win rate, award amount, and dispute processing time from initiation to termination for consumer and employment arbitration and litigation cases initiated by individuals and that terminated with awards. The arbitration data came directly from the two largest arbitration service providers—American Arbitration Association (AAA) and Judicial Arbitration and Mediation Services, Inc. (JAMS). Litigation cases came from Public Access to Court Electronic Records (PACER) and were compiled and provided by Lex Machina, a third-party data provider.

OUTCOMES OF CONSUMER AND EMPLOYMENT ARBITRATIONS AND LITIGATIONS

We analyzed and compared the outcome pattern between arbitration and litigation for consumer and employment cases that terminated during January 2014 – December 2021. Three potential outcomes of a consumer or employment dispute to be resolved either through arbitration or litigation are: (1) the dispute is settled between parties during the process to include monetary payments and/or non-monetary relief; (2) the dispute is dismissed, abandoned, or withdrawn during the process; or (3) the dispute ends in a decision by the adjudicator in favor of one or both sides. After comparing the distribution of all three potential outcomes between arbitration and litigation, we then compare the benefits of the two systems for consumer and employee claimants. We calculate the win rate,

Gough (2014). In Colvin's 2011 study and later work, the author used data from nearly 4,000 employment arbitrations administered by AAA during 2003-2007 to compare with litigation outcomes in 1999-2000 calculated by other empirical studies. Comparing his arbitration findings with litigation findings from others, Colvin concluded that employment arbitration was less favorable for employees than litigation, with a lower employee win rate and lower award amounts. In contrast, Eisenberg and Hill (2003) used a sample of 261 arbitrations administered by AAA during 1999-2000 to compare with 1,430 federal court cases. They showed the employee win rate for higher-pay employees in arbitration was higher than in litigation, and that the employee win rate for lower-pay employees was lower in arbitration than in litigation, while award amounts in arbitration were generally lower than in litigation. Similarly, Delikat and Kleiner found that the employee win rate in the securities industry was higher in arbitration than litigation. While the average award was higher in litigation, they found that the median award was slightly higher in arbitration. Sources: Colvin, Alexander J.S. 2018. "The growing use of mandatory arbitration: Access to the courts is now barred for more than 60 million American workers." Economic Policy Institute; Colvin, Alexander and Mark D. Gough. 2015. "Individual Employment Rights Arbitration in the United States: Actors and Outcomes." Industrial and Labor Relations Review.

12 Lahav, Alexandra and Peter Siegelman. 2019. "The Curious Incident of the Falling Win Rate: Individual vs System-Level Justification and the Rule of Law." University of California Davis Law Review.

monetary awards, and time spent of cases initiated by consumers and employees that terminated with awards to one prevailing party.

Consumer Disputes. There were 41,376 consumer arbitrations and 94,171 consumer litigations filed in federal courts that terminated during 2014-21. Among those 41,376 arbitrations: 6,425 (16%) were decided with awards in favor of the claimant or defendant, 21,868 (53%) ended with settlements, and the remaining 13,083 (32%) were dismissed, withdrawn, or terminated with other administrative actions. Among the 94,171 consumer litigations: 5,727 (6%) were decided with awards, 79,564 (85%) ended with settlements, and 8,880 (9%) were dismissed, withdrawn, or terminated with other administrative procedures. (Table 2)

Table 2.
Nearly 16% of consumer arbitrations and just over 6% of consumer litigations were decided with awards during 2014-21

	Consumer Arbitrations		Consumer Litigations	
	Count	Share	Count	Share
Terminated Cases	**41,376**	**100.0%**	**94,171**	**100.0%**
Decided	6,425	15.5%	5,727	6.1%
Settled	21,868	52.9%	79,564	84.5%
Withdrawn/Dismissed	13,083	31.6%	8,880	9.4%

Employment Disputes. There were 25,743 employment arbitrations and 167,198 employment litigations filed in federal courts that terminated during 2014-21. Among those 25,743 arbitrations, 2,163 (8%) were decided with awards, 19,388 (75%) ended with settlements, and 4,192 (16%) were dismissed, withdrawn, or terminated with other administrative actions. Among those 167,198 litigations, 25,068 (15%) were decided with awards, 118,169 (71%) settled, and the remaining 23,961 (14%) were dismissed, withdrawn, or terminated with other administrative procedures. (Table 3)

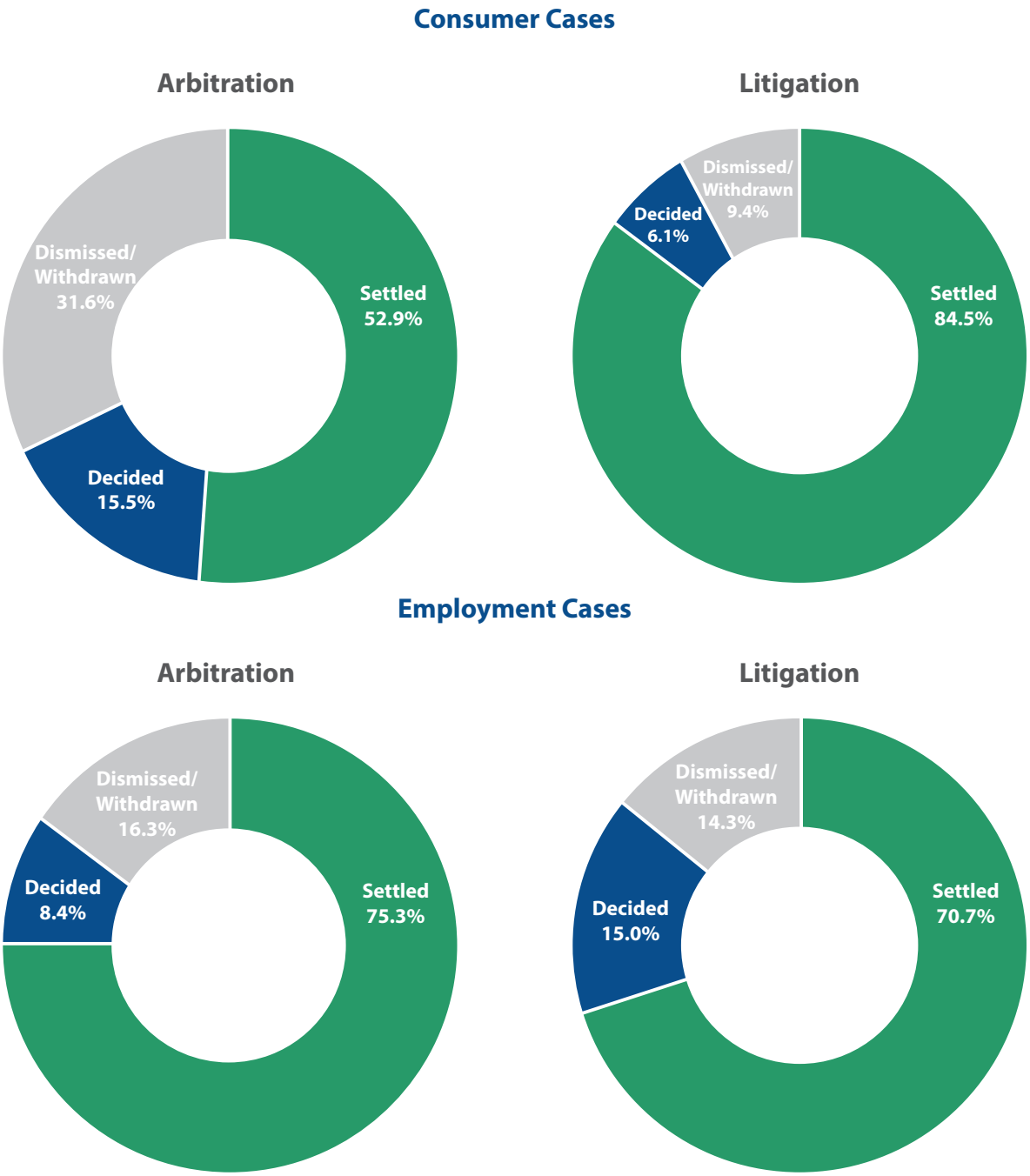
Table 3.
Over 8% of employment arbitrations and 15% of employment litigations were decided with awards during 2014-21

	Employment Arbitrations		Employment Litigations	
	Count	Share	Count	Share
Terminated Cases	**25,743**	**100.0%**	**167,198**	**100.0%**
Decided	2,163	8.4%	25,068	15.0%
Settled	19,388	75.3%	118,169	70.7%
Withdrawn/Dismissed	4,192	16.3%	23,961	14.3%

Overall, the outcome pattern of disputes is similar between the arbitration and litigation processes. Only a relatively small number of cases were terminated and decided by adjudicators. Most consumer and employment disputes were settled among parties or dismissed and withdrawn during the process. The magnitude of the outcome distribution may vary among

dispute types. During 2014-21, nearly 85% of consumer litigations settled while only 6% terminated with decisions in court. In contrast, more than 15% of consumer arbitrations terminated with decisions, and less than 53% settled. For employment disputes, about three-quarters of cases were settled in court or with arbitrators. Less than 9% of employment arbitrations terminated with decisions compared to 15% of employment litigations. (Figure 1)

Figure 1.
In both litigation and arbitration, most cases ended with settlements during 2014-21



WIN RATES OF CONSUMER-CLAIMANTS AND EMPLOYEE-CLAIMANTS IN ARBITRATION VERSUS LITIGATION

We assessed the likelihood of winning when consumers and employees initiated disputes in arbitration and in federal court from January 2014 to December 2021. Since disputes can be initiated by individuals or businesses and terminated with awards in favor of claimants, defendants, or both parties, we identified decided cases with awards to one prevailing party. Within those cases, we identified instances where the consumer or employee initiated and prevailed. The win rate for consumers is the number of cases that consumers initiated and prevailed divided by the number of decided cases with awards to one prevailing party. In parallel, the win rate for employees is the number of cases that employees initiated and prevailed divided by the number of decided cases with awards to one prevailing party.

Consumer Disputes. Among the 6,425 consumer arbitration disputes that terminated with decisions, 5,257 arbitrations terminated with awards to one prevailing party. Within these 5,257 cases, consumers initiated and prevailed in 2,192 cases in 2014-2021, or 41.7%. Among the 5,727 consumer litigations terminated with one prevailing party during 2014-21, consumers initiated and prevailed in 1,680 cases, accounting for 29.3% of decided cases. (Table 4)

Table 4.
The consumer win rate was 42% in arbitration compared to 29% in litigation during 2014-21

	Consumer Arbitrations	Consumer Litigations
Decided Cases w/ One Prevailing Party	5,257	5,727
Consumer Initiated & Prevailed	2,192	1,680
As % of Decided Cases with One Prevailing Party	**41.7%**	**29.3%**

Employment Disputes. Among the 2,163 employment arbitration disputes that terminated with decisions, 1,884 cases terminated with awards to one prevailing party. Among these 1,884 cases, employees initiated and prevailed in 710 cases, accounting for 37.7% of employment arbitrations terminated with decisions during 2014-21. Among the 25,068 employment litigations terminated with one prevailing party, employees initiated and prevailed in 2,698 cases, accounting for 10.8% of decisions during 2014-21. (Table 5)

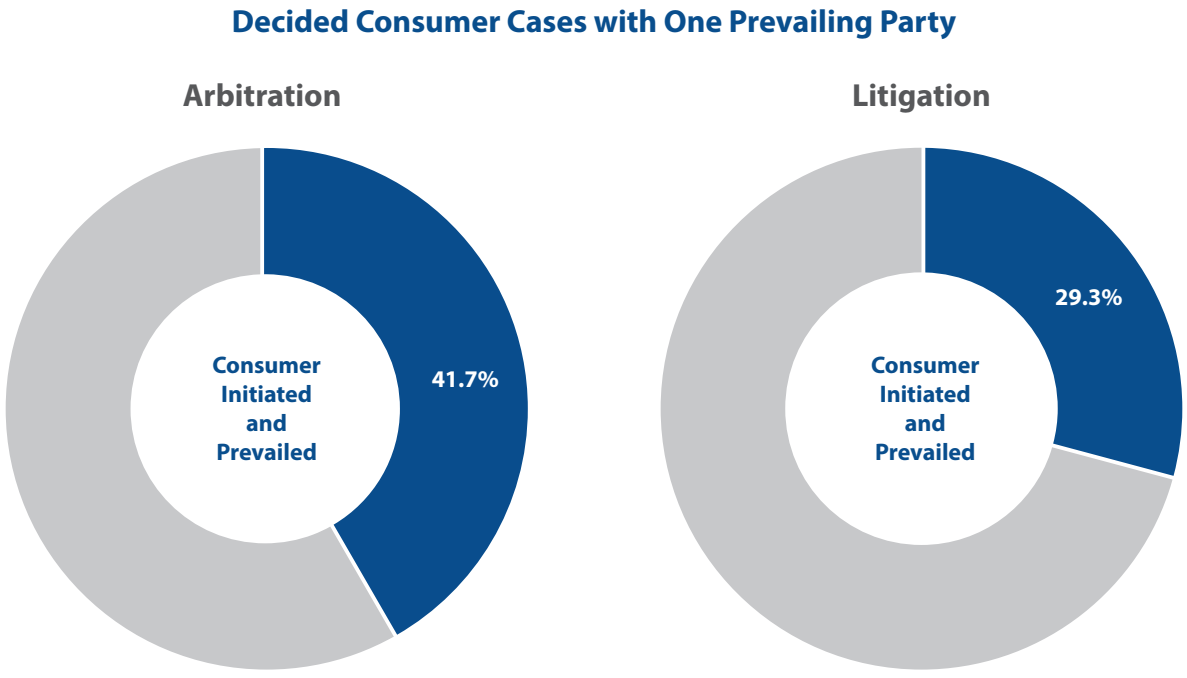
Table 5.
The employee win rate was nearly 38% in arbitration compared to less than 11% in litigation during 2014-21

	Employment Arbitrations	Employment Litigations
Decided Cases w/ One Prevailing Party	1,884	25,068
Employee Initiated & Prevailed	710	2,698
As % of Decided Cases with One Prevailing Party	**37.7%**	**10.8%**

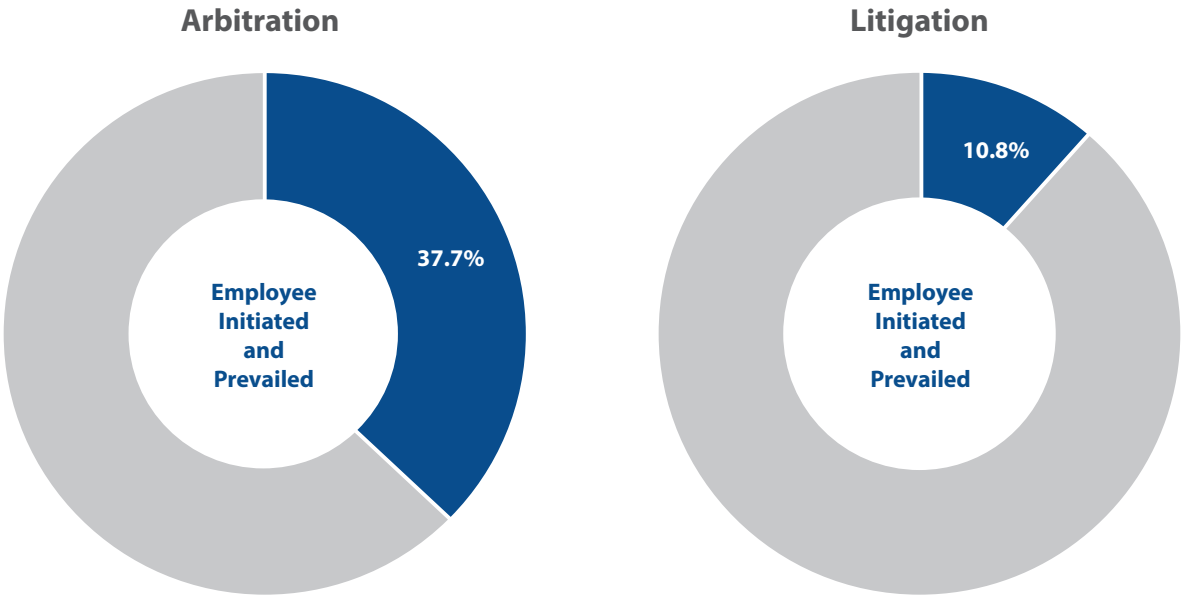
In sum, consumer- and employee-claimants were more likely to win in arbitration than in litigation. For consumer disputes that terminated with awards to one party during 2014-21, consumers initiated and prevailed nearly 42% of the time in arbitration compared to 29% in litigation. In other words, the chance for consumers to win was over 1.4 times higher in arbitration than in court.

The difference in win rates was even more pronounced for employment disputes. The chance for employees to win was 3.5 times higher in arbitration than in court. Employees initiated and prevailed nearly 38% of the time in arbitration compared to less than 11% of the time in litigation. (Figure 2)

Figure 2.
The win rates for consumers and employees were higher in arbitration than in litigation



Decided Employment Cases with One Prevailing Party



AMOUNT AWARDED

In arbitration and litigation, disputes can be resolved with monetary and non-monetary awards to individuals (consumers or employees), businesses, or both. We calculated and compared the distribution of the total monetary amount awarded to consumers and employees who initiated and prevailed in arbitration and litigation.

Consumer Disputes. During 2014-21, consumer-claimants who prevailed in arbitration received an average of $79,945 ($20,356 in median); the top 10% of awards were $161,325 and higher. During the same period, consumer-claimants who prevailed in litigation received an average of $71,354 ($6,669 in median); the top 10% of awards were $61,500 and higher. (Table 6)

Table 6.
On average, consumer-claimants received $79,945 in arbitration and $71,354 in litigation during 2014-21

	Consumer Arbitrations	Consumer Litigations
Mean	$79,945	$71,354
Median	$20,356	$6,669
90th Percentile	$161,325	$61,500

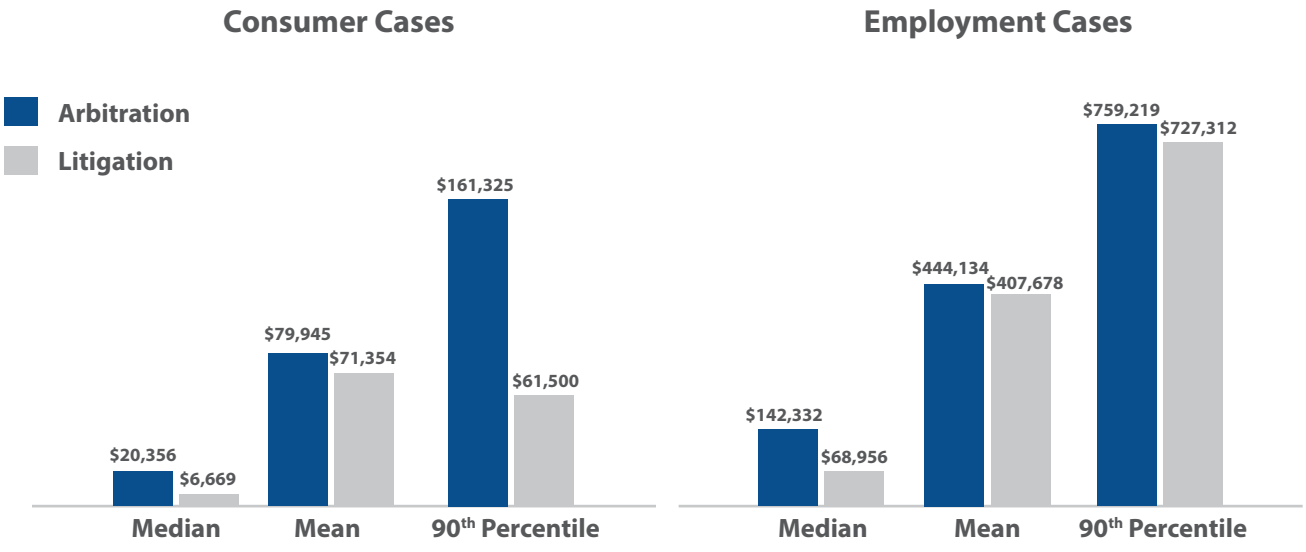
Employment Disputes. During 2014-21, employee-claimants who prevailed in arbitration received an average of $444,134 ($142,332 in median); the top 10% of awards were $759,219 and higher. During the same period, employee-claimants who prevailed in litigation received an average of $407,678 ($68,956 in median); the top 10% of awards were $727,312 and higher. (Table 7)

Table 7.
On average, employee-claimants received $444,134 in arbitration and $407,678 in litigation during 2014-21

	Employment Arbitrations	Employment Litigations
Mean	$444,134	$407,678
Median	$142,332	$68,956
90th Percentile	$759,219	$727,312

Overall, consumer-claimants and employee-claimants received higher awards in arbitration than in litigation. For consumer-claimants, the median award in arbitration was more than three times the dollar amount in litigation, $20,356 compared to $6,669. The top 10% of awards to consumer-claimants in arbitration was over 2.6 times the dollar amount in litigation, $161,325 compared to $61,500. The mean award for consumer-claimants in arbitration was 12% higher than litigation, $79,945 compared to $71,354. For employee-claimants, the median award in arbitration was more than double the dollar amount in litigation, $142,332 compared to $68,956. The mean award for employee-claimants in arbitration was nearly 9% higher than litigation, $444,134 compared to $407,678. The top 10% of awards to employee-claimants in arbitration was over 4% higher than litigation, $759,219 compared to $727,312. (Figure 3)

Figure 3.
Consumers and employees received higher awards in arbitration



TIME TO RESOLUTION

Another attractive feature of arbitration is time spent to resolve disputes. Arbitrations typically resolve disputes faster than litigations and thereby lower associated costs for consumers and employees to initiate claims. We calculated and compared the dispute-processing time from initiation to termination for disputes initiated and won by consumers and employees in arbitration and litigation. Time was measured by days from the filing date to the time when the case was decided with awards.

Consumer Disputes. From initiation to termination, it took consumer-claimants an average of 321 days (265 days in median) to prevail in arbitration during 2014-21. The required time in the top 10% of arbitrations was 558 days. From initiation to termination, it took consumer-claimants an average of 439 days (315 days in median) to prevail in litigation during 2014-21. The required time for consumer-claimants in the top 10% of litigation cases was 919 days. (Table 8)

Table 8.
During 2014-21, it took consumer-claimants an average of 321 days to prevail in arbitration compared to litigation

	Consumer Arbitrations	Consumer Litigations
Mean	321	439
Median	265	315
90th Percentile	558	919

Employment Disputes. During 2014-21, it took employee-claimants an average of 659 days (623 days in median) to prevail with awards in arbitration. The required time in the top 10% of arbitrations was 917 days. During the same period, it took employee-claimants an average of 715 days (578 days in median) to prevail with awards in litigation. The required time for the top 10% of litigation cases was 1,402 days (Table 9).

As noted above, the pandemic period has seen a substantial increase in terminated arbitrations. Employment arbitrations have been particularly affected: compared to 2020, employment arbitrations terminating with awards more than doubled and employment arbitrations initiated by employees and terminating with awards more than tripled. This unusual level of activity may have affected the efficiency of dispute resolution in 2020-2021.

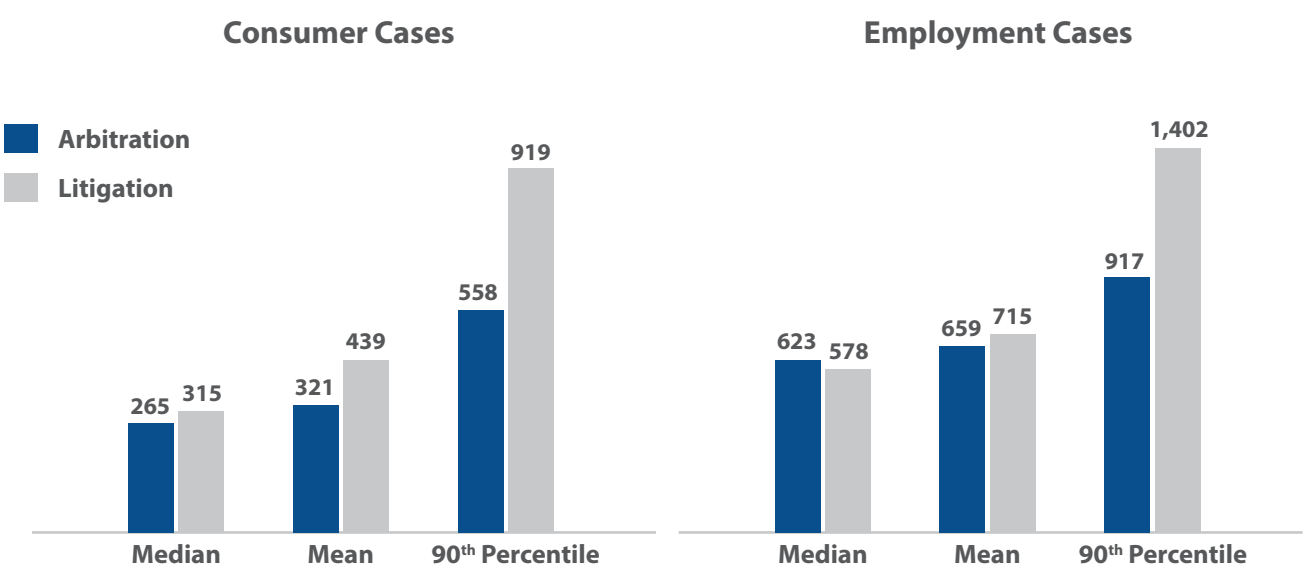
Table 9.
During 2014-21, it took employee-claimants an average of 659 days to prevail in arbitration compared to 715 days in litigation

	Employment Arbitrations	Employment Litigations
Mean	659	715
Median	623	578
90th Percentile	917	1,402

Arbitration tends to be faster than litigation. For cases where consumers initiated and prevailed with awards, the average time was nearly 27% faster in arbitration than litigation, 321 days compared to 439 days. The median time for consumer-claimant wins in arbitration was nearly 16% faster than litigation, 265 days compared to 315 days. The required time for the top 10% of consumer-claimant wins that took the longest to decide was over 39% faster in arbitration than litigation, 558 days compared to 919 days.

For cases where employees initiated and prevailed, the average time for employees to prevail was nearly 8% faster in arbitration than litigation, at 659 days compared to 715 days, while the median time for employees to prevail was longer in arbitration than litigation, at 623 days compared to 578 days. The top 10% of employee-claimant wins were faster in arbitration than litigation.[13] The top 10% of employee-claimant wins that took the longest to decide were 35% faster in arbitration than litigation, 917 days compared to 1,402 days. (Figure 4)

Figure 4.
Consumers and employees prevailed faster in arbitration than in litigation



13 Employment arbitrations historically were consistently faster than litigations both on average and in median until 2021. However, more time was required to terminate both employment arbitrations and litigations in 2021 due to operational disruptions across the country. The median time to terminate employment arbitrations increased in 2021 reflecting a substantial increase in employment arbitrations during this time while employment litigation activity remained unchanged.

CONCLUSION

Debates over the benefits of arbitration continue as the popularity of arbitration rises. Due to its flexibility and efficiency, the use of arbitration increased during COVID-19's negative impact on business operations and its limiting of courtroom activity. We expanded our analyses from previous reports to include cases that terminated since the outbreak of COVID-19 to assess outcomes and results between the arbitration and litigation systems. Despite the substantial increase in arbitrations which might affect the efficiency of the dispute resolution processes in 2020 and 2021, the findings in this study are consistent with findings in our previous reports. The three main metrics continue to show that arbitration is better than litigation for consumers and employees. Consumers and employees have a better chance of winning and receiving higher monetary awards in arbitration than litigation. In addition, arbitration allows consumers and employees to reach a resolution faster than litigation, which helps make it less costly than litigation.

METHODOLOGY

This report compiled arbitration data from two major arbitration service providers, the American Arbitration Association (AAA) and Judicial Arbitration and Mediation Services, Inc. (JAMS), and litigation data in federal courts to construct a large database to assess consumer and employment arbitration and litigation. Our analysis excludes consumer cases involving healthcare, insurance, and personal injury claims. We calculated and compared the win rates, award amounts, and time spent on consumer and employment disputes between arbitration and traditional litigation during the same time period, from 2014 to 2021. To analyze the benefits of the arbitration versus litigation systems to consumers and employees, we focus on cases where they initiated and prevailed with awards.

Arbitration Data. Our analysis of consumer and employment arbitration cases relies on data from two large arbitration service providers: AAA and JAMS.

Our arbitration dataset consists of 67,119 consumer and employment cases terminated during 2014-2021. The data breakdowns are: 41,376 consumer arbitrations (36,241 from AAA and 5,135 from JAMS) and 25,743 employment arbitrations (18,285 from AAA and 7,458 from JAMS). In total, 8,588 cases were recorded as awarded, of which 7,141 had one prevailing party, with the remaining awarded to both parties or the prevailing party was unknown. Of these 7,141 cases, 2,902 were initiated and won by consumers or employees. When analyzing award amounts, cases with missing award values are excluded.

Since AAA provides data of arbitrations terminated within the past five years, we downloaded 2017-2021 data from the AAA website in February 2022 and merged it with the 2014-2016 data that we downloaded from the AAA website in 2019. Similarly, we downloaded 2017-2021 arbitration data from JAMS and merged it with the 2014-2016 data that we downloaded from the JAMS website in 2019. AAA and JAMS do not provide data for ongoing consumer and employment arbitration cases. We removed consumer and employment arbitration cases with missing data on the initi-

ating party and/or outcomes. We removed duplicate cases based on the case ID to avoid double counting.

Litigation Data. Our analysis of litigation cases relies on 261,369 federal court cases that also terminated during 2014-2021. We downloaded litigation data from the Lex Machina portal in February 2022. Lex Machina is a database that collects and organizes federal court data from the federal courts' Public Access to Court Electronic Records (PACER) system. Our analysis excludes class actions and cases where the claimant was a government agency, as these claims are not comparable to private party consumer and employment arbitration. Additionally, a small number of cases terminated with a consent judgment were classified as "settled" instead of "awarded" cases because they embody settlements between the parties. Of the 30,795 awarded cases (defendant or claimant wins) identified in Lex Machina, claimants won 4,610 cases. Based on the names of the claimant and defendant, we identified 4,378 cases where the consumer or employee initiated the litigation and prevailed. Of these, 3,932 cases have monetary damage amounts. Due to missing data, there is a small discrepancy between the total number of cases used to analyze the award amount and the total number of cases used to analyze the duration from initiation to award.