



David Arkush
Director
Public Citizen's Congress Watch
215 Pennsylvania Ave. SE
Washington, D.C. 20003
202-454-5130
darkush@citizen.org

May 26, 2009

John Kroger
Oregon Department of Justice
1162 Court Street NE
Salem, OR 97301-4096
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Dear Mr. Kroger,

Enclosed is a new Public Citizen report, *Home Court Advantage: How the Building Industry Uses Forced Arbitration to Evade Accountability*, which exposes the harmful effects of home builders forcing buyers to settle disputes in binding arbitration.

Forced arbitration creates a gross conflict of interest in every industry that uses it. Arbitration firms depends on business parties to choose them as the venue for resolving disputes. As a result, forced arbitrations are biased in favor of businesses and against consumers.

The manner in which home builders secure purported agreements to arbitrate disputes is particularly insidious. A builder typically "gives" the consumer a third-party warranty issued by a risk retention insurance company. These warranties, which buyers often do not receive until after they move into their house, generally exclude protections for important classes of defects and limit the builder's and warranty company's liability by forcing all disputes to be settled in binding arbitration in a forum chosen by the warranty company. This enables homebuilders and home warranty companies to evade their contractual obligations and avoid accountability for misconduct.

This system was pioneered by the National Association of Home Builders, which created the first home warranty company. That warranty company, in turn, created, housed and subsidized an arbitration firm to adjudicate disputes between itself and its customers. That firm went bankrupt.

Construction Arbitration Services, which bills itself as largest arbitration firm devoted to construction issues, is its “successor in interest.”

We believe that these warranty companies may be violating Oregon law. We read with interest a bulletin posted by the Oregon Insurance Division, which read in part, “Arbitration must be at the mutual agreement of the parties, occur in Oregon, and be according to Oregon laws. Anytime arbitration language is used in insurance contracts, Oregon law applies to all lines of insurance (Health, Life, and Property/Casualty), as well as service contracts.” We have every reason to suspect that home warranty insurers are forcing Oregon consumers to accept binding arbitration.

We urge you to investigate this matter.

Please feel free to contact me if I can be of any assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "David J. Arkush". The signature is fluid and cursive, with a long horizontal stroke at the end.

David Arkush