



May 20, 2009

Mr. Larry Long
Attorney General of South Dakota
1302 East Highway 14, Suite 1
Pierre, SD 57501-8501

Dear Mr. Long,

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 depend 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 South Dakota law, which prohibits forced arbitration in insurance contracts. *See* S.D. CODIFIED LAWS. § 21-25A-3. 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 Arkush".

David Arkush