

JAMS Adopts Mass Arbitration Procedures and Guidelines

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On May 1, 2024, JAMS, the world's largest private alternative dispute resolution (ADR) provider, released its [Mass Arbitration Procedures and Guidelines](#) (Procedures) and an accompanying [Mass Arbitration Procedures Fee Schedule](#) (Fee Schedule) to address inefficiencies and abuses involving mass claims. JAMS stated that these new Procedures and Fee Schedule are intended to "facilitate the fair, expeditious and efficient resolution of Mass Arbitrations."

In the Procedures, "Mass Arbitration" is defined as "75 or more similar Demands for Arbitration, or such other amount as is specified in the Parties' agreement(s), filed against the same Party or related Parties by individual Claimants represented by either the same law firm or law firms acting in coordination."

JAMS acknowledged some of the concerns posed by the current mass arbitration environment. "The filing of dozens, hundreds or even thousands of individual claims may create administrative burden and onerous fees, as well as delay and potential unfairness to all Parties, all of which may impair the integrity of the Arbitration process," JAMS stated in an introduction to the Procedures.

To this point, JAMS — unlike other leading ADR providers, including the American Arbitration Association (AAA), National Arbitration, and Mediation (NAM) and FedArb — had declined to implement any protocols specific to mass arbitration. See Kimberly Taylor, "[Insight From the President: JAMS Policy Regarding Mass Arbitration Filings, Kimberly Taylor](#)," JAMS (Mar. 3, 2023). Even with these new Procedures and Fee Schedule, JAMS continues to encourage businesses to craft provisions to adopt, supplement or contractually modify their rules and processes, and urges parties to work together in good faith to ensure that arbitration is fair and cost-effective.

Notable changes include:

- The Fee Schedule imposes a flat filing fee of \$7,500 (up to \$2,500 to be paid by the consumers collectively and the remainder paid by the business) for filings that meet the definition of a "Mass Arbitration." The remaining fees include:
 - Process Administrator Fee.
 - Arbitrator Appointment Fee.
 - Arbitrator Compensation.
 - A Case Management Fee that is 13% of the Process Administrator's and/or merits arbitrator's total fees.
- The Procedures impose new filing requirements, such as requiring claimants' counsel to provide a sworn declaration with each demand for arbitration that the facts in the demand are true and correct to the best of their knowledge.
- The Procedures create a Process Administrator mechanism (akin to the AAA Process Arbitrator and the NAM Procedural Arbitrator). Assuming these items are not delegated to a court, a Process Administrator may, among other things, determine:
 - If the filing requirements and/or conditions precedent to initiating arbitration have been met.
 - Whether to batch, stage or otherwise group the demands or claims in the mass arbitration.
 - Whether threshold jurisdictional and arbitrability disputes are arbitrable or for a court to decide.

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- Fees are minimal through a Process Administrator proceeding.
- The Process Administrator's determinations are binding on subsequently appointed merits arbitrators, unless those determinations are deemed provisional by the Procedures (such as determinations on jurisdiction or arbitrability) or by the Process Administrator.
- The Procedures allow for the same merits arbitrator to be assigned to multiple cases.

JAMS noted that it will not uniformly administer under these Procedures; the parties must have agreed to their application "in a pre-or post-dispute written agreement" to have them automatically applied.

For demands filed under agreements that do not specifically cite the Procedures or have flexible language that could be interpreted to apply them, businesses should still consider seeking their

application to mass arbitrations. Given the acknowledgement by JAMS that, at present, many mass arbitration tactics compromise the integrity of a process premised on fairness, JAMS may be receptive to applying the Procedures where appropriate to ensure the objectives of arbitration and the JAMS Consumer Arbitration Minimum Standards are met. As the Procedures themselves note, they "supplement the Arbitration Rules that otherwise apply."

JAMS is an effective and reputable ADR provider with an impressive roster of neutrals. While these developments will not solve all abuses of its fee structure, they are a step in the right direction, much like the AAA-ICDR Mass Arbitration Supplementary Rules. See our January 17, 2024, client alert "[Modifications to the AAA Supplementary Rules and Fee Schedules Published and Effective Immediately.](#)"