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**Vehicle arbitration deals force Alabamans to seek right to sue - CONSUMER RIGHTS.**

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**Vehicle arbitration deals force Alabamans to seek right to sue** - CONSUMER RIGHTS - A fight over car market practices may have wide US implications, writes Betty Liu.

In the 1990s Alabama juries were doling out so many multi-million-dollar awards against companies that critics complained of a "jackpot justice" mentality in the state.

Years after tort reform, many of those class-action lawsuits have dried up, replaced by an issue that is proving equally controversial: the use of arbitration agreements as a pre-emptive measure against lawsuits. The practice has become so widespread in Alabama's car market that at least one lawsuit against the state's car dealers is winding its way up to the state Supreme Court to challenge the legality of these arbitration agreements - in essence, suing to establish the right to sue.

The suit, filed by Lorie McGrue, a Birmingham resident, claims all Alabama car dealers are requiring customers to agree to arbitration in a contract before cars can be purchased, thereby forcing consumers to give up their rights to trial by jury. Stories abound of Alabama residents driving to Georgia to purchase cars strictly to skirt these agreements.

The Birmingham Automobile Dealers Association denies there is any collusion among car dealers, noting there are some who make it a selling point not to have arbitration agreements. But Brett McBrayer, president of the association, acknowledges: "We know a lot of the dealers use arbitration. The legal situation here got so bad in the mid-1990s that it was the obvious thing to consider."

If granted class-action status - a decision that will be known in the next few weeks - and successful, the case may have wider implications on the national debate surrounding consumer arbitration, an area that has yet to be properly explored. Commercial and labour arbitration are common in the US, used in the airline industry between management and pilots or in baseball between players and owners. Arbitration concerning consumers is relatively newer.

"In reality, the experience of the American Arbitration Association is that we don't do a lot of consumer cases," says Richard Naimark, the AAA's senior vice-president. "The real issue on the consumer side is access to justice: can you get the same remedies in arbitration that you would get in court."

Some cases have already tested the boundaries of these arbitration agreements. The 9th US Circuit Court of Appeals in California ruled this year that AT&T had used illegal tactics by burying its arbitration clause in notices that were easily overlooked by long-distance customers. "But Alabama is ahead of the rest of the country in adopting consumer arbitration agreements and then arguing about them," says Stephen Ware, professor at the Cumberland School of Law in Birmingham, Alabama.

The state's arbitration laws contradict the Federal Arbitration Act, which enforces pre-dispute agreements. That has left wide open to interpretation the cases that can be enforced, prompting Alabama's Supreme Court to hear more arbitration cases than most other states, according to Mr Ware.

Where the rest of the US has remained largely indifferent to the issue of arbitration in consumer disputes - there are pre-dispute arbitration clauses in everything from credit card to brokerage contracts - Alabamans have grasped the topic with a passionate fervour, portraying it as the same kind of David and Goliath battle that gave rise to the class-action lawsuits against companies during the 1990s.

"Most places in the country have never heard of consumer arbitration or heard about it in a non-controversial setting," says Mr Ware. "In Alabama, lots of people who have heard of arbitration think they don't like it."

That's because the debate around arbitration taps into a largely populist outlook borne from the poorer, rural life and a deep, lingering resentment toward federal laws and mandates.

"The justices on the Alabama Supreme Court are serious about this issue," argues Mr Ware. "It goes beyond just arbitration but to the role of the federal government versus state government. That was an issue worthy enough to have a civil war."

#### RECOURSE TO ARBITRATOR LEAVES CONSUMERS WITH A BITTER TASTE

Quietly over several years whole areas of American law have, in effect, been privatised, reports Patti Waldmeir. Consumers and employees are now being forced more frequently to submit disputes to arbitration, where a private arbitrator decides matters that formerly would have been handled by public courts. Banks, brokers, insurance firms, car dealers and e-commerce companies now frequently include mandatory arbitration in consumer contracts, forcing consumers to give up the right to sue, often without their even realising that they have done so. More and more employers are refusing to hire workers unless they agree to submit all disputes to binding arbitration. Supporters of arbitration say it is quicker and less costly than a lawsuit. Opponents say arbitration favours big companies, provides no public deterrence - since most rulings are private - and provides for only a very limited right to appeal against such rulings in court. The Supreme Court is being called in more often to rule on when and how arbitration can provide a substitute for litigation. The justices heard more cases in the past four terms on arbitration than on antitrust or securities litigation. The justices will shortly decide one of the most important cases so far in this area: one that tests whether many small claims can be brought together in a class-action arbitration (in cases where a contract does not specifically rule out class actions). If small claims cannot be brought as class actions, many probably cannot be brought at all, because plaintiffs will not find lawyers willing to represent them under America's contingency fee system unless many claims can be lumped together. But opponents argue that allowing class-action arbitration would defeat the purpose of arbitration itself, which is to provide justice more swiftly and at a lower cost.

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