The Economics of Class Action Waivers

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Abstract:

Many firms require consumers, employees, and suppliers to sign class action waivers as a condition of doing business with the firm.  Indeed, three recent US Supreme Court cases, *Italian Colors*, *Concepcion*, and *Epic Systems*, have endorsed companies’ ability to block class actions (along with class arbitrations) through mandatory individual arbitration clauses.  Are class action waivers serving the interests of society or are they facilitating socially harmful business practices?  This paper synthesizes and extends the existing law and economics literature by analyzing the firms’ incentive to impose class action waivers on consumers, employees, and other contractual parties.  While in many settings the firms’ incentive to block class actions is aligned with maximizing social welfare, in many other settings it is not.  We examine conditions in which class action waivers can compromise product safety, facilitate anticompetitive conduct, and support harmful employment practices.  Our analysis delivers a more nuanced, policy-based understanding of the recent Supreme Court cases, highlights several new unresolved issues, and identifies future challenges for legal scholarship.