Consumer Financial Protection Bureau Agreement Over Corinthian Colleges Purchase Benefits Students But Leaves Protections in Doubt

Enrollment Forms No Longer Will Require Individual Students to Give Up Their Right to Sue

WASHINGTON, D.C. – An agreement announced yesterday between the federal government and ECMC Group, the prospective owner of 56 Corinthian College campuses, marks a step forward for individual students because they will no longer be forced to waive their right to go to court when they enroll in classes.

However, there have been reports that ECMC will still attempt to prohibit students from banding together in class actions against the institution. ECMC will still require students in Washington state to pursue claims in non-binding arbitration before they may sue in court. The enforceability of a class-action ban, however, is highly doubtful now that it is no longer tied to a mandatory arbitration clause.

The positions on arbitration was set forth in the agreement, which concerns the purchase of the Corinthian campuses, including Everest College, Everest Institute, Everest University, Everest College Phoenix and WyoTech.

“We are pleased that, after being pressured by the Fair Arbitration Now coalition, ECMC Group has decided to restore the rights of Corinthian Colleges’ students by ending the use of forced arbitration in enrollment contracts,” said Christine Hines, consumer and civil justice counsel for Public Citizen’s Congress Watch division. “However, we are frustrated by reports that ECMC will still attempt to prohibit its students from participating in class actions against it. Class actions are appropriate for students who suffer similar claims caused by the same misconduct and are a critical tool for holding corporations accountable.”

The class-action ban, if enforceable, would ban students from joining together to bring suits based on misconduct such as misrepresentations about the ability of for-profit schools to prepare students for careers. Corinthian has been accused of significant wrongdoing over the years, including misrepresenting job placement statistics and other serious deceptive practices. The deceptions allegedly induced students to enroll, strapping them with a mountain of student loan debt.

Because of forced arbitration clauses with class-action bans, Corinthian students have been denied the ability to seek compensation for injuries caused by the institution’s apparent misconduct. Together, the forced arbitration clauses and class-action bans operated to make it impractical and costly for students to seek remedies in individual arbitration proceedings.

“Class actions are vital to allow students to fight back against bad business practices of colleges or financial institutions simply because students often lack the resources to take them on alone.”
said Ellen Taverna, legislative director with the National Association of Consumer Advocates. “Without class actions, many possible violations like fraudulent marketing or other abusive or deceptive practices could go unchallenged.”

Corinthian’s forced arbitration strategy was the result of U.S. Supreme Court decisions holding that the Federal Arbitration Act (FAA) permits corporations to use forced arbitration clauses to restrict consumers’ and employees’ participation in class actions. But because ECMC’s new agreement will include a class-action ban but not a compulsory arbitration clause subject to the FAA, ECMC will no longer be able to rely on the FAA as a basis for claiming its class-action ban is enforceable.

Instead, the enforceability of the ban will depend on the law of the state in which students bring suit. States have different laws regarding the permissibility of class-action bans that are not subject to the FAA. Courts applying the laws of many states around the country have held that class-action bans in consumer contracts are “unconscionable” and therefore invalid. Still, students would be better off if terms prohibiting class actions were not included at all, Hines said.

Two weeks ago, Fair Arbitration Now, a coalition of consumer, labor, legal and citizen groups, sent a letter to the Department of Education, and copies to ECMC Group and the Consumer Financial Protection Bureau, urging the department to insist that ECMC restore Corinthian students’ rights as a part of its purchase of the schools.