

Minnesota Sues a Credit Arbitrator, Citing Bias

The Attorney General's lawsuit claims the National Arbitration Forum has ties to debt-collection law firms and works against consumers

By [Robert Berner](#)

The Minnesota Attorney General on July 14 sued the nation's largest arbitration firm involved in adjudicating delinquent credit-card debt, charging that it runs a biased process that favors major credit-card companies.

The civil suit filed against the National Arbitration Forum in state District Court in Minneapolis alleges that far from being an impartial venue for resolving such disputes, the NAF has conflicting ties to major collection law firms that represent credit-card companies. Indeed, the case claims that New York hedge fund Accretive LLC—in which Seagram heir Edgar Bronfman Jr. is a general partner—has cross ownership of such major collection law firms and the NAF, sending collection cases between the two. The suit also alleges Accretive is involved in the arbitration firm's business development. Accretive isn't named as a defendant in the suit. There is no allegation of wrongdoing by Bronfman.

A spokeswoman for the NAF did not immediately respond to the lawsuit. Officials at Accretive didn't return several telephone calls seeking comment.

"The Forum represents to the public, the courts, and consumers that it is independent, operates like an impartial court system, and is not affiliated with any party," says Attorney General Lori Swanson's suit, which charges NAF with consumer fraud, deceptive trade practices, and false advertising. "The consumer does not know that the Forum works alongside creditors behind the scenes—against the interest of consumers."

"Threat to the Legal System"

"These practices go to the foundation of our legal system," Swanson adds in an interview. "Impartial resolutions of disputes are what democracy is all about, and the actions of this company undermine justice and are a threat to the legal system."

BusinessWeek made many of these [assertions of bias](#) in an investigative story on the NAF last year. The story showed how NAF worked closely with debt-collection firms to develop business with credit-card companies and buyers of delinquent credit-card debt. NAF marketing material obtained by *BusinessWeek* showed NAF claiming better debt recovery rates through arbitration than through the courts. And the story revealed a system whereby NAF arbiters—lawyers and former judges hired on a contract basis—had incentives to rule in the creditor's favor.

Most of the nation's [credit-card companies](#) have clauses in their contracts that require consumers to resolve disputes over how much they owe through arbitration, a private judicial process that is supposed to be fair and cheaper and more efficient than the courts. Increasingly, though, credit-card issuers have turned to arbitration to collect delinquent debts. The Minnesota suit says that Bank of America ([BAC](#)), JPMorgan Chase ([JPM](#)), Citigroup ([C](#)), Discover Card, and American Express ([AXP](#)) use NAF, based in St. Louis Park, Minn.

Swanson's suit follows a bias case brought against NAF last year by the San Francisco city attorney in California state court. That suit alleged that only a fraction of California credit-card debtors win cases against creditors through the NAF. That case is still pending.

Corporate Connections

In interviews with *BusinessWeek* last year, NAF officials refused to disclose whether Accretive had an ownership stake in the firm. In fact, the Minnesota lawsuit cites e-mail deliberations on how to respond to *BusinessWeek's* question on whether there was an ownership connection. "Ultimately the National Arbitration Forum gave the reporter an incomplete and misleading answer, layered in lawyer speak," the lawsuit says.

The suit alleges that in 2006 and 2007, Accretive created several private equity funds under the name Agora ("forum" in Greek) to invest \$42 million in NAF in exchange for a 40% stake and governance rights. Also in 2007, the case alleges, Accretive acquired the operations of collection law firms Wolpoff & Abramson, Eskanos & Adler, and Mann Bracken, partly funded by the Small Business Administration. Accretive named that division Axiant. Accretive's Web site, [Accretivetechology.com](#), names Axiant as a division, but makes no mention of Agora.

NAF executives were concerned enough about the public-relations damage that could come from the company's ties to Accretive and Axiant, the lawsuit says, that they planned to unwind the deal should it become public.

Swanson's suit claims that in 2006, 125,000 consumer debt-collection cases, or 60% of the cases NAF handled, came from those three law firms. "The Forum conceals its affiliations with the collections industry through extensive affirmative representations, material omissions, and layers of complex and opaque corporate structuring," the suit charges.

Debt Collection in Other Industries

The suit asserts that NAF founder Edward Anderson told Accretive managers before the sale of the investment stake that "the Forum is one of a kind; there is no competitor nor is there likely to

be one....The barriers to entry are insurmountable." In a copy of a "Strategic Vision" document that is an exhibit to the complaint in the case, Accretive says that with its assistance NAF will enter new industries. "NAF sits at the center of a broad arbitration ecosystem," the document states. Since Accretive's investment, NAF has moved into health-care and mortgage collections, the suit alleges.

The suit alleges Accretive has also helped NAF develop "talking points" and a plan to lobby members of Congress on how to kill or weaken the federal Arbitration Fairness Act, a bill currently in Congress that would curb the use of arbitration.

A number of tactics are used to encourage credit-card companies and other creditors to file arbitration claims with the NAF, the suit alleges. The Forum drafts clauses for them, advises creditors on arbitration legal trends, refers them to debt-collection firms, and even helps creditors draft claims against consumers, the suit contends. In one solicitation cited in the case, NAF says "The customer does not know what to expect from arbitration and is more willing to pay," and that "you [the creditor] have all the leverage [in arbitration] and the customer really has no choice but to take care of the account."

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