

Mass Arbitration Claim Shows Potential For Blockchain

By **Caroline Simson**

Law360 (November 1, 2022, 10:09 PM EDT) -- A group of attorneys is using blockchain to solicit potential claimants across the globe for a mass arbitration against PayPal and Amazon, an innovative use of the technology that experts say nevertheless just scratches the surface of its potential value in arbitration.

The claimants intend to accuse PayPal and Amazon of violating users' due process rights by unfairly seizing funds held in their accounts for alleged policy violations without explaining their reasoning, a practice the claimants say has been going on for years.

The platforms will at first freeze the funds for about six months due to allegedly suspicious activity and then unilaterally seize the funds because of the users' alleged violations of the platforms' internal policies, the claimants say. The platforms allegedly refuse to share with users what, exactly, they did to violate the policy.

A representative for Amazon declined to comment on the allegations. Representatives for PayPal did not respond to a request for comment.

The amounts that were allegedly seized varied widely, starting from as little as \$80 for an individual and rising to as much as \$170,000 for a business, according to attorneys Ning Zhang of Intelink Law Group PC and Eric Bensamochan of The Bensamochan Law Firm Inc., who are part of the legal team working on the case. At the moment, they said they already have several thousand claimants and are expecting hundreds of thousands more.

To find those claimants, they're trying something experts say hasn't been done before: using the blockchain. Zhang says they've created a DAO, or decentralized autonomous organization, to handle the claim, allowing them to target potential claimants who wouldn't be reached by attorneys who use more typical methods, such as taking out internet or television advertisements.

Once claimants sign a contribution agreement and create a "wallet" account on a website called OpenBlock, they'll receive a token. Token holders will then be allowed to vote on the actions taken by the DAO to assert the claim, Zhang said. They'll be able to access their digital wallet using an app on their phone.

"The beauty of blockchain and the DAO is that everybody will be an owner, a shareholder, in a way, of that entity," she said. "Basically it allows for collaboration between different players and different stakeholders on a global scale, to do things together."

Additionally, claimants will know exactly how much of any ultimate damages they will be entitled to since that information will all be on the blockchain, "so there's no funny business," Zhang added. She noted the legal team is still discussing what sort of currency will be used for the payout, and that the token is mainly being used as an organizational tool right now.

Bensamochan told Law360 they're not yet sure where the claim will be filed.

"We're looking into all possibilities," he said. "We're certainly not opposed to a smaller tribunal outside the U.S. ... but it's really still a big, open question."

The approach to finding claimants using blockchain technology is unique. Experts contacted by Law360 could recall only one similar initiative, involving a company called Ryval that touts itself as "the stock market of litigation financing." Ryval uses blockchain to allow individuals to buy and sell tokens to fund civil lawsuits.

International arbitration lawyer Sean McCarthy noted the idea behind Ryval is to create "a blockchain-powered crowdfunding platform for mass claims, either litigation or potentially arbitration," an idea he called "very, very promising" even though problems may arise due to the gray area surrounding cryptocurrency and securities regulations.

McCarthy is also a co-founder of ArbTech, a worldwide, online community forum fostering cross-disciplinary dialogue on technology, dispute resolution and the future of justice.

As the blockchain crowdfunding platform idea suggests, the claimant solicitation method for the PayPal and Amazon arbitration may be just the beginning for the relationship between blockchain and arbitration.

"It's an inventive use of the blockchain technology, but a limited one at this stage," said London-based arbitrator Sophie Nappert of 3 Verulam Buildings, who is also a co-founder of ArbTech.

Still, she added, the lawyers here are "being smart about it" because it's something the technology is definitely capable of at this point.

"They can, in that way, probably gather a class that would be larger and more comprehensive than if they did it in the usual way," she said. "I think this is a very clever way of using the technology, doing what it does best in its current state of development."

As for other ways in which blockchain could be used in the arbitration context in the future, Nappert said she could envision a scenario in the next five to 10 years where it could be quite useful.

She gave an example of a construction project where all the contracts from the various companies involved in the project are placed on the blockchain, and transactions could be recorded there. As the project progresses, daily reports could be placed into the blockchain with a record of all transactions that were completed.

"That, to me, would be a really ideal example, because then the project would be starting and ... all of [the documents] would be placed on the blockchain as things develop. So when you have a problem, that would also be recorded in real time," she said, adding that having a complete documentary record like that on the blockchain would likely save the parties time and money in the event of a dispute.

Although the technology is likely capable of doing something like that right now, the hard part remains convincing business owners that blockchain can save them money, Nappert said.

"It has to be worth their while, and I think what needs to be done is to make them understand that ... if ever a dispute arises, this would mean a considerable saving of their time," she said. "Once they understand that, then I think it's going to be a no-brainer for them to do it."

In the longer term, blockchain could be the next step for online dispute resolution, McCarthy said.

Many commercial arbitration claims are administered by arbitral institutions like the International Chamber of Commerce's International Court of Arbitration or the American Arbitration Association. With blockchain, however, many of the procedural processes these institutions do could be automated, McCarthy said.

"Because blockchain and specifically smart contracts can automate a lot of the administration that, say, an institution like the ICC could do today, it democratizes it down, where you can have peer to peer arbitration and not just million-dollar-plus cases between bigger companies," he said. "That's where the future could easily go."

"So I think we're absolutely only in the infancy," McCarthy continued. "No project has really

scratched the surface of highly refined, and how popular, and how used arbitration could be if it was powered with certain blockchain elements."

--Editing by Jill Coffey and Lakshna Mehta.