Consumer Arbitration Clauses: Dispute System Design and Procedural Justice?

After a bench trial in Ross et al v. American Express et al., Judge William Pauley III concluded that plaintiffs had failed to meet their burden of proving that a group of credit card-issuing banks violated federal antitrust laws. Despite his ruling, however, Judge Pauley wrote a 91-page opinion that described a complicated series of meetings and exchanges—all culminating in the defendant banks’ inclusion of class action-barring mandatory pre-dispute arbitration clauses. Judge Pauley also warned of the dangers of such cooperation involving companies that are supposed to be in competition with each other.

Could the actions detailed in Judge Pauley’s opinion constitute a form of dispute system design? If yes, who were the “designers?” Did the “designers” comply with the principles of procedural justice? Where should dispute resolution organizations and individual dispute resolution professionals fit today in any such design process?

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PV 272, SPEA (School of Public & Environmental Affairs)
Professor’s Welsh’s talk is open to the IU community and the general public.

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