SECURITIES ARBITRATION ALERT 2021-09 (3/11/21)

George H. Friedman, Editor-in-Chief

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- ***Back to Basics: Drawing the line between Disclosure, Challenge and Disqualification Standards in International Investment Arbitration*, Kluwer Arbitration Blog (Mar. 1, 2021)**
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- **The Petrobras Crisis: *Arbitrating Investors' Claims Against the Brazilian Federal Government*, Kluwer Arbitration Blog (Mar. 6, 2021)**

DID YOU KNOW?

- **JAMS has An ADR Blog**

A NEW FEATURE ON OUR WEBSITE. *This year's back issues are now available free of charge by navigating to "Download this year's back issues of the Online Securities Arbitration Alert" on our landing page. To protect subscriber value, the list is always a week behind the current issue. See the latest list.*

SQUIBS: IN-DEPTH ANALYSIS

SEC'S DIVISION OF EXAMINATIONS RELEASES 2021 EXAM PRIORITIES – ARBITRATION AGAIN NOT ON THE LIST. ***The SEC's* Division of Examinations ("DOE") *issued its exam priorities for 2021. Once again, FINRA's dispute resolution program isn't mentioned.*** Announced in a **March 3** Press Release, the 42-page DOE Report articulates several key exam priority categories (*repeated* verbatim): 1) Retail Investors, Including Seniors and Those Saving for Retirement, Through Reg. BI and Fiduciary Duty Compliance; 2) Information Security and Operational Resiliency; 3) Financial Technology (Fintech) and Innovation, Including Digital Assets; 4) Anti-Money Laundering Programs; 5) The London Inter-Bank Offered Rate (LIBOR) Transition; 6) Focus Areas Relating to Investment Advisers and Investment Companies; 7) Focus Areas Involving Broker-Dealers and Municipal Advisors; and 8) Market Infrastructure.

Specific Priorities

SEC Acting Chair **Allison Herren Lee** says in the Release: "This year, the Division is enhancing its focus on climate and ESG-related risks by examining proxy voting policies and practices to ensure voting aligns with investors' best interests and expectations, as well as firms' business continuity plans in light of intensifying physical risks associated with climate change. Through these and other efforts, we are integrating climate and ESG considerations into the agency's broader regulatory framework." The specific priorities within the main categories are nicely summarized in the Release. FINRA is covered in **Market Infrastructure**: "The Division will continue its oversight of FINRA by focusing examinations on FINRA's operations and regulatory programs and the quality of FINRA's examinations of broker-dealers and municipal advisors."

COVID-19 Not Forgotten

The elephant in the room is not forgotten, with several references to steps taken in 2020 and forward-looking pandemic-related exam objectives for 2021. Looking back, the Report says: "Early on in the pandemic, we issued a statement on our own operations noting the shift to correspondence examinations and our outreach efforts to registered firms to assess pandemic-related operational resiliency challenges. The Division pivoted to focus on the most pressing risks -- including examining whether registered firms' business continuity plans were updated, operational and effective, and addressing increased cybersecurity risks facing firms and investors. We published a COVID-19 Risk Alert to share observations from this work and provided observations and recommendations to assist firms' pandemic response" (footnotes omitted).

And Arbitration?

As in recent years, arbitration is again not listed as a priority this year. It is, however, mentioned in passing on page 35, where the Report describes FINRA at a high level using the same language it did last year: "In addition, FINRA, among other things, provides a forum for securities arbitration and mediation…." Perhaps DOE intends to examine the Dispute Resolution Services where the Report states that the Division: "conducts risk-based oversight examinations of FINRA. It selects areas within FINRA to examine through a risk assessment process designed to identify those

aspects of FINRA's operations important to the protection of investors and market integrity."
*(ed: *As usual, DOE warns that the list is not exhaustive and that priorities may change as the year unfolds. That was certainly the case in 2020! **Last year's Report was 22 pages long. ***As covered in SAA 2021-06 (Feb. 18), FINRA announced its 2021 risk monitoring and exam priorities on February 1. ****Last year's DOE exam priorities were announced in early January; we're sure the delay this year was prompted by the change of administrations and SEC leadership.)*
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A LOOK AT AAA'S SPECIAL *PRO SE* CASE ADMINISTRATION UNIT. ***The American Arbitration Association ("AAA" or "Association") in 2015 created a special unit of dedicated case administrators to process* pro se *cases. We offer here a synopsis.***
An AAA arbitrator who had been approached recently to serve on a case shared with us news that the Association has a case administration team to work on cases involving *pro se* parties. The invitation letter said: "This dispute is being administered by the **Pro Se Arbitration Administration Team** as at least one party to the case is currently not represented by an attorney. The Pro Se Arbitration Administration Team ('Pro Se Team') is comprised of experienced AAA case administrators, and the goal of the Pro Se Team is to ensure fair and efficient management of cases involving unrepresented parties. For this reason, all communications between the AAA and parties are conducted in writing, and the names of individual team members are not disclosed to the parties. My name is _____, but I will be communicating with the parties and you via the ProSeAdministrator … email address. You are free to contact me at this email address or by calling my direct telephone number _____. We request that you do not disclose our names or telephone numbers to the parties."

The AAA Explains
This naturally got our attention so we contacted the Association to seek more information. Senior Vice President **Christine Newhall** was kind enough to virtually sit down with the *Alert* to provide some insights. The conversation is essentially *verbatim*:

SAA: **What is the Pro Se Arbitration Administration Team program? Please describe the core features.**

Newhall: The Pro Se Case Administration Team administers cases involving unrepresented parties by a team of highly skilled AAA case administrators who are experienced and trained in handling cases involving pro se parties. The Pro Se Case Administration Team has developed specifically tailored resources for pro se parties to educate them about the arbitration and mediation process (ADR process). The Pro Se Case Administration Team also has provided information to pro se parties to help them obtain legal representation (example: ABA Free Legal Answers). To ensure an efficient and fair process, all communications on cases administered by this team are primarily conducted in writing with the exception of any in person or telephonic hearings which are conducted by the arbitrator. This helps parties focus on case issues, gives parties time to

respond to submissions from opposing parties and can make it possible for both parties to be copied on all correspondence.

SAA: When did it start?

Newhall: 2015.

SAA: Why did AAA create it?

Newhall: Unrepresented parties who are unfamiliar with the ADR process have more questions and are less familiar with the process. In keeping with our not-for-profit mission to educate the public about ADR, the AAA saw a need to have a team experienced in administering cases with unrepresented parties in order to help these parties navigate their case. Resources available on our Website include videos that help educate the pro se party on the arbitration process.

SAA: **How is it working so far?**

Newhall: The AAA Pro Se Case Administration Team is providing information and service on the cases and continues to learn and develop new resources for unrepresented parties, as well as for the arbitrators that serve on the cases. The team is working hard and over the last five years have provided valuable administrative services on the pro se cases.

SAA: Is there anything else you want our readers and followers to know?

Newhall: Those interested in additional information on the AAA's Pro Se Case administration should visit our website, www.adr.org.

Message is Clear

There's a page on the AAA Website dedicated to the program, https://adr.org/pro-se. Among the resources is a 3-minute video, *Pro Se Party Information,* advising: "It is important to keep in mind that the AAA manages only the administrative aspects of the arbitration, such as the appointment of the arbitrator and handling the fees associated with the arbitration. The AAA and/or the arbitrator do not assist the parties in presenting their case. The AAA and/or the arbitrator do not provide legal advice or assistance to the parties and cannot give advice about your case or what documents you should use as evidence." The video underscores that all communications must be in writing, and phone calls are not accepted (we assume this applies to all sides, including parties represented by counsel.)

*(ed: *Our thanks to Ms. Newhall for providing this information! **We're assuming that a need to shield staff in part drove creation of the program. ***FINRA does not have such a program, but under Rule 13203(a) the Authority can: "decline to permit the use of the FINRA arbitration forum if the Director determines that, given the purposes of FINRA*

and the intent of the Code … accepting the matter would pose a risk to the health or safety of arbitrators, staff, or parties or their representatives."
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FOURTH TIME NOT THE CHARM, EITHER: SDNY ONCE AGAIN HOLDS THAT NY CPLR SECTION 7515 IS PREEMPTED BY THE FAA. ***For the second time in recent weeks, the District Court for the Southern District of New York holds that New York's CPLR section 7515 is preempted by the FAA.*** This law, banning mandatory predispute arbitration agreements ("PDAA") covering discrimination and harassment claims, is on a losing streak at this Court. Readers may recall that New York's arbitration statute, Article 75 of the Civil Practice Law and Rules, was amended in **2018** to add a new section 7515, rendering null and void mandatory PDAAs covering sexual harassment disputes (see SAA 2018-39 (Oct. 17) for our coverage). As we later reported in SAA 2019-25 (Jun. 26), the law was again amended effective **October 2019** to expand section 7515's PDAA ban to embrace *any* "discrimination in violation of laws prohibiting discrimination…." We reported in SAA 2021-08 (Mar. 4) on *Gilbert v. Indeed*, No. 20-3826, 2021 WL 169111 (S.D.N.Y. Jan. 19, 2021), where the Southern District for the third time held that the Federal Arbitration Act ("FAA") preempts section 7515.

Once Again, Preemption
On the heels of that case comes *Rollag v. Cowen, Inc.*, No. 20-CV-5138 (S.D.N.Y. March 3, 2021), where the Court again holds that the statute is preempted. Says Judge **Ronnie Abrams**: "The law's outright prohibition on the arbitration of discrimination claims is plainly inconsistent with the FAA and the Supreme Court's interpretation of that federal law. Accordingly, NY CPLR § 7515 is displaced by the FAA in this case. The Court finds support for this conclusion in two recent opinions from this District."

No Clear Delegation Under the FINRA Code
Another issue before the Court was whether incorporating the FINRA *Code of Arbitration Procedure* is "clear and unmistakable" evidence of the parties' intent to delegate arbitrability. "No," says the Court, "especially as compared to the AAA Rules." On this issue Judge Abrams says: "Unlike the AAA rules, which provide that '[t]he arbitrator shall have the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope or validity of the arbitration agreement,' … the FINRA Code 'does not clearly and unmistakably provide for all issues of arbitrability to be arbitrated,' *Alliance Bernstein*, 445 F.3d at 126 (evaluating NASD Rule 10324, now FINRA Rule 13413). The relevant FINRA rule is more circumscribed than its AAA counterpart, stating only that '[t]he [arbitration] panel has the authority to interpret and determine the applicability of all provisions *under the Code*.' FINRA Rule 13413 (emphasis added)…. No other FINRA rule delegates to its arbitration panel determinations about the general scope or validity of an arbitration agreement. As a result, the Agreements' incorporation of the Code does not clearly evince the parties' intent to delegate the arbitrability question at issue here" (brackets and emphasis in original).

*(ed: *The cases we've reported on previously:* Latif v. Morgan Stanley & Co., LLC, *No. 18cv11528 (S.D.N.Y. 2019);* Whyte v. WeWork Companies, Inc., *No. 20cv01800 (S.D.N.Y. June 11, 2020); and* Gilbert v. Indeed, *No. 20-3826, 2021 WL 169111 (S.D.N.Y. Jan. 19, 2021). The Court cited the first two. **This was a FINRA arbitration, and although the preemption ruling disposed of the matter, we point out that CPLR section 7515 has a carveout for SRO-administered arbitrations. ***Again, not to say we told you so, but we told you so. We said when the law was enacted in 2018 and again when it was amended in 2019 that the statute "faced serious FAA preemption challenges." ****An* Alert *h/t to Editorial Board member Peter R. Boutin, Esq., of Keesal, Young & Logan, for alerting us to this decision.)*
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SHORT BRIEFS: CONCISE NEWS YOU NEED TO KNOW

FINRA BOARD MET VIRTUALLY LASTWEEK. AS EXPECTED, NO DISPUTE RESOLUTION ITEMS. FINRA's Board of Governors met virtually **March 3 – 4**. As we expected, the 45-second video describing the results posted **March 10** on the FINRA Website does not reflect any dispute resolution-related items. What transpired? The Board: "approved proposed amendments to FINRA's Borrowing From or Lending to Customers Rule, approved the allocation of 2020 fine monies to various capital initiatives in accordance with FINRA's Financial Guiding Principles, and moved forward with an advanced analytics strategic initiative." More details are contained in *March 2021 Board Update* and a Press Release.
(ed: The schedule for the rest of the year is: May 18 – 19; July 21 – 22; September 23 – 24; and December 1 – 2. We imagine these meetings will also be virtual until conditions permit them to be in-person.)
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ICYMI, SO DID WE: AAA'S INTERNATIONAL RULES WERE AMENDED EFFECTIVE MARCH 1. The AAA's International Centre for Dispute Resolution ("ICDR") has amended its *International Dispute Resolution Procedures* effective for cases filed on and after **March 1, 2021**, unless the parties agree otherwise. The changes are not cosmetic. For example, Article 5: "Codif[ies] the ICDR's practice of having the International Administrative Review Council, which is comprised of current and former ICDR executives, decide arbitrator challenges and other administrative disputes …." We will do a full writeup in a future *Alert*.
(ed: Sorry we missed this one.)
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ICC REPORTS STRONG FILINGS IN 2020. The International Chamber of Commerce ("ICC") on **March 2** released preliminary **2020** stats showing the highest number of arbitrations filed since **2016**. There were 946 new arbitration cases filed in 2020, "the highest number of cases registered since 2016, when a complex cluster of small disputes effectuated a marked increase in the statistics." Of the 946 new cases, 929 were filed under the *ICC Rules of Arbitration* and 17 cases were filed under *the ICC Appointing Authority Rules*; of those, 12 cases were filed under *UNCITRAL Rules* and five cases were completely *ad hoc*. The ICC International Centre for ADR had a record year, according to the ICC announcement: "The Centre, which received its 400th request

for Mediation in December, registered 77 new cases in 2020, comprising a record 45 mediations, 22 expertise proceedings, 7 DOCDEX and 3 Dispute Board proceedings." *(ed: *We look forward to seeing the final stats, which we think will show that the agency administered some financial services cases. **As reported in SAA 2020-38 (Oct. 14), the ICC on October 10 announced that its Rules of Arbitration were amended effective January 1, 2021.)*
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SEC'S INVESTOR ADVISORY COMMITTEE TO MEET VIRTUALLY MARCH 11. NO ARBITRATION OR MEDIATION AGENDA ITEMS. The SEC on **March 3** announced that its Investor Advisory Committee would be meeting virtually on Thursday, **March 11** from 10:00 a.m. to 4:00 p.m. Eastern Time. The Agenda shows two main topics: 1) Follow-On Panel Discussion Regarding Self-Directed Individual Retirement Accounts (IRAs); and 2) Panel Discussion Regarding Special Purpose Acquisition Companies (SPACs). Two recommendations will also be considered: 1) Recommendation Regarding Minority and Underserved Inclusion; and 2) Discussion of Recommendation Regarding Credit Rating Agencies.
(ed: The meeting will be webcast on the Commission's Website at www.sec.gov.)
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PRO ACT PASSED BY THE HOUSE. The *Protecting the Right to Organize (PRO) Act* – H.R. 842 – was passed in the House of Representatives by a 225-206 mostly party-line vote on **March 9**. We reported in SAAs 2021-08 (Mar. 4) & -06 (Feb. 18) that the *PRO Act* had been introduced **February 4** the House. This omnibus bill has a small provision (see pages 11-13 of the text) aimed at legislatively overruling *Epic Systems Corp. v. Lewis*, 138 S. Ct. 1612 (2018), where SCOTUS held that the FAA permits employers to use arbitration clauses containing class action waivers, notwithstanding the *National Labor Relations Act's* ("*NLRA*") protections of workers' rights to act collectively. Specifically, the *PRO Act* would amend the *NLRA* to make it an unfair labor practice for *any* employer (not just those dealing with potential unionization) to use class action waivers, "notwithstanding" the Federal Arbitration Act.
*(ed: *The bill was transmitted to the Senate.**We'll track this one and keep our readers and followers informed.)*
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SCOTUS DECLINES TO REVIEW SECOND CIRCUIT CASE HOLDING THAT FAA YIELDS TO THE BANKRUPTCY CODE. The Supreme Court on **March 8** declined to review *Belton v. GE Capital Retail Bank,* 961 F.3d 612 (2d Cir. June 16, 2020), a case we covered in SAAs 2020-24 (Jun. 24) & -23 (Jun. 17). There, the Second Circuit held unanimously that the Federal Arbitration Act ("FAA") is displaced by the Bankruptcy Code. Specifically, the *Belton* Court declined to compel arbitration of a dispute over an alleged violation of a bankruptcy discharge Order. The Bankruptcy Code in 11 U.S.C. § 524(a)(2) states in pertinent part: "A discharge in a case under this title … (2) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal

liability of the debtor, whether or not discharge of such debt is waived …." The *Belton* Court rejected the banks' argument that *Epic Systems Corp. v. Lewis*, 138 S. Ct. 1612 (2018), should lead to a different result. The Court recognized that, while *Epic Systems* sets forth an "exacting gauntlet through which a party must run to demonstrate congressional intent to displace the Arbitration Act," the standard articulated in *Anderson v. Credit One Bank N.A.*, 884 F.3d 382 (2d Cir.), *cert. denied*, 139 S. Ct. 144 (2018) holds. The *Anderson* Court had refused to enforce the parties' arbitration agreement and found that "Congress did not intend for disputes over the violation of a [bankruptcy] discharge order to be arbitrable." Concluded the *Belton* Court: "… though the text and history of the Bankruptcy Code are ambiguous as to whether Congress intended to displace the Federal Arbitration Act in this context, our precedent is clear that the two statutes are in inherent conflict on this issue. We therefore affirm the district court's order." The question for review in the **October 9** Petition for *Certiorari*: "Whether provisions of the Bankruptcy Code providing for a statutorily enforceable discharge of a debtor's debts impliedly repeal the Federal Arbitration Act, 9 U.S.C. § 1 *et seq*."
*(ed: **GE Capital Retail Bank vs. Belton, *No. 20-481, appears on page 2 of the* ***March 8*** *Order List. **We had thought SCOTUS might take a run at this one. The* Belton *Rule is a major exception to consistent SCOTUS jurisprudence requiring that a party resisting arbitration show that Congress expressly barred arbitration in a competing federal statute.)*
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PARTIES' PDAA NAMING AN ARBITRATOR DOES NOT TRUMP CALIFORNIA'S ARBITRATION STATUTE. It is hornbook arbitration law that parties may in their predispute arbitration agreement ("PDAA") designate a specific individual to serve as arbitrator. It is likewise well-established that neutral arbitrators must disclose any relationships that might create reasonable doubt about their ability to serve impartially. California goes a step further, requiring in Code of Civil Procedure section 1281.91(b)(1) that a disclosing arbitrator withdraw upon the timely objection of a party. And, if an arbitrator refuses to step down, the Award is subject to vacatur under section 1286.2(6). All of these factors were at play in *Roussos v. Roussos*, No. B293358 (Calif. Ct. App. 2 Feb. 16, 2021), where the PDAA executed five years previously by business partners designated **Judge John P. Shook** as arbitrator. The arbitrator made certain required disclosures, prompting an objection from one of the parties. He declined to recuse himself, and an Award was ultimately rendered. A unanimous Court of Appeal in *Roussos* reverses the Trial Court's decision confirming the Award, finding that the Arbitrator's designation in the PDAA did not trump the arbitration statute: "Harry [Roussos] contends Ted [Roussos] waived his right to object to the arbitrator because five years earlier the parties had agreed the specified arbitrator would have binding authority to arbitrate all issues. However, the arbitrator was still a 'proposed neutral arbitrator' for the present arbitration under [California] Code of Civil Procedure sections 1281.9 and 1281.91 and under section 1281.91, subdivision (b)(1), the arbitrator was required to disqualify himself upon Ted's timely service of a notice of disqualification. We conclude the parties cannot contract away California's statutory protections for parties to an

arbitration, including mandatory disqualification of a proposed arbitrator upon a timely demand" (footnotes omitted).
*(ed: *Seems right to us. **The statute requires disclosures be made as required by California's* Ethics Standards for Neutral Arbitrators in Contractual Arbitration. *Recall that the* Standards *in* Jevne v. Superior Court, *111 P.3d 954 (Cal. 2005) and* Credit Suisse First Boston Corp. v. Grunwald, *400 F.3d 1119 (9th Cir. 2005), were held preempted by the 1934 Act as to SROs. They are very much applicable to other ADR programs. ***An* SAA *h/t to Editorial Board member Peter R. Boutin, Esq., of Keesal, Young & Logan, for alerting us to this decision.)*
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QUICK TAKES: CASES AND AWARDS WORTH READING

***Cooper v. Ruane Cunniff & Goldfarb Inc.*, No. 17-2805 (2d Cir. Mar. 4, 2021):** "Plaintiff-Appellant Clive V. Cooper appeals from a district court order compelling arbitration of his claims for breach of fiduciary duty under § 502(a)(2) of the Employee Retirement Income Security Act of 1974 ('ERISA'), 29 U.S.C. § 1132(a)(2).… The district court concluded that Cooper's ERISA claims against Ruane 'relate to' Cooper's employment and that Ruane, although not a signatory to the agreement to arbitrate, was entitled to rely on it to compel arbitration. On review, we conclude that the district court erred. Cooper's ERISA claims for breach of fiduciary duty are not properly understood to be 'related to' his employment …."

***Contreras v. Superior Court of Los Angeles County (Zum Services, Inc.)*, No. B307025 (Calif. Ct. App. 2 Mar. 1, 2021)**: "Petitioners alleged Zum misclassified them and others as independent contractors, thereby violating multiple provisions of the California Labor Code. Zum moved to compel arbitration based on agreements petitioners had signed at the beginning of their employment. The trial court granted the motion, ordering into arbitration 'the issue of arbitrability' of petitioners' suit – whether they are 'aggrieved employees' entitled to raise PAGA claims. Petitioners now challenge the trial court's order, arguing that the delegation of that question to an arbitrator frustrates the purpose of PAGA and is therefore prohibited under California law. We agree and reverse the order compelling arbitration."

***Tate v. Citigroup Global*, FINRA ID No. 20-01720 (Chicago, IL, Feb. 9, 2021)**: A registered representative loses his request for expungement of one customer complaint appearing on his CRD record after the FINRA Director of Arbitration determined under FINRA Rule 13203(a) that the request is not eligible for arbitration because it arises from a prior adverse award. The registered rep is also denied expungement of another complaint. (*ed: Provided courtesy of SAC's ARBchek facility, www.arbchek.com*.)
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ARTICLES OF INTEREST: RECENT NEWS FROM THE ADR FRONT

Garcia Fuentes, Mateo, *Gramercy Funds Management LLC v. The Republic of Peru: An Empirical Study of Interim Measures Under 2013 UNCITRAL Arbitration Rules* (January 14, 2021): "Interim measures have certainly become an influential and

important procedural instrument in investment arbitration procedures. As such, arbitral tribunals have demonstrated an increasing willingness to grant provisional measures. Nevertheless, such expansive approach should not disregard two main elements: (i) due process and (ii) the peremptory nature of procedural law. The present paper intends to address the concept of provisional measures and the legal standards that ought to be met under 2013 UNCITRAL Arbitration Rules based on previous case law. It will be particularly assessed how the *Gramercy v. Peru* Tribunal addressed the issue of non-aggravation measures as it gives raise to multiple questions."

***Back to Basics: Drawing the line between Disclosure, Challenge and Disqualification Standards in International Investment Arbitration*, Kluwer Arbitration Blog (Mar. 1, 2021)**: "'To disclose or not to disclose?' no longer seems to be a question for international arbitrators. The narrative and policy space surrounding the independence and impartiality of international arbitrators has been consistently driven towards maximum disclosure obligations. This is evidenced in recent legal instruments seemingly blurring the lines between the recognized ethical standards for arbitrators, their disclosure obligations, and real conflict of interest which could be grounds for challenge and disqualification. Maximum disclosure has also become an inherent expectation of the disputing parties, who have challenged arbitrators for their failure to disclose facts and contacts of little to no consequence to their independence or impartiality. Although most such challenges do not lead to the removal of the arbitrator in question, they cause significant disruptions to the proceedings and expose the arbitrator to additional pressure.

***9th Cir. Holds Anti-Joinder and Class Action Waiver Provisions Did Not Violate California Law*, Maurice Wutscher LLP (Mar. 1, 2021)**: "The U.S. Court of Appeals for the Ninth Circuit recently affirmed an order compelling arbitration, even though the arbitration clause contained a class action waiver and an anti-joinder provision, and dismissing a putative class action brought against the operator of a smartphone app offering financial services to its customers. In so ruling, the Ninth Circuit held that (1) the arbitration agreement allowed injunctive relief under California law, and that (2) public injunctive relief under the various California consumer protection statutes at issue is available in an individual lawsuit without a plaintiff acting as a private attorney general."

***New 2021 Rules Issued by the International Centre for Dispute Resolution (ICDR)*, Holland & Knight LLP Blog (Mar. 5, 2021)**: "The amended International Dispute Resolution Procedures (the Rules) of the International Centre for Dispute Resolution (ICDR), the international division of the American Arbitration Association (AAA), entered into effect on March 1, 2021, and will apply to any arbitration that is commenced after said date, unless agreed otherwise. The ICDR is one of the leading arbitration institutions worldwide. The changes to the Rules are in line with the publication of new rules by various other institutions, including the London Court of International Arbitration (LCIA) and International Chamber of Commerce (ICC), which also sought to adapt to the continually changing landscape of international arbitration."

***When Mediating in Colorado, Sign a Settlement Memorandum During the Mediation*, Gordon Rees Scully Mansukhani Blog (Mar. 5, 2021)**: "In *Tuscany Custom Homes, LLC v. John B. Westover, et al*., No. 2020CA1724, the Colorado Court of Appeals held that post-mediation communications from a mediator memorializing the parties' agreement reached during mediation (but not executed by the parties) and an unsigned settlement agreement formalizing those settlement terms were "mediation communications" under Colorado's dispute resolution statute (C.R.S. § 13-22-302(2.5) & -307) and thus inadmissible evidence of a settlement agreement. While the Court's holding does not necessarily set new law or change our understanding of Colorado's mediation statutes, it serves as a cautionary tale to those engaged in mediation that the extra effort to solidify the parties' agreements before ending the day is the safest bet."

***The Petrobras Crisis: Arbitrating Investors' Claims Against the Brazilian Federal Government*, Kluwer Arbitration Blog (Mar. 6, 2021)**: "The recent crisis between the Brazilian president Jair Messias Bolsonaro and the Brazilian national oil company Petrobras may result in a wave of investors' claims submitted to arbitration against the Brazilian Federal Government for abuse of controlling power and breach of fiduciary duties under the *Brazilian Companies Act 1976*…. Pursuant to the arbitration clause available at Article 58 of Petrobras' bylaws, disputes between shareholders concerning the application of the Brazilian Companies Act 1976 and the company's bylaws must be settled in accordance with the rules of arbitration of the Chamber of Arbitration of the Market – CAM, a Brazilian arbitration institute created by the Brazilian stock exchange in 2001."

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DID YOU KNOW?

JAMS HAS AN ADR BLOG. ADR provider JAMS has an excellent blog, located at https://www.jamsadr.com/blog/. The blog: "serves to engage our clients, the legal community and the public in a discussion about alternative dispute resolution. As leaders in mediation, arbitration and more, we strive to remain at the forefront of legal developments, trends and news in areas of law that pertain to ADR." New posts are added frequently.

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Send any messages or inquiries to: George@SecArbAlert.com

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