SECURITIES ARBITRATION ALERT 2021-27 (7/22/21)

George H. Friedman, Editor-in-Chief

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- ***Carolina Casualty. Ins. Co. v. Spicer*, 2021 WL 2659551 (Fla. Dist. Ct. App. June 29, 2021)**
- ***Caswell v. WestPark Capital and Fawcett*, FINRA ID No. 20-03577 (Des Moines, IA, Jun. 22, 2021)**
- ***Charles Schwab v. Wilson*, FINRA ID No. 20-02648 (Denver, CO, Jun. 25, 2021)**

ARTICLES OF INTEREST:

- **Shanghai International Economic and Trade Arbitration Commission (SHIAC), *International Commercial Arbitration in the Time of Covid-19*, Global Arbitration Review (Jul. 7, 2021)**
- ***Admissibility of "Hacked Evidence" in International Arbitration*, Kluwer Arbitration Blog (Jul. 7, 2021)**
- ***Automatic Stay Must Give Way: Bankruptcy Court Lets Non-Core Claims Be Decided Through Arbitration*, Dechert LLP Blog (Jul. 12, 2021)**
- ***Arbitration Services Provider Launches in US and UK*, www.iclg.com (Jul. 13, 2021)**
- ***Lawyer's Advocacy in Arbitrations: No. 10 of the Top 10 Horrible, Terrible, No Good Mistakes Lawyers Make: Not Looking for Ways to Make Your Arbitrator Happy at the End of a Hearing,* Bradley Arant Boult Cummings LLP BuildSmart Blog (Jul. 13, 2021)**
- ***SEC Announces $97 Million Enforcement Action Against TIAA Subsidiary for Violations in Retirement Rollover Recommendation,* www.sec.gov (Jul. 13, 2021)**
- ***Litigants Lining Up to Sue Over Northstar Bermuda*, (Bermuda) Royal Gazette (Jul. 15, 2021)**
- ***Pershing Ordered to Pay $650K to Stanford Ponzi Victims Seeking $16.8M*, Financial Planning (Jul. 15, 2021)**

DID YOU KNOW?

- **FINRA Posts Free "Unscripted" Audio Podcasts Every Two Weeks**

ERRATA

SQUIBS: IN-DEPTH ANALYSIS

AMICUS* BRIEFS ARE COMING IN ON *SERVOTRONICS*. AND ORAL ARGUMENT IS SET. Amicus *Briefs have begun to be filed in* Servotronics*, where the Supreme Court has agreed to resolve a major split on whether 28 U.S.C Section 1782 provides for discovery in aid of private, foreign, commercial arbitration or only covers cases administered by governmental arbitration forums. And the case will be argued October 5. First, some review from our past coverage. Under 28 U.S.C. § 1782, a party to a matter pending in a "foreign or international tribunal" can seek an *ex parte* discovery order in aid of arbitration. Specifically: "The district court of the district in which a person resides or is found may order him to give his testimony or statement or to produce a document or other thing for use in a proceeding in a foreign or international tribunal … for use in the foreign proceeding." But does section 1782 cover foreign, *private* arbitration proceedings? The answer is "Yes or No," depending on the Circuit. Here's the split as of today: the Second, Fifth and Seventh Circuits, and two Third Circuit District Courts, hold that section 1782 covers *only* governmental arbitration forums. The Fourth and Sixth Circuits extend section 1782's reach to *private* arbitration organizations.

The Split in a Nutshell: Same Arbitration Case Yields Different Results

We covered in SAA 2020-13 (Apr. 8) *Servotronics, Inc. v. The Boeing Co. and Rolls-Royce PLC*, 954 F.3d 209 (4th Cir. 2020), where, in a case involving a private commercial arbitration being held in England under Chartered Institute of Arbitrators Rules, the Court *upheld* a District Court decision ordering discovery from three Boeing employees residing in South Carolina. A more recent entry in the "no" camp was the Seventh Circuit, which in *Servotronics, Inc. v. Rolls-Royce PLC*, No. 19-1847, 2020 WL 5640466 (Sept. 22, 2020) – a dispute arising out of the *same* arbitration – held that section 1782 does *not* extend to private international commercial arbitration. As described in SAA 2020-37 (Oct. 7), the District Court barred Servotronics from obtaining discovery documents located in Illinois for use in the same private arbitration pending in London, and the Seventh Circuit (*ed: then-Judge Amy Coney Barrett was not on the Panel deciding the case*) affirmed unanimously. Among the Court's rationales was a perceived conflict between section 1782 and the Federal Arbitration Act: "The discovery assistance authorized by § 1782(a) is notably broader than that authorized by the FAA…. If § 1782(a) were construed to permit federal courts to provide discovery assistance in private foreign arbitrations, then litigants in foreign arbitrations would have access to much more expansive discovery than litigants in domestic arbitrations. It's hard to conjure a rationale for giving parties to private foreign arbitrations such broad access to federal-court discovery assistance in the United States while precluding such discovery assistance for litigants in domestic arbitrations. In sum, what the text and context of § 1782(a) strongly suggest is confirmed by the principle of avoiding a collision with another statute: a 'foreign or international tribunal' within the meaning of § 1782(a) is a state-sponsored, public, or quasi-governmental tribunal."

A Split Worthy of Review

Every time we've covered this growing split, our editorial comment queried if SCOTUS would eventually be asked to take up this issue. As we reported in SAA 2020-47 (Dec.

17), Servotronics in **December 2020** Petitioned the Court for *Certiorari* in the Seventh Circuit case, *Servotronics, Inc. v. Rolls-Royce PLC and the Boeing Company,* No. 20-794. The question presented: "Whether the discretion granted to district courts in 28 U.S.C. §1782(a) to render assistance in gathering evidence for use in 'a foreign or international tribunal' encompasses private commercial arbitral tribunals, as the Fourth and Sixth Circuits have held, or excludes such tribunals without expressing an exclusionary intent, as the Second, Fifth, and, in the case below, the Seventh Circuit, have held." And, as reported in SAA 2021-11 (Mar. 25), the Court on **March 22** granted the Petition without comment (see page 1 of the Order List).

***Amicus* Briefs: U.S. Urges Narrow Application**

Although the case will not be argued until next fall, several *Amicus* Briefs have already been filed and can be viewed here. Among the more noteworthy, the United States filed a Brief on behalf of Respondents urging narrow application of 28 U.S.C. §1782(a): "The parties and lower courts have disputed the ordinary meaning of 'tribunal' …. Whatever the meaning of that term in isolation, however, when properly construed as part of the broader phrase 'foreign or international tribunal,' in light of the statutory context and history, it does not extend to private commercial arbitration."

Oral Argument Set for October 5

The newly-released oral argument calendar for October shows that the case is set for **Tuesday, October 5**. On **June 28**, the Government filed a still-pending Motion for leave to participate in oral argument and for divided argument. Specifically, Respondents consent to yield two minutes of their time allotted for oral argument.

*(ed: *Other noteworthy Briefs were filed by: the International Chamber of Commerce (in support of neither party); Institute of International Bankers (Respondents); and the International Arbitration Center in Tokyo (Respondents). **Our past coverage was blogged on March 22. ***We will certainly track this one.)*

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THOUGHT THE STANFORD PONZI SCHEME CASES WERE DONE? READ ON… ***The Stanford Ponzi scheme was discovered in early 2009. Arbitration cases arising out of it are still with us, however.*** We covered in the "Articles of Interest" section in SAA 2021-26 (Jul. 15) a **July 12** *Financial Advisor IQ* story, "FINRA Arb Panel Orders Pershing to Pay $650K Over Ponzi Scheme," reporting that: "A Financial Industry Regulatory Authority arbitration panel has ordered Pershing to pay close to $650,000 to another group of investors who claimed loses [sic] that were part of a $7 billion Ponzi scheme involving certificates of deposit from Antigua's Stanford International Bank…. The panel ordered Pershing to pay $436,000 in compensatory damages to Charles Pope, around $124,600 to Dudley Devore IRA and $87,200 to Joyce Cagle, according to a Finra award document published on Thursday [July 8]. The arbitrators also ordered Pershing to pay $750 in costs and reimbursements as the non-refundable portion of the FINRA dispute resolution filing fee, but denied all other claims for damages and costs, the industry's self-regulator says." We decided to pull the Award

in *Joyce E. Cagle IRA et al v. Pershing LLC*, FINRA ID Nos. 20-00922 and 20-03862 (Dallas, TX, Jul. 8, 2021), to learn more about the case.

Core Claims and Allegations Against Pershing
The common causes of action against Pershing in this massive, consolidated case: "Aiding and abetting common law fraud, aiding and abetting breach of fiduciary duty, negligence (gross negligence), breach of contract, violation of FINRA Conduct Rule 3310, violation of FINRA Conduct Rule 2120, violation of NASD Conduct Rule 2110 (now FINRA Rule 2010), violation of NASD Conduct Rule 3110, and civil conspiracy to defraud.… Respondent, acting as custodian and clearing firm for Stanford Group Company ('SGC'), gave material assistance to a Ponzi scheme, involving certificates of deposit ('CDs') issued by Stanford International Bank, Ltd. ('SIBL') and recommended by SGC financial advisors. Original Claimants further alleged that, despite having concerns about the CDs and SGC, Respondent continued to provide assistance."

Explained Award
We were curious to see if there was an explanation offered by the unanimous All-Public Panel, and it turns out there was. Say the Arbitrators: "The Panel finds that, based on all of the evidence and testimony presented, by the beginning of 2008, Respondent had the requisite level of knowledge, as to SGC's wrongful conduct in connection with the CD scheme, that it knew or should have known that it was providing meaningful/substantial assistance to that wrongful scheme by remaining the clearing firm for SGC in the United States and, more particularly, by facilitating wire transfers for the purchase of CDs issued by SIBL on behalf of Charles A. Pope, Dudley Devore IRA, and Joyce E. Cagle during 2008." The bottom line: about $17 million in damages was sought by numerous customers; only three were awarded damages, totaling about $650,000.
(ed: Although the Stanford Ponzi scheme was unearthed more than ten years ago, there was no discussion of timeliness in the claims.)
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SHORT BRIEFS: CONCISE NEWS YOU NEED TO KNOW

FINRA SEEKS PUBLIC INPUT ON BEST WAYS TO EDUCATE NEWER INVESTORS. FINRA and the FINRA Investor Ed Foundation are seeking comments from the public on how to more effectively educate newer investors. A **June 30** "Special Notice," *FINRA Requests Comment on Effective Methods to Educate Newer Investors*, states: "As markets and trading platforms evolve, and as evidence emerges to suggest that newer retail investors have markedly different attitudes, characteristics and behaviors than their more experienced counterparts, the time is ripe to rethink how best to engage and educate investors with a diverse array of needs and priorities, especially those who opt not to work with an intermediary such as an individual registered investment professional." The *Notice* seeks comments by **August 30**: "that will help inform and guide the investor education initiatives FINRA and the FINRA Investor Education Foundation (the FINRA Foundation) undertake. In particular, we seek input from firms, investors, investor advocates, academics and other stakeholders who are knowledgeable about investor behavior regarding the most effective methods for educating newer

investors. This *Notice* is not focused on existing regulatory requirements applicable to member firms and their interactions with investors." We could not find any references to dispute resolution.
*(ed: *Comments may be filed: online using the comment form in the Notice; by email to pubcom@finra.org; or by surface mail to: Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA 1735 K Street, NW, Washington, DC 20006-1506. **The Notice is also available in PDF format.)*
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SAVE THE DATES: PIABA'S ANNUAL MEETING STARTS OCTOBER 26. The PIABA Annual Meeting will take place virtually and in-person **October 26 – 30** at Amelia Island, Florida. Says the program description: "In keeping with health and safety concerns, PIABA will present the Securities Law Seminar virtually and the PIABA Annual Meeting will be presented virtually and in-person. To accommodate all time zones, five sessions will be presented during the Securities Law Seminar. Four or five sessions will be hosted each day of the Annual Meeting with two breakout session options presented during these presentations. "There are three discrete events as follows: Securities Law Seminar (October 26); PIABA Annual Meeting (October 27 – 29); and PIABA Board Meeting (October 30). The draft Agenda is here and registration may be done online. CLE credits are available.
*(ed: *The in-person programs will take place at the Ritz-Carlton, 4750 Amelia Island Parkway, Amelia Island, FL 32034. **Registration fee amounts depend on the attendee's status and whether they are attending virtually or in person. ***The Annual Business Meeting and some break-out sessions may be designated as 'closed' (open to PIABA members only).)*
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IN-PERSON PROGRAMMING IS COMING BACK AT FORDHAM LAW CLE. The Fordham Law School Office of Public Programming on **July 14** announced that it will be resuming in-person CLE programs this Fall. Says the announcement: "The Office of Public Programming and CLE is so excited to announce that we will be hosting in-person programs again this Fall, at Fordham Law School! This has been quite a trying time and we truly hope that you, as well as your loved ones, are well and have remained safe throughout the pandemic. We were able to make virtual programming work for us, but we have missed seeing our guests in person. We welcome you back and look forward to seeing your smiling faces! While we are opening up our doors again for in-person programs, our programs will look very different from what you have grown accustomed to. We want to keep the same Fordham spirit while being compliant to new protocols." The notice lists several changes, among them: most events will be conducted using a hybrid model; a limitation of the number of in-person attendees; and all attendees will be required to show proof of vaccination.
*(ed: *Another sign that life is slowly returning to normal. **We suspect that the hybrid model will persist post-pandemic.)*
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AAA STAFF CANNOT "SHORT-CIRCUIT" DELEGATION TO ARBITRATORS VIA APPLICATION OF INTERNAL POLICIES. Although the AAA Rules delegate certain administrative decisions to the staff, this does not include authority to decide "gateway" arbitrability questions, a split Court holds in *Ciccio v. SmileDirectClub LLC*, No. 20-5833 (6th Cir. June 25, 2021). Customer Johnson started a classwide arbitration against SmileDirect, alleging false advertising. Next: "An AAA administrator informed the parties that AAA's Healthcare Due Process Protocol and Healthcare Policy Statement applied, which require healthcare providers and their patients to sign an arbitration agreement after a dispute arises in certain cases unless a court order has compelled arbitration." SmileDirect's counsel objected, but the AAA stood by its "initial, administrative determination" that the healthcare protocol and AAA policies applied. SmileDirect moved without success to compel arbitration at the District Court level. Why? "The district court concluded that SmileDirect and Johnson got what they bargained for because the dispute had been 'resolved using the rules of the [AAA].'" On appeal, a split Sixth Circuit reverses: "[N]either the administrator nor the district court should have decided whether Johnson's claims were arbitrable. '[W]hether the parties have agreed to arbitrate or whether their agreement covers a particular controversy' is a gateway question of arbitrability…. By incorporating the AAA rules, the parties agreed that an arbitrator would decide gateway questions of arbitrability…. The text of the Agreement confirms that the parties didn't intend to allow an administrator to short-circuit arbitration by refusing to appoint an arbitrator to answer this initial gateway question. Accordingly, we don't have anything further to say on the matter until and unless a party asks us to review an arbitrator's decision under 9 U.S.C. § 10 …. Today's decision is a narrow one. We say nothing about whether the underlying dispute is arbitrable, only that the Agreement requires that an arbitrator make that determination. Both parties are free to make the arguments they made before us to the arbitrator." (citations omitted).
*(ed: *Judge Clay dissented, writing: "No further evidence was needed of what the AAA rules require than what occurred in this case. Here, the AAA determined that proceeding to arbitration would violate their due process rules without its mandatory post-dispute agreement. When the parties agreed that the dispute 'shall be resolved using the rules of the AAA,' they were aware that those rules called for an administrator to render the AAA's initial determination regarding the requirements of the organization's own rules before proceeding to arbitration." **We're with the dissent; we think the institution – including FINRA – can decline its administrative services if certain policy considerations are at issue.)*
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MINNESOTA SUPREME COURT: JUDGE, NOT ARBITRATOR, DECIDES ARBITRABILITY BASED ON MURKY DELEGATION LANGUAGE. It is well-settled SCOTUS jurisprudence that arbitrability questions are for the court to decide, absent "clear and unmistakable evidence" that the parties agreed to delegate this issue to an arbitrator. That point was underscored by a unanimous decision in *Glacier Park Iron Ore Properties, LLC, v. United States Steel Corp.*, No. A19-1923 (Minn. Jun. 30, 2021). After first determining that the Federal Arbitration Act and federal law applies, the Court

turns to the language in the arbitration agreement and finds that it does not satisfy the standard articulated by SCOTUS: "The arbitration clause in the Lease does not provide that arbitrability of the claim itself is subject to arbitration. We agree with the court of appeals that this silence does not satisfy the clear and unmistakable standard." Glacier Park had argued that the "any disagreement or controversy" language in the broad arbitration clause was clear evidence of delegation, but the Court was not convinced: "There is nothing in the Lease to indicate that the parties intended this clause of the arbitration provision to be so broad. To the contrary, the fact that the parties listed out four specific categories of arbitrable issues confirms that the parties did not intend the broad agreement that Glacier Park advances. In any event, the clear and unmistakable standard means just that. For the question of arbitrability to be subject to arbitration, the parties must express that agreement to arbitrate in clear language. No such language appears here."
(ed: We're with the Court. As to delegation: "when in doubt, spell it out.")
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SECURITIES EXPERTS ROUNDTABLE PUBLISHES ITS LATEST FREE NEWSLETTER. The latest issue of the Securities Experts Roundtable's ("SER") quarterly newsletter, *The Expert's Examiner* (*"TEE"*) volume 2021-02*,* covering **April – June 2021**, hit the electronic newsstand **July 9.** This *free*, link-rich publication, which can be found on the Website's landing page ("newsletter" tab), offers a wealth of information on financial services arbitration and ADR in general. Among the regular features are: **Recent News from the Arbitration Front; Expert Opinions: What are the Courts (and Arbitrators) Thinking?; Heard Through the Regulatory Grapevine -- Comment Letters and Speeches;** and **Statistics, Events & Resources.** Content is provided by the Roundtable's members; the *Alert* is also a contributor. Signup is available online.
*(ed: *The non-profit SER, which was founded in 1992, is: "a group of professionals with significant experience as testifying and consulting experts in securities, business and investment-related litigation." **The* TEE *is a wonderful resource for the arbitration bar. Past issues are grouped here. ***Full disclosure:* SAA*'s publisher and editor-in-Chief George Friedman is an active member of the SER.)*
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QUICK TAKES: CASES AND AWARDS WORTH READING

***Public Risk Innovations, Solutions, and Management v. Amtrust Financial Services*, 2021 U.S. Dist. LEXIS 129464 (N.D. Ca. July 12, 2021)**: "The crux of the dispute is whether Mr. Conley, the arbitrator selected by [Plaintiff] PRISM (one of three people on the arbitration panel), should be disqualified from being an arbitrator…. That Mr. Conley can fairly be said to have worked for an 'insurance' company within the meaning of the arbitration agreement, however, is not the end of the matter. He must also be 'disinterested.' Mr. Conley does not meet this requirement. PRISM does not dispute that Mr. Conley is currently an official for (1) entities that have members who are also members of PRISM or (2) entities that are actually members of PRISM itself. Given this fact, Mr. Conley cannot be said to be 'disinterested' within the meaning of the arbitration

agreement. Mr. Conley could feel some pressure to take positions favorable to PRISM because of the relationship between PRISM and the entities he works for. This is true even if the entities or their members have no direct financial interest in how the parties' dispute here is resolved." (*ed: the Court also holds that PRISM can replace the Arbitrator*.)

***Commodities & Minerals Enterprise Ltd. v. CVG Ferrominera Orinoco C.A.*, No. 1:19-cv-25217-DPG (S.D. Fla. Jul. 8, 2021)**: "Petitioner argues that since the FAA governs the dispute, it should be absolved from the standard requirement that a summons accompany a complaint (or petition). However, the FAA does not provide any guidance on how to serve an instrumentality of a foreign state. In the absence of such guidance, courts turn to the Federal Rules of Civil Procedure…. Federal Rule of Civil Procedure 4(j) provides that '[a] foreign state or its political subdivision, agency, or instrumentality must be served in accordance with 28 U.S.C. § 1608' …. Each of the subsections require a summons to be served. Since Petitioner did not serve a summons, Petitioner did not comply with any of the subsections in § 1608(b)" (footnote and citations omitted). The $188 million Award was thus "unconfirmed."

***Carolina Casualty. Ins. Co. v. Spicer*, 2021 WL 2659551 (Fla. Dist. Ct. App. June 29, 2021)**: "Carolina Casualty Insurance Company 'Carolina Casualty') appeals a final order granting partial summary judgment to John D. Spicer (the 'Trustee'), as Chapter 7 Trustee for the Bankruptcy Estate of Primcogent Solutions, LLC ('Primcogent'). The Trustee sued Carolina Casualty to recover an arbitration award it obtained against Santa Barbara Medical Innovations, LLC ('SBMI'). Carolina Casualty had issued a management liability insurance policy to SBMI, but it refused to satisfy the arbitration award. The Trustee asserted a claim for breach of contract that is the subject of this appeal, as well as claims of bad faith and fraudulent transfers that remain pending in the trial court. The court found that the arbitration award is a covered claim under the policy and is not subject to any of the policy exclusions raised by Carolina Casualty. We affirm the trial court's order…."

***Caswell v. WestPark Capital, Inc. and Fawcett*, FINRA ID No. 20-03577 (Des Moines, IA, Jun. 22, 2021)**: A customer alleging that he was persuaded to buy speculative stocks and driven to purchase two unsuitable private placements in Atrinsic Inc. and Miramar Inc. loses his claim against a non-appearing Respondent broker, despite a Rule 12801 default proceeding. *Provided courtesy of SAC's ARBchek facility (www.arbchek.com).* (*ed: the claims against WestPark were settled*.)

***Charles Schwab & Co., Inc. v. Wilson*, FINRA ID No. 20-02648 (Denver, CO, Jun. 25, 2021)**: An Arbitrator awards Claimant broker-dealer $93,388.94 in compensatory damages, plus interest, relating to a debit balance in the customer's account, despite not making a specific finding that fraud occurred. The arbitration was *ex parte. Provided courtesy of SAC's ARBchek facility (www.arbchek.com).*
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Shanghai International Economic and Trade Arbitration Commission (SHIAC), *International Commercial Arbitration in the Time of Covid-19*, Global Arbitration Review (Jul. 7, 2021): "The Covid-19 pandemic has shaken the world and had a severe impact on all sectors of global society. Arbitration institutions in different countries have been confronted with new challenges and opportunities at the same time. In China, arbitration institutions took active and effective measures to ensure that arbitration cases ran smoothly during the outbreak, including the Shanghai International Arbitration Center (SHIAC), which has explored ways to provide efficient and convenient arbitration services to resolve disputes. In facing booming international commercial disputes, alternative dispute resolution mechanisms will surely undergo significant developments."

***Admissibility of "Hacked Evidence" in International Arbitration*, Kluwer Arbitration Blog (Jul. 7, 2021)**: "An emerging consideration in international arbitration is the use of evidence acquired illegally. Illegally obtained evidence can take a variety of forms, including, for example, illicit recordings, information obtained by trespass, and 'hacked evidence'. 'Hacked evidence' refers to materials obtained through unauthorised [sic] access to an electronic system (either directly or through a third party), and usually includes emails, digital documents, electronically stored audio and video recordings, instant messages and logs, or financial transaction records."

***Automatic Stay Must Give Way: Bankruptcy Court Lets Non-Core Claims Be Decided Through Arbitration*, Dechert LLP Blog (Jul. 12, 2021)**: "In a recent opinion, the Bankruptcy Court for the District of Maryland dealt with a conflict between the strong presumption in favor of enforcing arbitration agreements and the Bankruptcy Code's emphasis on centralization of claims. Based on an analysis of the two statutory schemes and their underlying policies and concerns, the Court decided to lift the automatic stay to allow the prepetition arbitration proceeding to go forward with respect to non-core claims."

***Arbitration Services Provider Launches in US and UK*, www.iclg.com (Jul. 13, 2021)**: "A new company which provides management services to independent arbitrators has been launched in in London and Washington, seeking to capitalize [sic] on the post-Covid disputes boom…. Launched yesterday (12 July) Arbitra has 18 initial members, who will receive administrative, practice management, career, marketing and business development support from the organization , which is led by a former leading clerk from London's commercial Bar. The new organisation [sic] said it anticipated a significant increase in demand for dispute resolution services following the pandemic and it has a membership which includes arbitrators, mediators and dispute board members in the United States, United Kingdom, Europe and Malaysia."

***Lawyer's Advocacy in Arbitrations: No. 10 of the Top 10 Horrible, Terrible, No Good Mistakes Lawyers Make: Not Looking for Ways to Make Your Arbitrator Happy at the End of a Hearing*, Bradley Arant Boult Cummings LLP BuildSmart Blog (Jul. 13, 2021)**: "There's a great argument that lawyer advocacy in an arbitration is more essential

than at a trial in court. This is the last post of the 10 most horrible, terrible, no good, 'bang your head against the door' mistakes that I have seen lawyers make in arbitrations, both when I served as counsel and as an arbitrator."

***SEC Announces $97 Million Enforcement Action Against TIAA Subsidiary for Violations in Retirement Rollover Recommendation*, www.sec.gov (Jul. 13, 2021**): "The Securities and Exchange Commission today announced that TIAA-CREF Individual & Institutional Services LLC (TC Services), a subsidiary of Teachers Insurance and Annuity Association of America (TIAA), will pay $97 million to settle charges of inaccurate and misleading statements and a failure to adequately disclose conflicts of interest to thousands of participants in TIAA record-kept employer-sponsored retirement plans (ESPs). The $97 million will be distributed to investors affected by the misconduct and settles both the SEC's case and a parallel action announced today by the Office of the New York Attorney General (NYAG)."

***Litigants Lining Up to Sue Over Northstar Bermuda*, (Bermuda) Royal Gazette (Jul. 15, 2021)**: "American lawyers are advising international investors to sue over a failed Bermuda investment company. The failure of Northstar Financial Services (Bermuda) is related to a jailed billionaire investor in the US, and the sudden halting of the company's operations in Hamilton. Litigation is lining up against brokerage firms who recommended participation in Northstar investment products. American lawyers are advising international investors to sue over a failed Bermuda investment company. A Japanese investor is one of the latest reportedly seeking massive compensation from the brokerage that sold her on the Bermuda company…. She has claimed a six-figure loss in the $500-million FINRA arbitration case she has filed against Bancwest Investment Services."

***Pershing Ordered to Pay $650K to Stanford Ponzi Victims Seeking $16.8M*, Financial Planning (Jul. 15, 2021)**: "One of the largest custodians is paying a far lower FINRA arbitration award than the amount requested by nearly three dozen victims of the infamous R. Allen Stanford Ponzi scheme. BNY Mellon's Pershing must pay just three of the 35 clients seeking compensatory damages based on allegations that the company "gave material assistance" to Stanford as the clearing firm and custodian for his company and the fraudulent CDs issued by its bank, according to a Dallas panel's July 8 decision. The clients requested $16.8 million in damages and interest, but were awarded a combined $648,500. The meager award stands in contrast to a different FINRA arbitration panel's decision last year awarding $5.6 million in damages from Pershing and is the latest blow in the victims' continuing quest to get compensation for their losses in connection with the $7 billion fraud scheme." (*ed: see our coverage elsewhere in this* Alert.)

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DID YOU KNOW?

FINRA POSTS FREE "UNSCRIPTED" AUDIO PODCASTS EVERY TWO WEEKS. Did you know that about every two weeks, FINRA posts short (roughly 30 minute) "FINRA Unscripted" audio podcasts on topics of interest? Navigate to

https://www.finra.org/media-center/finra-unscripted to find the podcasts, which are listed in descending date order with a brief description. The dedicated Webpage can also be filtered by storyline and date. A recent podcast, *Zoom Arbitration One Year Later: Lessons Learned, Tips for Practitioners and the Road Ahead*, featured Dispute Resolution Services Director of Arbitration **Richard Berry**, who was joined by practitioners **Sam Edwards** (Shepherd, Smith, Edwards and Kantas) and **Beverly Jo Slaughter** (Wells Fargo's Wealth Investment Management Litigation group).
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ERRATA

ERRATA: An individual familiar with the matter has informed us that the last issue of the *Alert* had an error in the "In Memoriam" section. **Stuart C. Goldberg** was a graduate of the Cornell and New York University Graduate Law Schools. We regret the error.
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Send any messages or inquiries to: George@SecArbAlert.com

Editor's Note & Disclaimer: While we undertake considerable efforts to present information in this publication in a fair and accurate manner, we caution that readers should access referenced material themselves as the best source. Our analyses make liberal use of links, and we offer courtesy copies of materials not on the Internet. Similarly, readers should not rely solely upon our summaries in making legal decisions or consider our commentary to be rendering legal, accounting, or other professional advice or service. If legal advice or other expert assistance is required, the services of a competent professional person should be sought. — *adapted from the Declaration of Principles jointly adopted by a Committee of the American Bar Association and a Committee of Publishers and Associations.*

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