SECURITIES ARBITRATION ALERT 2021-28 (7/29/21)

George H. Friedman, Editor-in-Chief

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- ***Calderon v. Sixt Rent a Car, LLC*, No. 20-10989 (11th Cir. Jul. 14, 2021)**
- ***Hayden v. The Retail Equation, Inc.*, No. 8:20-cv-01203-JWH-DFMx (C.D. Calif. Jul. 8, 2021)**
- ***Direct Grading & Paving v. Eighth Judicial District Court*, 137 Nev. Adv. Op. No. 31 (Nev. Jul. 8, 2021)**
- ***Stone v. Clifton Myers Financial Advisory, Inc.*, FINRA ID No. 18-04069 (Dallas, TX, Oct. 20, 2021)**
- ***Donnelly v. Wells Fargo Clearing Services, LLC*, FINRA ID No. 20-04013 (Seattle, WA, Jun. 21, 2021)**

ARTICLES OF INTEREST:

- **Lande, John, *Charting a Middle Course for Court-Connected Mediation*, University of Missouri School of Law Legal Studies Research Paper No. 2021-12 (July 6, 2021)**
- ***Amazon Ends Use of Arbitration for Customer Disputes*, NY Times (Jul. 22, 2021)**
- ***What a Former SEC Executive has Learned about CFP Board's Enforcement Program*, Financial Planning (Jul. 22, 2021)**
- ***Buoyed by $3-Mln Whistleblower Award, Ex-Merrill Duo Clears Their Record,* AdvisorHub (Jul. 23, 2021)**
- ***Arbitration Agreement with Conflicting Provision in Two Languages Saved by FAA Default Rule,* JD Supra (Jul. 23, 2021)**
- ***Finra Suspends Ex-Wells Broker Fired Over Covid Relief Loan*, Financial Advisor IQ (Jul. 26, 2021)**

DID YOU KNOW?

- **AAA has a Quarter of a Million Case Filings So Far this Year**

SQUIBS: IN-DEPTH ANALYSIS

FINRA DRS POSTS STATS THROUGH 2Q: CUSTOMER CLAIMS ARE EVEN WITH 2020, WHILE INDUSTRY CLAIMS CONTINUE TO PLUMMET. AND THE COVID-19 PENDING CASES BACKLOG IS REALLY GONE. *FINRA Dispute Resolution Services ("DRS") posted case statistics through June, with the*

overall case filing trends essentially unchanged from prior months. In brief, the headlines are: 1) overall arbitration filings through **June** – 1,533 cases – are down 18%, about the same as in **May**; 2) customer claims are now unchanged from **2020**; 3) industry disputes are almost halved, down 40%; and 4) for the tenth month in a row, pending cases declined (and as discussed below, the COVID-induced backlog remains completely gone). Overall arbitration turnaround times were 13.7 months, with hearing cases now taking 15.2 months. There were just 223 mediation cases in agreement, a 7% decrease (up from May's minus 16%). The settlement rate remains high at 86% (it had been 84% in May). There are now 8,323 DRS arbitrators, 3,955 public and 4,368 non-public. Both panels saw declines in June.

Virtual Arbitrations at FINRA
FINRA's "Virtual Arbitration Hearings" category shows that, since FINRA started cancelling in-person hearings in **March 2020**, 380 cases were conducted with one or more hearings via Zoom (143 customer and 237 industry cases). There were 318 joint motions for virtual hearings (113 customer and 205 industry cases). As reported in SAA 2021-10 (Mar. 18), DRS in March posted two new stats on its Website that allow users to gauge results in hearings conducted by Zoom: *Awards on the Merits of the Case with One or More Zoom Evidentiary Hearings* and *Awards on the Merits of the Case with In-Person Evidentiary Hearings* are both listed under the category, *Result of Customer Claimant Arbitration Award Cases (Regular Hearing Only.* DRS resumed in-person hearings in all 69 locations on **August 2**; the impact on these stats remains to be seen.

COVID-19 Pending Cases Backlog is Still Gone
Recall that we had reported for months that pending cases had grown in the wake of the onset of the pandemic and in-person hearing cancellations. We later reported that parties and counsel appeared to have grown more familiar with virtual hearings and that, as a result, the pending cases backlog had been shrinking. We more recently reported that as of **May**, it was completely gone; in fact, there had been a net reduction in pending cases since the pandemic started. Those trends continued in **June**. The last ten months have each experienced declines in pending cases, reflecting a 816 case reduction from last year's high water mark of 5,415 open cases in **August 2020**. This now leaves a cumulative decrease of 182 pending cases since **March 2020.**
*(ed: *Again, kudos to FINRA DRS for eliminating the backlog. We had said before that we would be retiring this stat, but we couldn't resist the temptation to see if the trend was holding. **We wonder why the number of both public and non-public arbitrators declined last month (the latter for the second month in a row)? ***We will analyze AAA's stats through 2Q as soon as they are posted.)*
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COURT DECLINES TO ENFORCE ARBITRATION CLAUSE AGAINST A NON-SIGNATORY. ***The Fifth Circuit holds that direct benefits estoppel does not bind a non-signatory to a contract, nor should a series of contracts be read as a single, unified contract.*** Columbia Hospital Medical City ("Columbia") filed a demand for arbitration against IMA, Inc. for non-payment of medical services based on an arbitration

clause in a contract between Columbia and a third party. IMA filed suit in the Southern District of Texas seeking declaratory and injunctive relief, arguing it is not obligated to arbitrate because it is not a signatory to the agreement. Columbia then moved to compel arbitration, arguing direct benefits estoppel, or alternatively, that a series of agreements should be viewed as a single, unified contract. The District Court denied the motion to compel arbitration, holding that IMA is not a party to and is not otherwise bound by the agreement containing the arbitration clause. In its decision, *IMA, Inc. v. Columbia Hospital Medical City*, No. 20-20032 (5th Cir. Jun. 17, 2021), the Fifth Circuit agrees with the District Court.

The Series of Contracts

In 2012, Columbia entered into an agreement with HealthSmart, a PPO. The agreement contained an arbitration clause. Pursuant to the agreement, Columbia would provide services to HealthSmart and its Groups, defined to include plan administrators, at discounted rates. HealthSmart agreed to ensure that its Groups would be contractually bound to adhere to the terms and conditions of the agreement, and the Groups would pay the rates specified in an Exhibit to the agreement. In 2003 plan administrator IMA entered into an agreement with PPOplus, a PPO network. This agreement provided that IMA would be able to access participating providers in the PPOplus network at contracted rates. A year earlier, PPOplus entered into an agreement with HealthSmart, which provided reciprocal access to their respective networks of participating providers. In sum, Columbia contracted with HealthSmart, HealthSmart contracted with PPOplus, and PPOplus contracted with IMA.

Columbia argues that IMA is bound by the arbitration clause in its contract with HealthSmart because this series of contracts forms a single, unified contract. Alternatively, Columbia argues that IMA is bound by the arbitration clause because it received the benefits of the contract between Columbia and HealthSmart. Neither argument succeeds.

Direct Benefits Estoppel Requires Proof of Knowledge of the Contract

The Court first deals with the direct benefits estoppel argument. A non-signatory can 'embrace' a contract if it knowingly seeks and obtains direct benefits from the contract. However, to invoke direct benefits estoppel under this theory, IMA had to have known about the existence of and the terms of the contract between Columbia and HealthSmart, have sought to exploit the contract, and obtained some benefit under the contract. The Court holds that Columbia did not establish that IMA had knowledge of the contract, and therefore, did not consider whether it met the other factors. Columbia relied on the fact that IMA was aware of the discounted rates; however, those rates were contained in an exhibit to the contract and did not require IMA to have been aware of the entire contract.

The Series of Contracts is not a Single Contract

With respect to whether the contracts were a single, unified contract, the Court considers whether the agreements should be read together to ascertain the parties' intent. This may be done even if the parties executed the agreements at different times and the agreements

do not refer to each other. Here, both the Columbia-HealthSmart agreement and the IMA-PPOplus agreement contain "Entire Agreement" clauses, undercutting Columbia's argument that they should be read as a single document. Further, while the Columbia-HealthSmart agreement may be read to incorporate the IMA-PPOplus agreement by reference, the IMA-PPOplus agreement does not incorporate the Columbia-HealthSmart agreement. The court finds that, accordingly, IMA did not intend to be bound by the Columbia-HealthSmart agreement.
(**This Squib was drafted by Christine Lazaro, Professor of Clinical Legal Education and Director of the Securities Arbitration Clinic at St. John's University School of Law and an* Alert *Editorial Board member.*)
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SHORT BRIEFS: CONCISE NEWS YOU NEED TO KNOW

REMINDER: FINRA TO RESUME IN-PERSON HEARINGS IN ALL LOCATIONS EFFECTIVE AUGUST 2. This is a friendly reminder that, as reported in SAA 2021-22 (Jun. 10), beginning **August 2**, all 69 FINRA Dispute Resolution Services ("DRS") hearing locations will be open for in-person proceedings. The Authority updated its Webpage on **June 4** to reflect the change. The Website says: "In-person proceedings at the following hearing locations are postponed through July 30, 2021: Augusta, Boca Raton, Buffalo, Detroit, Philadelphia, Providence and Wilmington. Beginning August 2, 2021, all FINRA DRS hearing locations will be open for in-person proceedings." Previously, FINRA DRS had announced the resumption of in-person hearings in 62 of 69 hearing locations, effective **July 5**. The Authority has published a *Safety Protocol for In-Person Hearings* that has been sent to arbitrators and parties. The Website says the *Protocols* may include (*ed: repeated* verbatim): hearings held in venues large enough to allow social distancing; hand sanitizer provided in each room; masks for all in-person participants and arrangements made to provide masks to participants who do not have them; Plexiglas dividers and face shields provided in the event that testifying witnesses must remove their masks; and in-person participants provided with information on best practices when traveling to and attending the hearing."
*(ed: *This is wonderful news and another sign that life is slowly returning to normal.)*
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FINRA BOARD MET VIRTUALLY IN MID-JULY. AS EXPECTED, NO RULEMAKING ITEMS. As reported in SAA 2021-26 (Jul. 15), FINRA's Board of Governors met virtually **July 21 – 22** and the meeting as expected was a strategy session, "in lieu of a full schedule of committee meetings and a review of rule proposals," as stated in this pre-meeting announcement. The schedule for the rest of the year is: **September 23 – 24;** and **December 1 – 2.**
(ed: We imagine that in-person Board meetings – at least for the vaccinated – may return by the next meeting, with some members participating via Zoom.)
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FAIR ACT CREEPS CLOSER TO HOUSE PASSAGE. We reported in SAA 2021-06 (Feb. 18) that Democrats had reintroduced several bills to curb use of mandatory

predispute arbitration agreements ("PDAA"). Among them was H.R. 963 – the *Forced Arbitration Injustice Repeal (FAIR) Act* – introduced **February 11** by Rep. **Henry "Hank" Johnson Jr.** of Georgia. If enacted it would ban mandatory arbitration for almost every conceivable transaction that's not a business-to-business or union-management matter. Specifically, this bill would amend the Federal Arbitration Act to eliminate mandatory predispute arbitration agreements ("PDAA") for disputes involving consumer, investor, employment (including independent contractors), and antitrust matters. It would cover brokers and investment advisers; bar class action/collective action waivers in or out of a PDAA; apply to "digital technology" disputes; reserve for court determination any arbitrability or delegation issues "irrespective of whether the agreement purported to delegate such determinations to an arbitrator;" and extend to a broad range of civil rights matters, including sexual harassment claims. We reviewed the bill's text and offered a detailed analysis in SAA 2021-10 (Mar. 18) and our blog. The proposed *FAIR Act* is inexorably moving toward at least House passage. It already has 196 cosponsors (all Democrats), with 218 votes needed for passage.
(ed: The prospects for House passage seem very good in our view. The prior iteration of the Act passed the House in the last Congress. Although the Democrats' House majority is now slimmer, we think there are enough votes for House passage this time around.)
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AMAZON TELLS CUSTOMERS THAT IT DROPPED PDAA FROM CONDITIONS OF USE. We reported in SAA 2021-22 (Jun. 10) that Amazon had dropped the predispute arbitration agreement ("PDAA"), and replaced it in the Conditions of Use as of **May 3** with this dispute resolution language: "Any dispute or claim relating in any way to your use of any Amazon Service will be adjudicated in the state or Federal courts in King County, Washington, and you consent to exclusive jurisdiction and venue in these courts. We each waive any right to a jury trial." Readers are now reporting that Amazon is letting customers know about the change. Specifically, the firm the week of **July 18** sent customers an email titled *Our Terms Have Changed* that reads as follows:

> We wanted to let you know that we recently updated our Conditions of Use. One of our updates involves how disputes are resolved between you and Amazon. Previously, our Conditions of Use set out an arbitration process for those disputes. Our updated Conditions of Use provides for dispute resolution by the courts. Please visit https://www.amazon.com/conditionsofuse to read our updated terms in full. As always, your use of any Amazon service constitutes your agreement to our Conditions of Use."

No reason is given, but media conjecture is that the high cumulative fees associated with the tens of thousands of individual Alexa-based arbitrations drove the change. See, For example, *Amazon Ends Use of Arbitration for Customer Disputes*, NY Times (July 22, 2021). Recall that we covered in SAA 2021-08 (Mar. 4) the case of *Tice v. Amazon.com, Inc*., No. 20-55432 (9th Cir. Feb. 19, 2021) (unpublished), in a Short Brief titled: *"Alexa … Do I Have to Arbitrate My Dispute with Amazon?" Yes You Do, According to a*

Divided Ninth Circuit. The Plaintiff had sought class certification under California's *Invasion of Privacy Act,* asserting: "she and other class members were injured because Amazon's voice-activated device, Alexa, recorded Tice's communications without her consent." Amazon sought to compel arbitration at the AAA based on the PDAA in the Conditions of Use. The divided Ninth Circuit compelled arbitration, holding: "[T]he arbitration clauses apply to '*any dispute* or claim *relating in any way* to . . . use of any Amazon Service, or to *any products* or *services* sold or distributed by Amazon or through Amazon.com' and to '[a]ny dispute or claim arising from *or relating to* this Agreement or *Alexa.*'"
(ed: As we read it, all claims will be litigated in Kings County, Washington. Not sure how that benefits consumers as compared to individual local arbitrations.)
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DC CIRCUIT: AIRBNB'S SIGNUP SCREEN GAVE CLEAR NOTICE OF PDAA. This is one of those "whatever happened to?" cases. Readers with good memories may recall *Selden v. Airbnb, Inc.*, No. 16-cv-00933 (D.D.C. 2016), an appeal dismissed for lack of jurisdiction, No. 16-7139 (D.C. Cir. 2017), where the Court held that Airbnb's predispute arbitration agreement ("PDAA") precluded a renter's race discrimination lawsuit. As detailed in SAA 2016-41, the Court effectively took judicial notice that consumers doing business online know they are accepting terms of service – and rarely read them: "So, while the record is silent as to Mr. Selden's history with e-commerce, the prevalence of online contracting in contemporary society lends general support to the Court's conclusion that Selden was on notice that he was entering a contract with Airbnb in this case." The case eventually proceeded to arbitration, and Selden lost. His effort to vacate the Award failed at the District Court level, and his appeal to the DC Circuit fared no better. The unanimous decision in *Selden v. Airbnb, Inc.*, No. 19-7168 (D.C. Cir. Jul. 13, 2021), among other things rejects Selden's assertion that he was not on notice that he was agreeing to arbitration when he signed up online: "The screen presents three options to sign up for Airbnb: using a Facebook account, a Google account, or an email. Directly below these options, the screen states: 'By signing up, I agree to Airbnb's Terms of Service, Privacy Policy, Guest Refund Policy, and Host Guarantee Terms.' The terms and policies appear in red and are hyperlinks to the relevant document. The Terms of Service begin with a warning, in all caps, that they 'contain important information regarding [a user's] legal rights, remedies and obligations,' including 'various limitations and exclusions, a clause that governs the jurisdiction and venue of disputes, and obligations to comply with applicable laws and regulations.' (capitalization altered). The 'Dispute Resolution' section includes an arbitration clause in which, as relevant here, a user and Airbnb 'agree that any dispute, claim or controversy arising out of or relating to these Terms … or to the use of the Services or use of the Site … will be settled by binding arbitration'"(footnotes and internal citations omitted).
*(ed: *Seems right to us. **The underlying dispute goes back to 2016. So much for speedy conflict resolution!)*
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FAA PREEMPTS CONSTRUING AMBIGUITY IN PDAA AGAINST DRAFTER. It is a well-known legal axiom that ambiguities in a document are generally construed against the drafter (*ed: canon of* contra proferentem; *while we know the concept, we had never heard of that term, either*). It is also well-settled Federal Arbitration Act ("FAA") doctrine that Courts should err on the side of predispute arbitration agreement ("PDAA") enforcement. These two concepts clashed in *Western Bagel Co., Inc. v. Superior Court*, No. B305625 (Calif. Ct. App. 2 Jul. 16, 2021), where the English-language PDAA called for binding arbitration, while the Spanish version mistakenly provided for *nonbinding* arbitration. The Trial Court had applied *contra proferentem* in denying the employer's attempt to enforce the PDAA against a Spanish-speaking employee, but the Court of Appeal reverses. Citing *Lamps Plus, Inc. v. Varela*, 139 S.Ct. 1407 (2019), the unanimous Court says: "… we conclude the FAA preempted the trial court's use of *contra proferentem*. Next, assuming arguendo there is an ambiguity regarding whether the parties consented to binding or nonbinding arbitration, we employ the FAA's default rule that any ambiguities about the scope of an arbitration agreement must be resolved in favor of arbitration as envisioned by the FAA, a fundamental attribute of which is a binding arbitral proceeding. We thus grant Western Bagel's petition and direct the trial court to enter a new order compelling the parties to arbitrate their dispute via binding arbitration in accordance with the terms of their arbitration agreement."
*(ed: *Orders compelling arbitration are generally not appealable. Here, the matter was fashioned as a Petition for a Writ of Mandate. **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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QUICK TAKES: CASES AND AWARDS WORTH READING

***American Institute for Foreign Study, Inc. v. Fernandez-Jimenez*, Nos. 20-1641 & 20-1692 (1st Cir. Jul. 9, 2021)**: "The American Institute for Foreign Study, Inc. (the 'Institute') places au pairs with host families in the United States. In 2018, it entered a contract (the 'Agreement') with Laura Fernandez-Jimenez, an au pair from Spain, which required the parties to arbitrate their disputes and waived their rights to other forms of dispute resolution. After Fernandez-Jimenez filed a class arbitration demand against the Institute and its CEO William L. Gertz, they filed suit in federal district court seeking to enjoin class arbitration…. The Agreement does not provide an affirmative basis to conclude that the parties agreed to class arbitration. The arbitration clause is silent about class arbitration. And the waiver clause only mentions class actions in precluding the parties from litigating as a class."

***The Application of the Fund v. AlixPartners*, No. 20-2653 (2nd Cir. Jul. 15, 2021)**: "… because the arbitration is between an investor and foreign State party to a bilateral investment treaty [between Lithuania and the Russian Federation], and because the arbitration takes place before an arbitral panel established by that same treaty, we hold that this arbitration is a 'proceeding in a foreign or international tribunal.' Second, because the Fund is a party to the arbitration for which it is seeking discovery assistance, it qualifies as an 'interested person' under [28 U.S.C.] § 1782. Third, we find no abuse of

discretion in the District Court's determination that the relevant factors announced by the Supreme Court in *Intel* weigh in favor of granting the Fund's discovery application."

***Calderon v. Sixt Rent a Car, LLC*, No. 20-10989 (11th Cir. Jul. 14, 2021)**: "A customer making an airline, hotel, or car-rental reservation on Orbitz.com agrees to a contract that includes an arbitration provision. That provision requires the customer to arbitrate disputes related to, among other things, 'any services or products provided.' In this case, we must decide whether that phrase refers to services and products provided (1) by Orbitz or (2) by anyone. Reading the 'any services or products provided' clause in the light of neighboring provisions and the larger contractual context -- and applying a dose of common sense -- we conclude that it refers only to services and products provided by Orbitz. Because the underlying dispute in our case doesn't relate to services or products provided by Orbitz, but only to those provided by Sixt Rent A Car, a company that does business through Orbitz, we will affirm the district court's denial of Sixt's motion to compel arbitration."

***Hayden v. The Retail Equation, Inc*., No. 8:20-cv-01203-JWH-DFMx (C.D. Calif. Jul. 8, 2021)**: "… the Credit Card Agreement provides that Synchrony Bank -- not The Gap -- 'may be referred to as "we," "us" or "our."' This interpretation is also confirmed by the instructions for commencing arbitration, which state that Alire's notice demanding arbitration 'must be sent to Synchrony Bank…' It seems unlikely that the parties would expect a demand for arbitration solely against The Gap -- that does not involve Synchrony Bank -- to be sent to Synchrony Bank. At a minimum, the arbitration agreement cannot be said 'clearly [to] express an intention to confer a separate and distinct benefit on [The Gap].' Having concluded that The Gap cannot invoke the arbitration provision in the Credit Card Agreement, the Court need not address the parties' other arguments" (footnotes and citation omitted).

***Direct Grading & Paving v. Eighth Judicial District Court*, 137 Nev. Adv. Op. No. 31 (Nev. Jul. 8, 2021)**: "In this opinion, we address whether the district court has authority, either under NRS 38.222's provisional remedy allowance or through its inherent powers, to intervene in binding arbitration to sanction a party's misconduct. We clarify that NRS 38.222 provides limited authority to intervene in an arbitration only where the district court orders a provisional remedy. Because the parties here did not seek, and the district court did not provide, a provisional remedy, NRS 38.222 did not grant the district court authority to intervene in the arbitration. We further conclude that the district court did not have inherent authority to intervene in this arbitration to remedy alleged litigation misconduct because that matter was squarely before the arbitrator."

***Stone v. Clifton Myers Financial Advisory, Inc*., FINRA ID No. 18-04069 (Dallas, TX, Oct. 20, 2021)**: A Motion to Vacate based on alleged arbitrator misclassification was denied, and a $455,000 Award confirmed, in No. 20-1701-C425 (Tex. Dist. Ct. Mar. 21, 2021). Although not an issue in the post-Award court proceedings, we found this part of the Award of interest: "[T]he Panel ruled that an in-person hearing would take place on September 29 - October 2, 2020, but, in the event FINRA determined there would not be

in-person hearings in September 2020, the hearing would be held via videoconference on the same dates. Pursuant to the Panel's Order, the hearings on September 29 and 30, 2020 were held virtually via Zoom, due to the COVID-19 pandemic."

***Donnelly v. Wells Fargo Clearing Services, LLC*, FINRA ID No. 20-04013 (Seattle, WA, Jun. 21, 2021)**: An Arbitrator explains in great detail why he granted Respondent broker-dealer's Prehearing Motion to Dismiss pursuant to FINRA Rule 13206(a) of the *Code* (Six-year Eligibility Rule for Industry Disputes). Claimant broker had sought reformation of defamatory information from appearing on his Form U5 record: "Both the termination of Claimant's employment and the U4/U5 publication that he seeks to expunge from his CRD records occurred in March of 2012. Claimant did not file his Statement of Claim until December 2020, more than six years had passed between the event or occurrence giving rise to the claim and the filing of the statement of claim. Claimant attempts to avoid the 6-year eligibility bar of Rule 13206 by arguing that it is tempered by equitable tolling principles that traditionally apply only to statutes of limitation and not to statutes of repose. In order to resolve this dispute, it is important to understand the primary difference between these two types of statutes." *Provided courtesy of SAC's ARBchek facility (www.arbchek.com).*
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ARTICLES OF INTEREST: RECENT NEWS FROM THE ADR FRONT

Lande, John, *Charting a Middle Course for Court-Connected Mediation*, University of Missouri School of Law Legal Studies Research Paper No. 2021-12 (July 6, 2021): "This article describes two theoretical perspectives about court-connected mediation and sketches an approach to combine the benefits and reduce the risks of both perspectives. One perspective focuses on the fundamental principle that parties should make decisions in mediation voluntarily, without inappropriate pressure. The other perspective, which I call a 'liti-mediation perspective,' is grounded in a concern that without court orders, some parties lose valuable opportunities to mediate, and courts spend their limited resources on cases that should appropriately be resolved in mediation."

***Amazon Ends Use of Arbitration for Customer Disputes*, NY Times (Jul. 22, 2021)**: "Amazon told customers this week that it would no longer require them to resolve their legal complaints involving the technology giant through arbitration, a significant retreat from a strategy that often helps companies avoid liability. In a brief email to customers, Amazon said anyone using its products would now have to pursue disputes with the company in federal court, rather than go through the private and secretive arbitration process, which critics say puts consumers at a huge disadvantage." (*ed: see coverage elsewhere in this* Alert.)

***What a Former SEC Executive has Learned about CFP Board's Enforcement Program*, Financial Planning (Jul. 22, 2021)**: "Americans expect their financial advisors to act in their best interests, an expectation that can only be achieved through education, commitment to ethics and rigorous enforcement of high ethical standards. During my 20-year career at the SEC, I worked in the enforcement division, where we

focused on investor protection, developing programs designed to detect various forms of financial misconduct, ultimately serving to shield the investing public from bad actors. It is with this background that I joined CFP Board this January as its first-ever managing director for enforcement to ensure that the most prominent credential in the financial planning profession builds on its best-in-class enforcement program that will continually exceed the public's expectations."

***Arbitration Agreement with Conflicting Provision in Two Languages Saved by FAA Default Rule*, JD Supra (Jul. 23, 2021)**: "The California Court of Appeal for the Second Appellate District recently added clarity to a somewhat puzzling trial court decision that had sent an employment dispute to nonbinding arbitration. See *Western Bagel Co. Inc. v. Superior Court of Los Angeles County and Jose Calderon*, Case No. B305625 California Court of Appeal, Second Appellate Dist. (filed June 24, 2021, certified for publication July 16, 2021). In the case, Jose Calderon filed a putative class action against Western Bagel Company claiming that the company failed to give its employees proper meal and rest breaks. Western Bagel responded by seeking to compel binding arbitration based on an arbitration agreement Calderon signed." (*ed: see coverage elsewhere in this* Alert.)

***Buoyed by $3-Mln Whistleblower Award, Ex-Merrill Duo Clears Their Record*, AdvisorHub (Jul. 23, 2021)**: "A Financial Industry Regulatory Authority arbitrator granted this week expungements of 10 customer complaints – five each – for two UBS Wealth Management USA brokers, who in 2019 won a related $3 million whistleblower award from the Securities and Exchange Commission. The Brookfield, Wisconsin brokers … who joined UBS in 2012, had won that whistleblower award, based on allegations that their former employer, Merrill Lynch Wealth Management, had made misleading statements about proprietary volatility-linked structured note products."

***Finra Suspends Ex-Wells Broker Fired Over Covid Relief Loan*, Financial Advisor IQ (Jul. 26, 2021)**: "The Financial Industry Regulatory Authority says it has suspended and fined a former Wells Fargo broker who had allegedly misrepresented his outside business to obtain Covid relief while registered with the firm. Wells Fargo discharged [broker] in November 2020 over allegations he had 'applied for business support from the Small Business Administration when the employee did not have a pre-existing formal business as required,' according to his BrokerCheck record."

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DID YOU KNOW?

AAA HAS A QUARTER OF A MILLION CASE FILINGS SO FAR THIS YEAR. According to a banner on the AAA Website's landing page, the Association has had 254,673 case filings through **July 26**. By way of comparison, there were 332,732 civil actions filed in federal courts for all of 2020, according to the U.S. Courts Website.

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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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