SECURITIES ARBITRATION ALERT 2021-39 (10/21/21)

George H. Friedman, Editor-in-Chief

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ARTICLES OF INTEREST:

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- ***The Schottenstein Affair: FINRA Arbitration as Yet Another Inheritance Litigation Venue,* Florida Probate & Trust Litigation Blog (Oct. 11, 2021):**
- ***ICSID Publishes 2021 Annual Report*, https://icsid.worldbank.org (Oct. 14, 2021)**
- ***CFTC Orders Tether and Bitfinex to Pay Fines Totaling $42.5 Millio*n, www.cftc.gov (Oct. 15, 2021)**
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- ***TIAA Faces Class Action Over Rollovers,* InvestmentNews (Oct. 15, 2021)**
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DID YOU KNOW?

- **ICSID Releases 2021 Annual Report**

A SCARY PRE-HALLOWEEN TREAT NEXT WEEK. *With Halloween fast approaching, we thought it might be an interesting break from our usual serious scholarly feature article fare for your publisher to share some humorous horror stories drawn from decades in the alternative dispute resolution field.* Tales from the Arbitration Crypt *will offer reflections on* a *career influenced by random, weird, other-worldly events. Look for it in the next* Alert.

SQUIBS: IN-DEPTH ANALYSIS

SCOTUS DECLINES TO TAKE UP CALIFORNIA'S PAGA – FOR NOW. ***The Supreme Court has eschewed for now the opportunity to review whether California's Private Attorneys General Act is preempted by the Federal Arbitration Act. But another Certiorari Petition involving the issue remains pending.*** We have reported many times on *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348, 327 P.3d 129 (Calif. 2014), *cert. den*., 135 S. Ct. 1155 (2015), where a divided 4-3 California Supreme Court – complete with partial concurrences and dissents – held that an employee could pursue claims against his employer under the California Private Attorneys General Act ("PAGA"), despite the existence of an arbitration agreement waiving such claims (see, for example, SAA 2015-01 and SAAs 2014-41 & -24).

No SCOTUS Review…

But did the U.S. Supreme Court's subsequent decision in *Epic Systems Corp. v. Lewis*, 138 S.Ct. 1612 (2018), holding that class or collective action waivers were enforceable under the Federal Arbitration Act, implicitly overrule *Iskanian?* We'll have to wait for SCOTUS to weigh in on this issue, because the Court on **October 12** declined to review *Campbell v. DoorDash, Inc.*, No. A159296 (Cal. Ct. App. 2020), *petition for review denied*, No. S266497 (Cal. Mar. 10, 2021), where that Court held: "*Iskanian* is good law and California courts remain bound by it." The **August 9** Petition for *Certiorari* in *DoorDash, Inc. v. Campbell*, No. 21-220, had presented this question: "Whether agreements calling for individual arbitration are enforceable under the Federal Arbitration Act with respect to claims asserted under California's Private Attorneys General Act, Cal. Lab. Code § 2698 *et seq*."

… But Another Case is Still Pending

As reported in SAA 2021-37 (Oct. 7), still pending is a **September 21** Petition for *Certiorari* seeking review of *Gregg v. Uber Technologies, Inc*., No. B302925 (Cal. Ct. App. 2 Apr. 21, 2021), *petition for review denied*, No. S269000 (Cal. June 30, 2021). The issue presented there is: "Whether agreements calling for individual arbitration are enforceable under the Federal Arbitration Act with respect to claims asserted under the California Labor Code Private Attorneys General Act." The Petition relies heavily on intervening SCOTUS rulings, including *Epic Systems*. See *Uber Technologies, Inc. v. Gregg*, No. 21-453.

*(ed: *Campbell is listed on page 5 of the October 12 Order List. **There have been other recent California Court of Appeal cases to the same effect as* Campbell: *see* Winns v. Postmates Inc., *No. A155717 (Calif. Ct. App. Dist. 1 Jul. 20, 2021)*; Herrera v. Doctors Medical Center of Modesto, Inc., *No. F080963 (Calif. Ct. App. 5 Aug. 5, 2021); and* Williams v. RGIS, LLC, *No. C091253 (Calif. Ct. App. 3 Oct. 18, 2021). ***As we've said before, stating the obvious, the Supreme Court's composition has changed since SCOTUS eschewed review of the original* Iskanian *holding in 2015.)*

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PDAA NOT ENFORCEABLE WHERE IT NAMED A DEFUNCT ADR PROVIDER, DIVIDED MISSISSIPPI SUPREME COURT HOLDS. ***A divided (5-4) Mississippi Supreme Court holds in Hillhouse v. Chris Cook Construction, LLC, No. 2020-CA-00438-SCT (Miss. Sep. 30, 2021)(en banc), that an arbitration clause naming a defunct ADR provider is unenforceable.*** The predispute arbitration agreement ("PDAA") provided that disputes: "shall be submitted to arbitration before the Southern Arbitration and Mediation Association upon demand by either party to the dispute." The named provider ceased operating in 1996. Could the Court appoint another institution to administer arbitrations? "Not under Mississippi law or the Federal Arbitration Act ('FAA')," says the Majority, because in this instance the ADR administrator was an essential contract term.

Precedent Dictates that PDAA is Unenforceable

"In *Moulds* [*Covenant Health & Rehabilitation v. Estate of Moulds ex rel. Braddock*, 14 So. 3d 695 (Miss. 2009)], this Court held that when a contract required that arbitration be administered by a certain organization, and when such organization was not available to administer arbitration, this Court would not enforce the arbitration agreement…. The contract language requires that arbitration be conducted by SAMA. Not only is SAMA unavailable, it was unavailable at the time the contract was executed and had been an impossibility for approximately seventeen years prior to the contract's execution. CCC, as the drafter, could have rectified that issue, but it did not. Because the contract explicitly requires the arbitration be conducted in an unavailable forum, *Moulds* is clearly applicable. Arbitration by SAMA was a contract requirement" (footnote omitted).

No Help from the FAA

Recall that Section 5 authorizes a court to appoint an arbitrator: "… if for any other reason there shall be a lapse in the naming of an arbitrator or arbitrators …." The Majority judges say the FAA does not require a different result: "[T]he *Moulds* Court did not discuss Section 5 of the FAA in finding the arbitration clause unenforceable due to forum unavailability. Additionally, the language in Section 5 of the FAA differs slightly from the language of [Miss. Code] Section 11-15-109. While Section 11-15-109 provides that a court may appoint an arbitrator 'if the agreed method fails or for any reason cannot be followed,' the FAA seemingly more narrowly provides that a court may appoint an arbitrator 'if for any other reason there shall be a lapse in the naming of an arbitrator[.]'"

Dissent: Provider was Not an Essential Term

Justice **Maxwell** authored a dissenting Opinion, joined by Justices **Beam**, **Chamberlin**, and **Coleman**, contending that the ADR provider was not an essential term: "Affirming the trial court's order to compel arbitration … merely requires that we apply Mississippi Code Section 11-15-109…. [I]f the parties did not care enough to investigate whether SAMA still existed, SAMA's continued existence can hardly be said to be essential to the agreement to arbitrate. Thus, the agreement to arbitrate can be enforced, even though the SAMA provision cannot. In fact, Section 11-15-109 provides for this very scenario."
(ed: We're with the dissenters.)
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SHORT BRIEFS: CONCISE NEWS YOU NEED TO KNOW

CPR UPDATES EMPLOYMENT-RELATED MASS CLAIMS PROTOCOL
We reported in SAA 2021-14 (Apr. 22, 2021) that the International Institute for Conflict Prevention & Resolution ("CPR") had updated its *Employment-Related Mass Claims Protocol*. An **October 14** blog post announces yet another update, effective **September 29**. CPR notes that, since the **April 2021** revision, its Task Force: "has continued to work together to develop the current version of the Protocol, which includes a novel approach to selecting neutrals that will enhance both efficiency and diversity. The updated version also provides greater detail in describing the mediation process and other procedures." *(ed: The Protocol applies: "where it has been incorporated into an agreement between the parties, either before or after a dispute arises, and where there are 30 or more similar cases filed with CPR against one company.")*
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AAA RELEASES VIDEO ON NEW MULTIPLE CASE FILINGS RULES. The American Arbitration Association ("AAA") has released a new arbitrator training video, *Supplementary Rules for Multiple Case Filings - Arbitrator Overview*, an **October 14** email to arbitrators announces. The free 20-minute video covers the new rules, which were released **August 1,** the purpose of which is: "to help streamline the administration of large volume filings involving the same party, parties, and party representatives, where the Employment/Workplace Fee Schedule or the Consumer Fee Schedule apply." *(ed: *Arbitrators are invited to pose questions by email to MultiCaseFiling@adr.org or by phone at 888-774-6904. **We analyzed the new rules in SAA 2021-32 (Aug. 26, 2021).)*
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DISTRICT COURT CONFIRMS TRIBAL PAYDAY LOAN DISPUTE AWARD, BUT COMPELS FURTHER ARBITRATION FOR PLAINTIFF'S UNDERLYING COMPLAINT. On **October 8, 2020,** the AAA granted a favorable award to Lillian Easley in a tribal payday loan dispute with WLLC II d/b/a Arrowhead Advance ("WLLC"), a tribal corporation organized under the laws of the Ogala Sioux Tribe and located in South Dakota. This litigation, *Easley v. WLCC II*, No. 1:21-00049-KD-MU (S.D. Ala. Sep. 16, 2021), arises from that tribal payday loan dispute between the Plaintiff ("Easley") and the Defendant WLLC. Easley obtained ten payday loans from WLLC with interest rates ranging as high as 650%. Each loan agreement contained an arbitration agreement designating the AAA as the arbitral forum for any disputes arising from the loan agreements. Easley initiated an arbitration proceeding against WLLC, claiming that WLLC was extending loans without a license and thus violating the *Alabama Small Loans Act* ("*ASLA*"). The AAA panel ruled that the loan agreements were void in their entirety and *ab initio.* Why? The Arbitrators held that WLLC had waived its sovereign immunity because the transactions involved "off-reservation commercial activities" and WLLC failed to obtain a license under the *ASLA*. Easley then filed a complaint in the Circuit Court for Mobile County, Alabama seeking to confirm her arbitration award and for relief on behalf of a putative class of Alabama consumers

alleging that WLLC had violated the *ALSA* by extending loans without a license. The case was then removed to the District Court for the S.D. of Alabama by WLLC. The Court had no issue confirming the arbitration award because: 1) WLLC did not contest it; 2) the Court has a "presumption under the [FAA] that arbitration awards will be confirmed;" and 3) the Court should "defer to an arbitrator's decision whenever possible." The Court relied on Eleventh Circuit precedent in deferring to the arbitrator's decision and confirming the award. WLLC moved to dismiss the case for improper venue and to compel arbitration. The Court agreed with WLLC and held that, while the loan agreements were themselves void, the arbitration agreements within the loan agreements are severable and thus enforceable. The Court confirmed Easley's arbitration award while dismissing Easley's complaint and compelling arbitration under the loan agreement.
*(ed: *This short brief was authored by Theodore Ryan, a recent graduate of St. John's University School of Law. **While the Court held that the arbitration agreements were severable from the now void loan agreements, the Court was clear that there is a difference between "a truly illegal contract" and "a contract that may be void or voidable." A "truly illegal contract" is one where the subject matter of the contract is illegal, thus no facts or arguments "could salvage the contract.")*
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A WONDERFUL PRIMER ON THE FAA AND FEDERAL JURISDICTION. We cover elsewhere in this *Alert* a unanimous Connecticut Supreme Court decision, *A Better Way Wholesale Autos, Inc. v. Saint Paul*, No. SC20386 (Conn. Oct. 12, 2021), dealing with whether the shorter time to vacate an award under state law -- Connecticut General Statutes § 52-420 (b) – was preempted by the Federal Arbitration Act ("FAA"). The Court held it was not, because the State's law: "… does not stand as an obstacle to the accomplishment of the federal policy to enforce arbitration agreements." A footnote in the case Opinion offers an excellent primer on federal jurisdiction under the FAA: "The parties disagree as to whether the plaintiff could have brought the application to vacate in federal court rather than in state court. As we discussed, it is undisputed that the FAA does not create subject matter jurisdiction in federal courts. Therefore, a federal court must have an independent basis of subject matter jurisdiction over an FAA claim. See, e.g., *Vaden v. Discover Bank*, supra, 556 U.S. 59; *Hall Street Associates, LLC v. Mattel, Inc.*, supra, 552 U.S. 581–82. An independent basis of jurisdiction may be established, among other ways, through (1) **diversity of citizenship**; see, e.g., *Equitas Disability Advocates, LLC v. Daley, Debofsky & Bryant, P.C.*, supra, 177 F. Supp. 3d 204; *Kiewit/Atkinson/Kenny v. International Brotherhood of Electrical Workers, Local 103, AFL-CIO*, 43 F. Supp. 2d 132, 135 (D. Mass. 1999); or (2) **federal question jurisdiction** over the underlying dispute pursuant to 28 U.S.C. § 1331. See, e.g., *Vaden v. Discover Bank*, supra, 59–60; see also, e.g., id., 62 (approving 'look through' approach to determine whether federal court has federal question jurisdiction under FAA)."
(ed: This issue is at the heart of Badgerow v. Walters, *No. 20-1143, which has been set for oral argument in the U.S. Supreme Court on November 2, according to the November 2021 calendar.)*
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BOTH PARTIES MOVE TO VACATE (FOR DIFFERENT REASONS), UNANIMOUS NEVADA SUPREME COURT CONFIRMS AWARD. Despite the fact that both parties moved to vacate, a unanimous Nevada Supreme Court confirms the Award in *News+Media Capital Group LLC v. Las Vegas Sun, Inc*., 137 Nev. Adv. Op. No. 45 (Sep. 16, 2021). The Court's words tell the story: "The parties are two newspapers with an extensive contractual relationship. In their contract, they elected to submit disputes arising out of the contract to binding private arbitration, instead of the court system. When a dispute arose over amounts owed under the contract, the parties submitted the dispute to arbitration, and the arbitrator rendered an award. Neither party was fully satisfied with the award, so they both turned to the district court to seek vacatur of the portions they perceived as unfavorable to their respective sides. They had high bars to clear. Under well-settled law, an arbitration award can only be overturned for very limited reasons, and a mere error is not one of those reasons. Here, both parties argued in essence that the arbitrator's award was not simply wrong, but so egregiously wrong that it was clear the arbitrator had failed to apply the contract at all…. An arbitrator's misinterpretation of an agreement constitutes an excess of authority only if the adopted interpretation is not even minimally plausible. A factual finding is arbitrary and capricious only if it is not supported by substantial evidence in the record. And an arbitrator manifestly disregards the law only when he or she *knowingly* disregards clearly controlling law"
(ed: Seems right to us.)
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QUICK TAKES: CASES AND AWARDS WORTH READING

***Forby v. One Technologies, L.P.*, No. 20-10088 (5th Cir. Sep. 14, 2021)**: "We again address a class action claiming that One Technologies, L.P. ('One Tech'), duped consumers into signing up for 'free' credit reports that were not really free. The last time around, we ruled One Tech waived its right to arbitrate the plaintiffs' state-law claims. *Forby v. One Technologies, L.P.*, 909 F.3d 780 (5th Cir. 2018)…. Now, we consider whether One Tech also waived its right to arbitrate federal claims added after remand. Adhering to our precedent that waivers of arbitral rights are evaluated on a claim-by-claim basis, see *Subway Equip. Leasing Corp. v. Forte*, 169 F.3d 324, 328 (5th Cir. 1999), we hold that One Tech did not waive its right to arbitrate the new federal claims. The district court erred by holding otherwise."

***Foster v. Walmart, Inc*., No. 20-1787 (8th Cir. Oct. 8, 2021)**: "The district court ruled that an arbitration clause found in Walmart.com's terms of use was unenforceable against purchasers of gift cards. Our view is different, so we reverse and remand for a trial on the question. See 9 U.S.C. § 4.[] More than two dozen gift-card purchasers allegedly had the experience of buying Walmart gift cards only to have them turn out to be worthless. According to the complaint, third parties tampered with the gift cards and then stole the funds that were loaded onto them. When Walmart refused to provide a refund, the plaintiffs sued the company in federal court…. In sum, 'material disputes of fact . . . exist on the question [of] whether the parties agreed to arbitrate.' In these circumstances, the

Federal Arbitration Act required the district court to 'proceed summarily to [a] trial.' 9 U.S.C. § 4 …." (case citations omitted; brackets in original).

***A Better Way Wholesale Autos, Inc. v. Saint Paul*, No. SC20386 (Conn. Oct. 12, 2021)**: "We conclude that § 52-420 (b) does not stand as an obstacle to the accomplishment of the federal policy to enforce arbitration agreements. Under the Connecticut statutory scheme, both parties have postarbitration rights to seek judicial enforcement of the agreement to arbitrate. General Statutes § 52-417 provides the prevailing party one year to seek confirmation of the award; § 52-420 (b) provides the challenging party thirty days to seek to vacate or modify the award. The plaintiff does not argue that thirty days is prohibitively short such that a challenging party lacks a meaningful opportunity to seek to vacate an arbitration award. Therefore, the thirty day time limitation contained in § 52-420 (b) does not interfere with the plaintiff's right to challenge the arbitration award and, in doing so, to enforce the arbitration agreement. Indeed, far from standing as an obstacle, the time limitation actually furthers the FAA's 'national policy favoring arbitration with just the limited [judicial] review needed to maintain arbitration's essential virtue of resolving disputes straightaway.' *Hall Street Associates, LLC v. Mattel, Inc.*, supra, 552 U.S. 588."

***Eskandari v. E*Trade Securities*, FINRA ID No. 20-03156 (Los Angeles, CA, Sep. 8, 2021)**: A customer alleging misappropriation with respect to his investment in Inovio Pharmaceuticals Inc. stock loses his case against Respondent broker-dealer. *Provided courtesy of SAC's ARBchek facility (www.arbchek.com).*

***Porco v. TD Ameritrade*, No. 19-01867 (New York, NY, Sep. 8, 2021)**: A customer alleging unsuitability with respect to the purchase of securities loses his case against Respondent broker-dealer. Non-party broker is granted his request for expungement of this matter from his CRD record. *Provided courtesy of SAC's ARBchek facility (www.arbchek.com).*

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ARTICLES OF INTEREST: RECENT NEWS FROM THE ADR FRONT

Tiamiyu, Oladeji, *The Impending Battle for the Soul of Online Dispute Resolution*, 23 CARDOZO J. CONFLICT RESOL. 21 (forthcoming): "Legal professionals and disputants are increasingly recognizing the value of online dispute resolution. While the coronavirus pandemic forced many to resolve disputes exclusively online, potentially resulting in long-term changed preferences for different stakeholders, the pre-pandemic trend has involved a dramatic increase in technological tools that can be used for resolving disputes, particularly with facilitative technologies, artificial intelligence, and blockchains. Though this has the added benefit of increasing optionality in the dispute resolution process, these novel technologies come with their own limitations and also raise challenging ethical considerations for how ODR should be designed and implemented. In considering whether the pandemic's tectonic shifts will have a permanent impact, this piece has important implications for the future of the legal profession, as greater reliance on ODR technologies may change what it means to be a

judge, lawyer, and disputant. The impending battle for the soul of ODR raises important considerations for fairness, access to justice, and effective dispute resolution — principles that will continue to be ever-present in the field."

***The Schottenstein Affair: FINRA Arbitration as Yet Another Inheritance Litigation Venue*, Florida Probate & Trust Litigation Blog (Oct. 11, 2021):** "Trusts and estates law as we know it has been around for centuries, and for much of that time litigators who made their living in this niche usually plied their trade in a probate court. That's still the norm, but the playing field is changing rapidly … especially on the margins…. If the wrongdoer at the center of your case is an unethical financial advisor, your first impulse might be to sue him or her directly. The problem with that approach is that the wrongdoer might be judgment proof (either because the value of the claim greatly exceeds the wrongdoer's personal net worth or the wrongdoer's assets are otherwise shielded, such as homestead property). The better approach might be to pursue claims against the wrongdoer — and his or her deep-pocket employer. In the finance world that usually implies prosecuting some form of FINRA arbitration claim."

***ICSID Publishes 2021 Annual Report*, https://icsid.worldbank.org (Oct. 14, 2021)**: "ICSID released its 2021 Annual Report today, featuring an in-depth look at the Centre's activities over the past fiscal year (July 1, 2020 - June 30, 2021). Features include: Messages from ICSID's Secretary-General and the Chair of the Administrative Council; An update on ICSID Membership; A complete list of new designations and re-designations to the ICSID Panels of Arbitrators and of Conciliators; A detailed report on ICSID's caseload trends; An overview of ICSID's extensive outreach and training activities; Statements on the Centre's revenue and expenses." (*ed: See our coverage elsewhere in this* Alert.)

***CFTC Orders Tether and Bitfinex to Pay Fines Totaling $42.5 Million*, www.cftc.gov (Oct. 15, 2021)**: "The Commodity Futures Trading Commission today issued an order simultaneously filing and settling charges against Tether Holdings Limited, Tether Limited, Tether Operations Limited, and Tether International Limited (d/b/a Tether) for making untrue or misleading statements and omissions of material fact in connection with the U.S. dollar tether token (USDT) stablecoin. The order requires Tether to pay a civil monetary penalty of $41 million and to cease and desist from any further violations of the Commodity Exchange Act (CEA) and CFTC regulations, as charged."

***SEC Awards $40 Million to Two Whistleblowers*, www.sec.gov (Oct. 15, 2021)**: "The Securities and Exchange Commission today announced awards of approximately $40 million to two whistleblowers whose information and assistance contributed to the success of an SEC enforcement action.[] The first whistleblower, whose information caused the opening of the investigation and exposed difficult-to-detect violations, will receive an award of approximately $32 million. The first whistleblower also provided substantial assistance to the staff, including identifying witnesses and helping the staff to understand complex fact patterns. The second whistleblower, who submitted important

new information during the course of the investigation but waited several years to report to the Commission, will receive an award of approximately $8 million."

***TIAA Faces Class Action Over Rollovers*, InvestmentNews (Oct. 15, 2021)**: "ERISA litigator Schlichter Bogard & Denton is pursuing a proposed class-action case against TIAA over that company's sales tactics for its Portfolio Advisor managed-account service…. For five years, the company misled retirement plan participants about individual retirement account rollovers, with sales reps making rollover recommendations that were rife with conflicts of interest that were not disclosed, according to the settlement notice. The firm's wealth management advisers told clients that they were acting as fiduciaries for the rollovers, although they had compensation incentives and were subjected to disciplinary pressures, the notice indicated. []The lawsuit filed this week alleges that the company used 'fear selling' to encourage participants to agree to rollovers into products that were financially inferior to their employer-sponsored retirement plans. TIAA settled claims in July from the SEC and New York State. Deloitte was recently sued over its plan, and Aon prevailed in a lawsuit."

***No Further Supreme Court Review to be Sought by Seila Law*, Ballard Spahr LLC Blog (Oct. 18, 2021): "**Seila Law has sent a letter advising the Ninth Circuit that it will not seek further review from the U.S. Supreme Court.[] After the Supreme Court ruled that the CFPB's structure was unconstitutional and remanded the case for further consideration, a unanimous Ninth Circuit panel ruled that the civil investigative demand (CID) issued to Seila Law was validly ratified by former Director Kraninger and affirmed the district court's decision granting the CFPB's petition to enforce the CID."

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DID YOU KNOW?

ICSID RELEASES 2021 ANNUAL REPORT. The International Centre for Settlement of Investment Disputes ("ICSID') has just released its *Annual Report* for the fiscal year ending **June 30, 2021**, that among other things contains case statistics. According to its website, "ICSID is an international facility available to States and foreign investors for the resolution of investment disputes. Established in 1966 by the *Convention on the Settlement of Investment Disputes between States and Nationals of Other States* (the *ICSID Convention*), it is the only global institution dedicated to international investment dispute settlement." As of June 30, 2021, 164 countries have signed the *Convention*. The U.S. signed the Convention in 1965. ICSID has arbitration rules and provides an arbitration forum; arbitrations "are entirely voluntary and require consent of both the investor and State concerned." The 76-page report is laden with a wealth of statistical data, such as: "332 cases were administered by ICSID in FY2021. This is the largest number of cases ever administered at ICSID in a single fiscal year. A record 70 new cases were registered and 55 cases concluded in the fiscal year."
(ed: ICSID does a service to its constituents by publishing this information.)

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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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