SECURITIES ARBITRATION ALERT 2021-41 (11/4/21)

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- ***Arbitrators Shoot Down $5-Mln 'YES' Claim Brought Against UBS by 'Sophisticated' Investors*, AdvisorHub (Oct. 25, 2021)**
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DID YOU KNOW?

- **The FAA is Almost a Century Old**

SQUIBS: IN-DEPTH ANALYSIS

DOL DELAYS FIDUCIARY RULE ENFORCEMENT UNTIL END OF JANUARY. ***In somewhat of a surprise, the Department of Labor ("DOL") has delayed from December 20 until January 31 enforcement of its fiduciary rule.*** We borrow from our past coverage to review the rule's recent history. We reported in SAA 2021-01 (Jan. 14) that the DOL on **December 15, 2020** had released the massive Final Rule, which was to become effective 60 days after its **December 18** *Federal Register* publication (85 FR 92798Vol. 85, No. 244. P. 82798), or on **February 16, 2021**. In SAA 2021-05 (Feb. 11),

we queried whether this would actually happen. As we had said before, the Final Rule's long-term fate was unclear since it was to become effective after Inauguration Day. We had noted that House Financial Services Committee Chairwoman **Maxine Waters** (D-CA) last **December** wrote to then President-elect **Biden** urging that *Reg BI* and *Form CRS* be rescinded. And there was significant media and interest group speculation that the DOL would at least pause implementation before February 16.

Rule Rolls Out as Scheduled

Contrary to our expectations, though, we reported in SAA 2021-06 (Feb. 13) that the rule went into effect as scheduled. A **February 12** Press Release stated: "The U.S. Department of Labor's Employee Benefits Security Administration has confirmed that 'Improving Investment Advice for Worker & Retirees,' an exemption for investment advice fiduciaries, will go into effect as scheduled on Feb. 16, 2021. In the coming days, the agency will publish related guidance for retirement investors, employee benefit plans and investment advice providers." Why this move? Said Deputy Assistant Secretary of Labor for the Employee Benefits Security Administration **Ali Khawar**: "This exemption allows for important investor protections, including a stringent 'best interest' standard of care for fiduciary recommendations of rollovers from ERISA-protected retirement accounts. We recognize that investment advice providers have been preparing for the exemption, and this step will allow them to implement important system changes. That said, we will continue our stakeholder outreach to determine how we might improve this exemption, the rule defining who is an investment advice fiduciary, and related exemptions to build on this approach." In the meantime, the temporary enforcement policy articulated in *Field Assistance Bulletin 2018-02* was to remain in place until **December 20, 2021**.

Enforcement Delayed

The December date will be slipping a bit. The Department on **October 25** released *Field Assistance Bulletin 2021-02*, announcing that the temporary enforcement policy would continue in force until **January 31, 2022**. Why the delay? Says the *Bulletin*: "The Department understands that the December 20, 2021 expiration date of the temporary enforcement policy poses practical difficulties for financial institutions that are in the process of complying with the exemption conditions. Specifically, financial institutions have expressed concern that they would incur significant additional distribution costs, because the December 20, 2021, expiration date does not align with their regular distribution cycle for disclosures. The expiration date also complicates the retrospective review requirement for financial institutions that want to perform their review on a calendar year basis.[] In addition, financial institutions are in the process of developing tools to comply with the rollover documentation and disclosure requirements …."

What it Means

What does this delay in enforcement mean for firms? "The Department will not pursue prohibited transactions claims against investment advice fiduciaries who are working diligently and in good faith to comply with the impartial conduct standards for transactions that are exempted in PTE 2020-02 or treat such fiduciaries as violating the

applicable prohibited transaction rules. In addition, from December 21, 2021 through June 30, 2022, the Department will not pursue prohibited transactions claims against investment advice fiduciaries who are otherwise in compliance with PTE 2020-02 based solely on their failure to comply with the disclosure and documentation requirements set forth in Sections II(b)(3) and (c)(3) of that exemption, or treat such fiduciaries as violating the applicable prohibited transaction rule …" (footnotes omitted).
*(ed: *Makes sense to us. As we say: "Better right than rushed.")*
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***SERVOTRONICS II*? SCOTUS GETS ANOTHER CHANCE TO RULE ON FOREIGN ARBITRATION DISCOVERY**. ***The Supreme Court has again been asked to determine the extent of discovery available in foreign arbitrations. And our take is that SCOTUS will grant* Cert.** We reported in SAA 2021-34 (Sep. 9) that, just a month out from the scheduled **October 5** oral argument, Servotronics had notified the Supreme Court that it was dismissing its Petition for *Certiorari* in *Servotronics, Inc. v. Rolls-Royce PLC and the Boeing Company*, No. 20-794. As reported in SAA 2021-11 (Mar. 25), the Court on **March 22** had agreed to resolve a major Circuit Court split on whether 28 U.S.C. § 1782 provides for discovery in aid of private, foreign, commercial arbitration or only covers cases administered by governmental arbitration forums. Under this statute, 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.

Our Concerns …
We lamented in our past coverage: "The bottom line for now is that the split in the Circuits remains." Perhaps our concerns were misplaced, because SCOTUS is getting another bite at the apple. Specially, a **September 10** Petition for *Certiorari* has been filed in *ZF Automotive US, Inc. v. Luxshare, Ltd.*, No. 21-401. The question presented: "is substantively identical to the question presented in *Servotronics, Inc. v. Rolls-Royce PLC*, No. 20-794 (oral argument originally scheduled for Oct. 5, 2021; case removed from oral argument calendar Sept. 8, 2021): Whether 28 U.S.C. § 1782(a), which permits litigants to invoke the authority of United States courts to render assistance in gathering evidence for use in 'a foreign or international tribunal,' encompasses private commercial arbitral tribunals, as the U.S. Courts of Appeals for the Fourth and Sixth Circuits have held, or excludes such tribunals, as the U.S. Courts of Appeals for the Second, Fifth, and Seventh Circuits have held."

… May Be Addressed
While it's a fool's errand to predict what the Court will do, recent activity is certainly worth noting. ZF Group's American unit had been ordered by the courts below to produce information in connection with the underlying $500 million+ arbitration pending

in Germany. On **October 15** ZF Automotive US, Inc., and individuals Gerald Dekker, and Christophe Marnat applied to **Justice Kavanaugh** to: "stay the order of the United States District Court for the Eastern District of Michigan requiring Applicants to produce discovery under 28 U.S.C. § 1782(a) (Section 1782)." On **October 27** the full Court granted the request: "Application (21A80) granted by the Court. The application for stay presented to Justice Kavanaugh and by him referred to the Court is granted, and it is ordered that the order of the United States District Court for the Eastern District of Michigan, entered August 17, 2021, is stayed pending the disposition of the petition for a writ of certiorari before judgment. Should the petition for a writ of certiorari before judgment be denied, this stay shall terminate automatically. In the event the petition for a writ of certiorari before judgment is granted, the stay shall terminate upon the sending down of the judgment of this Court."
(ed: We think this one clearly has a shot. SCOTUS obviously has an interest in this issue, and the stay just granted preserves the status quo and prevents the core issue from being rendered moot.)
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SHORT BRIEFS: CONCISE NEWS YOU NEED TO KNOW

SCOTUS HEARS ORAL ARGUMENT – WITH A LIVE AUDIO BROADCAST – IN *BADGEROW*. As reported in our analysis in SAA 2021-40 (Oct. 28), with a full complement of Justices, oral argument took place **November 2** before the Supreme Court in the arbitration-centric *Badgerow v. Walters,* No. 20-1143, complete with a live audio broadcast. As reported in SAA 2021-19 (May 20), the Supreme Court on **May 17** granted *Certiorari* this case, involving application of the "look through" standard. The Court reviewed *Badgerow v. Walters*, 975 F.3d 469 (5th Cir. 2020), a case we analyzed in SAA 2020-36 (Sep. 23). In the underlying case, the Fifth Circuit held that the District Court was correct when it applied the "look through" standard to determine that it could remove a state court action to vacate an Award. The issue identified for review in the granted Petition for *Certiorari*: "Whether federal courts have subject-matter jurisdiction to confirm or vacate an arbitration award under Sections 9 and 10 of the FAA where the only basis for jurisdiction is that the underlying dispute involved a federal question." We will analyze the oral argument in full next week, but here are some spoiler alerts: 1) **Justice Gorsuch** was a bit under the weather, and participated by telephone; all other Justices and counsel took part in person; 2) both Badgerow's attorney, **Daniel L. Geyser**, and Respondents' counsel, **Lisa Schiavo Blatt**, made it all the way through their openings without being peppered with questions; and 3) **Justice Thomas** asked several question of both attorneys. It seems to us that the Court will be tasked with reconciling two core countervailing arguments: 1) does it matter that only FAA section 4 (compelling arbitration) has express language supporting the "look through" doctrine (providing that a motion to compel arbitration can be brought in "any United States district court which, save for such agreement, would have jurisdiction under title 28, in a civil action or in admiralty of the subject matter of a suit arising out of the controversy between the parties") while sections 9 and 10 (confirming/challenging awards) do not?; and 2) the imagined **Justice Scalia** question we identified in our editorial note in # 40: "So let me

get this straight: it's OK to apply 'look through' to enforcing the arbitration agreement, but not the eventual award??" Our money is on the Respondents.
*ed: *The audio transcript and recording were posted later that day. **The "well-pleaded complaint rule" came up several times. ***Here's some SCOTUS trivia: Badgerow's attorney, Daniel L. Geyser, argued the ill-fated* Henry Schein, Inc. v. Archer and White Sales, Inc*., No. 19-963. Recall that, as reported in SAA 2021-03 (Jan. 28), the Court last January in a one-line* per curiam *Order reversed its decision to grant* Certiorari *in its second look at Henry Schein, despite having heard oral argument last December.)*
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FINRA DRS POSTS STATS THROUGH 3Q: CUSTOMER ARBITRATION CLAIMS ARE DOWN A BIT, WHILE INDUSTRY ARBITRATIONS CONTINUE TO CRASH. AND MEDIATION FILINGS ARE MOST DEFINITELY STAGING A COMEBACK. FINRA Dispute Resolution Services ("DRS") posted case statistics through the end of the third quarter, with the overall arbitration case filing trends basically continuing from prior months but with a confirmed change in mediation stats. In brief, the headlines are: 1) overall arbitration filings through **September** – 2,301 cases – are down 27% (had been -22% in **August**; 2) cumulative customer claims, which had been up 1% last month, are now down 2% from **2020**; 3) industry disputes remain way down at minus 51%; 4) mediation cases are really surging; and 5) for the thirteenth month in a row, pending cases declined. Overall arbitration turnaround times were 14.7 months, with hearing cases now taking 16.6 months. There were 395 mediation cases in agreement, a significant 29% *increase* over 2020 (and an improvement from August's already impressive plus 17%). Almost nine out of ten mediation cases (89%) have resulted in a settlement (it had been 85% in August). There are now 8,423 DRS arbitrators, 4,009 public and 4,414 non-public. Pending cases stand at 4,343, a decline of 98 from August. The last thirteen months have each experienced declines in pending cases, reflecting a 1,072 case reduction from last year's high water mark of 5,415 open cases in **August 2020**. This now leaves a cumulative *decrease* of 438 pending cases since the onset of the COVID-19 pandemic in **March 2020.**
*(ed: *Again, kudos to FINRA DRS for eliminating the backlog. **Also again, we wonder what's fueling the surge in mediations? ***What a difference a year makes. This time last year, we were reporting that industry claims were up 56%, with an impressive 306 cases filed in September (well above the monthly average of 162.3 through August). We also had noted that, for the first time ever, industry arbitration filings constituted more than half (51%) of all new filings. This year, that stat has reverted to mean, at about a third.)*
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HOUSE CONDUCTS SEMI-ANNUAL REVIEW OF CFPB. As required by Dodd-Frank, the House Financial Services Committee met on **October 27** to review the operation of the Consumer Financial Protection Bureau ("CFPB"). The meeting was titled, *Bringing Consumer Protection Back: A Semi-Annual Review of the Consumer Financial Protection Bureau*. The CFPB's *Semi-Annual Report Spring 2021*, covering **October 1, 2020** to **March 31, 2021**, was published **October 8.** This was the only

reference to arbitration: *"Bureau of Consumer Financial Protection v. LendUp Loans, LLC*, (N.D. Cal. 4:20-cv-08583). On December 4, 2020, the Bureau filed a lawsuit against LendUp Loans, LLC (LendUp). LendUp, which has its principal place of business in Oakland, California, is an online lender that offers single-payment and installment loans to consumers. The Bureau alleged that LendUp violated the MLA in connection with its extensions of credit…. The Bureau specifically alleged that LendUp's violations of the MLA include extending loans with a Military Annual Percentage Rate (MAPR) that exceeds the MLA's 36% cap, extending loans that *require borrowers to submit to arbitration*, and failing to make certain required loan disclosures. On January 20, 2021, the court entered a stipulated final judgment and order to resolve the lawsuit" (emphasis added).
*(ed: *The meeting was supported by a 7-page memo from the majority staff. **Looks like there's a new CFPB suit against this lender in the same court; we found this docket entry for case No. 3:2021cv06945 filed September 8.)*
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EDMISTON ASSUMES PRESIDENCY OF PIABA. The Public Investors Advocate Bar Association ("PIABA") announced in an **October 28** Press Release that **Michael Edmiston** of Jonathan W. Evans & Associates was elected President at its just-concluded annual meeting. The Release contained a prepared statement about his priorities for this upcoming year. We will be interviewing Mr. Edmiston for the next *Alert*, but for now we present the major headers from his statement: **Improving Form CRS Helps Investors Obtain Sufficient Information to Make an Informed Decision About Whether to do Business with a Financial Professional**; **PIABA Members Continue to Successfully Represent Investors in the Crazy-Quilt of RIA Regulation**; and **PIABA Will Continue to Work to Fix the Issue of Unpaid Arbitration Awards in the Financial Services Industry.**
*(ed: *We wish Mr. Edmiston the best of luck. **Rumor has it that Mr. Edmiston spent part of his career working in NASD/FINRA dispute resolution. We'll be sure to pose that question.)*
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NFA INVESTOR NEWSLETTER HITS THE ELECTRONIC NEWSSTAND. The National Futures Association ("NFA"), which operates a dispute resolution forum, issues a periodic *Investor Newsletter* aimed at commodity futures investors. It's designed to keep investors up-to-date on recent NFA initiatives, upcoming events, and resources that investors may find helpful. In the fourth *Newsletter* of 2021, distributed under a summary email dated **October 28**, NFA lists several highlights which we explore in the order presented, excerpted essentially *verbatim*: **Investor Education** reports: *Understand Risks and Markets before Reacting to Internet Hype*: On Wednesday, October 6, NFA and the CFTC held a free webinar entitled, *Virtual Currency Frauds: Spotting and Avoiding Common Scams* as part of World Investor Week…. a week-long global campaign promoted by the International Organization of Securities Commissions (IOSCO) to raise awareness about the importance of investor ed; and *Learning Modules: Follow a Course to Smart Investing*: In an effort to educate the public on the basics of investing smartly,

FINRA offers a series of six brief learning modules on its website entitled Follow a Course to Smart Investing. The modules cover topics including setting investment goals, risk and return, diversification and fees and commissions, among others. The **Investor Protection** section states: *Investor Alert: Natural Disaster Investment Scams*: The SEC advises investors to be on the lookout for investment scams related to natural disasters. Hurricanes, floods, oil spills and other disasters often give rise to investment scams, since they provide opportunities for scammers to tout companies purportedly involved in cleanup efforts and trading programs falsely guaranteeing high returns on investments; and *Informed Investor Advisory: Protecting Your Online Accounts*: As financial technology has evolved, it has given consumers the ability to save and invest online using their phones, tablets and computers. These modern financial conveniences, however, come with risk. Scammers always look for new ways to get into a consumer's pocketbook, electronically or otherwise. NASAA warns investors to be cautious when using the conveniences offered by new and evolving financial technology in order to protect their financial information. As usual, the *Newsletter* signs off with a list of the quarter's enforcement actions, with links to final decisions in each, complaints that were issued, and final orders in registration cases. The *Newsletter* Webpage also contains: 1) a link to BASIC; 2) an online complaint form; 3) a link to past issues of the *Newsletter* and 4) a subscription form.
*(ed: *Another informative issue. **The enforcement actions database allows searches by subject matter, such as arbitration. Stats may be found here; through June NFA has had just 10 arbitration cases filed – 9 investor and 1 intra-industry.)*
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QUICK TAKES: CASES AND AWARDS WORTH READING

***Hodges v. Comcast Cable Communications, LLC*, No. 19-16483 (9th Cir. Sep. 10, 2021)**: As reported in SAA 2021-37 (Oct. 7): "We conclude that the district court misconstrued what counts as 'public injunctive relief' for purposes of the *McGill* rule and that it therefore erred in concluding that the complaint here sought such relief. Because Hodges' complaint did not seek such relief, the *McGill* rule is not implicated, and the arbitration agreement should have been enforced. We therefore reverse the district court's denial of Comcast's motion to compel." On **October 22** Hodges petitioned for a rehearing or rehearing *en banc*. (*ed: Email us at Help@SecArbAlert.com for a copy of the Petition.*)

***Gordon v. Atria Management Co*., No. A161379 (Calif. Ct. App. 1 Oct. 27, 2021)**: "Atria Management Company … (collectively, Atria) appeal from an order denying their petition to compel arbitration of claims brought by Janet Gordon (Janet) through her son and guardian ad litem, Randall Gordon (Randall). Atria contends the court erred by (1) sustaining evidentiary objections to the arbitration agreement and a power of attorney held by Randall; (2) ruling that Randall was not authorized to sign the arbitration agreement on Janet's behalf because the power of attorney did not extend to healthcare decisions; and (3) denying the petition to compel arbitration even though Randall had ostensible authority to enter into the arbitration agreement. We conclude that Randall was

authorized to enter into the arbitration agreement, and we will reverse the order and remand for further proceedings" (footnote omitted).

***Remedial Construction Services, LP v. AECOM, Inc.*, No. B303797 (Calif. Ct. App. 2 (Jun. 15, 2021)**: "In the absence of a clear agreement to submit a dispute to arbitration, we will not infer a waiver of a party's jury trial rights. (See *Avery v. Integrated Healthcare Holdings, Inc*. (2013) 218 Cal.App.4th 50, 59 (*Avery*).) The Subcontract's incorporation of a voluminous contract containing an arbitration agreement between other parties was insufficient to subject RECON to arbitration of its claims against AECOM."

***Dowe v. Prudential Financial, Inc.*, FINRA ID No. 20-01798 (New York, NY, Sep. 15, 2021)**: An All-Public Panel grants Respondent broker-dealer's and broker's Prehearing Motion to Dismiss with prejudice pursuant to FINRA Rule 13504(a)(6)(A) (release of claims due to prior Settlement Agreement). The Claimants' case involved the alleged misappropriation of funds and conspiracy involving their rights to equal employment under Title VII of the 1964 Civil Rights Act. Says the Award: "There is no dispute that a settlement agreement and release were executed by the Claimants. Clamant contends that the Panel should look beyond the four corners of the documents and consider Claimants' arguments that the agreements are invalid because they were fraudulently induced.[] The Panel has carefully considered Claimants' arguments and concludes that the settlement and release executed by the Claimants, two decades ago, falls squarely within FINRA Rule 13504(a)(6)(A). The claims brought herein were addressed as part of a settlement that included a broad release. Consideration was paid to each Claimant, moreover, Claimants all executed 'Execution and Acknowledgement' agreements specifically confirming that they participated in the complained of ADR process voluntarily and with full understanding of the consequences. Were we to adopt Claimants' argument, a settlement agreement and release could never be the basis of a successful motion so long as a Claimant contended that it was fraudulently induced. The panel also finds that Claimants' claims are timed-barred and that accordingly FINRA Rule 13504(A)(6)(C) provides a basis for dismissal as well." *Provided courtesy of SAC's ARBchek facility (www.arbchek.com).*

***Ingram v. UBS Financial Services Inc*., FINRA ID No. 19-00684 (Boca Raton, FL, Oct. 21, 2021)**: An All-Public Panel denied the Customers' $4 million claim and recommended expungement of the unnamed broker's CRD record: "With an ultrahigh net worth, Ingram has over forty (40) years of stated investment experience. Ingram is a sophisticated entrepreneur, successful businessperson, and well-seasoned professional. The Panel finds that Ingram aggressively pursued options strategies before, during and after Ingram was Respondent's client. Unnamed Party Lane's testamentary evidence (that the Panel finds credible) and the documentary evidence (including several executed documents by Ingram) confirms Ingram's full understanding that YES was 'aggressive' and 'high risk.' The latter being 'tolerance,' which Ingram accepted and acknowledged in writing."

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ARTICLES OF INTEREST: RECENT NEWS FROM THE ADR FRONT

Alshakhanbeh, Khaled Abed, *Arbitration Is a Private and Confidential Process only to Some Extent*, Global Journal of Politics and Law Research 2021, Vol. 9, No. 6, pp. 25-32 (Sep. 16, 2021): "This paper seeks to examine and analyse [sic] the levels of privacy and confidentiality of the arbitration process by exploring circumstances and legal provisions surrounding this process."

***DOL Delays Fiduciary Rule Enforcement Until February*, InvestmentNews (Oct. 25, 2021)**: "The Department of Labor on Monday delayed implementation of an investment advice rule that had been set for December, granting additional breathing room the financial industry had sought to prepare for the new regulation.[] The DOL said that it wouldn't enforce until February a fiduciary rule for retirement accounts that was approved last year by the Trump administration and that went into effect last February.[] The regulation would impose a fiduciary duty on most rollovers from 401(k) plans to individual retirement accounts. It would require advisers to document and explain the benefits, costs and conflicts of interest related to the recommendations." (*ed: See our coverage elsewhere in this* Alert.)

***Arbitrators Shoot Down $5-Mln 'YES' Claim Brought Against UBS by 'Sophisticated' Investors*, AdvisorHub (Oct. 25, 2021)**: "Arbitrators batted down a $5 million claim brought by two experienced investors, a father and son, against UBS Wealth Management USA over its Yield Enhancement Strategy, or YES, a widely marketed and now heavily-litigated options-spread strategy. The investment product went awry during market volatility in 2018 and 2020 and has sparked dozens of client complaints.[] In this case, a Financial Industry Regulatory Authority panel of three 'public' arbitrators in Boca Raton, Florida determined UBS was not at fault for the losses claimed by investors …. according to the Oct. 21-finalized award." (*ed: See our coverage elsewhere in this* Alert.)

***Potential Industry Impact of FA Arbitration Case Before the Supreme Court*, Financial Advisor IQ (Oct. 26, 2021)**: "An ex-Ameriprise Financial Services advisor's pending case before the Supreme Court of the United States could determine whether federal courts have the authority to confirm or vacate Financial Industry Regulatory Authority arbitration awards — and firms would prefer it if they did, according to arbitration lawyers.... If the Supreme Court says that district courts have that authority, more arbitration challenges would end up in federal court, which means more consistency for brokers, according to former Finra director of dispute resolution George Friedman. Friedman is the principal of George H. Friedman Consulting, which provides advice on arbitration and mediation in general and the Finra dispute resolution forum in particular.[] If the Supreme Court says otherwise, the opposite is true, he says."

***Ninth Circuit Urged to Reconsider Ruling Narrowly Limiting "Public Injunctive Relief" Exception to Arbitration in Privacy and Data Collection Class Actions*, Squire Patton Boggs Blog (Oct. 27, 2021)**: "CPW covered in September how the Ninth Circuit Court of Appeals reversed a district court order denying Comcast Cable Communications, LLC's ('Comcast') motion to compel arbitration under the Federal

Arbitration Act ('FAA') claims brought against it by a former cable subscriber. The Plaintiff had brought a putative class action challenging Comcast's privacy and data-collection practices for subscribers and demanded monetary and equitable relief .... Well, last week the Plaintiff who had filed suit in Comcast filed a petition for the Ninth Circuit to rehear the case (either en banc or with the same panel previously) and revisit its decision to send the litigation to arbitration (the 'Petition'). Among other things, the Petition argued that the Ninth Circuit's opinion in Comcast conflicts with Court precedent by "adding new conditions to the definition of 'public injunctive relief': that the proposed injunction 1) must seek 'to stop future violations of law that are aimed at the general public'; 2) must benefit the general public as a whole; and 3) must not 'requir[e] consideration of the individual claims of non-parties.'"

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DID YOU KNOW?

THE FAA IS ALMOST A CENTURY OLD. Statutes like the Federal Arbitration Act ("FAA") are referred to as "modern" arbitration laws, but did you know that before 1926, enforcing predispute arbitration agreements and arbitration awards in the United States was very difficult? Under Common Law doctrine, parties could walk away from their promise to arbitrate, and arbitration awards were virtually unenforceable. Then the FAA was enacted in 1925, and went into effect a year later. It made written promises to arbitrate matters involving interstate commerce specifically enforceable, and established very limited judicial review of arbitration awards. The FAA was passed by both houses of Congress *without a dissenting vote,* signed into law by **President Calvin Coolidge** on **February 12, 1925**, and went into effect **January 1, 1926**. *(ed: We can't imagine a unanimous vote today!)*

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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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