SECURITIES ARBITRATION ALERT 2021-43 (11/18/21)

George H. Friedman, Editor-in-Chief

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- ***National Securities Corp. v. Stein*, FINRA ID No. 20-03270 (New York, NY, Sep. 27, 2021)**
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- ***Edward Jones' Bid to Restrain Ameriprise Broker Backfires with $762K Arbitration Loss*, AdvisorHub (Nov. 8, 2021)**
- ***Lawyers Question FA's Odds in Supreme Court Arbitration Jurisdiction Battle,* Financial Advisor IQ (Nov. 8, 2021)**
- ***SEC Issues Awards Totaling More Than $15 Million to Two Whistleblowers*, www.sec.gov (Nov. 10, 2021)**
- ***CPR International Conference Highlights: 'Effects on Cross-Border Disputes After the Singapore Convention'* CPR Blog (Nov. 12, 2021)**

DID YOU KNOW?

- ***Global Arbitration News* Posts International ADR Stats**

POSTSCRIPT:

- **We're Not Alone in Our Thinking**

ALERT! EARLY *ALERT* NEXT WEEK. *We usually publish on Thursdays. Because of the upcoming Thanksgiving holiday, we plan to publish next Wednesday afternoon. Look for us in your email box on November 24. Our weekly blog selection will be posted on Friday, as usual.*

SQUIBS: IN-DEPTH ANALYSIS

NASAA: "REG BI NOT WORKING WELL SO FAR." SIFMA: "T'AINT SO!"

Within the space of a few hours, NASAA issued a report concluding that Reg BI thus far is not working as well as intended, and SIFMA responded that this was not the case. As we have reported several times, the SEC issued its final *Regulation Best Interest* ("*Reg BI")* Rule package in **June 2019**. Two items were effective immediately on publication: *Commission Interpretation Regarding Standard of Conduct for Investment Advisers* (84 FR 33669) and *Commission Interpretation Regarding the Solely Incidental Prong of the Broker-Dealer Exclusion from the Definition of Investment Adviser* (84 FR 33681). Two other items went into effect **September 2019**, specifically *Reg BI* (84 FR 33318) and Final Rule - *Form CRS Relationship Summary and Form ADV Amendments* (84 FR 33492). Although *Reg BI* was effective in September 2019, compliance was not required until **June 30, 2020**.

NASAA: So Far, Not So Good

On **November 4,** NASAA issued a report based on an examination of 443 firms from 35 jurisdictions, suggesting that, so far, *Reg BI* is not working as intended. A Press Release, *NASAA Report Finds that Many Broker-Dealer Firms Still Place Their Financial Interests Ahead of Their Customers Despite Implementation of Regulation Best Interest*, identified several "notable findings" that we repeat *verbatim*:

- The percentage of broker-dealer firms surveyed that were offering complex, costly, and risky products increased by 11% after Reg BI took effect.
- 65% of broker-dealer firms surveyed are not discussing lower-cost or lower-risk products with their customers when they recommend these products.
- No more than 4% of broker-dealer firms surveyed had enhanced their investor profile forms (in any key metric measured) to more carefully match investors with products after Reg BI took effect.
- 3% of broker-dealer firms surveyed took a step backward from their prior suitability procedures by dropping customer education, longevity risk, and tolerance for alternative products from their investor profile forms.
- 24-30% of broker-dealer firms surveyed were still utilizing product-agnostic sales contests, differential compensation, and extra forms of compensation. These compensation conflicts are rarely seen in fiduciary firms, observed in only 0.5-3% of investment advisers examined in Phase I.

SIFMA: No So!

SIFMA disagreed in a **November 4** statement from President and CEO **Kenneth E. Bentsen, Jr.**: "We appreciate that the NASAA report and NASAA leadership recognize that firms have adjusted their policies and procedures to be compliant with the federal law that Reg Best interest is and that the vast majority of firms are headed in the right direction. However, the report misses the mark in terms of the numerous and substantial changes that firms have made to enhance investor protection and satisfy the best interests of their retail investors. Firms began making those beneficial changes back in 2015 and 2016 when the now vacated DOL fiduciary rule came out. In mid-2019 when Reg BI was finalized, firms maintained those material changes because they would also help the firm

comply with Reg BI. The report fails to recognize these significant changes made in response to Reg BI, thereby discounting the true benefits delivered by Reg BI in terms of the positive changes it inspired and requires."
(ed: We are sure this is not the last we'll hear about this issue!)
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WITH THE DECKS CLEARED, SCOTUS TAKES ON ANOTHER ARBITRATION-CENTRIC CASE. ***Having just heard argument in this term's only arbitration-related case on the oral argument docket, SCOTUS on November 15 granted*** **Certiorari** ***in another case involving arbitration.*** As reported in SAA 2021-41 (Nov. 4), 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. With no other arbitration-related cases remaining on the "*Certiorari* granted" docket, the Court on **November 15** agreed to review *Morgan v. Sundance Inc*., 992 F.3d 711 (8th Cir. Mar. 30, 2021).

Case Below: Waiver of Arbitration Rights
Cases involving whether a party has waived its right to compel arbitration typically involve whether that party participated in litigation and waited too long. The basic elements are whether the offending party: 1) had knowledge of its right to demand arbitration; 2) acted inconsistently with that right; and 3) thereby prejudiced the other party. The case below focused on the third element, with the Eighth Circuit majority holding that Sundance did not wait too long to press its arbitration rights and its conduct had not prejudiced Morgan: "The district court found Morgan was prejudiced by having to respond to Sundance's motion to dismiss over the eight-month span of litigation. We disagree. Four months of the delay entailed the parties waiting for disposition of Sundance's motion to dismiss. No discovery was conducted. And, the record lacks any evidence that Morgan would have to duplicate her efforts during arbitration. Instead, most of Morgan's work focused on the quasi-jurisdictional issue, not the merits of the case. For these reasons, we hold Morgan was not prejudiced by Sundance's litigation strategy. [] In the absence of a showing of prejudice to Morgan, we conclude Sundance did not waive its contractual right to invoke arbitration.."

A Question of Prejudice
The question presented in the **August 27** Petition for *Certiorari* in *Morgan v. Sundance, Inc.*, No. 21-328, is: "Does the arbitration-specific requirement that the proponent of a contractual waiver defense prove prejudice violate this Court's instruction that lower courts must 'place arbitration agreements on an equal footing with other contracts?' [in] *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339 (2011)." The Petition notes that there is a multi-faceted split on the issue: "This Court should grant certiorari to resolve a longstanding circuit split on the question whether a party asserting waiver of the right to arbitrate through inconsistent litigation conduct must prove prejudice, and if so, how much. This question not only divides the federal courts of appeals, but divides federal courts from geographically co-located state courts of last resort …" Judge **Steven M. Colloton** dissented: "Morgan showed sufficient prejudice to support the district court's

determination of waiver. We concluded in a prior decision that nearly identical conduct by a defendant—waiting eight months to mention arbitration while forcing a plaintiff to defend against a motion to transfer venue to another judicial district—supported a finding of prejudice. Sundance also led Morgan to waste time and money engaging in a fruitless mediation based on an inaccurate premise that the case would be litigated in federal court. These impositions on the plaintiff are enough to satisfy the modest prejudice requirement employed in this circuit" (citation omitted).
*(ed: *The case is listed on page 1 of the Order List. **The Court also granted the "motion of Law Professors" for leave to file an* Amicus *Brief. ***Oral argument is not yet scheduled; we'll track it. ****The November 15 CPR Blog covers the case in* U.S. Supreme Court Adds an Arbitration Issue: Is Proof of Prejudice Needed to Defeat a Motion to Compel?*)*
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SHORT BRIEFS: CONCISE NEWS YOU NEED TO KNOW

SEVERAL COMMENTS POSTED ON NASAA'S PROPOSED MODEL RULES TO ADDRESS UNPAID AWARDS AND FINES. As reported in SAAs 2021-38 (Oct. 14) & -37 (Oct. 7), the North American Securities Administrators Association ("NASAA") released for public comment draft model rules to address the lingering problem of unpaid arbitration awards and fines. Specifically, NASAA issued an **October 5** Press Release, *NASAA Seeks Public Comment on Proposed Model Rules to Combat Unpaid Arbitration Awards and Fines*, describing the proposals. As we said in #37, these are the headlines (*ed: repeated* verbatim): Specifically, the Model Rules would add the following provisions to the existing rules on dishonest or unethical business practices by broker-dealers, agents, investment advisers and investment-adviser representatives:

- Failing to satisfy an arbitration award resulting from a client or customer-initiated arbitration;
- Attempting to avoid payment of any client or customer-initiated arbitration; or,
- Failing to satisfy the terms of any order resulting from a regulatory action taken against the registrant.

Comments were due **November 4**, and we were set until recently to report that none had been posted so far on the NASAA Website. On checking over the weekend, however, we discovered that over ten comments were posted, several of which predated the due date. We will analyze them in the next *Alert*, but we share with you now that among the commenters were: Financial Services Institute; PIABA; SIFMA; and several law school securities arbitration clinics.
*(ed: *We're pleased that this proposal has drawn comments.)*
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CPR TO SCOTUS: "WE'RE NOT TAKING SIDES, BUT PLEASE CLEAR UP THE SPLIT ON FOREIGN ARBITRATION DISCOVERY." Although it stresses that it is not taking sides on *how* the Court should rule on the substantive issue, Conflict Prevention & Resolution ("CPR") has filed an *Amicus* Brief urging that SCOTUS *not pass up* another opportunity to determine the extent of discovery available in foreign arbitrations. 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. 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. The "Quick Takes" in SAA 2021-28 (Jul. 29) covered *Application of the Fund for the Protection of Investor Rights v. AlixPartners*, No. 20-2653 (2nd Cir. Jul. 15, 2021), where the Court stated: "… 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.'" On **October 5,** AlixPartners filed a Petition for *Certiorari* in *AlixPartners LLP v. The Fund for Protection of Investors' Rights in Foreign States,* No. 21-518. CPR on **November 5** filed a Motion for leave to file an *Amicus* brief, stating: "CPR takes no position on the merits of the question presented by the petition of AlixPartners, LLP for a writ of certiorari. Rather, CPR submits this amicus brief solely to support the petitioner's request that the Court take up the case and grant certiorari to resolve definitively and promptly the interpretation of the Phrase 'foreign or international tribunal' in Section 1782."
*(ed: *We reported recently that a* Cert. *Petition was filed recently in* ZF Automotive US, Inc. v. Luxshare, Ltd., *No. 21-401, dealing with: "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." **CPR published a* Nov. 12 blog post, CPR Asks Supreme Court to Consider Another Foreign Tribunal Evidence Case. ****The Court on December 3 will consider the* Cert. *Petitions in both* ZF Automotive *and* AlixPartners*. We think at least one of these cases has a good shot, since SCOTUS obviously has an interest in this issue.)*
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INVESTOR CHOICE ACT PASSES HOUSE COMMITTEE. The House Financial Services Committee on **November 16** passed the *Investor Choice Act of 2021* ("*ICA*") by a party-line vote of 27-23. As we reported in SAA 2021-14 (Apr. 22), the *ICA* was reintroduced **April 15** by Sen. **Jeff Merkley** (D-OR) and by Rep. **Bill Foster** (D-IL). This iteration of the ICA – H.R. 2620 and S. 1171 – is essentially the same as the old one in that it would amend the FAA, the *Securities Exchange Act of 1934,* and the *Investment Adviser Act of 1940,* to ban the use of mandatory predispute agreements by broker-dealers and investment advisers and guarantee class action participation. The new proposed *ICA* also retains a section from the last one amending the *Securities Act of 1933* to state: "A security may not be registered with the Commission if the issuer, in its bylaws, registration statement, or other governing documents mandates arbitration for

any disputes between the issuer and the shareholders of the issuer." The Committee action was announced in a Press Release, *Committee Passes Legislation to Protect Retail Investors from Predatory Practices and Promote Fair Hiring Opportunities.*
(ed: While we continue to think this bill will pass the House, it faces an uncertain future in the deadlocked Senate. The nonpartisan www.govtrack.us Website gives it only a 3% chance of enactment.)
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CREDIT CARD TCPA CLAIM MUST BE ARBITRATED WHERE THE CUSTOMER SIGNED THE AGREEMENT CONTAINING THE PDAA, USED THE CARD, AND DID NOT OPT OUT. Signing a credit card application containing a predispute arbitration agreement ("PDAA"), using the card, and not exercising the right to opt out, results in arbitration being compelled in a Telephone Consumer Protection Act ("TCPA") dispute. The fact pattern in *Jefferson v. Credit One Bank, N.A*., No. 21 C 532, 2021 U.S. Dist. LEXIS 202162 (N.D. Ill. Oct. 20, 2021), is familiar: 1) customer applies for a credit card; 2) the application contains a PDAA; 3) customer receives the credit card and uses it; 4) customer does not opt out of arbitration; 5) customer falls behind on payments; 6) bank makes several collection phone calls to the customer; 7) customer brings a TCPA suit; and 8) bank responds by moving to compel arbitration per the PDAA. We'll let Judge **Virginia M. Kendal's** Memorandum Opinion and Order speak for itself: "Jefferson argues that an arbitration provision contained within a lengthy agreement, like the one at hand, cannot constitute a 'knowing and voluntary' waiver of her litigation and trial rights. See *Wellness Int'l Network, Ltd. v. Sharif*, 575 U.S. 665, 685 (2015) (waiver of Article III right to adjudication must be 'knowing and voluntary'). At the beginning of the Cardholder Agreement, Credit One included a notice alerting the cardholder to the arbitration provision that follows and dedicated two pages of the eleven-page Agreement to the arbitration provision. In addition, Credit One also notified Jefferson of the arbitration provision within the Cardholder Agreement at the time she applied for credit. The arbitration provision itself utilizes bold font, underlining, and capital letters to ensure it is not overlooked by the cardholder. Similar emphasizing formatting is used to alert the cardholder of her right to opt out of arbitration. Under these circumstances, there is no reason to infer Jefferson's waiver was unknowing or involuntary simply due to the length of the Agreement. The evidence before the Court supports a finding of a valid agreement to arbitrate that this Court is bound to enforce" (internal citations omitted).
(ed: Seems right to us.)
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FORDHAM LAW'S VIRTUAL INTERNATIONAL ADR CONFERENCE IS NOVEMBER 19. Fordham Law School's *16th Annual Conference on International Arbitration and Mediation* will be taking place virtually via Zoom on Friday, **November 19**, from 9:30 a.m. – 3 p.m. EST. This free event will feature (*ed: listed* verbatim):

- Keynote Address: Reflections on Arbitral Assumptions, by Neil Kaplan, International Arbitrator, Arbitration Chambers.

- Launch of the IMI/CCA/Straus Mixed Mode Task Force Reports, Technology in Arbitral Hearings: The Future is Here.
- *Jura Novit Curia*: (How) Does This Principle Apply in International Arbitration?

The conference is being presented by the Conflict Resolution and ADR Program and the Louis Stein Center for Law and Ethics at Fordham Law. The co-chairs are: **Benno Kimmelman** and **Edna Sussman**. New Jersey and New York CLE credit is available. *(ed: *Registration is done online. **For further info, email: lawcle@law.fordham.edu.)*
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QUICK TAKES: CASES AND AWARDS WORTH READING

***Cunningham v. Lyft, Inc*., Nos. 20-1373, 20-1567, 20-1549, 20-1544, 20-1379 (1st Cir. Nov. 5, 2021)**: "Plaintiffs are Massachusetts-based rideshare drivers who use the Lyft application and platform to find passengers. Plaintiffs claim that Lyft misclassifies them as independent contractors, rather than employees. They seek relief on their own behalf and on behalf of other drivers who worked for Lyft in Massachusetts, although a class has not been certified. [] The parties joined issue in a flurry of motions leading to rulings concerning plaintiffs' requests for preliminary injunctive relief and Lyft's request to compel arbitration. Lyft now presses an interlocutory appeal from the denial of its motion to compel arbitration, while plaintiffs press interlocutory cross-appeals from the denial of requests for preliminary injunctive relief, including a so-called 'public injunction.' For the following reasons, we reverse the order denying Lyft's motion to compel arbitration, and affirm the denials of preliminary injunctive relief" (footnote omitted).

***ADT, L.L.C. v. Richmond*, No. 21-10023 (5th Cir. Nov. 10, 2021)**: "Reading 'parties' to mean only the parties to the [FAA] § 4 petition [to compel arbitration] also advances the core policy behind the look-through test. *Vaden* stressed that looking only to a § 4 petition to define the parties' controversy would invite litigants to manipulate federal jurisdiction. See *Vaden*, 556 U.S. at 66–70. The look-through test defeats artful pleading by ensuring that federal jurisdiction over a petition to compel arbitration corresponds with federal jurisdiction over the parties' actual dispute…. Section 4 defines 'parties' as it does to bar litigants from abusing federal jurisdiction. Having agreed to arbitrate its claims against a diverse defendant, a plaintiff may not escape our power by joining to its state-court suit nondiverse persons whom it could not hale into arbitration. 'Parties,' in § 4, means the parties to the § 4 suit—not everyone against whom one party claims relief."

***Najarro v. Superior Court of San Bernardino County*, No. E076328 (Calif. Ct. App. 4 Oct. 22, 2021)**: "In this employment dispute, the trial court granted motions to compel arbitration for eight employees, each of whom signed one of two versions of arbitration agreements. The ruling was based primarily on a finding that clear and unmistakable delegation clauses foreclosed the court from ruling on either agreement's validity…. Given the differences between the two arbitration agreements as well as the factual circumstances each employee describes, we grant the petition in part, deny in part, and hold as follows. The first version does not clearly and unmistakably delegate questions of arbitrability to the arbitrator, so we grant the writ petition as to the employees who signed that version. As to two of these employees, the trial court must decide whether this first

version is unconscionable, guided by our discussion below. As to the other two employees who signed this version, we find that the arbitration agreement is unenforceable for the separate reason of fraud in the execution. [] Fraud in the execution also voids the agreement for two of the employees who signed the other, second version of the arbitration agreement. Because the second version has a clear and unmistakable delegation clause that petitioners have not specifically challenged, however, we deny the petition as to the remaining two employees who signed the second version." (*ed: An* Alert *h/t to Editorial Board member Peter R. Boutin, Esq., of Keesal, Young & Logan, for alerting us to this decision.*)

***National Securities Corp. v. Stein*, FINRA ID No. 20-03270 (New York, NY, Sep. 27, 2021)**: An Arbitration Panel explains why it decided to grant Claimant broker-dealer's request for damages relating to the execution of a promissory note agreement and an independent contractor agreement, and why it decided to deny Respondent broker's Counterclaim for fraudulent inducement, among other allegations: "Claimant established that there was an outstanding promissory note, executed by Respondent, which was unpaid in the amount of $140,000.00. The note became due upon the termination of the Independent Contractor Agreement, which constituted an Event of Default, in March of 2019. Respondent failed to establish any cognizable defense for non-payment. Under the terms of the note, Respondent is liable for reimbursement of the amount paid to him, plus 4% interest and attorney's fees incurred in collection." *Provided courtesy of SAC's ARBchek facility (www.arbchek.com).*

***Prasad v. JP Morgan Securities, LLC*, FINRA ID No. 21-00933 (Los Angeles, CA, Sep. 30, 2021)**: "Claimant broker is granted her request for reformation of her Form U5 record by the Panel. However, one Arbitrator dissented, finding that the Form U5 termination language was not defamatory in nature." *Provided courtesy of SAC's ARBchek facility (www.arbchek.com).*
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ARTICLES OF INTEREST: RECENT NEWS FROM THE ADR FRONT

A. De Luca and C. Baltag (Editor), *Counterclaims in Investment Arbitration: Reflections on UNCITRAL WG III Reform*, Kluwer Arbitration Blog (Nov. 5, 2021): "The discussion within UNCITRAL Working Group III (WG III) on counterclaims has still remained, to a certain extent, deadlocked, as opposed to discussions on other topics under the table. As a result, the UNCITRAL Secretariat has been put (at least) until now in the unfortunate position of being unable to bring a coherent package of draft provisions on the matter to the attention of WG III delegates."

***Arbitration Compelled! Court (Again) Rejects Claim that Party Did not Agree to Arbitration Because, Well, the Party DID Agree to Arbitration!*, Lexology (Nov. 3, 2021)**: "The Federal Arbitration Act has been around for almost 100 years. It requires courts to "rigorously enforce" arbitration agreements—on equal footing as any other contract. Yet parties often try to avoid rigorous enforcement. Often, that does not work. And it did not work in todays' case, *Jefferson v. Credit One Bank, N.A.*, No. 21 C 532,

2021 U.S. Dist. LEXIS 202162 (N.D. Ill. Oct. 20, 2021)." (*ed: See our coverage elsewhere in this* Alert.)

***Edward Jones' Bid to Restrain Ameriprise Broker Backfires with $762K Arbitration Loss*, AdvisorHub (Nov. 8, 2021)**: "Edward D. Jones & Co.'s effort to block a former broker who moved to Ameriprise Financial in Henderson, Nevada from transferring his customers to his new firm appears to have backfired, according to an arbitration award issued on Thursday [November 4]. [] A Financial Industry Regulatory Authority arbitration panel denied Jones' breach of contract and trade secret claims and instead ordered it to pay $562,000 – including $447,000 in damages and $115,000 in attorney fees – to [broker], who defected two years ago. The broker and his new firm had counter-claimed against Jones for unfair competition, a 'civil conspiracy' and tortious interference with business relations, according to the award. [] The panel also ordered Jones to pay $1 in damages and $200,794 in attorney fees to Ameriprise Financial Services, which hired Peterson for its employee channel."

***Lawyers Question FA's Odds in Supreme Court Arbitration Jurisdiction Battle*, Financial Advisor IQ (Nov. 8, 2021)**: "A former Ameriprise Financial advisor's effort to obtain a favorable ruling for an arbitration challenge to be heard in state court, rather than federal court, is in jeopardy after Supreme Court oral arguments offered pushback, lawyers say. [] In *Badgerow v. Walters*, the Supreme Court is evaluating whether district courts have jurisdiction under the Federal Arbitration Act to use what's called the 'look through' doctrine to pull legal challenges to arbitration awards out of state court and up to the federal level, according to Supreme Court briefings."

***SEC Issues Awards Totaling More Than $15 Million to Two Whistleblowers*, www.sec.gov (Nov. 10, 2021)**: "The Securities and Exchange Commission today announced awards of more than $12.5 million and $2.5 million to two whistleblowers whose information and assistance led to a successful SEC enforcement action. [] The first whistleblower alerted Commission staff to a fraudulent scheme and prompted the opening of an investigation. The second whistleblower's information was more limited but also helped lead to the success of the enforcement action."

***CPR International Conference Highlights: 'Effects on Cross-Border Disputes After the Singapore Convention'* CPR Blog (Nov. 12, 2021)**: "According to the Singapore Convention on Mediation's website, the Convention is a 'multilateral treaty which offers a uniform and efficient framework for the enforcement and invocation of international agreements resulting from mediation.' [] The speakers at the Oct. 6 CPR International Conference kickoff panel, 'Effects on Cross-Border Disputes After the Singapore Convention' gave more context to the current legal landscape after the Convention has come into force. [] The Convention was passed by resolution by the U.N.'s General Assembly in 2018, and signed into effect in August 2019. It has been hailed as a huge boost for mediation because it provides support for the effectiveness of the agreements the process produces."

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DID YOU KNOW?

***GLOBAL ARBITRATION NEWS* POSTS INTERNATIONAL ADR STATS**. ADR providers that administer international cases regularly publish their case stats, but did you know that *Global Arbitration News* publishes a yearly compilation of arbitration stats from several institutions. See, *Arbitration Statistics 2020 – In Full Sail Through the COVID Storm*, which reports that 7,419 international arbitrations were filed last year.
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POSTSCRIPT

WE'RE NOT ALONE IN OUR THINKING. SAA 2021-42 (Nov. 11) and our weekly blog post contained a "Letter *From* the Editor" titled, *Sorry About That, Chief, But it Does Matter Who Appointed the Judge*, asserting that former **President Trump**'s Ninth Circuit judicial appointments have neutralized this formerly anti-consumer/employment arbitration Court: "With all due respect, I disagree with **Chief Justice Roberts**, who said in 2018: 'We do not have Obama judges or Trump judges, Bush judges or Clinton judges…. There's no difference between Obama and Trump appointees.' With 10 Trump appointees, and none so far from President Biden (four nominations are pending), the Ninth Circuit membership has gone from a net majority of 11 judges appointed by Democratic Presidents to just three. And there ***has*** been a difference, at least in the arbitration realm." It turns out we are not alone in our thinking on the core issue. The **November 15** UK's *Guardian* has a story on how the former President has also "reshaped the Fifth Circuit…"
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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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