SECURITIES ARBITRATION ALERT 2022-10 (3/17/22)

George H. Friedman, Editor-in-Chief

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RETURN OF THE SQUIBS AND A FRIDAY *ALERT* NEXT WEEK. *After being absent for two of the last three* Alerts *due to two "breaking news" feature articles on the new* Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act*, squibs are back in force with three covering a variety of topics of interest. Enjoy! Also, we will be publishing Friday next week, to allow coverage of two arbitration-centric cases being*

argued next week at SCOTUS. In the meantime, see our handy chart on all four cases being heard by the Court the last two weeks of March.

SQUIBS: IN-DEPTH ANALYSIS

UPDATE ON FINRA "RIGGED PANELS" ACCUSATION: FINRA RESPONDS TO WARREN AND PORTER (AND VICE VERSA). ***We covered briefly in SAA 2022-09 (Mar. 10) this ongoing story, which we've covered extensively and blogged about on February 2, 9, and 25. Here is the promised elaboration.*** To review, Fulton County Superior Court Judge **Belinda E. Edwards** in *Leggett v. Wells Fargo Clearing Services, LLC*, No. 2019CV328949 (Ga. Super Jan. 25, 2022), found that the potential arbitrator list preparation process had been compromised. This prompted: 1) subsequent calls by PIABA for Congressional and SEC investigations; 2) a denial from Wells and a vow to appeal; 3) a **February 9** letter to FINRA from Sen. **Elizabeth Warren** (D-MA) and **Rep. Katie Porter** (D-CA) demanding answers by **February 23**; 4) a **February 18** Press Release from FINRA announcing that the Authority had retained the Lowenstein Sandler law firm to conduct an independent review; and 5) a **February 24** appeal by Wells (according to news reports in *FA Magazine* and *ThinkAdvisor*). The latest news is that FINRA replied to Sen. Warren and Rep. Porter in a **February 21** letter from CEO and President **Robert W. Cook**, and the legislators responded in a **March 7** letter announced in a Press Release.

FINRA Responds to the Legislators

In their February 9 letter, Sen. Warren and Rep. Porter said that FINRA must address their concerns by answering a series of questions by **February 23.** FINRA replied to the legislators in a **February 21** letter from CEO and President **Robert W. Cook**. After reviewing at length the operation of the Neutral List Selection System, arbitrator disclosure requirements, how FINRA Dispute Resolution Services ("DRS") handles arbitrator challenges, along with specifics how it handled the arbitrator challenge in the *Leggett* arbitration itself, and the retention of outside counsel to conduct an investigation, Mr. Cook states that thus far no irregularities have been discovered. He also announces some immediate changes in policy and procedure: "[W]hile this independent review is ongoing, DRS is implementing enhanced oversight of its decisions in response to challenges by parties seeking removal of arbitrators. In particular, all such decisions will be escalated to the DRS Director for final review and determination. The DRS Director will also provide a monthly report to the FINRA Chief Legal Officer of all such decisions. FINRA also has updated its website to provide additional clarity and transparency related to the arbitrator selection process" (footnote omitted).

The Legislators Respond to the Response

Sen. Warren and Rep. Porter are not pleased with FINRA's response and have additional questions. Their letter states: "[W]e are disappointed that you failed to answer key questions about the specific way that arbitrators were chosen in the *Wells Fargo vs. Leggett* case, the actions of Wells Fargo and its representatives, and communications between Wells Fargo officials and FINRA officials about the arbitration process. Instead, you only provided us with an anodyne description of the process from FINRA's Dispute

Resolution Services…." Because FINRA was not in their view responsive to the original list of questions, the latest Warren-Porter letter propounds a new list (*ed: repeated essentially* verbatim):

> (1) A description of the full investigative processes and procedures that will be used by the outside law firm investigating this matter.
> (2) The name of the firm conducting the investigation.
> (3) Will FINRA make the full report of this firm public, including all relevant documents, interviews, or other information?
> (4) Will FINRA conduct a new arbitration process in the Wells Fargo vs. Leggett case if the independent investigation reveals concerns about DRS's compliance with applicable rules, policies, and procedures for arbitrator selection in this case?
> (5) Will the review encompass any cases besides the Wells Fargo vs. Leggett case? Will FINRA consider conducting new processes in these cases based on the finding of the independent investigation?
> (6) What specific enhanced oversight processes will DRS implement? What will be the timeline for implementing these processes?

A response is requested by **March 22**.
*(ed: *Seems to us some of the answers were in Mr. Cook's February 24 response. **We imagine DRS Director of Arbitration Rick Berry will be really busy dealing with every arbitrator challenge! We suggest a better approach would have been to allow an aggrieved party to escalate what they believe was an erroneous staff decision. Also, Rule 12100(m) authorizes the Director to delegate most decisions. This substantial change in policy might require a rule filing. ***As we've said early and often, this is by no means the end of it. It's just the latest chapter in what is sure to be a lengthy process. ****Full disclosure: we had to look up the definition of "anodyne." According to Websters, it means: "not likely to offend or arouse tensions" or "serving to alleviate pain.")*
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WHAT EVER HAPPENED TO THE FINRA NON-ATTORNEY REP RULE CHANGE PROPOSAL? ***FINRA's Board of Governors in December 2018 approved a major rule change proposal on non-attorney representatives in arbitration, authorizing staff to file the rule with the SEC. More than three years later, the 19b filing has not occurred.*** We reported in SAA 2028-48 (Dec. 29, 2018) that the Board approved two rule proposals to be published by FINRA for comment or filed with the SEC, the first of which was: "*Proposal to Prohibit Compensated Non-Attorney Representatives (NARs) in Arbitration and Mediation* – The Board approved filing with the SEC proposed amendments to the Codes of Arbitration and Mediation Procedure relating to prohibiting compensated non-attorney representatives from practicing in the FINRA arbitration and mediation forum." FINRA on **December 21, 2018** issued a Press Release and video on the meeting's results.

Some Review
Code of Arbitration Procedure Rule 12208(c) provides: "**Representation by Others:** Parties may be represented in an arbitration by a person who is not an attorney, unless: state law prohibits such representation; or the person is currently suspended or

barred from the securities industry in any capacity; or the person is currently suspended from the practice of law or disbarred." Recall that, in keeping with the "new normal," the Board had in **2017** authorized staff to publish a Regulatory Notice seeking public comments on a rule change proposal: Regulatory Notice 17-34, *FINRA Requests Comment on the Efficacy of Allowing Compensated Non-Attorneys to Represent Parties in Arbitration* (Oct. 18). Also, RN 17-34 advised that FINRA was conducting a review of "the efficacy of continuing to allow such representation" and specifically sought constituent input "with respect to the efficacy of allowing NAR firms to continue to represent clients in the forum." We analyzed the comments in SAA 2018-01 (Jan. 11).

Time to Get on with It

Yes, there was a worldwide pandemic for nearly two years, but the rule filing with the SEC is beyond overdue. We can't imagine what's causing the delay, but staff should in our humble opinion get on with it.

*(ed: *We imagine the eventual rule filing proposal will generate many comments! **Director of Arbitration Richard Berry describes the changes starting around marker 0:30 of the December 2018 Board meeting results video. ***In response to our inquiry, a FINRA spokesperson advised the* Alert *that a draft rule filing is underway.)*

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REMINDER: SCOTUS HEARS TWO OF "ARBITRATION FINAL FOUR" ORAL ARGUMENTS NEXT WEEK. *Just a reminder that SCOTUS will be hearing oral argument next week on two cases involving arbitration.* We reported in December that the Supreme Court had granted *Certiorari* in four cases involving arbitration. Then SAA 2022-04 (Feb. 3) advised that the Court had set the cases for oral argument during the last two weeks of **March.** The oral argument calendar released by SCOTUS on **January 28** shows that two of the four cases are set for oral argument next week: **March 21**: *Morgan v. Sundance Inc.*, No. 21-328; **March 23:** *ZF Automotive US, Inc. v. Luxshare, Ltd.*, No. 21-401, and *AlixPartners LLP v. The Fund for Protection of Investors' Rights in Foreign States*, No. 21-518.

A Brief Review

We covered these cases in detail in SAA 2021-47 (Dec. 16) and in a feature article, *After a Lull in 2021, a Busy Year Ahead Arbitration-wise for SCOTUS*, 2021:48 SEC. ARB. ALERT 1 (Dec. 23, 2021). We provide below a thumbnail on the issues involved.

***Morgan*:** The question presented in the **August 27** Petition 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 significant 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.…"

ZF Automotive - AlixPartners: The **September 10** Petition in *ZF Automotive* asserts that the question before the Court "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." The **October 5** Petition for *Certiorari* in *AlixPartners*, which is consolidated with *ZF Automotive,* states: "Whereas the arbitration in *Servotronics* was between two private parties, the arbitration here is between a private party and a foreign state -- an application of Section 1782 upon which the United States has expressed 'particular concern.' The question presented is: Whether an ad hoc arbitration to resolve a commercial dispute between two parties is a 'foreign or international tribunal' under 28 U.S.C. § 1782(a) where the arbitral panel does not exercise any governmental or quasi-governmental authority."

A Handy Chart on All Four Cases

The chart below has information on the "Arbitration Final Four" cases. Oral arguments are audio livestreamed via the SCOTUS Website. The Court's Website posts audio recordings and transcripts the same day as arguments.

March 21: *Morgan v. Sundance Inc.*, No. 21-328; prejudice requirement for waiver of arbitration rights.
March 23: *ZF Automotive US, Inc. v. Luxshare, Ltd.*, No. 21-401, and *AlixPartners LLP v. The Fund for Protection of Investors' Rights in Foreign States*, No. 21-518; 18 USC 1782; discovery in foreign arbitration.
March 28: *Southwest Airlines Co. v. Saxon*, No. 21-309; FAA section 1 preemption scope – workers actually moving goods or people over state lines or is part of the "flow" or "stream" enough?
March 30: *Viking River Cruises, Inc. v. Moriana*, No. 20-1573; FAA preemption of California's PAGA.

Amicus Briefs aplenty have been filed in all four cases and can be found by clicking on the link to each case.)

(ed: One wonders if SCOTUS is setting up another "Steelworkers Trilogy" scenario, when the Court six decades ago simultaneously decided three landmark arbitration cases involving the United Steelworkers. The three cases, United Steelworkers v. American Manufacturing Co., *363 U.S. 564 (1960);* United Steelworkers v. Enterprise Wheel & Car Corp., *363 U.S. 593 (1960); and* United Steelworkers v. Warrior & Gulf Navigation Co., *363 U.S. 574 (1960), were all heard the same week (April 27-28, 1960), and the decisions*

were all announced seriatim on the same day (June 20, 1960). Is SCOTUS planning a redux with the "Arbitration Quartet"? Time will tell.)
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SHORT BRIEFS: CONCISE NEWS YOU NEED TO KNOW

FINRA BOARD ACTS ON RULE CHANGES NEEDED TO CONFORM TO *ENDING FORCED ARBITRATION OF SEXUAL ASSAULT AND SEXUAL HARASSMENT ACT*. FINRA's Board of Governors met in person **March 9 – 10**. Among other items on the Agenda were: "proposed amendments to rules related to arbitration of sexual assault and sexual harassment claims to conform to the *Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act*." The results, posted on **March 16**, add little to the previously-announced Agenda item: "The Board approved the submission to the SEC of proposed amendments to align FINRA rules with the *Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021*." The post-meeting video (*ed: see starting around marker 0:20*) is similarly cryptic. Recall that we said in our feature article, *President Biden Signs Into Law the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act. It Became Effective Immediately – Part I,* 2022:08 SEC. ARB. ALERT 1 (Mar. 3, 2022): "The new law definitely affects securities arbitrations, since the *Act* amended the FAA. We think the impact at FINRA will be in two main areas: 1) opting out; and 2) intertwining…. We suggest that FINRA will need to amend the *Industry Code* and its administrative procedures to accommodate the *Act*'s PDAA opt-out provisions…. FINRA will [also] need to address the intertwining issues identified above." We gave models to emulate in each area.
*(ed: *Not in keeping with the new normal – where a Reg Notice seeking comments would be the next step – this proposal will be going straight to the SEC.**We imagine this rule filing will be for immediate or accelerated effectiveness. We continue to believe constituents would have been better served if Congress allowed more lead time on effectiveness. ***Wonder what other ADR institutions like AAA, CPR, and JAMS are doing? ****The Board next meets May 11-12.)*
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*****THIS JUST IN: FINRA FILES REG NOTICE ON A PROPOSED RULE TO ACCELERATE ARBITRATIONS FOR SERIOUSLY ILL OR ELDERLY PARTIES**. Just as we were finalizing this *Alert* came word that FINRA has filed Regulatory Notice 22-09, *FINRA Requests Comment on a Proposed Rule to Accelerate Arbitration Proceedings for Seriously Ill or Elderly Parties.* We will provide a full analysis in a future *Alert*. As reported in SAA 2021-46 (Dec. 9), FINRA's Board of Governors met in **December 2021** and among other actions approved a rule change proposal to codify the exiting FINRA Dispute Resolution Services special program to expedite administration of arbitration cases involving senior or seriously ill parties.
*(ed: *For those who can't wait, details can be found here. **Comments are due May 16.)*
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NASAA TO SENATE BANKING COMMITTEE: BAN MANDATORY INVESTOR-BROKER AND RIA PDAAS. We reported in SAA 2022-09 (Mar. 10)

that the Senate Banking Committee – chaired by **Senator Sherrod Brown** (D-OH) – on **March 8** held a 75-minute hearing, *Examining Mandatory Arbitration in Financial Service Products.* We said that it seemed clear to us that the focus was on the proposed *Arbitration Fairness for Consumers Act*, mandatory arbitration involving consumer financial products and services, and what the CFPB might do about it, rather than securities arbitration, FINRA, and SEC oversight. While there were no references to either institution, at the very end (*ed: around marker 01:25 of the hearing video, available here*), Chairman Brown made a passing reference to having received a letter from NASAA about securities arbitration that he would be putting in the record. As of press time for # -09, the letter had not been posted and could not be found on NASAA's Website. We can now report that the March 8 letter from NASAA President and Maryland Securities Commissioner **Melanie Senter Lubin** has since been posted on the NASAA Website. In it, NASAA urges that any ban on mandatory consumer financial PDAA use extend to broker-dealer and investment adviser customers: "I am writing to urge you and your colleagues to consider certain key points that have emerged from NASAA's study of mandatory arbitration agreements …. NASAA believes Congress should act now on a swift, bipartisan basis to empower investors and give them a choice when it comes to resolving disputes with securities firms and professionals. Unfortunately, the SEC has failed to use the rulemaking authority that Congress gave it in 2010 to prohibit, condition, or limit the use of mandatory arbitration agreements by broker-dealers and investment advisers" (footnotes omitted).
*(ed: *We can't say we're surprised. **The* Arbitration Fairness for Consumers Act *aims to amend* Dodd-Frank *Title X* - Bureau of Consumer Financial Protection. *Securities matters are covered by Title IX* - Investor Protections and Improvements to the Regulation of Securities. *Of course, the proposed* Investor Choice Act *would address NASAA's concerns. ***An SAA h/t to Jeanne G. Hamrick, NASAA Director of Communications.)*
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DISTRICT COURTS HALT ENFORCEMENT OF $112 MILLION AWARD DUE TO WAR IN UKRAINE. Federal District Judge **Colleen Kollar-Kotelly** on **March 4** granted a joint request to pause discovery in an enforcement proceeding involving a $112 million award in favor of a Russian oil company against Ukraine. The parties' stipulation in *PAO Tatneft v. Ukraine*, No. 1:17-cv-00582-CKK (D.D.C. Mar. 4, 2022) states: "Due to the war in Ukraine, the parties jointly move for a moratorium on discovery and all related proceedings before this Court, consistent with the parties' right to modify ordinary discovery procedures by stipulation, pursuant to the inherent authority of the Court, and in the interest of justice. See Fed. R. Civ. P. 29(b); *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). Tatneft has stipulated that discovery should be suspended until further order of the Court."
(ed: Federal Magistrate Sarah Netburn entered a similar order in a companion case pending in S.D.N.Y.)
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WISCONSIN SUPREME COURT TO ARBITRATOR: YOU SNOOZE, YOU DON'T NECESSARILY LOSE. Every so often, a party asserts that an arbitrator slept through parts of a hearing. In *Loren Imhoff Homebuilder, Inc., v. Taylor*, 2022 WI 12 (Mar. 1, 2022), the losing party sought vacatur on the ground that the snoozing Sole Arbitrator: "so imperfectly executed his power that an award upon the subject was not made." The facts demonstrated that, after the hearings closed but before the Award was rendered, the challenger raised objections to the Arbitrator's continued service. And, the opposition did not contradict the assertion that the Arbitrator nodded off repeatedly. These factors, the Wisconsin Supreme Court holds, warranted that the Court of Appeals determine whether the Award should be vacated based on the sleeping Arbitrator (that Court had held that the challenge had been "forfeited" because it was not raised at an evidentiary hearing). Says the Opinion: "Here, the homeowners raised their objection to the arbitrator's sleeping to him before he issued the arbitral award. Even though it was after the evidentiary hearing was completed, there remained the opportunity for the arbitrator to make corrections for his sleeping during the evidentiary hearing. However, he failed to do so. Therefore, because the homeowners raised their objection before the issuance of the arbitral award, we conclude that the issue was not forfeited and was preserved for review by the circuit court." Should the Award be vacated? "We conclude that, because the homeowners objected to the arbitrator's sleeping before he issued the arbitral award, they did not forfeit their objection. However, we are evenly divided on whether the arbitral award should be vacated pursuant to Wis. Stat. § 788.10. Therefore, we reverse the decision of the court of appeals and remand the matter to the court of appeals for consideration of § 788.10 issues" (*link added by the* Alert.)
(ed: Seems right.)
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QUICK TAKES: CASES AND AWARDS WORTH READING

***Campbell v. Keagle Inc*., No. 21-2256 (7th Cir. Mar. 4, 2022)**: "… mutual assent to arbitration remains, and a federal judge should implement the parties' decision whenever possible. That can be done by naming an arbitrator under [Federal Arbitration Act] §5, and everything else will take its own course.[] Campbell protests that this uses §5 to rewrite an arbitration clause. It would be better to say that §5 permits (indeed requires) a judge to name an arbitrator, even if the only thing that survives a judge's encounter with the clause is the fact that the parties have agreed to arbitrate" (link added by the *Alert*).

***Thorne v. Square, Inc*., No. 1:20-cv-05119-NGG-TAM (E.D.N.Y. Feb. 23, 2022)**: "Defendants Square, Inc. and Sutton Bank offer their users a mobile payment platform called 'Cash App' and 'Cash Card.' Plaintiffs allege that they were Cash App and Cash Card users, that funds were fraudulently withdrawn from their Cash App and Cash Card account by third parties, and that Defendants' dispute resolution process to address their complaints is inadequate and improperly places the burden on the user to prove that a disputed transaction was unauthorized. As a result, Plaintiffs assert causes of action on behalf of themselves and others similarly situated under the Electronic Fund Transfers Act, 15 U.S.C. § 1693 and N.Y. Gen. Bus. Law § 349. Defendants respond that Plaintiffs agreed to individually arbitrate any dispute involving their Cash App and Cash Card

accounts. They now move pursuant to the Federal Arbitration Act 'FAA'), 9 U.S.C. § 1, et seq., to compel arbitration and dismiss the complaint. For the reasons that follow, Defendants' motion is GRANTED…. [T]he court finds that the Cash App and Cash Card sign-up flow presented the terms in a clear and conspicuous manner; Plaintiffs were on inquiry notice of those terms; and Plaintiffs unambiguously manifested assent to them…. The Cash App and Cash Card arbitration provisions that Plaintiffs agreed to with Defendants serve as clear and unmistakable evidence of the parties' intent to delegate the threshold question of arbitrability to an arbitrator. In light of this broad delegation, any question of arbitrability is properly submitted to the arbitrator. See *Henry Schein, Inc.*, 139 S. Ct. at 529."

***Rogers v. Roseville SH, LLC*, No. C089561 (Calif. Ct. App. 3 Mar. 4, 2022)**: "Roseville SH, LLC also contends that the trial court's ruling that Richard did not have the authority to sign the arbitration agreement but had the authority to sign the other 2018 admissions documents singled out the arbitration agreement for special treatment, in violation of the Federal Arbitration Act (9 U.S.C. § 1 et seq.).[]The issue before the trial court on defendants' petition to compel arbitration was whether a valid agreement to arbitrate existed and whether the plaintiffs' causes of action must be arbitrated. The trial court was not asked to and did not decide whether the other admissions documents Richard signed were valid or enforceable. Considering whether Richard had the authority to act as Claude's agent in signing the arbitration agreement was determined by reference to generally applicable principles of contract and agency law…. The trial court did not single out the arbitration agreement for special treatment based on the characteristics of arbitration" (citation omitted).

***Olson v. Wells Fargo Advisors, LLC*, FINRA ID No. 20-03515 (Charlotte, NC, Feb. 28, 2022)**: Among other things, a unanimous Majority-Public Panel explains why it awards $400,000 in punitive damages against the firm for a "vindictive and defamatory" U5 entry: "[We award] a. $200,000.00 on Claimant's fraud claim, based upon intentional omission of highly material information in the recruitment of Claimant which omissions were intended to deceive and did in fact deceive Claimant; and b. $200,000.00 on Claimant's defamation claim, based upon the vindictive and defamatory nature of Respondent's filing of the amended U5 for Claimant. Specifically, under all of the evidence and reasonable inferences therefrom, the Panel finds and concludes that the actions of at least one management level employee of Wells Fargo Clearing Services, LLC, doing business as Respondent Wells Fargo Advisors (Central Registration Depository ('CRD') Number 19616) ('WFA'), resulted in WFA's filing with FINRA on or about November 18, 2020, an amended U5 (Filing ID: 55173325) for Claimant Aaron T. Olson (CRD Number 5207302) which was vindictively motivated. In the process of filing that amended U5, WFA failed to follow filing requirements outlined in FINRA's requirements and guidelines and acted inconsistently with earlier and later more egregious takings of WFA's highly confidential non-protocol customer information by other terminated financial advisors. The Panel concludes that, under all of the evidence and reasonable inferences therefrom, the filing of and the information in the amended U5

was both vindictive and defamatory in nature causing material and continuing harm to Claimant's reputation and career as a financial advisor."

***Schwartz v. Allstate Financial*, FINRA ID No. 20-01683 (Philadelphia, PA, Feb. 2, 2022)**: A Majority-Public Panel explains its reasoning for granting a broker's request for reformation, finding that there was no merit to Respondent broker-dealer's allegation incorporated into the broker's Form U5 record: "In this instance the entry in the Form U5 in question for expungement is '…an allegation has been made.' There is absolutely no error or falsehood that an allegation was made because it is a matter of fact that Allstate made a claim or allegation. However, the Panel found after listening to the witnesses and reviewing the exhibits offered and accepted, that there is no validity to Allstate's allegation. Simply, the allegation, although made, is without merit and any reader of this Panel's Order and/or the U-5 document should just ignore the allegation Allstate made; it is worthless." *Provided courtesy of SAC's ARBchek facility (www.arbchek.com).*
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ARTICLES OF INTEREST: RECENT NEWS FROM THE ADR FRONT

A. Schmitz, Amy and J. Zeleznikow, *Intelligent Legal Tech to Empower Self-Represented Litigants*, Ohio State Legal Studies Research Paper No. 688, 23 COLUMBIA SCIENCE & TECHNOLOGY LAW REVIEW, 142-190 (2022): "Legal technologies, or 'legal tech,' are disrupting the practice of law and providing efficiencies for businesses around the globe. Indeed, legal tech often conjures up notions around billion-dollar businesses and highly sophisticated parties. However, one branch of legal tech that holds particular promise for less sophisticated parties is expanding access to justice (A2J) through the use of online dispute resolution (ODR). This is because ODR uses technology to allow for online claim diagnosis, negotiation, and mediation without the time, money, and stress of traditional court processes. Indeed, courts are now moving traffic ticket, condominium, landlord/tenant, personal injury, debt collection, and even divorce claims online. The hope is that legal tech such as online triage and dispute resolution systems will provide means for obtaining remedies for self-represented litigants (SRLs) and those who cannot otherwise afford traditional litigation. Meanwhile, the Covid-19 pandemic has accelerated the growth of online processes, including court and administrative processes that traditionally occurred in person. Nonetheless, these online processes seem focused on mainly case management and communication, neglecting the need for more imaginative and innovative uses of technology. Accordingly, this Article proposes a six-module process framework for ODR programs and identify gaps in development – where new technologies are needed to advance A2J. Indeed, there is great room for development of Artificial Intelligence (AI) and data analytics to assist SRLs and others in pursuit of remedies, and justice."

***SEC Awards More Than $3.5 Million to Whistleblower*, SEC.gov (Mar. 8, 2022):** "The Securities and Exchange Commission today announced an award of more than $3.5 million to a whistleblower who provided critical information that significantly contributed to the success of two SEC enforcement actions. The whistleblower's information prompted SEC staff to further investigate certain potential securities

violations, saved SEC staff time and resources, and helped advance settlement discussions."

***J.P. Morgan Seeks To Reverse $1.4M Judgment In Defamation Case*, FA Magazine (Mar. 10, 2022)**: "J.P. Morgan Securities is seeking to vacate a $1.4 million award it was ordered last month to pay a former advisor who alleged that the firm's stated reasons for firing him were false and defamatory.[]In a preliminary memorandum filed Monday [March 7] in U.S. District Court for the Western District of Kentucky in Louisville, J.P. Morgan said the Financial Industry Regulatory Authority (Finra) arbitration panel disregarded the law and exceeded its powers when it decided in favor of advisor …."

***Virtual Arbitrations Before FINRA: An Update and a Look Forward*, JDSupra (Mar. 10, 2022)**: "As we approach year three of the COVID-19 pandemic, FINRA Dispute Resolution's arbitration hearings are being heard both in-person and via Zoom. I think FINRA has done a good job utilizing the Zoom platform and generally in its response to COVID. The following is a discussion of the current status of FINRA arbitration hearings and a look forward to potential developments."

***Wells Fargo Must Pay Ex-rep $1.4M Over "Vindictive" U5 Amendment*, Financial Planning (Mar. 10, 2022)**: "After a FINRA arbitration panel ruled that a former Wells Fargo broker was the subject of a "vindictive and defamatory" Form U5 amendment, the company must pay a million-dollar award.[] Financial advisor[]will receive $1.4 million in compensatory and punitive damages and costs from Wells Fargo Advisors under the unanimous Feb. 28 ruling by a Charlotte, North Carolina-based panel. While the U5 amendment is no longer visible on … BrokerCheck, the panel slammed the firm's conduct in making the allegations against him." (*ed: see our coverage in this* Alert).

***FINRA Fines Jump 60% in 2021 Even As Case Numbers Dip*, Wealth Management (Mar. 11, 2022)**: "Fines collected by Wall Street's self-regulatory group, the Financial Industry Regulatory Authority, jumped by 60% in 2021 compared to the prior year, despite the fact that the number of cases dropped slightly compared to 2020, according to a new analysis conducted by partners at the law firm Eversheds Sutherland.[]The amount of reported fines increased to $91 million from $57 million between 2020 and 2021, but the boost comes with the large caveat of the gargantuan $57 million fine levied against trading app Robinhood in June of last year for allegedly misleading customers and letting clients engage in inappropriate options trading."

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DID YOU KNOW?

TWO NICE RESOURCES FOR TRACKING ACTIVITIES IN CONGRESS. The frenetic pace of legislative activity in Congress prompts us to pass along info on two excellent Websites we use regularly, www.congress.gov and www.govtrack.us. Both allow signups for easy bill tracking and have a wealth of other info. Govtrack even has a feature that estimates a bill's chances of enactment.

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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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