SECURITIES ARBITRATION ALERT 2022-22 (6/9/22)

George H. Friedman, Editor-in-Chief

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SQUIBS: IN-DEPTH ANALYSIS

UNANIMOUS SCOTUS DECIDES *SOUTHWEST*: GOES WITH THE FLOW ON "ENGAGED" IN INTERSTATE COMMERCE. ***The Supreme Court has decided* Southwest Airlines Co. v. Saxon, No. 21-309, *ruling unanimously* that that the Federal Arbitration Act ("FAA") *section 1* exemption of "workers engaged in foreign or interstate commerce" includes classes of workers who are part of the flow or stream**

of interstate commerce, and that there is no FAA requirement that these individuals actually cross state lines. We reported in **December 2021** that the Supreme Court had granted *Certiorari* in four cases involving arbitration, among them *Sundance.* Specifically, the Court on **December 10** agreed to review *Saxon v. Southwest Airlines Co*., 993 F.3d 492 (7th Cir. 2021). We covered this case 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 borrow from our past coverage to provide below a thumbnail sketch of the issues involved.

Case Below: The Extent of the FAA Section 1 Exemption

FAA section 1 exempts from the Act: "contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce." As we have reported many times, there is a clear Circuit Court split on whether the FAA section 1 exemption embraces only workers actually moving goods or people in interstate commerce or is to be construed more broadly to cover a class of workers whose jobs are part of the "flow" or "stream" of interstate commerce. In the underlying case, a unanimous Seventh Circuit held: "The act of loading cargo onto a vehicle to be transported interstate is itself commerce, as that term was understood at the time of the Arbitration Act's enactment in 1925. Airplane cargo loaders, as a class, are engaged in that commerce, in much the way that seamen and railroad employees were, and Saxon and the ramp supervisors are members of that class. It therefore follows that they are transportation workers whose contracts of employment are exempted from the Arbitration Act."

Issue Before SCOTUS

The question presented in the **August 23** Petition is: "Whether workers who load or unload goods from vehicles that travel in interstate commerce, but do not physically transport such goods themselves, are interstate 'transportation workers' exempt from the Federal Arbitration Act."

The Oral Argument

The oral argument took place **March 28**. **Justice Coney Barrett** did not participate; while there was no explanation about her absence, we think it was because she authored the Opinion in *Wallace v. Grubhub Holdings, Inc*., 970 F.3d 798 (7th Cir. 2020). The unanimous *Wallace* Court had rejected the drivers' argument that the FAA section 1 carveout covered workers moving goods that had in the past been transported in interstate commerce but who themselves did not regularly move goods or people in interstate commerce. The case was referred to several times during the argument. The oral argument discussion featured repeated references to: drayage; seamen; stevedores; and wharfage. There were also frequent mentions of *Circuit City Stores v. Adams*, 532 U.S. 105 (2001) (FAA section 1 exemption for "workers engaged in interstate commerce" applies only to transportation workers) and *New Prime Inc. v. Oliveira*, 139 S.Ct. 532 (2019) (FAA section 1 covers independent contractors, not just "employees"). The discussion focused more on the narrow question of airline baggage handlers, and seemed to be saving for another day the broader issue of "last mile" or Uber/Lift drivers (spoiler

alert: that turned out to be the case). Based on the questions from the pro-arbitration wing Justices, it seemed to us that a narrow "stream" or "flow" of FAA section 1 engaged in interstate commerce ruling is in the offing (spoiler alert: that turned out to be the case).

Unanimous SCOTUS: We Go with the Flow

The unanimous Opinion in *Southwest* was authored by **Justice Thomas**. That he would be the writer was perhaps foreshadowed. We had said in our coverage: "In the spirit of the upcoming Passover holiday, Justice Thomas asked four questions." In an 11-page Opinion he writes: "Latrice Saxon works for Southwest Airlines as a ramp supervisor. Her work frequently requires her to load and unload baggage, airmail, and commercial cargo on and off airplanes that travel across the country. The question presented is whether, under §1 of the Federal Arbitration Act, she belongs to a 'class of workers engaged in foreign or interstate commerce' that is exempted from the Act's coverage. We hold that she does." The Opinion adds: "Thus, any class of workers directly involved in transporting goods across state or international borders falls within §1's exemption. Airplane cargo loaders are such a class…. Put another way, transportation workers must be actively 'engaged in transportation' of those goods across borders via the channels of foreign or interstate commerce." But crossing state lines is not required.

Narrow Decision

The Court makes clear that its holding is narrow, declining to adopt arguments proffered by each party based on the *ejusdem generis* principle (*ed: we had to look up that one, too. It means: "where general words or phrases follow a number of specific words or phrases, the general words are specifically construed as limited and apply only to persons or things of the same kind or class as those expressly mentioned."*). For example, the Justices reject Saxon's assertion that "class of workers" includes: "all airline employees who carry out the 'customary work of the airline, rather than cargo loaders more specifically." Says the Opinion: "We therefore reject Saxon's argument that §1 exempts virtually all employees of major transportation providers." Likewise, the Court was unpersuaded by Southwest's argument that: "Only workers who physically move goods or people across foreign or international boundaries—pilots, ship crews, locomotive engineers, and the like—are 'engaged in foreign or interstate commerce.'" Also, the Justices eschew taking on broader issues: "We recognize that the answer will not always be so plain when the class of workers carries out duties further removed from the channels of interstate commerce or the actual crossing of borders. Compare, e.g., *Rittmann v. Amazon.com, Inc.*, 971 F. 3d 904, 915 (CA9 2020) (holding that a class of 'last leg' delivery drivers falls within §1's exemption), with, e.g., *Wallace v. Grubhub Holdings, Inc.*, 970 F. 3d 798, 803 (CA7 2020) (holding that food delivery drivers do not). In any event, we need not address those questions to resolve this case."

No "Arbitration Quartet" but Maybe a "No Arbitration Quartet"?

We had in past coverage wondered out loud if SCOTUS was setting up another "Steelworkers Trilogy" scenario, in which 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?'", we mused. We thought we had our answer with the decision in *Morgan v. Sundance Inc.*, No. 21-328, in that there would not be a simultaneous release of four arbitration-centric decisions. But there might be a different meaning. As our readers know, the Supreme Court on **May 23** decided *Morgan*, ruling unanimously that there is no prejudice requirement under the FAA for a court to find a waiver of arbitration rights. Thus far, the decisions in *Sundance* and *Southwest* have limited the reach of the FAA. Left to be decided are *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); and *Viking River Cruises, Inc. v. Moriana*, No. 20-1573 (FAA preemption of California's PAGA). Perhaps we will end up with four "no arbitration" rulings? We don't think so, but time will tell.
*(ed: *For an excellent analysis of this decision, see* Supreme Court Backs Airport Worker, Applies Federal Arbitration Act Sec. 1 Exemption, and Sends Employment Dispute to Court *in the June 6 CPR Blog. **This squib was published June 7 in our blog.)*
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CONSUMER COALITION TO SEC: LOOK INTO RIA USE OF PDAAS CALLING FOR NON-FINRA ARBITRATION. ***A broad coalition of a dozen consumer advocacy groups – including PIABA – has written to the SEC. urging that the Commission investigate the use by RIAs of mandatory predispute arbitration agreements ("PDAA") providing for the use of non-SRO arbitration fora, such as the AAA or JAMS.*** The four-page **May 17** letter was sent to **Chairman Gary Gensler** by: American Federation of Labor and Congress of Industrial Organizations (AFL-CIO); American Federation of State, County and Municipal Employees (AFSCME); Americans for Financial Reform Education Fund; American Association for Justice; Better Markets; Center for American Progress; Consumer Action; Consumer Federation of America; Public Citizen; Public Investors Advocate Bar Association; Revolving Door Project; and 20/20 Vision.

Concerns About RIA PDAAs Calling for Non-FINRA Arbitration
The letter notes that use of PDAAs calling for non-SRO fora is prevalent among RIAs, and carries with it increased costs and fewer investor protections compared with FINRA's arbitration forum. How expensive can these other ADR institutions be? The letter states: "For example, it is not uncommon for a single arbitrator in JAMS (where arbitrators set their own fees in addition to what the forum charges for its administrative fees) to charge $8,000 or more for a single day's work. The arbitrator's fees alone can easily exceed $64,000 for five days of hearings and three days of pre-hearing and post-hearing work."

FINRA Arbitration Forum Offers Great Investor Protections
The letter notes that, for individuals asserting claims against brokers, the FINRA Dispute Resolution forum offers greater investor protections: "FINRA rules mandate that FINRA-registered firms use the forum if requested by the investor, regardless of other forum selection language in an investor account agreement. FINRA rules provide certain protections and prohibitions regarding dispute resolution provisions. For example, FINRA member firms must provide clear, prominent disclosures about the presence and terms of the arbitration clause. FINRA rules also specifically prohibit the use of class action waivers, thereby allowing investors to ban together should they so choose, to vindicate their rights. FINRA firms are also prohibited from specifying a hearing location for any claims, limiting the ability of an arbitrator to award damages, including any waiver of FINRA or SEC rules, and utilizing class action waivers. Earlier this year, FINRA issued a 'Regulatory Notice' to its members reminding them to abide by these standards.[] FINRA member firms also subsidize the bulk of FINRA arbitration forum fees by paying various fees and surcharges."

SEC Should Investigate
The coalition calls on the SEC to: "gather and publish data about RIAs' use of pre-dispute arbitration clauses, and their key terms including:

- What dispute resolution forum has been designated;
- Whether particular procedural rules have been designated;
- Whether a venue is designated, and if so, whether the venue is the same as the investor's residence or principal place of business;
- Whether a class action waiver is included;
- Whether there are limitations on the type of claims that may be asserted or damages that may be awarded;
- Whether there are any fee shifting provisions;
- Whether any claims have been filed against the RIA subject to the clause;
- Whether the firm has been found liable in any arbitration claims in the last five years; and
- Whether the firm has failed to pay any arbitration awards in the last five years."

*(ed: *Interesting that the FINRA arbitration program is suddenly viewed as superior in terms of investor protection. See* Groups Want Probe of RIAs Over Mandatory Arbitration*, in the May 19 Financial Advisor IQ Blog. Of course, with proper safeguards, non-SRO arbitration can work as well. **We will certainly track this one!)*
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SHORT BRIEFS: CONCISE NEWS YOU NEED TO KNOW

IS FUNDING FOR LAW SCHOOL SECURITIES ARBITRATION CLINICS COMING? NEW BILL INTRODUCED IN CONGRESS TO MAKE IT HAPPEN.
Continuing funding for law school investor advocacy clinics has for years been an issue. Start-up funding is typically defrayed by the FINRA Investor Education Foundation or a state. These sources tend to dry up after a few years, and some clinics have closed due to lack of continuing funding. That may no longer be the case, as Rep. **Mike Quigley** (D-IL) on **June 1** introduced in the House H.R. 7923 – the *Investor Justice Act* – which

would: "amend the Securities Exchange Act of 1934 to establish a grant program to fund qualified investor advocacy clinics, and for other purposes." The text provides: "The Commission, acting through the Investor Advocate, may make grants, on a competitive basis, to qualified investor advocacy clinics in accordance with this paragraph." After establishing eligibility criteria (e.g., the clinic: "provides or will provide free representation to investors with claims of less than $100,000 …"), the bill states: "A qualified investor advocacy clinic awarded a grant … may only use grant funds for the development, *expansion, or continuation* of the qualified investor advocacy clinic"(emphasis added). Aggregate yearly grants are capped at $5 million, and individual clinic grants at $150,000. Multi-year grants are permitted for up to three years. The federal share cannot exceed 50%, and there is an accounting requirement.
*(ed: *A collection of several clinic directors and law professors – including you publisher – have written to Rep. Quigley in support of the bill. Email us at Help@SecArbAlert.com for a copy. **Recall that we reported in SAA 2017-27 on FINRA's "Special Notice" soliciting public comments on a new enterprise-wide project examining transparency and engagement. Georgia State University submitted a letter from the law professors responsible for teaching in the 13 "remaining securities arbitration clinics," voicing their concerns about the continued existence of the surviving clinics. They noted that the clinics educate the vulnerable population about investment fraud, but they are threatened financially and urged FINRA to provide support. According to the letter, the clinics "are the last and only option for investors who have lost less than $100,000." ***An* Alert *h/t to Editorial Advisory Board member Prof. Christine Lazaro for alerting us to the new bill and the letter. ****The June 9 SEC Investor Advisory Committee meeting Agenda has this item: "Discussion of a Recommendation on Funding Investor Advocacy Clinics.")*
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SEC NAMES EIGHT NEW INVESTOR ADVISORY COMMITTEE MEMBERS, INCLUDING ONE OF THE *ALERT*'S BOARD MEMBERS. The SEC announced on **June 1** that it had appointed eight new members to its Investor Advisory Committee ("IAC"), including *Alert* Editorial Advisory Board member Prof. **Christine Lazaro**, who is Professor of Law and Clinic Director at St. Johns Law School. We reported in SAA 2022-04 (Feb. 3) that the Commission was: "seeking candidates for appointment to the Investor Advisory Committee ["IAC"] to help protect investors and improve securities regulations.[] The committee was established under the Dodd-Frank Wall Street Reform and Consumer Protection Act to advise the Commission, protect investor interests and promote the integrity of the securities marketplace. Committee members represent the interests of investors, are knowledgeable about investment issues and have reputations for integrity." The other new members are: **James Andrus,** Interim Managing Investment Director, Board Governance & Sustainability, CalPERS; **Gina-Gail S. Fletcher**, Professor of Law, Duke Law School; **Colleen Honigsberg**, Associate Professor of Law, Stanford Law School; **Andrew Park**, Senior Policy Analyst – Hedge Funds and Private Equity, Americans for Financial Reform; Dr. **David L. Rhoiney**, Staff General Surgeon, U.S. Navy; **Paul F. Roye**, retired, former Senior Vice President and Senior Counsel, Fund Business Management Group, Capital Research and Management

Company; and **Brian L. Schorr**, Partner and Chief Legal Officer, Trian Fund Management L.P. The IAC: "advises and consults with the Commission on: Regulatory priorities of the Commission; Issues relating to the regulation of securities products, trading strategies, fee structures, and the effectiveness of disclosure; Initiatives to protect investor interests; and Initiatives to promote investor confidence and the integrity of the securities marketplace."
*(ed: *The new members will serve a 4-year term. **The June 9 SEC Investor Advisory Committee meeting Agenda has this item: "Discussion of a Recommendation on Funding Investor Advocacy Clinics." ***Congrats to Prof. Lazaro, as well as the other new members!)*
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SCOTUS DENIED *CERTIORARI* IN ANOTHER ARBITRATION-RELATED CASE. We reported in SAA 2022-21 (Jun. 2) that the Supreme Court on May 31 denied *Certiora*ri Petitions in two arbitration-related cases we've covered in the past: *Branch Banking and Trust Company v. Sevier County Schools Federal Credit Union*, No. 21-365; and *International Energy Ventures Management, L.L.C., Petitioner v. United Energy Group, Ltd*. No. 21-1028. It turns out we missed one. The Court also denied *Cert.* in *Khalid Abu Al-Waleed Al Hood Al Qarqani v. Saudi Arabian Oil Company*, No. 21-1335. The core arbitration-related issues in the **April 4** Petition were: "1. Whether a foreign sovereign or instrumentality of a state that is a signatory member of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention Treaty") may assert the Foreign Sovereign Immunity Act ("FSIA") as a defense to enforcement of a foreign arbitral award? 2. Whether a foreign sovereign or instrumentality of a state that accepts and accedes the United Nations Conventions on Jurisdictional Immunities amounts to an express waiver of sovereign immunity under the New York Convention Treaty?"
*(ed: *The case is on page 2 of the May 31 Order List. **We had thought the Court might want to take a look at this issue, since it arises with some regularity.)*
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ANOTHER ARBITRATION-RELATED *CERT*. PETITION FILED. A *Certiorari* Petition was filed on **May 17**, seeking review of *Northport Health Services of Arkansas v. Dept. of Health & Human Services*, No. 20-179 (8th Cir. Oct. 1, 2021), *pet. for rehearing den.* (Dec. 14, 2021). The questions presented in *Northport Health Services of Arkansas, LLC v. Department of Health and Human Services*, No. 21-1455, are: "1. Whether the FAA is indifferent to rules that penalize parties for using arbitration agreements but leave enforceable any theoretical agreements parties enter into despite those penalties. 2. Whether HHS may promulgate a rule that concededly singles out arbitration agreements for disfavored treatment even though Congress has nowhere expressly empowered HHS to override the FAA or its federal policy favoring arbitration."
(ed: Seems to us SCOTUS might have an interest in this one.)
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ALABAMA SUPREME COURT: ARBITRABILITY – INCLUDING WAIVER ISSUES – ARE DELEGATED TO THE ARBITRATOR VIA INCORPORATION OF AAA RULES. Incorporation of the AAA's Rules – coupled with an express delegation provision in the arbitration agreement – required that the Trial Court should have referred to arbitration the question of whether arbitration rights had been waived by a party substantially invoking the litigation process, according to a recent court decision. Says the Alabama Supreme Court in *Key v. Warren Averett, LLC*, No. 1210124 (Ala. May 20, 2022): "The parties are correct: by both its plain language and its incorporation of the American Arbitration Association's Commercial Arbitration Rules, Section 16 of the PSA requires that issues of arbitrability -- including whether Key has waived his right to compel arbitration by substantially invoking the litigation process -- must be decided by the arbitrator, not the court.... In short, whether Key's claims against WA must be arbitrated is a threshold issue that should not have been decided by the circuit court; nor is it appropriate for this Court to settle the issue in this appeal. Accordingly, the circuit court's order is reversed, and the cause is remanded for the circuit court to enter an order sending the case to arbitration for a determination of the threshold issue of arbitrability and staying proceedings in the circuit court during the pendency of the arbitration proceedings."
(ed: The PDAA stated: "Any agreement as to whether a particular Dispute is subject to arbitration under this [arbitration clause] shall be decided by arbitration in accordance with the provisions of this Section ....")
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QUICK TAKES: CASES AND AWARDS WORTH READING

***Martin v. Pierce County*, No. 21-35251 (9th Cir. May 27, 2022)**: "This case involves a single issue: does a Washington state law requiring a claimant to file a declaration declining to submit the case to arbitration when filing a medical malpractice suit apply in federal court? We conclude that it does not. Washington's declaration requirement conflicts with the Federal Rules of Civil Procedure. Thus, under *Hanna v. Plumer*, 380 U.S. 460, 470–74 (1965), the state rule does not apply in federal court. Because the district court mistakenly applied the state rule in Martin's case, we **REVERSE** and **REMAND**."

***California v. Maplebear Inc*., No. D079209 (Calif. Ct. App. 4 May 18, 2022)**: "Instacart, of course, readily concedes the City of San Diego is not a signatory to its arbitration agreements with Shoppers. Instacart argues, however, that the City is bound by the agreements because it is, in effect, representing, or seeking to validate the individual employment law rights of, the Shoppers…. Contrary to Instacart's argument, the City is not attempting to circumvent or evade an applicable arbitration agreement between Instacart and its Shoppers. Rather, it is exercising its authority to enforce state law on behalf of the People of California. Instacart's claim that the trial court created a new categorical exemption to mandatory arbitration for private claims brought by a public prosecutor is a distortion of the court's order. The fundamental premise of the FAA is to ensure that agreements to arbitrate stand on equal footing to all contracts.

However, the policy favoring arbitration does not apply when the parties have not agreed to arbitrate."

***Matter of PricewaterhouseCoopers, LLP v Cahill*, 2022 NY Slip Op 03060 (App. Div., 1st Dept. May 5, 2022)**: "A party seeking to enforce a valid agreement to arbitrate in New York under CPLR 7503(a) is entitled to injunctive relief against further prosecution of proceedings in tribunals of other jurisdictions concerning matters within the scope of the arbitration agreement …. The plain language of the parties' arbitration provision called for arbitration in New York in accordance with AAA Commercial Rules or 'such other alternative dispute resolution ("ADR") service as the parties may agree.' As there has been no agreement between the parties to adopt other rules in this dispute, the AAA Commercial Rules in New York applied" (citations omitted).

***Fayezishk v. Simonetti and New York Life Insurance Company*, FINRA ID No. 19-00675 (New York, NY, Apr. 26, 2022)**: A broker prevails on his age and racial discrimination case and is awarded damages from Respondent broker-dealer and registered representative totaling $500,000. This matter was decided by an All-Public Panel pursuant to Rule 13802 of the *Industry Code. Provided courtesy of SAC's ARBchek facility (www.arbchek.com).*

***Bluebay Multistrat v. Precision Securities*, FINRA ID No. 20-03262 (Boca Raton, FL, Apr. 29, 2022**): A Majority Public Panel grants one named Respondent broker-dealer's Prehearing Motion to Dismiss without prejudice pursuant to Rules 12511 and 12212, as a sanction against the customer for discovery violations. The Panel also grants the other named Respondent broker-dealer's Prehearing Motion to Dismiss with prejudice pursuant to Rule 12504(a)(6)(B), as this Respondent broker-dealer was not involved with the security, account, or conduct at issue. *Provided courtesy of SAC's ARBchek facility (www.arbchek.com).*
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ARTICLES OF INTEREST: RECENT NEWS FROM THE ADR FRONT

Y. Levashova and M. Azeredo da Silveira, *Investment Claims Against Russia in the Economic Sanctions Era*, Kluwer Arbitration Blog (May 31, 2022): "The commencement of the war in Ukraine triggered the imposition of unprecedented sanctions affecting almost all sectors of the Russian economy. Many foreign companies operating in Russia ceased or temporarily put on hold their business activities. In response, the Russian government adopted several retaliatory measures.[] This post offers an overview of these measures and their legal implications for foreign investors; investigates avenues available to foreign investors to assert their rights through investor-state dispute settlement (ISDS) proceedings; and discusses challenges that foreign investors may face at the enforcement stage as a result of economic sanctions currently in place."

***Some Highlights of the Amended ICSID Arbitration Rules*, Kluwer Arbitration Blog (May 26, 2022)**: "On 21 March 2022, the Administrative Council of the International

Centre for Settlement of Investment Disputes, or ICSID, approved extensive amendments of ICSID's Regulations and Rules. The Regulations and Rules prominently include the rules of procedure for arbitration proceedings initiated under the constituent treaty of ICSID, the 1965 Convention on the Settlement of Investment Disputes Between States and Nationals of Other States. These rules of procedure are commonly called the ICSID Arbitration Rules. They have governed most of the many so-called ISDS cases—investor-State arbitrations initiated pursuant to international investment agreements, or IIAs—that have been brought during the last three decades.[] The recently approved amendments have thoroughly overhauled the ICSID Arbitration Rules. This post examines some highlights of the amended Arbitration Rules."

***Morgan Stanley Must Pay Client $160K Over Broker's Trading*, ThinkAdvisor (May 27, 2022)**: "Morgan Stanley must pay $160,000 in compensatory damages to a client who alleged the firm was guilty of negligence and failing to supervise a former broker over the trading of unspecified securities in the client's account, according to an arbitration award posted on FINRA's website on Thursday.[] A three-person panel of public arbitrators in Phoenix, Arizona, agreed that the wirehouse was liable for those actions but not for other allegations made by the client" (link to award in original).

***Finra Arbitrators Award Mexican Farmer Damages Against Morgan Stanley, Ex-broker*, InvestmentNews (May 31, 2022)**: "Finra arbitrators ordered Morgan Stanley and a former financial adviser at the firm to pay $160,000 each in damages to a Mexican farmer for allegedly making inappropriate recommendations about risky investments…. [A] farmer in Hermosillo, Mexico, sold his operation in 2015. The next year, he invested the proceeds in junk bonds that didn't fit his risk profile that were pushed by his long-time broker, according to [his] attorney, Burt Newsome.[] [The investor] worked with Morgan Stanley registered representative Francisco Javier Valenzuela in the firm's Tucson, Arizona, office. [Investor], who is now 70, lost about $368,000 on the investments, Newsome said…. A three-person Financial Industry Regulatory Authority Inc. arbitration panel found Valenzuela liable for misrepresentation, manipulation and fraud, according to a May 26 arbitration award. The arbitrators found Morgan Stanley liable for negligence and failure to supervise. Valenzuela and Morgan Stanley were each ordered to pay [investor] $160,000 in compensatory damages."

***EEOC's Pivot to Virtual Mediation Highly Successful*, New Studies Find, www.EEOC.gov (Jun. 1, 2022)**: "The U.S. Equal Employment Opportunity Commission (EEOC) today announced that two new independent studies report overwhelming satisfaction with the EEOC's mediation program as well as a successful transition from in-person to online mediation as a result of the COVID-19 pandemic…. According to the first study, more than nine out of 10 participants (98% of employers and 92% of charging parties) indicated that they would be willing to participate in the EEOC's mediation program again if they were a party to an EEOC charge. A majority of participants (nearly 70%) reported that they would prefer online mediation to in-person mediation in the future. Participants cited flexibility, convenience, cost savings, and a "safe space" as reasons for preferring online mediation.[] The second study, reported that

EEOC mediators found that online mediation is easier to use and more flexible than in-person mediation; achieved similar or better quality and value of settlements for both parties; and increased access to justice for charging parties."

***J.P. Morgan Pursued a Multimillion Dollar Arbitration Against 3 Advisors. It Lost*, Barron's (Jun. 1, 2022)**: "An arbitration panel denied J.P. Morgan Securities' claims that three of its former advisors violated nonsolicitation agreements they had signed while employees of the bank.[] The JPMorgan brokerage unit had sought more than three million dollars in collective damages against [the] advisors…."
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DID YOU KNOW?

SUMMER SEASON IS UNOFFICIALLY HERE: JULY 4 CAN'T BE FAR OFF. As we approach Independence Day, we were inspired to compose a "Did You Know?" on the often surprising relationships between our nation's founders and arbitration. For example, while **John Jay** didn't sign the Declaration of Independence, he was our first Secretary of State and first Chief Justice of the Supreme Court. He was also a big fan of arbitration. A biography states: "He proposed that America and Britain establish a joint commission to arbitrate disputes that remained after the [Revolutionary] war - a proposal which, though not adopted, influenced the government's use of arbitration and diplomacy in settling later international problems." However, this eventually resulted in the Jay's Treaty of 1794, which indeed called for arbitration. (*ed: It's officially known as the "Treaty of Amity Commerce and Navigation, between His Britannic Majesty and The United States of America." Jay's Treaty is the better moniker!*)
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Send any messages or inquiries to: George@SecArbAlert.com

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