SECURITIES ARBITRATION ALERT 2022-23 (6/16/22)

George H. Friedman, Editor-in-Chief

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- ***Price v. HSBC Securities, FINRA ID No. 20-03729 (New York, NY, Apr. 27, 2022)***
- ***Sampanis Trust v. Interactive Brokers*, FINRA ID No. 21-02935 (New York, NY, Apr. 28, 2022)**

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- ***FINRA Orders Merrill Lynch, Pierce, Fenner & Smith, Inc. to Pay $15.2 Million in Restitution*, www.finra.org (Jun. 2, 2022)**
- ***Biden Taps Lawyer Known for Arbitration Cases for Top EEOC Post*, Reuters (Jun. 3, 2022)**
- ***U.S. Supreme Court Ruling Denies Arbitration, Ramps Up Litigation,* Ballard Spahr Blog (Jun. 7, 2022)**
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- ***US Supreme Court Narrows Application of Foreign Discovery Statute*, JURIST (Jun. 13, 2022)**
- ***Supreme Court Limits California Labor Law that Allows Private Suits Against Employers,* LA Times (Jun. 15, 2022)**

DID YOU KNOW?

- **Online Sources Cited in Opinions Are Available at SCOTUS**

SCOTUS ISSUES *TWO* ARBITRATION-RELATED DECISIONS. *The Supreme Court issued two arbitration related decisions this week, one unanimous and the other not nearly as clear. In ZF Automotive US, Inc. v. Luxshare, Ltd., No. 21-401, the Court on June 13 ruled unanimously that 28 U.S.C. § 1782(a), which permits litigants to use American courts to obtain discovery in aid of "a foreign or international tribunal,"*

applies only to governmental fora and does not extend to private commercial arbitral tribunals. In Viking River Cruises, Inc. v. Moriana*, No. 20-1573, the Court on June 15 held 8-1 that California's Private Attorney General Act ("PAGA") was in part preempted by the Federal Arbitration Act. Why do we say this one is not as clear? The decision starts out: "ALITO, J., delivered the opinion of the Court, in which BREYER, SOTOMAYOR, KAGAN, and GORSUCH, JJ., joined, in which ROBERTS, C. J., joined as to Parts I and III, and in which KAVANAUGH and BARRETT, JJ., joined as to Part III. SOTOMAYOR, J., filed a concurring opinion. BARRETT, J., filed an opinion concurring in part and concurring in the judgment, in which KAVANAUGH, J., joined, and in which ROBERTS, C. J, joined as to all but the footnote. THOMAS, J., filed a dissenting opinion." See what we mean? This one requires careful analysis. We will cover* ZF Automotive *and* Viking River *in detail in the next* Alert. *In the meantime, we've linked in "Articles of Interest" to coverage of both cases decided this week. We especially recommend* Supreme Court Limits California's PAGA Law on Employment Claims, Preempting It in Part under the Federal Arbitration Act*, appearing in the June 15 CPR Blog.*

Recall that the Supreme Court on May 23 decided Morgan v. Sundance Inc.*, No. 21-328, ruling unanimously that there is no prejudice requirement under the FAA for a court to find a waiver of arbitration rights. Then the Court on June 6 decided* Southwest Airlines Co. v. Saxon*, No. 21-309, ruling unanimously that that the 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. To say the least, this "Arbitration Quartet" of SCOTUS decisions has surprising aspects, such as the coalition that linked up in* Viking *River, and the near unanimity in all four decisions. More to come next week.*

In deference to the Juneteenth federal holiday celebrated on Monday, we will publish on Friday next week.

SQUIBS: IN-DEPTH ANALYSIS

UPDATE: MORE ON NASAA APPROVAL OF FINAL MODEL RULE ON UNPAID AWARDS. ***We reported briefly in SAA 2022-20 (May 26) that the North American Securities Administrators Association ("NASAA") on May 20 adopted its* Unpaid Customer Arbitration Awards Model Rule*. We decided the topic was worthy of expanded coverage.*** As described in a **May 20** Press Release: "The model rule would make it a dishonest or unethical practice for registrants to fail to pay any investment-related, customer-initiated arbitration award or judgment, fine, civil penalty, order of restitution, order of disgorgement, or similar monetary payment obligation imposed by any state securities regulator, the SEC, or FINRA. Registrants may also avoid licensing actions under the model rule by entering into and staying current with alternative payment arrangements related to obligations covered by the model rule. Ultimately, the model rule would provide an additional basis for enforcement actions related to unpaid

awards and could help encourage registrants to satisfy their monetary obligations to customers, clients, and regulators."

October 2021 Draft

As reported in SAA 2021-37 (Oct. 7), NASAA last Fall released draft model rules for public comment (see the **October 5, 2021** Press Release, *NASAA Seeks Public Comment on Proposed Model Rules to Combat Unpaid Arbitration Awards and Fines*). These are the headlines as described in the Release (*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.

The 11-page proposal had extensive background information as well as proposed model language for regulatory changes.

The Raison D'être in a Nutshell

The approved Model Rule is intended: "to provide member jurisdictions with an additional tool to address unpaid Financial Industry Regulatory Authority ('FINRA') arbitration awards by broker-dealers, agents, investment advisers, and investment adviser representatives. Ultimately, the Model Rules will serve as bases for enforcement actions related to unpaid awards and allow member jurisdictions to prevent the registration of firms and individuals, whether as broker-dealers, agents, investment advisers, or investment adviser representatives, if the firm or individual has outstanding FINRA arbitration awards or other regulatory obligations."

Dovetails with PIABA Proposal

The NASAA Model Rule dovetails with efforts by PIABA to address unpaid awards. As also reported in # 37, PIABA in **September 2021** issued its third report in over five years contending the problem of unpaid FINRA awards is getting worse, not better. The Report, *FINRA Arbitration's Persistent Unpaid Award Problem*, was announced in a Press Release, *PIABA - 30% of 2020 FINRA Arbitration Awards Went Unpaid*, and via a 24-minute Zoom event. The headlines? "The percentage of unpaid customer awards in FINRA arbitration cases increased to nearly 30% and the percentage of unpaid award dollars rose to 24%, according to the Public Investors Advocate Bar Association's (PIABA) new report on unpaid FINRA arbitration awards. PIABA's first report on the topic was published in 2016, and the new update illustrates how the lack of improvement on this critical issue for American investors reflects FINRA's refusal to solve the problem…. In short, the problem is not improving since PIABA's initial 2016 Report." The PIABA Report also contained concrete suggestions for statutory and regulatory changes, including creation of an unpaid awards fund.

(ed: For more details, we again recommend NASAA Approves Model Rule Targeting Unpaid Arbitration Awards*, Wealth Management (May 23, 2022).)*
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LATEST *NEUTRAL CORNER* FROM FINRA DISPUTE RESOLUTION SERVICES HITS THE ELECTRONIC NEWSSTAND. ***FINRA Dispute Resolution Services ("DRS") has posted the latest edition of*** **The Neutral Corner** ***newsletter for arbitrators and mediators ("TNC"), on the Authority's Website.*** We present essentially *verbatim* the table of contents of Volume 2022-1:

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Pilot Programs: Prehearing Conferences by Zoom
(by Shannon Bond, Associate Director, FINRA Case Administration)

FINRA Dispute Resolution Services and FINRA News

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- COVID-19 Impact to Arbitration and Mediation Hearings
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- Virtual Arbitration Hearing Statistics
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- Mediator Training Opportunities
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Questions and Answers
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Education and Training
- Fall 2021 Neutral Workshop: Getting Back to In-Person Hearings and More

Quarterly Arbitrator Disclosure Reminder

Directory of FINRA DRS Offices
*(ed: *We covered in SAA 2022-21 (Jun. 2) the pilot program for pre-hearing conferences by Zoom and the related survey, which are the subject of the feature article. We also covered several of the other news items in recent issues.* **TNC *is a wonderful resource not only for arbitrators and mediators, but parties as well. Past issues are here.)*
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WE CALLED THIS ONE: NINTH CIRCUIT TO REHEAR *EN BANC* DIVIDED DECISION COMPELLING ARBITRATION OF TRIBAL PAYDAY LOAN DISPUTE. ***Some outcomes are easier to predict than others. Case in point:* Brice v. Plain Green, LLC*, 13 F.4th 823 (9th Cir. Sep. 16, 2021), which the Ninth Circuit on June 6 agreed to rehear* **en banc**. We covered this one in SAA 2021-36 (Sep. 23). In our experience, most motions to compel arbitration of disputes arising out of tribal lender payday loan agreements fail, typically because of unconscionability. Thus, it was a surprise last **September** to see the normally consumer arbitration-resistant Ninth Circuit order arbitration in *Brice*, albeit with a strong dissent. The loan agreement had a predispute arbitration agreement ("PDAA") with a delegation clause, called for application of tribal law, and carried a 400%+ interest rate.

Majority Compels Arbitration
Based primarily on unconscionability, the District Court declined to compel arbitration of the plaintiffs' RICO claims. On appeal, a split Ninth Circuit reversed. The humorous majority Opinion stated: "We must decide whether a provision allowing an arbitrator, instead of a court, to decide whether an arbitration agreement that is governed by something other than federal law is unenforceable because it requires the parties to prospectively waive their federal rights. Already confused? You're not alone. Grappling with the Supreme Court's decision *in Rent-A-Center, West, Inc. v. Jackson*, 561 U.S. 63 (2010), we work our way through this brain twister and conclude that an agreement delegating to an arbitrator the gateway question of whether the underlying arbitration agreement is enforceable must be upheld unless *that specific delegation provision* is itself unenforceable. Because we conclude that the delegation provision in the contract at issue is not itself an invalid prospective waiver (while not resolving whether the arbitration agreement as a whole is a prospective waiver), we reverse the district court and remand with instructions to compel the parties to proceed with arbitration. In reaching our

decision, we diverge from the decisions reached by several of our sister circuits" (emphasis in original)."

Strong Dissent
In a vociferous, lengthy dissent, Judge **William A. Fletcher** asserted: "My colleagues misunderstand the effect of the choice-of-law provisions in the agreements. Under the choice-of-law provisions, the arbitrator may apply only tribal law and a small and irrelevant subset of federal law. The prospective waivers of most federal law and all state law prevent the arbitrator from applying the law necessary to determine whether the delegation provisions and the arbitration agreements are valid. This renders both the delegation provisions and the arbitration agreements invalid."

Easy One to Call
Our editorial comment in # 2021-36 was: "For those keeping score at home, the majority Panel members -- **Danielle J. Forrest** and **Lawrence VanDyke** -- are **Trump** appointees, and dissenter Fletcher is a **Clinton** appointee…. We think this one is destined for a Petition for *en banc* review." The request for review came to pass **November 2021**, and the Court on **June 6** vacated the three-judge panel's decision and ordered a rehearing *en banc.*
*(ed: *This one was easy to predict. We're betting that the full Circuit will not compel arbitration. **Oral argument will take place the week of September 6 in Pasadena. ***Email us at Help@SecArbAlert.com for copies of the Petition or Orders.)*
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SHORT BRIEFS: CONCISE NEWS YOU NEED TO KNOW

FINRA APPOINTS NEW SENIOR VP OF EXAMINATIONS. FINRA announced via a **June 2** Press Release that it has appointed **Michael Solomon** as Senior Vice President of Examinations. He started on **June 6** and reports to **Greg Ruppert**, Executive Vice President and Head of Member Supervision. The Release states that Mr. Solomon: "will be responsible for overseeing the strategic direction and execution of FINRA's national Examination Program, assuming responsibilities previously held by **Thomas Nelli**, who retired from FINRA in March 2022." Mr. Solomon: "was most recently the General Counsel and Chief Compliance Officer for Rockefeller Financial LLC. Prior to joining Rockefeller, Mr. Solomon spent seven years as the Senior Vice President and Northeast Regional Director for FINRA, where he had responsibility for the Examination and Surveillance Programs in the region and oversaw a staff of 350 people in FINRA's five northeast offices. Prior to his tenure at FINRA, he had senior legal and compliance roles at several global financial services firms, including Jefferies, UBS and Merrill Lynch. Michael was also a trial counsel in the NYSE Enforcement Division and began his legal career as an assistant district attorney in Manhattan where he investigated and prosecuted violent street crime, narcotics trafficking, fraud, and organized crime."
(ed: We wish Mr. Solomon the best of luck in his new capacity.)
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PRESIDENT NOMINATES GILBRIDE FOR EEOC GENERAL COUNSEL. SUCCESSFULLY ARGUED *MORGAN V. SUNDANCE*. President Biden on **June 3** nominated Karla Gilbride to be the next General Counsel of the Equal Employment Opportunity Commission. As to arbitration, the announcement says: "Gilbride currently works at Public Justice, litigating cases and appeals on behalf of low-wage workers and others who are disproportionately harmed by procedural barriers. Her cases at Public Justice have focused on mandatory, pre-dispute arbitration provisions that prevent workers and consumers from using the public courts when they experience unfair pay, on-the-job harassment or other violations of law. She has successfully argued appeals in U.S. Courts of Appeals on the topic of arbitration, and recently won a unanimous Supreme Court decision involving arbitration." The SCOTUS case is of course *Morgan v. Sundance Inc.*, No. 21-328. As our readers know, the Supreme Court on **May 23** decided *Morgan*, ruling unanimously that there is no prejudice requirement under the Federal Arbitration Act for a court to find a waiver of arbitration rights. Public Justice issued a June 3 Statement that said in part Ms. Gilbride: "has a proven track record of advocating for commonsense legal protections for workers who have been cheated or discriminated against, and those whose civil rights and civil liberties have been wrongly violated." *(ed: Assuming Ms. Gilbride is confirmed by the Senate, we would expect her to continue to oppose mandatory employment arbitration.)*
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FORMER AAA PRESIDENT BILL STATE PASSES. We were profoundly saddened to hear of the death earlier last weekend of **William K. ("Bill") Slate II**, longtime President of the American Arbitration Association. Mr. Slate served as the AAA's leader from 1994 until his retirement in 2013, succeeding **Robert Coulson**. He was quite active in his retirement, most recently co-founding and serving as Chairman of the Board of Dispute Resolution Data, LLC. His bio states: "Bill led AAA/ICDR for 19 years and he had served as both an arbitrator and a mediator. For 12 years he was a member of the UNCITRAL Arbitration Working Group. He founded CAMCA (the Commercial Arbitration and Mediation Center for the Americas) and had been a Visiting Senior Fellow in Negotiation, Mediation and Arbitration at Duke University Law School, and a visiting professor at Seton Hall University Law School, University of Richmond Law School, Virginia Union University, and Virginia Commonwealth University…. At an earlier time he was an executive in both federal and state courts in the United States, and was the Director of a seminal study of Federal Courts in America mandated by the US Congress and reporting to the President, the Chief Justice of the Supreme Court, and the Speaker of the House of Representatives of the US Congress. He was the former Chairman of the Board of the American Management Association, and of Girard College." Mr. Slate held a Juris Doctor Degree from the University of Richmond Law School, and an MBA Degree from the Wharton School of the University of Pennsylvania. Upon his second retirement, this time from Dispute Resolution Data, the firm's Website reported that Mr. Slate was once asked what he believed would be his legacy to the field of arbitration. His prescient response was: "'Data' was, and has remained his answer. Bill believes that the study and application of aggregated data can transform the field of alternative dispute resolution. More than any other of the work he has undertaken, Bill

sees this as his most important legacy in the field." Current AAA President & CEO **India Johnson** said: "We have such warm and wonderful memories of working with Bill -- his humor, his energy, his compassion and passion. Everyone had to 'step it up' when Bill was around or we looked as if we might be sleepwalking." A memorial service is being planned.
(ed: Your publisher worked with Mr. Slate for several years while he was at the AAA. He was a true southern gentleman and scholar. Our thoughts are with the family.)
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BIPARTISAN SENATE BILL WOULD MORE CLEARLY REGULATE CRYPTOCURRENCIES. CFTC AND SEC TO STUDY AND REPORT ON SELF-REGULATION. A bipartisan bill introduced in the Senate on **June 7** would bring greater clarity to cryptocurrency trading regulation. Introduced by Senators **Kirsten Gillibrand** (D-NY) and **Cynthia Lummis** (R-WY), the *Responsible Financial Innovation Act* – S. 4356 – is "a bill to provide for responsible financial innovation and to bring digital assets within the regulatory perimeter." It would define cryptocurrencies as commodities, rather than securities. Section 807 addresses self-regulation, and requires that, within six months of enactment, the Commodity Futures Trading Commission ("CFTC") and SEC – in consultation with interested intermediaries – study and issue a report to Congress on self-regulation, including dispute resolution and arbitration. The bill was announced in a Press Release, which says: "SROs can play a complementary role, working with regulators to allow them to be more nimble and efficient, while maintaining strong supervision. However, the composition and scope of this kind of organization must be structured carefully in order to achieve the desired results."
*(ed: *The full text of the bill is available here, in addition to a section-by-section overview. **We wonder if the report will endorse arbitration and if so whether via FINRA, the NFA, and/or non-SRO fora?)*
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LONG-RUNNING STERLING JEWELERS SEXUAL HARASSMENT CASE REPORTEDLY SETTLED. As we've said many times before, this case has been around forever – more than a decade – so we eschew again going through its long history. Interested readers should peruse our analysis in SAA 2019-45 (Nov. 27). In *Jock v. Sterling Jewelers Inc.*, 942 F.3d 617 (2d Cir. 2019), the Second Circuit held unanimously that the Arbitrator acted within the scope of her authority under the arbitration agreements and the AAA's Rules to bind absent, non-consenting class members, even though the identical arbitration agreements didn't expressly so empower the Arbitrator. The Arbitrator had applied the AAA's *Supplementary Rules for Class Arbitrations*, which provide in Rule 1(a) that they: "shall apply to any dispute arising out of an agreement that provides for arbitration pursuant to *any* of the rules of the American Arbitration Association ('AAA') where a party submits a dispute to arbitration on behalf of or against a class or purported class, and shall supplement any other applicable AAA rules" (emphasis added). Moreover, Rule 4 states that: "the arbitrator shall determine whether one or more members of a class may act in the arbitration as representative parties on behalf of all members of the class described…[if] each class member has entered into an

agreement containing an arbitration clause which is substantially similar to that signed by the class representative(s) and each of the other class members." We later reported in SAA 2020-24 (Jun. 24) that Sterling Jewelers on **June 12** Petitioned SCOTUS for *Certiorari.* The question presented was: "whether an arbitrator may compel class arbitration -- binding the parties and absent class members -- without finding actual consent, and instead based only on a finding that the agreement does not unambiguously prohibit class arbitration and should be construed against the drafter." Our most recent coverage was in SAA 2020-37 (Oct. 7), where we reported that the Court without comment denied *Certiorari* in **October 2020** (see page 9 of Order List; the SCOTUS case is *Sterling Jewelers, Inc. v. Jock,* No. 19-1382). Our ed note in # 2020-37 was: "Wonder if the arbitration will finally go forward?" The arbitration indeed went forward at the AAA, and media reports are that this epic case has settled ahead of hearings next **September** (see, for example, *Jewelry Giant Settles Gender-discrimination Lawsuit for $175 Million,* Washington Post (June 9)).)
(ed: This case is not an exemplar of fast conflict resolution, but better late than never.)
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QUICK TAKES: CASES AND AWARDS WORTH READING

***Barrows v. Brinker Restaurant Corporation*, No. 21-606-cv (2d Cir. May 31, 2022)**: "In specific and exacting terms, and under penalty of perjury, she categorically denied ever completing any electronic paperwork for either PDI or for Brinker; using any of her employer's computers at her workplace; receiving or signing any documents showing receipt of Brinker's arbitration policies; using the Taleo system; hearing about or having any knowledge of the Taleo system; or, while employed by Brinker, owning, or even living in a home with, any computer whatsoever. This detailed accounting, submitted under oath, is surely 'some evidence' that she did not agree to arbitration…. Accordingly, and drawing all inferences in Barrows's favor (as, at this stage, we must), there is a triable issue of fact as to whether she ever received, or become aware of, Brinker's arbitration agreements, regardless of whether she ultimately signed them."

***Hinkle v. Phillips 66 Company*, No. 21-50905 (5th Cir. May 27, 2022)**: "Cypress argues that it is an aggrieved party under Section 4 of the FAA and therefore that the district court should have ordered arbitration. Cypress claims it is an aggrieved party because Hinkle 'br[ought] his employment-related disputes in court on a collective basis and now Cypress may be found jointly liable or be required to indemnify Phillips 66. But that is not what makes Cypress an aggrieved party.... As we have explained, Hinkle only promised to arbitrate claims brought against Cypress. Claiming that Hinkle did not arbitrate its claims with Phillips 66 is therefore not an allegation that he violated his agreement with Cypress…. Cypress is not an aggrieved party under Section 4 of the FAA and cannot compel arbitration" (footnote omitted; brackets in original).

***Corporacion AIC, SA v. Hidroelectrica Santa Rita S.A.*, No. 20-13039 (11th Cir. May 27, 2022)**: "This case involves the interplay between the Federal Arbitration Act ('FAA') and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards ('New York Convention'). We believe that our Circuit is out of line with Supreme Court

precedent, but we are powerless to change the course as a three-judge panel. As a result, today, we must affirm the District Court's determination that it could not vacate an arbitral award under the New York Convention on the exceeding powers ground. In so doing, we hope that this case will be taken *en banc* where this Court may overturn *Inversiones y Procesadora Tropical INPROTSA, S.A. v. Del Monte International GmbH*, 921 F.3d 1291 (11th Cir. 2019), and *Industrial Risk Insurers v. M.A.N. Gutehoffnungshutte GmbH*, 141 F.3d 1434 (11th Cir. 1998), and hold that under a correct understanding of Supreme Court precedent the exceeding powers ground is a valid basis for vacatur under both the New York Convention and the FAA. Until an en banc panel of our Court takes up this issue, our hands are tied" (links added by the *Alert*.)

***Price v. HSBC Securities*, FINRA ID No. 20-03729 (New York, NY, Apr. 27, 2022)**: A Panel dismisses without prejudice a broker's request for reformation of his Form U5 record, as a sanction for his failure to comply with its Order regarding the rescheduling of the hearing in this matter. *Provided courtesy of SAC's ARBchek facility (www.arbchek.com).*

***Sampanis Trust v. Interactive Brokers*, FINRA ID No. 21-02935 (New York, NY, Apr. 28, 2022)**: In this small claims arbitration, a customer trust alleging fraud with respect to the trading and purchase of BUR 18JUN2021 10 C options loses its case against Respondent broker-dealer. *Provided courtesy of SAC's ARBchek facility (www.arbchek.com).*

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ARTICLES OF INTEREST: RECENT NEWS FROM THE ADR FRONT

Mohnaty, G, *Visualizing the Role of International Rule of Law in 'Not for Profit Funding' in Investment Arbitration*, in: Sooksripaisarnkit, P., Prasad, D. (eds) BLURRY BOUNDARIES OF PUBLIC AND PRIVATE INTERNATIONAL LAW (Aug. 2021): "Contemporary developments in international arbitration have discussed the necessity of ensuring adherence to the rule of law in various facets of arbitration. International institutions deliberating on dispute resolution mechanisms and strategies have been evincing interest in discussing claim funding in international arbitration…. Although shrouded in mystery and less prominent compared to the traditional TPF, the author believes that the prevalence of not-for-profit funding is only set to increase in investment arbitration since a financial return on investment would not in usual circumstances be required to be given to that funder party. Through this chapter, the author will also attempt to define the contours of the rule of law in the context of TPF in arbitration and also elaborate upon the role of the rule of law in ensuring procedural fairness and natural justice in arbitration proceedings."

***FINRA Orders Merrill Lynch, Pierce, Fenner & Smith, Inc. to Pay $15.2 Million in Restitution*, www.finra.org (Jun. 2, 2022)**: "FINRA announced today that it has ordered Merrill Lynch, Pierce, Fenner & Smith, Inc. to pay more than $15.2 million in restitution and interest to thousands of customers who purchased Class C mutual fund shares when Class A shares were available at substantially lower costs…. Merrill Lynch maintained

an automated system designed to restrict a customer's purchase of Class C shares when lower cost Class A shares were available. The system, however, often failed to correctly identify and implement applicable purchase limits on Class C shares. As a result, thousands of Merrill Lynch customers purchased Class C shares, incurring fees and charges, when Class A shares were available at a substantially lower cost."

***Biden Taps Lawyer Known for Arbitration Cases for Top EEOC Post*, Reuters (Jun. 3, 2022)**: "President Joe Biden will nominate Karla Gilbride, a high-profile civil rights lawyer whose work has focused on combating companies' use of mandatory arbitration to handle workers' and consumers' legal claims, to be the top lawyer at the U.S. Equal Employment Opportunity Commission, the White House said on Friday."

***U.S. Supreme Court Ruling Denies Arbitration, Ramps Up Litigation*, Ballard Spahr Blog (Jun. 7, 2022)**: "For the second time in two weeks, the U.S. Supreme Court has ruled against a company seeking to compel individual arbitration of Fair Labor Standards Act (FLSA) collective action claims. In *Southwest Airlines Co. v. Saxon*, the Court held that the plaintiff's claims were exempt from arbitration under Section 1 of the Federal Arbitration Act (FAA), which exempts from the statute's ambit 'contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce.' The decision resolves a split between the Seventh and Fifth Circuits on this technical statutory issue. As in its May 27 ruling in *Morgan v. Sundance*, the Court based its conclusion on the plain text of the FAA, rather than its pro-arbitration purposes."

***Court Appears Set to Overturn Controversial Ruling That Wells Gamed Finra Arbitration*, AdvisorHub (Jun. 10, 2022)**: "A three-judge panel of the Court of Appeals of the State of Georgia showed skepticism about a trial court's controversial ruling in January that vacated a 2019 arbitration award allowing Wells Fargo to successfully beat back $1.7 million in damage claims over investment losses…. At a hearing Thursday, held after Wells appealed Edwards' ruling, the appeals panel reviewing it seemed unprepared to delve into Finra policies as well as broader questions about the fairness of Finra arbitrations between investors and brokerages."

***US Supreme Court Narrows Application of Foreign Discovery Statute*, JURIST (Jun. 13, 2022)**: "The US Supreme Court Monday unanimously held in *ZF Automotive US, Inc. v. Luxshare, Ltd.* that '[o]nly a governmental or intergovernmental adjudicative body constitutes a "foreign or international tribunal"' under 28 U.S.C. §1782. Justice Barrett wrote the court's opinion. This case is a consolidation of two cases involving foreign arbitration proceedings.[] 28 U.S.C. §1782 allows federal trial courts to order production of evidence and testimony 'for use in a proceeding in a foreign or international tribunal.' The court defined a foreign tribunal as 'a tribunal imbued with governmental authority by one nation' and an international tribunal as 'a tribunal imbued with governmental authority by multiple nations.' The court concluded that 'private adjudicatory bodies' do not qualify as foreign or international tribunals under the statute."

***Supreme Court Limits California Labor Law that Allows Private Suits Against Employers*, LA Times (Jun. 15, 2022)**: "In a victory for California employers, the Supreme Court on Wednesday placed limits on a state labor law that authorizes private lawsuits on behalf of groups of workers, even if they had agreed to resolve their disputes through individual arbitration.[] The majority ruled the Federal Arbitration Act preempts or overrides the state law."
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DID YOU KNOW?

ONLINE SOURCES CITED IN OPINIONS ARE AVAILABLE AT SCOTUS. The frenetic activity at the Supreme Court as the Term comes to a close reminds us that the Court makes available on its Website a collection of online sources cited in Opinions. The cases are listed by docket number. For example, available for the recently-decided *Southwest Airlines Co. v. Saxon*, No. 21-309, are:
https://www.transtats.bts.gov/Fields.asp?gnoyr_VR=FIL and
https://www.transtats.bts.gov/Data_Elements.aspx?Data=2.
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Send any messages or inquiries to: George@SecArbAlert.com

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Mail to: 194 Carlton Terrace, Teaneck, NJ 07666
T: 917-841-0521
Web: www.SecArbAlert.com
Blog: www.sacarbalert.com/blog/; Twitter: @SecArbAlert