SECURITIES ARBITRATION ALERT 2022-29 (7/28/22)

George H. Friedman, Editor-in-Chief

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- ***Raucher v. Ecker*, FINRA ID No. 20-03658 (Boca Raton, FL, Jun. 13, 2022)**
- ***Walker v. Network 1 Financial*, FINRA No. 20-02843 (Houston, TX, Jun. 30, 2022)**

ARTICLES OF INTEREST:

- **Rogers, C.A., *Reconceptualizing the Party-Appointed Arbitrator*, Harvard Int'l LJ (Forthcoming 2023)**
- ***Finra Wants To Start Identifying 'Restricted' Firms On BrokerCheck*, FA Magazine (Jul. 18, 2022)**
- ***Morgan Stanley Seeks to Send Brokers' Deferred Comp Lawsuit to Arbitration,* AdvisorHub (Jul. 18, 2022)**
- ***U.S. Supreme Court Urged to Revisit Its Decision on Arbitration of California PAGA Claims,* JDSupra (Jul. 18, 2022)**
- ***SEC Issues More than $17 Million Award to a Whistleblower,* www.sec.gov (Jul. 19, 2022)**
- ***J.P. Morgan Accuses Former Broker of Soliciting Firm's Clients,* Wealth Management (Jul. 20, 2022)**

DID YOU KNOW?

- **Abraham Lincoln and ADR**

AS PROMISED: A NEW FEATURE ARTICLE! *We lead off this* Alert *with a new feature article,* What Does the Federal Arbitration Act's "Policy Favoring Arbitration" Really Favor? Arbitration as a Way of Settling Disputes Rather than "Deciding" Cases, *by Stephanie Korenman and Aegis Frumento. The authors assert that recent Supreme Court cases suggest: "that arbitration is actually better thought of as a settlement agreement delegating to arbitrators the power to impose a resolution on parties unable to settle their dispute on their own." And we have our usual collection of Squibs, Short Briefs, Quick Takes, and Articles of Interest. In other words, a jam-packed new issue!*

FEATURE ARTICLE

WHAT DOES THE FEDERAL ARBITRATION ACT'S "POLICY FAVORING ARBITRATION" REALLY FAVOR? ARBITRATION AS A WAY OF SETTLING DISPUTES RATHER THAN "DECIDING" CASES, *by Stephanie Korenman and Aegis Frumento*. For decades, arbitration practice has been conceptualized as an alternative way to resolve cases, acting much as a court would, but more quickly and cheaply. Recent Supreme Court cases suggest that this concept is wrong, and that arbitration is actually better thought of as a settlement agreement delegating to arbitrators the power to impose a resolution on parties unable to settle their dispute on their own. Reconceiving arbitration as a way to settle cases rather than deciding them will make the practice of arbitration, with its "split-the-baby" results, seeming randomness and opacity, and its primary insulation from appeal, better understood and accepted by parties who today often approach the process with the wrong expectations. *Read more…*

(ed: The authors co-head the Financial Markets Group of Stern Tannenbaum & Bell LLP (www.sterntannenbaum.com) in New York City, representing financial firms and professionals in regulatory enforcement actions and private disputes. They can be reached at skorenman@sterntannenbaum.com and afrumento@sterntannenbaum.com.)

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SQUIBS: IN-DEPTH ANALYSIS

FINRA DRS POSTS STATS THROUGH JUNE: CUSTOMER AND INDUSTRY ARBITRATION CLAIMS ARE DOWN AT THE HALF-WAY MARK. MEDIATION FILINGS ARE STILL STRONG, BUT ARE SLOWING DOWN. ***FINRA Dispute Resolution Services ("DRS") has posted case statistics through June, with most trends persisting.*** We offer these headlines: 1) overall arbitration filings through the year's half-way point – 1,260 cases – are down 18% (had been down 16% last month); 2) cumulative customer claims declined by 23% (had been minus 22%); 3) industry arbitration filings are down 9% (had been down 6% through **May**); 4) mediation cases continue to run ahead of 2021, but have slowed down a bit; and 5) pending cases continue to decrease.

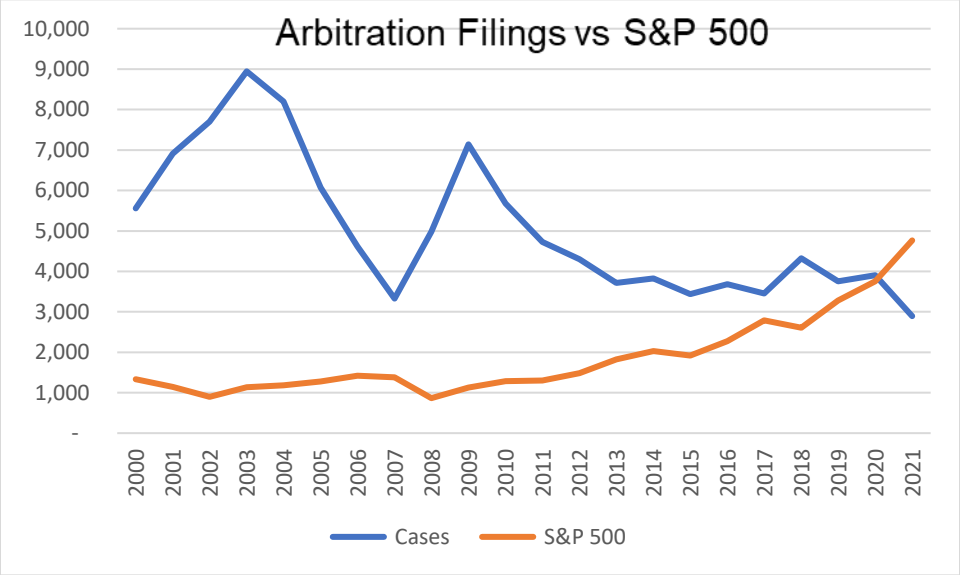
Potpourri

Overall arbitration turnaround times were 17.7 months, with hearing cases now taking 19.6 months (both figures are slight increases from the past two months). There were 465 mediation cases in agreement, a 109% increase (but down from May's torrid plus 137% pace). The mediation settlement rate remains very high at 89%. There are now 8,448 DRS arbitrators, 4,061 public and 4,387 non-public. Pending cases stand at 3,344, a decline of 101 from May.

A Down Year in the Offing?

If the trend holds, the 1,260 arbitrations filed through June straight-lines to only about 2,500 yearly arbitration filings, a weak year by any measure. Ten years ago, the 2012 stats showed 4,299 yearly arbitration cases filings. The all-time high water mark was 2003, when that post tech-wreck figure was 8,945 cases. The trend in recent years backs

up our belief that arbitration case filings are countercyclical to the capital markets. Translation: people fight when they lose money; not so much when they make money. This subject was covered in a **2020** blog post jointly-authored by your publisher and **Rick Ryder, Esq.**, *What's Past is Prologue – All Over Again. What's Ahead for Arbitration Filings in the Wake of Recent Volatility*. The *Alert* offers this updated chart as further proof; of course, this year's market volatility may ultimately impact filings.



*(ed: *Breach of Reg BI made it into "Top 15 Controversy Types in Customer Arbitrations" with 54 claims, ranking this category number 13. **Hearing processing times ticked up a bit again through June, after decreasing earlier this year. We will keep an eye on this one, since we continue to wonder if the resumption of in-person hearings almost a year ago in August 2021 is somehow linked to this stat. Common sense tells us it is easier to schedule and attend virtual hearings, than those conducted in-person. ***Past year stats can be found here. ****An* Alert *h/t to former DRS Neutral Roster chief Barbara Brady, for suggesting that we compare this year's arbitration filings to past years.)*
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THE HIGH BAR TO ENFORCE AN AWARD THAT HAS BEEN SET ASIDE IN A FOREIGN JURISDICTION. ***The Court of Appeals for the Second Circuit holds that courts should act with "trepidation and reluctance" in enforcing an arbitral award that has been set aside in the primary jurisdiction.*** *Esso Expl. and Prod. Nigeria Ltd. v. Nigerian Nat'l Petroleum Corp.*, Nos. 19-3159 (L) & 19-3361 (2d Cir. Jul. 8, 2022), involves the question of how a court in a secondary jurisdiction should exercise its discretion in enforcing an arbitral award under the *New York Convention* that has been set aside in the primary jurisdiction.

Procedural History

Petitioners **Esso Exploration and Production Nigeria Limited and Shell Nigeria Exploration and Production Company Limited** (collectively, "Esso") entered into a petroleum exploration and oil extraction venture in Nigeria with Respondent **Nigerian National Petroleum Corporation** ("NNPC"). In 1993, the parties entered into a Production Sharing Contract (the "PSC") that contained an arbitration clause. Oil extracted was to be divided into four tranches, one of which was tax oil, to cover Esso's taxes due under the Nigerian Petroleum Profits Tax Act. Under the PSC, Esso must calculate its tax liability and prepare its return, which NNPC will then transmit to the Nigerian government. NNPC is also responsible for lifting the tax oil and the royalty oil for delivery to the government. Although the agreement was entered into in 1993, Esso did not begin oil extraction until 2006. At that point, NNPC began to lift more tax oil and royalty oil than Esso calculated. NNPC also prepared and delivered its own tax returns rather than those prepared by Esso.

The Arbitration

In July 2009, Esso commenced arbitration against NNPC. In October 2011, the arbitral panel that was convened pursuant to the PSC awarded Esso $1.8 billion plus interest, finding that NNPC had overlifted tax and royalty oil. The panel rejected NNPC's argument that the issue was inarbitrable because it concerned taxes owed under Nigerian law, not a breach of contract. Before the award was issued, the Federal Inland Revenue Service ("FIRS"), Nigeria's tax authority, initiated an action in a Nigerian trial court, seeking to enjoin the arbitration. In March 2012, the trial court decided that the dispute was not arbitrable. At about the same time as the FIRS decision was issued, NNPC moved the Nigerian trial court to set aside the arbitral award. The trial court granted the request, finding that the dispute involved tax issues that were not capable of settlement by arbitration. Esso appealed both trial court decisions.

Post-Award Litigation in Nigeria

In July 2016, the Nigerian Court of Appeals affirmed in part and reversed in part the trial court's decision to set aside the award. It agreed that the issues related to the proper calculation of taxes were inarbitrable, but were severable from the claims grounded in the PSC, principally the preparation of the tax returns and the calculation of lifting allocations. The appellate court reinstated the portion of the award insofar as it related to the PSC claims. Less than a year later, the Court of Appeals similarly affirmed in part and reversed in part the trial court's ruling in the FIRS action on similar grounds.

Post-Award Litigation in the U.S.

In 2014, Esso commenced an action in the Southern District of New York, seeking to enforce the original arbitral award pursuant to the *New York Convention*. NNPC moved to dismiss on the basis of lack of personal jurisdiction and *forum non conveniens*. NNPC further argued that the action should be dismissed on the merits, citing the Nigerian courts' decisions to set aside the award. The district court rejected NNPC's arguments as to personal jurisdiction and *forum non conveniens*, but found for NNPC on the merits and denied Esso's petition to enforce the award.

The New York Convention and Enforcement

The *New York Convention* governs the enforcement of foreign arbitral awards. The country in which an arbitral award is rendered is the "primary jurisdiction," and has the ability "to set aside or modify an award in accordance with its domestic arbitral law and its full panoply of express and implied grounds for relief." All other states that are signatories to the Convention are "secondary jurisdictions" and may only decide whether to enforce an award. A secondary jurisdiction is obligated to enforce an award, subject to very limited exceptions. One such exception is when the primary jurisdiction has set aside the award. Under the principle of international comity, the court should not enforce the award that has been set aside unless the judgment that set the award aside is "repugnant to U.S. public policy."

Application of Comity to Enforcement of the Arbitral Award

The District Court relied on *Corporación Mexicana de Mantenimiento Integral, S. de R.L. de C.V. v. Pemex-Exploración y Producción*, 832 F.3d 92 (2d Cir. 2016) ("*Pemex*"), to determine that the award should not be enforced. Specifically, *Pemex* set forth four considerations to assess whether the foreign court's judgment was repugnant to public policy: "(1) the vindication of contractual undertakings and the waiver of sovereign immunity; (2) the repugnancy of retroactive legislation that disrupts contractual expectations; (3) the need to ensure legal claims find a forum; and (4) the prohibition against government expropriation without compensation." The district court considered each of these factors and, utilizing its discretion to afford comity to the Nigerian appellate decisions, determined not to enforce the award. However, the District Court declined to enforce any part of the arbitral award, even those parts the Nigerian courts had not set aside.

On appeal, the Second Circuit holds that the District Court appropriately exercised its discretion in declining to enforce the portions of the award the Nigerian courts had set aside. The Second Circuit recognizes that "any court should act with trepidation and reluctance in enforcing an arbitral award that has been declared a nullity by the courts having jurisdiction over the forum in which the award was rendered." The Second Circuit goes on to state: "the public policy exception to the principle of comity 'does not swallow the rule: the standard is high, and infrequently met.'" Here, Esso did not meet its burden of showing that the Nigerian judgments contravene U.S. public policy. However, because the Nigerian judgments only partially set aside the arbitral award, the Second Circuit finds that the district court was obligated to enforce those portions of the award that were not set aside. Unfortunately, the Nigerian judgments were ambiguous as to which damages related to the tax claims were set aside. The Second Circuit remands the case to the district court to conduct further fact-finding and briefing to determine whether it should order any partial damages payment by NPCC.

*(ed: *This squib was authored by Christine Lazaro, Professor of Clinical Legal Education at St. John's University School of Law, and an* Alert *Editorial Advisory Board member. **The Court affirmed the District Court's ruling with respect to personal*

jurisdiction and forum non conveniens on the grounds that: "its factual determinations were meticulous and its legal conclusions sound.")
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SHORT BRIEFS: CONCISE NEWS YOU NEED TO KNOW

NAMC ROSTER 2022: FINRA-DRS MAKES TWO NEW ADDITIONS. FINRA Dispute Resolution Services ("DRS") generally makes annual changes each June to its National Arbitration and Mediation Committee ("NAMC") roster. As we do every year, we follow the changes. The 13-member NAMC, consisting of seven Public and six Industry Members, considers changes in policy and rules that govern the FINRA arbitration-mediation facility. Viewing the roster as of **June 1**, there are two replacements on the "Industry" side of the Committee. Members **Chris Lewis** (Edward Jones) and **Courtney R. Reid** (MassMutual) have rotated off the Committee, and new members **Tracey Salmon-Smith** (Faegre Drinker Biddle & Reath LLP) and **Sara Soto** (Bressler, Amery & Ross, P.C.) have joined. There are no changes on the Public side, and Public Member **Nicole Iannarone** (Drexel University Thomas R. Kline School of Law) remains as NAMC Chair. Only one Committee member is an arbitrator (FINRA indicates this on the roster).
*(ed: *We had in the past noted that all of the Public Members were litigators and all the Industry members were in-house, and advocated for a more balanced representation of the arbitration constituency – defense counsel, consumer advocates, prominent arbitrators, experts. We are pleased to see a more diverse group, including a clinic director as chair. **Also, we again suggest that the roster denote the identity of incoming members; we had to use the Wayback Machine Website to do our sleuthing.)*
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CATCH 22: FOISTED ON THE INTERSTATE COMMERCE PETARD. A paratransit driver who contended that his job did not involve interstate commerce – and thus precluded application of the Federal Arbitration Act ("FAA") – finds that there *is* interstate commerce present and the Act does apply. However, since his job transporting disabled people did not involve the flow of interstate commerce, the FAA section 1 exemption did not apply to him, and arbitration was required under the predispute arbitration agreement ("PDAA") and class action waiver he signed with his employer. The Court's unanimous holding in *Evenskaas v. California Transit, Inc.*, No. B308354 (Calif. Ct. App. 2 Jul. 15, 2022), can be summarized as follows: 1) the PDAA definitely falls under FAA section 2 as a: "written provision in any maritime transaction or a contract *evidencing a transaction involving commerce*; but 2) by the driver's own admission, he was not a: "*worker[s] engaged in foreign or interstate commerce*" under the FAA section 1 exemption (emphasis added). How so? As to the presence of interstate commerce, the Opinion states: "The stated findings in the ADA, the findings in the report of the House Committee on Energy and Commerce, and Congress's stated intent to legislate through its commerce power reflect a determination that the activity regulated by the ADA—including the provision of paratransit services for persons with disabilities—is among the 'economic "class of activities" that have a substantial effect on interstate commerce.'" As to employee Evenskaas' job, a footnote explains: "As the

United States Supreme Court explained in *Circuit City Stores, Inc. v. Adams* (2001) 532 U.S. 105 [121 S.Ct. 1302, 149 L.Ed.2d 234], 'the specific phrase "engaged in commerce" [is] understood to have a more limited reach' than the phrase "'involving commerce'" (brackets in original). Because the FAA was applicable, it preempts the California Supreme Court's decision in *Gentry v. Superior Court* 42 Cal.4th 443 (2007), holding that class action waivers in employment arbitration agreements are unenforceable.
(ed: Seems right to us. The references to interstate commerce in FAA sections 1 and 2 are different.)
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FINRA FOUNDATION AND AARP ISSUE REPORT ON "VICTIM BLAMING IN FINANCIAL FRAUD" The FINRA Foundation and the AARP Fraud Watch Network have issued a report, *Blame and Shame in the Context of Financial Fraud: A Movement to Change Our Societal Response to a Rampant and Growing Crime*. Announced in a **July 21** Press Release, the 24-page Report: "says shifting how our society talks about victims of financial fraud could lead to a much-needed change in how our country responds to this growing crime…. [W]ords such as 'swindled' and 'bilked' put the focus on the fraud victims, even unintentionally. Rather than saying a victim was 'duped' or 'fell for it'—as if the victim were to blame—the focus should be on the criminal and the crime. Saying a perpetrator stole a person's life savings has a much different connotation than saying a person was duped for $250,000." The *Report* also: "details drivers of victim blaming: the faceless nature of the crime; a lack of standards and accepted lexicon for discussing financial fraud, including in state and federal legal codes; a lack of resources for fraud prevention and victim services organizations; and a lack of coordination among federal and state agencies (including law enforcement and criminal justice components), financial institutions and other stakeholders."
(ed: Fraud is number 8 in FINRA Dispute Resolution Services' "Top 15 Controversy Types in Customer Arbitrations," weighing in with 310 arbitration filings through June.)
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QUICK TAKES: CASES AND AWARDS WORTH READING

***Preble-Rish Haiti, S.A. v. BB Energy USA*, No. 22-20021 (5th Cir. Jul. 14, 2022)**: "The Foreign Sovereign Immunities Act provides a foreign state's property with immunity from prejudgment attachment unless an exception applies. The relevant exception in this case requires a foreign state to explicitly waive its immunity from prejudgment attachment. 28 U.S.C. § 1610(d). Although this court has yet to interpret the § 1610(d) exception, today we hold that an explicit waiver must be, well, *explicit.* Anything short of a foreign state's clearly expressed waiver of immunity from prejudgment attachment will not suffice under § 1610(d). Here, however, the district court entered a writ of attachment based on the erroneous conclusion that Haiti and its agency waived their immunity from prejudgment attachment based on a contract that said nothing about prejudgment attachment" (emphasis in original; link to statute added by the *Alert*.)

***Crystal Point Condominium Association, Inc. v. Kinsale Insurance Co*., No. A-76-20 (NJ Jul. 18, 2022)**: A unanimous Opinion states: "In this appeal, the Court considers

whether plaintiff Crystal Point Condominium Association, Inc., which has obtained default judgments against two entities for construction defect claims, may assert claims against defendant Kinsale Insurance Company, alleged to have insured those entities, under the Direct Action Statute, N.J.S.A. 17:28-2. The Court also considers the effect of the provisions in each policy mandating binding arbitration of disputes between Kinsale and its insureds…. **HELD**: Crystal Point may assert direct claims against Kinsale pursuant to the Direct Action Statute in the setting of this case. Based on the plain language of N.J.S.A. 17:28-2, however, Crystal Point's claims against Kinsale are derivative claims, and are thus subject to the terms of the insurance policies at issue, including the provision in each policy mandating binding arbitration of disputes between Kinsale and its insureds. Crystal Point's claims against Kinsale are therefore subject to arbitration" (emphasis in original; link to statute added by the *Alert*).

***California Business & Industrial Alliance v. Becerra*, No. G059561 (Cal. Ct. App. 4 Jun. 30, 2022)**: A unanimous Opinion provides: "On appeal, plaintiff asserts a single theory: that PAGA violates California's separation of powers doctrine by allowing private citizens to seek civil penalties on the state's behalf without the executive branch exercising sufficient prosecutorial discretion. We reject this theory for two reasons. First, our Supreme Court held in *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348 (*Iskanian*), that 'PAGA does not violate the principle of separation of powers under the California Constitution'…. Second, even if *Iskanian* did not require this result, we would reach it anyway through application of California's preexisting separation of powers doctrine. PAGA is not meaningfully distinguishable from comparable *qui tam* statutes outside the employment context…. Plaintiff and its supporting *amici* fail to produce even one single case in which any of these many statutes has been held to violate California's separation of powers doctrine. Nor do they identify any sufficiently significant distinctions between those statutes and PAGA, or any other compelling reason for us to break new ground."

***Raucher v. Ecker*, FINRA ID No. 20-03658 (Boca Raton, FL, Jun. 13, 2022**): A customer asserting allegations on behalf of her IRA and Family Trust loses her remaining claims against Respondent broker, after the Panel grants his Motion for Directed Verdict (Motion to Dismiss) pursuant to FINRA Rule 12504(b). The broker, however, loses his request for expungement of this matter from his CRD record. *Provided courtesy of SAC's ARBchek facility (www.arbchek.com).*

***Walker v. Network 1 Financial*, FINRA No. 20-02843 (Houston, TX, Jun. 30, 2022)**: A customer alleging unsuitability with respect to his purchase of various biotech and pharmaceutical stocks, including Aeglea Biotherapeutics and Zogenix, to name a few, is awarded over $1.2 million in damages against Respondent broker-dealer, including punitive damages pursuant to the Texas Deceptive Trade Practices Act. *Provided courtesy of SAC's ARBchek facility (www.arbchek.com).*

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ARTICLES OF INTEREST: RECENT NEWS FROM THE ADR FRONT

Rogers, Catherine A., *Reconceptualizing the Party-Appointed Arbitrator*, Harvard International Law Journal (Forthcoming 2023): "Despite the popularity of the age-old practice, several prominent arbitrators and industry leaders have proposed eliminating party-appointed arbitrators. These critics contend that party-appointment injects bias into a tribunal that is supposed to be impartial.[] Various empirical studies seem to confirm the uncomfortable contradiction between the rhetoric of impartiality and the purportedly biased conduct of party-appointed arbitrators. Most of these empirical claims, however, are deeply flawed both in both their substance and methodology. More fundamentally, these claims also ignore Legal Realism's insight that decisionmaker 'bias' (or reliance on extra-legal factors) is an inevitable consequence of law's inherent indeterminacy.[] If some forms of bias are inevitable, the key inquiry is not whether bias exists, but more nuanced questions: Which forms of bias are legitimate? Who decides which forms of bias are legitimate? And, How do we police the boundary between legitimate and illegitimate forms of bias?[] This Article answers those questions with respect to party-appointed arbitrators."

***Finra Wants To Start Identifying 'Restricted' Firms On BrokerCheck*, FA Magazine (Jul. 18, 2022):** "Broker-dealers designated as 'restricted firms' by Finra because of the spotty records of their brokers may soon find that label slapped on their public BrokerCheck records.[] Finra has proposed disclosing a firm's 'restricted' status on BrokerCheck, the public database that lists the regulatory histories of securities firms. The regulator, which is a private entity that acts as a self-regulatory organization for the industry, is asking the SEC for approval to begin making the names of restricted firms public in the second cycle of such designations being made."

***Morgan Stanley Seeks to Send Brokers' Deferred Comp Lawsuit to Arbitration*, AdvisorHub (Jul. 18, 2022)** "Morgan Stanley has asked a federal court to stay a proposed class action lawsuit related to its deferred compensation plan and compel 12 of its former brokers who filed the suit to arbitrate their claims.[] Lawyers for Morgan Stanley argue that the brokers each signed arbitration pacts as part of employment agreements, and that any controversy about the 'arbitrability' of their claims should be settled by an arbitrator, according to a brief filed in late June. Firms typically prefer arbitration where filings are private and they have more control over selecting panelists."

***U.S. Supreme Court Urged to Revisit Its Decision on Arbitration of California PAGA Claims*, JDSupra (Jul. 18, 2022)**: "On July 6, 2022, Moriana, the named plaintiff-employee at the center of *Viking River Cruises*, filed a petition for rehearing with the Court. In the question presented, Moriana asks if the Court's opinion should be modified to avoid 'unwarranted and incorrect resolution of the unbriefed issues of contract construction and state law statutory standing[.]'"

***SEC Issues More than $17 Million Award to a Whistleblower*, www.sec.gov (Jul. 19, 2022)**: "The Securities and Exchange Commission today announced an award of more than $17 million to a whistleblower who provided information and assistance in

a covered action and related action.[] The whistleblower's information prompted SEC staff to open a new investigation that led to the successful covered action. The whistleblower also provided SEC Enforcement staff with detailed information and documents throughout the investigation. Further, because the same information led to the success of the related action, the whistleblower is also entitled to an award based on amounts collected in the related action."

***J.P. Morgan Accuses Former Broker of Soliciting Firm's Clients*, Wealth Management (Jul. 20, 2022)**: "J.P. Morgan Securities has filed a lawsuit to try to stop a former broker from stealing its clients, arguing he violated a nonsolicitation agreement.[] To date, David Anderson attracted numerous clients with more than $20 million in business to join him at Stifel, according to J.P. Morgan's complaint filed in Michigan federal court. J.P. Morgan wants the court to issue a temporary restraining order to stop Anderson from contacting clients until FINRA concludes arbitration proceedings."
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DID YOU KNOW?

ABRAHAM LINCOLN AND ADR. We have blogged in the past about other Presidents and ADR (*ed: see* The Presidents and Arbitration: from Washington to Biden: An Update *(Feb. 15, 2021)*), but we learned just recently that **Abraham Lincoln** was also a fan. A **July 18** post, *CPR Council Meeting: Abraham Lincoln and Dispute Resolution*, describes a presentation on the subject by the CPR's former CEO & President, Prof. **Thomas J. Stipanowich**. Says the post: "Lawyer Lincoln encouraged fellow trial lawyers to discourage litigation and always sought ways to resolve conflict out of the courtroom to avoid the often-unsatisfactory result through trials. Stipanowich found evidence that Lincoln was an informal mediator and had served as an arbitrator. Once, he organized a minitrial with a judge outside the court, with the judge rendering a nonbinding decision that settled a dispute without going to trial."
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