SECURITIES ARBITRATION ALERT 2023-35 (9/14/23)

George H. Friedman, Editor-in-Chief

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DID YOU KNOW?

- **Labor Arbitration Goes Way Back**

TWENTY-TWO YEARS AFTER 9-11. *It's hard to believe twenty-two years have elapsed since that awful day in 2001 that forever changed the world. 9-11 brought horrible losses that were almost too painful to bear. For NASD and its dispute resolution service, the aftermath brought office relocations, mass postponements of hearings, stays of administration, and a host of other emergency measures.*

The dispute resolution senior management team was meeting that day in Washington, D.C., when frantic calls started coming in from the staff at 125 Broad Street, reporting

that a wayward Cessna had accidentally plowed into the World Trade Center. Little did we know that this was actually the opening act of a global event. A few days later, NY Regional Director Liz Clancy, Mediation Director Ken Andrichik, and Director of Arbitration George Friedman trekked to lower Manhattan to ascertain if the NASD's property at 125 Broad Street could serve as a lifeboat for dislocated NASD staff who had worked at One Liberty Plaza – directly across the street from the twin towers. It could, but the awful smell and sights linger in our minds still. We also recall the yeoman efforts with our NYSE, NASDAQ, and Amex colleagues – and the folks at ConEd and NYNEX – to get the markets reopened quickly, as urged by the White House.

Somehow, the financial services world and indeed America, slowly returned to normal. But it would forever be a new normal.

SQUIBS: IN-DEPTH ANALYSIS

SEC APPROVES FINRA'S RULE CHANGE PROPOSAL IMPLEMENTING "RIGGED PANELS" INVESTIGATION REPORT RECOMMENDATIONS. ***The SEC has approved FINRA's rule change proposal to implement recommendations resulting from the outside investigation of allegations that the arbitrator selection process was rigged.*** We reported in SAA 2023-01 (Jan. 5) that, on the eve of the year-end holiday break, FINRA had filed a rule change proposal that would implement recommendations resulting from the outside investigation of allegations that the arbitrator selection process was rigged. The SEC approved the rule filing on **September 7**. Borrowing heavily from past coverage, we present below a concise history.

Brief History: Award Vacated by Trial Court

To review succinctly, Fulton County Superior Court Judge **Belinda E. Edwards** in *Leggett v. Wells Fargo Clearing Services, LLC*, No. 2019CV328949 (Ga. Super Jan. 25, 2022), vacated the Award that sparked the debate in what might be considered a primer on the basic Federal Arbitration Act grounds for vacating an award (i.e., fraud, arbitrator bias, arbitrator misconduct in not hearing relevant or material evidence or failing to grant a reasonable postponement request; or the panel exceeding its authority). Although the Trial Court found all of these bases for vacating the Award, Judge Edwards weighed in on interference with the Neutral List Selection System with some scathing verbiage:

> The Court's factual review of the record evidence leads to its finding that Wells Fargo and its counsel manipulated the FINRA arbitrator selection process in violation of the FINRA Code of Arbitration Procedure, denying the Investors' their contractual right to a neutral, computer-generated list of potential arbitrators. Wells Fargo and its counsel, Terry Weiss, admit that FINRA provides any client Terry Weiss represents with a subset of arbitrators in which certain arbitrators (at least three, but perhaps more) are removed from the list Wells Fargo agreed, by contract, to provide to the Investors in the event of a dispute. Permitting one lawyer to secretly red line the neutral list makes the list anything but neutral, and calls into question the entire fairness of the arbitral forum.

Award "Unvacated"
Wells appealed, and, in a unanimous decision, the Georgia Court of Appeals reinstated the Award in *Wells Fargo Clearing Services, LLC v. Leggett*, No. A22A1149 (Ga. Ct. App. Aug. 2, 2022). The unanimous decision rejected all bases upon which Judge Edwards vacated the Award. As reported in SAA 2022-42 (Nov. 10), Leggett on **August 22, 2022** filed a Petition for *Certiorari,* seeking review by the Georgia Supreme Court.

Independent Investigator's Report
As summarized in SAA 2022-38 (Oct. 13), FINRA in **June 2022** released a 37-page *Report of the Independent Review of FINRA's Dispute Resolution Services – Arbitrator Selection Process,* which was announced in a corporate Press Release and a separate statement from the Audit Committee. The investigation was directed by **Christopher Gerold**, a partner in Lowenstein Sandler LLP's Securities Litigation and Corporate Investigations & Integrity Practice Groups.

Recommended Changes
After discussing methodology and the operation of the Neutral List Selection System, the Report concluded that there were no irregularities, and it closed with recommendations for improvement. The core recommendations were (*ed: presented* verbatim *from the Release*):

- Implementing ongoing, mandatory training for staff;
- Requiring written explanations, upon a party's request, of approval or denial of a causal challenge to the selection of an arbitrator or an arbitrator removal by the DRS Director for cause;
- Conducting an updated external procedural review of the arbitrator selection algorithm to determine if it is still the most effective means for creating random, computer-generated arbitrator lists; and
- Updating the DRS Manual and rules to clarify staff roles and procedures, and to ensure consistency and transparency.

FINRA's management accepted all recommendations, and now posts on its Website a live progress report on implementation. *Status Report on Lowenstein Sandler LLP Recommendations* shows that most items have been implemented or were "in progress."

Late December 2022 Rule Filing
On **December 23, 2022**, FINRA filed with the SEC SR-FINRA-2022-033, *Proposed Rule Change to Amend the Codes of Arbitration Procedure.* The filing describes it as: "a proposed rule change to amend the Code of Arbitration Procedure for Customer Disputes ('Customer Code') and the Code of Arbitration Procedure for Industry Disputes ('Industry Code') (together, 'Codes') to make changes to provisions relating to the arbitrator list selection process in response to recommendations in the report of independent counsel Lowenstein Sandler LLP. The proposed rule change also makes clarifying and technical changes to requirements in the Codes for holding prehearing conferences and hearing sessions, initiating and responding to claims, motion practice, claim and case dismissals, and providing a hearing record." We referred readers to published analyses of the 96-page rule filing: *Finra Proposes Tweaks to Arbitrator*

Selection, AdvisorHub (Jan. 3, 2023); *Finra Moves to Make Arbitrator Selection Process More Transparent*, Financial Advisor (Jan. 5, 2023); and *Finra Floats Revamped Arbitrator-Selection Process*, Financial Advisor IQ (Jan. 6, 2023).

Post-Rule Filing Activity

We present below in bullet format the several events that took place since the rule change proposal was filed last December:

- The proposed rule was published in the *Federal Register* on **January 12** (Vol. 88, No. 8, P. 2144), making comments due **February 9**.
- We analyzed in SAA 2023-07 (Feb. 16) the handful of comments received from PIABA and three law school clinics posted on the SEC's Website, describing them as generally supportive but recommending improvements.
- FINRA by a **February 14** letter extended to **April 12** the SEC's time to act.
- On **April 4,** a unanimous Georgia Supreme Court declined to review the underlying case, stating: "Certiorari – Writ denied …. All the Justices concur, except Boggs, C. J., not participating."
- FINRA on **April 11** filed its response to comments, and Amendment No. 1 to Proposed Rule Change.
- The SEC on **April 18** published in the *Federal Register* (Vol. 88, No. 74, P. 23720) Order Instituting Proceedings To Determine Whether To Approve or Disapprove. The Order requested comments by **May 9**, with rebuttal comments to be submitted on or before **May 23**. No comments are posted on the SEC's Website.
- FINRA by a **July 3** letter extended to **September 8** the SEC's time to act.

Rule Approved

The Commission approved the rule filing a day early on **September 7**¸via Release No. 34-98317. The Summary to the 57-page Approval Order reads: "The proposed rule change, as modified by Amendment No. 1 …, would amend provisions of the Codes governing the arbitrator list selection process to: (1) exclude arbitrators from the arbitrator ranking lists based on certain conflicts of interest; (2) permit the removal of an arbitrator for cause at any point after receipt of the arbitrator ranking lists until the first hearing session begins; and (3) provide parties with a written explanation of the decision by the Director of FINRA Dispute Resolution Services … to grant or deny a request to remove an arbitrator. In addition, the proposed rule change, as modified by Amendment No. 1, would amend procedural rules in the Codes, such as those pertaining to holding prehearing conferences and hearing sessions, initiating and responding to claims, motion practice, claim and case dismissals, and providing a hearing record" (footnotes omitted)

What's Next?

Next will be *Federal Register* publication of the Approval Order. Thereafter, FINRA will publish a Regulatory Notice setting the effective date(s). Along the way there will be staff and arbitrator training.

(ed: Kudos to FINRA and the SEC.)

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FOURTH CIRCUIT: CONSIDER IMPACT OF CLASS ACTION WAIVERS BEFORE CERTIFYING CLASS. ***The District Court erred in certifying a class without first considering the impact of class action waivers, a Fourth Circuit panel holds unanimously in a case of first impression.*** Class action waivers ("CAW") are relatively common in consumer contracts. At issue in *In re Marriott International, Inc.*, No. 22-1744 (4th Cir. Aug. 18, 2023), is the impact of CAW on the sequence for deciding applications for class certification. In other words, when is the impact of the CAW considered: before or after class certification? Although this case did not involve arbitration, it's worth noting. We draw liberally from the Court's Opinion in this case of first impression.

Facts and Procedural History
"In November 2018, Marriott International, Inc., announced that hackers had breached one of its guest reservation databases, giving them access to millions of guest records. Customers across the country began filing lawsuits, which were consolidated into multidistrict litigation in Maryland. The plaintiffs then moved to certify multiple class actions against Marriott and Accenture LLP, an IT service provider that managed the database at issue.[] The district court obliged in part. After extensive proceedings, it certified classes for monetary damages on breach of contract and statutory consumer-protection claims against Marriott under Rule 23(b)(3) of the Federal Rules of Civil Procedure. It also certified 'issue' classes on negligence claims against Marriott and Accenture under Rule 23(c)(4), limited to a subset of issues bearing on liability."

Core Issue
"The threshold question on appeal is whether the district court erred by certifying classes against Marriott without first addressing this class-action waiver defense. Marriott argues vigorously that class waivers must be addressed and (if appropriate) enforced at the *certification* stage, not after a class action already has been litigated through to the merits. And, notably, the plaintiffs seem not to disagree – at least, not by much. Apart from a half-sentence referring to a district court's general discretion to manage its docket, the plaintiffs' brief does not join issue on this timing question at all; instead, it jumps straight to the merits of Marriott's defense, arguing that Marriott repudiated or otherwise waived the defense and that the class waiver is in any event unenforceable and largely inapplicable. If there is an argument in favor of deferring consideration of a class waiver until after certification, the plaintiffs have not made it, and it may well be forfeited" (emphasis in original).

Class Action Waiver Consideration Comes First
"We granted the defendants' petitions to appeal the district court's certification order and now conclude that the order must be vacated. The district court erred, we find, in certifying damages classes against Marriott without first considering the effect of a class Action waiver signed by all putative class members. And because the existence of damages classes against Marriott was a critical predicate for the district court's decision to certify the negligence issue classes, that error affects the whole of the certification order…. [W]e agree with Marriott that the time to address a contractual class waiver is

before, not after, a class is certified. Although it seems no court has had occasion to expressly hold as much, that is the consensus practice. Courts consistently resolve the import of class waivers at the certification stage – before they certify a class, and usually as the first order of business" (citations omitted).
(ed: Seems right. We imagine the same outcome had the CAW been contained in an arbitration agreement.)
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SHORT BRIEFS: CONCISE NEWS YOU NEED TO KNOW

FINRA BOARD MEETS IN PERSON THIS WEEK; NO DISPUTE RESOLUTION ITEMS. FINRA's Board of Governors is meeting in person **September 13–14**. The Agenda shows no dispute resolution rulemaking items (*ed: listed* verbatim*)*:

- The Regulatory Policy Committee will review a rule proposal related to over-the-counter options trade reporting for regulatory purposes.
- The Finance, Operations and Technology Committee will:
  - conduct its biennial review of FINRA's Financial Guiding Principles; and
  - receive an update on the Consolidated Audit Trail.
- The Regulatory Oversight Committee will:
  - receive several updates on FINRA's regulatory operations; and
  - meet with Bill St. Louis, who was recently appointed as Head of Enforcement.

As usual, we will follow up after the meeting results are released. The next and final meeting on this year's schedule is **December 6–7**.)
(ed: We'll tweet any news as soon as we have it.)
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SEC AWARDS MORE THAN $18 MILLION TO WHISTLEBLOWER. The SEC on **August 25** announced via press release an award of more than $18 million to an individual whistleblower: "whose information and assistance led to a successful SEC enforcement action.[] After initially reporting misconduct internally, the whistleblower submitted information to the Commission that prompted the opening of an investigation. The whistleblower thereafter provided additional helpful information and substantial cooperation that saved the Commission time and resources during the investigation." The Commission stresses that whistleblower awards are: "made out of an investor protection fund, established by Congress, which is financed entirely through monetary sanctions paid to the SEC by securities law violators. No money has been taken or withheld from harmed investors to pay whistleblower awards." Whistleblower awards: "can range from 10 to 30 percent of the money collected when the monetary sanctions exceed $1 million."
*(ed: *This is one of the larger such awards in our memory. **For more information about the program visit www.sec.gov/whistleblower.)*
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NFA INVESTOR NEWSLETTER HITS THE ELECTRONIC NEWSSTAND. The National Futures Association ("NFA"), which operates a dispute resolution forum, issues a periodic *Investor Newsletter* aimed at commodity futures investors. It's designed to

keep investors up to date on recent NFA initiatives, events, and resources that investors may find helpful. In the third *Newsletter* of **2023**, distributed under a summary email dated **August 29,** NFA lists several highlights which we explore in the order presented: **Investor Education** reports on: *Military Consumer Month*: "July is recognized as Military Consumer Month, an annual observance to increase awareness of consumer protections and financial readiness for servicemembers, veterans and military families. Throughout July, MyCreditUnion.gov published resources for military communities that are now available to all." Also covered: *Learn More about the Derivatives Markets*: "Want to expand your knowledge of the derivatives markets? Futures Fundamentals is a one-stop educational resource designed to simplify and explain complex market topics. Through interactive features and rich content, the website explains the role of futures markets in everyday life and provides information on the derivatives industry as a whole. Futures Fundamentals is a collective effort that is made possible by a number of contributing organizations across the futures industry, including NFA, CME Group, FIA and the Institute for Financial Markets (IFM)." The **Investor Protection** section contains two items: a NASAA Informed Investor Advisory: *Seniors Guide to Staying Safe Online*; and a CFTC notice: *Beware Imposters Posing as CFTC Officials. As* usual, the *Newsletter* signs off with a list of the quarter's enforcement actions, with links to final decisions in each, complaints that were issued, and final orders in registration cases. The *Newsletter* Webpage also contains: 1) a link to BASIC; 2) an online complaint form; 3) a link to past issues of the *Newsletter* and 4) a subscription form.
*(ed: *Another informative issue. **The enforcement actions database allows searches by subject matter, such as arbitration. ***Stats may be found here; for 2021, NFA had just 22 arbitration cases filed – 19 investor and 3 intra-industry. Stats for 2022 are* ***still*** *not yet posted. The* Alert *has asked the NFA for an explanation; so far there has been no response.)*
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SEC, NASAA, GEORGIA TO HOST OCTOBER INVESTOR ROUNDTABLES. The SEC, NASAA, and the Georgia Secretary of State will be hosting two joint Investor Roundtables in October. One event will be hosted on **October 4** at the University of North Georgia and the other will be held **October 5** at Dalton State College. According to a recent announcement: "These public roundtables will be an opportunity for investors, regulators, and members of the investment community to share their experiences with SEC staff. They will offer unprecedented access to hear directly from retail investors on topics that are important to them, such as securities fraud and feedback on SEC rulemaking. These events are designed to listen to investors and better understand their needs in future policy and practice."
*(ed: *This hybrid event will be Webcast on SEC.gov. **For more info, contact Adam Anicich, InvestorEngagement@sec.gov.)*
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QUICK TAKES: CASES AND AWARDS WORTH READING

***Payne v. Savannah College of Art and Design, Inc*., No. 22-11556 (11th Cir. Aug. 31, 2023)**: "On appeal, Payne argues that the district court erred by ignoring that his

agreement with SCAD was unconscionable and that SCAD waived its right to arbitrate. He also argues that the district court abused its discretion in rejecting his early discovery request. SCAD counters that (1) Payne freely agreed to a substantively fair arbitration provision, (2) SCAD never waived its right to arbitrate, and (3) the district court correctly denied Payne's discovery request. After careful review, and with the benefit of oral argument, we affirm the district court's order granting SCAD's motion to dismiss and compel arbitration."

***Barrera v. Apple American Group LLC*, No. A165445 (Calif. Ct. App. 1 Aug. 31, 2023)**: "Based on *Viking River Cruises, Inc. v. Moriana* (2022) 596 U.S.___, [142 S.Ct. 1906] (*Viking River*) and the Federal Arbitration Act (FAA) (9 U.S.C. § 1 et seq.), we conclude the parties' agreements require arbitration of plaintiffs' PAGA claims that seek to recover civil penalties for Labor Code violations committed against plaintiffs. On an issue of California law that the California Supreme Court has recently resolved, we conclude plaintiffs' PAGA claims that seek to recover civil penalties for Labor Code violations committed against employees other than plaintiffs may be pursued by plaintiffs in the trial court. (*Adolph v. Uber Technologies, Inc*. (2023) 14 Cal.5th 1104 (*Adolph*).)[] Therefore, the order denying defendants' motion to compel arbitration is reversed in part and affirmed in part."

***Kovac v. S.D. Reemployment Assistance Division*, 2023 S.D. 45 (Aug. 23, 2023)**: "We hold that filing, as used in SDCL 1-26-31, refers to the date that the original document is received by the clerk of courts' office. Therefore, a notice of appeal is considered filed under SDCL 1-26-31 on the date of receipt by the clerk of courts' office, regardless of the date the office formally accepts the notice of appeal. Here, the clerk of courts' office acknowledged in a letter that it was in 'receipt' of Kovac's notice of appeal on March 22, which was sufficient to constitute timely 'filing' under SDCL 1-26-31."

***Cleary v. UBS Financial*, FINRA ID No. 22-00905 (Washington, DC, Aug. 3, 2023)**: A broker (acting as a customer) alleging that Respondent failed to follow his directions and instructions as personal representative of an estate, and improperly withheld funds, loses his case. The Panel finds for Respondent on its Counterclaim. directing it to file a proceeding in the Superior Court for the District of Columbia, Probate Division, where the Will was probated, to request an adjudication on the proper disposition of the account proceeds, and ordering the account to remain frozen until the proper disposition is established. *Provided courtesy of SAC's ARBchek facility (www.arbchek.com).*

***Lercher v. Citigroup Global*, FINRA ID No. 22-02915 (New York, NY, Aug. 11, 2023)**: An Arbitrator explains why she has decided to grant Respondent broker-dealer's Prehearing Motion to Dismiss Claimant registered rep's request for reformation of his Form U5 record pursuant to the applicable statute of limitations (FINRA Rule 13206, Six-year Eligibility Rule for Industry Disputes). *Provided courtesy of SAC's ARBchek facility (www.arbchek.com).*
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ARTICLES OF INTEREST: RECENT NEWS FROM THE ADR FRONT

Rao, Weijia Rao, *Large Corporations and Investor-State Arbitration*, Kluwer Arbitration Blog (Aug. 18, 2023): "In **May 2023**, more than thirty members of the U.S. Congress sent a letter to the Biden administration, arguing that '[l]arge corporations have weaponized [investor-state dispute settlement (ISDS)] to benefit their own interests' and that "the broken ISDS system has time and time again worked in favor of big business interests." This criticism against ISDS is **not new**. ISDS **has often been perceived as** a system primarily utilized by large corporations to serve their interests, despite **evidence to the contrary**. This perception is driven by some high-profile victories secured by large corporations (*e.g.*, ***Occidental v. Ecuador***), as well as significant cases brought by large corporations that challenged public health or environmental regulations of host countries (*e.g.*, ***Philip Morris v. Australia***; ***RWE v. Netherlands***), which led to concerns of 'regulatory chill.' Partly due to such concerns, several countries have terminated their bilateral investment treaties and international investment agreements that contain ISDS provisions. Despite such criticism and backlash, we still know relatively little about the users of the system, let alone which users are more likely to win cases or to use the system to chill regulations. This post summarizes the key findings of **a recent article** (the 'Article') that introduces a new dataset on the characteristics of claimants in ISDS cases up to 2020, focusing on the users and beneficiaries of ISDS, and the implications of these findings for ongoing ISDS reform."

***Brokers Slammed by FINRA for Falsifying Documents Emphasizes Compliance, Says Atlanta RIA Lawyer*, www.law.com (Aug. 28, 2023)**: "Recent actions by the Financial Industry Regulatory Authority (FINRA) have sent ripples through the financial sector as it took resolute measures against former representatives of LPL Financial and Raymond James for their involvement in document falsification…. [F]ormer LPL Financial representatives, faced disciplinary measures for their involvement in signing documents on behalf of clients without proper authorization.[] In a more severe case …, a former representative of both Raymond James and B. Riley Wealth Management, has been barred from associating with any FINRA member. This resolute action was taken because [Rep] provided falsified statements and fabricated documents to the regulator, highlighting the stark repercussions of non-compliance."

***FINRA Issues Cybersecurity Alert Tied to FBI Warning*, ThinkAdvisor (Aug. 28, 2023)**: "The Financial Industry Regulatory Authority (FINRA) has alerted member firms to a recent FBI flash warning that all exploited Barracuda Email Security Gateway appliances remain vulnerable to attacks from threat actors.[] Even appliances with up-to-date security patches remain at risk for computer network compromise from hackers exploiting a previously reported vulnerability, FINRA's cybersecurity notice said."

***FINRA Foundation and AFCPE Announce 2023 FINRA Foundation Military Spouse Fellows*, www.fina.org (Aug. 29, 2023)**: "The FINRA Investor Education Foundation (FINRA Foundation) and the Association for Financial Counseling and Planning Education® (AFCPE®) announced today the recipients of 2023 FINRA Foundation Military Spouse Fellowship.[] Thirty military spouses will receive free training and the

credentialing exam to earn their Accredited Financial Counselor® (AFC®) designation, which enhances a career in financial empowerment. AFC-trained counselors use a comprehensive, research-backed, life-cycle approach to empower clients financially."

***FINRA Subject to Constitutional Constraints, Adviser Argues*, www.bloomberg.com (Aug. 29, 2023)**: "The Financial Industry Regulatory Authority Inc. acts as a governmental entity and violates constitutional provisions that are applicable to it when it conducts enforcement proceedings, an investment adviser said in a brief to the D.C. Circuit.[] And if FINRA isn't a 'state actor,' it shouldn't be enforcing federal law, Alpine Securities Corp. said Monday in its opening salvo in an appeal to temporarily protect its business from a FINRA proceeding.[] At issue is whether the advisory firm is entitled to a preliminary injunction while it litigates its constitutional challenge."

***Securities America Seeks Relief from Finra Liability Claim in U.S. Court*, FA Magazine (Aug. 30, 2023)**: "Securities America filed a request Friday in U.S. District Court to be removed from a Financial Industry Regulatory Authority arbitration involving clients of a company it acquired in 2016. The clients named both that company, Foothill Securities, and Securities America as respondents in a $600,000 claim seeking compensation for a poor investment recommendation made before the acquisition.[] At issue is whether Securities America, a La Vista, Neb.-based broker-dealer in the Osaic group, should be called before Finra in this matter at all, according to the company's complaint, filed in the District of Nevada. When the company purchased Foothill, it acquired most, but not all, of the firm's assets, and the acquisition agreement included phrasing that absolved Securities America of any debts or obligations that might arise from Foothill's operations before the sale, according to the filing."

***Fourth Circuit Holds that the Enforceability of Arbitration Agreements Containing Class Waivers Must Be Resolved Before Class Certification*, Lexology (Sep. 5, 2023)**: "A significant recent decision by the Fourth Circuit confirms that arbitration agreements that contain class-action waiver provisions can be a powerful tool to defeat class certification. In In re Marriott International, Inc., the Fourth Circuit observed that while 'no court has had occasion to expressly hold as much,' the 'consensus practice' of courts is to 'resolve the import of waivers at the certification stage—before they certify a class, and usually as the first order of business.' 2023 WL 5313006, at *6 (4th Cir. Aug. 18, 2023). The Fourth Circuit held that courts must address the implication of an arbitration clause containing a class-action waiver before, not after, a class is certified. And because the district court in this case did not do so, the Fourth Circuit vacated the district court's class certification ruling." (*ed: See our coverage elsewhere in this* Alert.)
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DID YOU KNOW?

LABOR ARBITRATION GOES WAY BACK. With Labor Day behind us, we thought it was an appropriate time to delve into the origins of labor arbitration. Writes Frank D. Emerson in *History of Arbitration Practice and Law* (19:1 CLEVELAND STATE LAW Review (1970)): "One of the first disputes submitted to the earliest known American

arbitration tribunal, organized in 1786 by the Chamber of Commerce of New York, involved the wages of seamen. It is important to recall these early uses of arbitration at this time when, in the midst of a rising tide of controversy, doubts arise."
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