SECURITIES ARBITRATION ALERT 2024-08 (2/22/24)

George H. Friedman, Editor-in-Chief

SQUIBS:

- **SCOTUS Hears Oral Argument in *Bissonnette***
- **Ninth Circuit Affirms the Result, But Not the Reasoning, of the District Court in Award Confirmation Proceeding**

SHORT BRIEFS:

- **REMINDER: *Suski* Oral Argument is February 28**
- **SCOTUS Sets Oral Argument in *Spizzirri***
- **Public Citizen: Mandatory Consumer Financial Arbitration Agreement Use Harms Communities of Color, Low Income Communities**
- **PDAA Does Not Require Representative PAGA Claims to be Arbitrated**

QUICK TAKES:

- ***Patrick v. Running Warehouse, LLC,* No. 22-56078 (9th Cir. Feb. 12, 2024)**
- ***Voltage Pictures, LLC v. Gussi, S.A. Gussi S.A. de C.V.,* No. 23-55123 (9th Cir. Feb. 5, 2024)**
- ***Stiegler v. Meriden,* No. SC20803 (Conn. Feb. 6, 2024)**
- ***Ecenbarger IRA v. Farhoumand,* FINRA ID No. 23-02221 (Indianapolis, IN, Jan. 26, 2024)**
- ***Nguyen v. TD Ameritrade*, FINRA ID No. 23-02425 (Dallas, TX, Jan. 26, 2024)**

ARTICLES OF INTEREST:

- **Pahis, Stratos, *Rethinking International Investment Law: Form, Function & Reform*, VIRGINIA JOURNAL OF INTERNATIONAL LAW, Vol. 63, No. 3, (2023)**
- ***Nevada Recognizes the Ability of Non-Signatories to Compel Arbitration,* Lexology (Feb. 7, 2024)**
- ***Former Morgan Stanley Broker Running for Office Reviewing $147K Award,* InvestmentNews (Feb. 8, 2024)**
- ***DC Circ. Cautiously Weighs FINRA's Future*, Law 360 (Feb. 9. 2024)**
- ***Sixteen Firms to Pay More Than $81 Million Combined to Settle Charges for Widespread Recordkeeping Failures,* www.sec.gov (Feb. 9, 2024)**
- ***Ex-Edelman FA Sues over "Wildly" Restrictive Covenants*, Financial Advisor IQ (Feb. 12, 2024)**
- ***Why the Supreme Court Should Affirm in Bissonnette,* CPR Speaks blog (Feb. 17, 2024)**

DID YOU KNOW?

- **Barack Obama Once Won Confirmation of an NASD Award**

SCOTUS HEARS ORAL ARGUMENT IN *BISSONNETTE.* *The Supreme Court heard oral argument February 20 in* Bissonnette v. LePage Bakeries Park St. LLC, *No. 23-51, one of two cases involving arbitration being heard this month. The other case is* Coinbase v. Suski, *No. 23-3, which will be heard Wednesday February 28. The* Bissonnette *audio is here and the transcript can be found here. We cover this topic in detail below.*

SQUIBS: IN-DEPTH ANALYSIS

SCOTUS HEARS ORAL ARGUMENT IN *BISSONNETTE*. *The Supreme Court heard oral argument this week in* Bissonnette v. LePage Bakeries Park St. LLC*, No. 23-51, one of two cases involving arbitration being heard this month.* As reported in SAA 2024-05 (Feb. 15), the Supreme Court on **February 20** heard the oral argument in *Bissonnette.* The audio is here and the transcript can be found here.

***Certiorari* Petition**

The **July 2023** Petition states: "The Federal Arbitration Act exempts the 'contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce.' 9 U.S.C. § 1. The First and Seventh Circuits have held that this exemption applies to any member of a class of workers that is engaged in foreign or interstate commerce in the same way as seamen and railroad employees—that is, any worker 'actively engaged' in the interstate transportation of goods. The Second and Eleventh Circuits have added an additional requirement: The worker's employer must also be in the 'transportation industry.' The question presented is: To be exempt from the Federal Arbitration Act, must a class of workers that is actively engaged in interstate transportation also be employed by a company in the transportation industry?" Several *amicus* briefs were filed. Noteworthy briefs were filed by Amazon.com, the California Employment Law Council, and the Chamber of Commerce of the United States.

The Oral Argument

With a full complement of Justices, the oral argument in this case was audio livestreamed via the SCOTUS Website. The discussion focused squarely on Congress' intent on the scope of the FAA section 1 exemption, with several references to the situation when the FAA was enacted in 1925. (*ed: who knew that a coal strike caused a famine in Chicago in 1903?)* Bissonnette's counsel **Jennifer Dale Bennett** urged that the Court reject an additional requirement that a company be part of the transportation industry: "Less than two years ago, in *Southwest versus Saxon*, this Court carefully examined the text and history of the Federal Arbitration Act's worker exemption, and it held that the exemption applies to 'any class of workers directly involved in transporting goods across state or international borders.'" **Traci L. Lovitt**, Counsel for the Respondent, led with: "[i]n *Circuit City*, this Court said that the Section 1 exemption should be read narrowly and should be interpreted with reference to the ejusdem canon, context, and history, all three of which demonstrate that the exemption is limited to transportation industry workers. After all, in 1925 … seamen and railroad employees were defined by the industry in which they work. And that commonality should carry through to the residual clause. Context and history tell you why this line makes sense." The Court's pro-arbitration wing was relatively quiet, with the bulk of the questions coming from **Justices Kagan, Jackson**, and **Sotomayor** (although **Justice Thomas** was atypically active). Several Justices on both sides struggled with additional complications posed by defining the "transportation industry." For a comprehensive "chapter-and-verse" analysis, we recommend that readers peruse these **February 21** posts: *Justices Debate Arbitration Exemption for Transportation Workers* (SCOTUSBlog); *Tuesday's Supreme Court*

Federal Arbitration Act Exemption Arguments (CPR Speaks); and *US Supreme Court Seems Unlikely to Limit FAA Exemption to Transportation Companies* (Reuters). *(ed: *We're with Reuters. **We had to look up "ejusdem," too. It means: "of the same kind or class." ***The Court also granted* certiorari *in another arbitration-related case,* Coinbase v. Suski, *No. 23-3, which will be heard Wednesday February 28.)*
return to top

NINTH CIRCUIT AFFIRMS THE RESULT, BUT NOT THE REASONING, OF THE DISTRICT COURT IN AWARD CONFIRMATION PROCEEDING. ***The Court holds that the district court made the right decisions on the issues of jurisdiction and service, but for the wrong reasons, and therefore affirms the confirmation of an award.*** The arbitration award in question resolved a dispute regarding the rights and obligations of the parties to a Distribution and Licensing Agreement ("DLA") governing the distribution in Latin America of a movie entitled *Ava.* The prevailing party, Voltage Pictures, LLC ("Voltage"), commenced a confirmation proceeding in federal court by filing and serving a notice to confirm the arbitration award ("notice") on the losing party, Gussi, S.A. de C.V. ("Gussi SA"), a Mexican company. *Voltage Pictures, LLC v. Gussi, S.A. de C.V.*, No. 2:21-cv-04751 (C.D. Cal. Jan. 17, 2023), in the course of confirming the award, ruled that the court had diversity of citizenship jurisdiction and that the notice was properly served under California law. On appeal, the U.S. Court of Appeals affirms this decision in *Voltage Pictures, LLC v. Gussi, S.A. de C.V.*, No. 23-55123 (9th Cir. Feb. 5, 2024).

The District Court had Jurisdiction, but Why?
The first issue the Appellate Court addresses is whether the district court had subject matter jurisdiction. Because, it explains, Voltage is a limited liability company, its citizenship is determined by the citizenship of its members, and because the record does not indicate the latter's citizenship, the district court erred in finding that it had diversity of citizenship jurisdiction. Nevertheless: "Section 203 of Chapter 2 of the Federal Arbitration Act (FAA) vests federal district courts with subject matter jurisdiction over motions seeking to confirm non-domestic arbitral awards…. Here, it is undisputed that the arbitral award at issue is 'between at least one foreign party' because Gussi SA is a citizen of Mexico…. Accordingly, we are satisfied that Section 203 provided the district court with an independent basis for exercising subject matter jurisdiction over the motion."

Service of Process Is Not Governed by California Law
The stickier problem is whether service of the notice was proper. The DLA requires both parties to accept service of process in accordance with the Independent Film & Television Alliance ("IFTA") Rules for International Arbitration ("IFTA Rules"). However, while IFTA Rule 13.1 states that California law must apply to the arbitration, the Court holds that it does not apply to a subsequent confirmation proceeding. "Instead, we hold that, by incorporating IFTA Rule 12.5 into the DLA, Voltage and Gussi SA both agreed to accept service of a confirmation motion pursuant to any law, treaty, or convention (except for the Hague Convention) that applies to such motions in the

prevailing party's chosen confirmation forum. Because Voltage filed its confirmation motion in a federal court, we must analyze whether service of the motion on Gussi SA complied with whatever federal law applies to such motions."

Solving a Service of Process Problem
However, applying federal law creates a quandary: Section 9 of the FAA requires a notice of a motion to confirm an award to be served on a non-resident of the district in which the award was entered by a U.S. marshal of the district where the non-resident may be found, but Gussi SA is a Mexican corporation with its principal place of business in Mexico City, where U.S. marshals have no authority. Unlike some other federal courts that deemed this requirement to be obsolete, the Court here rules that the U.S. marshal requirement is still valid. Fortunately: "Section 208 of Chapter 2 instructs that Chapter 2 only incorporates § 9 'to the extent that [§ 9] is not in conflict with [Chapter 2] or the [New York Arbitration] Convention as ratified by the United States.'... Therefore, we conclude that Congress did not intend to incorporate § 9's nonresident service provision into Chapter 2 of the FAA in circumstances where nonresident adverse parties cannot be found for service within the United States." Instead: "we hold that Rule 5(b)—the federal procedural law governing how service of a motion is made, Fed. R. Civ. P. 5(b)—is the default rule for serving notice of an application to confirm an award when § 9 conflicts with Chapter 2." Under that Rule, Voltage properly served Gussi SA with the notice by mailing it to its attorneys in the arbitration.

One Final Issue
Finally: "On appeal, Gussi SA also challenges the district court's decision not to take judicial notice of a document that Gussi SA claimed was a court order from Mexico enjoining Voltage from seeking to confirm the award in the United States. However, as the district court correctly noted, Gussi SA did not certify the genuineness of the document purporting to be a Mexican court order or the accompanying translation.[] … Therefore, Gussi SA fails to carry its heavy burden to show that the district court abused its discretion when it decided not to take judicial notice of the purported court order from Mexico." The Court affirms the confirmation of the award.
*(ed: *Seems right to us. **An Alert h/t to Peter R. Boutin, Esq. of Keesal Young & Logan in Los Angeles, CA for alerting us to this decision. ***This Squib was prepared by Harry A. Jacobowitz, President of HAJ Research and Writing LLC. Mr. Jacobowitz, a member of the Pennsylvania bar, and his firm perform legal research and writing for attorneys and handle substantive searches of SAC's Award database. He can be contacted at harryjacobowitz@optimum.net.*return to top
return to top

SHORT BRIEFS: CONCISE NEWS YOU NEED TO KNOW

REMINDER: *SUSKI* ORAL ARGUMENT IS FEBRUARY 28. We reported in SAA 2024-03 (Jan. 18) that the Supreme Court had set oral argument in *Coinbase v. Suski*, No. 23-3, for Wednesday **February 28**. Recall that we reported in SAA 2023-25 (Jun. 29) and blogged in **June 2023** that the Supreme Court had decided *Coinbase, Inc. v. Bielski*, No. 22-105, ruling mostly along ideological lines that courts must stay underlying

litigation while an appeal of a denial of a motion to compel arbitration is pending. The 5-4 decision, which was released on June 23, was authored by Justice **Kavanaugh**. He was joined outright by Chief Justice **Roberts**, and Justices **Alito, Barrett**, and **Gorsuch**. Justice **Jackson** wrote a dissenting opinion, in which Justices **Kagan** and **Sotomayor** joined in full, and in which Justice **Thomas** joined for the most part. Buried in a footnote was this landmine: "The Court's judgment today pertains to respondent Abraham Bielski. The writ of certiorari as to respondents David Suski et al. is dismissed as improvidently granted." We further reported that back with a **June 2023** *Certiorari* Petition were the Suski parties, who raised this issue: "Whether, where parties enter into an arbitration agreement with a delegation clause, an arbitrator or a court should decide whether that arbitration agreement is narrowed by a later contract that is silent as to arbitration and delegation." In a three-item Miscellaneous Order released **November 3, 2023**, SCOTUS granted *Certiorari* in *Suski.* As usual, there was no explanation. Several *amicus* briefs have been filed. Noteworthy briefs were filed by the American Bankers Association, the American Tort Reform Association, the Atlantic Legal Foundation, the Cato Institute, and the Chamber of Commerce of the United States.
*(ed: *The oral argument audio will be livestreamed at www.supremecourt.gov. Transcripts will be found here, and audio files here. **See* Arbitration, Ready to Argue: Amicus Views on Overturning Bissonette at the Supreme Court *in the February 6 CPR Speaks blog.)*
return to top

SCOTUS SETS ORAL ARGUMENT IN *SPIZZIRRI.* The Supreme Court has set Monday **April 22** for the oral argument in *Smith v. Spizzirri*, No. 22-1218. SCOTUS agreed in a **January 12** Miscellaneous Order to take on the case. As reported in SAA 2023-36 (Sep. 21), the **June 14, 2023** Petition for *Certiorari* states: "This case presents a clear and intractable conflict regarding an important statutory question under the Federal Arbitration Act (FAA), 9 U.S.C. 1-16.[] The FAA establishes procedures for enforcing arbitration agreements in federal court. Under Section 3 of the Act, when a court finds a dispute subject to arbitration, the court 'shall on application of one of the parties *stay the trial of the action* until [the] arbitration' has concluded. 9 U.S.C. 3 (emphasis added).... The question presented is: Whether Section 3 of the FAA requires district courts to stay a lawsuit pending arbitration, or whether district courts have discretion to dismiss when all claims are subject to arbitration."
*(ed:*Spizzirri *will be the second case argued*. ***See our blog post*, First Monday in October Coming Soon: Some Arbitration-Centric Cases Worth Following
return to top

PUBLIC CITIZEN: MANDATORY CONSUMER FINANCIAL ARBITRATION AGREEMENT USE HARMS COMMUNITIES OF COLOR, LOW INCOME COMMUNITIES. Public Citizen released a new report on **February 7**: "revealing that the forced arbitration clauses routinely included in the agreements for financial services products — including credit cards; money transfer services; and buy now, pay later products — disproportionately harm communities of color and contribute to intergenerational wealth gaps." Announced in a press release, the key findings in the 32-

page *Consumers' Fraught Journey Into Forced Arbitration* were (*ed: repeated* verbatim; emphasis in original):

- Arbitration systems are further out of reach for low-income BIPOC [black, indigenous and other people of color] communities because they are **procedurally inaccessible and lack the resources** to accommodate marginalized communities
- Forced arbitration provisions harm low-income BIPOC families by forcing them to engage with **arbitration firms that do not provide adequate resources** to support low-income BIPOC individuals. In contrast, **state and federal courts offer** more diverse judges and juries than the decision-makers at arbitration firms, and also offer access to public assistance programs and accessibility services.
- Banning forced arbitration in financial services, as the **Consumer Financial Protection Bureau (CFPB) has the authority to do,** would be the first step toward granting consumers access to equitable and financial relief.

The report concludes: "Forced arbitration clauses are found in a wide range of consumer contracts, including contracts governing the purchase of tickets, cellular phone accounts, credit card accounts, accessing a website, downloading an app, residence at a nursing home, and car purchases, among others. These clauses require consumers to resolve any disputes between them and the company that might arise in the future through private arbitration, rather than in a public court. Forced arbitration clauses also typically bar consumers from joining class action lawsuits. For this reason, in recent years, the number of class actions brought by or on behalf of low-income consumers and employees has drastically dropped" (footnotes omitted).
(ed: The report steers clear of FINRA and securities arbitration.)
return to top

PDAA DOES NOT REQUIRE REPRESENTATIVE PAGA CLAIMS TO BE ARBITRATED. *Piran v. Yamaha Motor Corporation*, No. G062198 (Calif. Ct. App. 3 Feb. 8, 2024), involves representative and individual claims asserted under California's Private Attorneys General Act ("PAGA"). The plaintiff was bound by a predispute arbitration agreement ("PDAA"). Before the Court was the PDAA's impact on the PAGA claims. Holds the Court: "Yamaha argues Piran's individual PAGA claim must be compelled to arbitration under the parties' arbitration agreement and her non-individual PAGA claims must be dismissed for lack of standing. Yamaha also contends the trial court failed to enforce the arbitration agreement according to its terms by allowing Piran's class claims to remain in the case pending completion of the arbitration.[] We affirm in part and reverse in part. We hold Piran's individual PAGA claim must be compelled to arbitration in accordance with the arbitration agreement under *Viking River Cruises, Inc. v. Moriana* (2022) 596 U.S. ___ [142 S.Ct. 1906, 213 L.Ed.2d 179] (*Viking River*). We determine the non-individual PAGA claims remain in the trial court under the arbitration agreement, and the trial court properly stayed them pending completion of the arbitration. We find Piran maintains PAGA standing to pursue her non-individual PAGA claims in court under *Adolph v. Uber Technologies, Inc*. (2023) 14 Cal.5th 1104 (*Adolph*). Finally, we conclude Yamaha forfeited any arguments concerning the trial

court's alleged error in staying the class claims, because Yamaha did not address how it was prejudiced by the stay."
*(ed: *We reported in SAA 2024-05 (Feb. 1) on* DeMarinis v. Heritage Bank of Commerce, *No. A167091 (Calif. Ct. App. 1 Jan. 4, 2024), where the Court held unenforceable a PDAA providing for the "wholesale waiver" of rights – individual and collective – under PAGA. **An* Alert *h/t to Editorial Board member Peter R. Boutin, Esq., of Keesal, Young & Logan, for alerting us to this decision*.)
return to top

QUICK TAKES: CASES AND AWARDS WORTH READING

Voltage Pictures, LLC v. Gussi, S.A. Gussi S.A. de C.V., **No. 23-55123 (9th Cir. Feb. 5, 2024)**: "On June 10, 2021, Voltage Pictures, LLC (Voltage) filed a motion in the United States District Court for the Central District of California to confirm an arbitral award that was issued against Gussi S.A. de C.V. (Gussi SA) earlier that year. After hearing from both parties, the district court confirmed the award and entered judgment in favor of Voltage. On appeal, Gussi SA maintains that service of the motion to confirm the award was insufficient under federal law and that parallel proceedings in Mexico required the district court to abstain from confirming the arbitral award. We have jurisdiction pursuant to 28 U.S.C. § 1291 and 9 U.S.C. § 16(a), and we affirm."
(*ed: See our coverage elsewhere in this* Alert).

Patrick v. Running Warehouse, LLC**, No. 22-56078 (9th Cir. Feb. 12, 2024)**:
"Defendants-Appellees are companies that own and operate e-commerce websites selling sporting goods. Plaintiffs-Appellants John Patrick, Bethany Buffington, Craig Arcilla, Laurie Gasnick, Erik Solter, Lorne Bulling, and Tom Hargrove (Plaintiffs) purchased goods online from Defendants. In October 2021, hackers breached Defendants' websites and stole their consumers' personally identifiable information. Based on this data breach, Plaintiffs brought six putative class actions against Defendants asserting claims of negligence, breach of contract and of implied contract, and quasi contract. Defendants moved to compel Plaintiffs to arbitrate their claims against Defendants based on the arbitration provision in the terms of use in their agreements. The district court granted the motions and dismissed the six related actions without prejudice. We affirm" (footnotes omitted). (*ed: An* Alert *h/t to Editorial Board member Peter R. Boutin, Esq., of Keesal, Young & Logan, for alerting us to this decision*.)

Stiegler v. Meriden**, No. SC20803 (Conn. Feb. 6, 2024)**: "After the effective dates of their retirements, an arbitration panel issued an interest arbitration award pursuant to the provisions of General Statutes § 7-473c of the Municipal Employee Relations Act, General Statutes § 7-460 et seq., granting all firefighters in that municipality a retroactive wage increase. The plaintiffs filed a breach of contract action, alleging, among other things, that they were entitled to a recalculation of their pension benefits to reflect the retroactive wage increase. The trial court agreed with the plaintiffs and rendered judgment in their favor on the breach of contract claims. On appeal, the defendants claim that the trial court lacked subject matter jurisdiction because the plaintiffs had failed to exhaust their administrative remedies and, on the merits, that the trial court had

incorrectly concluded that the plaintiffs were entitled to a recalculation of their pension benefits. We conclude that the trial court properly exercised jurisdiction but erroneously determined that the plaintiffs are entitled to receive a retroactive increase in their pension benefits and, therefore, reverse in part the judgment of the trial court."

***Ecenbarger IRA v. Farhoumand*, FINRA ID No. 23-02221 (Indianapolis, IN, Jan. 26, 2024)**: A Panel grants with prejudice Respondent broker's Prehearing Motion to Dismiss pursuant to FINRA Rule 12504(6)(C) (Res Judicata), after finding that the non-moving party (Claimants) already litigated the same claims in dispute, thereby making them fully and finally adjudicated. The previous Panel found the claims to be time-barred under Rule 12206 (Six-year Eligibility Rule) of the Code. *Provided courtesy of SAC's ARBchek facility (www.arbchek.com).*

***Nguyen v. TD Ameritrade*, FINRA ID No. 23-02425 (Dallas, TX, Jan. 26, 2024)**: In this small claims arbitration, a *pro se* customer alleging that she was denied access to her investment account loses her case, after the Arbitrator finds that Respondent broker-dealer was authorized to take all of the actions it did regarding her self-directed account. *Provided courtesy of SAC's ARBchek facility (www.arbchek.com).*
return to top

ARTICLES OF INTEREST: RECENT NEWS FROM THE ADR FRONT

Pahis, Stratos, *Rethinking International Investment Law: Form, Function & Reform*, VIRGINIA JOURNAL OF INTERNATIONAL LAW, Vol. 63, No. 3 (2023): "This Article provides a novel perspective for understanding, criticizing, and reforming one of the most important and controversial institutions in the international economic order: international investment law (IIL). First, I argue that contrary to the conventional wisdom, the key function of the IIL regime is not to protect or promote investment, but rather to reduce the cost of doing so. Second, I argue that the regime's form is misaligned from its function. Specifically, its coverage of State contracts does not reduce costs and is instead redundant, inefficient, and unfair. It imposes unnecessary costs and constraints on investors, States, and the public that serve no purpose at all. Third, I argue that the best explanation for this misalignment is path dependency, not purposeful design. The coverage of State contracts was once functional, but because of changes in the international legal and economic context, it no longer is. Finally, I argue that reformers should realign the form and function of the regime by splitting it in two. The current investment treaty regime should be kept for property investments, but State contracts should be spun off to the existing international commercial arbitration regime. Such a reform would benefit every stakeholder, including investors, States, and the public."

***Nevada Recognizes the Ability of Non-Signatories to Compel Arbitration*, Lexology (Feb. 7, 2024)**: "In a recent case of first impression in Nevada, the Nevada Supreme Court found en banc that a nonsignatory to an arbitration agreement may compel another nonsignatory to arbitrate. The Court's decision in *RUAG Ammotech GmbH v. Archon Firearms, Inc*., 139 Nev. Adv. Op. 48 (2023) can be read here."

***Former Morgan Stanley Broker Running for Office Reviewing $147K Award*, InvestmentNews (Feb. 8, 2024)**: "A former Morgan Stanley broker who's running for Congress recently won a Finra arbitration case against her erstwhile employer but wants to double-check the math on the $147,000 award.[] Deborah Adeimy is seeking the Republican nomination for the 22nd District congressional seat in Florida. It's her second attempt at the office, after an unsuccessful primary bid in 2022.[] Adeimy left the Morgan Stanley office in West Palm Beach, Florida, in November 2021 to launch her 2022 campaign. In an arbitration claim filed in July 2022, she alleged that Morgan Stanley blocked her from running for office when she worked there. Adeimy cited breach of employment agreement and wrongful termination, among other causes of action, according to the Monday award."

***DC Circ. Cautiously Weighs FINRA's Future*, Law 360 (Feb. 9. 2024)**: "The D.C. Circuit spent more than two hours Thursday debating the future of the Financial Industry Regulatory Authority, with the judges seemingly divided on whether the private organization is subject to the same constitutional restraints imposed on government agencies, or if it can continue punishing broker-dealers that violate its rules without additional oversight."

***Sixteen Firms to Pay More Than $81 Million Combined to Settle Charges for Widespread Recordkeeping Failures*, www.sec.gov (Feb. 9, 2024)**: "The Securities and Exchange Commission today announced charges against five broker-dealers, seven dually registered broker-dealers and investment advisers, and four affiliated investment advisers for widespread and longstanding failures by the firms and their employees to maintain and preserve electronic communications.[] The firms admitted the facts set forth in their respective SEC orders, acknowledged that their conduct violated recordkeeping provisions of the federal securities laws, agreed to pay combined civil penalties of more than $81 million, as outlined below, and have begun implementing improvements to their compliance policies and procedures to address these violations."

***Ex-Edelman FA Sues over "Wildly" Restrictive Covenants*, Financial Advisor IQ (Feb. 12, 2024)**: "Edelman Financial Engines is facing a lawsuit from a former financial advisor who claims that his lead stream was unfairly slashed, greatly reducing his compensation, and that a non-solicitation clause in his employment contract effectively prevents him from working with his former clients or any others."

***Why the Supreme Court Should Affirm in Bissonnette*, CPR Speaks blog (Feb. 17, 2024)**: "The U.S. Supreme Court will hear oral arguments for *Bissonnette v. Le Page Bakeries Park St. LL*, No. 23-51, this Tuesday, Feb. 20. Earlier this month, *CPR Speaks* posted summaries of the petitioner-original plaintiffs' ceramics support to overturn the Second US. Circuit Court of Appeals decision.[] This post looks at the case from the opposing respondent side—the affiliated company defendants in the Federal Arbitration Act employment case."

return to top:

DID YOU KNOW?

BARACK OBAMA ONCE WON CONFIRMATION OF AN NASD AWARD. In keeping with our Presidents Day theme, did you know that, as a young attorney with Davis, Miner, Barnhill & Galland in Chicago, **President Obama** in 1994 argued successfully to enforce an NASD arbitration award in the Seventh Circuit in *Baravati v. Josephthal, Lyon & Ross, Inc*., 28 F.3d 704 (1994)? Alas, the award seems to be lost to history, as we couldn't find it in FINRA's awards database. *(ed: If anyone has a copy of the award, please share to Help@SecArbAlert.com.)*

return to top

Send any messages or inquiries to: George@SecArbAlert.com

Editor's Note & Disclaimer: While we undertake considerable efforts to present information in this publication in a fair and accurate manner, we caution that readers should access referenced material themselves as the best source. Our analyses make liberal use of links, and we offer courtesy copies of materials not on the Internet. Similarly, readers should not rely solely upon our summaries in making legal decisions or consider our commentary to be rendering legal, accounting, or other professional advice or service. If legal advice or other expert assistance is required, the services of a competent professional person should be sought. — *adapted from the Declaration of Principles jointly adopted by a Committee of the American Bar Association and a Committee of Publishers and Associations.*

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