

Award Distribution By State Chart*

All Awards

1/1/95...6/30/96

| STATE | NASD | NYSE | AMEX | AAA | STATE | NASD | NYSE | AMEX | AAA |
|-------|------|------|------|------|-------|------|------|------|------|
| AR | 4 | ---- | ---- | ---- | NC | 12 | 11 | ---- | 1 |
| AZ | 37 | 3 | ---- | 5 | NE | 8 | 1 | ---- | ---- |
| CA | 353 | 30 | ---- | 13 | NJ | ---- | ---- | ---- | 5 |
| CO | 35 | 4 | ---- | 1 | NM | 7 | 2 | ---- | ---- |
| CT | 1 | 5 | ---- | ---- | NV | 6 | ---- | ---- | ---- |
| DC | 38 | 3 | ---- | 1 | NY | 269 | 170 | 20 | 18 |
| FL | 206 | 40 | ---- | 10 | OH | 29 | 6 | ---- | 4 |
| GA | 43 | 7 | ---- | 1 | OK | 10 | 4 | ---- | ---- |
| HI | 2 | ---- | ---- | ---- | OR | 17 | 1 | ---- | ---- |
| ID | 1 | ---- | ---- | ---- | PA | 69 | 16 | ---- | 2 |
| IL | 39 | 16 | ---- | 3 | PR | ---- | 5 | ---- | ---- |
| IN | 5 | 1 | ---- | 1 | SC | ---- | ---- | ---- | 1 |
| KY | 7 | ---- | ---- | ---- | TN | 11 | 3 | 2 | 1 |
| LA | 10 | 7 | ---- | 1 | TX | 69 | 17 | 2 | 9 |
| MA | 63 | 14 | ---- | 1 | UT | 7 | 1 | ---- | ---- |
| MD | 6 | 5 | ---- | ---- | VA | 10 | 3 | ---- | ---- |
| MI | 33 | 4 | ---- | 2 | WA | 29 | 1 | ---- | 2 |
| MN | 28 | 2 | ---- | 2 | WI | 2 | 1 | ---- | ---- |
| MO | 29 | 8 | ---- | ---- | | | | | |

* There are a total of 1,994 Awards presented on the Chart: NASD (1495); NYSE (391); AMEX (24); and AAA (84). The Awards reflected cover those in which hearings were held during the period January 1995 to June 1996. Excluded are 1,068 Awards during the same time period, where no hearings were held (i.e., Small Claims matters) or the hearing locale was not indicated in the Award.

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SAC Award Survey

Award Distribution for Major Forums

The Chart on the facing page is the result of a recent SAC Survey of Awards rendered by four major securities arbitration forums during a recent 18-month period — from January 1995 to June 1996. We surveyed almost 2,000 Awards in which hearings were held to develop a picture of which forums service which states and how frequently each state was selected as a hearing locale during this timeframe.

Our primary purpose was to formulate statistical information that claimants — whether brokerage firms, brokers, or customers — could use in making determinations about which forum to use when filing a securities arbitration claim. Respondents do not have the initial choice, but may also find use of this Chart to negotiate a change in forum or a compromise that could be presented to the forum as a mutual agreement.

We recognize that AAA is not always a practical choice, because agreements to arbitrate do not always include this facility, but the American Arbitration Association still handles more securities cases than any SRO forum, other than NASD and NYSE. Moreover, its almost 40 regional offices create a local presence that would suggest a fairly wide locale distribution — an assumption that appears to be confirmed by the survey results.

The American Stock Exchange is the third largest SRO forum and, in 1995, its filings surged dramatically. While most of those 1995 filings did not result in Awards during the timeframe we studied, the four-fold filing increase made AmEx a good candidate for this review. The New York Stock Exchange and the National Association of Securities Dealers are the largest SRO forums by far and commonly receive specific mention in Customer Agreements as available forums.

We purposely chose a fairly short timeframe, on the theory that recent

appearances in a state were the most significant. To the extent that claimants are concerned that a forum will appear in a particular state, it is also important to them that the appearance will be relatively timely. We omitted more than 1,000 Awards that were mostly Small Claims, non-hearing matters (a small number was omitted simply because a hearing locale was not indicated in the Award).

While we think this Survey provides insight into the likelihood of having a hearing in one's chosen state, we should add that we have no data as to how often parties are unable to obtain the locale of first choice. It may well be that claimants whose first-choice states do not appear on this Chart can still obtain a timely hearing that is sited in such state. Where there is party agreement on the situs, this likelihood is even greater.

NASD accounted for 1,495 of the 1,994 Awards surveyed. It also appeared in the highest number of states (34). The 18 states (we viewed Puerto Rico and Washington, DC as "states" for purposes of the Chart) which were not locales for hearings were Alabama, Alaska, Delaware, Iowa, Kansas, Maine, Montana, Mississippi, New Hampshire, New Jersey, North Dakota, Puerto Rico, Rhode Island, South Carolina, South Dakota, Utah, West Virginia, and Wyoming.

NYSE covered fewer states than NASD (30 Awards) and a relatively large percentage of its Awards (43% vs. NASD's 17%) were heard in New York State. On the other hand, NYSE had only one-quarter as many Awards as NASD and it did cover Puerto Rico (5 Awards), when NASD did not. AAA had a relatively wide distribution among the states (21 states), given that it issued only 84 Awards during our timeframe, and it also covered two states which NASD and NYSE did not — South Carolina (1) and New Jersey (5).

AmEx's distribution was poor, but the sample was concededly small. We were impressed that AmEx did cover Tennessee (2), some indication that, unlike many of the other regionals, it will establish a hearing locale if there is a demand.

Our purpose, again, is to provide a realistic guide for claimants, when a local hearing is important to their choice of forum. Hearing situs is not only a matter of distance and expense, it may also have a practical impact on which state law is applied and whether one uses local counsel or counsel located in the situs state. Yet, it is critical to the ultimate fairness of arbitration that arbitrators be carefully "vetted" and trained. The forums should not be faulted for taking care that competence and impartiality of the selected arbitrators are of primary concern in setting the hearing location.

There are certainly indications that the forums might easily serve more locales than they do (e.g., neither NASD and NYSE hold hearings in New Jersey, when a large portion of their New York arbitrator pool resides in New Jersey). To expect, though, that all states not currently serviced can immediately be covered is also simplistic. Our feature article on arbitrator recruiting and training demonstrates the time lag in reaching this ideal in a responsible fashion.

Final thought: the switch to list selection is going to make it even harder to offer a wider array of hearing locale choices, since a list of 15 (at least) arbitrators will need to be available in a particular locale, instead of just three. Ideally speaking, the will must be there, but, practically speaking, the move to greater coverage must be gradual and carefully planned. For now, parties might look to this Chart as presenting a current picture as to where they can expect to arbitrate.