

EMPLOYMENT AWARD SURVEY

As our guest authors indicate in this issue's feature article on sexual harassment claims, these and other employment-related claims are likely to be resolved in arbitration post-Gilmer. Several months after Gilmer issued, the United States General Accounting Office was asked by Congressman Edward J. Markey (D-MA) to initiate a study of the incidence, outcomes, and consequences of employment discrimination claims proceeding in arbitration (4 SAC 11(3)).

We noted at the time that there was only a handful of Awards in this genre and that it would be difficult to assess accurately the effectiveness of arbitration's role. We recently updated two Charts on employment-related Awards generally that we published in the February 1991 issue of SAC (See 4 SAC 2, (8 and 9)). Those Charts, as the ones on the next page, contain statistics taken from SAC's Award Database.

The February 1991 Charts covered the approximate period May 1989 through April 1990 and surveyed 235 Awards involving Member-Employee and Employee-Member disputes. Our updated Charts cover Awards rendered during the period May 1989 through

March 1992 — almost three years. The latest review covered 727 NYSE and NASD Awards and several from other forums. The Charts are provided for reader review, in light of this issue's dominant theme. Space, though, limits further commentary to some caveats and general remarks.

Our methodology in formulating Chart II differs from that employed in formulating Chart I in the earlier survey. In the first survey, we subjectively classified Awards by "Employee Claim," counting each Award only once in the tally. Since Awards normally reflect a number of types of claims, our survey Chart II below reflects a more objective tally of how often the five top "Employee Claims" appear in Awards, even if it meant considering an Award more than once.

Despite this more thoroughgoing method, we still found only 24 Awards among a total of 275 Employee-Member disputes that alleged employment discrimination as one of the grievances. There have been more Awards in recent months reflecting discrimination claims. One can also assess, from a scan of the court decisions in this issue's "Articles & Case Law" section,

that more discrimination cases are being sent to arbitration. Still, the number that have been resolved through arbitration remains small.

Keep in mind, while reviewing the Charts, that NASD Awards relating to "industry" disputes are not, as a matter of policy, made publicly available. This policy is in the process of being changed on a prospective basis. For the time being, we have assumed that our sample of 164 Awards is representative. Remember, too, that these Awards represent arbitral decisions and do not reflect the number of claims that may have been filed and settled before hearing.

For some perspective on that aspect, one can look to NYSE statistics on employment-related disputes between registered representatives and firms. In 1986, NYSE closed 341 such cases, about 46% of which were tried through Award (See 4 SAC 2(7) for more detail). In 1991, NYSE concluded 562 such cases, 175 (31%) of which were closed via Award. NYSE also reported that 440 of the 1,403 cases filed in 1991 were employment-related disputes.

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EMPLOYMENT SURVEY *cont'd from page 7*

Overall, the Charts do present a statistical picture of what kinds of disputes are most frequently heard, with their outcomes. By the time we take our next look, approximately 9 months hence, the results will be enhanced in two ways: (1) a number of discrimination disputes currently winding their way through the courts and the arbitration process, should have come to final Award; and, (2) we will be able to include many more NASD Awards (See "In Brief," "NASD Rule Proposals").

CHART I

***Industry Award Results**

Forum	Type Of Dispute	No. Awards	(ooo's)			C/C		(ooo's)
			Clmts. Win	Clmts. Loss	Amt. Awrd.	Win	Loss	Amt. Awrd.
NASD	M/E	90	71	19	2,462	10	25	38,321**
NASD	E/M	74	45	29	5,698	5	13	104
NYSE	M/E	362	304	58	13,661	41	64	3,079
NYSE	E/M	201	123	78	16,447***	12	42	1,058
TOTALS		727	543	184	38,268	68	144	42,562

*Member to Member Cases are not covered by this survey.

**Prescott Ball & Turben v. Kanuth, SAC ID# 8912058, accounts for all but \$88,300 of this figure.

***Selden v. SLH, SAC ID# 9002071, accounts for \$2,914,000 of this amount.

CHART II

Frequent Employee Claims

(Employee Member Awards Only)

Type Of Claim	No. Of Awards			Avg. Amount* Awarded In Winning Cases	Avg. Amount* Of Related Claims
		Win	Loss		
Breach of Contract	85	57	28	167	521
Compensation	141	97	44	148	552
Defamation	45	28	17	230	1,208
Discrimination	24	11	13	86	184
WrongTerm	90	52	38	193	861

* 000's omitted.