

SECURITIES ARBITRATION COMMENTATOR

9/91

ISSN: 1041-3057

IN THIS ISSUE

PUBLIC AWARD RESULTS <i>For the second year, employing our Award Reporter database of arbitration Awards, SAC surveys Award results from 3000 decisions issued by SRO panels since May 1989.....</i>	1
STATISTICAL CHARTS	
-- State Chart.....	2
-- AAA/SRO Chart.....	3
-- Product Chart.....	4
-- Futures Chart.....	5
-- Broker-Dealer Chart.....	10
IN BRIEF <i>AAII Affiliation; NFA Stats.; NFA Rule Proposals; NFA Mediation; AAA Task Force; 6-Yr. Eligibility; Attorney Fees; Barbier stayed; Fahnestock en banc denied; Kent - Briefing Begun.....</i>	9
ARTICLES & CASE LAW <i>Book Review - our guest writer provides her views concerning a new treatise on securities arbitration.....</i> <i>Case Law - court decisions dealing with arbitration issues in brokerage firm disputes.....</i>	13
SCHEDULE OF EVENTS <i>The coming quarter's schedule of arbitration events.....</i>	14

COMING EVENTS

Once again, this issue has proved to be one of our most difficult to produce. Much has been shuffled about to make room for the 1991 Award Survey. Now that it's done, the next couple of issues should follow in relatively quick succession.

Survey of Public Award Results *The First 3,000 Awards*

Introduction

Since May 1989, the Self-Regulatory Organizations operating arbitration forums have been making public the results of arbitrations conducted under their auspices. These results are memorialized in the arbitration Awards, which SRO-selected Arbitrators issue to the parties as their decision.

The SAC Award Reporter, our companion publication, has, as its mission, the tracking and cataloguing of arbitration Awards rendered in the securities and commodities sectors. The Award Reporter's database of arbitration Awards, which includes Awards from the securities SRO's, and from the National Futures Association (Award summaries only) and the American Arbitration Association (subscriber-contributed Awards only), is the only consolidated reference source for recoding and searching these Awards.

Since our last survey of Awards in the March-April 1990 issue of SAC ("the 1990 Survey"), when we reviewed Award results of some 1,300 Awards, the Reporter database has grown to approximately 5,000 Awards. Almost 3,500 of these have been readied for publication in the Reporter. For the current survey, we have isolated the "first 3,000" Awards in order to update the findings published in our 1990 Survey.

Scope of Survey

SAC recently dedicated an edition to industry disputes and included a survey reviewing Award results in the area of employment and commercial con-

troversies, 4 SAC 2(7). Those Awards have been omitted from our current survey; the concentration here will be on customer-initiated claims. We have also omitted SRO Awards rendered prior to May 10, 1989, since these Awards contain insufficient information for some of the statistical analyses.

Although AAA Awards are included in the database, whenever subscribers contribute them, we have omitted those Awards as well from the current statistical review. There are several reasons. Those Awards which we have are probably the most notable, but, as such, represent neither a sufficient, nor a representative sample. Moreover, AAA has recently released Award statistics concerning arbitrations conducted under its Securities Arbitration Rules during 1990, which are more complete. From this information, we have prepared a comparison chart to juxtapose SRO Award results with the latest data from the AAA.

Caveats

We had hoped, in delaying the 1991 Award Survey, to have available for comparison the statistical results that we expect will be contained in the thoroughgoing study underway by the U. S. General Accounting Office. Our results are taken directly from the information reflected in the Awards themselves, without reference to the forums' internal records. It may be, then, that there will be differences. Nevertheless, the SRO Awards issued in the recent past have become more elaborate and more observant of the

cont'd on page 2

AWARD SURVEY *cont'd from page 1*

<p align="center">SRO Award Analysis Of The Five Most Active States</p> <p align="center">CustomerMember Only*</p>								
State Situs	No. Awd.	No. Cust. Wins	{TCC} Total Comp. Claims (\$000's)	{TA} Total Awards (\$000's)	{RCC} "Related" Comp. Claims (\$000's)	Percentages		
						Cust. Wins %	TA TCC %	TA RCC %
NY	304	184	71,591	17,313	51,065	61	24	34
CA	231	143	42,542	13,930	26,331	62	33	53
FL	150	93	23,695	6,619	19,743	62	28	34
IL	64	30	7,502	1,236	2,597	47	16	48
TX	62	38	17,835	5,418	11,792	61	30	46
All Other States	452	255	75,149	21,684	54,237	56	29	40
All States	1,263	743	238,314	66,200	165,765	59	28	40

* Small Claims Awards are not included in the figures presented, since many Small claims cases are decided "on the papers" and do not include an oral hearing. Thus, no situs is indicated in such Awards. CustomerMember Awards are those which are customer-initiated and relate to claims in excess of \$10,000.

information requirements stipulated in the Uniform Code of Arbitration, developed by the Securities Industry Conference on Arbitration and we believe the information we present is the most comprehensive and accurate that reference to the Public Awards can offer.

Still, we preface the Survey with some explanatory remarks. First, the Award Survey is cumulative; that is, it includes those Awards which were presented in the 1990 Survey. To modulate the skewing effect of some of the larger Awards and small instances of incomplete data, we felt it wiser to proceed with the largest available sample than to attempt a period-to-pe-

riod comparison. As a result, any changes in the general statistics versus those reflected in the 1990 Survey will require a greater shift in the more recent Awards than the overall statistic will indicate.

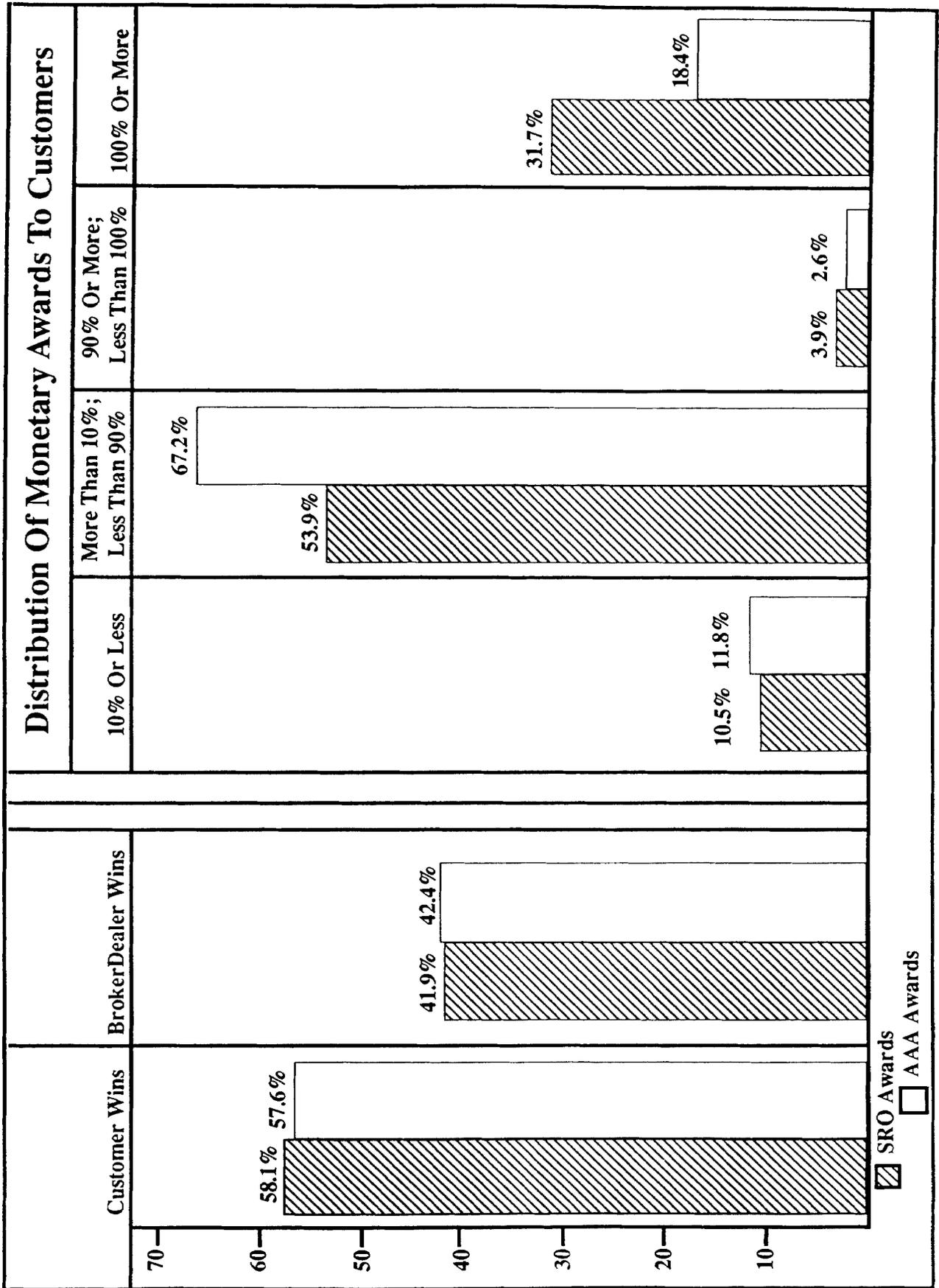
Example: The percentage of SRO Awards in which customers received some recovery increased from 55.2% in the 1990 Survey to 58.1% in the 1991 Survey. Since the Awards from which the earlier "win" rate was calculated are also included in the new calculation, the Awards added since the 1990 Survey must reflect an even higher

"win" rate than 58.1%.

Readers should also remember that labels used to categorize disputes as "CustomerMember," (cases initiated by customers, alleging more than \$10,000 in losses) or "Small Claims" (cases initiated by customers, alleging claims not exceeding \$10,000, which are decided by a single Public Arbitrator) can be simplistic. The use of such classifications, when we are composing aggregate Award statistics, causes awards to be disregarded which may have been rendered on counterclaims or third-party claims. These "subsidiary" claims can change the outcome

cont'd on page 4

AAA/SRO Award Breakdown



AWARD SURVEY *cont'd from page 2*

complexion of a particular case significantly.

Example: In Shearson Lehman Hutton v. Henry (SAC ID #9007166 - NASD, issued 6/26/91), Shearson recovered a complete Award against Mr. Henry on an account deficit, \$408,719.18; but, the firm gave it right back on a successful counterclaim, in which Mr. Henry won \$408,719.18 on churning and suitability allegations. Since this matter is styled as a "MemberCustomer" matter, the Award to Mr. Henry would not be considered in calculating amounts awarded in customer-initiated arbitrations; yet, the Award to Shearson would be considered in calculating the amounts won by broker-dealers in "Mem-

berCustomer" cases.

The Henry Award illustrates a final point that requires clarification. The Awards contained in the "first 3,000" are concentrated in the 15-month period subsequent to May 10, 1989, but there are Awards issued on later dates, due to the vagaries of our gathering and inputting procedures. By omitting Awards in the database prior to May 10, 1989, the original public availability date, we at least establish a fixed commencement date.

With these qualifications, this year's Customer Award Survey more than doubles the number of Awards reviewed in the 1990 Survey. In addition, there are five statistical Charts, which examine the Award results from different perspectives. We make greater use of Charts this year than in last year's survey, because graphical

presentations often explain the data better and in less space.

These Charts attempt to address, in statistical fashion, such imponderables as how "the customer" is doing in arbitration, which firms have the best track record, how the AAA compares to the SRO's, whether hearing situs makes a difference, and which "products" or investment vehicles are behind the problems. As imponderables, these questions are not given to ready measurement, but the quantitative data may offer insights that will foster more objective assessments.

Statistical Analysis

All Customer Awards

Of the "first 3,000" Awards, there are 2,279 CustomerMember and Small Claims Awards that fit our criteria. These Awards represent almost a half

cont'd on page 5

SRO Award Analysis Of The Top Five Products In Dispute								
CustomerMember & Small Claims								
Product*	No. Awds.	No. Cust. Wins	{TCC} Total Comp. Claims (\$000's)	{TA} Total Awards (\$000's)	{RCC} "Related" Comp. Claims (\$000's)	Percentages		
						Cust. Wins %	TA / TCC %	TA / RCC %
Equity	696	415	64,518	19,939	44,325	60	31	45
Options	339	206	71,768	22,197	52,966	61	31	42
Fixed Income	169	106	24,140	6,110	14,455	63	25	42
Mutual Fds	159	81	8,175	2,558	3,965	51	31	65
Direct Investments	119	72	22,034	10,124	18,500	61	46	55

* Some Awards involve more than one product among the transactions in dispute. Such Awards will be counted more than once in the tabulation of these product statistics.

AWARD SURVEY *cont'd from page 4*

billion dollars in claims by customers and almost a quarter billion dollars in investment losses, as calculated by the customer-Claimants themselves. Of the 2,279 Awards, 1,325 resulted in some recovery to the customer on her claim ("customer wins"), or 58.1% of the total.

In our 1990 Survey, customers won 55.2% of the 964 Awards surveyed. In a survey of the earliest Public Awards, conducted by SAC in September 1989, we found a "win" rate of 51%. Over time, the statistics reflect a steady

rise in this indicator. Thus, the addition of the more recent Awards to the total continues to signal a perceptible shift in the customer's chances of getting some recovery, if he proceeds through hearing to an Award.

Could such a shift be attributable to some change in Arbitrators' attitudes? Might it be a consequence of major revisions in the SRO Rules in May 1989 and since? Customers' counsel will no doubt attribute the rise to the more experienced representation aggrieved investors have available

nowadays. It may be, if such a shift is valid, that it is due to these factors and others. It could also be a function of the larger size of the claims that Arbitrators are adjudicating. One might expect that the greater complexity of large-claim disputes could lead to at least some portion of these claims being sustained. We tested this notion with a quick survey of compensatory claims over \$100,000; the customer "win" rate in such SRO proceedings is around 64% — not a compelling difference, but a

cont'd on page 6

Commodity Award Analysis By SRO Arbitration Forum

CustomerMember and SmallClaims

SROs	Award Figures		Damage Figures						Ratios		
	No. Awards	No. Of Cust. "Wins"	Total Claims (\$000's)	Total Comp. Claims (\$000's)	Total Awards (\$000's)	Total Comp. Awards (\$000's)	"Related" Total Claims (\$000's)	"Related" Total Comp. Claims (\$000's)	Cust. "Wins" (%)	TA TCC (%)	TA RCC (%)
Arbitration Forum ⁽¹⁾											
Natl Futures Assn ⁽²⁾	141	90	5,066	4,311	1,850	1,562	3,514	2,855	64	43	65
New York Stk Exch	24	18	19,468	16,097	4,425	3,782	18,454	15,084	75	27	29
Natl Assn Secs Dlrs	20	13	52,992	17,665	2,079	1,390	47,526	12,492	65	12	17
Totals	185	121	77,526	37,073	8,353	6,734	69,494	30,431	65	23	22

(1) One PSE Award was omitted from Chart. Customer lost a claim for \$200,000 in asserted losses.

(2) All NFA Awards are commodities-related. NFA does not release actual Award copies, only summary information on Awards rendered since January 1, 1990. Thus, many of the 141 "Awards" reflected are not actually part of the SAC Award database, but are maintained in a separate database file.

AWARD SURVEY *cont'd from page 5*

factor, perhaps.

Small Claims Awards have kept pace with this apparent trend. These Awards account for 1,016 of the 2,279 customer-initiated Awards surveyed. Thus, a large disparity between outcomes in this category and outcomes in the CustomerMember sector could skew the statistical results. That is not the case here. In the 1990 Award Survey, the overall "win" rate was 55.2% for customers as a whole, while the rate for Small Claims was 54.4%. In the 1991 Award Survey, the corresponding figures remained similarly close, 58.1% and 58.8%, respectively.

Recovery Rate Down

The amount of money in play in these arbitrations is starting to stagger the senses. When one thinks that the aggregate claim and award amounts are supposed to have some nexus, not with the amount that retail investors lost in the markets, but with that far smaller portion which might be laid at the feet of the malfeasant or negligent brokerage firm — and then one discounts that amount by the settlements, litigation claims, and abandoned claims that are not represented in the numbers — \$242.4 million in compensatory claims is an impressive figure.

Of that amount, customers recovered approximately \$67.8 million, in the form of damages awarded by SRO arbitration panels. Thus, about 28% of the aggregate compensatory claims of both winning and losing Claimants was assessed against brokerage firms and awarded to investors. In our 1990 Survey, the corresponding figure was 31%. Whereas total compensatory claims increased about 133% in the interim, total amounts awarded rose somewhat more slowly, approximately 110%.

When the amounts claimed in losing cases are excluded, the aggregate compensatory claims left total \$168.0 million. This figure, which constitutes almost 70% of all amounts claimed, represents the aggregate amounts claimed in those SRO cases where Arbitrators awarded the customer some

recovery. We refer to this amount as the sum of all "related compensatory claims," since the claim amounts that comprise the figure relate only to "winning" claims, i.e., those claims in which some amount was awarded to Claimant.

The total amount of "related" compensatory claims went from \$63.8 million in our 1990 Award Survey to \$168.0 million in the current Survey, an increase of about 163%. The \$67.8 million in awarded damages amounts to just over 40% of the claim amounts sought by investors who achieved some recovery. We shall refer to this figure as the "SRO recovery rate."

NASD & NYSE

Last year, the corresponding percentage was 50.5%. Because this "recovery rate" figure relies upon Claimants' own estimates of their compensatory claims, it can be regarded as somewhat unreliable. Claimants are free to overstate their losses and inflate their claims — and they often do. Thus, those who expect anything approaching a 100% "recovery rate," whether it is in litigation or arbitration, are ignoring the facts. Nevertheless, the number of Awards in our Survey is considerable and should exert a modulating effect on all but the most erratic evaluations.

There was a dramatic shift in NASD's "recovery rate" from the 1990 Survey to this review. In reporting the 1990 Survey results, we indicated that "a comparison of the total amount awarded (\$18.2 million) in the NASD customer-claimant cases to the related compensatory claims of \$30.3 million, reveals a surprisingly high 60.1%." 3 SAC 3&4(4). That percentage fell to 41.4% in the 1991 Survey. NYSE's "recovery rate" also fell, but the difference was less dramatic, from 40.4% to 35.2%.

NASD and NYSE continue to account for the great majority of the Awards we survey. NASD issued 1,621 of the 2,279 customer-initiated SRO Awards and accounted for \$41.2

million of the amount awarded. 956 of these Awards involved some monetary recovery for the customer-Claimant, so that the customer's "win" rate at NASD stands higher than at any of the major forums — 59%.

NYSE Awards totalled 481. Thus, these two major forums continue to account for more than 90% of the SRO-sponsored arbitration Awards. Of the 481 Awards, monetary awards to Claimants were granted in 263 of the cases, or 54.7% of the time. Total amounts awarded were \$23.4 million, compared to \$66.4 million in related compensatory claims, yielding a 35.2% NYSE "recovery rate" on the winning Awards.

Award Charts**Tracking the "Fairness Factor"**

SAC's 1990 Survey did not include statistical comparisons to Award results for arbitrations conducted under AAA's Securities Arbitration Rules. AAA does not currently make Awards

cont'd on page 7

SECURITIES ARBITRATION COMMENTATOR - Editor and Publisher: Richard P. Ryder, P.O. Box 112, Maplewood, N.J. 07040. Business Office: 14 Highland Place (G), Maplewood, N.J. 07040 (201) 761-5880. FAX No. (201) 378-8747. Copyright © 1991 Securities Arbitration Commentator. No part of this publication may be reproduced in any manner without the written permission of the publisher.

SUBSCRIPTION

INFORMATION: The Securities Arbitration Commentator is published 12 times per year. Subscription Rates: One year - \$228 Regular Rate. Overseas subscribers, please add 10% for additional postage and handling. Back issues available to subscribers only at \$15 per issue.

AWARD SURVEY *cont'd from page 6*

publicly available, although that policy is under review. The Association did subsequently publish statistical results for its securities arbitration program during 1989 and a comparison of those results to the SRO results appeared in the June/July 1990 issue, 3 SAC 6&7(3).

In that comparison, we tested the so-called "Fairness Factor," the idea that material differences exist between the AAA and the SRO's, to the degree that a "fairness" gap separates the two. This notion arose from the suspicion that only an "independent" organization can provide a neutral forum, but it has been reinforced by broker-dealer resistance to AAA in the "AmEx Window" controversies, and sustained by many who wield it as an "arbitration-bashing" device. (AAA, it should be said in "fairness," has not endorsed this notion and has never, in our observations, sought to bootstrap its program from the backs of the SROs.)

If valid, though, the existence of a "fairness factor" should be manifested in statistical comparisons of Award results, at least over time. If the Fairness Factor weighs heavily in the Award results equation, then there should appear a significant gap between the character of Award results at AAA and those at the SRO's. We found no gap to suggest the presence of a "fairness factor" in the comparisons we displayed in the June/July 1990 issue.

The AAA figures did disclose in the June/July comparison a customer "win" rate (58.9%) that was slightly higher than the SRO's (56.1%); but, among the winning Awards for customer-Claimants, the amounts awarded compared to amounts claimed revealed very similar relative distributions. There was a difference on the high-end of the distribution scale, which indicated that SRO Awards more often granted full recovery than AAA Awards, but we viewed the Award distributions as "strikingly close" in that comparison.

This year, we are fortunate to have the AAA's statistical report on 1990 securities Awards as part of our 1991 Survey. The Report covers 172 Awards issued under the AAA's Securities Arbitration Rules during 1990, of which 132 were customer-initiated. Of these, 76 Awards, or 57.6% of the total, resulted in some monetary recovery for the customer. Thus, the "win" rates of the AAA and the SRO's as a group are even closer than last year and closer, too, are the AAA and NASD rate than NASD to NYSE.

In the Chart labeled "AAA/SRO Award Breakdown," we illustrate in bar graph fashion the distribution patterns for those Awards in which Claimants received an award of any amount. The distribution patterns remain very similar to one another, as they were in the June/July 1990 comparison, and the percentages remain much the same as they were then. On the high end, both the AAA and the SRO forums increased slightly their share of Awards in which the customer took full recovery of claimed losses. Among the SRO forums, 35.6% of the "winning" Awards assessed damages of 90% or more of the compensatory amount claimed. At the AAA, 21% of the "winners" received 90% or more of the losses sought.

AAA also reported an "average % award" of 56.5%. This figure is comparable to the "SRO recovery rate," in that it compares on a percentage basis the average amount awarded to the average compensatory claim. The outcome percentage of 56.5% represents the single greatest disparity among the AAA Award statistics and SAC's Award statistics for the SRO's. We were surprised to see the SRO "recovery rate" fall to 40%, on the one hand, but it was truly perplexing, given the relative similarities among the other indicators, to see such a disparity in the "recovery rate" comparisons.

Is the disparity real? It could be a difference in methodology between AAA and the way we formulate the

"recovery rate." AAA's sample of 76 "winning" Awards is also a small one, which means that some skewing caused by a single extraordinary Award is reasonable to anticipate. Then, there is the expectation spurred by the similar Award distribution patterns reflected in the AAA/SRO Chart that "recovery rates" should also be nearly equivalent.

Still, we tend to think the disparity in recovery rates is real, to some extent. The reason why, we believe, lies in the final statistical offering in the AAA's Award Analysis. The Analysis cites a study performed by the Public Investors Arbitration Bar Association ("PIABA") and released in early 1991 (4 SAC 1(8)), which surveys known punitive damage Awards since the 1987 McMahon decision through 1990. The Report is cited for the premise that "customers are awarded punitive damages more often at the AAA."

An accompanying chart discloses that AAA accounted for approximately 7% of the securities arbitrations filed in 1990, but 30% of the punitive damage Awards in the PIABA Report were AAA Awards, as well as 46% of the \$9.7 million in punitive sanctions mentioned. A higher incidence and magnitude of punitive damage sanctions in AAA Awards, although extant unques-

cont'd on page 8

INFORMATION REQUESTS:

SAC aims to concentrate in one publication all significant news and views regarding securities/commodities arbitration. To provide subscribers with current, useful information from varying perspectives, the editor invites your comments/criticism and your assistance in bringing items of interest to the attention of our readers. Please submit letters/articles/case decisions/etc.

TO: Richard P. Ryder, Editor
Securities Arbitration
Commentator
P. O. Box 112
Maplewood, N.J. 07040.

AWARD SURVEY *cont'd from page 7*

tionably in a relatively small number of cases, would help to explain the apparent anomaly of a higher recovery rate than the SRO's showed for the period covered. Whether this is the full explanation or, indeed, a factor at all is, we caution, a matter of uncertainty without access to the individual Award figures on the AAA cases.

In any case, all the indicators other than "recovery rate" comparisons tend to support our earlier conclusion that AAA and SRO Awards remain, as before, fairly comparable. The AAA did provide one other measurement, a "median % award" figure of 53.8%; this rather esoteric statistical comparison measure the relationship between the median Award and the median compensatory claim. In an effort to be thorough, we ran a check on that figure for SRO Awards and found that the median percentage award among the 1,325 SRO "winning" Awards was 56.3%. Again, this squares with the proposition that Award results between AAA and the SRO's are generally comparable and with the explanation that a few spectacular Awards account for the disparity in recovery rates. There are certainly other explanations, we concede.

Other Charts

Our primary objective in this Award Survey is to provide information. That we have spent time interpreting it is, in part, an attempt to illustrate the varying ways in which the data can be viewed. It is also, though, a prerogative that, admittedly, we decline to refuse. This narrative has covered "win" rate, "recovery rate, and AAA-SRO comparisons, but there are many insights and ratios that can occupy the individual reader.

Our "State Chart" breaks out Award results for the top five states. Illinois replaced Pennsylvania as one of the five and, in terms of Awards rendered, assumed fourth place. Interestingly, these five states account for a very considerable 64% of the Awards. Except for Illinois, the customer "win" rates in these states also surpassed the

"win" rate in all "other states." Oddly enough, Pennsylvania had also stuck out last year as a tough state (48%) for Claimants, relative to the other most active states.

Identification of product is a new requirement for the SRO Awards, although most of the forums have been incorporating that information as a matter of policy. Our statistical analysis, from the standpoint of the investment vehicle involved in the disputes surveyed, is set forth in the "Product" Chart on page 4. There were few real surprises in these statistics, although it was unsettling to see that options cases accounted for more dollars claimed and awarded than stocks, the primary investment vehicle of the small investor.

Commodities-related disputes are treated in a separate Chart. We did this for several reasons. For one thing, the customer "win" rate in commodities disputes is notably higher at the three top forums than for other products. Secondly, the Award information reflected in the Chart for National Futures Association Awards is not derived entirely from the Award database, since NFA does not release the actual Awards. Thirdly, in the near future, we shall be reporting on a recently released study by the CFTC staff of commodities disputes in non-commodities forums.

Finally, the centerfold Chart on the five "Most Active Broker-Dealers" updates an analysis from SAC's 1990 Award Survey. These brokerage firms accounted for 35% of the total Awards surveyed (vs. 40% in the 1990 Survey). The figures reflect some changes when compared to last year, in particular, a much better performance for Dean Witter. That firm's "win" rate declined to 48% from 59% and its "recovery rate" went from 85% to 45%.

Conclusion

Our effort has been to provide all relevant statistics and to allow the reader to select the most important ones; but, such a blur of figures can also be confusing. Here's our summary:

Customers as Claimants won 58.1% of the time at SRO forums and 57.6% of the time in AAA arbitration. They recovered about 40% of their stated actual damages (56% at the AAA) for a total of \$67.8 million in sustained claims (\$8.6 million at the AAA). Small-claim customers won about the same percentage of their cases (57%), but did recover, on average, a greater percentage of their actual losses (73%).

SAC Binder: We now offer a looseleaf binder to store past issues of the newsletter. We had continuing requests from subscribers to replace lost issues, so we thought a special binder with SAC markings might assist storage and easy retrieval. Available for purchase for \$15, the binder is an attractive blue with grey print on the front ("Securities Arbitration Commentator") and on the 1.5" binding ("SAC"). A "D-Ring" holder permits the binder to lie flat when you use it and a plastic pocket inside provides a place to put SAC supplements or your own notes.

AWARD COPIES

Reporter subscribers can order photocopies of any of the arbitration Awards listed in this issue or any past issue. Just supply us with the SAC ID numbers of the Awards you want. We'll photocopy the Award and send it to you promptly. Prices are \$2 per Award, regardless of length. Minimum order: \$10.00. FAX service is also available for \$2 per page.

In Brief

AAII-IAS Affiliation: Here's something that caught our eye: The American Association of Individual Investors, which is a membership organization based in Chicago that boasts some 110,000 members, has affiliated itself with a lay service for representing investors in arbitration (see 4 SAC 3(6)). Investors Arbitration Service (IAS) is an arbitration consultant, that "assists individuals who have been financially damaged by the improper actions of brokers," according to AAIL.

In the July 1991 issue of the *AAII Journal*, James B. Cloonan, President of the Association, announced that "AAII has provided funds for IAS expansion and has received options to purchase an equity position in IAS." In return, AAIL members will receive "special preferred service" and a reduction in IAS' customary fees. AAIL sought this association with IAS, ac-

ording to Mr. Cloonan, "[b]ecause over 3% of our members have already been involved in arbitration and because we feel effective guidance can significantly affect results." Among the services IAS provides aggrieved investors: "It will investigate, file for arbitration, prepare the arbitration case, negotiate settlements, and, where necessary, guide investors through the arbitration hearing. IAS is not a law firm, but uses attorneys and other professionals when appropriate."

(ed., Services such as IAS are, in part, a phenomenon of the increased visibility and use of the securities arbitration process. Those who perform representational or advisory roles are at the vortex of a simmering issue that centers on unauthorized practice of law concerns (See, e.g., 4 SAC 3(6)). We plan to report further on these new services, as well as the legal issues they raise, in an upcoming issue.)

NFA Stats: The National Futures Association, which operates the largest forum for the arbitration of commodi-

ties disputes, reported that, during the April-June 1991 quarter, the Association received 55 Demands for arbitration. Of these, 48 were filed by public customers, six were filed by Members or Associates against customers, and one was a business dispute between Members.

In the same quarter, 32 hearings, including summary proceedings, were held and 75 cases were closed. The 75 completed cases included 28 settlements and 33 that were decided by an arbitration panel. The rest were withdrawn, rejected for lack of jurisdiction, or terminated for other reasons, such as bankruptcy.

NFA Updates: The Board of Governors of the National Futures Association voted at its August 1991 meeting on several new arbitration rules. The Association's Board approved changes to NFA's Arbitration Code that will provide for hearing fees, in addition to the filing fees currently assessed. The fees are to be paid in

cont'd on page 12



Become a Subscriber Today!

Please clip out or photocopy this subscription blank to enter your order for a one-year subscription to either of our publications -- or, save \$84., and subscribe to both! Please send the completed subscription blank to us at:
SECURITIES ARBITRATION COMMENTATOR, P. O. Box 112, Maplewood, NJ 07040.

Please Check One:

- Please enter my 12-month subscription to the SAC AWARD REPORTER only for \$168. NAME _____
 - Please enter my 12-month subscription to the SECURITIES ARBITRATION COMMENTATOR only for \$228. ORGANIZATION _____
 - Please enter my 12-month subscriptions to the SECURITIES ARBITRATION COMMENTATOR and the SAC AWARD REPORTER for \$312. That way I save \$84 and get the whole picture to boot! ADDRESS _____
- CITY/STATE/ZIP _____
- TEL. NO. _____

BILL ME CHECK ENCLOSED Please make checks payable to: Securities Arbitration Commentator

Award Analysis By Most

Customer Member
(SROs Only)

		<u>A w a r d</u> <u>F i g u r e s</u>		<u>D a m a g e</u>			
		No. Awards	No. Of Cust. "Wins"	Total Claims (\$000's)	{TCC}		Total Comp. Awards (\$000's)
Broker	Dealer				Total Comp. Claims (\$000's)	{TA} Total Awards (\$000's)	
Shearson Lehman ²		302	182	90,484	40,156	15,796	13,236
Merrill Lynch		185	88	63,005	27,891	5,204	4,213
PruBache		135	71	26,267	13,403	4,852	3,978
PaineWebber		92	56	33,653	13,043	3,497	2,858
DeanWitter		83	40	12,404	8,497	2,384	1,596
All Broker-Dealers¹		2,279	1,325	473,419	242,394	67,832	58,782

1. The figures in the "All Broker- Dealers" row represent totals for every brokerage firm named in an Award, including the top five firms, separately listed in the Chart.

Active Broker-Dealers

and Small Claims (SROs Only)

<u>Figures</u>		<u>Percentages</u>				
"Related" Total Claims (\$000's)	{RCC} "Related" Comp. Claims (\$000's)	Cust. "Wins" (%)	TA TCC (%)	TA RCC (%)	Small Claims Only	
	Cust. "Wins" (%)				TA RCC (%)	
78,079	33,447	60	39	47	54	66
25,056	12,041	48	19	43	46	42
20,296	9,747	53	36	50	40	61
23,470	8,393	61	27	42	56	92
9,386	6,879	48	28	38	46	35
348,313	168,014	58	28	40	57	73

2. The Award tally for Shearson Lehman Hutton does not include Awards in which E.F. Hutton was named as a Respondent, but Shearson was not. Hutton Awards of this description numbered an additional 49 Awards, with compensatory claims totalling \$26.8 million. Of these, 33 resulted in recoveries to customers totalling \$2.85 million (RCC=20,114).