

RECENT NEWS FROM THE ARBITRATION FRONT: WHAT ARE THE COURTS (AND ARBITRATORS) THINKING? OCTOBER 2019

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ed: We publish on quarterly basis the "Expert Opinions" column in The Expert's Examiner. The column follows recent items of interest on how courts value, view and utilize testifying experts, how one can better serve the fact-finder and more effectively help the client, and more likely avoid a bad experience. We also publish "Recent News from the Arbitration Front." This column follows recent items of interest to securities experts and relating to arbitration practice. Items for both columns are drawn from the past quarter's editions of the Securities Arbitration Alert ("SAA"), and the Securities Online Litigation Alert ("SOLA"), publications of the Securities Arbitration Commentator and appear with the permission of SAC's publisher. Going forward, these columns will be compiled by the Securities Arbitration Alert's new Editor-in-Chief, George H. Friedman.

Three months is a long time to wait between columns, so we are introducing a new feature: on a monthly basis we will publish in the "News" section short blurbs on court cases, awards, and articles of interest that are candidates for possible coverage in SOLA or the SAA. Here's the first installment. We offer no analysis or evaluation; items are listed in chrono order. Also, some items don't necessarily relate to financial services arbitration, but we think they might be of interest to SER members. Readers may click on the links for more information.

Stupid Expert Fees: (October 7) "This post is a follow-up of sorts to our [Stupid Expert Tricks](#) post. That post dealt with dodgy games that our opponents' experts play. This post is about adding injury to insult, that is, when the plaintiffs try to make us pay for the privilege of dealing with those tricks."

DTCI: When Expert's Testimony Should Be Inadmissible: (October 16) "Expert assistance is also very costly, representing a significant litigation expense. The payment of an expert's fee can be second only to the payment of the attorney's fee in civil litigation. Given the significant expenses associated with expert retention, many plaintiffs have attempted to reduce their expenses by entering into contingency fee agreements with potential expert witnesses. While retaining an expert witness on a contingency fee basis may appear to resolve a large portion of the upfront costs of litigation, this arrangement gives rise to many unintended consequences."

Federal Third Circuit panel rejects appeal by convicted ex-state senator Jane Orie: (Oct 16) "Orie also claimed on appeal that she should have been permitted to call an expert witness on Senate rules as part of her case. However, the trial judge found that the expert's testimony was not relevant."

Danko v. UBS Financial Securities, Inc., FINRA ID # 16-02357 (Tampa, FL, Oct. 17, 2019): motion to strike expert testimony denied. Challenger had asserted that the expert's opinions: "were not derived using the proper and accepted methodology, lack proper foundation, and are based on incorrect facts, assumptions and his own personal, subjective analysis which is neither specific nor satisfies the requirements of Fed. R. of Evid. 702 and [Daubert](#) [v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993)]."

Several Chester, Delaware county residents urge judge to shut down Mariner East pipelines, citing fears of explosion: (October 23) “During 3 1/2 hours of hearing on Wednesday morning, Judge Elizabeth Barnes rejected a request by Sunoco attorneys to limit the testimony of lay witnesses on the grounds that they were not qualified to offer expert opinions on issues like the impacts of a pipeline explosion. ‘In general, my ruling is a layperson can testify on their opinion,’ the judge said. But she said those witnesses would not be allowed to use hearsay reports on matters that they are not experts on.”

Judge bars accountant testimony in alleged \$200 million investment fraud case KSL.com: (October 25) “A father and son say the criminal fraud case against them is tainted because a prominent forensic accountant once retained for their defense switched sides and became an expert witness for the prosecution.”

Cage v. Raymond James & Associates, Inc., FINRA ID 17-02973 (Shreveport, LA, Oct. 28, 2019): \$3.2 million Award included \$140,000 for expert witness fees. There were 73 hearing sessions.

Why hire claim experts for arbitration in construction projects: (Oct. 28) “An expert witness is out-sourced. Hence no party can claim any biases. The decision is considered independent.... For every dispute that arises in your project process, an expert witness will provide independent and experience-based judgment, thus resulting in effective arbitration.”

Exclusive: J&J's own expert, working for FDA, found asbestos in Baby Powder: (Oct. 30) “... J&J announced that other labs it hired ultimately found no asbestos in samples from the bottle tested by the U.S. Food and Drug Administration or from the same production lot. In challenging the FDA’s finding, however, the healthcare giant is casting doubt on one of its own experts....”