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2013 AWARD SURVEY: A CYCLE IN PERSPECTIVE

A SAC Award Survey Comparing Results in 2013 to 2007-2012

INTRODUCTION

The last several years have seen the securities markets riding a rollercoaster, courtesy of the 2007 credit crunch, financial adventurism that seems foolhardy in retrospect, a 2008 crash and the deepest economic recession since the Great Depression. Indeed, if the news events of the recent past are any indication, stomach-churning market volatility is not yet entirely a thing of the past. Still, we are finally enjoying some hopeful signs of economic recovery.

If the stock market's journey up and down from day to day is often unsteady and unpredictable, securities arbitration has followed a necessarily related, but more predictable and shallower, arc. The truth is that investors are more likely to notice – or at least, complain about -- unsuitable strategies and insufficient warnings of risk when they lose money on their investments. Seven years ago, arbitration filings were on the decline, as cases fueled by the 2000 "tech-wreck" crash dissipated.

They reached their nadir in 2007 and, then, as angry investors inexorably responded to the effect of the financial debacle on their pocketbooks, the rate of filings quickly picked up. New case submissions more than doubled in the space of two years. However, even in 2009, the numbers never matched the previous twenty-first century highs of 2002-04.

Then, the number of new arbitrations gradually slid downward after 2009. Indeed, 2012 was the second most anemic year in the last 15 and the new case totals in 2013 drew even closer to 2007 levels.

Almost all of those cases for the last several years have been filed in the Financial Industry Regulatory Authority (FINRA), which has had a near monopoly in handling securities arbitration dispute resolution, since the forum emerged from a merger of the regulatory functions of the National Association of Securities Dealers (NASD) and the New York Stock Exchange (NYSE). Those two regulatory giants were previously the two leading securities arbitration forums in the country, when the two became one on July 29, 2007. According to FINRA's own statistics, the number of filings bottomed out in 2007 (3,238 cases), then quickly spiked in 2009 (7,137), before sliding down again.

Interestingly, this drop actually resembled the parabola of a roller coaster: at first, the decline was almost as sharp as the rise (5,680 in 2010 vs. 4,982 in 2008), but the angle of descent became shallower in succeeding years, falling by fewer than 1,000 filings in 2011 (4,729) and by even fewer in the next two years (to 4,299 in 2012 and 3,714 in 2013). It is too soon to know whether the sequence has, indeed, reached the bottom again, but comparison figures for the first four months of FINRA-DR filings in 2014 reveal an 11% increase.

In short, the last seven years has seen an entire cycle of arbitration filings. It seems an appropriate time to take stock of securities arbitration generally, something we have not done in five years. While each case must follow its own course before a panel of arbitrators resolves it by issuing an Award, we review the Awards overall to identify statistical trends and make generalized

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observations about the trends and and anomalies that we encounter.

In doing so, we must keep in mind that it takes more than a year for the average arbitration to wend its way to an Award, so the cycle of Awards in this survey will lag behind the filing cycle, even as it matches its step. Moreover, many of those cases will never become Awards, as they will settle or be withdrawn along the way. Because data about those matters, which constitute about 75-80% of the whole, are not collectively known, we must be cautious in assuming that our observations about the Awards bear relevance to the nature of the whole.

Methodology & Caveats

This year's review follows mostly the normal presentation path we followed in our Award Surveys in 2006 (2007 SAC 2(1)) and in 2008 (2009 SAC 1(1)), but with some notable changes. We generally exclude Stipulated Awards from our Survey numbers. Stipulated Awards are not the product of arbitration decisions on the merits of a dispute, but of negotiations between the parties that are memorialized in an Award, in order to secure one or another aspect of the settlement agreement (e.g., expungement relief or installment payments).

In determining "win" rates, readers should understand that we count as a "win" any monetary award assessed by the arbitrators (other than fees and costs). Those upset with the inflationary effect that may have on the "win" results may find company with those of another camp who object to the deflationary features of our "recovery" rate analyses. Ultimately, we must base our calculations on figures disclosed in the Awards. Thus, if an employee makes an outrageous claim for "compensatory" damages stretching from the date of his/her termination through the rest of his/her working years, we honor that assessment and include it as the denominator over which we place the numerator of dollars awarded.

Dollars awarded, we should disclose, include all amounts assessed by the arbitrators, other than fees, costs and sanctions. That may seem like a comparison of apples to oranges to the purist, but it is the most practical approach, given the information available in the Awards, and it "compensates" somewhat – only by a fraction – for the excesses in the claims figures. To adjust for these imperfections, to the extent we can, we present both average recovery rates and median recovery rates. The latter has a mitigating impact on the outliers for the total statistical results, especially with smaller samples. In very large samples, we find the average recovery rate to be the more representative of true expectations.

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MANAGING EDITOR....................................... **Richard P. Ryder**

SECURITIES ARBITRATION COMMENTATOR

Mailing Address: SAC, P.O. Box 112, Maplewood, N.J. 07040. Business Office: 93 Riggs Place, South Orange, NJ 07079. Tel: (973) 761-5880. FAX No. (973) 761-1504.

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In calculating the recovery rate, we include only those Awards in which the claimant recovers some monetary damages. Since the purpose of the recovery rate is to measure how generous arbitrators are when they do award damages, including losses in the calculation would subvert that purpose and depress the recovery rate. Furthermore, it would make the recovery rate partially dependent on the win rate, instead of serving as an independent yardstick.

In past surveys, we produced separate charts for Customer-Member recovery rates and for Employee-Member recovery rates (the latter of which also included a repetition of the calculations of Employee-Member win rates, taken from another table). This treatment was partially justified by the fact that we excluded claims of more than $1 million from our sample of Customer-Member Awards, but had no such limitation in the table on Employee-Member Awards. Another reason for the separation, however, was that we measured median recovery rates for Customer-Member Awards issued in the three states that traditionally included the largest number of Awards – California, Florida and New York.

In 2013, because of the decline in Award totals, the number of Awards issued in these top states numbered only a dozen each, not enough to offer meaningful statistics (in fact, the median recovery rate for Florida Awards exceeded 100% in that year, thanks to three punitive damage awards, and the median recovery rate for California Awards exceeded 90%). In this survey, therefore, we are excluding individual states and combining Customer-Member and Employee-Member recovery rates in a single chart. The top states are now covered in a separate chart.

The Charts that follow number five. Charts 1-4 – of which all but Chart 3 appear as did analogous Charts in SAC's prior surveys – seek to compare Award results on a yearly basis from 2007 to 2013. Chart 5 covers the entire period in aggregate from the perspective of selected states. Our commentary covers the same territory as the Chart on which it is commenting, although it takes a broader perspective in time. More specifically, the Charts approach the Awards in the following manner:

Chart 1 -- Award Volume, Distribution & Win Rates: Four categories of Awards form the Chart's columns (Customer/ Member, Small Claims, Member/ Employee and Employee/Member). The Chart shows the reader the "win" rates for each category, plus the changing Award volume over the years and the distribution of Awards among these major categories.

Chart 2 – Small Claims Awards, Win Rates: Customer-initiated cases involving $25,000 or less will proceed "on the papers," unless the customer opts for a merits hearing. We look at how frequently Small Claims investors are represented by counsel and how often customers opt for a hearing. Do these variables have an impact on "win" rates? This Chart addresses such possibilities.

Chart 3 – Recovery Rates: CustomerMember (<$1M) and Employee-Member Awards: By limiting the range of Customer-Member compensatory claims to cases involving more than $25,000, but not more than $1 million, this Chart seeks to define the usual (calculated by both the median and average) recovery an investor can expect in securities arbitration. This focus also permits a more reliable look at yearly comparisons over the seven-year period, because that has been our approach in past Award Surveys. We concede, at the same time, that claims are inflating and a larger segment of the Awards are being excluded by the dollar limitation. In 2013, for instance, Awards exceeding $1 million in compensatory claims accounted for one-quarter of all Customer-Member Awards.

Employee disputes with former employers over compensation, hiring and firing decisions, and account transfers form an array of disputes within this one category. However, because there are fewer Awards in this category, and unlike our practice with Customer/ Member Awards, we calculate only the median recovery rate and include all Employee/Member "win" Awards in doing so.

Chart 4 – Total Amounts Awarded: This Chart returns to the four categories in Chart 1 and provides data about the aggregate amounts awarded in each category and how much of the total was comprised of punitive damages awards and attorney fee assessments.

Chart 5 – Customer-Member Awards in the Top Ten States: This Chart differs from the others by breaking down the results of Charts 1 and 3 for Customer-Member Awards, not by year, but by state -- more specifically, the ten states with the largest number of Customer-Member Awards (other than stipulated Awards) in the survey period. The Chart provides an opportunity to compare Award totals and win rates for all Customer-Member Awards and median recovery rates of Customer-Member claims in the $25,000-$1 million range between the identified states and with the national total.

CHART 1 – TOTALS, TYPES & TALLIES

Customer-Initiated Awards

Customer claims have, not surprisingly, been the driving force in most of the changes in Award frequency. When investments go down, customer complaints go up and the securities arbitration mill gets grinding. However, the effect is not instantaneous; even if a customer files the day he suffers as loss, he or she must wait while the case goes through pre-hearing proceedings and a set of evidentiary hearings before a panel issues an Award on the merits.

In 2007-08, even as the waters of financial turmoil raged through the securities markets, the number of contested Customer/Member Awards – those resolving claims of more than $25,000 by customer against broker-dealers – continued to plummet, as it had since its 21st Century high of 1,600 in 2004, falling from 582 in 2007 to 370 in 2008. At that point, however, the numbers bottomed out and then sharply rose, from 396 in 2009 to a new peak of 616 in 2010, before

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AWARD VOLUME, DISTRIBUTION & WIN RATES

BY TYPE OF DISPUTE & YEAR (2007-2013)

YEAR	CustomerMember Win/All (#)	CustomerMember Win Rate (%)	SmallClaims Win/All (#)	SmallClaims Win Rate (%)	All Cust. Wins	MemberEmployee Win/All (#)	MemberEmployee Win Rate (%)	EmployeeMember Win/All (#)	EmployeeMember Win Rate (%)
2007	217/582	37%	36/124	29%	36%	161/200	81%	74/166	45%
2008	158/370	43%	45/111	37%	42%	135/162	83%	72/171	42%
2009	201/396	51%	97/244	40%	47%	185/204	91%	59/145	41%
2010	323/616	52%	83/202	41%	50%	264/286	92%	75/153	49%
2011	228/486	47%	47/130	36%	45%	346/377	92%	74/167	44%
2012	206/437	47%	42/121	35%	44%	266/291	91%	52/136	38%
2013	153/350	44%	49/142	35%	41%	282/315	90%	55/160	34%
All years Combined	1486/3237	46%	399/1074	37%	44%	1639/1835	89%	461/1098	42%

Notes to Chart 1:

!. Stipulated Awards are excluded from the numbers.

2."CustomerMember" Awards describe disputes by complaining customers against broker-dealers that involve $25,001 or more, while "SmallClaims" Awards identify disputes by complaining customers that involve $25,000 or less.

3. The term "Wins" signifies a "win" for the Claimant. Any monetary award in favor of the Claimant is counted as a "win."

4. The "win rate" is determined by dividing the number of Awards that are "wins" into the total number of Awards that issued in that category of dispute and year.

5.The four types of dispute reflected in this Chart represent the great majority, but not all, of the Awards that issued during each of the given years. Other dispute categories include CustomerEmployee, MemberMember and NonMemberMember.

6.The "All Cust. Wins" column combines the results in the "CustomerMember" and "SmallClaims" columns to arrive at a "win rate" for all customer Claimants. The "win rates" for all years, 2007-2013, combined are calculated by adding together all of the "wins" and dividing the sum into the sum of all Awards in that category.

sliding down again, reaching a new low of 350 in 2013.

Small Claims cases – customer claims of $25,000 or less – react to the same market phenomena as Customer/Member cases, but, because so many of them rely on simplified procedures, and the parties have less incentive to invest a lot of time and effort, they tend to take less time to reach a conclusion on the merits. Although the schedule and vector were not the same, contested Awards in Small Claims had a similar trajectory, falling from a high of 622 in 2004 to a low of 111 in 2008, then suddenly doubling to 244 the following year, before sliding downward, especially between 2010 (202) and 2011 (130). It is worth noting that their numbers seem not only to have bottomed out but to have risen above 2011 levels in 2013.

"Win" rates for customers shrank throughout most of the first decade of this millenium, reaching a low of 37% in Customer/Member cases and 29% in Small Claims in 2007. The next few years saw the win rates for both types of disputes move in tandem, rising again to top off in 2010 – at 52% in Customer/Member disputes and 41% in Small Claims – before falling again over the next few years, reaching 44% in Customer/Member cases and 35% in Small Claims in 2013. Interestingly, this trajectory mimics – at least since 2009 – the rise and fall in the yearly tally of Awards. Respondents are wont to explain away investor losses attributable to the 2007-08 crash as the result of market forces beyond their control; these figures suggest that many arbitrators are not buying that argument.

Small Claims disputes have, throughout the seven-year period covered by this survey, consistently suffered a "win rate" gap of 6-12% per year, when compared to their bigger brother, "Customer/Member" Awards. We will return to this phenomenon, and suggest a reason for this gap, in our discussion of Chart 2 below.

INDUSTRY-INITIATED AWARDS

The fact that customer-initiated Award statistics are particularly sensitive to market turbulence does not necessarily mean that industry-initiated Award statistics are necessarily immune to its effects. The crash of 2007-08 caused a shakeup in the securities industry, most clearly evinced in the collapse of Lehman Brothers and some notable mergers, but no doubt forcing many other firms, large and small, to face closings, downsizing, and broker migrations. This, in turn, we presume, spawned more proceedings to recover the unpaid balances of forgivable, but not yet forgiven, loans previously paid to the now-terminated brokers when they were first hired.

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SMALL CLAIMS AWARDS (SCA) "WIN" RATES
BY PRESENTATION & REPRESENTATION (2007-2013)

YEAR	Merit Hearing(MH) Win/All (#)	Win Rate (%)	On The Papers Win/All (#)	Win Rate (%)	MH v. All SCA	Cs Pro Se Win/All (#)	Win Rate (%)	Cs w/Counsel Win/All (#)	Win Rate (%)	ProSe v. All SCA
2007	9/36	25%	27/88	31%	29%	26/90	29%	10/34	29%	73%
2008	10/31	32%	35/80	44%	28%	28/87	32%	17/24	71%	78%
2009	18/48	38%	79/196	40%	20%	56/167	34%	41/77	53%	64%
2010	9/29	31%	74/173	43%	14%	58/146	40%	25/56	45%	72%
2011	8/23	35%	39/107	36%	18%	21/73	29%	26/57	46%	56%
2012	6/21	29%	36/100	36%	17%	16/74	22%	26/47	55%	61%
2013	9/23	39%	40/119	34%	16%	18/86	21%	31/56	55%	61%
All Years Combined	69/211	33%	330/863	38%	20%	223/723	31%	176/351	50%	67%

Notes to Chart 2:
1. Stipulated Awards are excluded from the numbers.
2. The term "Wins" signifies a "win" for the Claimant. Any monetary award in favor of the Claimant is counted as a "win."
3. The "win rate" is determined by dividing the number of Awards that are "wins" into the total number of Awards that issued in that category of dispute and year.
4. The "MH v. All SCA" column presents percentages for each year that represent the ratio between those Small Claims Awards (SCA) in which an oral hearing on the merits was conducted and the total number of SCAs.
5. The "Pro Se v. All SCA" column presents percentages for each year that represent the ratio between those Small Claims Awards (SCA) that are handled by customers without counsel (pro se) and the total number of SCAs.

The rise in promissory note cases accounts for a substantial majority of Member/Employee cases and therefore has a substantial impact on them. Thus, mimicking customer-initiated Awards, contested Member/Employee Awards fell to a low of 200 in 2008, the smallest number since 2001, before rising again, reaching 377 – a record for this millennium so far – in 2011. Nor is the connection between these numbers and loan default cases idle speculation – the proportion of Member/Employee Awards that involved promissory notes rose from 75% (122/162) in 2008 to 95% (353/377) in 2011; in fact, the number of non-promissory note cases in 2011 was only half those in 2008. Since then, the total numbers of Member/Employee Awards have slipped without displaying such a clean pattern, though more than 90% each year still involve promissory notes.

This increase in promissory note disputes has also affected the "win" rates for employers in Member/Employee Awards. Loan default claims rarely fail; the sums are fixed, promissory notes clearly document the debt and few brokers have much in the way of an effective defense. In the first nine years of this millennium, ending in 2008, inclusive, the win rate remained stable, in the 81-89% range. In 2009, it jumped to 91% and thereafter ranged from 89% to 92% each year.

Employee/Member disputes are more diverse in nature and the damage figures are especially prone to subjective adjustments (as Chart 4 reflects). The disputes are oftentimes straightforward compensation disputes, but more usually they involve tortious conduct, such as defamation, discrimination, retaliatory discharge, and wrongful conduct leading to termination or constructive discharge.

The number of Employee/Member Awards in contested cases is less affected by the ups and downs of the markets and more likely to reflect seemingly random fluctuations. If anything, the average number per year declined after 2008, for no apparent reason. In the five-year period immediately preceding the period covered by this survey (2002-06), the annual numbers fluctuated from a low of 172 to a high of 206. In the seven full calendar years since (2007-13), however, they fluctuated from a low of 136 (in 2012) to a high of only 171 (in 2008) and two of the three highest numbers were in the first two years of that period.

For some, perhaps related, reason that we have not identified, the win rates for employee claimants showed a similar decline. In the first seven years of the millennium (2000-06), they ranged from a low of 52% (in 2004 and 2005) to a high of 65% (in 2001). Since then, however, they ranged from a high in 49% (in 2010) and a low of 34% (in 2013). Indeed, the rate has declined in each of the last three full calendar years.

CHART 2 – SMALL CLAIMS: CHOICES AND CONSEQUENCES

As we determined in reviewing Chart 1, Small Claims customers do not fare as well as investors with larger claims (by 6-12% each year), even as their

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"win" rates rise and fall with those of the latter, but what accounts for this gap? Small Claims customers have the choice of requesting a live hearing before the Arbitrator, but the default choice is no hearing, more commonly called "on the papers (OTP)." This decision certainly changes the dynamics of the proceeding and, therefore, may influence the outcome. Similarly, the choice to be represented by counsel may have a bearing on the outcome.

Chart 2 attempts to measure the impact of these factors. Historically, claimants in this category have regularly won more cases when they requested a live or "merits" hearing than when they accepted the default, as we noted in our 2008 Survey. In fact, we there noted that, for the entire 2002-08 period covered by that Survey, merit hearings produced a 41% "win rate," compared to 36% for OTP cases. Yet, we also noticed that the advantage reversed in the last three years (2006-2008). That trend continued over the next four years, giving "on the papers" cases a higher "win" rate than those decided after merits hearings (38% vs. 33%) for the entire 2007-2013 Survey period.

The advantage suddenly flipped again in 2013, when merit hearings yielded a 39% "win" rate and "on the papers" proceedings only 34%. That change did not reflect a prior trend toward converging results; the results often alternated between near equality (in 2009 and 2011) and double digit differences (in 2008 and 2010); even 2012 favored merit hearings more than the previous year. The most likely explanation for this volatility is the relatively small numbers of Small Claims Awards each year. It might be that 2013 is nothing more than a contrary blip in a pattern that will continue to favor claimants in "on the papers" cases.

Whether or not the choice of a live hearing affects win rates in Small Claims Awardsdoes matter as does whether the investors employ counsel or represent themselves. Small Claims clamants who used counsel fared significantly better than their *pro se* counterparts, usually by double digits and occasionally by huge margins (39% in 2008 and 33-34% in the last two years). Overall, the margin was close to 20% (50% with counsel vs. 31% without). The only times when counsel did not offer a sizable advantage were in 2007 (when the chances were even) and 2010 (when the margin was only 5%).

Still, Small Claims claimants proceed *pro se* about 67% of the time, according to the "All Years Combined" percentage in Chart 2. After rising from 56% in 2006 to a historically high 78% in 2008, the proportion of Small Claims Awards involving *pro se* claimants declined, falling to 56% in 2011 and leveling off at 61% in each of the last two years.

In fact, the overall "win" rate for Small Claims cases with counsel actually exceeds the rate for Customer/Member cases (50% vs. 46%). That was also true of each year, except, again, in 2007 and 2010. In contrast, OTP "win" rates never matched or came within 6% of Customer/Member "win" rates, except in 2008 (when it reached a maximum 44% vs. 43% for Customer/Member Awards). This, then, may be the real explanation for lower Small Claims "win" rates: whether they opt for a merits hearing or submit their claims "on the papers," *pro se* customers are at a decided disadvantage in proving their cases -- or they overestimated the merits of their cases in the first place.

CHART 3 – RATING RECOVERY RATES

Recovery rates, i.e., the amount winning claimants are awarded, as compared to how much they claimed to have lost, are the most controversial statistics we publish. They are volatile, particularly in employment disputes, and are quite dependent upon the unsteady premise that claimants will not inflate the amounts they request in compensatory damages.

While they may, indeed, be imperfect, we believe that recovery-rate determinations answer the second question new claimants will ask after "what are my chances of winning?" That question is, "If I win, how much can I expect to win?" Therefore, we include only those in which the claimant wins a monetary award, however large or small. FINRA does not attempt to calculate recovery rates, although it does publish "win" rates on customer Awards. The forum did make an attempt to publish more realistic claim figures by revising the forum's hearing script in April 2008 to ask claimants to state a final compensatory claim request right before the close of hearings.

We did our share by calculating both average and median recovery rates in presenting the figures for Customer/Member Awards in Chart 3. We also limited the claim size of the Customer/Member Awards surveyed to $1 million, in order to reduce any skewing effect from very large claims or awarded amounts and, also, to generate recovery rates that would be most relevant to the "average" public-investor claimant. As we explained earlier, Chart 3 does contain a column reflecting the median recovery rate for all Customer-Member Awards. Because Employee/Member Awards are a much smaller category, a factor that tends to increase the volatility of the statistic, we included all "win" Awards and measured only the median recovery rate, which is less likely to be affected by unrealistically large claims. We did not include Member/Employee claims in the Chart, because their recovery rates are as routinely high as their "win" rates, and we did not include Small Claims because there is nothing to see there.

Average recovery rates for the Customer/Member cases in our Survey have been on a rise, from 53% in 2007 to 62% in 2010; then, after dipping to 54% in 2011, the rate jumped again to 69% and then to an historic high of 88% in 2013. The median recovery rate followed a slightly different trajectory, rising from 37% in 2007 to 48% in 2009, then sliding back down to 39% in 2011, before rising again to a high of 62% in 2013. 2013, in short, was an exceptionally good year for the average investors who proved their cases and hoped to win the damages they perceived as flowing from their injury.

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RECOVERY RATES:
CUSTOMER-MEMBER & EMPLOYEE-MEMBER 2007-2013

YEAR	Customer-Member						Employee-Member	
	Compensatory Damage Claims $25,000 to $1 million				All Compensatory Damage Claims			
	Avg. Award/ Avg. Clmd. Comp. ($) Avg. Recovery (%)		Median Award/Media Comp ($) Median Recovery (%)					
2007	$186.4/$350.8	53%	$88.8/$240.7	37%	$105.0/$259.7	40%	$174.5/$1000.0	17%
2008	$182.8/$306.9	60%	$100.0/$240.0	42%	$116.0/$300.0	39%	$75.7/$300.0	25%
2009	$165.5/$273.8	60%	$96.0/$200.0	48%	$116.0/$249.0	46%	$125.0/$449.0	28%
2010	$203.4/$327.8	62%	$101.6/$233.5	44%	$143.8/$312.0	46%	$145.0/$500.0	29%
2011	$193.5/$361.5	54%	$115.0/$291.5	39%	$172.4/$400.0	43%	$91.0/$462.6	20%
2012	$220.1/$318.8	69%	$96.8/$200.3	48%	$143.4/$259.6	55%	$125.0/$293.5	43%
2013	$286.5/$326.3	88%	$155.5/$249.4	62%	$287.8/$400.0	72%	$100.0/$588.6	17%
All Years	$202.7/$322.7	63%	$91.0/$241.4	38%	$142.1/$304.0	47%	$115.0/$462.6	25%

Notes to Chart 3:

1. Stipulated Awards and Awards in which the Claimant did not recovery any monetary damages are excluded. Counterclaim awards are not considered in this Chart.

2. Dollar figures are expressed by rounding to the nearest $100 and dividing by 1000. For instance, $182.8 in the Chart represents $182,800.

3. Average recoveries are determined by aggregating the amounts awarded in each case and the compensatory claims in each case and determining the average of each by dividing by the number of "win" Awards.

4. Median recoveries are determined, first, by sorting all Awards in dollar order by total amount awarded and finding the middle value, and then, by sorting the Awards by compensatory claim and finding the middle value. Those aggregate results are then divided by one into the other and multiplied by 100 to determine a percentage.

5. CustomerMember Awards reflecting more than $1 million in compensatory claims are deliberately omitted in the first two columns of this Chart, to minimize the skewing effect of potentially grossly inflated claim amounts and to develop suitable recovery rates for year-to-year comparisons, particularly with respect to average recovery rates. All Customer-Member Awards are included in the third column, to provide an "apples-to-apples" comparison to Employee-Member cases.

Median recovery rates in Employee/Member cases appeared to show a similar trajectory in the first six years of the Survey period, rising from only 17% in 2007 to a high of 43% in 2012, with only one check on this trend (from 29% in 2009 to 20% in 2010). In 2013, however, the median suddenly dropped like a stone back to 17%. We do not have any explanation for either the upward trend or its sudden reversal.

If there are two clear lessons to draw from the Chart, they are these: year after year, the average recovery rate for Customer/Member Awards is higher than the median recovery rate for that category, and the median recovery rate is higher for Customer/Member than for Employee/Member Awards. In fact, the difference between average and median rates in Customer/Member cases has not been less than 15% and the difference between the median rates for Employee/Member cases came closer than that to Customer/Member cases only once, in 2012 (48% vs. 43%). Given the exceptionally high Customer/Member average recovery rate and the particularly low Employee/Member median recovery rate, it is not surprising that both margins were largest in 2013. The overall margins were 25% (63% vs. 38%) for average and median Customer/Member rates and 13% for median rates in the two types of dispute.

CHART 4 – SHOW THE MONEY

Chart 4 is a relatively simple chart, in that it returns to the four categories of dispute listed in Chart 1 and provides aggregate award amounts for each category from 2007 to 2013. These numbers are largely dependent on the number of "win" Awards and the rising trend in recovery rates, but are also vulnerable to particularly outsized awards. That last factor explains why the highest total award amount in Customer/Member cases in the Survey period ($524.2 million in 2009), immediately followed the lowest yearly awards total ($53.1 million in 2008). More than three-quarters of that amount was a single award, for $406.6 million, in *STMicroelectronics v. Credit Suisse*, FINRA ID #08-00512 (NYC, 2/12/09).

The increase in the recovery rate, though, explains why the total amounts awarded in 2013 ($238.6 million) were so much more than the figures for 2008, even though the number of Customer/Member "win" Awards in the later year did not exceed the number in the earlier year. With 158 "wins" during the year, 2008 produced an average award of $336,076 (if one includes all Customer/Member awards, and not just

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TOTAL AMOUNTS AWARDED ($)

BY TYPE OF DISPUTE & YEAR (2007-2013)

YEAR	CustomerMember Total $ Awarded (bld)	Puni ($)/Atty Fees ($)	SmallClaims Total $ Awarded (bld)	Puni ($)/Atty Fees ($)	MemberEmployee Total $ Awarded (bld)	Puni ($)/Atty Fees ($)	EmployeeMember Total $ Awarded (bld)	Puni ($)/Atty Fees ($)
2007	**$75.7M**	$8.3M/$4.6M	**$378.8K**	$0/$17.4K	**$23.3M**	$500K/$1.3M	**$32.1M**	$20.0M/$813.9K
2008	**$53.1M**	$5.6M/$3.5M	**$422.6K**	$4.0K/$12.9K	**$24.7M**	$0/$1.4M	**$50.6M**	$7.9M/$3.0M
2009	**$524.2M**	$7.4M/5.6M	**$920K**	$0/$26.3K	**$25.0M**	$0/$2.1M	**$21.8M**	$400K/$661.7K
2010	**$270.0M**	$17.1M/$7.6M	**$798.9K**	$0/$16.5K	**$5.1M**	$0/$1.7M	**$50.8M**	$4.9M/$1.7M
2011	**$298.5M**	$19.8M/$6.0M	**$685.2K**	$56.6K/$28.3K	**$79.6M**	$17.6K/$3.7M	**$41.7M**	$4.2M/$1.7M
2012	**$110.3M**	$8.9M/$9.0M	**$667.2K**	$0/$87.2K	**$65.2M**	$0/$3.6M	**$49.6M**	$5.6M/$1.4M
2013	**$238.6M**	$24.0M/$9.1M	**$1.0M**	$25.0K/$38.0K	**$59.6M**	$311.8K/$3.9M	**$25.8M**	$1.5M/$2.0M

Notes to Chart 4:
1. Stipulated Awards are excluded from the numbers, even if they disclose any dollars paid in settlement.
2. M=Millions and K=Thousands, when expressing all dollar figures.
3. By referring to the number of "Win" Awards reflected in each dispute category of Chart 1 and dividing the number into the aggregate award amounts reflected above, one can determine the average amount awarded to a winning Claimant. For instance, dividing 217 CustomerMember "wins" in 2007, as noted in Chart 1, into the $75.7 million in aggregate amounts awarded, per Chart 4, yields an average award amount of $349K, for CustomerMember Awards issued in 2007.

the "average" ones considered in Table 4). With 153 "win" Awards, on the other hand, 2013 produced an average award of $1,559,477. Finally, that small number of "wins" explains why, in spite of arbitrators' generousness in this past year, 2013 ranked only fourth in total amounts awarded in Customer/Member cases.

2013 was an exceptional year for both punitive damage and attorney awards in Customer/Member cases, not only in proportion to the number of successful claimants, but even in raw totals. The $24 million in punitive damages and $9.1 million in attorney fees awarded last year exceeded the figures for each other year in the Survey; in fact, it was the highest punitive damage figure since 2003. As a percentage of the total amount awarded, the $24 million in punitives ranked on the high side, but not outside the range.

$1 Million-Plus Awards

The biggest Customer/Member award amount in 2013 was just shy of $94 million, assessed against Wells Fargo Advisors in *Cohen v. Wells Fargo*, FINRA ID #11-04241 (Newark, NJ, 12/24/13), second only to *STMicroelectronics* among all awards in the Survey period. Unusually, the recovery in this auction rate securities case, for compensatory damages only, equalled 100% of the compensatory damage claim made at the close of the hearing and was much greater than the $20 million originally requested. It could have been worse for the respondent, though: the claimants also requested $60 million in punitive damages.

The next two top-money Awards, both in the Customer/Member category, were: (1) *U.S. Airways v. Oppenheimer & Co.*, FINRA ID #09-00788 (NYC, 1/31/13), another auction rate securities case that assessed $30 million in compensatory damags against an individual Respondent and his employer; and (2) *Segner v. WFP Securities*, FINRA ID 11-03651 (Dallas, 5/30/13), a claim by a liquidating trustee arising from investments in oil and gas companies managed by Provident Royalties, LLC, which netted over $6.5 million in compensatory damages, $7.5 million in punitive damages and $4.5 million in attorney fees. All six awards of $10 million or more were rendered in favor of customers

A total of 50 awards of $1 million or more issued in 2013, 33 of which were Customer/Member and two of which were Customer/Employee. Another eight were in Member/Employee loan default cases, five were in Employee/Member cases and two were Member/Customer cases. The largest award in an industry-initiated claim was $8 million in *Gupta v. Morgan Stanley*, FINRA ID #11-00951 (NYC, 8/29/13), an Employee/Member Award that features a dissent and an explained Award finding wrongful termination.

CHART 5 – THE TOP TEN STATES

Chart 5 differs from the others in looking at 2007-2013 Awards from a different comparative perspective. Rather than breaking down the results by year, it surveys them geographically. That is to say, it focuses on Customer/Member results in the ten states with the largest share of such Awards and compares their "win" and median recovery rates, not only with each other, but with Customer/Member Awards as a whole. In order to provide an "apples to apples" comparison of recovery rates, we limit that aspect of the Chart to the same $1

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2013 AWARD SURVEY *cont'd from page 8*

million and less claim universe as we did in Chart 3.

The states surveyed fall into two distinct classes. California, New York and Florida issued 12-15% of all Customer/Member Awards each and more than 40% of them together, while the next seven together issued fewer than 25% of the total. In evaluating the results, it is important to keep in mind that the lower one goes down the list, the smaller is the sample of Awards, especially for calculating the median recovery rate; therefore, we recommend caution in taking some of the results to heart.

That said, the best states from the investors' point of view appear to be Michigan, which ranked first in "win" rate (52%) and a close second in median recovery rates (51%); California, ranking first in median recovery rate (52%) and second in "win" rate (47%); and Missouri, third in median recovery rate and tied for third in "win" rate (46% each). All three ranked above the national median recovery rate (38%) and were at least equal to the national "win" rate (46%).

The lowest "win" rates for customers were in Illinois (37%), New York (39%) and Pennsylvania (41%), while the worst median recovery rates were in Pennsylvania (an unusually low 20%), New Jersey (not far behind - or should we say, not quite as far behind – at 22%) and Massachusetts (33%) – although, once again, sample size might help to explain the wider variance in this measurement. All three of the states with median recovery rates below the national average were in the Northeast and all four Northeastern states in the Chart were below the national "win" rate.

CONCLUSION

This marks the fifth time we have issued annual Award surveys. We have customarily canvassed a span of years for two main reasons: (1) the universe of Awards in a group of years is sufficiently large to minimize the skewing effect of outlying Awards; and (2) the larger sample permits statistical breakouts that are impractical with a single year's

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CUSTOMER MEMBER WIN AND RECOVERY RATES IN TOP TEN STATES
BY TYPE OF DISPUTE & YEAR (2007-2013)

STATE	"Win" Ratios	Win Rate	% of	Median Recovery: $25,000-$1M Clms	
	Win/All (#)	Win Rate (%)	All C-M Awards	Med. Award/Med. Comp. Clmd. ($)	Median Recovery Rate (%)
All	**1486/3237**	**46%**	**100%**	**$91.0/$241.4**	**38%**
California	**223/471**	**47%**	**15%**	**$105.0/$200.3**	**52%**
New York	**173/448**	**39%**	**14%**	**$70.0/$168.0**	**42%**
Florida	**187/402**	**42%**	**12%**	**$124.8/$277.1**	**45%**
Texas	**91/196**	**46%**	**6.1%**	**$116.0/$300.0**	**39%**
Michigan	**68/128**	**53%**	**4.0%**	**$107.2/$211.0**	**51%**
Pennsylvania	**52/127**	**41%**	**3.9%**	**$52.2/$258.7**	**20%**
Illinois	**40/107**	**37%**	**3.3%**	**$107.0/$240.6**	**44%**
New Jersey	**35/84**	**42%**	**2.6%**	**$50.0/$229.7**	**22%**
Missouri	**37/81**	**46%**	**2.5%**	**$110.0/$237.0**	**46%**
Massachusetts	**32/75**	**43%**	**2.3%**	**$82.0/$250.0**	**33%**

Notes to Chart 5:

1. Stipulated Awards are excluded from the numbers. Awards in which the Claimant did not recovery any monetary damages are excluded from the calculation of recoveries. Counterclaim awards are not considered in this Chart.
2. "CustomerMember" Awards describe disputes by complaining customers against broker-dealers that involve $25,001 or more, while "SmallClaims" Awards identify disputes by complaining customers that involve $25,000 or less.
3. The term "Wins" signifies a "win" for the Claimant. Any monetary award in favor of the Claimant is counted as a "win."
4. The "win rate" is determined by dividing the number of Awards that are "wins" into the total number of Awards that issued in that category of dispute and year.
5. Dollar figures are expressed by rounding to the nearest $100 and dividing by 1000. For instance, $182.8 in the Chart represents $182,800.
6. Median recoveries are determined, first, by sorting all Awards in dollar order by total amount awarded and finding the middle value, and then, by sorting the Awards by compensatory claim and finding the middle value. Those aggregate results are then divided by one into the other and multiplied by 100 to determine a percentage.
7. CustomerMember Awards reflecting more than $1 million in compensatory claims are deliberately omitted from this Chart, to minimize the skewing effect of potentially grossly inflated claim amounts and to develop suitable recovery rates for comparison to the national figures, as well as between states.

2013 AWARD SURVEY *cont'd from page 9*

Awards. What we have lost in that mix, though, was a sense of the present.

We have learned from publishing the latest Award information in the *Securities Awards Monthly (SAM)* and from following trends in our weekly UPDATE: ARBchek email sservice that patterns appear as one looks at the latest Awards to issue from FINRA. A sense of the present is one of the benefits of focusing specifically on the prior year's Awards. Each year has its own dynamics and these dynamics may be seen to have their impact on arbitration results and party reactions. By plotting the Award results year-by-year, we see the changes on a yearly plane and can compare past years to the present.

In summary, then, here are some of the statistical findings of this year's Survey: Customer-initiated Awards reflected mixed results, but were especially lucrative for successful claimants:

- Beginning in 2006, the "win" rates increased steadily to a peak of 52%, but have since fallen again to 44% in 2013, the lowest rate since 2008.
- Small Claims "win" rates had a similar, albeit less elevated, trajectory, reaching a peak of 41%, also in 2010, before falling to 35% in 2013, but consistently 6-12% behind Customer/ Member "win" rates.
- The difference in "win" rates seems largely due to the tendency of most Small Claims investors to represent themselves, rather than retain counsel, and less a consequence of the size of the claims or whether their claims are decided "on the papers" or after a hearing on the merits; the "win" rates for represented Small Claims cases compare well to those in Customer/ Member claims.
- On the other hand, the average and median recovery rates for Customer/ Member Awards with claims of $1 million or less reached historic highs in 2013, at 88% and 62%, respectively, well above the overall figures of 63% and 38%, respectively, for all seven years combined.
- Although the total number of "win" Awards in 2013 is lower than in any other year of the Survey, the total amounts of damages awarded in Customer/Member cases was in the middle range of all years covered and the amounts of punitive damages and attorney fees were higher than in all six of the prior years.

Industry-initiated Awards have generally kept a relatively even keel from a number of perspectives, although the past couple of years have been slightly different from the others in the 2002-2008 Survey range:

- Member/Employee "win" rates, previously in the 80-89% range, reached 90% or higher in each of the last five years (2009-2013).
- "Win" rates for employees in Employee/ Member Awards fluctuated in the 41-49% range between 2007 and 2011, inclusive (which represented a decline from prior years) and fell into the mid 30s in the two most recent years (2012-2013).
- The median recovery rate in Employee/ Member Awards is quite volatile. In 2013, it was only 17%, the lowest percentage since 2007. Ironically, the highest rate for the entire Survey period, 43%, occurred in the prior year, 2012.

The changes from year to year are due to different, and in some cases, still undetermined, factors. The rise and fall of "win" rates in customer-initiated claims appear to be related to the upsurge in, and abatement of, claims in the wake of the 2007-2008 stock market crisis. Market turmoil likely exposed what investor and arbitrators concluded were unsuitable investment strategies and deficient warnings.

The continuing and, as yet, unabated rise in Customer/Member recovery rates still begs an explanation. Whether it is a product of procedural changes, more realistic assessments of damages by claimants' counsel (aided by a change in the arbitrators' script that encourages claimants to revise their damage requests at the conclusion of the case, a more investor-friendly attitude from arbitrators or a combination of factors, we do not know. While the diligent application of the law makes it unlikely that conscientious arbitrators, whether public or industry, will grant relief in a meritless case, they have substantially more discretion in determining the amount of damages once a case is proved.

Market volatility also probably accounts, indirectly, for the rise in already high Member/Employee "win" rates. Forgiveable loans are designed to keep brokers in the firms that paid them, with the carrot of reduced balances as their employment continues and the stick of unpaid balances immediately due upon their leaving for any reason. Promissory notes make those balances especially easy to collect. As firms go belly up or downsize in response to the market crash, the number of promissory note cases has become an increasingly large share of the Member/Employee cases.

Brokers are at a disadvantage in every way, it seems. The market turmoil and its aftermath have done nothing to make it easier for them to win their cases or to collect large damages, and FINRA has not had the same incentive, or shown the same concern for, making arbitration friendlier to them. While we do not know why Employee/Member "win" rates are going down, and median recovery rates display no pattern at all, the answer may lie more in the business climate than in the venue.

Finally, where an investor brings her claim does matter, according to the statistical results. The reasons for this are complex and not easy to work out. Take Florida, for instance. It is known for its strong blue sky law, Florida's Securities and Investor Protection Act, which investors regularly cite in their Statement of Claims, and that is no doubt a factor in its ranking among states; yet, Florida's "win" rate is below the national average. Perhaps investors are putting too much faith in the statute's efficacy. Legal culture, the strength of the investor arbitration bar and sheer statistical noise might also play roles.

We began this article by noting that the past seven years represent a complete, or nearly complete, cycle in the ebb and flow of the tide of arbitration. But our analysis of the yearly statistical results leaves us on a different part of the beach than it did when it started.