

RAIDING *cont'd from page 2*

Surveying Recent Raiding Awards

SAC's Award Database Service offers a "Raiding Awards" Package, which contains materials on this special genre of dispute, ranging from all of the Public Awards rendered in the area to briefs, pleadings, related court decisions, notices and releases on rule changes, articles, and excerpts from past *Commentator* issues. Utilizing these materials and our computerized Database of all Awards, SAC developed some statistics about "Raiding" Awards rendered during 1997 and the first half of 1998 (1H98).

The NASD has stated that more than 90% of "raiding" disputes filed under its injunctive Rule 10335 are settled. Our own tally of 23 such Awards in 1997 and 18 in 1H98 confirms that very few cases in which court-ordered or arbitral injunctive relief is sought actually persist to a Panel decision. Defining a "Raiding" dispute to require that at least two opposing broker-dealers appear in the case reduces the Award numbers to 12 each in the two periods surveyed. In 1997, 6 of those matters resulted in a monetary award to the complaining brokerage house (5 of 11 at NASD; 1 of 1 at NYSE). In the first half of 1998, there were 10 such "wins" for the "raided" broker-dealers (8 of 10 at NASD; 2 of 2 at NYSE).

Injunctive Relief

Interim injunctive relief, prefatory to trying the merits of the dispute in arbitration, is harder to nail down. We can say that, in 8 of the 23 Awards (1997), court-ordered relief was mentioned (it was denied in one case) and injunctive relief from a single arbitrator

was ordered in at least 5 cases. In the first half of 1998, the single arbitrator was resorted to more frequently, on 11 occasions versus the 5 court-ordered applications (denied in one instance) that were mentioned. Interim relief was granted by the single arbitrator in only 6 of the 11 instances in 1H98.

Permanent injunctive relief as part of the final Award was requested in 11 of the 23 cases in 1997 and granted in some form in 7 of the Awards. Almost all of the 18 Awards in 1H98 reflected a permanent injunctive request; however, in only 5 of these 16 instances did the Panel include any non-monetary relief. Monetary relief in the final Awards was more common, of course, on both claims and counterclaims.

Monetary Relief

In 14 of the 23 Awards during 1997, "raided" parties won \$5.2 million in damages. One of the remaining nine appeared to us a draw and the 8 losers disclosed six instances where the accused "raider" received a monetary award. These "backfire" awards totaled \$5.0 million in 1997. In 1H98, the "raided" firms have done far better. The total damages awarded them in 14 "wins" among the 18 Awards amounts to \$8.9 million. Only 1 of the four losses for "raided" firms resulted in a monetary assessment against the firm and that was for \$63,000.

In addition to the extraordinary relief represented by injunctive orders, arbitrators in these hotly contested, highly charged disputes have reacted with sanctions and exemplary damage

assessments more frequently than in other types of cases. Attorney fees were granted in 4 instances among the 1997 Awards, punitive damages in two and discovery sanctions in two of the 23 Awards. In the 1H98 Awards, attorney fees were granted in 3 instances and punitive damages were assessed in two of the 18 Awards.

Size & Diversity

One also sees that "raiding" disputes are no longer the province of the large wirehouses. The competition for veteran producers is fierce and those who switch are often driven by style or "cultural" change, as much as the monetary inducements. In only four of the twelve 1997 Awards where broker-dealers were opposed did major national wirehouses appear. In the 1H98 Awards, only five of the twelve relevant Awards disclosed a major national wirehouse as a party. Regional firms were most commonly the brokerage firm in opposition.

On the other hand, where the larger broker-dealers are involved, the stakes are often higher and size is not necessarily an advantage. Five of the seven Awards that exceeded \$1.0 million in damages were assessed against national houses. In two instances, the large wirehouse was positioned as the putative "raided" party, but lost on counterclaims — once against a regional firm and once against an individual. Three times, the wirehouse was the accused "raider" and lost, twice against another national house and once against a national discount broker-dealer.

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