

1992 Case Statistics: All Forums

On the opposite page, we display statistics concerning 1992 case filings and dispositions for those self-regulatory organizations that participate in the Securities Industry Conference on Arbitration ("SICA"). These are filing and case disposition statistics reported to SICA annually and included as part of SICA's periodic reports to the Securities and Exchange Commission. The current statistics are included in SICA's Eighth Report on its activities. The case filing statistics reflect a small decrease (about 7%) in overall filings of 5,451 new cases during the past year, but the distribution of those filings among the SRO's reflects some substantial changes.

NASD, which now handles about 80% of the SRO volume, was the only SRO to experience an increase in new cases, about 5.5%. The rest all dropped, some more than others. The NYSE, in particular, experienced a marked decline in new filings, almost 38%, from 1,403 in 1991 to 873. In 1990, NASD accounted for 68% of the SRO volume and NYSE 26%. NYSE's "market share" has dropped in the year past to 16%.

About 25% of the NYSE decline, 1991 vs. 1992, was composed of small claims filings, an area in which NASD remained about even. The Chart does not indicate whether other customer-initiated case filings (i.e., Customer/Member cases over \$10,000) also dropped disproportionately, but NYSE has reported that industry-related cases comprise a larger share of its current docket. The Exchange's customer "win" rate (col. 6 as a % of col. 5) rose to 43% from 41% in 1991. NASD's "win" rate for customers was down from 55% to 53% year to year, but it remains above the rate for all SRO's of 51%.

Incidentally, if these "win" rates seem low, compared to the GAO fig-

ures of 60% (and SAC's past survey findings), it is because there are some apples mixed with the oranges in the SICA figures. For reasons that must be historical, the SRO's report among the "Public Customer Cases" those Awards in which broker-dealers are claiming against customers (Member/Customer). Since broker-dealers chasing debit balances are successful in a high percentage of the cases, the overall "win" percentage is conservatively low.

Thus far in 1993, it appears that NASD's dominance is growing, as it continues to project year-end filings that will total some 5,200 cases, more than a 15% increase. Some of the regional SROs may have skewed increases in their statistics for new filings, because of "mass actions" that have reportedly been filed, e.g., at the Pacific and Philadelphia Stock Exchanges, in limited partnership disputes. NYSE reports that new case filings appear a little lower than in 1992, so the forces that have dictated this shift evidently continue.

The American Arbitration Association is having a banner year, despite the solidifying federal court precedent, restricting access through the "AmEx Window" (see Luckie v. SBHU, this issue). Through August 1993, AAA reports 491 new securities cases filed nationwide, see "In Brief," this issue. AAA had 485 case filings during all of 1992, 586 in 1991, and 381 in 1990. At its current pace, this will be AAA's biggest year yet; if the trends continue, this non-SRO forum may one day rival NYSE as the second largest forum. The pace at AAA has been strong all year, but it quickened in the past three months. This may be an indication that the rule revisions negotiated by the AAA's Task Force, which culminated in May 1993 with the implementation of a new set of Securities Arbitration Rules (see Lerner article, 5 SAC 9(1)),

has dissolved some of the historical brokerage firm resistance to AAA.

The National Futures Association is not a participant in SICA, so its figures are reported separately. NFA is a futures SRO, NASD's counterpart in the regulation of commodity futures. Its arbitration program is specialized, concentrating on problems with futures transactions only. NFA tracks its case filings on a fiscal year basis. For FY 1992, which ended in June 1992, NFA reported 249 new Demands for arbitration, down from 319 in FY 1990, but up a fraction from 238 in FY 1991. In the first half of FY 1993 (July - December 1993), only 77 new Demands were filed. Things recovered a bit in the third and fourth fiscal quarters (see "In Brief," this issue), but the trend appears to be to a lower overall level of filings at NFA.

It seems from the new statistics that the moderate drop in new SRO filings that occurred in 1992 will reverse itself in 1993. That reversal will be most noteworthy, not for the size of the increased volume, but rather for the shift in "market share" among the SRO's. Pinpointing what factors are leading to this continuing shift is conjectural. We do think there is a softening in attitude toward AAA arbitration on the part of broker-dealers, as a result of AAA's efforts to accommodate the need of its users in the recent overhaul of its securities rules. NASD has spoken about its regional office program when asked about Claimants' new preference shift and, indeed, NASD and AAA are the only two forums which offer regional services.

We have always wondered how much influence the broker-dealers, as traditional respondents in these arbitrations, have been able to exercise upon the customer's choice of forum. To the

cont'd on page 10

SRO ARBITRATION FIGURES

Three-Year Chart 1990-1992

Year	Total Cases Received	Total Cases Concluded Including Settlements	Small Claims Received	Small Claims Concluded	Public Customer Cases Decided	Awards In Favor Of Public
AMERICAN STOCK EXCHANGE						
1990	69	72	21	21	25	15
1991	51	64	15	22	25	17
1992	45	55	12	15	23	8
*The Boston Stock Exchange received one new filing in 1992. In 1990 and 1991, it had received one each year.						
CHICAGO BOARD OPTIONS EXCHANGE						
1990	67	85	16	18	32	16
1991	46	62	5	12	13	9
1992	28	28	7	5	11	5
*The Chicago Stock Exchange (formerly the Midwest Stock Exchange) had 1 filing in 1992, 5 in 1991 and 4 in 1990. The Cincinnati Stock Exchange reported no filings during the three-year period.						
MUNICIPAL SECURITIES RULEMAKING BOARD						
1990	75	90	41	32	40	22
1991	94	82	35	41	38	18
1992	45	68	12	19	31	14
NATIONAL ASSOCIATION OF SECURITIES DEALERS						
1990	3,617	4,019	703	900	1,530	826
1991	4,150	4,037	787	665	1,419	775
1992	4,379	4,375	793	717	1,552	821
NEW YORK STOCK EXCHANGE						
1990	1,378	1,466	222	199	499	256
1991	1,403	1,496	187	199	451	185
1992	873	1,167	55	109	316	136
PACIFIC STOCK EXCHANGE						
1990	93	68	25	25	45	26
1991	86	82	21	17	33	21
1992	58	65	16	13	27	16
PHILADELPHIA STOCK EXCHANGE						
1990	29	34	5	9	15	7
1991	33	32	13	15	15	8
1992	21	18	2	3	4	1
1990	5,332	5,837	1,033	1,204	2,187	1,169
1991	5,869	5,857	1,063	971	1,994	1,033
1992	5,451*	5,779	897	881	1,964	1,001

CASE STATS *cont'd from page 9*

extent that it existed, that influence has been diminished by the requirement (post-Sep. '89) that new pre-dispute arbitration agreements allow freedom of choice among all SRO's. It has also been our conviction (call us cynical) that lawyers, not investors, made the choice between arbitration and litigation in the "old days" and now make the choice between the possible arbitration forums. If that is at least partially valid, we wonder if the changes in what we call the "infrastructure" of the "Claimants" bar, that which traditionally rep-

resents the investor, have had an impact on these shifts.

For instance, if there is greater specialization, communication, and organization among those who represent investors, and, thus, a greater confluence of views in that group, might this not mean that (1) broker-dealers have even less influence on the choice than before, and (2) that "herd instincts," "fads" or simple consensus among the regular investor representatives are influencing some of the factors resulting

in these shifts. These are rhetorical questions, not something we could persuasively argue, but our suspicion, on a general plane, that the very significant changes in this "infrastructure" that we see in the post-Crash period must influence the practice of arbitration is part of SAC's reasons for wanting to analyze some of these "infrastructure" changes in future issues.



Exemplary Damage Awards

Numerous requests from SAC Award Reporter subscribers for database searches regarding punitive and treble damage Awards caused us to prepare a package of Awards reflecting such relief and to make it available at a set price. This "Exemplary Damages" set of more than 190 cases (currently) has become our most frequently requested Awards Package. It contains an Award Report summarizing the results in each case, with photocopies of each Award. To obtain a set, please send a check and this completed coupon to:

SECURITIES ARBITRATION COMMENTATOR
ATTN: Exemplary Damages Package
 P. O. Box 112
 Maplewood, NJ 07040

NAME _____

ORGANIZATION _____

ADDRESS _____

CITY/STATE/ZIP _____

TEL. NO. _____

Reporter Subscribers only, \$150

Non-subscribers, \$200

Please make checks payable to Securities Arbitration Commentator

NOTE: Package prices may be adjusted periodically as additional Awards are added to the set. Updates can be obtained for an additional 70% off the current purchase price at any time within the first year following your receipt of the "Exemplary Damages" package.