Wells Fargo Lawyer Accidentally Releases Trove of Data on Wealthy Clients

A Bressler, Amery & Ross lawyer representing Wells Fargo, responding to a third party subpoena in a case between two financial advisors, produced documents without redaction or confidentiality designations that revealed "billions of dollars of client account information, from residents of numerous states and possibly Europe."

Above the Law describes how the mistake got worse: "To compound the issue, [the lawyer] alleges that plaintiffs showed the documents – which, remember, weren't protected by a confidentiality agreement – to the New York Times, which then wrote about the consumer information that was produced. All in all, an incredibly messy affair."

Kathryn Rubino writes that a broadly worded confidentiality agreement could have mitigated the damage.

Read the Above the Law article.

Defense Lawyer: Shkreli Would Lose $65 Million If Convicted

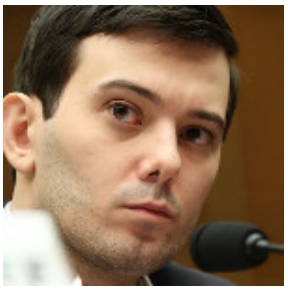

Image by OversightandReform

A defense lawyer says former pharmaceutical CEO Martin Shkreli would lose a $65 million stake in a drug company he founded if he's convicted at his securities fraud trial, reports the Associated Press through **ABC News**.

The lawyer told jurors that a drug company official who testified against Shkreli was biased because the company would benefit financially if Shkreli is convicted of a felony.

"Shkreli is best known for raising the price of a life-saving drug by 5,000 percent and trolling his critics," the AP reports.

Read the article.

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Republicans Introduce Bills to Scrap New Bank Arbitration Rule

Republican lawmakers in the House and Senate have introduced bills calling for the repeal of a just-announced regulation that would make it easier for consumers to bring class-action lawsuits against banks, reports ***The Los Angeles Times***.

The new Consumer Financial Protection Bureau rule would ban banks and other financial institutions from forcing arbitration clauses on customers to prevent them from bringing or joining class-action suits.

Some Republicans have introduced resolutions calling for use of the Congressional Review Act, which allows Congress to new regulations created by federal agencies, writes **James Rufus Koren**.

Read the *LA Times* article.

CFPB Hits Back at Efforts to Kill Rule Easing Bank

Lawsuits

Just days after approving a controversial rule that will make it much easier for Americans to sue their banks, the U.S.'s top consumer watchdog is already fighting back against attempts to prevent the regulation from taking effect, **reports Bloomberg**.

Bloomberg's **Elizabeth Dexheimer** reports that Consumer Financial Protection Bureau Director Richard Cordray said there is "no basis" to claims that his agency's action will put the nation's financial system at risk. Cordray was responding to concerns raised by acting Comptroller of the Currency Keith Noreika, a regulator appointed by the Trump administration who had a long legal career representing banks.

Under the new rule, financial firms are restricted from forcing consumers to resolve their disputes through arbitration, a practice that has been used by the industry for years to keep grievances tied to payday loans, credit cards and other products out of courts.

Read the Bloomberg article.

My Smart Contract Just Ate

$14 Million – Now What?

A Canadian digital currency exchange (QuadrigaCX) reported recently that a malfunction in a smart contract is responsible for a $14 million dollar loss of the cryptocurrency ether, reports **Jared Butcher** in the **Steptoe Blockchain Blog**.

He explains that a software upgrade performed by the company had an error in the code that prevented the smart contract from properly processing incoming amounts of the cryptocurrency Ether. During the time it took to discover the problem, Ether sent to the company's exchange was "trapped" in the smart contract.

"The potential for new risks and severe consequences arising from smart contracts (compared to traditional contracts) suggests that a re-consideration of indemnification strategies is warranted," Butcher writes. "Risks arising from coding errors or other human errors are not the product of intentional wrongdoing or a catastrophic event and may not involve any injury to a third party."

Read the article.

HSBC, UBS Settle U.S. Rate-

Rigging Litigation; 10 Banks' Total Payout Tops $408 Million

Image by Mark Moz

Reuters is reporting that HSBC Holdings Plc and UBS Group AG have each agreed to pay $14 million to settle private U.S. litigation accusing them of rigging an interest rate benchmark used in the $483 trillion derivatives market.

If approved by the judge overseeing the case, the settlements would boost the total payout from 10 settling banks to $408.5 million. HSBC and UBS denied wrongdoing.

"Several pension funds and municipalities had accused 14 banks of conspiring to rig the ISDAfix benchmark for their own gain from at least 2009 to 2012," writes reporter **Jonathan Stempel**.

Read the Reuters article.

Wells Fargo's $142-Million Sham Accounts Settlement: What You Need to Know

Image by firedoglakedot com

A federal judge has signed off on a deal under which Wells Fargo & Co. will pay $142 million to settle a bevy of class-action lawsuits over the bank's creation of unauthorized accounts.

The Los Angeles Times offers some answers to typical questions that consumers may have about the settlement and what it can mean for the customer individually.

Reporter **James Rufus Koren** writes that Keller Rohrback, the lawyers who negotiated the settlement with the banking company, will ask the court for $21.3 millions, which amounts to 15 percent of the total settlement fund.

The article answers such questions as: Am I eligible? How much will I get? How do I sign up? What if I want to sue the bank? When will I get paid?

Read the *Times* article.

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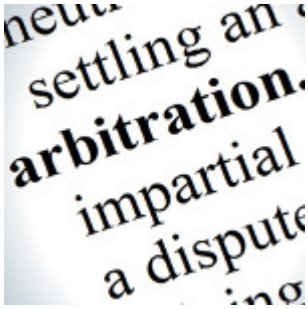
Consumer Watchdog Makes It Easier to Sue Banks and Other Companies



The government's consumer watchdog has finalized a rule that will make it easier for people to challenge financial companies in court, reports ***The Washington Post***.

The new Consumer Financial Protection Bureau rule targets arbitration clauses, which can show up on user agreements for credit cards, bank accounts and other consumer products.

"As a condition for receiving services or products, consumers often give up their right to join a class-action lawsuit with these clauses, and instead agree to settle any disputes in a private process known as arbitration," writes the *Post*'s **Jonnelle Marte**.

Now the rule will ban companies from using these agreements to block consumers from joining group lawsuits. But supporters of arbitration say the clauses can help companies and consumers save money by minimizing legal costs.

Read the *Post*'s article.

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Fiduciary Rule Creates Breach of Contract Claim, No Private Right of Action

The first part of the Department of Labor's Conflict of Interest Rule went into effect in June, and a large group of newly-defined "fiduciaries" are now subject to certain requirements of the Best Interest Contract (BIC) exemption, a portion of the Fiduciary Rule that according to some commentators creates a private right of action for investors, reports **Kilpatrick Townsend**.

"The creation of a private right of action is one of the investment industry's chief concerns with the Fiduciary Rule," write **Paul Foley** and **John I. Sanders**. "Industry leaders claim that the BIC exemption creates a private right of action because it enables investors to bring breach of contract claims and class actions against the fiduciaries with whom they contract. However, a federal judge from the Northern District of Texas flatly rejected this claim in *Chamber of Commerce of the United States of America v. Hugler*."

Read the article.

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Ex-American Realty CFO Convicted of Falsifying Company's Accounts

The former chief financial officer of American Realty Capital Properties Inc was convicted on Friday of deceiving investors by inflating the real estate investment trust's financial statements, **Reuters reports**.

A three-week trial in federal court in New York ended with Brian Block guilty of fraud and conspiracy.

American Realty shares lost about $4 billion in market value on one day in 2014 after the company said employees intentionally concealed accounting errors.

"Block was charged with securities fraud and conspiracy last year," writes **Brendan Pierson**. "Prosecutors said that in July 2014, he plugged fake numbers into a spreadsheet that was used to prepare the company's financial report for the second quarter of that year in order to disguise a calculation error in a previous report."

Read the Reuters article.

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Law Firm Not Liable for $1.5B Loan Gaffe

Image by C_osett

Entities that loaned General Motors $1.5 billion before it went bankrupt cannot sue GM's law firm, Mayer Brown, for accidentally canceling the collateral on the loan, the Seventh Circuit ruled.

Courthouse News Service **is reporting** that the Chicago-based appeals court ruled Wednesday that Mayer Brown has no duty to GM's lenders because it did not represent them.

The suit was based on a statement drafted by Mayer Brown that mistakenly terminated the collateral securing a $1.5 billion loan. That mistake resulted in the lenders' loans becoming unsecured, putting their claims behind the claims of secured creditors, writes **Lorraine Bailey**.

Read the Courthouse News article.

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Shkreli Described by Prosecutors as Spinning 'Lies Upon Lies'

Image by OversightandReform

Pharma Bro Martin Shkreli is a liar who ripped off his clients, a prosecutor told jurors, according to a **Bloomberg report**.

Reporters **Patricia Hurtado** and **Misyrlena Egkolfopoulou** write that his lawyer said the former fund manager may be nuts, but he's also a genius who made millions for his investors.

Shkreli is accused of fraud in relation to his control of two hedge funds he ran as well as Retrophin Inc., a pharmaceutical company he founded in 2011. Prosecutors characterize him as a con man.

The defense paints Shkreli as an investment genius, prosecutors point out that he repeatedly lost money for investors and lied to them.

Read the Bloomberg article.

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Prominent California Lawyer Convicted of Embezzling $300,000

A California federal jury convicted Manhattan Beach lawyer and former Body Glove employee James R. Miller on Monday of embezzlement and tax evasion for stealing more than $300,000 from the internet sales company he oversaw as president from 2009 to 2012, reports ***The Beach Reporter***.

Miller, 68, could be sentenced up to 20 years in prison and fined $250,000.

“Miller was convicted of writing dozens of checks for personal gain during his time as president of MWRC Internet Sales LLC and failing to account for that income on his federal tax filings. He was convicted of five counts of wire fraud and filing false taxes,” writes reporter David Rosenfeld.

The investigation began after the then-president of Body Glove notified the Federal Bureau of Investigation about her suspicions.

Read *The Beach Reporter* article.

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MetLife General Counsel to Step Down After Beating U.S. in Court

Bloomberg reports that MetLife Inc. General Counsel Ricardo Anzaldua is stepping down after he helped win a court battle that reversed the government's designation of the insurer as too big to fail.

Anzaldua will be on the job until the end of June, and he'll continue to advise Chief Executive Officer Steve Kandarian through the end of the year, the CEO said Thursday in a memo to staff.

"Under Anzaldua, MetLife was the only company to go to court to fight the designation by a government panel as a non-bank systemically important financial institution," reports **Katherine Chiglinsky**."General Electric Co. sold assets to shed its finance unit's SIFI status. And American International Group Inc. said that the label, which can bring increased regulation and tighter capital rules, wasn't a big deal."

Read the Bloomberg article.

Lawsuit in U.S. Accuses 12 Big Banks of Credit Default Swap Collusion

Image by Mark Moz

A small trading exchange on Thursday filed an antitrust lawsuit accusing Bank of America Corp., Citigroup Inc., JPMorgan Chase & Co. and nine other banks of conspiring to shut it out of the $9.9 trillion credit default swap market, **reports Reuters**.

The plaintiff, Tera Group, alleges the banks organized a boycott of its seven-year-old TeraExchange platform by refusing both to send it any CDS transactions, and to clear and settle any CDS trades that customers wanted to handle there, according to reporter **Jonathan Stempel**. The complaint said the banks used their 95 percent market share to require that trading follow a protocol known as “request for quote,” which Tera described as opaque and inefficient.

“Tera said this enabled banks to boost profit by keeping traders in the dark about prices, defeating a goal of the 2010 Dodd-Frank financial reforms, while instilling a “great fear of retaliation” against traders who defected to rival

platforms," Stempel writes.

Read the Reuters article.

It's All Fun and Games Until Someone Sues for Breach of Contract

Loans secured by stock are an important and popular product offered by many lenders to individuals and other borrowers, according to a post on the website of **Loeb & Loeb LLP**.

"The ability of a lender to sell the stock held as collateral is very much dependent on the documentation governing the loan. When and to what extent a lender may realize upon (or liquidate) the stock to repay the indebtedness under the loan should be carefully and clearly set forth in the loan documents," write **Bryan G. Petkanics** and **Anthony Pirraglia**. "A recent federal court case analyzed the ability of a lender to act upon stock pledged to secure a loan, and provides insight into valuable language to be included in the loan documentation."

They discuss Kinzel *v. Merrill Lynch*, in which the Sixth Circuit affirmed the judgment of the district court in favor

of Merrill Lynch, finding that the financial services company breached neither the contract nor its duty of good faith under the terms of the loan management account agreement.

Read the article.

Dubious Corporate Practices Get a Rubber Stamp From Big Investors

Institutional asset managers carry enormous clout across corporate America. So it's unfortunate that so many of these managers choose to support the status quo for boards, even when investors are ill served, points out *The New York Times*.

As an example, writer **Gretchen Morgenson**, discusses the case of Arconic, the industrial metals company that spun off Alcoa in November. Some of its directors are facing a proxy challenge to be decided at the company's next annual meeting.

Giant hedge fund Elliott Management is behind the challenge, following years of declining sales, rising losses and a subpar stock performance at Alcoa.

As Morgenson explains, "The structure of Arconic's board – and Alcoa's before it – is investor-unfriendly. It is what's known as a classified board, in which directors' terms are

staggered, protecting them from being voted out en masse."

Read the *NYT* article.

Hackers Face $8.9 Million Fine for Law Firm Breaches

Three Chinese stock traders were ordered to pay $8.9 million in fines and penalties for hacking into two law firms and stealing information on upcoming mergers and acquisitions and then leveraging the information to trade stocks, according to a **Dark Reading report**.

A federal court in New York found that the three hackers installed malware on the law firms' computer networks, enabling them to view emails on mergers and acquisitions in which the firms were involved. Then they used that information to buy stock in at least three public companies prior to their merger announcements, according to the Securities and Exchange Commission.

The firms aren't identified in the complaints, but **Law360 reports** they appear to be Weil Gotshal & Manges and Cravath Swaine & Moore, based on information in charging documents.

Read the Dark Reading article.

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Creating Material Wealth for Business Owners & Labor with ESOPs

Bloomberg BNA, PKF O'Connor Davies LLP, Prairie Capital Advisors, and Sadis & Goldberg LLP will present an **exclusive live event** on using employee stock ownership plans (ESOPs) to support growth and ownership transition strategies.

The event will be Thursday, June 1, 2017, 3-5:15 p.m., with a reception to follow. The location will be at Bloomberg LP, 120 Park Ave., New York, NY 10017.

On its website, Bloomberg says this program will explore all of the ways in which a business can utilize ESOPs to create favorable conditions for financing, allow for acquisitions, attract top talent, and generate wealth for both owners and employees.

ESOPs are commonly used by an owner seeking to retire, however, in today's business market of successful start-ups, there's an opportunity to consider them earlier in the lifecycle of the company. ESOPs, when done properly, may position the company for financing, allow for acquisitions, help attract and retain top talent in a competitive environment, and create wealth for owners and employees.

Register for the event.

Best Practices for Limiting Liability Arising from Smart Contract Vulnerabilities

Jared Butcher, writing in the Steptoe Blockchain Blog, says it is no secret that smart contracts have vulnerabilities, but he suggests a mix of best practices to limit potential liabilities that may arise when vulnerabilities interfere with smart contract performance.

"There is potential for manipulation by insiders, which is of particular concern for smart contracts that operate based on 'proof of stake' protocols, given the ongoing concerns that those protocols will not be effective in ensuring that the parties play by the rules," Butcher writes. "Even without intentional interference by hackers or insiders, smart contracts may have software bugs that disrupt performance, and there is the possibility of unintended outcomes if the smart contract's code fails to anticipate an unusual situation."

In the post, he offers six best practices to consider when implementing a smart contract.

Read the article.

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