


# Independent Research


## Four Full 5-Month Subscriptions for Only \$69


**100% MONEY-BACK  
GUARANTEE**


If during the first two months after placing your order, you decide the four newsletters you chose are not worth your money, let us know. We will promptly and cheerfully return every penny.


**YOU RISK NOTHING!**


**WALL STREET STRATEGIES** 1 YR \$2,150  

 An independent research firm offering sophisticated stock trading advice directed primarily towards professional traders. Over 90% of subscribers are investment professionals who choose to personally purchase a subscription despite the access of millions of dollars of research information provided by their respective firms. Has been featured in *The New York Times*, *CNBC*, *Worth Magazine*, and *Bloomberg*.  
 ORDER AL54

**DICK DAVIS DIGEST** 1 YR \$180  

 A selection of the best from more than 300 stock market letters with a subscription value of over \$40,000, spotlighting special stock recommendations. Loaded with 12 pages of concise money making ideas from the best minds on Wall Street.  
 ORDER AD76

**UNDISCOVERED STOCKS** 1 YR \$189  

 With over 40 years of combined money management and analytical experience, Nancy Zambell and Sherri Parker excel in finding stocks about to break out of stagnant positions and with huge price appreciation potential. Their extraordinary recent stock picking record includes a run-up of 89.57% during a period when NASDAQ plummeted 38.7% and in 2003 they've helped subscribers to achieve up to 147% gains on selected stock recommendations.  
 ORDER AL65

**SMALL BANK NEWSLETTER** 1 YR \$690  

 Some of the greatest stock market gains over the past 6 years have been in small banks, yet this industry is one of the most overlooked. Small banks tend to be prime candidates for stock splits and buyouts. These analysts focus on uncovering the best investment opportunities in the smaller regional and community banks. Stocks pay an average of 3%-5% dividend each year with low downside risks. Mr. Hughes' bank commentary is regularly featured in *Jagnotes*.  
 ORDER AA60

**WONG'S BIOTECH STOCK REPORT** 1 YR \$279  

 Specializes in finding the best biotechnology stock investment opportunities. Integrates, analyzes, and interprets the mass of medical and scientific data that is available to make it easy for an investor to digest. Each issue examines new products, evaluating their potential, the markets and the likely impact on the company's future. Specific stock recommendations are followed until positions are closed. (Note: Publisher sends a 3 month subscription under this special SIE offer.)  
 ORDER AK24

**STURZA'S MEDICAL INVESTMENT LETTER** 1 YR \$340  

 Uncovers emerging medical technology stocks with substantial upside potential, selected by a team of M.D.s, pharmacists and a Ph.D. Independent, timely reports on biotechnology, pharmaceuticals and medical device companies delivered by fax or mail each week. Buy recommendations with specific price targets in every report. (Note: Publisher sends 13 issues under this special SIE offer.)  
 ORDER AK12

### Let Wall Street's Shrewdest Pros Help YOU Make Money In Both Bull and Bear Markets!

The newsletters listed on this page are the best performing, most popular ones from among over 180 newsletters Select Information Exchange (SIE) represents. SIE has been selling investment publications for more than 37 years. Over the years, more than one million investors have ordered their market letters from SIE. These investment publications are at the top of SIE's list in popularity. These are the same newsletters that their regular subscribers pay \$400, \$1800, \$2100 and even much more to receive. They will never be able to get these newsletters for less.

They include the famous ones that you've heard about and read about...including a famous institutional investment research firm that has been making money for its institutional clients for over 50 years. They include the best performing most popular market letters in the field. They're the chosen advisors for billions of investment dollars. They also include:

- The top stock picking newsletters according to a market letter performance tracking service
- The "best market timer for the past 3 years."
- The best low priced stock picker, with 22 winners out of 24 recommendations.

#### SIE's Incredible Offer



Pick any 4 of the top-performing, well-known publications on this page—the investment letters you've always meant to try. Receive full five-month subscriptions to each and every one. Your price for all four full 5-month subscriptions is only \$69! Not for each subscription. But for all four!



#### Why do publishers allow us to make this incredible offer?


Each publisher is convinced that when you see their service you will become a regular subscriber. But you are under NO obligation. You never have to buy anything again. You keep all the issues you receive—worth as much as \$2,177.00—for just \$69, less than the cost of one ticket to a Broadway show.


You can't lose. Your \$69 could buy you as much as \$2,177.00 worth of solid, professional investment ideas by people who know. Profit from this amazing opportunity while it is still available.



**Just Call Toll FREE 888-632-9346.**


**THE OBERWEIS REPORT** 1 YR \$149  

 Among the top investment advisory letters tracked by a leading market letter performance tracking service, Oberweis identifies pint-size companies with extraordinary revenue and earnings growth yet low relative P/E's. Companies tend to be small and in early stages of growth, often not yet well-known on Wall Street. Includes market commentary, individual stock recommendations and updates on prior recommendations. The model portfolio of the report has a market beating 21-year documented track record.  
 ORDER AF80  


**THE CABOT MARKET LETTER** 1 YR \$295  

 Identifies small, dynamic growth stocks with the potential to double your money many times! Typical companies have revolutionary new products addressing mass markets, have high profit margins, recurring income, high ownership by management and are ripe for accumulation as sales and earnings soar and institutions pile on board.  
 ORDER AE64  


**KONLIN LOW-PRICED STOCK LETTER** 1 YR \$95  

 An authority on low-priced stocks, this newsletter has been rated one of the best performing market letters in the nation. This unique service recommends 5 low-priced selections each month possessing the potential to double, triple or better. Specializes in low-priced stocks under \$10 with emphasis on emerging growth and special situations poised for explosive price appreciation. Specific buy and sell recommendations are provided with technical and fundamental analysis on all stocks reviewed until positions are closed. (Note: Publisher sends 4 issues under this special SIE offer.)  
 ORDER AG89

**OTC GROWTH STOCK WATCH** 1 YR \$299  

 Focuses on little known companies with a market capitalization of less than \$100 million, with a minimum 2 to 1 current ratio, minimal long term debt, rapid earnings growth for a period of at least two years, having niche products or service, in a relatively recession resistant industry, innovative management, and in many cases, strong acquisition candidates.  
 ORDER AR98

**ZACKS ADVISOR** 1 YR \$399  

 As founder of one of the most respected institutional research organizations in the world and whose corporate earnings estimates are followed by almost every leading institutional investor, Ben Zacks focuses his company's resources and his own legendary stock-picking talents in recommending the stocks he most likes. Each recommendation is supported by in-depth research and truly unique earnings change analyses. (An email address must be provided to receive this newsletter.)  
 ORDER AD72  


**GROWTH STOCK ALERT** 1 YR \$298  

 Author of Dow Jones-Irwin's widely acclaimed 1986 *Guide to High Tech Investing* and his prescient 1992 book *Super Investment Trends*, *Cashing In on the Dynamic '90s*, James Powell is considered by many Wall Street pros to be the "dean" of high-growth stock analysts. Jim's specialty is uncovering small companies possessing unique products or services with expanding markets. Each month, Jim draws upon 25 years of experience and contacts to recommend just a few carefully selected stocks with extraordinary potential which are poised for broad Wall Street recognition. (An email address must be provided to receive this newsletter.)  
 ORDER AK28

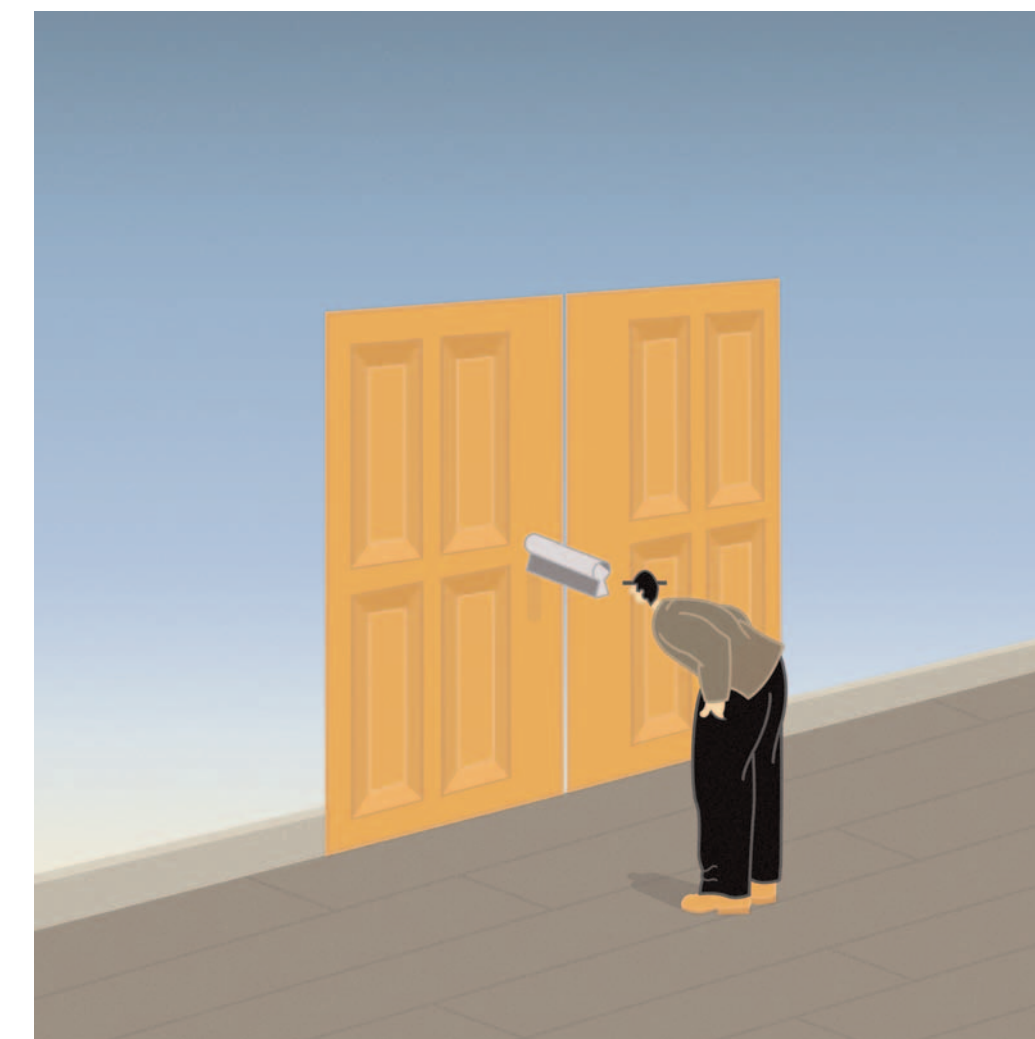
Get Your Full 5-Month Subscriptions for Only \$69 (No further costs or obligations)

**ORDER TODAY!**

**CALL TOLL FREE 888-632-9346**

Please mention code: 800704

# Behind Closed Doors



Recent attacks in the *Wall Street Journal* have put NASD arbitration under the spotlight. Certain industry pundits, and groups including the Public Investors Arbitration Bar Association (PIABA), have alleged there are serious problems with the process. These groups see the arbitrator selection process as one of the main problems that prevent investors from obtaining fair decisions.

PIABA asserts the mandatory industry arbitrator should be eliminated from the panel and three public arbitrators, who are truly public and have not ever had any ties to the industry, should hear cases. In PIABA's opinion, the industry arbitrators are inherently biased and tend to favor industry practices and respondents over investor claimants. In addition, they claim that many public arbitrators are not truly public because they once had ties to the industry. As a result, PIABA is lobbying for the NASD to have a panel of public arbitrators only.

BY KATHERINE VESSENES

See All 180+ Investment Letters at  
**www.stockfocus.com**

Attorney Jim Eccleston takes the opposite view. The industry expert is a necessary part of the process, according to Eccleston, because you need someone on the panel who understands the intricacies of the case. "One of the theories used to bolster PIABA's argument is that most cases now have a paid expert for both claimants and respondents, therefore there is no need for an industry expert to be on the panel," he says. Eccleston does not favor eliminating the industry member because it would require all claimants to find an expert to help them explain their case to the arbitrators. "This can be an expensive burden on investors, particularly for smaller cases," he says. Some investors or even smaller firms may not be able to afford the services of an expert witness. This would make it more difficult for them to get a fair hearing.

Attorney Terry Lister believes many of the cases are just too complicated to be left solely in the hands of public arbitrators. Take a case involving the minutiae of certain derivatives. "Most industry arbitrators would have a difficult time sorting through the evidence without the help of an expert witness to explain the details, says Lister. "Therefore, it is likely it would be much too complex for a public arbitrator."

Lister is comfortable with two public arbitrators so long as there is at least one industry arbitrator on the panel. The industry arbitrator can help explain the industry-specific details of the case to the other panel members.

Also the industry member can be a big help when it comes to a battle of the experts.

"It is not unusual for both sides to have paid expert witnesses. They might look at the facts and come to exactly opposite opinions depending on who paid them, the investor or the broker/dealer," says Lister. With at least one industry member on the panel, they can sort through the expert testimony and help decipher it for the other panel members.

Dave Markun says just because they qualify as an industry arbitrator does not necessarily mean that they are "experts" or even more knowledgeable than anyone else with respect to the particular issues that arise in an arbitration. "I have had many industry arbitrators who did not know anything about suitability or options or the other issues in a case," he says.

## ARBITRATOR COMPETENCE AND BIAS

Experts cite other problems with the arbitrators. Markun, who has represented both claimants and respondents in hundreds of cases, thinks there are two main issues with arbitrators that make it difficult to get a fair result. Many arbitrators are incompetent and biased, he says. According to Markun, the arbitrators, as those who try fact, are only marginally better than a jury, even though they have had extensive training by the NASD to qualify as arbitrators. Markun says, given similar facts, he has had dramatically different results before different panels.

"I have seen arbitrators who were so old or tired, they nodded off during the proceedings," says Markun. This puts the attorneys in a difficult position. If they bring it to the attention of the other arbitrators, they risk the ire of all the arbitrators and ultimately penalizing their client. "Usually I just press on and pretend they are just resting their eyes so I don't jeopardize my case," he says.

And, Markun says, the system has inherent biases. Take the professional arbitrator, the one who may be retired and needs to continue receiving arbitration assignments as a way to maintain income in retirement. That arbitrator is going to be very careful about awarding punitive damages, even in the most

egregious situations, says Markun. The reason is the selection process. "Attorneys will be looking at previous awards," Markun says. Any arbitrator who has ever rendered an award for punitive damages would be struck by the attorney representing the respondent," he says. "Most respondents would blackball these arbitrators because they would not want to take a chance on their client being hit with a large punitive damage award.

Jurors, on the other hand, can just walk away when a case is through. Jurors are not worried about their future livelihood. In general, jurors try to do the right thing, because they will leave the courtroom and go back to their employment, says Markun.

"Professional arbitrators may want to do the right thing,"

Markun says, "but their own future financial needs may affect their judgment."

The arbitrator's pay of about \$40 per hour is appealing to inexperienced attorneys who do not have any other work. So many of the arbitrators, attorneys, retirees and others are using this as a way of boosting their income. This means there is a good chance any panel will have one or more inexperienced or unqualified arbitrators, whether they are from the public or the industry sector. "In my mind this type of arbitrator, the ones just looking to supplement their income, are just not qualified to render a decent deci-

### NASD ARBITRATION 101

Arbitration is an alternative means for investors to resolve their disputes in lieu of traditional court litigation. The investor, or claimant, files a claim with the NASD, where an impartial panel of three arbitrators for larger cases, or a single person for smaller ones, studies the evidence and then makes a final and binding decision.

The arbitration process is generally quicker and cheaper than pursuing the same claim in court. The decision is subject to appeal in a very limited number and only a small number of cases is reversed on appeal.

Although the NASD does not require any investor to arbitrate a claim against a brokerage firm or broker, since 1987 most firms have investors sign a binding arbitration clause when they become clients of the firm.

Three-person arbitration panels consist of two public arbitrators and one industry arbitrator. Arbitrators are required to disclose any conflicts of interest and extensive background information, including past awards to parties to help them select their arbitrators.

Participants are asked to complete a "satisfaction survey" at the end of their case and the NASD has an extensive process for maintaining competent, unbiased arbitrators including peer review, staff observation, and party feedback.

sion," says Lister. "In fact, I would guess about 40 percent of all arbitrators are not qualified," he said. Markun agrees but said it is likely that as many as 50 percent of arbitrators are either too biased, uninformed or incompetent to render a fair verdict. According to Lister, one of the major problems with both public and industry arbitrators is they have no training that assists arbitrators in understanding the business and the specific issues they will be asked to evaluate. Lister also cites a complaint common among our experts: The NASD does not pay enough to attract arbitrators who are trained in alternative dispute resolution or have any real experience with the process or the industry.

The time commitment is another problem with attracting

qualified public and industry arbitrators. In years past, arbitration would take one or two days. This was a reasonable amount of time in which to expect experienced arbitrators to resolve disputes. Now cases can take months. "I heard one arbitration case involving derivatives that was so complicated, it went off and on for two years," says Lister. This expenditure of time, which can easily go for numerous sessions over a period of months, is not attractive to experienced and qualified arbitrators, particularly at the low pay.

Each party to an arbitration receives a list of potential arbitrators from the NASD, who has trained them. There will be five industry candidates and 10 public candidates. Each side ranks their choices and sends it back to the NASD who makes the final selections. It is very important to do your due diligence on potential arbitrators, according to Eccleston. Many veteran arbitrators may not be up to speed with the newer investment techniques like asset allocation and using hedging strategies to reduce risk, he says.

"We always look at the history of previous awards, the arbitrator's age and experience," said Eccleston. He pays particular attention to their previous experience. "If they are a commodities trader, they are probably too much of a risk taker for some of our cases."

To combat some of these issues, the NASD has participants complete a "satisfaction survey" at the end of the process. The NASD had procedures in place that are designed to disqualify incompetent or biased arbitrators. Lister has not found these procedures helpful in the past. "It is important that we only have competent and fair arbitrators," asserts Lister. "Because it is important that the public have confidence in the system."

## PROBLEMS WITH THE PROCESS

### EVIDENCE AND DISCOVERY

One issue mentioned as a problem by all of our experts was the means of gathering and admitting documents and testimony into evidence. What is consid-

ered evidence, documents and testimony, is the same in an arbitration or a court case. However, the standard of what is admitted or excluded is much different.

The standards for admitting and excluding evidence are far more strict in a court case than they are in arbitration. Arbitrators can admit hearsay or even out-of-date evidence. This would not usually be allowed in a court case, except in certain limited circumstances. This can have a big impact on the outcome of the case, sometimes changing it completely.

Also, most arbitrators will admit just about any evidence "for what it is worth," according to our experts. Parties will never know if the arbitrators gave the evidence a lot of weight, or no weight at all in deciding their case.

In a court case, a judge could make an error in admitting evidence but it would be appealable. That is not allowed in an arbitration.

In arbitration, admitting and excluding evidence should be a simple and streamlined process. However, as the arbitration practice is moving closer to typical litigation, gathering evidence has also come to look more like gathering evidence for a court case.

It is not unusual for both parties to present a lengthy list of possible documents to the other side for discovery. This can be an expensive and time-consuming process to locate and reproduce documents that are many years old and stored in offsite locations. In a court case a few years back, the plaintiff requested e-mails from the defendant broker/dealer. The broker/dealer estimated it would cost about \$175,000 just to retrieve the e-mails, an expense the broker/dealer claimed should be incurred by the plaintiff. After a lengthy court battle and appeal, the plaintiff was only ordered to pay 25 percent of the cost and the defending firm picked up the balance.

Many times this lengthy list of items is not even required for the case, but used to harass the opposing party. "Parties will make outrageous requests for documents and testimony," explains Lister, "Then they hunker down and get nothing." Some brokerage firms have sought to evade and avoid discovery obligations and thwart the intention of the rules. This practice of failing to deliver required documents can stymie a party's chance of getting a fair decision.

Markun also believes the discovery process is unfair. He says there is no real accountability for a broker/dealer who withholds a

document that is necessary for a claimant to present his case. To combat this problem the NASD has issued a new list of sanctions for failing to comply with legitimate evidence requests. Although there are sanctions available for willfully avoiding the rules, Markun has never seen them imposed against an offending firm. Even worse, without being able to depose the person responsible for producing the documents, many abuses undoubtedly go undiscovered, Markun says.

Another problem with discovery is inconsistent rulings. "I have seen the exact same evidence in five cases, and get five different decisions by different arbitrators," says Markun. Eccleston also cites similar problems.

To combat this, the NASD has proposed a new type of arbitrator, an Evidence Arbitrator, who only rules on evidence. Most of the experts interviewed liked this solution and felt it would help to get more consistent evidence rulings.

Markun would amend the arbitration rules to allow for one deposition. He would depose, under oath, the person who is most knowledgeable about production of the needed documents. He believes using the deposition process, parties would be able to get honest testimony about evidence and it would reduce the likelihood parties would destroy or alter documents or just fail to produce them. Many attorneys favor this change because it would allow them to bring criminal actions for perjury.

## THE RIGHT TO APPEAL

Most industry professionals prefer arbitration to litigation for most of their cases. Arbitration is generally faster and less expensive than going to trial. Markun says, however, that one of the changes he would like to see in the system would be the right for parties to opt for going to court if the disputed amount were over a certain dollar limit.

One of the trade-offs for speed and reduced cost is the ability to appeal. Most arbitration cases are not appealed for two reasons: first the grounds for appeal, under the NASD rules, are very limited, and second, most awards do not contain enough information in them on which to base an appeal. Bigelow believes this inability for an effective appeal is unfair to everyone.

Few cases are appealed. Eccleston estimated only one in

10 were appealed, and out of those maybe one in 10 was reversed on appeal. Markun, who has won many arbitration cases, says he has never seen a successful petition to set aside an award.

## GETTING THE RIGHT COUNSEL

Getting an experienced and competent attorney to represent you has also become more difficult over the last few years. The reason is most firms have errors and omission insurance. However, it is the insurance carrier, says Bigelow, not the broker or the broker/dealer who has the right to pick the law firm to defend a particular case.

It has become a widespread practice for the carrier to request bids from different law firms for this type of work. Most carriers will select the least expensive firm—and they may not be the most qualified. With law firms actively seeking this kind of business, usually the new and inexperienced attorney wins the bid. Rarely are the experienced attorneys willing to reduce their fees to become the winning bidder.

Under the terms of the policy, brokers or broker/dealers are not usually given the right to select their own counsel. This rarely bodes well for the party with the inexperienced counsel. "Although I have had clients who made sure my firm was listed in their policy," says Markun. "These broker/dealers wanted to be sure they had someone representing them whom they knew and could trust."

Insurance defense attorneys have moved into the security litigation arena in a big way and have won a lot of bids from E&O carriers. "What they don't understand," says Eccleston, "is this is a much different and very complicated area of law." He tells of one longtime litigator taking on his first NASD arbitration. "During the entire proceeding he kept referring to the NASD as the NSAD!" Eccleston recounts with a smile. "I knew we would succeed," he explains, "Because it became apparent he hadn't even

read the rules."

When selecting your attorney, Markun recommends doing your due diligence on your potential candidates. Interview them about the number of cases they have handled and the results. Be sure to get references from other firms, too.

## THE PROBLEMS WITH E&O COVERAGE

Many brokers and firms have been lulled into a false sense of security with their E&O policies. This situation came to my attention recently when I had a number of advisors

tell me the same story: a financial

NASD ARBITRATION BY THE NUMBERS:	
\$750,000	the amount of money three firms were fined for failing to comply with their discovery obligations in 20 arbitration cases
8,201	the number of arbitrations filed in 2004
6,626	the number of NASD arbitrators currently approved for taking cases
\$400	typical daily pay for an arbitrator
146	average number of days to turn around a case in 2004
86%	the number of mediation cases settled in 2004
46%	the amount of time arbitrators ruled in favor of an investor/claimant in 2004
15%	the number of investor awards that went unpaid in the first half of 2004

planner spent over \$100,000 to successfully defend a case and then his E&O carrier refused to reimburse him for his costs.

Bigelow explained this unfortunate situation could happen to any broker or firm whose policy says the insurer has the option to defend. In those cases, the insurer can legally decline to defend, sometimes without a good reason. "What you want in a policy," Bigelow advises, "is the duty to defend." If your policy is written to include the duty to defend, then the insurer must defend you, Bigelow explains. Unfortunately, almost none of the broker/dealer policies have language that specifies the duty to defend.

Strong insurance companies with good financials and integrity will probably defend the suit. If you get an insurance firm that is

in some financial trouble and they don't have a strong sense of integrity, they may decline to cover you, Bigelow says. "Regrettably" he says, "there is not much you can do about that."

Having an insurance company decline coverage can be devastating. Most companies and brokers have no idea what their policy says, Bigelow maintains. It is a good idea to review your policy now and make sure you won't be surprised later. "Our policies always have a duty to defend," he explains, "And this is pretty unusual in the industry."

## LESSONS LEARNED

The process is so costly, as a financial professional you want to avoid it if at all possible. Markun says spend the money on litigation prevention. It is much better to invest in educating the front line and making sure they comply, than spending the money on an expensive arbitration. When training your reps, make sure they know what suitability is and what it is not, and they take compliance seriously.

Eliminate your problem brokers upfront. Markun also suggests weeding out the bad brokers. If you have reps with four or five claims, absent unusual circumstances, cut them loose. They will cause you problems in the future, he says.

A broker/dealer's most important line of defense is the broker—choose them carefully and don't be afraid to spend money on good reps says Markun.

Negotiate for the right to your own counsel. Do not let the insurance carrier pick your attorney. Review your insurance policy and negotiate these terms when it comes up for renewal.

Do what is in the clients' best interest. "I tell my broker and adviser clients they should treat every customer like they are your mother," says Eccleston.

Think before you act. "I believe brokers should do everything as if three strangers will be reviewing it down the road," he explains. There is a good chance that one day three arbitrators will be deciding if you did things properly. If you can picture them reviewing your files, it helps you make better choices up front.

Don't ignore angry clients. Many times angry clients can be

calmed down if you handle their complaint fairly and honestly up front. Eccleston says almost every case he has defended involved someone responding callously to an unhappy investor. They frequently will blow them off with a stock letter that says something like "Too bad. We are not responsible. Everyone lost money."

Eccleston says this can be one of the worst things you can do, because it just inflames unhappy clients. You have then missed an opportunity to keep them happy and settle for a smaller amount of money. Instead, you find yourself in an expensive arbitration case where the firm will have much larger losses.

Eccleston reminds firms not to delay. The sooner you can work this out, the less chance you have of the investor hiring an attorney.

Come clean with your attorney. It is important to tell your attorney everything, good and bad, about your case. "One of the worst things that can happen to us is to discover something that hurts our case during the arbitration," Eccleston says. "If we had known about it in advance we can usually mitigate the problem. However, when we are blind sided right in front of the arbitrators there is usually not much we can do."

Branch office managers need to be careful when testifying. Sometimes they get involved because there is a failure to supervise claim. "One of the worst things I see is when a branch office manager testifies something along these lines: "I have known this broker for years and I trust him. I seldom inquire about what he does because he is such a wonderful person." What they have just done is shoot themselves in the foot, Eccleston says. The branch office manager basically just confessed to failing to supervise. Eccleston's advice: It does not matter what a great person the broker is, the branch office manager should still be doing his duty.

We would like to thank our experts: Attorney Jim Eccleston, partner, Shaheen, Novoselsky, Staat, Filiposki & Eccleston, (J.Eccleston@snsf-law.com. 312-621-4400); Attorney Dave Markun, partner, Markun, Zusman Compton (dmarkun@mzclaw.com, 310-454-5900); Attorney Terry Lister, Chief Regulatory Officer, Waddell and Reed (tlist@waddell.com); Bud Bigelow, President of Cambridge Alliance (bbigelow@cambridgealliance.com. 802-864-1891).

Katherine Vessenes, JD, CFP®, RFC, according to Bloomberg Press, is America's best-known authority on the legal and ethical issues of financial advisors. As president of Vestment Advisors, she helps financial advisory firms of all sizes build better, more profitable businesses. She can be reached at 952-401-1045 or Katherine@vestmentadvisors.com