

The Effect of Gender on Awards in Employment Arbitration Cases:  
The Experience in the Securities Industry

David B. Lipsky

Cornell University

J. Ryan Lamare

Penn State University

Abhishek Gupta

Cornell University

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## Abstract

In this article we analyze the outcomes of nearly 3200 awards issued in employment disputes settled by arbitration in the securities industry over the period 1986 -2008. The large amount of litigation in the securities industry alleging discrimination by securities firms against the women they employ led us to hypothesize that women would do less well than men in these arbitration cases. Regression analysis reveals that the gender of the complainant and the complainant's attorney (but not the gender of the respondent's attorney or the arbitrator) had significant effects on the size of the awards. Regardless of the definition of the dependent variable, female complainants did less well than male complainants in these employment arbitration cases. In most estimates, the gender of the attorney representing the complainant also affected the size of the award: male attorneys obtained larger awards than female attorneys. We conclude that these gender differentials are more likely to be the consequence of employment conditions in the securities industry rather than biases in the arbitration process.

## Introduction

In this article, we use quantitative techniques to assess whether gender makes a difference in employment arbitration. Specifically, we focus on the experience in the securities industry where employment arbitration was introduced in 1986. Over the period 1986-2008, approximately 3200 arbitration awards were issued in employment disputes arising in the industry. In every case, the employee (and his or her attorney) presented the arbitrator with a monetary figure representing the damages associated with the claim; the figure presented to the arbitrator usually included the claimant's demand for back pay and often included punitive damages as well. The employers in these cases always denied that the employees' claims had merit and frequently filed counterclaims; the employer-respondent maintained in each of these cases that the arbitrator should not award the employee-claimant any money at all. The task of the arbitrator (or arbitration panel), of course, was to decide the merit of these competing claims and issue an award; the principal and often only issue the arbitrator had to decide was the amount of the claim or counterclaim to award either party (Lipsky, Seeber, and Lamare 2010).

Considerable variation exists in the size of these monetary awards, and in our research, we developed hypotheses and regression models to explain this variation. The principal hypothesis we explore in this paper is that the gender of the parties, particularly the gender of the claimant, affects the size of the awards issued by the arbitrator (or arbitration panel). The large amount of litigation in the securities industry alleging discrimination by securities firms against the women they employ led us to hypothesize that women would do less well than men in these arbitration cases. To test our hypotheses, we were able to translate the information contained in the awards into a very large database, and in this paper, we use logistic regressions and an

ordinary least squares (OLS) logit transformation of the award as a percent of the claimant's claim to estimate whether the monetary awards were influenced by the gender of the complainant, the complainant's attorney, the respondent's attorney, or the arbitrator (controlling for other variables).

We find that, depending on the definition of the dependent variable, the gender of the complainant and the complainant's attorney (but not the gender of the respondent's attorney or the arbitrator) had significant effects on the size of the award. In general, female complainants did less well than male complainants in employment arbitration in the securities industry. We should note that our results are quite robust and persisted even when alternative specifications of the regressions were estimated. Following the presentation of our statistical findings, we explore alternative interpretations of their meaning, examining whether the gender variables in our analysis are proxies for other factors that might have influenced the outcomes in these arbitration cases. In most of these experiments, however, we could not find plausible factors that eliminated the gender effects.

It is commonly acknowledged that discrimination against women has been a widespread phenomenon on Wall Street (see, for example, Antilla 2002; Chung 2010; Roth 2004, 2006; Selmi 2005). Despite a rash of class action lawsuits over the last two decades in which women charged major Wall Street firms with sex discrimination, reports in the financial and business press and on the Internet suggest that sex discrimination is a persistent problem in the securities industry (see, for example, Hewlett and Leader-Chivee 2010; Horn 2010; Sherter 2010; Tecco 2010; Wallace 2010).<sup>1</sup> Many securities firms have taken measures to correct overt forms of

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<sup>1</sup> Some observers believe that discrimination against African Americans and other minorities is at least as serious as discrimination against women in the securities industry. As one reporter noted, "For far too long [Wall Street] has been a club stooped [sic?] in exclusivity. Needless to

sexism, and there are numerous women who have forged successful careers on Wall Street (see, for example, Herera 1997; Siebert 2002). But the industry and the arbitration profession remain heavily dominated by men, and it is possible that vestiges of bias remain in these institutions and underlie our findings.

### The Motivation for Our Research

Two factors motivate the research we report in this paper. First, the rise of employment arbitration in the United States has been accompanied by concerns about whether the procedure provides a fair and equitable forum for the parties that use it. On the one hand, proponents of the practice maintain that arbitration provides a faster and cheaper means of resolving employment disputes than litigation. Support for the use of arbitration to resolve employment disputes has been reinforced by several seminal Supreme Court decisions.<sup>2</sup> On the other hand, opponents of the practice argue that arbitration is not an adequate substitute for a judicial forum because it does not provide a level playing field for employment disputes (for a summary of arguments on both sides of this debate, see Seeber and Lipsky 2006). Critics of the practice maintain that arbitration ordinarily does not provide due process protections that are equivalent to the

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say, seeking out qualified African Americans for membership has never been a priority of chief executives of the major investment banks” (Clarke and McCoy 1992).

<sup>2</sup> Most notably, *Gilmer v. Interstate/Johnson Lane, Corp.*, 500 U.S. 20 (1991) and *Circuit City Stores v. Saint Clair Adams*, 532 U.S. 105 (2001). Several of the Supreme Court’s most important decisions regarding employment and consumer arbitration, including *Gilmer*, originated in the securities industry. For example, *Shearson/American Express v. McMahon*, 482 U.S. 220 (1987) held that investors who sign predispute arbitration agreements with their brokers could be compelled to arbitrate claims arising under the Securities and Exchange Act, and *Rodriguez de Quijas v. Shearson/American Express, Inc.*, 490 U.S. All (1989) overturned *Wilko v. Swan*, 346 U.S. 427 (1953), which held that claims arising under the Securities Act could not be compelled to arbitration by means of a contract.

protections both parties (but especially employees) would receive if their dispute was heard in a court of law. Arbitration has been criticized on several grounds: Critics contend, for example, that it does not guarantee adequate discovery, appropriate representation, protections against conflicts of interest, and the competency and impartiality of the arbitrator.<sup>3</sup> Certainly most observers would agree that if the procedure results in the treatment of disputants that varies significantly by their gender, race, religion, nationality, or disability, it does not meet an elementary criterion of fairness. In this paper, we focus on whether gender matters in employment arbitration.

Only within the last decade or so have researchers begun to do rigorous statistical analyses of critical issues in employment arbitration. As Colvin has noted, the research gap is due in part to “the dearth of publicly available data on which to conduct empirical research that would help evaluate the arguments on both sides of the employment arbitration debate” (Colvin 2009). In contrast to most employment arbitration awards, all arbitration awards in the securities industry are publicly available and hence allow us to conduct the analysis presented in this paper.

The second factor motivating our research is the fact, as we have noted, that Wall Street, and more generally the securities industry, has not always been a hospitable place for women. Indeed, there is considerable evidence that for most of its history a hostile atmosphere for women was commonplace in the industry. As Roth has written, “Not so long ago—as recently as the mid-1980s—Wall Street was one big men’s club of smoked-filled rooms and strippers on the

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<sup>3</sup> Several of these criticisms of mandatory arbitration are stated in the findings section of a bill, called the Arbitration Fairness Act, which was considered in the 111th session of Congress in 2009. This bill, cosponsored by Congressman Johnson and Senator Finegold, would amend the Federal Arbitration Act to ban the use of mandatory predispute arbitration agreements in employment, consumer, franchise, and civil rights disputes. For an assessment of the Arbitration Fairness Act, see Fincher et al. (2009).

trading floor. Women, to the degree that they were welcome at all, were relegated to roles as secretaries and sex objects. Firms blatantly discriminated against the few women who did fight to become traders, and court cases demonstrate a long history of groping, name calling, come-ons, blocked mobility, and sexual pranks” (Roth, 2006; for a thorough description of the discriminatory conditions women faced on Wall Street through the early part of this century, see Antilla 2002). Over the last 15 years, major class action lawsuits were brought against Smith Barney, Merrill Lynch, and Morgan Stanley, charging those firms with the improper treatment of women.<sup>4</sup> Each firm paid out more than \$100 million to resolve these lawsuits, although each firm denied that it had engaged in any systematic discrimination against women (Roth 2006).

Some scholars believe that in recent years the treatment of women in the securities industry has improved appreciably, in part because of these class action lawsuits (Selmi 2005). And it would be unfair to paint all firms in the securities industry with the same brush. For example, Prudential Financial, Inc., one of the largest companies in the financial services industry, was the target of two major class action lawsuits in the 1990s. But these lawsuits appear to have been a wake-up call for Prudential’s top management. The company promulgated a code of ethics, and top management took several significant steps to implement the code. It developed a sophisticated integrated conflict management system to handle employee complaints, and in 1999, it appointed a dynamic leader to be both the vice president in charge of managing this system and the company’s chief ethics officer. Prudential, headquartered in Newark, New Jersey, also initiated programs that focus on the value of diversity in hiring and employment. For the past 15 years, the company has been listed by *Working Mother* as one of the “100 Best

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<sup>4</sup> *Martens v. Smith Barney, Inc.*, 194 F.R.D. 113 (S.D.N.Y. 2000); *Cremin v. Merrill Lynch, Inc.*, 957 F. Supp. 1460 (N.D.Ill. 1997); *EEOC v. Morgan Stanley & Co.*, 324 F. Supp. 2d (S.D.N.Y. 2004). The *Martens* case is the principal focus of Antilla’s book (Antilla 2002).

Companies for Working Mothers” in the United States, and that publication now includes the company in its “Hall of Fame.”<sup>5</sup>

In 2006, the U.S. Equal Employment Opportunity Commission reported that about one third of the “officials and managers” in the securities industry were women, compared to nearly one half in the banking, credit, and insurance industries (U.S. Equal Employment Opportunity Commission 2006). Many observers contend that sexism continues to plague the securities industry. In 2010, women alleging sex discrimination filed class action lawsuits against both Goldman Sachs and Bank of America Merrill Lynch; both firms have denied that these suits have any merit. Nevertheless, reports of “women fleeing Wall Street” have been abundant in the financial and business press. In the past decade, 141,000 women, or 2.6 percent of the female workforce, left the industry, while the number of men working for Wall Street firms grew by 389,000, 9.6 percent of the male workforce (Wallace 2010). “The economic downturn produced a talent pool overflowing with highly qualified candidates, both men and women, but evidence suggests that the bar for women to reenter Wall Street is disproportionately high” (Hewlett and Leader-Chivee 2010).

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<sup>5</sup> According to *Working Mother* (2010), about 50 percent of Prudential’s managers, senior managers, and corporate executives are women. Prudential has been ranked as the nineteenth best employer in the United States by *Computerworld* (2010). Prudential, of course, is not a perfect employer: Each year scores of its employees have filed complaints with its internal dispute resolution program, and some of these complaints allege discrimination. Since the company’s program was established in the late 1990s, not a single employee has elected to use the arbitration option available in the company’s system, although quite a few have used FINRA’s dispute resolution program. The development of Prudential’s integrated conflict management system is discussed in Lipsky, Seeber, and Fincher (2003).

## Theory Development

Previous research has examined the effect of gender on outcomes in other arbitral and judicial settings. Bemels, in an analysis of 104 grievance arbitration cases, found that women were twice as likely as men to have their grievance sustained (Bemels 1988a); in a later study of over 1800 discharge cases, Bemels found that in cases decided by male arbitrators women were 86 percent more likely to have their grievances sustained than were men, but there was no significant difference in the treatment of male and female grievants by female arbitrators (Bemels 1988b; see also Bemels 1988c; Oswald and Caudill 1991). Scott and Shadoan analyzed 169 grievance arbitration awards and found that the gender of the grievant and the gender of the arbitrator had no effect on these decisions (Scott and Shadoan 1989). LaFree and Rack compared monetary outcomes in 312 adjudicated and 154 mediated small claims civil cases in New Mexico and found that minority female claimants received lower monetary awards in mediated cases in which the mediators were women (LaFree and Rack 1996). Research on the treatment of women in criminal cases generally finds that women are treated more leniently than men (see, for example, Boritch 1992; Bickle and Peterson 1991; Daly and Bordt 1995; and Steffensmeier, Ulmer, and Kramer 1998).

In the securities industry, several reasons lead us to hypothesize that women will do less well than men in arbitration cases. If women do fare less well than men, it is possible, of course, that the reasons may stem from biases that exist in the arbitration process itself. Arbitrators (whether male or female) may be affected by a subtle form of bias; unconsciously, they may be influenced by deeply rooted cultural stereotypes about men and women, and without consciously realizing it find more merit in claims brought by men than they do in the claims brought by

women, even when the claims are equally meritorious. Our argument, however, does not necessarily rest on the premise that the arbitrators or other participants in the FINRA arbitration process are either consciously or unconsciously biased against women. There are other factors, we maintain, that may influence the relative success of men and women in FINRA arbitration cases.

For example, it is at least conceivable that on balance male claimants in the securities industry have more meritorious claims than female claimants. Regrettably, we do not have sufficient evidence to test this proposition; information about the number and nature of filings by male and female claimants could be used to assess the proposition, but that information is unavailable. There is of course a lengthy process that precedes the issuance of an arbitration award. It typically involves both negotiation and mediation, and there are often motions by one party or the other that need to be heard by a court. Without knowing a lot more about what happens in these processes, it is impossible to evaluate whether there are systematic differences in the claims brought to arbitration by men and women.

As we have noted, Wall Street firms have been the target of a large number of sex discrimination lawsuits. Suppose, for the sake of argument, that employers in the industry are more inclined to negotiate settlements with women than they are with men who have equally meritorious claims. One can imagine some Wall Street firms, with dubious reputations regarding the employment of women, deciding that it was a better strategy to settle large claims brought by women rather than to proceed to arbitration and very likely court hearings that would put the firm in the public spotlight. If attorneys representing Wall Street firms are more likely to negotiate settlements with women than they are with men, then a higher proportion of men than women with meritorious claims will have their cases resolved by arbitrators.

There are other scenarios that support our hypothesis that men will do better than women in securities arbitration. It is very likely, given what we know about the nature of employment in the securities industry, that female claimants who proceed to arbitration have less service or seniority in the industry than male claimants. Evidence exists that shows that men have been “bigger earners” in the securities industry than women. For example, Roth studied a sample of MBA graduates who began their careers with major Wall Street firms in the early 1990s, and she discovered that in 1997 the median earnings of the women in her sample were \$325,000, while the mean earnings of the men in her sample were \$525,000 (Roth 2004: 209). As we will show, arbitration awards are related to claims—the larger the claim, the larger the award—and the arbitration awards support the view that claims are related to the claimants’ earnings. Therefore, it follows that men will do better than women in arbitration to the extent that they have had higher earnings in the industry. Again, however, we do not have comprehensive data on the service, seniority, or earnings of the claimants. (We acknowledge that the absence of these kinds of data creates an omitted variables problem in our regression analysis.)

A companion argument is that male claimants might be employed by more successful or profitable firms (or branches of firms) than female claimants. If men are more likely to be employed by elite investment banks in New York City and women are more likely to be employed by brokerages in smaller cities, then one would expect (all other things being equal) that male claimants would obtain larger arbitration awards than female claimants. Again, regrettably, we do not have data on the profitability of the firms employing the claimants in the disputes that were decided by arbitration.<sup>6</sup>

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<sup>6</sup> Analysis of our data, however, shows that there is no relationship between the gender of the claimant and the location at which the claim originated. About the same percentage of men and women (roughly one third) file claims in New York City.

We also test the relationship between the gender of the claimant's attorney and the gender of the respondent's attorney, on the one hand, and the size of the arbitration award. Suppose, for example, that male claimants' attorneys obtain larger awards than female attorneys. Again it is possible that arbitrators, whether male or female, may unconsciously favor male attorneys. If we find that the gender of the attorneys does not affect the size of the arbitration awards, then we would regard such a finding as evidence that arbitrators were not consciously or unconsciously affected by a bias related to the gender of the attorneys. But if we find that the gender of the attorneys is significantly related to the size of the awards, then we cannot necessarily conclude that the result is a consequence of bias. It is quite possible, for example, that the gender of the attorneys is a proxy for experience. We know that the legal profession, especially in New York City, continues to be dominated by men: The majority of the partners in most major firms are men, although many of the younger associates are women. In 2003, the U.S. Equal Employment Opportunity Commission analyzed data on gender, race, and ethnic diversity in U.S. law firms and found that "the mean number of White male partners [in these firms] far exceeds the mean number of women partners," which the EEOC estimated to be about 13 percent of the total (U.S. Equal Employment Opportunity Commission 2003, p. 29).<sup>7</sup>

If we find that male attorneys representing claimants win larger awards than female attorneys, then the explanation might possibly be bias on the part of the arbitrators, but it may also result from the fact that male attorneys have an advantage by virtue of their greater experience in arbitration proceedings. Once again, however, we lack the data to disentangle these

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<sup>7</sup> There are, of course, some law firms in which women are prominent partners. The New York law firm headed by Judith Vladeck has been a major player in both arbitration and court cases involving Wall Street Firms. Other female attorneys played a prominent role in Antilla's narrative of the class action lawsuits that have unfolded in recent years (Antilla 2002).

effects. (Conceivably, we could expand our database to include personal characteristics and human capital variables for all the attorneys who have appeared in FINRA arbitration cases, but quite obviously that would be a Herculean task.)

In summary, there are good reasons to hypothesize that male claimants (and male attorneys) are likely to obtain relatively larger arbitration awards than female claimants (and female attorneys) in the securities industry. If these differentials in awards exist, however, the explanation might be found either in the nature of the arbitration process or in the nature of employment in the securities industry (or some combination of those two factors). Is the arbitration process truly exogenous to the industry or is it endogenous to the culture, norms, and expectations of the industry? FINRA has gone to great lengths to enhance the exogenous nature of the process, but our analysis will in part illuminate the extent to which it has succeeded. The data we use and the analyses we perform are capable of casting some light on whether it is the nature of the industry or the nature of the process that is responsible for our results. But we lack the data necessary to fully distinguish one factor from the other. Our analysis, we believe, does describe a path for future research that we (or others) might undertake.

### Arbitration in the Securities Industry

In 1958, the New York Stock Exchange (NYSE) “established a rule that any controversy between a broker and the broker’s firm would be settled by arbitration” (Antilla 2002: 143). In 1968, the National Association of Securities Dealers (NASD) developed a Code of Arbitration Procedure, which was adopted as a voluntary program. But in 1972, the Code was made

mandatory for members and registered persons.<sup>8</sup> In 2007, the enforcement, regulatory, and dispute resolution programs of the NASD and the NYSE were merged under the Financial Industry Regulatory Authority (FINRA).<sup>9</sup> For the sake of simplifying matters, hereinafter we will refer to all arbitration cases arising under the NASD, the NYSE, and FINRA as FINRA cases.

FINRA is “the largest independent regulator for all securities firms doing business in the United States,” overseeing nearly 4750 brokerage firms and 633,000 registered securities representatives. It administers “the largest dispute resolution forum for investors in registered firms,” and it provides arbitration and mediation services for claims involving customers and brokers (in 2008, about 75 percent of all filings), brokers and brokers (2 percent of filings), and employees and their firms (23 percent of filings).<sup>10</sup> The FINRA employment dispute resolution program covers only “associated persons” in the securities industry; associated persons are employees who are registered with the Securities and Exchange Commission and can accept and execute customers’ buy- and-sell orders. It is estimated that about one third of the employees in the industry are registered representatives. (Hereinafter, we will use the term “employee” to refer only to registered representatives.) There are approximately 6100 arbitrators on the FINRA

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<sup>8</sup>This section is drawn largely from Lipsky, Seeber, and Lamare (2010).

<sup>9</sup>FINRA is classified as a self-regulatory organization (SRO). The SEC delegates to FINRA responsibility for enforcing certain industry standards and requirements related to brokerage and trading activities.

<sup>10</sup>For a description of FINRA’s dispute resolution programs, including the rules FINRA uses in arbitration cases, see <http://www.finra.org/index.htm>, accessed on January 30, 2010. We also draw here on Kwan (2009). Another useful source is Gross and Oshins (n.d.). Very little legal or empirical research has been conducted on arbitration in the securities industry. On the occasion of the twentieth anniversary of the Supreme Court’s decision in *Shearson/American Express v. McMahon*, 482 U.S. 220 (1987), the University of Cincinnati College of Law sponsored a symposium, “The Current State of Securities Arbitration,” which featured several papers by leading practitioners and scholars in the field; the symposium was published in 76 U. Cin. L. Rev. 459 (2007-2008).

roster. Between 1994 and 2008, there were over 90,000 claims involving customers and brokers and over 2600 claims involving employees and employers.<sup>11</sup>

The financial crisis that began in 2008 led directly to a dramatic increase in FINRA case filings, which more than doubled between 2007 and 2009 (from 3238 in 2007 to 7137 in 2009).<sup>12</sup> Although an analysis of the customer-broker cases would clearly be valuable, our interest in employment relations has led us to focus on the employment claims heard under FINRA auspices.<sup>13</sup>

### Women, Wall Street, and Arbitration

In the 1980s, as an increasing number of women were initiating lawsuits charging their Wall Street employers with sex discrimination (Antilla 2002; Chung 2010; Roth 2006; Selmi 2005), the securities industry established its employment arbitration program to handle a wide array of employment complaints, including those alleging discrimination. We were able to identify the precise allegations made by complainants in only 1981 awards of the total number of awards issued in FINRA cases; the information was missing in FINRA's coding of over 1100 cases. Figure 1 shows the types of claims made by employees in these 1981 awards (the data we present here are based only on the primary allegation in each case): In 28.2 percent, employees

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<sup>11</sup> Between 1986 and 1993, there were about six hundred employment arbitration awards. The data cited in this paragraph are from records made available to the authors by FINRA.

<sup>12</sup> FINRA Dispute Resolution Statistics, found at <http://www.finra.org/ArbitrationMediation/AboutFIN-RADR/Statistics/>, accessed February 9, 2010.

<sup>13</sup> Jill Gross is possibly the leading scholar on the arbitration of investor claims against securities firms. Of the many articles she has written on the topic, see, for example, Gross (2001-2002, 2006, 2010).

claimed their employer had denied them compensation they had been owed; in 26.6 percent, they claimed their employer had defamed them in some fashion (e.g., by alleging they had “churned” a customer’s account); in 13.7 percent, employees claimed they had been wrongfully terminated; and in 8.5 percent, they claimed their employer breached their contract. Cases involving a primary claim of statutory discrimination constituted 13.3 percent of the total.

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Insert Figure 1 Here

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It should be noted that in many cases employees filed multiple charges. For example, in a handful of cases, the employee filed a charge of both sex and age discrimination. By diligently reading all of the awards, we identified a total of three hundred and forty-four cases in which the complainant made a claim of statutory discrimination. Of this total, 147 (or 42.7 percent of all discrimination claims) were gender related. The number of gender discrimination claims exceeded the number of each of the other types of discrimination claims, including those alleging discrimination on the basis of age, race, disability, religion, and national origin. In the cases in which a woman was the claimant, 35.9 percent filed discrimination complaints (counting only those cases in which discrimination was the primary allegation), whereas in cases in which a man was the claimant, only 8.7 percent filed discrimination complaints. (A chi-square test on the difference between claimant gender and discrimination claims proved to be significant at the 0.01 level.)<sup>14</sup>

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<sup>14</sup> There was also a statistically significant difference between men and women in their filing of compensation and defamation complaints: 30.6 percent of men filed compensation claims compared with 17.2 percent of women, and 27.9 percent of men filed defamation claims

In fact, many of the women who brought charges against their firms wanted their day in court and believed they would not receive fair treatment in a mandatory arbitration system that had been promulgated by the industry. These women had the usual complaints about the deficiencies of employment arbitration, and they were especially concerned about the difficulty of appealing arbitrators' decisions in the courts (see, for example, Antilla 2002: 137-160).<sup>15</sup> Antilla reports that plaintiffs' attorneys, several of whom were well known in the legal community for their opposition to employment arbitration, encouraged their female clients to bring class action suits against their Wall Street employers. Neither the New York Stock Exchange nor the National Association of Securities Dealers heard class action complaints in their arbitration systems (nor does FINRA), so the attorneys advised their clients that the best strategy for avoiding mandatory arbitration was the class action approach. The attorneys believed that the tactic of filing a class action suit, "by its very ingenuity, would at a minimum get the story out to the public, regardless of whether the case actually went to trial" (Antilla 2002: 139).

Reports on the Smith Barney, Merrill Lynch, and Morgan Stanley class action lawsuits indicate that the vast majority of women in these suits settled their claims through negotiation or mediation. Ironically, however, some of the women needed to accept arbitration as the forum to resolve their complaints after negotiation and mediation failed to do so. The outcomes of these arbitration cases varied greatly. For example, an arbitration panel awarded a woman named

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compared with 20.9 percent of women. Cross-tabs and chi-square tests are available from the authors on request.

<sup>15</sup> Antilla describes a number of fears that women claimants and their attorneys had about arbitration. For example, she notes that in both arbitration hearings and courtroom proceedings women are "vulnerable to the trauma of a psychiatric evaluation." But, she says, "courtrooms provide more protections than do the informal auspices of an arbitration. In court, for example, [the claimant's attorney] could get her client a protective order to keep invasive information private, and if the order were violated, it could lead to contempt proceedings" (Antilla 2002: 151).

Hydie Sumner, a former Merrill Lynch employee, an award of \$2.2 million (Chung 2010: 233). But an arbitration panel in a case involving a woman named Edna Broyles, who had been a broker in a Tampa, Florida, branch office of Shearson Lehman and was one of the plaintiffs in the Smith Barney lawsuit, awarded the complainant zero dollars (Antilla 2002: 271-289).

### Descriptive Information

In our sample of nearly 3200 employment arbitration cases, not all cases had complete information. The *N* values, however, remained high regardless of the variables included in the models we tested, with variable-specific *N* values ranging from approximately 2400 to the full sample of nearly 3200 cases. Regarding the amount awarded, we considered not only the part of the award that represented all or part of a complainant's principal claim (usually a claim for back pay or for unpaid compensation) but also any attorney fees claimed by either party and any claim for punitive damages. We deflated to 1986 dollars (using the CPI) both the total amount claimed by the complainant and the amount awarded, and we subtracted from the complainant's award the deflated value of any successful counterclaim by the respondent.<sup>16</sup> (This means that if the arbitrator found merit in the counterclaim, but not in the claim, our calculation of the net deflated claim would be a negative number.)

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<sup>16</sup>Firms in the securities industry often require a newly hired broker to sign a promissory note, which calls for the broker to pay the firm, out of the broker's commissions, a certain amount of money (sometimes in the six-figure range) within a certain time period (say, 3 or 5 years). Consider a case in which a broker is (for example) terminated, the broker files a charge against his employer, and the case goes to arbitration: if the broker has not paid off his promissory note, typically his (former) employer will file a counterclaim, demanding that he/she do so.

Table 1 provides the descriptive information for all the dependent and independent variables, including coding schemes, numeric frequencies, and percent information.

The mean award across all cases (net of counterclaim awards but not adjusted for inflation) is about \$140,000, but this mean is the result of a highly skewed distribution of awards. The ten largest awards, for example, accounted for 22 percent (over \$101 million) of the total sum of money (\$467 million) awarded in all of the FINRA cases. The median amount claimed was \$373,000, while the median amount awarded was only \$1000—a mere quarter of a percent of the amount claimed. (These amounts are not deflated.)<sup>17</sup> When considering only meritorious claims (i.e., those garnering positive monetary outcomes for claimants), the mean nominal award was about \$256,000 and the median nominal award was \$44,000; these awards represent 9.6 and 13.2 percent of the mean and median initial claim amounts, respectively. Across our entire sample, the mean deflated award for male complainants was \$96,854, while the mean deflated award for females was \$69,265. Of course, without controlling for other determinants of the awards, we cannot reach any meaningful conclusions about the interpretation of this difference.

We found 694 cases in which there were counterclaims, that is, about 22 percent of all the cases. But arbitrators found merit based on counterclaims in only 322 cases, which means that respondent firms received counterclaim awards in 10.3 percent of all of the cases. However, we discovered that arbitrators made counterclaim awards in some cases in which the respondent did not initially make a counterclaim. In the 694 cases in which the respondent firm made a counterclaim, the arbitrators made counterclaim awards in 274 cases in an amount greater than

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<sup>17</sup> These results were first presented in Lipsky, Seeber, and Lamare (2010). The single largest award in the FINRA cases was in *Sawtelle v. Waddell & Reed*; an arbitration panel awarded Sawtelle \$27.6 million (of which \$25 million was for punitive damages). See *Sawtelle v. Waddell & Reed, Inc.* (Docket No. 9703642, award issued Aug. 7, 2001; 2001 NASD Arb. Lexis 820).

zero; this suggests a “win rate” of 39.5 percent for firms that actually filed counterclaims. Across the full sample of awards, the median counterclaim award was, of course, zero. The mean counterclaim award was \$10,900. There were six counterclaim awards of over \$1 million, and the highest counterclaim award was \$3,838,500.

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Insert Table 1 Here

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The skewed distribution of awards means that it would be inappropriate to use the amount of the monetary award as a dependent variable in an OLS regression. Accordingly, following best practice, we first use a series of logistic regressions in our analysis; in contrast to OLS, logistic regressions do not require that the dependent variable be normally distributed. We also overcome the skewed distribution of the awards by then testing a logit transformation of the percent of the claim awarded as the dependent variable in an OLS regression. To use logistic regressions, the dependent variable needs to be defined in dichotomous terms. Therefore, in our analysis, we chose to use four definitions to denote what might be defined (for the sake of convenience) as a “win” or a “loss” for the claimant, and to test each as a dependent variable in our regression models. Each variable was dichotomized, with 0 representing a loss and 1 representing a win.

Our first approach counted any positive award at all as a win for the claimant (i.e., any total award greater than zero), which is a common approach in empirical research on arbitration win rates (for a very useful summary of this research, see Gough 2009). The problem with using this definition of a “win,” however, is that it ignores the relationship between the size of the award and the size of the claim; suppose a claimant files a claim for \$10 million but is awarded

only \$1000: Should that award be considered a win for the claimant? It seemed to us that using the *relative* size of awards is a better indicator of how well claimants do in arbitration than using the *absolute* size of awards. Although it is common practice for plaintiffs' attorneys to inflate claims (especially in regard to damages), plaintiffs risk losing credibility in arbitration if their claims are not to some degree rooted in reality. Claims for back pay especially need to be related to the claimant's past earnings, and in fact, analysis of our data demonstrates that there is a strong correlation between the size of the claim (however much it may be inflated) and the size of the award. In our view, this is a further justification for the use of a relative measure of awards.

We decided to use successively more restrictive definitions of a claimant "win." By using four relative definitions of a win, we provide one basis for testing the robustness of our findings. Using the first definition of a win (any award greater than zero), we found that 58.3 percent of the FINRA cases fell in this category ( $N = 1676$ ). Our second definition of the dependent variable considered a win as any award greater than 25 percent of the amount claimed. Under this approach, complainants in 25.7 percent of the cases ( $N = 802$ ) were victorious. Our third approach, which further narrowed the definition of a win, counted as winners only cases with awards greater than 50 percent of the amount claimed. This definition yielded successful claims in 19.4 percent of the awards ( $N = 559$ ). Our final definition counted a win as any award greater than 75 percent of the total amount claimed. Using this narrowest definition of victory, 14.6 percent of the awards ( $N = 421$ ) resulted in victories for the claimant.

The key independent variables in our regressions are the gender of the various participants involved in the arbitration. These include the gender of the claimant, the gender of the claimant's attorney, the gender of the respondent's attorney, and the gender of the

arbitrator.<sup>18</sup> (It is probably obvious that we could not include the respondent's gender because in virtually all the cases the respondents were firms or companies and not individuals.) Across all of our gender variables, we found a heavy male presence: About 84 percent of the arbitrators were men, 85 percent of the claimants were men, and 90 percent of their attorneys were men; approximately 75 percent of the respondents' attorneys were men. We used the individual's first name to determine the gender of the participant, so there may be some level of error—although it turned out that identifying the gender of any of the participants was a problem in only a handful of cases. Where the first name was ambiguous (e.g., Casey), we excluded the case from the analysis.

We included a number of control variables in our analysis. For each of the models we estimated, we included the state in which the arbitration occurred (New York, California, and all others); the year issued (1988-2008, continuous); the number of hearing sessions (zero, 1-5, 6-10, 11-15, 16-20, and more than 20); and the amount claimed (less than \$25,000, \$25,000 to \$100,000, \$100,000 to \$1 million, and more than \$1 million). Reference categories were accorded to other state, more than twenty hearing sessions, more than \$1 million claimed, and all of the female gender variables, respectively.<sup>19</sup>

We performed a series of tests to ensure that none of our models suffered from multicollinearity or any other methodological concerns. For example, we employed statistical tools such as condition indexes and tolerance/VIF tests, in addition to a standard correlation

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<sup>18</sup> If an arbitration panel heard the case, we only coded the gender of the chair of the panel on the grounds that the chair is the key decision maker in these arbitration cases.

<sup>19</sup> As noted earlier, the arbitration program in the securities industry was established in 1986, but only a handful of awards were issued in 1986 and 1987. About sixty awards were issued in 1988, and so we begin our analysis in that year. Also, a hearing session in our database is defined as half a day. The mean number of hearing sessions for all cases was 7.4 (i.e., 3.7 days).

matrix, to establish that none of the independent variables meaningfully influenced any of the other variables within the models we estimated. Also, we do not think it is likely that endogeneity arising from reverse causality exists in any of our regressions, although we readily acknowledge that (given the nature of our database) we may have an omitted variables problem (a matter we will turn to in a subsequent section).

In one of our simplest tests, we generated a series of crosstabs to see whether—on the surface, at least—there was a relationship between our various definitions of “win” and the key gender variables. We found that the proportion of awards won by male claimants was consistently higher than the proportion of awards won by female claimants, regardless of the definition of a “win.” We also found that claimant attorneys who were men won a higher proportion of their cases than claimant attorneys who were women—again, regardless of the definition of a win. In other words, this finding seems to suggest that both female and male claimants did somewhat better when they were represented by a male attorney. Curiously, we also found that respondents did somewhat better when they were represented by a female attorney. Finally, the arbitrator’s gender also appeared to make a difference: The awards issued by male arbitrators across all four definitions of a win were somewhat lower than the awards issued by female arbitrators. Although the results seem to suggest that the gender of the principal participants was related to the outcomes in these cases, they do not tell us a great deal without controlling for other variables that may influence these outcomes.

## Regression Analysis

Tables 2-5 present our logistic regression results. Each table shows the regression estimates for one of our four dependent variables and also reports the  $N$  size, Nagelkerke  $R^2$ , unstandardized beta coefficients, standard errors, and odds ratios

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Insert Table 2 Here

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Insert Table 3 Here

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Insert Table 4 Here

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Insert Table 5 Here

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*Logistic Regression for Any Award Greater Than Zero.* Table 2 shows the logistic regression results when we define claimant victory as any award greater than zero. The model fits the data well, easily passing the Hosmer and Lemeshow goodness-of-fit test, although the pseudo- $RR^2$  was not particularly high. We found that any claimant win was influenced by the location of the arbitration hearing, the number of hearing sessions, the size of the claim, and the gender of the claimant. In terms of location, we found that cases heard in New York appeared to result in claimant victories more often than cases heard in other states ( $p < 0.05$ ). Regarding the

number of sessions, we found that fewer sessions (zero and 1-5) were less likely to yield awards greater than zero ( $p < 0.05$  and  $p < 0.01$ , respectively) than cases with more than twenty sessions. The regression in Table 2 also suggests that the amount of the claim significantly influenced the likelihood of a claimant victory, with smaller claims far less likely to result in awards above zero than claims of over \$1 million ( $p < 0.01$  for all claim sizes). Finally, we found a clear gender effect for claimants. Male claimants were substantially more likely to win anything at all, and Table 2 shows that men had a 34.4 percent greater likelihood than women of being awarded more than zero percent of the amount claimed ( $p < 0.05$ ). The gender of the claimant's attorney, respondent's attorney, and the arbitrator did not significantly influence awards, using our first definition of victory.

*Logistic Regression for Awards Greater Than 25 Percent of Amount Claimed.* Our second definition of the dependent variable assumes that a claimant victory is a positive award greater than 25 percent of the amount claimed. Table 3 provides the logistic regression for our model using this definition of the dependent variable. Again the model fits the data well, passing the Hosmer and Lemeshow test and offering a considerably stronger pseudo- $RR^2$  of 0.260. In common with the results for our first dependent variable, we found that location, number of sessions, amount claimed, and gender significantly influence awards. Cases in New York again were more likely to yield victories for claimants ( $p < 0.01$ ). The number of hearing sessions is again significant, with fewer sessions (zero, 1-5, and 6-10) less likely to yield victories under our second definition ( $p < 0.01$  for all). The amount claimed has a highly significant effect on awards, with all levels of the amount claimed significantly less likely to result in claimant victories than the reference category, greater than \$1 million ( $p < 0.01$  for all). Finally, we find an even

stronger gender effect for this second definition of our dependent variable. Both claimant gender ( $p < 0.10$ ) and the gender of the claimant's attorney ( $p < 0.01$ ) significantly influenced awards. Male claimants were again about 34 percent more likely to win than female claimants; especially noteworthy, however, is the finding that the gender of the claimant's attorney has an even larger influence on awards than the gender of the claimant. Claimants' attorneys who are men were 80.5 percent more likely to gain victories than claimants' attorneys who are women. For our second definition of the dependent variable, the results for the gender of the respondent's attorney and the gender of the arbitrator are the same as they were for our first definition of the dependent variable: Neither variable is statistically significant.

*Logistic Regression for Awards Greater Than 50 Percent of Amount Claimed.* The third definition of our dependent variable assumes that any award greater than 50 percent of the amount claimed is a win for the claimant; the results for this definition of the dependent variable can be found in Table 4. Again, we find that the model fits well, passing the goodness-of-fit test and yielding a Nagelkerke  $RR^2$  of 0.309. We also find that the year issued, number of sessions, amount claimed, and gender are all significant. In contrast to the previous regressions, however, location is not significant. On the other hand, the year the award was issued appears to matter, although only slightly ( $p < 0.01$ ). Table 4 shows that the number of sessions again has a significant effect on awards ( $p < 0.01$  for all). It also shows that the amount claimed was once again highly significant and negative for smaller claims ( $p < 0.01$ ). Finally, we again find that the gender of the claimant and the claimant's attorney have a significant effect on awards. The effects of these gender variables are similar to the effects that we found in our previous regression results. Male claimants were substantially more likely ( $p < 0.10$ ) than female

claimants to achieve victories, with a positive award likelihood of 1.449, higher than it was in any of the previous regressions. The gender of the claimant's attorney was again significant ( $p < 0.05$ ), with male attorneys about 68 percent more likely than female attorneys to win an award more than 50 percent greater than the amount claimed. Lastly, the gender of the respondent's attorney and the gender of the arbitrator again do not have a significant effect on awards.

*Logistic Regression for Awards Greater Than 75 Percent of Amount Claimed.* The fourth and final definition of our dependent variable assumes that a claimant victory is any award greater than 75 percent of the amount claimed. This represents the most restricted definition of victory, and the results can be seen in Table 5. Not surprisingly, given the previous results, we find that the model fits the data very well, with strong Hosmer and Lemeshow results and a Nagelkerke  $RR^2$  of 0.363, the highest of all our regressions. Regarding the independent variables, we find statistical significance for the year the award was issued, the number of hearing sessions, amount claimed, and the gender of the claimant and the claimant's attorney. In common with the previous regression, location does not have a significant effect on awards. Table 5 shows that the year an award was issued has a significant effect on awards ( $p < 0.01$ ), similar to the effect the variable had in our previous regression. This finding suggests, of course, that in recent years claimants were much more likely to win relatively large awards (greater than 50 or 75 percent of the amount claimed) than they were in the earlier years of the FINRA program. Also, again fewer sessions (zero, 1-5, and 6-10) led to a lower likelihood of claimant victory ( $p < 0.01$  for all). The amount claimed was once again significant: All lower levels of the amount claimed had a significant negative effect on awards, compared to the highest category of the amount claimed ( $p < 0.01$  for all). Finally, we once again find a gender effect, although it is quite different from

the gender effect we found in our previous regressions. Table 5 shows that the gender of the claimant no longer has a significant effect on awards. However, the gender of the claimant's attorney has an even greater effect on awards than it had in our previous regressions. It appears that claimants (both male and female) who are represented by male attorneys are over twice as likely to win relatively large awards (greater than 75 percent of the amount claimed) than claimants who are represented by female attorneys ( $p < 0.05$ ). However, before we rush to the conclusion that claimants in FINRA arbitration cases ought to retain male attorneys, we will need to interpret our results more carefully and consider what "gender" actually means in our analysis.

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Insert Table 6 Here

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*OLS Regression for a Logit Transformation of the Dependent Variable.* In the final result we present here, we estimate an OLS regression using as the dependent variable a logit transformation of the percentage of the claim the arbitrator awarded to the claimant. The logit model has a slightly different scope of analysis from the one we presented in the logistic regressions. Here, we analyze the extent to which gender influenced the progression of the dependent variable from no award up through the highest award on a continuous scale, whereas the logistic regressions used dichotomous dependent variables, essentially explaining whether or not a claimant was victorious. Table 6 shows that once again the model we use fits our data extremely well. The coefficients for both male claimant and male claimant's attorney are again significant, but neither the gender of the arbitrator nor the gender of the respondent's attorney has any effect on awards. Although the logit transformation of the percentage of the claim

awarded by the arbitrator has the advantage of allowing us to use a continuous (rather than a dichotomous) dependent variable in the regression estimate, it has the disadvantage of not allowing us to consider “negative” awards (i.e., cases in which arbitrators awarded more for the respondent’s counterclaim than they awarded for the direct claim.) In our definition of the dependent variable in our logistic regressions, we subtracted the amount the arbitrator awarded on a counterclaim by the respondent from the amount the arbitrator awarded to the claimant, which resulted in the possibility of the net amount awarded being a negative number. However, one cannot do a logit transformation on a negative number, so we confined the definition of the dependent variable used in the OLS regression to the amount of the direct claim and took no account of counterclaims. Nevertheless, the results in Table 6 are consistent with the results we presented in earlier tables, strongly suggesting that female claimants and claimants’ attorneys who are female obtain smaller awards than their male counterparts.

### Interpreting Our Results

Earlier we noted that the existence of gender differentials in arbitration awards might be the consequence of either biases in the arbitration process or employment conditions and employment relations in the securities industry. We maintain that our statistical results suggest that it is probably the latter factor rather than the former that explains our findings. Consider our finding that the gender of the arbitrator does not affect the relative size of the award. We did not find, for example, that male claimants obtained larger awards from male arbitrators, nor did we find that female claimants obtained larger awards from female arbitrators. Rather, we found that male claimants did better than female claimants regardless of the gender of the arbitrator. In our

view, this finding provides at least limited support for our belief that FINRA arbitrators do not overtly discriminate against women.

Although we lack the data necessary to test fully the source of the gender differentials in securities arbitration, we do have enough data to examine some of the alternative explanations for our regression results. Our main ambition in conducting these additional tests was to discover whether gender lost its significance when we used different specifications of our regression equations. In one experiment, for example, we changed the model parameters by converting the number of hearing sessions and the amount of the claim from categorical to continuous variables, and we converted the year the award was issued from a continuous variable to a categorical one. Although the overall structure of the model changed somewhat when we performed these tests, the gender of the claimant and of the claimant's attorney continued to have a significant effect on outcomes.

*The Experience of the Parties in FINRA Arbitration Cases.* We could also test for the experience of the claimants, the claimants' attorneys, the respondents' attorneys, and the arbitrators within the FINRA arbitration system. The hypothesis that motivated these tests is that a party that has experience in using a process has an advantage over a party that lacks experience. We created an assortment of experience variables for all the participants in the awards in our sample. For example, we could account for how many times a claimant's attorney or a respondent's attorney appeared in FINRA arbitration hearings. We ran tests to determine whether attorneys who appeared in more than one case obtained better awards than attorneys who appeared only once. We also distinguished attorneys who ranked in the "top ten" in terms of the number of FINRA cases they had handled from all other attorneys. We also constructed the

experience variables for arbitrators and for claimants (187 individuals were claimants in more than one arbitration case). We found that these experience variables did not significantly affect outcomes, and they did not eliminate the gender effects. In fact, the gender effects were virtually the same as those we report in this paper. It appears that the influence of gender on outcomes is independent of the influence of the experience of the claimants and attorneys on outcomes.

But we readily acknowledge that experience in the FINRA system does not necessarily represent the overall experience of the attorneys and arbitrators in arbitration. For example, a better measure of the experience of the attorneys and the arbitrators would include their experience in arbitration cases conducted under the auspices of the American Arbitration Association, JAMS, the Federal Mediation and Conciliation Service, and other providers. Constructing that kind of experience variable would be a difficult if not impossible task.

*Pro se Cases.* In our database, we discovered that some claimants were not represented by an attorney. In close to 10 percent of the cases, the coders at FINRA indicated that a case was a *pro se* one, but in another 10 percent of the cases, the coders neither listed an attorney for the claimant nor indicated the case was a *pro se* one. So it is conceivable that as many as 20 percent of the cases fall into the *pro se* category. There was no meaningful difference between the number of male claimants and the number of female claimants in this category; whichever way the variable was defined, we discovered that the variables we constructed for *pro se* cases had no significant effect on awards. In the regressions we present in this paper, we eliminated *pro se* cases from the analysis.

*Types of Allegations.* As discussed, our data document significant differences in the types of claims brought to FINRA arbitration by men and women. This is particularly true of discrimination cases, where the vast majority of claims were made by females. It could feasibly be the case that differences in the success rates of men and women in discrimination cases would explain our gender effects. To address this, we re-ran each regression, controlling for the top five allegations filed by claimants. Although doing so reduced our sample considerably, our results with regard to gender effects remained robust, irrespective of whether the claimant alleged discrimination or any other allegation.

*Interaction Terms.* We also ran a series of interaction terms in our regressions. For example, in one experiment, we interacted the gender of the claimant with the gender of the claimant's attorney, but when that interaction term is included in a regression that also contains both of the gender variables entered separately, there is too much multicollinearity to produce significance for any of the three variables. When only the interaction term is entered in the regressions, it proves to be significant in some of the regressions, but not in others. By far we obtained the strongest and most robust results when we used the regression specifications presented in this paper.

We also hypothesized that there might be an interaction effect between the gender of the claimant and the amount claimed. This hypothesis is linked to our earlier discussion that pointed out that male claimants are likely to have been higher earners than female claimants. Recall that the amount of the claim has a significant effect on awards in all the regressions we have tested. If there is a relationship between male claimants and the amount claimed, that would help explain why male claimants win larger awards. But when we included both the original and the

interactive terms in the regressions, we found that the interaction term was not significant. The original gender and amount claimed variables continued to have a significant influence on outcomes. Once again, the gender of the claimant appears to act independently of the amount claimed in determining arbitration outcomes. Thus, it appears that gender differentials in arbitration awards are not the consequence of gender differentials in the claimants' earnings.

*The Experience of the Respondents: The Repeat Player Effect.* Finally, we examined the experience of the respondents in the FINRA arbitration system. Previous research has suggested that employers who have been repeat players in employment arbitration cases are likely to have an advantage (as measured by win rates) over employees who appear only once in the employment arbitration arena (see, for example, Bingham 1998, 1999; Colvin 2011; for a review of the research on the repeat player effect, see Seeber and Lipsky 2006). In related research we are conducting, we have examined whether repeat players in FINRA arbitration cases have an advantage over one-time players. We found that the five firms that have most frequently been respondents in FINRA arbitration cases account for 608, or nearly 20 percent, of all the awards (Lipsky, Seeber, and Lamare 2010: 58). The firms that used the arbitration process frequently obtained significantly better awards than the firms that used the process infrequently. We developed alternative definitions of the repeat player effect and tested them in our regressions, and we found that in some cases (depending on the definition) repeat player variables had significant effects on outcomes. But in all these experiments, the gender effects followed the same pattern that we report in this paper, and in some cases, the gender effects were enhanced. We conclude that the gender effects we report in this paper are independent of repeat player effects.

## Conclusion

In this concluding section, we would like to move beyond the limitations of our quantitative analyses and further into the realm of speculation. Previous research has shown that in grievance and judicial settings, women often obtain better outcomes than men. In this paper, we find the opposite result for the arbitration process in the securities industry. There are several reasons—most of them discussed in this paper—that explain these differences in findings. For example, in grievances that arise in unionized settings, both men and women presumably have access to adequate and experienced representation, whereas in the securities industry, that may not be the case. Also, the well-documented existence of sex discrimination in the securities industry is less likely to be a significant factor in most unionized industries (which is not to say that discrimination on the basis of sex is absent in these industries). The arbitration process in the securities industry was created by the industry itself and has struggled to reduce its “endogenous” nature. The arbitration process under collective bargaining was negotiated by the parties and is thus largely their creature, but the independent status of unions is one factor strengthening the “exogenous” nature of the process. In simplest terms, labor arbitrators enjoy a degree of independence that arbitrators in the securities industry may lack, and we suspect that difference may help explain our findings.

We have conducted numerous regression experiments, using various definitions of the dependent variable and various specifications of the estimating equations, and we have tested a variety of hypotheses that might possibly explain the gender effects. (We have reported only some of our results in this paper.) We discovered that the gender effects reported here are remarkably stable and robust across the range of experiments we conducted. As we have noted,

we believe that gender in our results might plausibly be a proxy for other factors that influence the experience of men and women in the FINRA arbitration process. But we have a suspicion that even if we had the data to explain what “gender” actually means in our analysis, there would still be a residual that represented the effects of gender *per se* on arbitration outcomes. We suspect that the numerous accounts—in court cases, in scholarly articles, and in the popular media—of the entrenched sexism that infects Wall Street are reflected in the experience women have in arbitration. We are confident that FINRA has done its best to construct a level playing field for men and women in arbitration—it has promulgated numerous rules designed to guarantee equity and fair treatment in its proceedings. But until the securities industry and especially the major Wall Street firms are truly and committed to providing women with equal opportunity and fair treatment, the gender effects we have uncovered in FINRA arbitration awards are likely to persist.

Figure 1

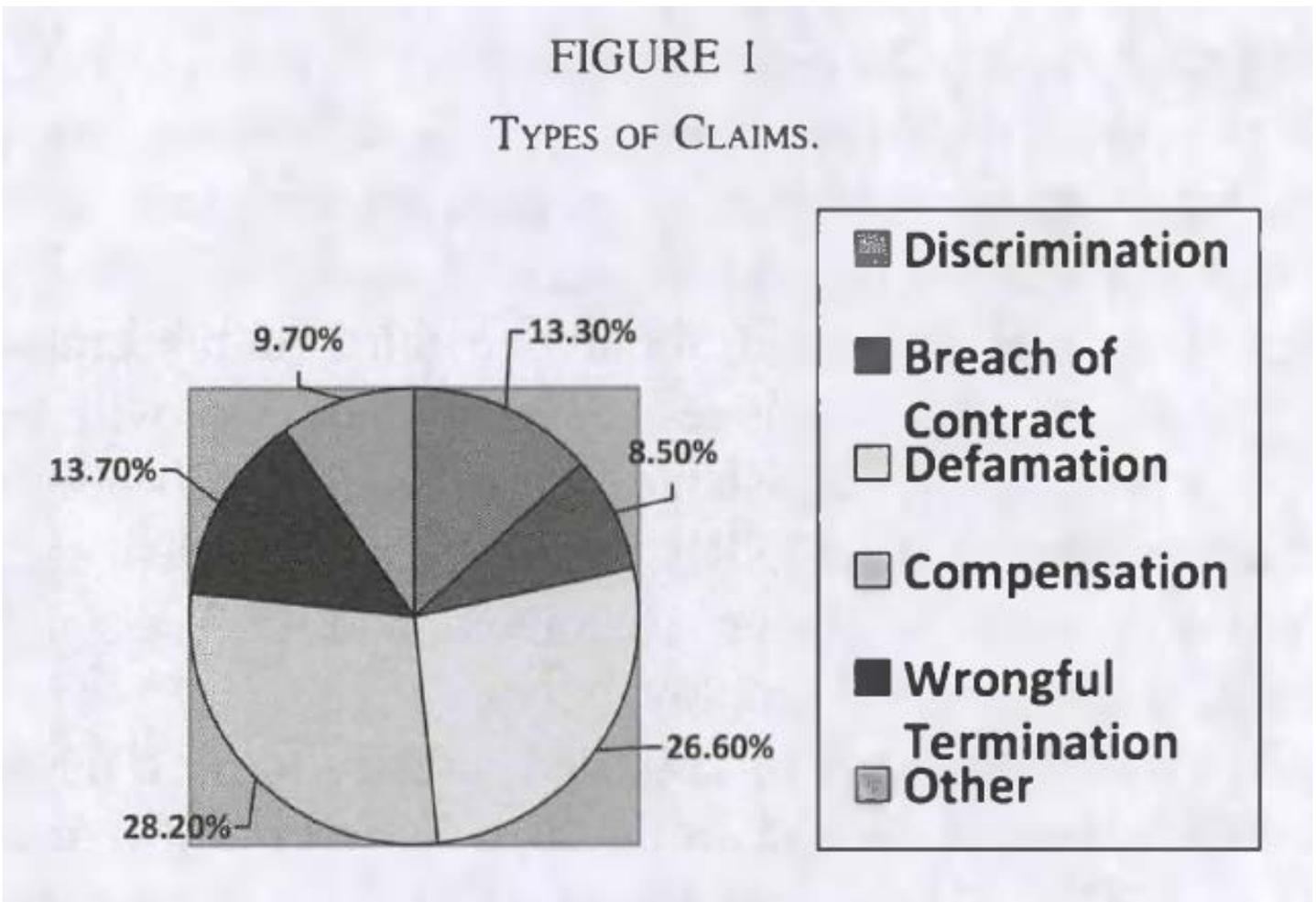


Table 1

**TABLE 1**  
**FREQUENCY AND PERCENTAGE DISTRIBUTION OF VARIABLES**

Variable	Coding Scheme	Frequency	Percent
<b>Dependent</b>			
No win	Dichotomous	1199	41.7
Any win >0	Dichotomous	1676	58.3
Win >25 percent claimed	Dichotomous	802	25.7
Win >50 percent claimed	Dichotomous	559	19.4
Win >75 percent claimed	Dichotomous	421	14.6
<b>Independent</b>			
New York	Categorical	1089	34.9
California	Categorical	374	12.0
Other state	Categorical (ref.)	1658	53.1
Year issued	Continuous	–	–
Zero sessions	Categorical	446	14.5
1–5 sessions	Categorical	1256	41.0
6–10 sessions	Categorical	778	25.3
11–15 sessions	Categorical	250	8.1
16–20 sessions	Categorical	134	4.4
20-plus sessions	Categorical (ref.)	204	6.6
>25 K claimed	Categorical	589	20.9
25–100 K claimed	Categorical	464	16.5
100 K–1 M claimed	Categorical	1030	36.6
<1 m claimed	Categorical (ref.)	730	26.0
Claimant gender (male)	Dichotomous	2617	84.6
Claimant attorney gender (male)	Dichotomous	2198	90.0
Respondent's attorney gender (male)	Dichotomous	2199	78.3
Arbitrator gender (male)	Dichotomous	2567	83.6

Table 2

TABLE 2  
LOGISTIC REGRESSION FOR ANY AWARD GREATER THAN ZERO

Variable	Unstandardized $\beta$	SE	Odds
New York	0.215**	0.103	1.240
California	-0.246	0.150	0.782
Year issued	0.001	0.011	1.001
Zero sessions	-0.609**	0.244	0.544
1-5 sessions	-0.666***	0.196	0.514
6-10 sessions	-0.265	0.192	0.768
11-15 sessions	0.354	0.236	1.424
16-20 sessions	0.099	0.276	1.104
>25 K claim	-0.549***	0.193	0.578
25-100 K claim	-0.872***	0.174	0.418
100 K-1 M claim	-0.889***	0.188	0.411
Male claimant	0.296**	0.128	1.344
Male claimant attorney	0.191	0.156	1.211
Male respondent's attorney	0.043	0.114	1.044
Male arbitrator	0.039	0.126	1.040
Constant	-1.335	21.926	0.263

$N = 2035$ .

Nagelkerke  $R^2 = 0.051$ .

Hosmer and Lemeshow significance = 0.312.

\*\*\*Significant at the 0.01 level; \*\*Significant at the 0.05 level.

Table 3

**TABLE 3**  
**LOGISTIC REGRESSION FOR AWARDS GREATER THAN 25 PERCENT OF THE AMOUNT CLAIMED**

Variable	Unstandardized $\beta$	SE	Odds
New York	0.360***	0.122	1.434
California	-0.080	0.188	0.923
Year issued	0.013	0.013	1.013
Zero sessions	-1.573***	0.307	0.207
1-5 sessions	-1.176***	0.247	0.309
6-10 sessions	-0.930***	0.244	0.395
11-15 sessions	-0.017	0.269	0.983
16-20 sessions	-0.389	0.329	0.677
>25 K claim	-1.246***	0.193	0.288
25-100 K claim	-2.173***	0.185	0.114
100 K-1 M claim	-3.857***	0.242	0.021
Male claimant	0.293*	0.160	1.340
Male claimant attorney	0.590***	0.202	1.805
Male respondent's attorney	0.181	0.140	1.199
Male arbitrator	-0.161	0.150	0.851
Constant	-25.000	26.456	0.000

$N = 2035$ .

Nagelkerke  $R^2 = 0.260$ .

Hosmer and Lemeshow significance = 0.349.

\*\*\*Significant at the 0.01 level; \*Significant at the 0.10 level.

Table 4

TABLE 4  
LOGISTIC REGRESSION FOR AWARDS GREATER THAN 50 PERCENT OF AMOUNT CLAIMED

Variable	Unstandardized $\beta$	SE	Odds
New York	0.237	0.145	1.268
California	-0.065	0.223	0.937
Year issued	0.045***	0.016	1.046
Zero sessions	-1.691***	0.349	0.184
1-5 Sessions	-1.566***	0.294	0.209
6-10 sessions	-1.263***	0.295	0.283
11-15 sessions	-0.187	0.317	0.830
16-20 sessions	-0.304	0.380	0.738
>25 K claim	-1.404***	0.196	0.246
25-100 K claim	-2.711***	0.200	0.066
100 K-1 M claim	-4.459***	0.292	0.012
Male claimant	0.371*	0.194	1.449
Male claimant attorney	0.521**	0.239	1.683
Male respondent's attorney	0.218	0.166	1.243
Male arbitrator	-0.040	0.179	0.960
Constant	-88.774***	31.471	0.000

$N = 2035$ .

Nagelkerke  $R^2 = 0.309$ .

Hosmer and Lemeshow significance = 0.301.

\*\*\*Significant at the 0.01 level; \*\*Significant at the 0.05 level; \*Significant at the 0.10 level.

Table 5

TABLE 5  
LOGISTIC REGRESSION FOR AWARDS GREATER THAN 75 PERCENT OF AMOUNT CLAIMED

Variable	Unstandardized $\beta$	SE	Odds
New York	0.240	0.168	1.271
California	0.094	0.251	1.098
Year issued	0.072***	0.018	1.075
Zero sessions	-1.790***	0.399	0.167
1-5 sessions	-1.88***	0.350	0.151
6-10 sessions	-1.381***	0.352	0.251
11-15 sessions	0.429	0.384	0.651
16-20 sessions	-0.349	0.450	0.706
>25 K claim	-1.632***	0.207	0.196
25-100 K claim	-3.130***	0.224	0.044
100 K-1 M claim	-5.292***	0.381	0.005
Male claimant	0.370	0.225	1.447
Male claimant attorney	0.712**	0.283	2.039
Male respondent's attorney	0.196	0.189	1.217
Male arbitrator	-0.052	0.204	0.950
Constant	-143.435***	36.646	0.000

$N = 2035$ .

Nagelkerke  $R^2 = 0.363$ .

Hosmer and Lemeshow significance = 0.341.

\*\*\*Significant at the 0.01 level; \*\*Significant at the 0.05 level.

Table 6

TABLE 6  
OLS LOGIT TRANSFORMATION OF PERCENT AWARDED

Variable	Unstandardized $\beta$	SE	Beta
New York	1.099***	0.372	0.062
California	-0.186	0.556	-0.007
Year issued	-4.409***	0.873	-0.153
Zero sessions	-4.289***	0.703	-0.244
1-5 sessions	-2.245***	0.687	-0.120
6-10 sessions	0.404	0.810	0.014
11-15 sessions	-0.793	0.960	-0.020
16-20 sessions	0.084**	0.039	0.045
>25 K claim	12.988***	0.638	0.496
25-100 K claim	5.487***	0.569	0.236
100 K-1 M claim	2.320***	0.427	0.134
Male claimant	1.066**	0.471	0.045
Male claimant attorney	1.087*	0.569	0.038
Male respondent's attorney	0.332	0.415	0.016
Male arbitrator	-0.102	0.457	-0.004
Constant	-176.977**	78.172	—

Dependent variable: percent awarded (0.00001-0.99999).

$N = 2035$ .

Adjusted  $R^2 = 0.188$ .

$F$  value = 33.106 ( $p < 0.000$ ).

\*\*\*Significant at the 0.01 level; \*\*Significant at the 0.05 level; \*Significant at the 0.10 level.

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