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## ADR Case Update 2020 - 8

### Federal Circuit Courts

- **FACE OF AWARD LIMITATION FOR AWARD MODIFICATION TO CORRECT MATERIAL MISCALCULATION OF FIGURES**

*Mid Atlantic Capital Corporation v. Beverly Bien and David Wellman*  
2020 WL 1860125  
United States Court of Appeals, Tenth Circuit  
April 14, 2020

Unhappy with their investment performance, Bien and Wellman initiated arbitration against Mid Atlantic, pursuant to an arbitration clause in their contract obligating parties to resolve disputes through binding arbitration in accordance with FINRA rules. Bien and Wellman's expert offered the arbitration panel two ways to calculate losses: net-out-of-pocket (amounting to \$294,411) or market adjusted damages (between \$484,684 and \$618,049). The panel's award ordered: Mid Atlantic to pay Bien and Wellman \$294,411 in initial investment loss damages and \$484,683 in compensatory damages, as well as interest on the damages, attorney's fees, costs, and arbitration fees; and Bien and Wellman to reassign ownership of the investments in question to Mid Atlantic. Mid Atlantic moved to modify to correct an evident miscalculation of figures, arguing that the panel issued a double award that included net out of pocket and market adjusted. The court denied the motion, noting it could correct an evident miscalculation of figures only if the miscalculation appeared on the face of the award. The court entered an amended final judgment, awarding Bien and Wellman damages, attorney's fees, and costs, confirming the panel's pre-judgment interest on damages but not attorney's fees or costs, and applying a federal rate to post-judgment interest. The panel ordered Bien and Wellman to reassign to Mid Atlantic their ownership interests in the investments. Both parties appealed.

The United States Court of Appeals for the Tenth Circuit affirmed. On a matter of first impression, the Court considered whether 9 USC §11(a) permits courts to look beyond the face of the arbitration award when deciding whether to modify an award to correct an alleged evident material miscalculation of figures. Looking to the text and context of the FAA, the Court

concluded that §11(a) embodies a face of the award limitation. Here, the alleged miscalculation did not appear on the face of the award; it did not state that the initial investment loss corresponded to net out of pocket loss or that compensatory damages were equivalent to the market adjusted damages. The Court rejected Bien and Wellman's assertions that the court erred in granting post-award interest only on damages, awarding post-judgment interest at the federal rate, and ordering Bien and Wellman to reassign post-award distributions from the investments to Mid Atlantic. The panel decision that interest accrued only on damages was consistent with the plain terms of the panel's award, which was not obviously contrary to the contracts of Bien and Wellman. The federal post-judgment interest rate applied because the parties did not contract for a different rate, nor did they put the issue before the panel. In requiring Bien and Wellman to pay post-award distributions from the investments, the court did not stray from the arbitration award, which provided that they assign their ownership in the investments. Rather, in entering the judgment, the court ensured that Mid Atlantic received all of the ownership interests, including the right to future distributions, just as the arbitration panel contemplated.

*Case research and summaries by Deirdre McCarthy Gallagher and Richard Birke.*

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