

What FINRA Stats Tell Us About Elder Abuse Claims

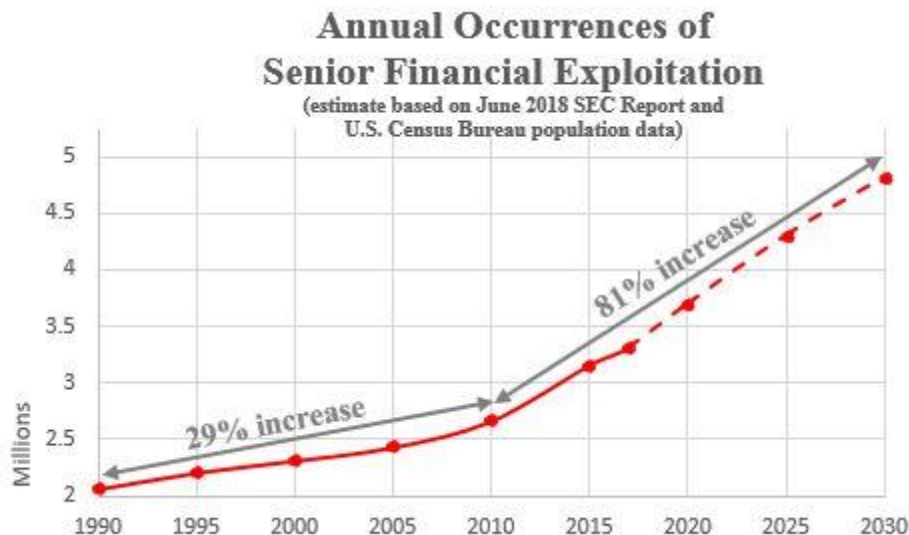
By **Joel Everest** (October 30, 2018, 5:36 PM EDT)

As baby boomers continue to age, the 65-and-over population is growing in dramatic fashion. More than 50 million Americans are currently age 65 and over, and that number is projected to reach more than 73 million by 2030.[1] The growth rate of the senior population for the current decade will be nearly three times the rates seen during the 1990s and 2000s.

As the 65-and-over population has grown, there has been a corresponding surge in the number of seniors who are exploited financially. In a June 2018 report, the U.S. Securities and Exchange Commission cited research finding that more than 6 percent of the senior population is exploited each year (with many more cases going unreported).[2] By 2025, that will correspond to more than 4 million instances of financial exploitation annually.[3]



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In response to these astonishing predictions, the federal government, the Financial Industry Regulatory Authority and many state legislatures have enacted rules, laws and other measures to combat the incoming wave of financial elder abuse and exploitation. Below, we analyze recently released statistics from FINRA regarding financial elder abuse claims. While the data is still limited, the preliminary numbers support the logical conclusion that an industry trend toward more FINRA arbitrations

concerning senior investors is already underway. We also analyze below prior FINRA awards, and identify two additional trends regarding the damages awarded in elder abuse cases and where these cases are being filed.

Elder Abuse Claims Are Now Among the Top FINRA Claim Types

Since at least 2008, FINRA has published monthly statistics breaking down the “type of controversy” involved in each of the arbitrations it oversees.[4] Cases can be coded to more than one type of controversy.

When it first began collecting this information, FINRA included 10 controversy types, such as suitability, breach of contract, and negligence. In October 2015, FINRA expanded its data and began identifying it as the “top 15” controversy types.

Over the past three years, there has been only one change to the controversy types included in FINRA’s top 15 — the addition of elder abuse claims. Elder abuse claims appeared among the top 15 for the first time in December 2017, replacing claims related to execution errors. In 2018, elder abuse claims have remained among the top 15 each and every month, and FINRA has now published a full year’s worth of data regarding these claims.

FINRA’s Stats Show That Claims Involving Seniors Are Trending Upward

For the 12 months preceding Sept. 30, 2018, FINRA tallied a total of 226 new filings that involved claims of elder abuse. That equates to 8 percent of all customer arbitrations filed over that time. That figure also puts elder abuse claims on roughly the same level as the number of churning claims and unauthorized trading claims, and ahead of claims involving margin issues. In recent months, elder abuse claims have ranked between the 10th and 12th most common type of controversy.

Even based upon the limited data now available, an upward trend is clearly underway. We annualized FINRA’s data from 2017 and 2018 to project each as a full year. While this estimate has its limitations, the expected number of elder abuse cases in 2018 is 232, or an increase of almost 30 percent over the estimated figure from 2017.



Moreover, in our experience, additional cases are being filed that involve a wide array of issues related to seniors that are not labeled as “elder abuse” claims and not included in FINRA’s statistics.

Prior Elder Abuse and Exploitation Awards Reveal Two Key Takeaways

In a further attempt to identify trends, we analyzed all publicly available FINRA cases involving claims of elder abuse or exploitation that concluded over the past five years.[5]

First, to date there have been no awards related to the new FINRA rules regarding senior and vulnerable investor exploitation that went into effect in February 2018. Based on the typical length of a FINRA arbitration, the first decisions regarding those rules should appear over the course of the next one to two years.

With that in mind, the cases we examined revealed two notable takeaways:

1. Damages have been awarded more frequently in elder abuse cases.

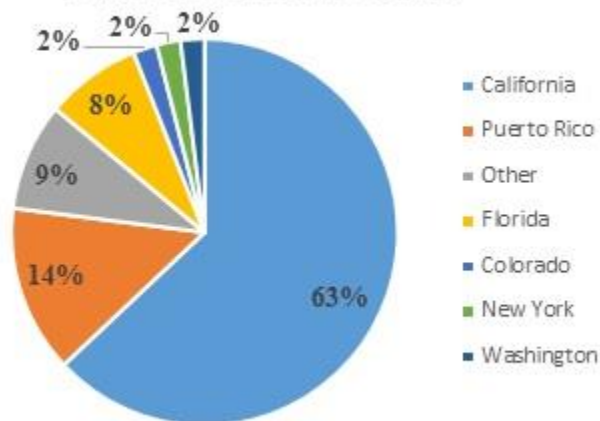
Overall, customer-filed arbitrations that are decided by a panel result in an award of damages 41 percent of the time. In cases involving elder abuse and exploitation, that number jumps to 57 percent.

Moreover, attorneys’ fees and/or punitive damages are awarded in cases involving elder abuse and exploitation at more than twice the rate of all customer-filed arbitrations (19 percent vs. 9 percent of all cases decided by a panel).

2. Most elder abuse cases have been filed in California.

It is not surprising that California leads the way in elder abuse and exploitation arbitrations that concluded over the past five years, as it ranks first in the nation in 65-and-over population with 5.5 million such residents. What is surprising, however, is the overwhelming degree to which these cases have been filed in California. Since 2013, 63 percent of the cases we reviewed were filed in California.

**Where Elder Abuse Claims Have Been Filed
Over the Past Five Years**



Florida — which has the second highest concentration of residents 65 and over (4.2 million) — was in line with its fair share based on population with 8 percent of the filings.

The other 48 states combined accounted for just 15 percent of the filings, despite having almost 80 percent of the nationwide 65-and-over population.

The remaining 14 percent of cases were filed in Puerto Rico, despite the fact that Puerto Rico includes barely over 1 percent of the 65-and-over population.

One driving factor behind these disproportionate numbers likely stems from varying provisions in states' elder abuse statutes. Most notably, California's elder abuse statute incentivizes customers to make such a claim by including a provision that attorneys' fees "shall" be awarded in cases where liability for financial elder abuse is established.[6]

Florida's elder abuse statute does not mandate attorneys' fees, but does reference that attorneys' fees "may" be awarded.[7] Other states with the largest senior populations, such as Texas, New York, Pennsylvania and Illinois, make no mention of attorneys' fees in their statutes concerning elder abuse and exploitation.

Puerto Rico also does not provide for attorneys' fees or additional damages. Instead, the relatively large number of elder abuse cases arising out of Puerto Rico is likely a side effect of the influx of cases filed over the past five years related to Puerto Rico bonds.

Conclusions

The inclusion of elder abuse claims among FINRA's top 15 controversy types is another indicator that this area of the law is expanding quickly. Elder abuse claims have ranked as high as 10th in recent months, and the early data from FINRA demonstrates an upward trend in the number of these filings. Given the growing 65-and-over population and the growing legal framework applicable to senior issues, we expect this trend to continue in coming years with a significant rise in elder abuse and exploitation claims, spread much more evenly throughout the country.

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[1] All population data in this article was taken from the U.S. Census Bureau's projections. See <https://census.gov/data/tables/2017/demo/popproj.html>.

[2] See <https://www.sec.gov/files/elder-financial-exploitation.pdf>.

[3] It is also important to note that the research cited by the SEC deals only with cognitively functioning seniors, with the ability to participate in and consent to the studies. Millions more have some form of dementia and are at increased risk for exploitation. See, e.g., Alzheimer's Association, 2018 Alzheimer's Diseases Facts and Figures, <https://www.alz.org/media/HomeOffice/Facts%20and%20Figures/facts-and-figures.pdf> (finding that 5.5 million Americans 65 and over currently suffer from Alzheimer's dementia).

[4] See FINRA Statistics, <https://www.finra.org/arbitration-and-mediation/dispute-resolution-statistics>.

[5] A special thanks to Capital Forensics Inc. for compiling these cases.

[6] See Cal. Code § 15657.5.

[7] See Fla. Stat. § 415.1111.