

## Signet Jewelers: Potential Release of Class Arbitration Documents Could be PR Nightmare for Signet

### Arbitration Update

In its most recent [10-Q](#), Signet disclosed that Sterling Jewelers, Inc. filed a motion for protective order in the American Arbitration Association (AAA) matter. The 10-Q further indicates that the matter was fully briefed and oral argument was held on [July 22, 2016](#). Because the presumption of privacy and confidentiality does not apply in class arbitrations, Sterling Jewelers likely filed the motion to prevent the potentially damaging documents and evidence submitted by the claimants from becoming publicly available. Given that the matter has been fully briefed and was argued approximately six weeks ago, we expect a decision in the near-term and possibly as soon as September 6, 2016—the date on which the parties and arbitrator will have their next monthly status conference.

The release of the evidence and documents, which contain extremely troubling allegations of alleged improper sexual conduct and comments reflecting gender stereotypes by numerous executives and senior managers, would almost certainly have negative consequences for Signet for the following reasons: first, the nature of the allegations coupled with the fact that senior executives are implicated carries the potential for significant negative headline risk at a time when the company is already facing accusations of swapping customers' diamonds; second, considering there are allegations against executives, the company could come under pressure to make executive level changes; third, given that a portion of prospective class claimants can still [opt-in](#), it could motivate potential class members who are currently on the fence to join the class, which could result in additional liability for Signet in the event that claimants prevail.

### A Closer Look at Arbitration

**No blanket presumption of confidentiality.** Most stakeholders have overlooked the significance of the arbitration because they assume that the documents and matters in the arbitration will remain confidential. While this is generally true, the AAA's own [rules](#) state: "The presumption of privacy and confidentiality in arbitration proceedings shall not apply in class arbitrations." Ultimately, it will be up to the arbitrator to decide whether the filings will be made public, as the AAA's rules also provide, "All class arbitration hearings and filings may be made public, subject to the authority of the arbitrator to provide otherwise in special circumstances."

**Significance of release of information.** Although stakeholders are able to gather basic information about the contents of the documents and evidence by reading the [Class Award](#) and [Memorandum in Support of Motion for Class Certification](#), the release of the underlying documentary evidence would likely provide more insight into the culture in the Sterling Jewelers Division and the specific alleged conduct that created an unequal or unfair working environment for women. The release of the evidence would also provide information about whether the practices alleged in the Memorandum were limited in nature or pervasive.

In the discussion of the evidence of behavior demeaning to women and gender stereotypes in the Class Award, the arbitrator states that "For the most part Sterling has not sought to refute this evidence; rather Sterling argues that it is inadmissible, irrelevant and insufficient to establish a corporate culture that demeans women." Given that the evidence, which includes declarations and testimony by current former male and female Sterling employees,

and testimony from Sterling executives and senior managers, Signet may be hard pressed to deny the allegations in the declarations and testimony.

As discussed above, the release of the documents would likely have a negative impact on Signet by adding to the existing negative publicity surrounding the company related to diamond-swapping allegations. Given the fact that the declarations and testimony contain allegations of improper behavior by Signet executives, including Signet CEO Mark Light, the company could come under intense pressure to make executive level changes. Finally, a portion of prospective claimants have until October 5, 2016 to opt-in to the class arbitration. If the release of information resonates with prospective claimants or they see patterns of behavior that also impacted them, they may be more inclined to opt-in to the class action. Increasing the size of the class would increase the size of potential damages against Signet in the event that the claimants prevail in the arbitration.

**Details of allegations.** In the Class Award, the arbitrator alludes to the contents of the evidence. The arbitrator notes that the evidence consists of declarations and testimony by current and former male and female Sterling employees as well as testimony from Sterling executives and senior managers. The Class Award states that the conduct described in the evidence occurred in numerous settings including hallways, elevators, Sterling stores and at the mandatory annual Sterling managers' meeting in Orlando, Florida.

The evidence, according to the Class Award, "includes references to women in sexual and vulgar ways, groping and grabbing women, soliciting sexual relations with women (sometimes as a *quid pro quo* for employment benefits), and creating an environment at often-mandatory Company events in which women are expected to undress publicly, accede to sexual overtures and refrain from complaining about the treatment to which they have been subjected." Importantly, the Class Award notes that the testimony and declarations submitted describe instances in which managers at all levels of the company made comments reflecting negative gender stereotypes, and used those stereotypes in furtherance of gender biased promotion and pay decisions.

The [Memorandum in Support of Motion for Class Certification](#) also provides information about the contents of the evidence. In addition to the matters discussed in the Class Award, the Memorandum indicates that the inappropriate behavior "has even included sexual assault and rape." And while the section about the conduct of executives is currently redacted, it is our understanding that if the arbitrator decides to make the documents publicly available, the portions of the Memorandum that are currently redacted would also become publicly available.