

Vol. 16, No. 10

Covering Dispute Resolution in the United States and Around the World

October 2005

New WAMR Editors. The Editor and the Publisher are pleased to announce the appointment of two new editors to the WAMR editorial staff. Professor Welber Barral of the Universidade Federal de Santa Catarina (Brazil) has been named Editor for Latin American Arbitration and Professor Christopher Drahozal of the University of Kansas School

of Law has been named Editor for U.S. Arbitration Law. Both of the new editors are accomplished scholars in the field of arbitration. We are delighted to welcome them to WAMR's distinguished editorial staff. (Story begins on page 295.)

In the International News section, **Professor Bachand**, **WAMR** Editor for Investment Arbitration, provides a report on two recent ICSID arbitral awards: CMS Gas Transmission Co. v. Argentina Republic and Aguas Argentinas, S.A. v. The Argentine Republic. The CMS award is the first award rendered in a series of claims against Argentina by foreign investors who suffered losses as a result of the recent economic crisis in Argentina. In the second award, the tribunal held that it had the power to accept and consider **amicus briefs** by non-parties even if the arbitrating parties objected. The Bachand Report also provides a summary of a Working Paper on Suggested Changes to ICSID Rules and Regulations. (The Report begins on page 298.)

The **NAF Case Summaries** provide a comprehensive indication of the range of arbitration issues that are being addressed by contemporary courts. Some of the arbitration issues that have been ruled upon by the courts include: The "discoverability" of arbitral awards and proceedings; the rights and obligations of nonsignatory parties under

# HIGHLIGHTS

# CONTENTS

News At Home	297
International News	298
NAF Case Summaries	304
Documentary Resources	322
Calendar	

arbitration agreements and in arbitral proceedings; the exclusion of punitive damages in arbitration; the use of email to establish arbitration agreements; class action waivers in arbitration agreements; arbitration agreements implied by conduct; the impact of contractual provision upon judicial supervision; the enforceability of employment arbitra-

tion agreements; and the definition of manifest disregard of the law. (The *NAF Case Summaries* begin on page 304.)

In particular, the NAF Case Summaries include a description of a U.S. Third Circuit case in which the appellate court, always favorably disposed to arbitration and the exercise of freedom of contract within the process, displayed its customary deference to arbitration by holding that an agreement that excluded review for errors of law or legal reasoning of any kind was enforceable. Presumably, the provision made review for manifest disregard or for irrationality unavailable despite their common law status under FAA §10. In its decisional law, the Third Circuit continues to sustain the minority view that the FAA is merely a default regulatory framework that can be dislodged by party provision. The case not only points to the tension between freedom of contract and statutory regulation in U.S. arbitration law, but also to the theoretically ambiguous definition and role of court supervision of arbitral awards under U.S. law. (The NAF Summary of Nextel Communications of the *Mid–Atlantic* begins on page 319.)

Lastly, **A. Kristine Fordahl**, Internet Legal Counsel for the NAF, provides an account of two domain name decisions. (The *Documentary Resources* section begins on page 322.)



Copyright © 2005 JurisNet LLC

## IN THIS ISSUE

### **NEWS AT HOME**

New Editors for WAMR Arthur W. Rovine Assumes new Role in Arbitration Retired Federal Judge Fern M. Smith Joins JAMS CPR Institute Adds General Electric Senior Executive	297 297
to its Board of Directors	298
INTERNATIONAL NEWS	
International Investment Arbitration: Recent Awards A Student Perspective on the Need for International Law	298
and a Global Perspective by Joshua Fellenbaum	301
by Joshua Fenenbaum	
NATIONAL ARBITRATION FORUM (NAF)	
CASE SUMMARIES	304
DOCUMENTARY RESOURCES	
National Arbitration Forum (NAF) Decisions	
Supplied by A. Kristine Fordahl	322
CALENDAR	328

**Editorial Assistants:** Tanya Browne Brian Carter Alain Fernandez Cecile H. Nantchouang

Sandra Partridge Emily Reece Jason Reimer

#### Publication and Subscription Information

The WORLD ARBITRATION AND MEDIATION REPORT is published monthly by JurisNet LLC, 71 New Street, Huntington, New York 11743; telephone: (631) 673-3330; fax: (631) 673-9117; (800) 887-4064; e-mail: *subscriptions@jurispub.com*. Visit our website at http://www.jurispub.com. The Report is distributed worldwide by JurisNet LLC. Subscription price: In the United States: \$650.00 yearly; International: \$710.00 yearly. Prices include shipping & handling and complete online access to the full archive of all WAMR issues. ISSN # 0960-0949.

### **Submission Information**

Editorial correspondence should be directed to Professor Thomas Carbonneau, Editor, World Arbitration and Mediation Report, 71 New Street, Huntington, New York 11743 (USA), or Penn State Dickinson School of Law, 150 South College Street, Carlisle, PA 17013-2899. You may call him at (717) 240-5153; email: tec10@psu.edu.