

World & Arbitration & Mediation Report



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HIGHLIGHTS

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

CONTENTS	
News At Home.....	297
International News.....	298
NAF Case Summaries.....	304
Documentary Resources.....	322
Calendar.....	328

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 arbitration 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.)

