

World Arbitration & Mediation Report



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Covering Dispute Resolution in the United States and Around the World

February 2005

HIGHLIGHTS

The **British Columbia Court of Appeals** has ruled that an arbitration clause cannot justify a stay of **class action proceedings** under the *1995 Class Proceedings Act*. The ruling is one of the first Canadian decisions dealing with the effectiveness of arbitration clauses in a class action context. (Story on page 54.)

A **NAFTA Chapter 11 Tribunal** dismissed a U.S. investor's derivative claim against Mexico, *inter alia*, because the investor did not establish that the Mexican government action constituted a complete and unwarranted repudiation of the applicable regulatory provisions. In so doing, the Tribunal followed the doctrine established in the landmark *Waste Management* opinion. (Story on page 55.)

The **SEC** has extended the duration of the **NASD** regulation allowing arbitrating parties to waive compliance with **California's disclosure requirements** for arbitrators. (Story on page 43.)

The **National Arbitration Forum (NAF)** provides summaries of recent cases on arbitration. The

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case summaries supply guidance on the evolution of current arbitration law and depict interesting recent developments on basic issues. They constitute a comprehensive and informative inventory of recent court rulings on arbitration. (The case summaries begin on page 44.)

Lawyers at the offices of **Sherman & Sterling LLP** evaluate a **recent change** in the **U.S. model for BITs**. The new U.S. BIT framework modifies the scope of protection provided to international investors and alters the manner in which investment disputes will be resolved. (The commentary begins on page 59.)

James Coben, **WAMR** editor for domestic mediation and Director of **Hamline's Dispute Resolution Institute**, provides an extensive survey of significant **2004 judicial decisions on mediation**. The survey includes cases on a number of basic topics: the enforcement of mediated settlements, confidentiality, compelling mediation, the award of attorney's fees, mediator ethics and malpractice, and the relationship between mediation and arbitration. (The survey on mediation law begins on page 62.)

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EDITORIAL STAFF

Editor-in-Chief:

Thomas E. Carbonneau
Penn State Dickinson School of Law

Executive Editor:

Jeanette A. Jaeggi
Penn State Dickinson School of Law

Editors:

Robert Ackerman, Domestic Mediation,
Penn State Dickinson School of Law
Nadja Alexander, International Mediation,
Australian Centre for Peace and Conflict Studies,
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Nancy Welsh, Domestic Mediation,
Penn State Dickinson School of Law

David Zaslowsky, International Arbitration,
Baker & McKenzie (New York City)

Production Manager:

Michael Murphy

Editors-At-Large:

William W. Park
Boston University School of Law

Jan Paulsson
Freshfields (Paris)

Editorial Assistants:

Ryan Boland Sandra Partridge
Ryan Loxam Janice Sayas

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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.