The Uniform Mediation Act will shortly become law in Ohio. It has been enacted in Illinois, New Jersey, and Nebraska. It awaits approval in New York, Vermont, Massachusetts, and the District of Columbia. (Story on p. 75.)

The National Arbitration Forum (NAF) Case Summaries address such topics as the duty to arbitrate, the remedial relief that is available in arbitration, the conduct of arbitral proceedings, the waiver of the right to arbitrate, and the impact that claims of fraud have upon the separability doctrine. (The Case Summaries begin on p. 77.)

The Arbitration Group at White & Case supplied a variety of reports on international commercial arbitration for the issue, including an analysis of a Paris Court of Appeal decision in which the court refused to set aside an arbitral award on public policy grounds, a survey of the new Swiss Institutional Rules of International Arbitration, and an empirical study of the rate of enforcement of international arbitral awards in Russia. (The various reports begin on p. 79.)

As a Special Feature, WAMR is publishing an Ernst & Young Study on the use of arbitration in consumer lending cases. The study is based on consumer arbitration data accumulated over the last four years by the National Arbitration Forum (NAF). The study concludes that “the arbitration process appears to be favorable to the consumer. Consumers appear to be satisfied with settlements accomplished prior to hearings and, if a hearing takes place, consumers are not losing a disproportionate number of cases...[T]he findings...do not support claims that...arbitration...is harmful to consumers...[or] biased towards...business.” The study begins on p. 88.)

The Sixth Circuit has advanced a revised interpretation of the Prima Paint separability doctrine. In the federal appellate court’s view, the separateness of the arbitral clause does not in fact create a physically distinct contract, but rather serves as a theoretical construct that facilitates the judicial resolution of the arbitrability question.

In an extensive commentary, the Editor argues that the patchwork arbitration doctrine that resulted in the creation of the notion of “gateway issues” distorts and confuses the standard provisions of arbitration law. The ruling in Prima Paint on the separability of the arbitral clause cannot be understood without reference to the kompetenz-kompetenz doctrine. These doctrines are meant to work “in tandem” to confer jurisdictional autonomy on sitting arbitrators. Because kompetenz-kompetenz has not been integrated into U.S. law, arbitrator jurisdictional autonomy is achieved in U.S. arbitration doctrine through a configuration of cases (the post-modern “American Concordat”): Prima Paint, Kaplan, Bazzle, and Howsam. In the Editor’s view, the Sixth Circuit opinion only makes it more difficult to escape the labyrinth of this make shift doctrine. (The Comment and case summary appear on p. 85.)
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