World Arbitration & Mediation Report

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HIGHLIGHTS

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 patch work 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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