World Arbitration & Mediation Report

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HIGHLIGHTS

The **Ninth Circuit** has ruled on the legality of the **California ethics standards for arbitrators**. Issuing its decision less than a week before the **California state Supreme Court** was scheduled to hear arguments on the same question in a parallel case, the federal appellate court held that the California rules were preempted by the 1934 Securities and Exchange Act. Like the cultural wars, the justice war is being fought primarily in California. Important issues and institutions are at stake, *i.e.*, can the public interest continue to tolerate the self-regulatory practices of private justice processes? *A contrario sensu*, can modern society furnish effective adjudicatory services without arbitration? Should contentious political values—perhaps empty and rhetorical—be allowed to impose their destructive ideological dynamic upon a viable and functional adjudicatory process, like arbitration? What are the scope and content of adjudicatory fairness in contemporary society? (Story begins on page 107.)

Just prior to the printing of this issue, **JAMS** announced that it was **withdrawing** its **policy** on the administration of arbitrations involving **consumer arbitration agreements** that contained **mandatory waivers of class action relief.** (Story on p. 110.)

The **International Chamber of Commerce (ICC)** has added a new dispute resolution process to its existing services. **Dispute Boards (DBs)** are now available to contracting parties, along with arbitration, expertise, and ADR. DBs are used primarily in mid- and long-term contracts and are in effect throughout the duration of the contract. The boards can assist parties in resolving contract disputes as they arise. They can supply the parties with recommendations or decisions. (Story begins on p. 111.)

The **Mediation Column** edited by **Nadja Alexander** addresses the topic of *Enforcing Mediation Settlement Agreements in Australia.* The author, **David Spencer**, concludes that, "in Australia, it is not easy to have a mediated settlement agreement overturned for duress, lack of capacity because of impaired intellectual ability or physical illness, or lack of legal representation or legal advice....[S]uch defenses...fail the tests set down by Australian common law in the mediation setting when raised after the conclusion of mediation." (The *Mediation Column* begins on p. 124.)

Special Note: On February 1, 2005, the **French Court of Cassation** denied an appeal against, and, therefore, upheld, the lower court opinion in the celebrated ***NIOC v. Israel*** case. The Court determined that: "the inability of a party to gain access to a trial proceeding, even an arbitral one, that has been selected as the means of litigation to the exclusion of any national court and to exercise a right that is part of international public policy and validated by the principles of international arbitration and Article 6(1) of the European Convention on Human Rights constitutes a denial of justice warranting the French court's exercise of its international jurisdiction...." (Appeals Nos. 01-13.742 and 02-15.237; Decision No. 404-FS-P+B). **WAMR** will provide a summary of and commentary on the ruling in a subsequent issue.

CONTENTS

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IN THIS ISSUE

NEWS AT HOME

INTERNATIONAL NEWS

JUDICIAL DECISIONS

MEDIATION COLUMN

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