

World Arbitration & Mediation Report



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Covering Dispute Resolution in the United States and Around the World

May 2005

HIGHLIGHTS

The SEC has extended for the second time the **NASD rule** that allows arbitrating parties in California to waive state **arbitrator ethics standards**. The rule will be in effect until September 30, 2005. The SEC is awaiting the outcome of the appeal of the decision in *NASD Dispute Resolution, Inc. v. Judicial Council of California* to the U.S. Court of Appeals for the Ninth Circuit. (Story begins on page 135.)

The **National Arbitration Forum (NAF)** recently released updated **arbitration rules** for cases filed on or after January 1, 2005. The updated provisions of the *2005 Code of Procedure* include an authorization for arbitrators to provide injunctive relief and restraining orders in business-to-business cases, revised rules on injunctive relief generally that allow for an expedited hearing, and giving arbitrators the discretion to value large claims early in the arbitration. (Story begins on page 135.)

A **California Court of Appeal** has ruled in *Woolls* that California regulations requiring the disclosure of a binding arbitration clause in the contract do not violate the FAA and are not **preempted** by federal law. (Story begins on page 136.)

The **National Arbitration Forum (NAF) Case Summaries** address a wide variety of issues in arbitration

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law, including: the waiver of the right to arbitrate, the validity of arbitration agreements, jurisdictional boundaries between the courts and arbitrators, the effect of choice-of-law in arbitration, the selection of arbitral venues, fee-shifting provisions, and federal preemption of state law. (The *Summaries* begin on page 137.)

In the *JAMS Arbitration Column*, the **Honorable Lawrence C. Waddington (Ret.)** addresses “Federal Jurisdiction in Arbitration.” He states that the “Congressional enactment of the Federal Arbitration Act in 1925 and its subsequent interpretation by the U.S. Supreme Court pre-empting state anti-arbitration law, and in some cases enjoining state courts from refusing to enforce arbitration agreements, reflect the continuing tension of sovereignty....” (The *JAMS Arbitration Column* begins on page 149.)

Finally, in the *Mediation Column* created and directed by **Nadja Alexander**, WAMR’s Editor for International Mediation, **Serge Loode** discusses a number of empirical findings regarding **mandatory mediation in Germany**. In 2000, an experimental scheme for mandatory mediation in small claims was introduced. The results of its operation in three German states provide an understanding of the advantages and disadvantages of mandatory mediation frameworks. (The *Mediation Column* begins on page 153.)

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