

# World & Arbitration & Mediation Report



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Covering Dispute Resolution in the United States and Around the World

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## HIGHLIGHTS

As various stories and reports in this issue reveal, the **legitimate use of arbitration** in some sectors **remains uncertain** and continues to be debated.

There appears to be a growing consensus that arbitral procedures can be effective in resolving would-be secular **disputes within religious organizations**. Arbitration has been applied to issues of corporate governance and workplace discrimination in religious congregations. Judicial enforcement of arbitration agreements and awards in this setting, it seems, can take place as long as judicial orders and rulings do not implicate religious doctrine. (Story begins on page 233.)

The use of arbitration in **consumer matters** continues to generate a variety of views and ideas to accommodate competing interests.

In **New Jersey**, acting Governor Richard Codey has ordered the New Jersey Division of Consumer Affairs to revamp the process for **homeowner arbitration**. Arbitrators who served in the process apparently lacked training and sufficient credentials. They also failed to make necessary disclosures. Arbitral procedures must satisfy minimal professional requirements—in this setting as they do elsewhere. (Story begins on page 234.)

Like Fannie Mae and Freddie Mac, **CitiFinancial**, one of the world's largest providers of financial services, has announced

### CONTENTS

<b>Around the States.....</b>	<b>233</b>
<b>Judicial Decisions.....</b>	<b>238</b>
<b>State Judicial Decisions.....</b>	<b>242</b>
<b>Perspectives.....</b>	<b>243</b>
<b>Bibliographic Resources.....</b>	<b>252</b>
<b>Calendar.....</b>	<b>260</b>

that it will remove or not enforce **arbitration clauses** in its **real estate loans**. (Story begins on page 235.)

Courts in various states have taken variegated positions on the legality of arbitration in consumer transactions. In Illinois, an appellate court held that a **class arbitration waiver provision** in an arbitration clause contained in a contract for cellular phone service was unconscionable because of its adhesiory character and because it deprived the customer of effective remedial recourse. (Story at page 237.) By (surprising) contrast, in California, an appellate court reached the opposite conclusion: An arbitration clause in cellular phone service contracts that **barred class actions** was not so one-sided as to render the clause unenforceable. (Story on page 237.)

The **Baker & McKenzie** arbitration and international practice group has supplied an account of several recent cases on **international commercial arbitration** for this issue of **WAMR**. The case accounts address a number of topics: for example, the scope of application of the New York Arbitration Convention in federal law, foreign State liability under an arbitral award, and the use of the setting aside procedure against international arbitral awards. (The *Baker & McKenzie* case accounts begin on page 237.)

Finally, **WAMR** editors **Kimberly Koko** and **Gail Partin** provide an extensive and up-to-date **worldwide bibliography** of recent books, articles, and reviews on **arbitration and ADR**. (The *Bibliography* begins on page 252.)

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## IN THIS ISSUE

### NEWS AT HOME

DC Court Holds That UAA Applies to Beth Din Provisions.....	233
Litigation can Lead to a Waiver of Arbitration in Nevada.....	233
California Law may Require Parties to Petition Courts Formally to Compel Arbitration.....	234
CPR Publishes Model Agreement for Patent and Trade Secret Adjudication.....	234
NJ Governor Orders Overhaul of Homeowner Arbitration System.....	234
CitiFinancial Announces that it will Remove Arbitration Clauses From Real Estate Loans.....	235
Retired Federal Judge Gary L. Taylor Joins JAMS.....	235
CPR Changes Its Name.....	235
Florida Court Considers Changes to Mediator Certification Process.....	237
Illinois Appellate Court Finds Arbitration Agreement in a Cellular Phone Agreement Unconscionable.....	237
California Appellate Court Upholds the Class Action Prohibition in a Cellular Phone Contract.....	237

### JUDICIAL DECISIONS

First Circuit Affirms Preliminary Injunction Against Union Pursuant to CBA.....	238
Second Circuit Holds That, in a New York Convention Case, 9 U.S.C. § 207 Preempts 9 U.S.C. § 9.....	238
“Arising Under” Language Does not Require Arbitration of a Claim for Fraudulent Inducement.....	239
Court Confirms an Arbitral Award Against the Democratic of Congo.....	240
Louisiana Statute Preempted by the New York Arbitration Convention .....	241
Sixth Circuit Holds That “Manifest Disregard of the Law” can be Used to Vacate a New York Convention Award.....	241

### STATE JUDICIAL DECISIONS

Maryland State Court Upholds Arbitration of Employment Discrimination Claim.....	242
---	-----

### PERSPECTIVES

The Application of Mandatory Law and Public Policy in International Commercial Arbitration by Jennifer L. Young.....	243
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### BIBLIOGRAPHIC RESOURCES

by Kimberly Koko, Senior Editor and Gail A. Partin, Research Editor.....	252
---	-----

CALENDAR.....	260
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