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HIGHLIGHTS

California appellate court finds an **employment arbitration agreement unconscionable** and unenforceable. Moreover, it held that the choice of arbitral forum was a material term in the contract and could not be adjusted *post facto* by a court. (Story on p. 220.)

JAMS, The Resolution Experts, recently elected a new Chairman of the Board. The Hon. **William L. Bettinelli** (ret.) replaced the outgoing chair, the Hon. Coleman F. Fannin (ret.), who served as Chairman for five years. (Story on p. 221.)

In *Compagnia Noga*, the U.S. **Second Circuit** ruled that, under international law and federal common law, there is no meaningful legal **distinction** between a **sovereign** and one of its **political organs**. Therefore, for purposes of confirming and enforcing an arbitral award, they are not separate parties. (Story on p. 223.)

Two landmark English court decisions challenge the right of **confidentiality** in **lawyer-client communications**. The **Court of Appeal** held that, where no adversarial proceedings are pending or anticipated, a communication between lawyer and client is privileged only if its dominant purpose relates to advising clients about their rights and obligations. Also, the court held that there could be no claim to privilege if litigation was not a reasonable likelihood at the time of the advice. (Story on p. 226.)

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Pursuant to the ruling in *Volt Information Sciences*, the U.S. **Second Circuit** has held that the **FAA** does not **preempt** a rule of California procedure that provides for the **stay of arbitral proceedings**. (Case summary on p. 230.)

In a significant decision, the U.S. **Third Circuit** has held that **FAA § 7** does not permit arbitrators to **subpoena** the production of documentary evidence by **non-arbitrating parties** without first summoning the non-arbitrating parties to appear before a court. (Case summary on p. 231.)

In a *Perspectives* piece, Professor Gabriel Moens of the University of Notre Dame in Perth, Australia supplies an assessment of a well-known volume on ADR and reflects upon the ideology and practicality that underlies ADR and arbitration. He concludes that: "The ultimate usefulness of this book, however, may be measured by its ability to alert practicing lawyers to the fact that the making of every possible legal point and the advancement of every possible argument—characteristics usually associated with litigation and adjudication—are not necessarily in the best interests of their clients. Alternative Dispute Resolution methods, especially mediation, when properly and expeditiously employed, may commercially benefit a lawyer's clients." (The *Perspectives* section begins on page 242.)

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