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.)

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.)
IN THIS ISSUE

NEWS AT HOME
Fifth Circuit Requires Contractor to Exhaust ADR Remedies Before Litigation...219
SEC Approves NASD’s Rule for Higher Fees........................................219
California Appellate Court Holds Employment Arbitration Agreement Unenforceable..............................................................220
U.S. Senate Approves Mediation Requirement in Special Education Disputes...220
JAMS Names New Chairman.................................................................221
Federal Transportation Agency Issues Guidance for Binding Arbitration........221
Utah Statute Requires Insurers to Arbitrate PIP Reimbursement Claims........222
Connecticut Governor Vetoes Bill Requiring Mediation of Personal Injury and Wrongful Death Claims........................................222
New Jersey Governor Signs Legislation for Court-Annexed Mediation and Arbitration in Medical Malpractice Cases........................223

INTERNATIONAL NEWS
Second Circuit Finds That a Sovereign Nation and its Government are the Same Legal Person for Purposes of Enforcing Arbitral Awards........223
U.S. District Court Holds That an Arbitral Tribunal has no Jurisdiction.......224
U.S. District Court Refuses to Compel Mexican Company to Arbitrate......225

NEWS ABROAD
Incursions Into the English Doctrine of Legal Professional Privilege........226
English Court Finds That Fairness—not Technical Rules—Should Determine Awards’ Precedential Effect..............................................227
English Court Holds That Statutory Rights are not Ousted by Arbitration Agreement.................................................................228
English High Court Finds That an Arbitral Award Relying on Group of Companies Doctrine is Contrary to Substantive Law of the Agreement.................................................................229
ICSID Tribunal Holds Exclusive Jurisdiction Clause in Private Agreement Overrides Forum Selection Provision in BIT........................................229

JUDICIAL DECISIONS
Second Circuit Holds that the FAA Does not Preempt California Procedural Rule.................................................................230
Third Circuit Holds that FAA § 7 has Limited Impact on Third Parties........231
Fourth Circuit Refuses to Vacate Award...............................................232
Eleventh Circuit Stays Litigation Pending Outcome of Appeal to Compel Arbitration.................................................................233
U.S. District Court Refuses to Stay Arbitration...................................233

STATE JUDICIAL DECISIONS
Ohio Supreme Court Refuses to Vacate Award..................................234
Supreme Court of Nevada Upholds the Arbitration of Public Works Contracts...235
Tennessee Appellate Court Refuses to Compel Wrongful Death Action to Arbitration.................................................................235
Louisiana Appellate Court Compels Franchisees to Arbitrate..................236
Ohio Appellate Court Holds That Arbitrator Exceeded Authority...........237
South Carolina Court Compels Contractor to Arbitrate Claims Against Subcontractor.................................................................237
New Jersey Appellate Court Finds Arbitration Agreement in Insurance Contact Unenforceable.................................................................238

COMMENTARY
Exporting Western Conflict Resolution: A Perspective on Training in the Solomon Islands (By Morgan Brigg)........................................239

PERSPECTIVES
An Assessment of Arbitration and Mediation as Means of Resolving Commercial Disputes Compared with Litigation: A Review of MAXWELL J. FULTON, COMMERCIAL ALTERNATIVE DISPUTE RESOLUTION (By Gabriel Moens)...............................................242

CALENDAR..................................................................................246