

# WORLD ARBITRATION & MEDIATION REPORT

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Covering Dispute Resolution in the United States and Around the World

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## HIGHLIGHTS

The **U.S. Supreme Court** has rendered its ruling in *Howsam v. Dean Witter Reynolds*. It ruled that a dispute regarding the NASD six-year eligibility requirement is for the arbitrator to decide, not the courts. In the court's view, the dispute raised a "question of arbitrability" that fell within the arbitrator's jurisdiction. There are different types of "gateway" questions—some of which must be determined by courts and others that pertain to the arbitrator's jurisdictional authority. Invoking the language of the unfortunate RUAA, the Court concluded that the application of the six-year time-limit was a "condition precedent" to arbitrability. (The case is summarized on page 31.)

Professor **Dan Posin**, Securities Arbitration Editor, provides a thorough and insightful commentary on the *Howsam* opinion. (The commentary begins on page 41.)

The **U.S. Supreme Court** also has been active in reviewing other lower court opinions on arbitration. It has granted *certiorari* in two cases and denied it in five other cases. (The account of the Court's activity begins on page 32.)

The **ICC** has released its **statistics** for the year **2001**. The number of demands have increased, more cases involve multiple parties, and there is a greater diversity in nationality. Half of the ICC cases involve claims of at least \$1 million (U.S.), and 2% of the cases involve more than \$10

million (U.S.). Parties chose the situs of arbitration in 84% of the cases and, in 78% of the cases, they designated an applicable law. National law applied in 99% of the cases. (Story at page 36.)

**Audrey Strutinskiy**, a member of the Bar of the Ukraine and sometime Counsel for the Kyiv Investment Fund, provides a unique perspective into the status of **international commercial arbitration** in the **Ukraine**. He provides a description and analysis of several recent Ukrainian cases on the enforcement of transborder arbitral awards. He notes the enactment of recent legislation meant to foster the enforcement of international arbitral awards in the Ukraine. The current system has a number of serious flaws, but the general disposition of Ukrainian courts to international commercial arbitration is generally favorable and supportive. (The Perspectives section begins on page 45.)

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