

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 editor, publisher, and staff of the WAMR join the international arbitration and academic community in mourning the loss of **PHILIPPE FOUCHARD** and the members of his family who were lost in the air disaster at Sharm El-Sheik, Egypt, on January 3, 2004. The late Professor **FOUCHARD**'s contribution to arbitration in France and throughout the world was enormous. It was achieved through his writings and his position as the Editor-in-Chief of *La Revue de l'Arbitrage*.

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In a decision dated April 29, 2003, the **Paris Court of Appeal**, as a matter of first impression, ruled on a challenge of an order rendered in accordance with the **ICC Rules for a Pre-Arbitral Referee Procedure**. The French court ruled that the order was not an award. (Article on p. 36.)

The **International Bar Association** has drafted new guidelines for arbitrators in international disputes. The proposed *Guidelines on Impartiality, Independence, and Disclosure in International Commercial Arbitration* are the product of a nineteen-member working group of the IBA's Committee on Arbitration and ADR. According to the IBA, the growing complexity of international law and commerce and of disclosure requirements required the creation of rules and guidelines where none existed before. (Article on p. 35.)

In a 2001 decision, recently reprinted in the ASA Bulletin, a **Swiss cantonal court** ruled that **pre-trial mediation clauses are enforceable** under Swiss law. The case involved an alleged failure to pay rent. The pre-trial mediation clause contained in the lease contract provided that a party could commence court proceedings only if a settlement court not be reached through mediation. The court held that, in principle, pre-trial mediation clauses, like arbitration clauses, are binding under Swiss law. (Article on p. 36.)

The **Milan Chamber of National and International Arbitration** has revised its Arbitration Rules. The new Rules took effect on January 1, 2004. The Chamber held a workshop on the new Rules on January 30, 2004, in Milan. The workshop featured lectures from Stefano Azzali, Secretary General of the Chamber of Arbitration of Milan; Rinaldo Sali, Deputy Secretary General; Edoardo F. Ricci, President of the Arbitral Council; and Riccardo Luzzatto, member of the Arbitral Council. (Article on p. 35.)

In *Harper v. Ultimo*, a **California state appellate court** has ruled an arbitration clause calling for Better Business Bureau arbitration was both procedurally and substantively unconscionable and therefore unenforceable. (Article on p. 39.) In *Gutierrez v. Autowest*, another **California appellate court** held that an arbitration provision was unconscionable and thus unenforceable because the fees required to initiate the arbitral proceeding were unaffordable and the provision "fail[ed] to provide the consumer [with] an effective opportunity to seek a fee waiver." (Article on p. 40.)

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