

World Arbitration & Mediation Report



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Covering Dispute Resolution in the United States and Around the World

July 2004

HIGHLIGHTS

On May 1, JAMS, The Resolution Experts elected a new Chairman of the Board. The new Chairman is former Sonoma Superior Court Judge, the Honorable William L. Bettinelli (ret.). He will serve a two-year term as Chairman. Judge Bettinelli began as a neutral at JAMS in 1991 and has served on its Board since 1999. (Story on page 187.)

The 2003 statistics for the ICC Court of Arbitration are now available. They indicate that the ICC Court received 580 requests for arbitration. (Story on page 188.)

The ICC has expressed concern about the revised draft articles of the Model Law on International Commercial Arbitration relating to the issuing and enforcement of interim measures of protection in arbitral proceedings. Under the proposed revisions of Articles 17 and 17bis of the Model Law, arbitral tribunals would have the power to issue interim measures of protection on an *ex parte* basis and such measures would be enforceable by courts. The ICC warned that “[i]nclusion of such provisions in the Model Law would make the Model Law materially different from the arbitration laws in major centers of international arbitration (e.g., Paris, Switzerland, London, and New York). (Story on page 188.)

The debate on the allocation of arbitration costs continues in California. In *Lifescan, Inc. v. Premier Diabetic Services, Inc.*, the Ninth Circuit found that a party’s refusal to deposit its share of the fees at the outset of the arbitration did not constitute “failure, neglect or refusal” to arbitrate under § 4 of the Federal Arbitration Act (FAA). Additionally, in *Abramson v. Juniper Networks Inc.*, a California appellate court held that a

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mandatory arbitration agreement that an employee signed at the outset of his employment was unenforceable with respect to his unwaivable, nonstatutory public law rights because its cost-sharing provision required the employee to pay half the costs of arbitration. (Case summaries on pages 189 and 192.)

In a Commentary, Laurence Boule, Professor of Law at Bond University in Australia, discusses the

changes in judicial attitudes toward mediation and alternative dispute resolution which have occurred in the Australian courts and legal system over the last decade. He offers an interesting look at how the judicial and ADR processes have become mixed and the implications of having judges become mediators. (The Commentary section begins on page 194.)

In the Perspectives section, Brian Brooker analyzes the development of Brazilian arbitration law and its impact on Brazil’s role in the international marketplace. He discusses the 1996 Brazilian Arbitration Act and the UNCITRAL Model Law’s limited influence on the legislation. Further, he analyzes the constitutionality of the 1996 Act and the Brazilian Supreme Court’s landmark decision in *MBV v. Resil*. Additionally, the author assesses Brazil’s accession to the New York Arbitration Convention and the potential impact the ratification of the Olivos Protocol will have on Brazilian arbitration law. (The Perspectives section begins on page 198.)

Finally, Timothy S. Cole, Director of the NAF’s Internet Dispute Solutions, provides a summary of and the opinions in recent domain name awards. (The Documentary Resources section begins on page 206.)

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