

World Arbitration & Mediation Report



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Covering Dispute Resolution in the United States and Around the World

June 2004

HIGHLIGHTS

The Editors of WAMR and Juris Publishing, Inc. are honored to publish a speech on *International Dispute Resolution* given by **Senator George J. Mitchell** at Penn State The Dickinson School of Law. Senator Mitchell served in the U.S. Senate from 1980 to 1995 and as majority leader from 1989 to 1995. Senator Mitchell also served as chair of the **Peace Negotiations in Northern Ireland** which produced the historic Good Friday Agreement. He also was the chair of an International Fact-Finding Committee on violence in the **Middle East**. That Committee produced *The Mitchell Report*; its recommendations were endorsed by many governments, including the Bush Administration. Senator Mitchell was awarded the **Presidential Medal of Freedom**—the United States’ highest civilian honor. In his speech, Senator Mitchell addressed a number of topics, including the use of force, American ideals on the world stage, terrorism, irreducible conflict, and paths to peace. (The *Perspectives* section begins on page 172.)

James Coben, WAMR editor for domestic mediation and Professor of Law and Director of Hamline University School of Law’s **Dispute Resolution Institute**, provides an extensive summary of the 2003 case law on mediation. The cases address a number of topics, including the enforcement of mediation agreements, confidentiality in mediation, ethics and professionalism in mediation, attorney’s fees and costs, and the link between arbitration and mediation. (The *Commentary* section begins on page 163.)

In *MM&S Financial, Inc. v. NASD*, the U.S. Court of Appeals for the **Eighth Circuit** held that the **Securities and Exchange Act of 1934** does not create a private cause of action for members of the National Association of Securities Dealers (NASD) against the

CONTENTS	
Around the States.....	155
Judicial Decisions.....	158
State Judicial Decisions.....	162
Commentary.....	163
Perspectives.....	172
Bibliographic Resources.....	178
Calendar.....	181

Association for alleged violations of its own rules. (An assessment of the case appears at page 155.)

The **Securities and Exchange Commission** approved a National Association of Securities Dealers’ proposal to **redefine public and non-public arbitrators** in order to ensure that those with close ties to the securities industry not serve as public arbitrators. (Story at page 156.)

The **Institute for Transnational Arbitration** will hold its **Fifteenth Annual International Commercial Arbitration Workshop** on June 17, 2004 at the Westin Galleria Hotel in Dallas, Texas. As described by the ITA, the workshop will “continue the ITA tradition of combining scenes from a mock arbitration with expert commentaries.” It will focus on advocacy in international commercial arbitration and will feature a mock arbitration arising from a construction dispute between a Texas construction company and the Moroccan subsidiary of a Dutch power company “in which the claimant seeks damages for alleged defects in the design and construction of a power plant jetty that was damaged in a storm. The contract states that such disputes are governed by New York law and calls for dispute resolution in Geneva, Switzerland, under the rules of the London Court of International Arbitration.” (Story at page 157.)

In *Action Industries, Inc. v. U.S. Fidelity & Guarantee Co.*, the U.S. Court of Appeals for the **Fifth Circuit** held that, absent clear and unambiguous language, a **choice-of-law provision** in an arbitration agreement does not demonstrate the parties’ intent to depart from the **vacatur** standards of the Federal Arbitration Act. (Case Summary at page 158.)

PENNSTATE



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IN THIS ISSUE

NEWS AT HOME

Eighth Circuit Holds That the NASD Cannot be Sued for Violating its own Arbitration Rules.....	155
Ohio State House of Representatives Passes the Uniform Mediation Act.....	156
SEC Approves NASD Proposal to Redefine Public and Non-Public Arbitrators.....	156
Bill to Adopt the RUAA Dies in Arizona State House of Representatives.....	156
California Supreme Court Finds a Waiver of the Right to Arbitrate Under the Mandatory Fee Arbitration Law.....	157
ITA's Fifteenth Annual Workshop on International Commercial Arbitration.....	157

JUDICIAL DECISIONS

Fifth Circuit Upholds Award for Consequential Damages and Establishes Requirements for "Opt-in" Review.....	158
U.S. District Court Holds That the EEOC is Entitled to Investigate Employment Discrimination Case Despite Presence of Employer-Employee Arbitration Agreement.....	159
U.S. District Court Rules That an Arbitration Award Precludes a Subsequent Suit.....	159
U.S. District Court Stays Enforcement Proceedings.....	160

STATE JUDICIAL DECISIONS

CBA Must Contain a "Clear and Unmistakable" Waiver of an Employee's Right to File a Lawsuit.....	162
Texas Court Rules That Courts can Appoint an Arbitrator if the Parties Cannot.....	163

COMMENTARY

Mediation Case Law: 2003 in Review by James Coben.....	163
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PERSPECTIVES

International Dispute Resolution by Senator George J. Mitchell.....	172
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BIBLIOGRAPHIC RESOURCES

by Kimberly A. Koko.....	178
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CALENDAR.....	181
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