

World Arbitration & Mediation Report



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Covering Dispute Resolution in the United States and Around the World

May 2004

HIGHLIGHTS

The **Hawaii state Supreme Court** overruled a circuit court decision that vacated an arbitration award on the basis of “**evident partiality**.” The court found that the party’s failure to challenge an arbitrator’s alleged partiality “prior to or during the arbitration proceeding constituted a waiver of the issue for purposes of a post-arbitration motion to vacate the arbitration decision.” (Story on p. 123.)

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The **Supreme Court of New York County, New York** has held that the arbitration clause in a standard form client agreement between an investor and an investment advisor empowered the **arbitrator** to determine whether the claims were **barred by limitations** and permitted the arbitrator to award punitive damages. (Story on p. 132.)

Jack Hanna, currently Director of the ABA Section of Dispute Resolution, will join **JAMS, The Resolution Experts**, on May 17, 2004. He will assume the role of Business Manager of JAMS’ Washington, D.C. Resolution Center. (Story on p. 124.)

In a *Commentary*, **Piero Bernardini** of the LUISS-Guido Carli University in Rome argues that the internal Italian debate about whether an **arbitral award** is contractual or juridical in character “has no bearing on the enforceability of [Italian] awards under the New York Arbitration Convention.” (Story on p. 133.)

The U.S. **Third Circuit** Court of Appeals has affirmed the arbitrator’s ruling that the labor dispute between Major League Baseball and its **umpires** fell within the scope of the arbitration clause in the CBA. (Story on p. 126.)

The *Documentary Resources* section contains the text of the **official translation** of the **new Japanese arbitration law**. The law became effective in March 2004. The availability of the translation was delayed for months because of the challenge in elaborating a linguistically accurate text. Needless to say, in the event of inconsistencies or conflicts, the translation is always secondary to the actual text of the Japanese statute. Future **WAMR** issues may contain commentary on the new law. (The *Documentary Resources* section begins on page 134.)

Some **courts** in the **Russian Republic** appear to be invoking the **public policy exception** in the New York Arbitration Convention to thwart the enforcement of international arbitral awards. The lack of an express statutory definition of public policy allows lower courts especially to protect national businesses from liability established by transborder awards. (Story on p. 127.)

Finally, **Timothy S. Cole**, Director of the **NAF’s** Internet Dispute Solutions, provides a summary of and the opinion in a recent **domain name award**. (The *Documentary Resources* section begins on page 146.)

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EDITORIAL STAFF

Editor-in-Chief:

Thomas E. Carbonneau
Penn State Dickinson School of Law

Senior Editor:

Kimberly A. Koko, Research
Tulane University School of Law

Editors:

Nadja Alexander, International Mediation
Australian Centre for Peace and Conflict Studies,
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James Coben, Domestic Mediation
Dispute Resolution Institute,
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Robert Ackerman, Domestic Mediation
Penn State Dickinson School of Law

Paul Friedland, International Arbitration
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Jeanette A. Jaeggi, Employment Arbitration
Penn State Dickinson School of Law

Nancy Welsh, Domestic Mediation
Penn State Dickinson School of Law

Production Manager:

Michael Murphy
Juris Publishing, Inc.

Editors-At-Large:

William W. Park
Boston University School of Law

Jan Paulsson
Freshfields (Paris)

Editorial Assistants:

Rosa DiBetta David R. Sedlak
Abigail Salawage S. Stephen Yau

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Submission Information

Editorial correspondence should be directed to Professor Thomas Carbonneau, Editor, *World Arbitration and Mediation Report*, 71 New Street, Huntington, New York 11743 (USA), or Penn State Dickinson School of Law, 150 South College Street, Carlisle, PA 17013-2899. You may call him at (717) 240-5153; email: tec10@psu.edu.