

World Arbitration & Mediation Report



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Covering Dispute Resolution in the United States and Around the World

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HIGHLIGHTS

California persists in integrating social justice considerations into its endorsement of arbitration—at least in domestic matters involving **consumers**. Recently enacted legislation limits the financial liability of consumer for the **costs** of arbitration. In effect, low-income consumers are exempted from the consequences of “loser pays” provisions. (Story on page 315.)

The **California** State Bar Association is about to propose a change in California law that would permit **non-U.S. attorneys** to represent clients in arbitrations held in California that do not involve the application of state law. The measure is in keeping with the standard that now applies to non-California U.S. lawyers who participate in arbitrations held in California. (Story on page 315.)

The U.S. Court of Appeals for the **Ninth Circuit** has confirmed a **CIETAC arbitral award** even though it involved proceedings in two separate venues done by two separate arbitral tribunals. Because the parties’ agreement did not contain any requirements relating to the venue for arbitration, the court held that the administering agency had complete discretion over the matter. (Story on page 316.)

In a case summarized in the **Baker & McKenzie Newsletter on International Litigation and Arbitration**, the U.S. Court of Appeals for the **Fifth Circuit** has held that the ground of “**arbitrary and capriciousness**” is not a viable basis for the

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vacatur of awards in the Fifth Circuit. In so holding, the court emphasized that it will continue to afford great deference to arbitrator determinations. (Story on page 316.)

The **Fifth Circuit** also has held that the **New York Arbitration Convention** applies to a dispute between two U.S. nationals arising from an injury off the coast of

Nigeria (summary on p. 326) and that an **arbitral clause** that permits one of the parties to have judicial recourse and denies that type of relief to the other is **unenforceable** under Louisiana law (summary on p. 327.)

The issue features **National Arbitration Forum (NAF) Case Abstracts**. (The abstracts begin on 317.)

Finally, in a *Perspectives* article, **Markham Ball**, Director of the Alternative Dispute Resolution Center, International Law Institute, provides a rigorous and insightful assessment of the new *IBA Guidelines* on arbitrator disclosure and conflicts of interest. Despite a number of misgivings and the view that they are a “work in progress” Mr. Ball states that “the *Guidelines* make an important contribution toward the analysis and solution of the problems they address...[and] will be of significant assistance to arbitrators, arbitration lawyers, and institutions, and probably also to many courts and legislators as well, in the future.” (The *Perspectives* section begins on p. 333.)

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