

World Arbitration & Mediation Report



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Covering Dispute Resolution in the United States and Around the World

September 2004

HIGHLIGHTS

ACCESS ADR—a project supported by the JAMS Foundation and the ABA Section of Dispute Resolution and designed to enhance the participation of professionals from various racial and ethnic groups in ADR—received a **grant** from the **William and Flora Hewlett Foundation**. (Story on p. 251.)

A new feature of **WAMR** is the **Case Squibs** provided by the staff of the **National Arbitration Forum (NAF)**. (The *Squibs* begin on p. 252.)

The IBA has published its **Guidelines on Conflicts of Interest in International Arbitration**. The *Guidelines*—the result of over two years of consultation and review with leading arbitration and industry authorities around the globe—represent the most comprehensive work to date to define the framework by which the impartiality of arbitration in the international arena can be most effectively assured. (Story on p. 255.)

A **new Spanish law of arbitration** came into force on March 26, 2004. (Story on p. 257.)

The **Ninth Circuit** has agreed with the Second Circuit by endorsing the view that “when a petition to vacate ‘complains principally and in good faith that the award was rendered in **manifest disregard of federal law**, a substantial **federal question** is presented and the federal circuit courts have jurisdiction to entertain the petition.’ ” (The case summary begins on p. 260.)

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In *Borowiec v. Gateway 2000 Inc.*, the Illinois state Supreme Court found that a **Magnuson-Moss Warranty Act (MMWA)** provision making informal dispute settlement procedures prior to court proceedings non-binding does not preclude courts from enforcing a binding arbitration agreement found in a written warranty claim. Accordingly, the court refused to give deference to the Federal Trade Commission’s (FTC) regulations prohibiting the arbitration of such claims. (The case summary begins on p. 264.)

In *Hottle v. BDO Seidman, L.L.P.*, the Connecticut state Supreme Court affirmed a prior ruling and held that, according to New York law, an **arbitration clause** in a **partnership agreement** designating five partners as arbitrators was not illusory and contrary to public policy. (The case summary begins on p. 266.)

Harry L. Arkin, noted international lawyer and arbitrator, discusses the issue of arbitrator neutrality and the new IBA’s Guidelines for neutrality. (The *Commentary* section begins on page 270.)

Finally, in a *Perspectives* article, **Susan Summers Raines** compares and contrasts **online mediation** with more traditional mediation. She applies the “fit the forum to the fuss” adage and attempts to isolate a subset of cases that is suitable for online mediation. Professor Raines also discusses conflict management techniques in the online environment. (The *Perspectives* section begins on p. 271.)

PENN STATE



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