

World & Arbitration & Mediation Report



Vol. 17, No. 1

Covering Dispute Resolution in the United States and Around the World

January 2006

HIGHLIGHTS

Professor **Christopher Drahozal**, WAMR Editor for U.S. Arbitration Law, examines the issue of **separability** and federal preemption of state arbitration law in *Buckeye Check Cashing, Inc. v. Cardegna*. The U.S. Supreme Court has granted *certiorari* in *Buckeye*. The question to be reviewed by the Court is whether courts or arbitrators should resolve claims that the underlying contract is illegal. This decision will either uphold or reverse the decision in the earlier case of *Prima Paint*. (The *Perspectives* section begins on page 11.)

The *National Reports* section includes a translation of the recent **Chilean Arbitration Law**, provided by **Mary Mourra**, an emerging expert on Latin American arbitration law. (The *National Reports* section begins on page 15.)

Baker & McKenzie provides a comprehensive analysis of *Republic of Ecuador v. ChevronTexaco Corp.*, in which the U.S. District Court for the Southern District of New York held that the **Act of State Doctrine** does not apply when courts must examine whether to enforce an arbitration agreement between a **signatory and non-signatory party**. Therefore, the court must look to federal common law to decide the question. Here, the district court denied the non-signatory's motion for summary judgment, stating that there was a genuine issue as to

CONTENTS

News At Home.....	3
News Abroad.....	6
International News.....	7
Federal Judicial Decisions.....	9
State Judicial Decisions.....	10
Perspectives.....	11
National Reports.....	15
Documentary Resources.....	24
Bibliographic Resources.....	29
Calendar.....	30

whether it had derived a "direct benefit" from the contract that contained the arbitration agreement, thereby making itself bound to that agreement. (The *International News* section begins on page 7.)

The **Eleventh Circuit** recently rejected the "**knowing and voluntary**" standard for determining the enforceability of arbitration clauses. It held that general contract principles should govern that question. In so holding, it joined the majority of federal circuits. (The case summary begins on page 3.)

In *Stolt-Nielsen SA v. Celanese AG*, the **Second Circuit** ruled that **arbitrators** have broad powers under the Federal Arbitration Act to **compel testimony and documents** from non-party witnesses at both preliminary and final hearings. The court found that, under FAA § 7, there are no time limits preventing arbitrators from issuing subpoenas for evidence that they deem material to the case. (Case summary begins on page 4.)

A **California appeals court** has held that arbitrators must comply with state law requirements of **disclosure for conflicts of interest** and that failure to do so may result in a vacatur of the arbitral award. (The case summary begins on page 5.)

PENNSTATE



The Dickinson
School of Law

JurisNet LLC, Huntington, NY, USA

Published in conjunction with Penn State University's
Institute for Arbitration Law and Practice, Carlisle, PA, USA

IN THIS ISSUE

NEWS AT HOME

U.S. Supreme Court Hears Arguments on Separability Doctrine.....	3
Eleventh Circuit Rejects the “Knowing and Voluntary” Test	3
House Legislation Seeks to Impose Limits on Mandatory Arbitration in Home Building Contracts.....	3
Florida Adopts Stricter Requirements for Judge-Mediators.....	4
FMCS Study States That Mediation has Saved the Economy \$9 Billion.....	4
Texas State Supreme Court Compels Non-Signatory to Arbitrate	4
Second Circuit Upholds Broad Subpoena Power Under the FAA.....	4
California Appellate Court Upholds California Arbitrator Disclosure Standards.....	5
Fourth Circuit Upholds Arbitration Clause in an Adhesion Contract.....	5
Senate Republicans Propose ADR for Federal Recovery Projects.....	5
California State Court Strikes Down an Arbitration Clause With an Out-of-State Choice of Forum	6

NEWS ABROAD

Polish Legal Framework of Arbitration Overhauled by Adam J. Sulkowski & Dr. Andrzej Tynel	6
--	---

INTERNATIONAL NEWS

Act of State Doctrine Does not Apply When Considering Whether to Enforce an Arbitration Agreement.....	7
---	---

FEDERAL JUDICIAL DECISIONS

Fourth Circuit Holds That Non-Signatory Cannot Enforce Arbitration Agreement.....	9
Eighth Circuit Refuses to Vacate Arbitrator’s Award.....	9

STATE JUDICIAL DECISIONS

Texas State Court Holds Employee Handbook not an Arbitration Agreement.....	10
--	----

PERSPECTIVES

FAA Preemption, Separability, and <i>Buckeye Check Cashing</i> by Christopher Drahozal.....	11
--	----

NATIONAL REPORTS

Law of the Republic of Chile Translated by Mary Mourra.....	15
--	----

DOCUMENTARY RESOURCES

National Arbitration Forum (NAF) Domain Name Decisions Provided by A. Kristine Fordahl.....	24
--	----

BIBLIOGRAPHIC RESOURCES

by Gail A. Partin.....	29
------------------------	----

CALENDAR.....	30
---------------	----

EDITORIAL STAFF

Editor-in-Chief:

Thomas E. Carbonneau
Penn State Dickinson School of Law

Senior Editor:

Kimberly Koko, Esq.
Tulane Law School

Executive Editor:

Jeanette A. Jaeggi, Esq.
Penn State Dickinson School of Law

Editors:

Nadja Alexander, International Mediation,
Australian Centre for Peace and Conflict Studies,
Queensland (Australia)

Frédéric Bachand, Investment Arbitration, McGill Law
Faculty (Montréal)

Welber Barral, Latin American Arbitration,
Universidade Federal de Santa Catarina (Brazil)

Richard Chernick, Editor for Arbitration Law &
Practice, JAMS (Los Angeles)

James Coben, Domestic Mediation,
Dispute Resolution Institute,
Hamline University School of Law

Robert Davidson, Editor for Arbitration Law
& Practice, JAMS (New York)

Christopher Drahozal, U.S. Arbitration Law, University
of Kansas School of Law

Paul Friedland, International Arbitration,
White & Case LLP (New York City)

Barry Garfinkel, International Arbitration,
Skadden Arps Slate Meagher & Flom
(New York City)

Grant Hanessian, International Arbitration,
Baker & McKenzie (New York City)

Gail Partin, Research Editor,
Penn State Dickinson School of Law

David Zaslow, International Arbitration,
Baker & McKenzie (New York City)

Production Manager:

Wendy M. Ser

Editors-At-Large:

William W. Park
Boston University School of Law
Jan Paulsson
Freshfields (Paris)

Editorial Assistants:

Alain Fernandez	Sandra Partridge
Robert Michaels	Emily Reece
Cecile H. Nantchouang	Jason Reimer

Publication and Subscription Information

The WORLD ARBITRATION AND MEDIATION REPORT is published monthly by JurisNet LLC, 71 New Street, Huntington, New York 11743; telephone: (631) 673-3330; fax: (631) 673-9117; (800) 887-4064; e-mail: subscriptions@jurispub.com. Visit our website at <http://www.jurispub.com>. The Report is distributed worldwide by JurisNet LLC. Subscription price: In the United States: \$650.00 yearly; International: \$710.00 yearly. Prices include shipping & handling and complete online access to the full archive of *all* WAMR issues. ISSN # 0960-0949.

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.