


# World Arbitration & Mediation Report



Vol. 17, No. 4

Covering Dispute Resolution in the United States and Around the World

April 2006

## HIGHLIGHTS

In *Buckeye Check Cashing, Inc.*, the U.S. Supreme Court reaffirmed one of the basic tenets of U.S. arbitration law—that courts, under the separability doctrine, may enforce a valid arbitration agreement even though the contract in which it is contained is later found void. *Buckeye* is a significant decision, not because it creates new principles of arbitration law, but rather because it affirms and reinforces fundamental rules of U.S. arbitration law. In particular, it underscores the vitality of *Prima Paint*, *Howsam*, and *Bazzle* that established the decisional sovereignty of the arbitrator once an arbitration agreement is recognized. It demonstrates the Court's continuing unequivocal acceptance for arbitration. (Story on page 103.)

A recent opinion by the **U.S. First Circuit** regarding a decision by the U.S. District Court for the District of Puerto Rico contributes to the continuing debate regarding the use of **"opt-in" provisions** for judicial review. The First Circuit aligned itself with the Third, Fifth, and Sixth Circuits by holding that contacting parties have the right to provide for judicial supervision of the merits of awards in their arbitration agreement. In its ruling, the First Circuit, however, required clear contract language to that effect. The Seventh, Eighth, Ninth, and Tenth Circuits have adopted a contrary position, disallowing contract provisions that alter FAA § 10. For these federal appellate courts, the FAA is not a "default" statutory framework and parties cannot create judicial jurisdiction by contact. (Story begins on page 108.)

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**Austria** is about to adopt a **new arbitration law** that is likely to go into effect in mid-summer 2006. The existing law dates back to the end of the 19th Century in its original form and was last amended two years before the UNCITRAL Model Law was published. There is a modern arbitration practice in Austria and the projected legislation will strengthen

Austria's position as a modern and hospitable venue for arbitration. (Story begins on page 110.)

The **National Arbitration Forum (NAF)** provides a group of case summaries of recent decisions on arbitration. The topics addressed are diverse and include: arbitrator impartiality, jurisdiction, class action waivers, enforceability of consumer arbitration agreements, providing reasons for the determination, the employment contract exclusion, and other points of law. (The *NAF Case Summaries* begin on page 113.)

The *National Reports* section contains a comprehensive description of **Canadian arbitration law**. The *Report* identifies the major cases that have been decided since Canada's accession to the New York Arbitration Convention in 1986. It covers and annotates significant developments in the provinces. The author, **Ryan Loxam**, concludes that "Canada has made significant strides in reversing hostility to arbitration." He is critical, however, of the "arb-med" provision in the British Columbia statute because it contains no guidance as to its application. Canada's embrace of arbitration, he says, has led to a minimization of basic distinctions, in some respects. (The *National Reports* begins on page 119.)

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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

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**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](mailto: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.

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