


World Arbitration & Mediation Report



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Covering Dispute Resolution in the United States and Around the World

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HIGHLIGHTS

Frédéric Bachand, WAMR Editor for Investment Arbitration, provides an account of recent developments in **NAFTA Arbitration**, including a NAFTA Chapter 11 decision to consolidate three **Softwood Lumber** arbitrations. Professor Bachand also highlights the **Supreme Court of Canada's** decision to hear the *Dell Computer* case, involving the enforceability of terms and conditions in a consumer contract. Finally, he notes that the **Paris Court of Appeal** has reaffirmed the French decisional view regarding the **setting aside of decisions** under Article V(I)(e) of the New York Arbitration Convention. The court found that these decisions have no transborder effect and have a bearing only within the legal system that gave rise to them. (*International News* begins on page 142.)

The **U.S. Court of Appeals for the Tenth Circuit** has reaffirmed its **qualified support** of the exercise of **freedom of contract** in regard to appellate remedies against arbitral awards. Here, the court endorsed a limitation of standard appeal procedures by the parties. (Story begins on page 145.)

The **National Arbitration Forum (NAF) Case Summaries** address a host of basic issues in arbitration law,

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including cases on the impact of arbitration agreements on **bankruptcy proceedings**. A **Second Circuit** opinion again demonstrates the liberalization of the use of arbitration in bankruptcy proceedings. In *MBNA America Bank v. Hill*, the court found that, even in cases involving core bankruptcy proceedings, bankruptcy courts do not have discretion to override arbitration

agreements unless the proceedings are based on provisions of the Bankruptcy Code that “inherently conflict” with the FAA or would “necessarily jeopardize” the objectives of the Bankruptcy Code. (The *Case Summaries* begin on page 148.)

A **U.S. Fourth Circuit** decision once again tests the gravamen and range of the **manifest disregard** ground for vacating arbitral awards. The court appears simply to have disagreed with the arbitrator’s interpretation of the relevant contracts. Manifest disregard should require more than mere disagreement. (Story begins on page 139.)

The **UMA** is law in two more jurisdictions: Utah and the District of Columbia. Both adoptions incorporate the protections afforded by the **UN Model Law on International Commercial Conciliation**. (Story begins on page 139.)

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