

World & Arbitration & Mediation Report



Vol. 17, No. 6

Covering Dispute Resolution in the United States and Around the World

June 2006

HIGHLIGHTS

Relying on the holding in *First Options of Chicago, Inc. v. Kaplan*, the **Second Circuit** had held that an employee's claim that his employer violated the **Sarbanes-Oxley Act** is for an arbitrator to decide. Although *Kaplan* requires a clear and unmistakable reference of arbitrability issues to arbitration, the circumstances of the case indicated that the resolution of the arbitrability of Sarbanes-Oxley claims required an interpretation of the NASD Code, a matter within the arbitrator's exclusive authority. (Story begins on page 171.)

The **Paris Court of Appeal** has reaffirmed the French decisional view that **international arbitral awards set aside at the place of arbitration** are nonetheless enforceable in France. In *Société Int'l Bechtel*, the court upheld the position taken by the French Court of Cassation in *Hilmarton* more than ten years ago. The appellate court announced that decisions to set aside arbitral awards at the place of rendition "do not have international effects" and are valid only within the rendering court's territorial limits. (Story begins on page 173.)

New York Governor George Pataki signed legislation in late 2005 authorizing **New York state courts** to grant provisional remedies in support of international arbitrations. Prior law prevented New York state courts from granting attachments to secure the enforcement of an eventual award

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in aid of international arbitration. (Story begins on page 176.)

The **White & Case Arbitration Group** provides a thorough summary and evaluation of the decision in *Bayindir v. Pakistan*, an ICSID arbitration case. Their analysis focuses upon the interplay between contract claims and treaty claims, which the Group views as

"[a]n increasingly common problem in the investor-State sphere...." The tribunal held that the investor had a "self-standing right" to pursue claims under the applicable BIT even though the treaty claims arose out of a contract relationship, the BIT did not contain an "umbrella clause," and the contract provided for local, not ICSID, arbitration. (Story begins on page 177.)

The **National Arbitration Forum (NAF) Case Summaries** address a host of issues in contemporary U.S. arbitration law: vacatur for manifest disregard of the law, interlocutory relief for class arbitration, authority to decide issues of arbitrability, notice of arbitration in consumer contracts, and excess of arbitral authority—among others. (The *NAF Case Summaries* begin on page 180.)

Finally, **Sasha A. Carbone**, Associate General Counsel of the AAA, provides a thorough assessment of **Justice Alito's decisions on arbitration** as an appeals court judge. (The *Comment* begins on page 187.)

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

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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. 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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