

World Arbitration & Mediation Report



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Covering Dispute Resolution in the United States and Around the World

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HIGHLIGHTS

The **Hawaii state Supreme Court**, following a 9th Circuit precedent, has held an **arbitral clause** in an **employee handbook** invalid and unenforceable. The handbook contained an acknowledgment form and further provided that it did not constitute an employment contract and the employer could modify its content unilaterally at any time. The court concluded that the agreement lacked mutuality and bilaterally. (Story on page 211.)

According to the **Supreme Court of Michigan**, common-law arbitration agreements continue to be subject to **unilateral revocation** prior to the rendering of an award. In Michigan, common-law arbitration is not inherently preempted by statutory arbitration. (Story on page 212.)

The **National Arbitration Form (NAF) Case Summaries** included in this issue of **WAMR** constitute a comprehensive group of representative arbitration cases. The decisional law summarized addresses a host of issues of contemporary arbitration law, including the awarding of punitive damages by arbitrators, the role of *res judicata* in arbitral proceedings, the unconscionability defense to the enforceability of arbitration agreements, the partiality of arbitrators and the use of disclosure, the action to clarify

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awards, and the requirements for the validity of agreements. (The *Case Summaries* begin on page 214.)

In particular, the **NAF Case Summaries** highlight the 11th Circuit's landmark opinion in *B.L. Harbert Int'l, LLC v. Hercules Steel Co.* There, the federal

appellate court warned that sanctions may be in the offing for frivolous challenges to the enforceability of arbitral awards. Describing the use of manifest disregard in the case as baseless, the court expressed serious concern about compromising the benefits of arbitration through specious challenges against awards. (The case summary begins on page 215.)

Dr. Charles Poncet, a member of the **WAMR** Advisory Board and a lawyer at ZPG (Geneva), provides an assessment and translation of a significant recent opinion by the Swiss Federal Tribunal. The court opinion addresses the perplexing and elusive concept of "public policy" as it relates to international commercial arbitration. The court asserts that "an award is inconsistent with public policy if it disregards those essential and broadly recognized values which, according to the prevailing values in Switzerland, should be the founding [principles] of any legal order." (Dr. Poncet's contribution appears in the *News Abroad* section and begins on page 221.)

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