The U.S. Third Circuit has ruled that a court may adjust the terms of an award for the passage of time. The case involved the enforcement of an international arbitral award under the New York Arbitration Convention. Apparently, ten years separated the date of rendition of the award from the date of its enforcement. The court adjusted the terms of the award to account for the lapse of time, emphasizing that such emendations should track the content of the original award as clearly as possible. (Story on page 319.)

The U.S. Tenth Circuit has determined that appraisals do not constitute arbitrations; therefore, the FAA does not apply to disputes that emerge regarding an appeal. In the court’s view, an arbitral award disposes of an entire litigation, is final and binding, and cannot be reviewed for mistakes of law. An appraisal has none of those features. (Story on page 319.)

The National Arbitration Forum (NAF) provides a number of Case Summaries for this issue of WAMR. The cases address a wide range of cutting-edge issues in U.S. arbitration law: functus officio, merits review of awards, arbitrability, class action waivers, the requirement of mutuality, and available remedies. In particular, on matters of arbitrability, the courts have held that arbitration agreements are valid in wrongful death actions and in regard to issues arising from marital dissolution. (The NAF Case Summaries begin on page 321.)

In the Commentary section, Mitchell Zimmerman, a partner at Fenwick & West, LLP in San Francisco, writes about the risk of too much flexibility in alternative dispute resolution, in particular, the shifting of the neutral’s role from arbitrator to mediator and vice versa. He writes about a recent case, Morgan Phillips, Inc. v. JAMS/Endispute, LLC, 140 Cal. App. 4th 795 (2006), that involved issues of arbitral immunity and breach of contract. There, the court ruled that “arbitral immunity” should not act as a shield to the “unprincipled abandonment of the arbitration.” It concluded that the failure “to make a timely decision” amounted to the arbitrator’s “breaching a contractual duty to both parties.” Mr. Zimmerman draws a number of conclusions from the court’s reasoning and ruling. (The Commentary begins on page 329.)

Finally, in the Perspectives section, Albena P. Petrova provides a thorough comparative assessment of the case law regarding the ICSID Annulment grounds. She concludes that in terms of the annulment mechanism: “It is critical to maintain finality, efficiency, uniformity, and consistency, and to balance finality with accuracy, as the Washington Convention faces a growing number of pending annulment cases.” (The Perspectives section begins on page 331.)
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