

## Partners Notes

### National Arbitration Forum Summarizes Significant Arbitration/Mediation Cases

The National Arbitration Forum announces the release of the *2007 ADR Law & Policy Year in Review*. The review names and summarizes what it considers the most significant arbitration and mediation cases of 2007.

Cases included in the *Year in Review* are:

Federal cases: *Legair v. Circuit City Stores, Inc.* (Sixth Circuit affirms sanctions against attorney who disregarded order to arbitrate); *Pfannenstiel v. Mer-*

*rill Lynch, Pierce, Fenner & Smith* (Tenth Circuit joins other circuits in recognizing doctrine of arbitral immunity applicable to arbitration providers and arbitrator); *Ehleiter v. Grapetree Shores, Inc.* (whether party has waived right to arbitrate by participating in litigation is presumptively a question for the court); *Sanford v. MemberWorks, Inc.* (Ninth Circuit holds that court, not arbitrator, must decide existence of underlying contract); *Douglas v. United*

*States District Court* (Ninth Circuit: posting arbitration agreement on company's website does not constitute notice in an ongoing relationship); *Winfrey v. Simmons Food, Inc.* (California's mediation confidentiality rule does not bar evidence of oral settlement agreement reached at mediation), and *Lozano v. AT&T Wireless Services, Inc.* (court denies certification of national class based on need for state-by-state inquiry into enforceability of class waiver).

State cases: *Bank of America, N.A. (USA) v. Dahlquist* (FAA deadline for challenging awards only applicable to valid arbitration awards); *Reigelsperger v. Siller* (California Supreme Court unanimously enforces broad health care arbitration agreement that encompasses medical malpractice disputes); *Covenant Health Rehab of Picayune, L.P. v. Brown* (Mississippi law authorizes health care surrogates to agree to arbitration on patient's behalf); *Hogan v. Country Villa Health Services* (health care power of attorney authorizes attorney-in-fact to agree to arbitration on patient's behalf); *Koons Ford of Baltimore, Inc. v. Lobach* (Maryland's high court diverges from majority rule in

holding that Magnuson-Moss claims are not subject to binding arbitration); *Duke v. Graham* (Utah law permits arbitrators to remove members of a limited liability company); *Wagner Construction Co. v. Pacific Mechanical Corp.* (arbitrator, not court, must decide whether statute of limitations bars claims that parties have agreed to arbitrate); *Salley v. Option One Mortgage Corp.* (exception for foreclosure proceedings does not render arbitration agreement unconscionable under Pennsylvania law); *Scott v. Cingular Wireless* (Washington Supreme Court rejects class action waiver as exculpatory in effect); *Gentry v. Superior Court* (California Supreme Court questions enforceability of class action waiver on public policy grounds), and *Owens v. National Health Corp.* (court holds health care arbitration agreement fair and enforceable).

The *2007 ADR Law & Policy Year in Review* is a special edition of the National Arbitration Forum's *ADR Law & Policy Update*, a free, comprehensive weekly overview of case law, legislation, and regulations affecting the ADR community. For more information, visit [www.adrforum.com](http://www.adrforum.com).

### Dennis Kiker Joins Fios As Director

Fios® Inc. has announced that Dennis Kiker, Esq. has joined as a director in Fios Consulting.

Mr. Kiker comes to Fios after spending more than 13 years representing some of the largest manufacturing companies in the United States. A shareholder of Moran Kiker Brown PC for more than seven years, Mr. Kiker has served as national discovery counsel and designated e-discovery counsel for several of his clients. He specializes in bringing together in-house counsel, business personnel, IT staff and outside counsel to develop business processes that lower the costs, time and risks of discovery response.

Mr. Kiker's addition is in direct response to demand by companies faced with frequent litigation, anti-trust, regulatory compliance and investigation issues for Fios' comprehensive litigation readiness consulting services.

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Fios has launched a new consulting

service to help organizations reduce the costs, risks and time of managing ESI in response to litigation and governmental investigation.

Fios' Information Governance for e-Discovery consulting service addresses how ESI is captured, stored, retained and ultimately disposed of as part of the routine course of business. The new service helps clients reduce the overall cost and burden of discovery and incorporates proven governance practices so ESI can be managed as a strategic asset.

The service provides guidance around: understanding where and why ESI is being retained; policies and practices for limiting the amount of ESI retained and timeframes for retention; enhancing how ESI is organized, accessed, searched and retrieved for discovery, and controlling or minimizing the replication of ESI across multiple data stores.

For more information, visit [www.fiosinc.com/corporations](http://www.fiosinc.com/corporations).

### Ernst & Young

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based on the underlying risks. Concerns about insider trading and front-running as well as concerns about whether valuations on a company's books and records are the same as valuations provided to customers and investors are being reviewed. There are potential ERISA violations that are the subject of investigations. Investigations cover a variety of different topics, depending on the nature of the operation being scrutinized.

**Editor: What other types of legal action are taking place or likely to take place? What about the rating agencies?**

**Morris:** The time frame for the maturing of litigation is going to be months and maybe several years – we're clearly in the early stages of that cycle. As we move into litigation and damages assessments, we expect the following to ensue: breach of fiduciary duty may be a cause of action, securities fraud, insider trading, perhaps resulting in criminal allegations, investor and shareholder class actions. We are at the stage now where companies with fiscal years ending 12/31/07 are finalizing financial statements so that there are possibilities of additional shareholder suits once this information is released.

**Editor: What are the new long-term priorities for businesses resulting from the credit crisis?**

**Massam:** This is a longer term issue which will take time. An important priority for our clients is to marshal the information as to what has happened along with existing practices that have led to this point. It is critical for our

clients to be prepared to respond to any kind of legal process in order to defend against any litigation that is brought against the firm. In addition, most of our clients are taking the opportunity to enhance their regulatory corporate compliance procedures and guidelines. This issue has brought some important challenges to light and has provided an opportunity to enhance current practices, such as improving risk management tolerances and the internal reporting capabilities. It is also the case that many of our clients are looking at the market and asking: what sort of merger and acquisition activities might be appropriate for us? There are strategic opportunities that will make great sense for certain of our clients.

**Editor: How would you like to see the issue resolved?**

**Morris:** A return to more normal activity within the capital markets is not only good for the economy but has benefits of helping improve consumer confidence levels. The subprime mortgage issue has caused additional consumer and investor anxiety about something as fundamental as home ownership. Home ownership as a pillar of U.S. economic activity has been shaken. We would like to see a return of investor and consumer confidence that can only come from certain improvements in the financial markets and more education as well.

**Massam:** We've already come to appreciate the substantial risks associated with complex financial instruments backed by mortgages that were being actively traded in the marketplace and we stand to benefit from that increased awareness, but we do need to get back to a greater degree of investor and consumer confidence in the financial marketplace.

### West km™ Has New Productivity Tool

West km™, the management application from Thomson West that lets legal professionals capture and maximize their expertise and intellectual assets, now offers new productivity capabilities in the newly released West km 4.0 platform.

West km 4.0 features a new technology platform plus enhanced search and classification functionality, giving users a competitive edge by making institutional knowledge and expertise broadly available to legal professionals within an organization.

The new West km 4.0 platform enables users to mine key data directly from texts of documents through Litigation Analyzer, a new West km feature.

Visit [www.west.thomson.com/westkm](http://www.west.thomson.com/westkm) for additional information.

### CSC To Manage Haymarket Portfolio

Haymarket Media Group, a global media company, has selected Corporation Service Company® to manage its entire domain name portfolio. CSC® will help Haymarket manage and secure its Web presence as well as protect its brands from infringement on the Internet.

In addition to strategic brand protection advice, CSC also provides digital services to Haymarket including, DNS hosting, email forwarding and digital certificates.

Thomson West has announced a new online tool to give litigators an edge in managing critical trial dates and filing logistics: Westlaw Legal Calendaring.

Westlaw Legal Calendaring is the first web-based rules calendaring system that allows attorneys to recalculate deadlines. It automatically calculates litigation dates from the first complaint filed through the final appeal, and tracks every event change requiring recalculation along the way, helping litigators and support staff stay abreast of dates and updates throughout a trial.

Westlaw Legal Calendaring is available on [www.litigator.westlaw.com](http://www.litigator.westlaw.com). For additional information on Westlaw Legal Calendaring, go to [www.west.thomson.com](http://www.west.thomson.com).

"It is important that CSC become our customers' trusted partner and not just another vendor," said Robert Farrugia, European managing director at Corporation Service Company. "It is through this partnership that we can help our customers balance both the risks and budgets associated with protecting their corporate identity online."

CSC will service the UK-based company's requirements through its European Headquarters in London.