In my first “From the Chair” column for this newsletter I mentioned two themes I want to return to here.

First, on the day I wrote that first column, I was catching wild cutthroats in Yellowstone National Park and then later in the day I was watching a bison walk through the yard at our family cabin just outside the Park. While writing this column from the same cabin, preparing to return to Atlanta for a mediation the next day, I looked out to see a dozen or so bison 100 yards away on the neighbor’s lot, with the adults protecting three newborns with surprisingly quick and effective herding when a neighborhood dog came by to inspect the scene. And the two days before I was catching cutthroats, rainbows and a single large brown trout on the Madison and Henry’s Fork Rivers just outside of the Park. (Fishing on the Madison was in 35 degree temps with snow and rain; sort of fun to talk about and not so much to do.) Bison and trout left behind; back to work.

Second, in that first column I underscored the Section’s continuing goal of working to improve quality of arbitration, mediation and other dispute resolution processes. We have pursued a number of projects devoted to that goal this year, with careful attention to needs of consumers of our services.

We have pursued the quality goal in the arbitration field in at least two important ways, both in concert with the College of Commercial Arbitrators. Our Arbitration Committee has, in conjunction with the College, drafted an annotation for the Code of Ethics for Arbitrators in Commercial Disputes. The Code was annotated with judicial decisions interpreting code sections, and provides citations to judicial decisions and other published writings which cite the 1977 or 2004 Codes from 1981 through July, 2010. In addition, throughout the year we have assisted the College in distribution of its important work product, The College of Commercial Arbitrators Protocols for Expeditious, Cost Effective Commercial Arbitration. This report has become an important publication for recognizing party and counsel needs in the commercial arbitration arena and establishing concrete proposals for satisfying those needs.

Several section leaders have also devoted significant efforts of to developing Guides to Mediation for parties to mediations. After substantial vetting with numerous section leaders, the Guides are nearly ready for publication. The idea for these guides flows from recommendations of the Report of the Task Force on Improvement of Quality in Mediation published in 2006. As a reminder this Task Force project was a result of numerous focus groups and surveys aimed at finding ways to improve quality in mediation of civil cases. These Guides should become an important contribution to informing mediation participants about the process more fully. With any luck we will soon follow up with production of an instructional video for parties to watch providing similar insights to them on how the mediation process works.

Our Section’s devotion to promotion of quality in ADR processes has gone on for many years, and I am thankful we have been able to advance the ball in several important ways this year.

R. Wayne Thorpe
Section Chair
Email: wthorpe@jamsadr.com
Ethical Dilemma
Submitted by: Daniel Yamshon

A federal agency issued a specialty policy of insurance not available on the open market. After the premiums were paid and the policy delivered, the agency modified the terms of the insurance contract, publishing them in the Federal Register but not serving direct notice on the insured. The published notice also gave policyholders the right to cancel their policies within thirty days with pro-rata refunds based on the remaining policy period.

After suffering a loss covered by the original contract, the insured filed a claim for insurance coverage. The agency denied the claim as the modifications published in the Federal Register clearly stated the type of loss suffered by the insured would no longer be covered.

The insured filed a claim which proceeded to arbitration. The insured/claimant’s theory was the right to rely on the original contract that was issued and paid for in advance. The respondent agency’s defense was that an insurer has the right to modify a policy and publication in the Federal Register provides notice as a matter of law. There was no unfairness as the agency would have paid for the loss if it had occurred prior to the notice being published and the insured/claimant had the right to cancel the contract with a pro rata refund.

Just before closing arguments, the arbitrator muttered, “Hmm, there could be some due process issues here.” Respondent’s counsel replied, “Yes, there could be, yes there are.”

As counsel did not raise the due process issues, should the arbitrator:

A. Ignore them?
B. Ask the parties to brief them?
C. Rely on his own research and expertise and consider them in the award if they are applicable?

To answer these questions, click here:

ARTICLES OF INTEREST

A Modest Proposal for Foreclosure Resolution-The DOLLAR Method
by Harold Paddock

As a potential solution to some of the difficulties with current foreclosure resolutions and workouts, here is a Modest Proposal for the modification of the relationship between lender and homeowner/borrower for residential real estate, as an alternative to traditional foreclosure. Currently, under historic practices for mortgages and foreclosure, there is a stark binary choice: the lender does or does not get the property back through a deed in lieu of foreclosure or a sheriff’s sale. There is little flexibility other than a loan modification, which perpetuates the mortgage relationship. As an alternative to traditional workouts, please carefully consider a proposed mechanism called DOLLAR, which stands for: More…

Use of Consensus-Building For Infrastructure Project Development
by Chris Kane P.E., J.D.

The principles of mediation could play a much greater role in the decision-making for planning and implementing investments in improving our cities’ infrastructure. Capital projects involving urban redevelopment, transportation, water and energy require a great deal of political will, substantial upfront investment and a very lengthy process for implementation. Typically the public involvement is merely a box to be checked in the environmental review process and not a serious effort to seek and build consensus. Project opponents often do not get seriously engaged at the outset and can create greater trouble later on, when a simple majority of the governing entity wants to move forward.

The delays in these projects can not only delay the benefits to communities, but also add tremendously to the cost. Cost and delay issues in turn further delay and jeopardize the project by adding more controversy. Consensus-building is a form of mediation in multi-stakeholder decision-making, and in many cases can help solve these problems by expediting the time to get to an agreement. This article describes the conditions and steps of consensus-building and how the process can improve the schedule and support for urban infrastructure improvements. More…
Past ABA President Honored

Former ABA President was honored by Rotary International with the 2010-11 Global Alumni Service to Humanity Award. More:

COMMITTEE ACTIVITIES

The ABA Section of Dispute Resolution Arbitration Committee and along with the Ethics Committee of the College of Commercial Arbitrators are proud to announce the release of the Code of Ethics for Arbitrators in Commercial Disputes, Annotated.

This project was undertaken to annotate the Code of Ethics for Arbitrators in Commercial Disputes. The attached document includes such annotations of judicial decisions interpreting code sections, and provides citations to judicial decisions and other published writings which cite the 1977 or 2004 Codes from 1981 through July, 2010.

Although the Code has been referred to for guidance and has been cited by many courts it does not have the force of law and cannot in itself provide a basis for judicial decision.

The initial Annotation was prepared by a committee comprising members of the Arbitration Committee of the ABA Section of Dispute Resolution and of the Ethics Committee of the College of Commercial Arbitrators. Principally involved were:

- Edna Sussman and Kurt L. Dettman, Co-Chairs, Arbitration Committee of the ABA Section of Dispute Resolution
- Robert A. Holtzman, Chair, Ethics Committee of the College of Commercial Arbitrators
- David Brainin, Judith Meyer, Bruce Meyerson and Carroll Neecemann, Committee Members and Editors

The Committee extends particular thanks to Jonnese S. Crandol and Rajeev Raghavan, law students at Stetson University College of Law and University of Michigan Law School respectively, for their legal research and identification of the cases and articles cited, and to David Moora, Director of the American Bar Association Section of Dispute Resolution and Matthew Conger, Section Staff Attorney, for their coordination and supervision of the research project and invaluable technical support.

To review the annotated version click here:

October 16-22 2011 ABA Mediation Week

ABA Mediation Week is an annual project of the ABA Section of Dispute Resolution, to be held the week of October 16, 2011, to promote mediation and related forms of collaborative problem solving and to educate parties, lawyers, and the general public about these processes. This year’s ABA Mediation Week will focus on a theme of civility and civil public discourse. Our hope is that cooperating partners in state, local, and international bar groups, law schools and mediation groups will conduct educational events in cities around the world. To see The Mediation Week Toolkit developed to assist coordinators with talking points and pre-developed materials/presentations click here.

For more information on hosting a Mediation Week event contact Matthew Conger at matthew.conger@americanbar.org

Special Committee Membership for Student Members

Interested in meeting practitioners with years of experience and thriving practices? Want to get involved with interesting and substantive work? Or, just want to learn more about an ADR area of interest?

Join a Dispute Resolution Committee. Our Committees offer the chance to get involved in monitoring and encouraging the development of ADR in specific subject areas; they provide a community for section members who are interested in
the subject area; committees help develop CLE/training programs to assist members and formally liaise with other ABA entities that have a shared subject matter focus. Subject Matter Committees and Process Committees are open to the Section’s student membership free!

See a list of the Committees here:

**CLE ACTIVITIES**

**TELECONFERENCE:**

*Supreme Court Arbitration Update*

**Assessing the Importance and Implications of AT&T Mobility v. Concepcion**

**Thursday, June 23, 2011**

12:00 - 1:30 PM Eastern Time

The ABA Section of Dispute Resolution, in collaboration with Penn State Law, will present a teleconference assessing Concepcion’s importance in the context of the Supreme Court’s arbitration jurisprudence and exploring the decision’s implications regarding:

- The availability of class action litigation for consumers and employees
- Additional growth in the use of consumer and employment arbitration
- The “fundamental attributes” of arbitration, as dispute resolution options continue to evolve
- The potential regulation of consumer arbitration, through self-regulation, soft law or hard law

**Speakers:**
- Thomas Carbonneau, Samuel P. Orlando Distinguished Professor of Law, Penn State University, Dickinson School of Law, and author of *The Law and Practice of Arbitration*
- Alex Colvin, Associate Professor of Labor Relations and Conflict Resolution, Cornell University, and author of “An Empirical Study of Employment Arbitration: Case Outcomes and Processes”
- Michael Foreman, Director of Civil Rights Appellate Clinic, Penn State University, Dickinson School of Law, and counsel on Supreme Court briefs in 14 Penn Plaza LLC v Pyett and Rent-A-Center v. Jackson
- Nancy Welsh, Professor of Law at Penn State University, Dickinson School of Law, and author of “What Is ‘(Im)Partial Enough’ in a World of Embedded Neutrals?” (Moderator)

**Price:**
- $55 – ABA Section of Dispute Resolution members
- $95 – ABA members
- $115 – General/Non-members

**Registration:**

[Online](#)

[Mail/Fax](#)

Registration Deadline – Wednesday, June 22, 2011

CLE Information: 1.50 hours of CLE credit in 60-minute states/1.80 hours of CLE credit in 50-minute states have been requested in states accrediting ABA teleconferences and live audio webcasts. States currently not accrediting ABA Teleconferences: DE, IN, KS, OH, PA.
This panel will discuss the most important arbitration issues of the past year. Topics of discussion will include the United States Supreme Court rulings dealing with arbitration issues, as well as notable federal and state court decisions. Of particular note, the panel will talk about issues relating to the Supreme Court rulings in the areas of arbitrability and class action arbitrations.

Speakers:
Kristen Blankley, University of Nebraska, College of Law, Lincoln, NE
Maureen Weston, Pepperdine University, School of Law, Malibu, CA
James Madison, Menlo Park, CA

Price:
$55 – ABA Section of Dispute Resolution members
$95 – ABA members
$115 – General/Non-members

Registration:
Online:
Mail/Fax

Registration Deadline – July 6, 2011

CLE Information: 1.25 hours of CLE credit in 60-minute states/1.5 hours of CLE credit in 50-minute states have been requested in states accrediting ABA teleconferences and live audio webcasts. States currently not accrediting ABA Teleconferences: DE, IN, KS, OH, PA.

9th Annual Mediation and Advocacy Skills Institute
American Bar Association Section of Dispute Resolution

Past Participants have Said……..“The faculty are excellent, and the opportunity for advocates and mediators to interact in small facilitated groups made this an exceptional and valuable program for mediators and advocates alike.”
SAVE THE DATE

November 3-4, 2011

SHERATON SUITES AT SYMPHONY HALL
SAN DIEGO, CALIFORNIA

Topics Covered Include:
Preparing for Mediation
Maximizing the Joint Opening Session
Ethical Issues
Negotiating in the Caucus Stage
Breaking Impasse
Developing Your Practice
and more!

In Cooperation With:
San Diego County Bar Association
Arizona State Bar ADR Section
California State Bar Section of Litigation
Hawaii State Bar ADR Section
Inter-American Bar Association-International Arbitration Law Committee
Nevada State Bar ADR Section/Oregon State Bar ADR Section
The U.S. – Mexico Bar Association

TO REGISTER AND FOR MORE INFORMATION VISIT: click here

Attendees will receive:
12.0 hours of MCLE credit, including 1.0 hour of ethics credit, have been requested in 60-minute states. 14.4
hours of MCLE credit, including 1.2 hours of ethics credit, have been requested in 50-minute states.

CALENDAR OF EVENTS

June 21, 2011
The Effect of Spirituality & Morality on Negotiation
Free Teleforum for members of the Section of Dispute Resolution Mediation Committee
(All Section members are invited to join the Mediation Committee. See the Mediation Committee page for
more information)
Presenter: Jane Juliano
Date & Time: June 21, 2011, 1pm ET

June 23, 2011
12:00 - 1:30 PM Eastern Time
Teleconference:
Supreme Court Arbitration Update
Assessing the Importance and Implications of AT&T Mobility v. Concepcion
Registration:
Online
Mail/Fax
Registration Deadline – Wednesday, June 22, 2011
**JULY 7, 2011**

12:00 PM - 1:30 PM Eastern Time

Registration: To register online click here.

Registration Deadline – July 6, 2011

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**August 4-7**

Dispute Resolution Section Programs at the ABA Annual Meeting

Renaissance Toronto Downtown Hotel

Toronto, Ontario, Canada

Schedule at a Glance:

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<tr>
<th>TIME</th>
<th>THURSDAY, AUG 4, 2011</th>
<th>LOCATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>8:30am - 10:00am</td>
<td>How Decision Trees Can Help your Right-Brain Clients Arrive at Successful Conclusions</td>
<td>Metro Toronto Convention Centre</td>
</tr>
<tr>
<td>2:00pm - 3:30pm</td>
<td>Dial I for Infringement, The Anatomy of an IP Dispute Co-Sponsor: Section of Intellectual Property Law</td>
<td>Metro Toronto Convention Centre</td>
</tr>
<tr>
<td>2:00pm - 3:30pm</td>
<td>The Art and War of Mediation: The Top Ten Effective Tools and Ethical Concerns You and Your Client Better Consider Before Entering the Mediation</td>
<td>Metro Toronto Convention Centre</td>
</tr>
<tr>
<td>3:45pm - 5:15pm</td>
<td>Resolving Construction Disputes in Canada and the U.S. – Looking Back, Looking Forward</td>
<td>Metro Toronto Convention Centre</td>
</tr>
<tr>
<td>3:45pm - 5:15pm</td>
<td>Empathy, Creativity, Neutrality and Persuasion: What Dispute Resolvers Can Learn from the World of Theatre Co-Sponsor: Forum on Entertainment and Sports Industries</td>
<td>Metro Toronto Convention Centre</td>
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<tr>
<th>TIME</th>
<th>FRIDAY, AUGUST 5, 2011</th>
<th>LOCATION</th>
</tr>
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<tbody>
<tr>
<td>8:30am - 10:00am</td>
<td>Psychology &amp; the Computer: Their Effective Use in Mediation of Complex cases</td>
<td>Metro Toronto Convention Centre</td>
</tr>
<tr>
<td>8:30am - 10:00am</td>
<td>Take the High Road: Mastering Top Ethical Challenges Facing ADR Advocates and Neutrals</td>
<td>Metro Toronto Convention Centre</td>
</tr>
<tr>
<td>8:30am - 10:00am</td>
<td>Secrets, Lawsuits and Mediation: US and Canadian Alternatives to FOIA Litigation Primary Sponsor: Section of Administrative Law and Regulatory Practice</td>
<td>Metro Toronto Convention Centre</td>
</tr>
<tr>
<td>10:30am - 12:00pm</td>
<td>“Implicit Bias” and the Myth of Equal Justice Primary Sponsor: Section of Litigation</td>
<td>Metro Toronto Convention Centre</td>
</tr>
<tr>
<td>10:30am - 12:00pm</td>
<td>9/11 - A Decade Later, And A World Apart Primary Sponsor: Section of International Law</td>
<td>Metro Toronto Convention Centre</td>
</tr>
<tr>
<td>10:30am - 12:30pm</td>
<td>If You Were In My Shoes: Corporate Social Responsibility and Community Rights Primary Sponsor: Business Law Section</td>
<td>Piers 2/3, Convention Level, The Westin Harbour Castle</td>
</tr>
<tr>
<td>2:00pm - 3:30pm</td>
<td>Canada v. U.S. – Advocacy in International Arbitration – Different Cultural and Procedural Approaches Co-Sponsor: Section of International Law</td>
<td>Metro Toronto Convention Centre</td>
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<tr>
<td>2:00pm - 3:30pm</td>
<td>Making Money Talk</td>
<td>Metro Toronto Convention Centre</td>
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<tr>
<td>2:00pm - 3:30pm</td>
<td>Cloud Computing Demystified!! Is It A Revolution or an Evolution?? Primary Sponsor: Section of Science &amp; Technology Law</td>
<td>Metro Toronto Convention Centre</td>
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<tr>
<td>3:45pm - 5:15pm</td>
<td>New Hybrid Approaches to Transactions, Dispute Prevention &amp; Resolution: Ethical Considerations in Shaping ADR Processes to Fit the Problem and the People in Deals and Disputes</td>
<td>Metro Toronto Convention Centre</td>
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<tr>
<td>3:45pm - 5:15pm</td>
<td>How Arbitrators Think and What You and They Can Do About it: A Journey Into the Minds of Arbitrators</td>
<td>Metro Toronto Convention Centre</td>
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<tr>
<td>5:30pm - 10:00pm</td>
<td>Section Reception and Dinner</td>
<td>TBD</td>
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**SATURDAY, AUGUST 6, 2011**

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<thead>
<tr>
<th>TIME</th>
<th>Executive Committee Meeting</th>
<th>LOCATION</th>
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<tr>
<td>7:30am - 8:30am</td>
<td>Executive Committee Meeting</td>
<td>Renaissance Toronto Downtown Hotel</td>
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</table>
8:00am – 9:00am  Council Breakfast
8:00am – 9:00am  Ethics Committee Meeting
9:00am – 2:00pm  Council Meeting
2:00pm – 2:30pm  Annual Meeting of the Members and Council Elections
3:00pm – 5:00pm  Long Range Planning Committee Meeting

SUNDAY, AUGUST 7, 2011
8:30am – 10:00am  Arbitration Case Law Update
Joint Program with Labor and Employment Law Section
Metro Toronto Convention Centre

For more information and to register click here:

October 16-22, 2011
ABA Mediation Week
For more information on hosting a Mediation Week event contact Matthew Conger at
matthew.conger@americanbar.org

November 3-4, 2011
9th Annual Advanced Mediation & Advocacy Skills Institute
Sheraton Suites at Symphony Hall
San Diego, CA

April 18 – 21, 2012
14th Annual Spring Conference
Hyatt Regency Capitol Hill
Washington, DC

JUST RESOLUTIONS SUBMISSIONS
Editor
David Moora
David.Moora@Americanbar.org

Content editor
Gina Viola Brown
Gina.Brown@Americanbar.org

Newsletter Production
Pamela Meredith
Pamela.Meredith@Americanbar.org

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Click here to read the Newsletter submission guidelines.

Just Resolutions is published monthly except for in the months of April and August.

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