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Alternative Dispute
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NEUTRAL NEWS YOU CAN USE Spring 2008

► **MEDIATION – Confidentiality of mediation litigated** - In *Williams v. Johanns*, 529 F. Supp.2d 22 (D.D.C. 2008), an attorney was sanctioned for disclosing to the court conversations that took place during a mediation session. In *Hauzinger v. Hauzinger*, 43 A.D.3d 1289, 842 N.Y.S.2d 646 (4th Dep't 2007), the Appellate Division upheld a trial court's refusal to quash a subpoena directed to a mediator in a pending divorce action. The court believed that the subpoenaed mediator's testimony was necessary to determine whether the underlying separation agreement was "fair and reasonable at the time of the making of the agreement," the applicable standard. These decisions serve as a reminder that counsel must take care, not only in drafting confidentiality clauses in mediation agreements, but in safeguarding the confidentiality of the process.

► **ARBITRATION – Arbitration continues to be a favored dispute resolution device, but will not supplant federal statutory supremacy.** In its decision in *Hall Street Associates, LLC v. Mattel, Inc.*, 552 U.S. ----- (2008), the Supreme Court refused to enforce an attempt by parties in an arbitration agreement to define the grounds for judicial review of the award. Justice Souter commented that the limited grounds for review in the FAA reflect "a national policy favoring arbitration with just the limited review needed to maintain arbitration's essential virtue of resolving disputes *straightaway*." (emphasis added). With arbitration becoming more and more like litigation, speed and efficiency is wishful thinking, perhaps?

► **INVESTIGATIONS – Recent reports by the EEOC and other polling organizations report that discrimination claims (race, sex, pregnancy, retaliation) spiked in 2007.** Prompt, careful handling of internal complaints continues to be an important safeguard in responding to and preventing discrimination litigation. On the other hand, a faulty investigation can do more harm than good. Finesse and familiarity with employment law are the skills needed to conduct a reasonable investigation.

► **TRAINING – In difficult economic times, management and employee training should not be put on the back burner.** Empirical research and anecdotal evidence continue to demonstrate the importance of employee engagement to productivity, retention, and discipline. While in person training is always desirable, increasing dependence on electronic communications for geographically diverse workplaces, makes on-line training an affordable and practical alternative. I have recently partnered with *JG Advisory Services LLC* in developing and launching a web-based employment law compliance program for hedge funds, which can be adapted to any workplace. Please visit my website for more information.

Ruth Raisfeld provides alternative dispute resolution services including mediation, arbitration, workplace investigations and training. She can be contacted through her website at www.rdradr.com or at rdradr@optonline.net or 914.722.6006. This newsletter is for informational and promotional purposes and does not constitute legal advice or establish an attorney-client relationship. If you wish to unsubscribe to this newsletter, please contact Ruth. ATTORNEY ADVERTISING