Unanimous decision in Fair v. Bakhtiari draws a bright line re admissibility of documents

San Francisco, December 15, 2006 – In a case closely watched by the alternative dispute resolution community, the California Supreme Court unanimously reversed a lower court decision today, ruling that the inclusion of an arbitration clause in a list of proposed settlement terms does not turn a mediated document into a binding agreement to arbitrate that's later admissible in court.

"In order to preserve the confidentiality required to protect the mediation process and provide clear drafting guidelines, we hold that to satisfy [the exception provision], ... a writing must directly express the parties' agreement to be bound by the document they sign," Justice Carol A. Corrigan wrote for the court.

Shartsis Friese partner Arthur Shartsis, who successfully argued the case before the Supreme Court, said that the decision reaffirms the "sanctity of the mediation process."

"Down from the Supreme Court comes the word," he said, "that we want people to mediate in an environment where they have no concern that whatever they say or do in a mediation will ever get into a trial."

The ruling can be found at *Fair v. Bakhtiari*, 06 C.D.O.S. 11371. See "The Air of Enforceability", *The Recorder*, October 2, 2006, for a fuller discussion of the issues raised by the case.

Founded in San Francisco in 1975, Shartsis Friese LLP has over 50 lawyers. The firm has extensive trial and business litigation experience, including securities enforcement defense, and a complex transactional practice focused on investment advisers, hedge funds, mergers and acquisitions, corporate finance, securities, tax, venture capital, intellectual property and real estate.