AIDA REINSURANCE & INSURANCE ARBITRATION SOCIETY

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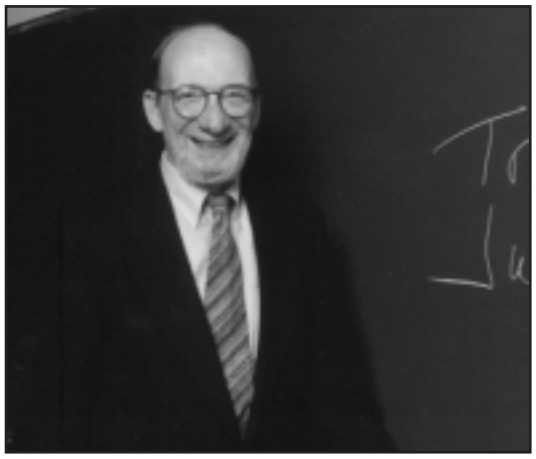
INSIDE:

THE CONCEPT OF ADMISSIBILITY: THE UTILITY OF THE LAW OF EVIDENCE TO THE ARBITRATOR



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KEYNOTE ADDRESS
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When a case goes to arbitration, or to any other informal forum of dispute resolution, you can usually hear the lawyers exhale a sigh of relief. "At least we will have no hassles over the arcane provisions of the rules of evidence, no judicial interference with our data streams." Free! Free of the arbitrary constrictions of foolish technicalities. If you asked experienced trial lawyers to construct out of whole cloth rules for a fact-finding commission, or an in-house disciplinary tribunal, the first departure from the judicial model would probably be to scrap the rules of evidence. Why is it that the litigators who know the rules of evidence best are the most relieved to work free of them? And are they right? Are the rules of evidence — embodied in ancient commonlaw, or in modern codes — nothing more than encumbrances to proof? Or are there, buried somewhere in the deep folds of the rules, some principles, some articulated guides, which would assist the arbitrator in dealing with the problems of proof?

I intend today to advance the bold thesis that behind the rules of evidence stand some basic principles as useful in the assessment of a cause in arbitration as in a case before a court. At the same time, I mean to argue that there are some basic tenets of the law of evidence that have no application in the forum of arbitration. I hope to offer some assistance in distinguishing between the two. Specifically, I mean to explore concepts of relevance, authentication and the role of experts, credibility and its impeachment, privilege, and some aspects of hearsay.

I start with a proposition on which, I suspect, we can all agree: the factual picture which emerges from a cause in contention is at best a construct, an approximation of the true historical fact. Our prime concern is that the inevitable distortion of the picture may be held to a minimum. We have, basically, two routes to that end. The first is to have unrestricted intake of data; on the theory that the more we know about an event, the more likely it is that we will recognize its true contours. In this inclusive model, the only filters are the practical constraints on evidence-gathering by the parties, and the wisdom of the joint judgment of counsel in limiting the issues. Financial weakness, lethargy, and ineptitude are powerful inhibitions on broad and productive investigation. But these limitations rarely enhance the prospect of a true determination of the facts. To a greater extent, the tribunal might appreciate counsels' agreed upon conception of the perimeters of the case. If both lawyers deem some subject beyond the boundaries of the case, it is very likely to be so. And the inclusive approach may be, to some extent, focused.

The problem with the inclusive approach, of course, is that a well-financed and imaginative lawyer is likely to have a very broad notion of what witnesses, what questions, what documents, what physical evidence might enlighten the fact-finder on the issue in contention. It's easy to understand the mentality of the litigator (most of us have been there ourselves): Fact-finders are unpredictable, even whimsical at times.

You never can tell what datum just might catch someone's attention — might even turn out to be the determinative item in the final accounting. Therefore, let's put in the kitchen sink — hey, y'never know, right?

The other model is the exclusive approach familiar in trials ruled by the law of evidence. Here, some form of restriction is imposed on the advocates. The obsolete purpose of these limitations — wholly inapplicable to arbitration in any event — was to prevent distraction and confusion of the ignorant lay jurors. The learned court, it was thought, should see to it that only pertinent and reliable evidence reaches the minds of the jurors But there is another purpose to evidentiary exclusions, as important today — and in the arbitration setting — as it ever was. And that is: efficiency. My wife is a judge. Her view? "Thank the sages of old and benevolent powers that be for the rules of relevance, and all the rest," she says. "Without them, I would still be trying the case I started last year." In fairness, I suppose it must be said that she does not underestimate the persistence and resourcefulness of free-range counsel. Plus she has an educated aversion for the protracted and devious story I do not cite my wife's appreciation for the constrictions of the rules of evidence as a recommendation that, in the interests of efficiency, arbitrators should adopt the Federal Rules of Evidence. I suggest that low-

cost efficiency may be derived from a selected few of the principles behind the rules of evidence. And on that mission, I now propose to embark.

RELEVANCE

Everyone excludes irrelevant evidence. Life — or at least verbal intercourse — would be hell without some way to focus on the topic at hand. If we could never say, "What's the point of this remote bit of intelligence," or: "What the devil does that have to do with it?" we could not bear to listen to any tale. It must be so with arbitrators too. The problem is: Are there any principles of relevance that might guide the effort to focus on the material facts and eliminate the marginal, trivial, or distracting? I think it is fair to say that there are, in the law of evidence, two major modifiers that rule the issue of relevance. And I mean to dismiss both as useless to the arbitrator. They are, however, so important and pervasive that I think I must describe them both briefly, before dismissing them.

A judge, long-time colleague, and respected sage on evidence, Jack Weinstein, once said to me that the only provision of the Federal Rules of Evidence that a really good judge needs is Rule 403. Relevant evidence is defined by the Rules, in effect. as any datum that makes any fact in issue more or less likely than it would have been without the datum in question. As good a definition as we can come up with, in my view. The Rules also say that relevant evidence is admissible (unless otherwise barred) and irrelevant evidence is not. But this rule must be read in the light of Rule 403. What Rule 403 does is introduce the dual concepts of prejudice and efficiency. It provides that even relevant evidence should not be introduced if it is prejudicial or needlessly confuses or multiplies the issues.

Perhaps we might spend a moment examining that idea of "prejudice." It is a subtle idea. It is any datum the persuasive effect of which exceeds its true value, or is likely to inflame passions to the point that they overwhelm reason. More persuasive than it should be? More emotionally provocative than appropriate? By whose lights? The concept is typical of the old, patronizing, function of the law of evidence — the jurors, being weak in mental discipline, will conjure insupportable inferences, or allow reason to be overwhelmed by emotion. I don't think either is a real danger with arbitrators. And so, with a nod to brother Jack, I rule the concept of a balance between probative value and prejudicial potential inapplicable to arbitration.

The efficiency aspect of rule 403, however, is certainly central to the arbitrator's task. Though not worried about confusion and distraction, the arbitrator surely wishes to keep the proceeding focused on critical issues in actual contention. Thus, relevance should be informed by a rigorous constraint of materiality.

The other major principle animating the law's consideration of the rules of relevance is more troublesome. And though I will likewise deem it largely outside the helpful circle of ideas, it might be worth a moment's thought. I refer here to the relevance of evidence of prior, unrelated conduct, insofar as it throws light on conduct in dispute.

All of us share the belief, I trust, that behavior emanates from personality. By that, I mean that every person is predisposed by personality to behave in predictable ways in given circumstances. Not that we always act in accord with our predisposition, but character is a highly predictive factor in the constellation of influences on conduct. Don't we all count on our fellows reacting in ways consistent with what we have learned by experience is a characteristic fashion? When we want to know whether it is likely that a particular individual did a particular act, don't we ask, is that the sort of thing he would have done? Well. If you don't already know, you will be surprised to learn that the rules of evidence, everywhere and since their common law invention, exclude evidence of other conduct (especially bad acts) that go to prove propensity to do the act in question. Now the reason for this grossly counter-intuitional rule reverts to the idea of prejudice (and for that reason I ultimately reject it for arbitration). But it may still be worth pondering for its possible effect on the arbitrator's deliberation.

The idea is that the datum is, in effect, overdeterminative: that knowing that an individual previously did something like the conduct in question is all you need to know to conclude that he did it again. You may remember an article that appeared in the NY Times Magazine this past August (subsequently published as a book and doing very well) in which a professor who served as a juror on a murder case describes the experience. His punchline is that, after the long, painful deliberation (resulting in a reluctant verdict of not guilty), the jurors learned a fact excluded from the trial evidence. They learned that the deceased had previously done something like what the defendant said he did on the occasion in question. That knowledge, the author suggested, validated the jury's verdict by attesting to the credibility of the self-defense story. Maybe so, but maybe the behavior was not repeated on the occasion in question, and the rest of the case should have been examined — as it was — on all the other evidence. So the note of caution is that evidence of prior conduct — or misconduct — tends to be overwhelming even to conscientious, educated fact-finders.

I do not for a moment propose that arbitrators reject the common reference to character in the determination of conduct. I would deem this a prime instance where you are well free of the arbitrary exclusions of the rules of evidence — however long may be their lineage. I simply advise that evidence of prior similar behavior should be received with self-admonitions not to weigh the datum too heavily.

AUTHENTICATION AND THE ROLE OF EXPERTS

Documents and dumb objects rarely speak for themselves (though the Rules of evidence have some special categories of self-authenticating documents: official papers under seal and the like). In courtrooms, the words in the document itself, declaring what it is or how it bears on the facts in issue, are the simplest form of hearsay. I should think you would regard them the same way, especially where they might be seen as self-serving. Yet to mark the document as a relevant datum, some extrinsic attestation is required. So the upshot is that a document is not admissible until some live witness, knowledgeable and subject to cross-examination, has testified that the document is what it purports to be. Normally, that witness will not be an "expert" — except, of course, insofar as special knowledge and experience is required in order to recognize and identify the document or object. I would suppose that, in the normal course — perhaps without designating the process "authentication" — the arbitrator would, like a judge, require some testimonial evidence from a knowledgeable source, identifying a document or physical object and describing its relevance to the issues in dispute. This is simply the rules of evidence cum common sense.

But there are occasions where the authenticity — or relevance — of a document will require the opinion of an expert: is the handwriting that of the plaintiff? Has this document been altered? Does the flake of paint come from the fender of the defendant's car? Is the blood on the defendant's sock the blood of the victim? The necessity to call upon the expert raises questions about the

role and qualifications of so-called expert witnesses.

I am sure that you have developed your own standards for the submissions by witnesses in this category, but I daresay you might occasionally be troubled about when and on what subjects experts may properly testify, and what criteria separate the true expert from the charlatan. Put another way, problems for courts — and probably for arbitrators as well — come down to two: who is an expert and on what subject may the expert offer an opinion?. In this department, I think the Rules of Evidence may be of some assistance — though, as evolved, they probably offer less help than we might like.

The old commonlaw rule, with which many of you are doubtless familiar, designated the expert as one who, by virtue of special training or experience, was competent to understand, analyze, or describe data that would be a mystery to the rest of us. So far so good. But here's the rub: under the Frye rule (as it was called), the framework and the techniques of analysis employed by the expert had to be recognized within a professional or scientific field as reliable for other than forensic purposes. The reason for the restriction is obvious, we don't want these self-anointed, for-hire testifiers to snow the jury with phony scientific data. But the first question is: what is a scientifically respectable "field"? Polygraph analysis? Graphology? And is there really any non-forensic field of ballistics? Do laboratories test for paint or fabric match-ups for any clients other than lawyers? So in recognition of the facts of life, the old standard was replaced by the famous Daubert rule. This 1993 decision of the Supreme Court held, in its most famous passage:

Faced with a proffer of expert scientific testimony, then, the trial judge must determine at the outset . . . whether the expert is proposing to testify to (1) scientific knowledge that (2) will assist the trier of fact to understand or determine a fact in issue. This entails a preliminary assessment of whether the reasoning or methodology underlying the testimony is scientifically valid and of whether that reasoning or methodology properly can be applied to the facts in issue. We are confident that federal judges possess the capacity to undertake this review.

Notwithstanding the Court's confidence, the Daubert decision has generated a great deal of ink in the years since. As of last week, West had 323 law review articles with the name "Daubert" in the title. But basically, all Daubert did was to assign to the trial judge the "gatekeeper's" job of evaluating the bona fides of the proposed expert. Applying flexible criteria not so different from those traditionally employed under Frye, the trial judge would receive only the opinions of respectable people in a respectable — preferably "scientific" — line of work.

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Probably the toughest problem for courts in this area has been the polygraph.

Polygraph readings today are employed in many ways, relied upon for many important decisions, including by law enforcement agencies. Yet most courts continue to view the evidence as unreliable. In part, this is the old fear of prejudice: that the unsophisticated jury is likely to accord greater weight to the "lie detector" evidence than it deserves. I frankly do not know how such evidence should be rated according to the Daubert standard. To the extent that you feel yourselves helpfully advised by Daubert's words — and unencumbered by judicial skepticism — all you need do is assess the "scientific validity" of the polygraph technique. Liberal arbitrators might consider the claims of the operators themselves, together with the widespread use of the device by serious enterprises, and take that as evidence of "validity." Others, I daresay, will be dubious, rejecting polygraph results altogether or receiving it "for what it's worth." (A phrase of implicit disparagement.)

There has also been a minor adjustment in defining the occasion for receiving the opinion of an expert. The commonlaw standard with which I grew up was that an expert may opine only in those areas where the ordinary juror could not be expected to be conversant — matters "beyond the ken" of the ordinary juror, as it was invariably put. It would usurp the jury's function — as well as insult their intelligence — to have an expert expound on a subject they were perfectly familiar with themselves, and entirely capable of understanding without any tutelage. I can readily appreciate how an arbitrator might apply such a standard, ruling in effect, do not waste my time by telling me what I already know. I know perfectly well that a declining demand for a product will bring down its price without some professor of economics explaining it to me.

The problem with the old test was that many matters generally within the ken of an average juror may be further elucidated by an expert. The Federal Rules of Evidence provide that an expert may testify whenever the evidence would be helpful to the fact finder. It may be that ordinary experience in life equips us all to recognize a match between a known and an unknown handwriting exemplar. But it might also be very helpful to have an expert identity, and calibrate, the points of similarity and difference.

Perhaps the most difficult problem in this area remains the psychologist, undoubtedly qualified, who offers evidence on the accuracy of perception, recognition, and recall. I doubt that you have many matters where the ability of a person to recognize and

identify a stranger, seen briefly on an earlier occasion, becomes a critical issue. This is standard fare in criminal prosecutions. But you may have similar issues and you surely have matters in which accuracy of perception and recall figures prominently. "Was X at the meeting where this matter was discussed?' "Did Y have the report on her desk before she announced her decision on the matter?" "What was Z's reaction when he first heard the news?' Any number of factual issues depend, ultimately, on whether a witness' good-faith observations and subsequent recall can be trusted. The fallibility of perception and recollection is typically a matter well within the ambit of ordinary experience — it is fully within our ken. But, as you probably know well, there is a corps of diplomaed experts standing by, with charts and statistics at the ready, to take the stand and explain in detail the common errors of perception, along with the erasures and distortions in the ordinary process of recollection. Will you hear that witness?

The trial courts are split. It's powerful stuff and virtually incontrovertible. The experts all agree. The studies are out there; they are respectable empirical work; and they do show that errors of perception are prevalent, and memory is often erroneous and easily influenced by a variety of factors. Maybe it's the old prejudice again: listen to the experts and you could readily conclude that no human witness should be believed about anything. Yet, as an arbitrator — unworried about possible prejudice — you might responsibly conclude that an expert like this on the stand might well clarify your own thinking about a critical question of credibility. So I can only sum it up by saying it's a hard question on which conscientious arbitrators might well disagree.

CREDIBILITY AND ITS IMPEACHMENT

As you know, credibility is the heart of the fact-finding game. Credibility may even be even more important than plausibility (because the plausibility litmus tends to discount the improbable, and we all know the strangest things happen all the time).

Just ask yourself whether you believe the witness, not whether the story she tell is probable. And you might think that, when it comes to credibility, there is little help to be expected from the Rules of Evidence. Either you believe the witness or you don't.

However, assigning credence is a chancy business at best. There are studies out there on the accuracy of people's judgment of mendacity, and they are not encouraging. The conclusion I remember best (though I try to forget it since it undermines much of the litigation process) was that believable people tend to be believed at about the same rate whether they are telling the truth or lying, and vice versa. Judges — and, I suppose, arbitrators — turn a blind eye to such data (and to common experience as well), and continue to proclaim that mendacity may be read in the demeanor of a live witness testifying viva voce in the presence of the fact finder. Thus, the mainstay of the credibility rules (which we will next explore) is the rule against hearsay. Even the US Constitution requires such live testimony in criminal cases by the confrontation clause of the Sixth Amendment. Of course, you are not bound by the rule against hearsay as such, but I wonder how you feel about getting your facts from documents, even sworn documents. Do you feel deprived of the key to credibility? Do you require live testimony on issues where you judge credibility to be at issue?

There are other ways that the laws of Evidence try to enhance the accuracy of the credibility call. There is, for example, the "first hand knowledge rule." Similar to the hearsay precept, the rule requires that, except for experts, witnesses must base their recital on their own perceptions. Judge are quick to intervene when a witness lapses into the familiar conversational mode of inference. As soon as the witness allows to creep into the testimony the words: "must have," or "it seems like," or "he probably thought that . . .", the judge will rule "guess, conjecture, or surmise" and sustain the objection. The ordinary witness is supposed to be no more than a mindless conduit for perceived facts. Of course, all human witnesses, however objective, draw inferences in the act of reporting, apply tacit assumptions, and engage in a host of other mental processes, but the law does not indulge in such sophisticated debate.

The most intrusive the law of Evidence gets on the subject of credibility concerns impeachment and the acceptable methods for discreditation. Ancient laws of witness disqualification have been modified. Thus, being a party in interest, or having a prior conviction of felony, for example, while no longer disqualifying, are carried forward into modern law as grounds for impeachment. Others techniques of impeachment are the product of common sense: self-contradiction, bias, and general dishonesty. Codes of evidence typically mention only a few of the many methods of impeachment, but generally, the laws of evidence on the subject can be divided into two categories. The first has to do with hostile questions that may be posed to a testifying witness on cross-examination. The other concerns the introduction of evidence from a source extrinsic to the impeached witness that contradicts or otherwise undermines the veracity of the primary evidence.

Opportunities for impeachment by cross-examination depend, of course, on the operative rules that require that witnesses take the stand to offer their evidence viva voce. In a courtroom, where hearsay rules are strictly applied, most evidence comes from live testimony. Things may be different in arbitration. However, even without the urging of the hearsay rules, all sorts of good tactical reasons may put critical witnesses on the stand. Parties to an arbitration, like all parties to litigation, usually believe their strongest evidence comes from live witnesses.

The general rule in courtrooms is that almost anything may be asked of a testifying adverse witness. The only restriction is not much of a restriction: that the question must be asked "in good faith" — meaning that the lawyer must have some reason, however remote, for believing that the answer might be affirmative. Thus, the question, "Isn't it a fact, sir, that you have filed false income tax returns for the last ten years?' would be warranted by a statement from the client that people in the office were always talking about how the boss cooked the books around tax time. Of course, the question must be relevant to credibility, but almost everything is.

I should mention that there are a few special rules, such as those governing prior sexual conduct in a sex offense case, but happily those special rules probably arise but rarely in the actions to which you are accustomed.

Most of the rules pertain to criminal cases or civil cases arising out of criminal behavior. Rule 412 does provide, however, that in a civil case involving "sexual misconduct," evidence of the victim's sexual predisposition is admissible.

Things get a bit more complicated when it comes to attacks on veracity by the introduction of extrinsic evidence. Here we encounter the somewhat ill-defined collateral issue rule. This rule is simply: no

extrinsic evidence on a collateral matter. By "extrinsic evidence" we mean evidence from a source other than the witness under examination. But what is a collateral matter? Some say it refers to anything unimportant. A better definition is that it is data the only relevance of which is to credibility. The believability of evidence in documentary form, however, may surely be challenged by contradictory evidence in the same form. Moreover, the old maxim is essentially a rule of efficiency, and should be applied flexibly by an arbitrator. That is, where the proceedings would not be seriously sidetracked to litigate the credibility of a testifying witness, the arbitrator should probably consider any evidence that undermines the credibility of an important witness, though it comes from an extrinsic source.

I should probably say a sentence or two about attacks on credibility by evidence of bad character. I preface these few sentences by emphasizing that I doubt whether you care about this, and — to the extent that you don't — I applaud your good sense. The law of evidence allows character evidence and, to some extent, proof of prior conviction to come in on the issue of a witness' propensity to lie on the stand under oath. You may notice that — for no good reason — this rule is just the contrary of the rule regarding character and propensity generally. Now, I don't know how often you see witnesses taking the stand to attest to their personal opinions of the reputation in the community of the prior witness for the traits of truthfulness and veracity. Nor can I guess whether, to the extent that you do hear evidence of good name, you are swayed by such testimony. Maybe for those in certain lines of endeavor, it is refreshing to hear a string of witnesses attesting to their scrupulous regard for the obligations of candor. For what it may be worth to you in these instances, however, I advise you only that the Federal Rules allow such evidence of good character only after an attack by evidence of the witness' mendacity.

PRIVILEGE

The viability of privileges of various sorts in the arbitration forum is, perhaps, one of the most provocative of my subjects. Privilege is a thorny topic, generally — the only one that the Congress backed away from, rejecting a number of specific proposals and providing in the Federal Rules of Evidence only that privileges are governed by the Constitution, acts of Congress, and the common law.

I would suppose that all of you would honor the refusal of a witness to testify on grounds of the so-called right of silence derived from the Constitution's Fifth Amendment. You do so, I take it, as a matter of grace since, as a private forum, you are not bound by the Constitution. And I would guess that most — if not all — of you would not force disclosure of materials claimed to be the confidential communications between lawyer and client made within a professional relationship. And you probably extend that exemption to the lawyers' favorite: "work product." Yielding to this claim of privilege — accepting the law of evidence in this one instance — may be simply an exercise of prudence. To the extent that you have lawyers before you, you know that they would raise a howl, and very likely dig in their heels and defy you, if you tried to pry from them what they deem to be covered by their precious privilege.

But what of all the other little truth-defeaters? Do the traditional doctor-patient, priest-penitent, and marital communication privileges serve to limit the flow of relevant evidence in arbitration? And what of the newer and more controversial privileges: the dentist-patient, accountant-client, the therapist-patient, journalist-informer, the filial? Will you allow anyone with a tenable claim to a socially important relationship based on candid confidential communication to withhold information that would otherwise advance the truth-finding aspect of your job?

I am probably not a good person to ask about this problem because I am no great friend of these privileges. I am acutely aware of the enormous difficulty of arriving at a true reconstruction of past event by the crude device of adversary litigation. I regard it as our first order of business to attempt enhance the accuracy of a fact-finder's product. This makes me reluctant to exclude helpful material. Perhaps I would be more enthusiastic if I believed that the privileges actually serve their touted social purposes. But I have never been entirely persuaded that the privileges really make important professional and familial relationships work better. Indeed, lawyers have confided to me that, even with the privilege, their clients often lie to them. And for all those years when they enjoyed no privilege, I didn't notice that psychotherapists had a problem with patient candor.

Now, I am not so naive as to think that the formal courtroom setting will ever foreswear the privileges. But I think if I were a privately appointed arbitrator, free of the shackles of established evidence law, I would look with jaundiced eye on any attempt to evade the obligations of testimony by resort to privilege. More than this I cannot say. I would be interested to hear your experiences and reactions in this regard.

HEARSAY

Ah, the rule against hearsay and its 32 enumerated exceptions! The jewel in the crown of the law of Evidence! Home and refuge for some of the most excruciatingly absurd assumptions in the entire corpus of the law. Consider a few choice examples.

* Contrary to all the empirical data, the flow of adrenaline is an assurance of reliability in an excited declaration.

* Fear of immanent confrontation with one's maker keeps our dying words true and honest.

* Factual findings resulting from investigations by government agencies are so invariably trustworthy that we can dispense with any cross-examination of the investigators.

* Statements to a physician are so likely to be honest and accurate that they will be admitted for the truth of the medical conditions they purport to describe even though they were made for the sole purpose of securing the MD to testify to a favorable diagnosis .

Obviously, you do not want to be bound by the exceptions developed and encoded on this masterpiece of jurisprudence.

But how about the concept of hearsay itself? Anything of value there for the unbound arbitrator? Well, in large measure, it depends upon how you feel about demeanor evidence. The whole purpose of this rule is to assure that the first-hand witnesses will be in court to give their accounts live, under oath, and subject to cross-examination in the presence of the fact finder. Why is live testimony so important? Surely not because it is — as it is in Britain — spontaneous and unrehearsed. Nor is it, I think, because the average witness would scruple to stray from the strict truth in the awesome atmosphere of the courtroom. Conscience is not so cheaply purchased in the face of contrary self-interest.

Rather, it is because we continue to trust the

small behavioral betrayals of mendacity. We resolutely believe that you can tell a liar by looking at him. Or, more specifically, as you watch the demeanor of the witness while reciting the story, and especially as the witness reacts to vigorous challenge by adverse interrogation, you can detect the signs of fabrication. Does the witness look the interrogator in the eye? Or do her eyes wander about, or look perhaps at the ceiling? Does the witness answer with clear and firm responses? Or does he insert hesitations and qualifications? Does the witness perspire at certain questions, and drink a lot of water? Does she keep her arms and legs crossed while answering? Is there a lot of shifting around and touching the face and body while listening to questions? These, and probably a host of others, we regard as reliable indices to the mendacity of a witness, and the law honors that faith by making sure that, as a general rule, we the fact-finders will have the opportunity to make the observations on which our appraisal of credibility will depend.

Credibility is a vitally important part of the process. And it is surely true that its assessment is one of the most daunting aspects of any system of adjudication. But the old faith in the behavioral signifiers has come under serious question. Numerous empirical studies have tested each of the supposed give-aways. The results? None correlates significantly with mendacity. In other words, a neutral and attentive fact-finder will be as likely to recognize an honest account in writing as orally recited.

Wigmore, I think it was, who first proclaimed cross-examination was "the greatest engine" yet invented for the detection of truth. Sometimes, maybe, it works. But I have often wished for a good study of the effectiveness of cross-examination generally in unmaking the liar, or even revealing the weakness of the poor or forgetful observer. And there was one such study I found but it was set up so badly I have no faith in its conclusions. As I have already mentioned, the most memorable finding from the scattered work of the social scientists is the not surprising conclusion that people tend to believe believable people and disbelieve the others regardless of whether they are telling the truth or not. And I would add, whether they are answering questions on direct of cross examination.

If that is a bit too cynical for you, and you remain among those (like my wife) who believe you know a liar when you hear one, more power to you. You should insist that the principle of the rule against hearsay be honored in your forum. Although I can not count myself among the faithful, I am glad to see a proceeding in which witnesses report their first hand observations insofar as practical, and second hand accounts and documentary evidence is secondary. You don't have to enforce the rule against hearsay or its exceptions slavishly to honor the principle of preference: live stories where practicable. At the same time, you should probably recognize that there are certain established exceptions to this rule that make sense. Medical records made and kept for purposes of therapy are highly reliable. Probably most regularly made and regularly kept records of businesses and other serious activity are also entitled to respect in court. Where a witness has no present recollection of an event but can attest to an accurate record made at a time when recollection was fresh, that recorded recollection is probably entitled to consideration for what it contains. And so on. Though not binding as such, many of the underlying principles of the rule against hearsay fit nicely within the tutored common sense of the arbitrator.

And that's really what it's all about, isn't it? Where the courtroom has developed a highly stylized common sense, the arbitrator and the parties wise or lucky enough to be before the arbitrator are free to pick and choose the best of the precepts, while ignoring the foolish encrustations and enigmatic convolutions of a doctrine too long the framework of the traditional, formal, adversary process.

CONCLUSION

In conclusion, let me append a word on the title assigned to this paper. The concept of admissibility, as embraced by the law of evidence, has two intertwined aspects: the differential worthiness of data and the value of the time and attention of the adjudicator. As to the first, the law of evidence tries, in an elaborate — and often crude — manner, to identify data that is pertinent, trustworthy, and from a knowledgeable and reliable source. In addition, it attempts (again in an often awkward fashion) to take account of the difficulty of attributing credence by allowing the fact-finder the fullest opportunity to view the supposed indices of veracity. This is all in the interests of sorting the worthy from the unworthy data. And it is very largely predicated on the notion that those called upon to find the facts — the lay jury — will be easily distracted, misled, inflamed, or otherwise hoodwinked. Whether or not this is so, this should be no concern of the arbitrators — except to the extent that it wastes their time and attention on matters of no importance. This is where the first purpose is linked to the second. All adjudicators, including arbitrators, should look to the rules of evidence to assist in conserving that precious resource, the time and attention of the adjudicators themselves.

WHY REINSURANCE ARBITRATION WORKS

Reinsurance agreements most often provide for resolution of disputes by arbitration. There have been occasional voices of criticism of arbitration, and initiatives to remove arbitration clauses. They have not changed the industry's predominant preference for arbitration. There are good reasons for this.

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THE ADVANTAGES OF ARBITRATION

1. Party Autonomy in Selecting an Informed and Interested Panel.

Under the customary practice I the United States, reinsurance arbitrations are most often ad hoc proceedings using two party-proceedings using two party-appointed arbitrators and an umpire. Typically, the arbitrators and umpire must be active or retired executives of insurance or reinsurance companies. In practice, most panels are drawn from a pool of approximately 40 seasoned professionals. This gives the parties what they need most, which is a panel of experienced, practical-minded decision makers who are familiar with both the reinsurance industry and the frequently adversarial and theatrical nature of lawyers as advocates. When the umpire is selected by agreement, or by reference to an appointing authority such as ARIAS• U.S., the parties have a significant degree of control over the selection of the ultimate decision makers.

As a natural consequence of this process, the panel has the experience necessary to understand the dispute. As professionals dedicated to the industry and the arbitration process, they are keenly interested in understanding the issues, giving the parties every opportunity to present their positions fully, and arriving at the best decision possible. Often, courts do not have that luxury. Judges and their clerks are highly competent and intelligent people, but they have two impediments in addressing reinsurance disputes. The first is that they lack the day-to-day experience and the ingrained and visceral understanding of the industry that arbitrators have. Second, especially in the major commercial jurisdictions such as New York and Chicago, judges simply have too many cases on their docket to do justice to all of them. Like most commercial matters, reinsurance disputes do not have the intrinsic interest of matters with widespread social or public policy implications. And of course, juries have even less experience and interest, and are highly susceptible to misleading "expert" testimony.

2. Communication With the Parties.

In arbitration, the possibility exists for an ongoing and meaningful dialogue between the decision makers on the panel and the parties. As evidence is introduced and issues become crystallized, the panel has the opportunity to specifically invite or direct the parties to offer proofs or arguments relevant to a full understanding of the case. Not all panels do this explicitly, but when they do, it is extremely helpful. In litigation, such interaction is extremely limited and not favored.

3. Rational Limits on Discovery.

Discovery is the most time consuming and therefore most expensive part of the dispute resolution process. Federal and state court procedural rules allow extremely broad discovery of documents and depositions of witnesses. This presents enormous opportunities for mischief, harassment and delay, if a party is so inclined. In contrast, reinsurance arbitrators most often permit reasonable and rational discovery of documents, and essential depositions. A party seeking excessive discovery must convince the panel of the need for that discovery and must demonstrate that it is appropriate. As a result, most often arbitration is a somewhat faster and less expensive process.

4. Broad Discretion Over Remedies.

Some cases are black and white. Bu, many times, especially in complex commercial disputes, there is much gray. Arbitration panels have extremely broad discretion to fashion remedies appropriate to the case before them. For example, they are free to fashion compromise awards when compromise is appropriate.

5. Enforceability of Awards.

In international reinsurance disputes, an arbitration award is enforceable under the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards. The U.S., England, Bermuda, and most nations with substantial reinsurance industries aer signatories to this Convention. No international convention exists on the recognition and enforcement of judgments rendered by

As professionals dedicated to the industry and the arbitration process, they are keenly interested in understanding the issues, giving the parties every opportunity to present their positions fully, and arriving at the best decision possible. Often, courts do not have that luxury.

courts, and there are significant disparities and uncertainties from country to country as to their enforceability

THE RESULT

The cumulative result of these advantages is that most arbitration awards do substantial justice to the parties, in light of the particular facts and circumstances at hand. It is very rare to find a reinsurance arbitration decision that is simply inexplicable, in the sense that it is impossible to understand the rationale and principles applied by the panel. In litigation, the limitations imposed by overworked courts, uninformed juries, and the application of strict rules of law to situations they were not designed to cover can sometimes work a substantial injustice, and result in a decision that can seem almost random. As cynical litigators put it, "if you have a bad case, go to court and demand a jury. It raises your likelihood of success to 50-50."

THE EXCEPTIONS TO THE RULE AND THE SOLUTIONS

There are occasional circumstances in which weaknesses in arbitration can appear. Fortunately, solutions are available to limit their impact.

Perhaps the greatest risk is the possibility of having an umpire who is inexperienced, or so predisposed towards one party or position, as to defeat the workings of justice. This risk is most prominent when the arbitration clause contains language providing for selection of the umpire by "drawing lots," or some other random selection method. The possibility of abuse exists when one party selects a "stacked" slate of candidates. This problem can be avoided at the initial drafting stage. Parties should never allow a drawing lots provision to appear in their arbitration clauses.

In the last few years, an attractive option has emerged. ARIAS• U.S., has developed an umpire selection procedure which will result in the selection of an umpire from its highly qualified panel. This has been rarely used in practice, but it should be used much more. Parties who are not comfortable with the ARIAS• U.S., procedure are best served by leaving the arbitration clause silent on the question of resolving a deadlock in umpire selection. The effect is to remove any doubt that the parties may resort to the courts to select an umpire. When this is done, a party which has put forth a good faith slate of qualified, experienced, and unbiased umpire nominees has a much better argument to present to a court than one who has not.

The second difficult scenario arises when one of the parties seeks delay by failing to make a good faith effort to agree upon an umpire, demanding excessive discovery, refusing to follow orders of the panel, or other wise working to derail the process. This can lengthen and increase the expense of arbitration. However, courts are available to enter orders in aid of arbitration, and these are often decided within a relatively short timeframe. Thus, even when court intervention is necessary, the overall proceedings can most often be concluded in less time than a comparable litigation would be. And significantly, the panel has the power to render an award that takes into account the delay and additional expense caused by an obstreperous party.

Arbitration is not perfect. But in the reinsurance industry, it is most often better than the alternatives.

save the date!

ARIAS• U.S.
2002 Spring Meeting
May 2-4, 2002
Westin Rio Mar Beach Resort
Puerto Rico

CONFERENCE REGISTRATION OPENS:
May 2, 2002 at 10:00 a.m.
CONFERENCE ADJOURNS:
May 4, 2002 at 12:30 p.m.

For Hotel Reservations Call: 787-888-6000 or 800-228-3000

Sleeping Room Group Rate (Refer to ARIAS):
$175 Single/Double Occupancy

Conference registration details to be mailed shortly.

FOR FURTHER INFORMATION
call Maria Sclafani at: 914-699-2020

From Our Photo Files…

2001 Annual Membership Meeting and Conference

Attended by its largest group ever, over 200 attended participated in the ARIAS• U.S 2002 Annual Membership Meeting & Conference held at the New York Marriott Marquis in Time Square.

Interactive breakout sessions were an integral part in discussing "What Every Arbitrator Should Know About Evidence". Participants then gathered in a general session to tabulate the results of individual sessions.

A special panel discussion consisting of Mary Lopatto, LeBoeuf, Lamb, Greene and MacRae, LLP, David Robb, The Hartford Financial Services Group, Thomas S. Orr, General Cologne Re, and Mark S. Gurevitz, The Hartford Financial Services Group and ARIAS(U.S Chairman, address an "Overview of World Trade Center Issues" as they might affect the insurance and reinsurance industry.

ARBITRATORS IN FOCUS

NEWLY CERTIFIED ARBITRATORS

JOHN P. ALLARE

John Allare began a full time arbitration practice and has served as a party appointed arbitrator in various reinsurance matters beginning in April, 2000. For the previous ten years, Mr. Allare had been chief legal officer for a group of runoff property and casualty insurance companies. In that capacity, he became experienced in reinsurance dispute resolution from a company standpoint. Mr. Allare's first experience in the insurance industry was establishing a law department for a medium size mutual life insurance company. He began his business career in the tax department of Arthur Andersen.

Mr. Allare has an MBA from Northwestern University (1978) with majors in accounting and finance. He has a JD. from Ohio State University (1976) and an B.A. in economics from the University of Notre Dame (1972).

JAMES F. DOWD

ODYSSEY RE HOLDINGS.

James F. Dowd was born in New York City on August 21, 1941. His secondary schooling at Archbishop Stepinac High School in White Plains, New York, was completed in 1958. He served in the United States Marine Corps from 1959 to 1963, and following military service, received a B.A. degree in Political Science from C.W. Post College of Long Island University in 1965. Mr. Dowd received his Juris Doctor degree from St. John's University School of Law in June 1968, and was shortly thereafter admitted to the New York Bar. Mr. Dowd attended the Harvard Business School, Advanced Management Program in 1980.

Mr. Dowd began his career with Skandia America Group in 1971 in New York City. From 1971 to 1984, he held a variety of positions within Skandia America Group. In April 1984, he became President and Chief Executive Officer of Skandia America Group. In March 1991, Mr. Dowd became President and Chief Executive Officer of Skandia U.S. Holding Corporation and Chairman and Chief Executive Officer of Skandia America Reinsurance Corporation. In 1993, Mr. Dowd became Chairman and Chief Executive Officer of Willis Faber North America, Inc. in New York City.

In July 1995, Mr. Dowd returned to his former post as Chairman and Chief Executive Officer of Skandia America Reinsurance Corporation, which is now known as Odyssey Reinsurance Corporation. Mr. Dowd became Chairman of the Odyssey Re Group and President and Chief Executive Officer of Fairfax Inc in January, 1998. In June 2001, Mr. Dowd became Vice Chairman of Odyssey Re Holdings. In November 2001, Mr. Dowd became Chairman of Lindsey Morden, Inc.

Mr. Dowd was a member of the Board of Directors of the Reinsurance Association of America and was its Chairman from 1988-1989. He was also a member of the Board of Directors of the Brokers & Reinsurance Markets Association. In May 1989, Mr. Dowd was appointed a Trustee of the American Institute for Chartered Property Casualty Underwriters and the Insurance Institute of America. He served as a member of the Board of Directors of the Insurance Information Institute and in June 1991, was elected to the Board of Trustees of the College of Insurance. Mr. Dowd currently serves on the following boards: Member of the Board of Directors of the International Insurance Council, 2001 - Present; Member of the Board of Directors of the International Insurance Foundation, 2000 - Present; Member of the Board of Overseers of the School of Risk Management, Insurance and Actuarial Science of Peter J. Tobin College of Business of St. John's University: 2001 - Present. Mr. Dowd is a member of the Advisory Board of the Peter J. Tobin College of Business of St. John's University: 2001 - Present. Mr. Downd is a member of the Board of Directors of the International Insurance Society, 1998 - Present and a member of the Board of Directors of the Korea Society, 1998 - Present. He is also

a member of the American Bar Association and was Chairman of its Committee on the Public Regulation of Insurance from 1980-81. He is a member of the New York State Bar Association and of the Association of the Bar of the City of New York. In addition, he is a member of the Federation of Insurance Corporate Counsel.

Mr. Dowd is the author of a number of articles on subjects related to the property/casualty insurance industry including "Punitive or Extra-Contractual Awards Against Insurers: The Reinsurer's Role" - 28 Federation of Insurance Counsel Quarterly, Spring 1978; "An Alien Insurer Seeking Entry into the United States-Factors to Consider" - Risk Management Magazine and New York University's International Journal of Law and Politics, 1978; "Excess and Surplus Lines-Its Historical Development and Some Legal Considerations" - Skandia Forum, Fall of 1979; Chapter 16 in the one-volume text entitled, "Reinsurance" published by The College of Insurance, New York, New York; "The Re-reform of the Tort System" - The United States Reinsurance Report, Jan/Feb. 1987.

Mr. Dowd and his wife, Lynn reside in New Canaan, Connecticut.

ARBITRATORS IN FOCUS

NEWLY CERTIFIED ARBITRATORS AS OF MARCH 1, 2001

CHARLES ERNST

ELEMENT RE CAPITAL PRODUCTS

Chuck Ernst is presently Senior Vice President and Group General Counsel of Element Re Capital Products, where he provides legal assistance and advise on all insurance and reinsurance related issues for XL Capital's weather risk management facility. Prior thereto, he was Senor Vice President and Group General Counsel of SOREMA North America Reinsurance Company, a New York domiciled reinsurance company. In that capacity, he was responsible for the legal support function for the reinsurance operations, as well as for the primary insurance and surplus lines operations of SOREMA'S insurance subsidiaries. Before joining SOREMA in 1994, he held various officer positions within the Crum & Forster organization. During his tenure at Crum & Foster, as a corporate attorney, he worked on numerous mergers, divestitures and acquisitions and other corporate transactions. In addition, he managed a reinsurance dispute unit responsible for over $400 million in disputed recoverables, including a significant book of asbestos and environmental losses as well as acted as senior counsel to the discontinued operations business unit that was involved in the run-off or sale of discontinued operations and businesses. Prior to his tenure at Crum & Forster, he was in private practice with one of the larger Wilmington, Delaware law firms.

Mr. Ernst has written a number of articles on the surplus lines market. He is also active in a number of industry groups, including the American Bar Association, Excess, Surplus Lines and Reinsurance Committee where he is Vice Chairman of the Surplus Lines Law Group.

WILLIAM W. FOX, JR.

Mr. Fox has engaged in an active consulting practice since his retirement from Buy Carpenter in May, 1999. He began his insurance career in 1959 with INA, and joined Balis & Co., Inc. in 1962 in the facultative reinsurance department. He became a treaty broker in 1965, and held a variety of positions, including President. He left in 1988 to start a reinsurance underwriting business. PW Re, a joint venture with the Providence Washington Insurance Group. He became President of the PW Group in 1989.

Mr. Fox retuned to Balis & Co., Inc. a subsidiary of Guy Carpenter, in 1992 as President of the Company. He also was a Managing Director of Guy Carpenter, a member of its Board of Directors, a d a Managing Director of Marsh & McLennan. He is a member of the Board of Directors of several insurance companies and is Chairman of the board of MII Management Group, the Attorney-in-Fact for MutualAid Exchange, a newly formed reciprocal insurer in Kansas.

ERIC KOBRICK

AMERICAN INTERNATIONAL GROUP, INC.

Mr. Kobrick has over ten years of significant specialization in the insurance/reinsurance industry. From 1989 - 1997, he was a litigation associate at the law from of Simpson Thacher & Bartlett. Simpson Thacher has a substantial insurance/reinsurance practice, and throughout his career there worked on numerous insurance/reinsurance matters. Clients with whom he has worked with include Continental Insurance Company, Crum & Foster, Chubb and Travelers.

At present, Mr. Kobrick is an Assistant General Counsel at American International Group, Inc. (AIG) a position he has held since 1997. He duties at AIG include supervision of all reinsurance litigation and arbitrations involving and AIG Member Company. He also provides legal support to AIG's Reinsurance Services Division and monitors all insurance insolvency proceedings involving and AIG member company.

JOHN REIMER

Mr. Reimer has a 28-year career with reinsurance companies. In 1972, he joined Excess and Treaty Management Corp, manager of ECRA. A number of years later that company was purchased by St. Paul Companies, turning it into the first St. Paul Re. Mr. Reimer remained head of claims, and later moved to a similar position at F&G Re in 1884. St. Paul Companies eventually purchased this entity in 1998. A reorganization finally took him away from St. Paul Companies in 2000 when he formed JHR Associates.

Mr. Reimer held the position of Vice President, head of the claim department, working in all lines of treaty and facultative reinsurance claims, including supervising and performing claim reviews for traditional and non-traditional programs. He obtained a CPCU in 1978.

Mr. Reimer's primary background includes work as an independent adjuster specializing in aviation related losses, work for a self-insured entity (New York University) and learning the business initially at Kemper Insurance. He started there in the Summitt, NJ Branch Office, as an all lines casualty field adjuster.

A graduate of Dartmouth College in Hanover, NH, with a History major, Mr. Reimer also attended New York University School of Law and completed 24 credits. Following Dartmouth, where he had obtained a scholarship in the US Navy Regular Program, he served as an officer in the United States Marine Corps with an infantry specialty. He received an Honorable Discharge in 1963 after service in the Far East.

ARBITRATORS IN FOCUS

NEWLY CERTIFIED ARBTIRATORS AS OF MARCH 1, 2001

ANGUS ROSS

Angus Ross is a veteran of more than 36 years in reinsurance, ranging from underwriting through broking, claims and administration, retiring as President of Sorema N.A.'s Canadian operations in June, 2000. His experience covers domestic Canadian, US and International property/casualty reinsurance treaties and facultative business. Fluently bilingual (French/English), he is a past Chairman of the Reinsurance Council of Canada and a past Director of the Insurance Bureau of Canada (IBC).

In more than three decades of speeches and articles on reinsurance topics he has been recognised as an ardent advocate for the industry on environmental issues ranging from pollution to climate change, including chairing the IBC Special Environmental Liability Committee. In 1995 he was appointed by the Prime Minister of Canada to the National Round Table on the Environment and the Economy, where he chairs a task force examining problems of and solutions to contaminated site clean-up.

He has been involved in ten past arbitrations as arbitrator, umpire or expert witness and is currently an arbitrator in one ongoing case and umpire in another.

C. DAVID SULLIVAN

TRESSLER SODERSTROM MALONEY AND PREISS.

Mr. Sullivan presently a partner in the Chicago law firm of Tressler Soderstrom Maloney and Priess. He spent 38 years at Kemper Insurance where he served as senior vice president and senior claim officer. He also served as Chief Trial Counsel and headed up the house counsel

operation for Kemper. A graduate of St. Bonaventure University with a BBA and Suffolk Law School, he is licensed to practice in both Illinois and Ma. Mr. Sullivan attended Harvard Law School mediation program and the CPR mediation program in Washington D.C. He also was former Vice President of DRI and The IADC. Mr. Sullivan has served as an arbitrator and Umpire in various cases. He now specializes as an expert witness on arbitrations and mediation in insurance cases.

JEREMY R. WALLIS

Mr. Wallis is presently active as a Reinsurance Consultant following a 15-year term as President and Chief Executive Officer of Chatham Reinsurance Corporation and its predecessor companies staring with the United States Branch of new Zealand Insurance Company Limited. He joined the New Zealand in September 1985 following a 20-year career as a treaty underwriter and, latterly, Vice President and Corporate Secretary, with the London and New York, later New Jersey, offices of The Mercantile & General Reinsurance Company.

Mr. Wallis successfully rebuilt New Zealand Re in the late 1980's and, following the sale of the New Zealand Group to General Accident, he oversaw the transition in ownership to, and renaming as, English & American Insurance Corporation in 1991. With the collapse of English & American in the U.K. he steered the company, renamed Chatham Reinsurance Corporation in 1993, through ownership in late 1997 by Ecclesiastical Insurance Office pic, a well-respected U.K. insurer. In June 200, Ecclesiastical sold its interest in Chatham to Mapfre Re, Compania de Reaseguros S.A. of Madrid, Spain, a member company of the Mapfre System, the largest insurance entity in Spain. As part of the overall transaction, Ecclesiastical made a significant financial investment in Mapfre Re in Spain. After guiding the company to this successful sale he resigned his executive positions but remains a board Director and a consultant on a non-exclusive, multi-year agreement.

Mr. Wallis' experience over a 35 year reinsurance career has covered all aspects of the operations of a company embracing shareholder relations through corporate administration to establishing business plans and their implementation through marketing, underwriting and financial activities. All but 8 of these years were spent with relatively small entities where a great variety of duties, tasks, challenges, and responsibilities were experienced. Up until 1997, he also directed the underwriting and marketing efforts, then, had to relinquish that role except for several specialty accounts, such as accident & health business.

In addition to serving on the board of Mapfre Reinsurance Corporation he is in his second term as a Director of the Intermediaries and Reinsurance Underwritiers Association, Inc., a treaty reinsurance association specializing in furthering education and knowledge in the reinsurance industry. He has been involved in the preparation or review of several industry texts including Dr. Strain's first edition of Reinsurance Contract Wording and was a member of the Insurance Institute of London's working party resulting in the publication entitled Excess of Loss Methods of Reinsurance. He has also authored several business articles over the years.

Educated in the United Kingdom, he holds the designation of Associate of the Chartered Insurance Institute in London and is a member of the Society of Fellows, the Chartered Insurance Institute and is a Chartered insurer.

CERTIFIED ARBITRATORS (AS OF SEPTEMBER 20, 2001)

GEORGE F. ADAMS
JOHN P. ALLARE
HOWARD N. ANDERSON
DAVID APPEL
RICHARD S. BAKKA
NASRI H. BARAKAT
LINDA MARTIN BARBER
FRANK J. BARRETT
PETER H. BICKFORD
JOHN W. BING
JOHN H. BINNING
MARY ELLEN BURNS
MARVIN J. CASHION
ROBERT MICHAEL CASS
DEWEY P. CLARK
PETER C. CLEMENTE
WILLIAM CONDON
DALE C. CRAWFORD
PATRICK CUMMINGS
PAUL E. DASSENKO
DONALD T. DECARLO
JOHN B. DEINER
ANTHONY L. DI PARDO
JAMES F. DOWD
CHARLES ERNST
PETER J. FLANAGAN
CHARLES M. FOSS
CALEB L. FOWLER
WILLIAM W. FOX, JR.
JAMES H. FRANK
PETER FREY
RONALD S. GASS
DENNIS C. GENTRY
WILLIAM J. GILMARTIN
GEORGE A. GOTTHEIMER, JR.
ROBERT B. GREEN
THOMAS A. GREENE
ALFRED EDWARD GSCHWIND
MARK S. GUREVITZ
MARTIN HABER
FRANKLIN D. HAFTL
ROBERT F. HALL
ROBERT M. HALL
JAMES S. HAZARD
CHARLES W. HAVENS, III
PAUL D. HAWKSWORTH
JOHN HARLAN HOWARD
ROBERT M. HUGGINS
IAN HUNTER QC
WENDELL INGRAHAM
RONALD A. JACKS
BONNIE B. JONES
T. RICHARD KENNEDY
WILLIAM M. KINNEY
FLOYD H. KNOWLTON
ERIC S. KOBRICK
ANTHONY M. LANZONE
MITCHELL L. LATHROP
PETER F. MALLOY
ANDREW MANEVAL
ROBERT M. MANGINO
MERTON E. MARKS
WALTER R. MILBOURNE
LEONARD MINCHES
LAWRENCE MONIN
GERALD F. MURRAY
THOMAS NEWMAN
CHARLES L. NILES, JR.
ROBERT J. O'HARE, JR.
DR. HERBERT PALMBERGER
JAMES J. POWERS
J. DANIEL REILY
JOHN H. REIMER
ROBERT REINARZ
DEBRA J. ROBERTS
ROBERT L. ROBINSON
EDMOND F. RONDEPIERRE
ANGUS ROSS
FRANKLIN D. SANDERS
DANIEL E. SCHMIDT, IV
JAMES A. SHANMAN
RICHARD D. SMITH
WALTER SQUIRE
J. GILBERT STALLINGS
JACK M. STOKE
C. DAVID SULLIVAN
N. DAVID THOMPSON
BERT M. THOMPSON
PAUL C. THOMSON
JOHN J. TICKNER
THOMAS M. TOBIN
PETER J. TOL
THEODORE A. VERSPYCK
JEREMY R. WALLIS
PAUL WALTHER
RICHARD G. WATERMAN
NORMAN M. WAYNE
EMORY L. WHITE
JAMES P. WHITE
RICHARD L. WHITE
W. MARK WIGMORE
MICHAEL S. WILDER
S. ROY WOODALL
EUGENE WOLLLAN

Although ARIAS• U.S. believes certification is a significant and reliable indication of an individual's background and experience, it should not be taken as a guarantee that every certified member is an appropriate arbitrator for every dispute. That determination should be preceded by a review of several factors, including but not limited to, the applicable arbitration provision, potential conflicts or bias and the type of business involved in the dispute. In addition, ARIAS• U.S. wishes to acknowledge that its certified arbitrators are not the only qualified arbitrators. As noted above, the Society is gratified that many of the most respected practicing arbitrators sought and obtained certification from ARIAS• U.S. Others who are similarly qualified and experienced, have not yet sought certification.

UMPIRE LIST (AS OF SEPTEMBER 20, 2001)

DAVID APPEL

RICHARD S. BAKKA

FRANK J. BARRETT

PETER H. BICKFORD

JOHN W. BING

JOHN M. BINNING

MARY ELLEN BURNS

R. MICHAEL CASS

PETER C. CLEMENTE

PAUL DASSENKO

DONALD T. DECARLO

JOHN B. DEINER

ANTHONY L. DIPARDO

CALEB L. FOWLER

JAMES H. FRANK

DENNIS C. GENTRY

WILLIAM J. GILMARTIN

GEORGE A. GOTTHEIMER, JR.

A. EDWARD GSCHWIND

MARTIN D. HABER

FRANKLIN D. HAFTL

ROBERT F. HALL

ROBERT M. HALL

PAUL D. HAWKSWORTH

ROBERT F. HUGGINS

RONALD A. JACKS

PETER F. MALLOY

ROBERT M. MANGINO

CHARLES L. NILES, JR.

JAMES J. POWERS

EDMOND F. RONDEPIERRE

DANIEL E. SCHMIDT, IV

RICHARD D. SMITH

JACK STOKE

THOMAS M. TOBIN

PETER J. TOL

BERT M. THOMPSON

N. DAVID THOMPSON

RICHARD G. WATERMAN

EUGENE WOLLAN

The ARIAS• U.S. Umpire List is comprised of ARIAS• U.S. Certified Arbitrators who have provided ARIAS• U.S. with satisfactory evidence of having served on at least three (3) completed (i.e. a final award was issued) insurance or reinsurance arbitration.

ARIAS U.S.

BOARD OF DIRECTORS (AS OF MARCH 1, 2001)

ARIAS U.S.

DO YOU KNOW SOMEONE WHO IS INTERESTED IN LEARNING MORE ABOUT ARIAS• U.S.?

IF SO, PASS ON THIS LETTER OF INVITATION AND MEMBERSHIP APPLICATION.

AN INVITATION…

The rapid growth of ARIAS• U.S. (AIDA Reinsurance and Insurance Arbitration Society) gives testimony to the acceptance of the Society since its incorporation in 1994. Through numerous conferences, seminars and literature, and through the establishment of an ambitious certification process, the Association is realizing its goals. Today, ARIAS• U.S. is comprised of 220 individual members and 31 corporate members of which 95 have been certified as arbitrators.

In addition, ARIAS• U.S. is pleased to add to its list of accomplishments the launching of the ARIAS• U.S. Umpire Selection Procedure and the approval of CLE Accredited Provider Status by the New York State Continuing Legal Education Board.

The Umpire Selection Procedure is a unique software program created specifically for ARIAS• U.S. which randomly generates the names of umpire candidates from a list of ARIAS• U.S. certified arbitrators who have served on at least three completed arbitrations. The Procedure is free to members and available at a nominal cost to non-members.

The Accredited Provider Status allows those who attend ARIAS• U.S. conferences and seminars to earn CLE credits in the areas of professional practice, practice management, skills and ethics. ARIAS• U.S. is proud to be placed among the list of other prestigious Accredited Provider organizations.

ARIAS• U.S. also has produced its *Directory, Practical Guide to Reinsurance* and *Guidelines for Arbitrator Conduct.* These publications, as well as quarterly newsletters, discounts to conferences and seminars and access to certified arbitrator training, are available to members without charge.

To date, ARIAS• U.S. has held conferences and seminars across the country including Chicago, San Francisco, San Diego, Philadelphia, Baltimore, Miami, Marco Island, New York City and Bermuda. The Society brings together many of the leading professionals in the field and serves as an educational and training forum.

We invite you to enjoy all its benefits by becoming a member of this prestigious program. If you have any questions regarding membership, please call Stephen H. Acunto, Vice President and Managing Director at 914-699-2020.

Join us and become active in ARIAS• U.S. - the industry's best forum for insurance and reinsurance arbitrations professionals.

Sincerely,

Mark S. Gurevitz
Chairman

Daniel E. Schmidt, IV
President

MEMBERSHIP APPLICATION

AIDA Reinsurance
& Insurance
Arbitration Society
BOX 9001
MT. VERNON, NY 10552
25-35 BEECHWOOD AVENUE
MT. VERNON, NY 10553
PHONE: 914.699.2020
FAX: 914.699.2025

ARIAS•U.S. is a not-for-profit corporation that promotes the improvement of the insurance and reinsurance arbitration process for the international and domestic markets. The Society provides continuing in-depth seminars in the skills necessary to serve effectively on an insurance/reinsurance panel. The Society, through seminars and publications, seeks to make the arbitration process meet the needs of today's insurance/reinsurance market place by:

- Training and certifying individuals qualified to serve as arbitrators and/or umpires by virtue of their experience, good character and participation in ARIAS•U.S.-sponsored training sessions;
- Empowering its members to access certified arbitrators/umpires and to provide input in developing efficient economical and just methods of arbitration; and
- Providing model arbitration clauses and rules of arbitration.

Membership is open to law firms, corporations and individuals interested in helping to achieve the goals of the Society.

- MEMBERSHIP BENEFITS
  Benefits of membership include newsletters, discounts to seminars/workshops, membership directory, access to certified arbitrator training, model arbitration classes and practical guidance with respect to procedure.

NAME & POSITION: _____

COMPANY or FIRM: _____

STREET ADDRESS: _____

CITY/STATE/ZIP _____

PHONE: _____ FAX: _____

E-MAIL ADDRESS: _____

Fees and Annual Dues:

	INDIVIDUAL	CORPORATION & LAW FIRM
INITIATION FEE:	$500	$1,500
ANNUAL DUES:	$250	$750
TOTAL	$750 △	$2,250 △

Payment By Check: Enclosed is my check in the amount of $_____
Please make checks payable to ARIAS•U.S. (Fed. I.D. No. 13-3804860) and mail with registration form to:

ARIAS•U.S., 25-35 Beechwood Avenue,
P.O. Box 9001, Mount Vernon, NY 10552

Credit Card Payments: Please charge my credit card:
☐ AmEx ☐ Visa ☐ MasterCard for $_____

Account No.:_____ Exp. ____/____

Name (please print): _____

Signature: _____

AIDA REINSURANCE & INSURANCE ARBITRATION SOCIETY

ARIAS U.S. QUARTERLY

PO BOX 9001
MT. VERNON, NY 10552-9001