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2005 Spring Conference *Report*

The Tension Between Integration Clauses and Disengagement Provisions

The Arbitration Task Force's Proposed Procedure for Reinsurance Arbitrations

editor's comments

T. Richard Kennedy

Arbitrators and counsel increasingly are confronted with seemingly conflicting provisions of reinsurance agreements. The arbitration provision frequently relieves the panel of "all judicial formalities" and having to adhere to "strict rules of law." Thus encouraged to consider industry custom and practice as well as the requirement of utmost good faith in the reinsurance transaction, the panel then is presented with a separate provision of the agreement providing that the document constitutes the "entire agreement of reinsurance between the parties." In this issue's "The Tension Between Integration Clauses and Disengagement Provisions," Attorney Randi Ellias of Butler, Rubin, Saltarelli and Boyd has provided an excellent analysis of the evidentiary questions raised by such provisions, including the results in the few court cases that have considered the issue. She then offers drafting options that ought to be carefully considered by parties entering into a reinsurance agreement to clarify their intent.

A very helpful review of the recent revisions to the "Procedures for the Resolution of U.S. Insurance and Reinsurance Disputes" is provided by Attorneys Alan J. Sorkowitz and Navneet K Dhaliwal of Sidley, Austin, Brown and Wood in "The Arbitration Task Force's Proposed Procedures for Reinsurance Arbitrations -- Defining Best Practices and Moving Toward Neutral Panels." The authors discuss revisions that should tend to further promote the expeditious resolution of reinsurance disputes. They suggest also additional work that may be needed to cure defects and resolve uncertainties in existing practice.

Be sure to read the report of the Spring Meeting in Las Vegas. Co-Chairs Steve Richardson, Elaine Caprio Brady and Dan FitzMaurice are to be commended for an outstanding program, which attracted 357 attendees, our largest Spring Meeting ever! Commendations also are due Bill Yankus and the CINN staff in planning and handling arrangements. One example was a much appreciated, last-minute extension of the evening cocktail reception to accommodate golfers who otherwise would have missed it coming in late from the course.

This summer issue of the Quarterly is more abbreviated than some of our earlier editions. Remember to take some time during these few months to relax and enjoy your favorite pastime. On behalf of the Editors, I want to wish each of you a most pleasant summer season. ▼

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Editorial Policy

ARIAS•U.S. welcomes manuscripts of original articles, book reviews, comments, and case notes from our members dealing with current and emerging issues in the field of insurance and reinsurance arbitration and dispute resolution.

All contributions must be double-spaced electronic files in Microsoft Word or rich text format, with all references and footnotes numbered consecutively. The text supplied must contain all editorial revisions. Please include also a brief biographical statement and a portrait-style photograph in electronic form.

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feature

The Arbitration Task Force's Proposed Procedures for Reinsurance Arbitrations—Defining Best Practices and Moving Toward Neutral Panels

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The Insurance and Reinsurance Dispute Resolution Task Force (the "Task Force") is an independent group of insurance and reinsurance executives, in-house counsel, arbitrators, and other persons interested in reforming and improving the arbitration process as it relates to insurance and reinsurance claims. Commencing with its formation in 1997, the Task Force's mission has been to "improve the reinsurance dispute resolution process by identifying common problems and recommending industry-wide, flexible, business-like solutions."[1]

The principle activity undertaken by the Task Force has been the drafting of a set of uniform arbitration procedures that can be incorporated by reference into insurance and reinsurance contracts. In so undertaking, the Task Force was attempting both to clarify minor procedural issues which sometimes resulted in unnecessary conflicts between parties and to tackle some of the major issues that were, in its view, causing parties to lose faith in the arbitration system.

While the Task Force was supported by the Reinsurance Association of America ("RAA") and included many ARIAS-certified arbitrators, its work product was its own and was not officially adopted or sponsored by either organization. Instead, it reflects a truly independent collaboration. The Task Force's efforts culminated in 1999 with the promulgation of the first version of the "Procedures for the Resolution of U.S. Insurance and Reinsurance Disputes," perhaps the first-ever attempt at a comprehensive codification of procedures designed specifically for U.S. reinsurance arbitrations.

After the first publication of the Procedures in 1999, the Task Force met again in 2003 to review the success of and to consider modifications to the Procedures. This resulted in the 2004 Procedures discussed below. The Task Force intends to reconvene once again in 2006 to see whether further updates or modifications are necessary.

In 2004, the Task Force, issued a revised version of the Procedures. This time, the Procedures came in two alternative versions, one for traditional panels consisting of two party-appointed arbitrators and a neutral umpire and the other for all-neutral panels. With the revised Procedures now in place and available on the Task Force's website (www.ArbitrationTaskForce.org), it is appropriate for all professionals in the reinsurance market to become familiar with them and consider their possible incorporation by reference into reinsurance agreements going forward. Thus, a critique of the Procedures is in order. First, we will evaluate the traditional panel Procedures as a compilation of and improvement upon existing practices. Second, we will consider the increasingly important issue of neutral panels and comment on the version of the Procedures setting forth rules for neutral panel proceedings.

I. The Procedures as Compilation and Refinement of Best Practices Before Traditional Panels

THE INCORPORATION BY REFERENCE MODEL

The use of arbitration to resolve reinsurance disputes is almost as old as the idea of reinsurance itself.[2] Over time, the standard reinsurance arbitration clause has evolved into its present form. As known to practitioners in the field, the standard clause prescribes mandatory arbitration of all disputes arising with respect to the contract; provides for appointment of two party-appointed arbitrators who then choose a neutral umpire pursuant to a stated procedure; states the place where the hearing is to be held; prescribes the method of splitting expenses; and characterizes the arbitration as an honorable engagement to which the strict rules of law are not applicable. Other provisions, such as a governing law provision, provisions relating to enforcement of the award, and provisions relating to multiple reinsurers, are sometimes added.

This usual form of arbitration clause has become so familiar in the market, and to attorneys in the field, that it is easy to forget that it is not the only form of clause, or even the only *type of clause*, available. On the contrary, the usual form of clause must be seen as embodying only one of many methods of providing for arbitration – a method which is not necessarily the best, and certainly is not the only, means to that end. Specifically, the standard clause provides for arbitration by laying out, in the contract itself, *a full and complete* procedure for settling differences. There is another methodology, and the Procedures opt for it. This is the model of incorporation by reference, whereby the contract itself contains only (a) a simple agreement to resolve disputes by arbitration, and (b) a reference to externally-established procedures, not recited in full in the contract, to be employed.

This is the methodology employed in many other industries[3], and it has inherent advantages. An arbitration clause utilizing an incorporation by reference methodology can be short and concise, thus facilitating the contracting process, while the procedures themselves can be as detailed as necessary. Indeed, the incorporated procedures can be more detailed than procedures set forth in full in the contract, since as a practical matter there are limits to the amount of procedural detail that the parties can or will load into their contracts. Moreover, an incorporation methodology allows the parties to refer to procedures that are refined and revised from time to time by the author (since incorporated procedures can be revised by the author but it is not feasible to constantly amend the contract).

If the Procedures do nothing more than encourage the industry to achieve arbitration through an incorporation by reference model, thus making contracts shorter and arbitration procedures more detailed and timely, the Task Force will have performed a significant service to the industry.

BEST PRACTICES

The individual members of the Task Force are all reinsurance veterans fully familiar with existing arbitration practices. As such, they are uniquely suited to frame a compilation of the "best practices" being employed. This is precisely what they have done. The Procedures generally prescribe rules that foster expeditious arbitration before quality panels fully equipped to do equity between the parties.

Speedy disposition of disputes is encouraged by several features of the Procedures, most of which are practices known to practitioners but some of which are innovations:

- The Procedures state clearly that all arbitrators must be "disinterested," but define that term in the practical sense of not being "under the control of either party, nor shall any member of the Panel have a financial interest in the outcome of the arbitration." (¶ 2.3.) This simple and limited definition should eliminate the growing trend of challenges to party-appointed arbitrators on the basis that they have an indirect interest in the case, such as a familiarity with the parties or prior exposure to the underlying issue. Challenges of that type have become a common cause of delay, since the proceedings frequently halt while the challenge is heard in court.[4]

- The power of the Panel to hear and determine the case via summary disposition is set forth explicitly. (¶13.1.)

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Certain provisions of the Procedures also make it more likely that the parties can secure the best possible panel for their needs. These, however, are some of the more controversial aspects of the Procedures:...

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- An important provision of the panel-selection rules provides that if a party-appointed arbitrator or a neutral umpire is unable or unwilling to serve, a replacement shall be chosen within 14 days. (¶¶ 6.8, 6.9.) This should eliminate the harsh effect of current law generally requiring proceedings to start "from scratch" in the event of a panel member's death or incapacity.[5]

- A "voluntary, prompt and informal exchange of all non-privileged documents and other information relevant to the dispute" is required prior to formal discovery. (¶ 11.1.) The voluntary exchange should eliminate some of the delay inherent in the formal discovery process.

- A separate set of streamlined procedures is prescribed for cases deemed appropriate by the parties. (¶ 16.) These alternative procedures, providing for shorter time periods, no discovery, and a hearing via written submission, should result in the expeditious disposition of smaller cases.

Certain provisions of the Procedures also make it more likely that the parties can secure the best possible panel for their needs. These, however, are some of the more controversial aspects of the Procedures:

- The Procedures prescribe a panel-selection procedure that varies from the one that is familiar to veterans in the field. Under the protocol established by the Procedures, the parties identify their party-appointed arbitrators simultaneously, within 30 days of commencement of the arbitration. (¶ 6.2.) The party-appointed arbitrators then have 30 days in which to agree upon an umpire (¶ 6.5) and, if they cannot, the parties then exchange lists of eight proposed umpires each (¶ 6.7(a)). After a questionnaire process is completed (¶ 6.7(b)), the parties then choose three candidates from each other's list (¶ 6.7(c)). If only one individual appears on both lists of three, he is the umpire (¶ 6.7(c)(1)); if more than one individual appears on both lists, one umpire is chosen from that set by lots (¶ 6.7(c)(2)). If no individual appears on both lists of three, each party ranks the six names on the lists in order of preference, and the person with the best total numerical ranking becomes the umpire. (¶ 6.7(c)(3).) A detailed discussion of the merits of this protocol is beyond the scope of this article. Clearly, however, the intent is salubrious: to eliminate, or at least discourage, the practice of submitting a short list of umpires with a favorable bias in hopes that one will be chosen by lot.

- The Procedures offer the parties the alternative of having "professionals with no less than ten years of experience in or serving the insurance or reinsurance industry" act as panel members, in addition to the more traditional "current or former officers or executives of an insurer or reinsurer." (¶ 6.2.) This would presumably allow experienced attorneys to serve as panel members.

Finally, the Procedures include rules designed to ensure that the panel has full power to control the proceedings before it and make an award that fully resolves all aspects of the dispute, in a realistic business-like manner:

- Paragraph 14.3 sets forth the "honorable engagement" concept long familiar in the industry, in standard language (including the stipulation that the panel need not follow "the strict rules of law"). The paragraph goes on, however, to set forth language concerning the method of resolving the dispute which, while equally familiar to practitioners, has less uniformly been included in arbitration clauses:

  > In making their Award, the Panel shall apply the custom and practice of the insurance and reinsurance industry, with a view to effecting the general purpose of the underlying agreement which is the subject of the arbitration.

- Settling a frequently controversial issue,[6] the Procedures give the panel power to grant interim relief, including pre-answer security. (¶ 8.1.)

- Similarly, the panel is given express authority to impose sanctions (including costs, attorneys fees and orders of preclusion) for failure to comply with interim rulings, or for discovery abuse. (¶ 8.2.)

- The parties, if all agree, are given the right to require a reasoned decision of the panel. (¶ 15.4.)

- The proceedings, hearing and award are expressly made confidential, thus allowing the parties the freedom of expression required for full airing of the issues without adverse repercussions in the marketplace. (¶ 7.1.) Certain exceptions to confidentiality are established, such as for judicial proceedings relating to the award, and the list of exceptions accords with currently prevalent practice. (¶ 7.2.)

A MISSED OPPORTUNITY?

To the extent there is room for criticism of the Procedures, the point that suggests itself is that the Task Force may have devoted too much attention to compiling a set of the best existing practices and not enough to curing defects that exist in the system even when best practices are employed. It is no secret that the current arbitration system is plagued by too much litigation and controversy. There are too many challenges to the neutrality of the panel, too many parties stonewalling the process through challenges to arbitrability, too many motions for vacatur of the award, too many discovery disputes; in short, too much litigation at the margins of the process and too much abuse. The Procedures could have done more to head off the litigation tide by resolving areas of uncertainty within existing practices. Three examples typify the problem.

The first relates to the definition of "neutral" as an umpire qualification. The Procedures require the umpire to be "neutral," but the definition of that term set forth in ¶ 2.4 – "disinterested, unbiased and impartial" – is somewhat tautological. The Procedures do not tell us what facts must be present in order to indicate an interest, bias or partiality, or what type of interests, biases and partialities the umpire must be free of in order to qualify as "neutral" (or, to put the matter more starkly, what interests, biases and partialities he may have and yet still be deemed "neutral"). If the intent is that an umpire must be free of *any* such impediment (as we must conclude if we give the Procedures their literal meaning), this is an open invitation for parties to litigate over a potential umpire's slightest previous contacts with the parties, their appointed arbitrators, or the potential witnesses. In the insular world of reinsurance arbitration, it will be difficult indeed to find umpire candidates so utterly removed from any given dispute.

The Task Force could have adopted the same definition for "neutral" as they did for "disinterested" (see above), or a variant thereof, or a definition offering more specific and practical guidance. By adopting the broad definition expressed in ¶ 2.4, it has invited continued litigation over the concept of neutrality, with concomitant delay and expense.[7]

A second example is the problem of disputes involving multiple reinsureds or reinsurers under the same contract, especially where there are differing interests within the reinsured or reinsurer group. These cases present a myriad of procedural issues, such as whether one proceeding or multiple proceedings should be had and who controls the nomination of the party-appointed arbitrators.[8] The Procedures have precious little to say about such cases, thus leaving these issues fertile for litigation.

A final example is the whole area of discovery. The Procedures include only general rules regarding discovery; they give the panel the power to order the production of such documents "as it considers necessary for the proper resolution of the dispute" and "such depositions as are reasonably necessary." (¶ 11.2-11.3.) The Task Force chose not to limit and regularize the discovery process by adopting one or more of the specific rules that have been proposed in recent years, *e.g.*, to confine discovery to the contract at issue or to limit the number and length of depositions. Perhaps this is as it should be, in that the scope and duration of discovery must be tailored to the circumstances of each case. But, the fact remains that the Procedures' broad guidelines will do nothing to eliminate the discovery disputes that now occur in almost every case.

II. The Procedures and Their Impact Upon Neutral Versus Party Appointed Arbitrators: Comparison to London Market Practice

The Task Force states that the overriding issue it discussed in 2003 was the "desirability of neutral panels."[9] The current interest and excitement being expressed by those involved in the reinsurance industry regarding the appointment of neutral arbitration panels cannot be ignored and yet one wonders whether it is actually having any impact at all.

There have been many debates and opinions offered over the last few years as to the differences between the arbitration practices in the two main reinsurance centers: the London market and the U.S. market. Which gives the client most satisfaction? Which is the most effective/efficient? There are concerns that this fast track, alternative dispute resolution method is no longer fast track and that arbitrators are feeling increasing pressure to bow to the commands of the parties that appoint them.

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The Procedures could have done more to head off the litigation tide by resolving areas of uncertainty within existing practices. Three examples typify the problem.

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The word "Arbitrator" is defined in the Oxford English Dictionary: "an independent person or body officially appointed to settle a dispute". It is the "independent" part that arbitrators in the U.S. are now seeking clarification of in order to allow them to carry out their roles more effectively.

Ultimately the U.S. system of party-appointed arbitrators has placed a heavy burden on those arbitrators appointed as advocates in terms of when their role as advocate ends and when their role of acting as an arbitrator/adjudicator begins. Increasingly arbitrators have become more willing to admit that they do not feel comfortable wearing both hats.

As noted, the Task Force's mission was to "[i]mprove the reinsurance dispute resolution process by identifying common problems and recommending industry-wide, flexible, business-like solutions." One product of this was the drafting of the Procedures. The very fact that there are two procedural versions, one for 'regular' party appointed advocates and one for 'neutral' panels only continues to emphasize the divide in the industry as to how arbitrators should conduct themselves.

One can appreciate a client's perspective when entering the arbitration arena. The client is faced with possibly losing millions of dollars if the panel votes against his case. Under such circumstances he would want to appoint an arbitrator who understands and has complete conviction in his case. There is too much at stake to take a back seat and hope for the best, everything that can be done should be done. This philosophy applies as much to the process of appointing experienced and effective counsel as to anything else. The panel has to understand the case, the legal argument, vast quantities of documents/reports, oral evidence and it then has to interpret and apply all of this. Presenting a case well is a mammoth task and by speaking to a party-appointed arbitrator the client can at least ensure that the panel is focusing on the correct issues and if it is not then the client can change his strategy. Additionally, having ex parte communications has the advantage of allowing a party to assess where it stands and opens up the opportunity for settlement discussions much earlier in the proceedings rather than having to wait until all the evidence is heard or a decision is handed down by the panel. Having the choice between a neutral panel and a party appointed advocate - if you were a client paying for a costly judicial process which would you prefer? Without a doubt most clients would opt for the party appointed. It allows for the greatest amount of involvement in the proceedings.

There are the usual standard arguments to counter the position of using a party appointed advocate including the fact that the lawyers are the advocates and it is their job to convey the importance of the case to the panel and ensure that it is understood. This is the way that English arbitrations have worked and worked well.

English arbitrations are governed by the English Arbitration Act 1996, (the "Act"). The Act is wide enough to allow for parties to agree certain procedures between themselves and in the absence of such agreement provides default positions. The A.I.D.A. Reinsurance Arbitration Society of the UK ("ARIAS UK") has its own specific and comprehensive set of rules for reinsurance arbitrations (sometimes incorporated by reference into contract wordings). These differ from the ARIAS U.S. rules. The preface to the ARIAS UK rules lays the foundation of the rules in the objectives of the Act by quoting from the general principles set out in § 1 of the Act: "the object of arbitration is to obtain the fair resolution of disputes by an impartial tribunal without unnecessary delay or expense. The parties should be free to agree how their disputes are resolved, subject only to such safeguards as are necessary in the public interest."

The Act's intention is to strengthen the powers of arbitrators and limit the role of the courts to occasions when it is obvious that the process needs assistance or there is likely to be a clear denial of justice.

The party-appointed in an English arbitration is expected to adopt a neutral stance and to come to an independent decision based on the facts before him. As a consequence of this, the party appointing him should not attempt to ascertain prior to his appointment whether he is in agreement with that party's case. In England lawyers ensure that the arbitrator has sight of or has seen the Act prior to the commencement of his duties.

The Procedures define "neutral" in ¶ 2.4 (as set out above) and ¶ 6.2 states how this is practically enforced: "Under no circumstances shall either Party or anyone acting on the Party's behalf engage in any communication with any prospective Panel member that could reasonably lead such Panel member to identify the Party that initiated the proposed Panel member's selection. Ex-parte communications between the Parties and the Panel in relation to the arbitration is prohibited."

This goes a few steps further than the English system where in essence the arbitrator is often generally assessed for his knowledge and experience in relation to the substance of the matter before he is appointed. This usually has to be done to eliminate any possible conflicts. The case cannot be discussed nor can the lawyer seek to influence the arbitrators views, even prior to appointment. As soon as he is appointed all ex parte communications must cease.

This Task Force suggestion of how the neutrality of the Panel can be guaranteed is probably the only way to combat the continual criticism the English arbitration system faces: that the arbitrators are party appointed advocates but cloaked in the veil of impartiality/neutrality. The fact that the arbitrator knows who has appointed him must apply some pressure on the arbitrator or create some allegiance towards the appointing party, obligating the arbitrator either directly or indirectly to argue that party's case in panel deliberations.

One of the problems with a panel appointed as set out in ¶ 6.2 is the lack of accountability to the parties by the individual arbitrators or the panel as a whole. If there are no ex parte communications, how will the parties know whether the arbitrators understood the issues and applied the law correctly? Again, the attraction of the Act is that it states that all awards will be reasoned unless the parties have a contrary agreement.[10] This ensures that each and every issue is paid adequate attention, the evidence is weighed and the conclusion is sound (or if it is not, this can easily be identified).

The Task Force does attempt to address the issue at ¶ 15.4. However, in the absence of any agreement between the parties the default position is that the award will consist of the "disposition of the claims and the relief, if any, awarded". It is difficult to envisage a situation where tactical considerations by each of the respective parties do not influence their decision to either request or object to a "written rationale"[11] for the award. The stronger the party's case the less likely it would be that they would want to have a reasoned or written rationale as part of the award as this would be opening the door to potential appeals by the other side.

Appeals from reasoned arbitration awards is not the norm in the London market. The awards in most cases are very carefully drafted by a lawyer who is usually acting as Umpire in the case. The trend over recent years has been towards having a three party Tribunal (unless the arbitration agreement expressly indicates otherwise), consisting of two market individuals and the Umpire being an experienced reinsurance lawyer.

The Alternative ¶ 6.3 proposal seems to be attempting to follow the above route allowing not only arbitrators and umpires who "are current and former officers or executives of an insurer and reinsurer"[12] but also "other professionals with no less than 10 years of experience in or serving the insurance or reinsurance industry".[13] This would allow reinsurance lawyers to sit as Umpires on the panel, being advised by two market arbitrators as to the intricacies of market practice.

This would make the arbitration process much more efficient in two very important areas. First, it would speed up the arbitration process compared to arbitrations that consist only of market persons. It would cut out frivolous applications and motions and the long and often tiresome explanations of the law. A lawyer is trained to work through the large amounts of case law, documentation and evidence that is presented during the course of the arbitration proceeding. The second very important function is the writing of a reasoned award. A lawyer is much better equipped to articulate the panel's findings upon the law and evidence presented. Also he is in a much better position to make the reasoned award 'watertight' allowing very little room for the award to be appealed. This would in itself satisfy the parties that the issues and law have been fully understood and takes the pressure off the party appointed arbitrator to have to return to the party that appointed him and explain what took place within the panel's deliberations. It also gives both parties finality regarding that dispute.

Almost certainly the reinsurance industry will find that the neutral panel procedures will not be used very often, if at all, because having the option of a party-appointed gives both sides a huge tactical advantage.

The Task Force has made a great leap forward in setting out suggested procedures to make the reinsurance arbitration process into a much more efficient and fair forum. It does, however, need to take a much stronger stand and align itself with one set of procedures. It is only then that the controlling force behind arbitration wordings: the clients, will sit up and take notice. ▼

1 Introduction to the Procedures for the Resolution of U.S. Insurance and Reinsurance Disputes, April 2004.

2 *See* Richard E. Stewart, "Arbitration and Insurance Without the Common Law," *ARIAS U.S. Quarterly*, Vol. 11, No. 3 (Third Quarter 2004) at 5 (historical survey of the roots of arbitration).

3 *See, e.g., Volt Info. Systems v. Board of Trustees, Stanford Univ.*, 489 U.S. 468 (1989), dealing with a contract incorporating the Construction Industry Arbitration Rules promulgated by the American Arbitration Association ("AAA"). Other industries in which contracts frequently incorporate rules promulgated by the AAA or other independent authors include securities and real estate.

4 An oft-discussed case is *Sphere Drake Ins. Ltd. v. All American Life Ins. Co.*, 307 F.3d 617 (7th Cir. 2002), in which a party that suffered an adverse award challenged same on the basis that the other party's party-appointed arbitrator showed "evident partiality" due to his prior business contacts with one of the parties. The circuit court of appeals, reversing the lower court order vacating the award and noted that "in the main, party-appointed arbitrators are supposed to be advocates." (Emphasis in original.)

5 *See* the authorities collected in *Trade & Transport, Inc. v. Natural Petr. Charterers Inc.*, 931 F.2d 191, 194-95 (2d Cir. 1991). The Procedures provide that if the umpire is unable or unwilling to serve, a replacement shall be promptly appointed, and prescribes procedures for this eventuality. A more complete treatment of the subject might have added that the resulting, reconstituted panel is empowered to resolve the dispute, but the intent is clear and the lack of this recitation appears harmless.

6 As stated in Staring, *The Law of Reinsurance* at 22-19 (West 1998):
Interim awards are of two general types. The first is the decision of a preliminary or bifurcated issue before going on to the final award. This is unlikely to raise any legal problem of authority or procedure, since the interim award can be amended until the final award, in which it will be subsumed and subject to review, and it clearly lies within the procedural discretion of the arbitrators. The second type is a grant of relief or protection intended to be carried out by the parties before a final award, which therefore presents questions of authority and of finality for its limited purpose.

7 Paragraph 2.4 of the Procedures does contain a caveat recognizing that an umpire may be "neutral" even if he has had "previous knowledge of or experience with respect to issues involved in the dispute." While this language is helpful, it does not address the common problem of a prospective umpire who has had previous contacts with the parties, their appointed arbitrators, or the witnesses.

8 *See, e.g., Connecticut Gen. Life Ins. Co. v. Sun Life Assur. Co.*, 210 F.3d 771 (7th Cir. 2000).

9 Introduction to the Procedures for the Resolution of U.S. Insurance and Reinsurance Disputes, April 2004.

10 The Act § 52(4).

11 The Procedures ¶ 15.4.

12 The Procedures ¶ 6.3.

13 The Procedures Alternative ¶ 6.3.

news and notices

Board Eliminates Charge to Non-members for Use of Umpire Selection Procedure

At its meeting on March 10, 2005, the ARIAS•U.S. Board of Directors voted to eliminate the $100 non-member fee from each party for use of the Umpire Selection Procedure. Previously, the fee was charged if neither party was an ARIAS member. However, the Board decided that it was in the best interest of the industry to remove any impediment to use of this method for randomly choosing an umpire. The recently announced procedure for neutral selection of a full panel also is offered to the industry at no cost. Both procedures are available through the website at www.arias-us.org .

Workshop Heads for Basking Ridge, New Jersey

The next Arbitrator Workshop will take place on September 6-7, 2005 at the North Maple Inn (formerly the AT&T Conference Center) in Basking Ridge, New Jersey. The new location provides an easier-to-access venue for members living to the south of the New York area. Yet, it is still within reach of major airports (40 minutes from Newark Liberty) for those coming from around the country. More information about the facility is at www.northmapleinn.com.

Registration will begin on the ARIAS website on July 13 at 10:00 a.m. Any member interested in attending who has not attended a previous workshop should plan to be online at that time and have a credit card ready. The first 27 qualified registrants will be accepted. Complete information will be sent to members by mail and email in June; it will also be on the website in advance of the registration date.

ARIAS Website Provides Members with Links to Other Sites

On May 20, the website opened a new page that includes a list of links to outside organizations and resources. The page was requested by the Board to help members interested in connecting with organizations outside of ARIAS that facilitate deeper understanding of dispute resolution, represent related activities, or are involved with similar initiatives in other countries.

Communication within Committees

As a means of assisting members of committees in exchanging information with their chairs and co-chairs, the committee listings on the website now include the email addresses of chairs and co-chairs of each committee. These committee rosters can be found in the "About ARIAS" section of the site.

Forms and Procedures Committee Seeks Member Input

Related to the item above, the Forms and Procedures Committee is looking even beyond its own members. The Co-chairs Susan Stone and Tom Forsyth have asked any member who has a comment, observation, or suggestion about improvements or additions to the ARIAS forms to contact them by email.

Board Certifies Five New Arbitrators, Names Two New Umpires

At its meeting on May 4, the ARIAS Board of Directors approved certification of five new arbitrators, bringing the total to 253. The following members were certified; their respective sponsors are indicated in parentheses:

- **Theresa Arana Adams** (Michael Cass, Dewey Clark, Richard Bakka)
- **Susan S. Claflin** (Charles Foss, Mark Wigmore, Robert Green)
- **Bernard A. Kesselman** (Peter Scarpato, Mary Ellen Burns, Howard Denbin, and six non-members)
- **Alan R. Hayes** (Michael Studley, Robert O'Hare, Anthony DiPardo)
- **Jonathan Rosen** (Thomas Greene, Paul Hawksworth, Robert F. Hall)

Their biographies will appear in this issue and the next.

At the same meeting, **Diane Nergaard** and **Floyd H. Knowlton** were approved for the ARIAS Umpire List.

Board Reaffirms Certification Criterion Relating to Sponsorship

(Due to the importance of this news item, it is being repeated.)

Last year, the Board of Directors clarified the requirement for sponsoring a member for certification. In commenting on the content of sponsor letters, the Board specified the following: "These comments must be based on the writer's personal acquaintance with the candidate over a significant period of time, at least five years." This clarification has been included in the criteria on the website since last September and is in the new Annual Directory. At its January meeting, the Board confirmed that sponsor letters were not acceptable if they indicated a period of time less than five years.

Board Emphasizes Sponsor Letter Content

(Due to the importance of this news item, it is being repeated.)

At its March meeting, the Board asked that members who are writing sponsor letters be reminded that letters must contain comments about the candidate's trustworthiness, moral character, and reputation. Letters that lack such information will not be accepted.

Some 2006 ARIAS Calendars Available

At the conference in Las Vegas, each attendee was given a 2006 appointment calendar with a small white ARIAS logo on the cover. Since these were ordered before the number of attendees was known, 26 of them were left over. Any member who would like one should send an email to info@arias-us.org with the address to which it should be sent. They will be mailed without charge, until they are gone.

ARIAS Briefcases Also Left Over

Twenty-two of the briefcases given to attendees at last fall's conference are also available. These are black microfiber with a small white logo. One will be sent to each of the first 22 members who requests it through an email to info@arias-us.org . Be sure to include the address to which it should be sent.

Employment Opportunities Added to ARIAS Website

On June 8, a new area opened on the ARIAS website, designed to give prospective employers a place to post descriptions of projects or positions for which they need talented insurance professionals. Simultaneously, an announcement and call for listings was emailed and mailed to all members. It is hoped that this location will provide a place for valuable connections to be made.

CORRECTION...Author's Photo in First Quarter Issue

In the article "Court Intervention in Selecting the Arbitration Panel" in the First Quarter issue, the photograph shown in the printed version was not Mark L. Noferi. His photo is provided here.

Mark L. Noferi

report

Jackpot Justice Avoided in Las Vegas…Reinsurance Arbitration Improves at Spring Conference

The 2005 ARIAS Spring Conference took on the task of improving the arbitration process from a range of viewpoints. Appropriately (for Las Vegas) entitled "Avoiding Jackpot Justice...Improving the Reinsurance Arbitration Process," the event drew a total of 357 attendees and 73 spouses or guests, a 32% increase over last year's attendance at The Breakers.

The curriculum analyzed what participants from various sides of dispute resolution can do to manage and improve the process. Separate sessions focused on how arbitrators, lawyers, and the parties in disputes can improve the organization, structure, and conduct of proceedings to achieve more constructive, efficient, and beneficial arbitrations. After general sessions addressed possible improvements by each group (arbitrators, lawyers, and parties), breakout sessions generated discussions among smaller groups, which were later summarized by reporters to the reconvened session.

In addition, the program addressed the opportunities for new arbitrators to contribute to the process and included a panel on what we can learn from arbitration practices in other countries and industries.

Co-chairs Steve Richardson, Elaine Caprio Brady, and Dan FitzMaurice began planning early and had the faculty fully in place when the announcement brochure went out in February. With periodic conference calls from London, Hartford, and Boston, as well as frequent email exchanges, they continued to work out the details, so that materials went out in advance to registrants and other elements came together just in time in Las Vegas.

Recent ARIAS conferences have increasingly been using slides in support of panel discussions. At this conference, for the first time, all general sessions featured slide presentations.

The faculty of this spring's conference was comprised of a total of 35 speakers, panelists, and moderators. In preparation for the conference, faculty papers addressing the topics of the general sessions were sent two weeks in advance to all who had registered. Some of these papers will be featured in upcoming issues of the Quarterly.

As usual for an ARIAS spring conference, golf and tennis were popular attractions for the time off on Thursday afternoon. The Seventh Annual ARIAS Open drew 96 golfers to the Desert Pines Golf Club, while 24 tennis players ventured over to Bally's for a series of spirited tennis games. The weather was threatening in the morning, bringing dark memories of Bermuda in 2003, but the afternoon ended up partly cloudy and perfect for sports and touring. However, golfers are looking forward to having the tournament back on hotel property next year at The Breakers. The logistics and time involved in traveling to and from Desert Pines put a bit of a dent in the event.

The Venetian lived up to its advance billing. The suites were spectacular, the restaurants, shops and scenery were impressive, and Las Vegas was certainly something to behold...at least once. ▼

feature

The Tension Between Integration Clauses and Disengagment Provisions

Randi Ellias
Butler Rubin Saltarelli & Boyd

I. Introduction

In recent years, reinsurance contracts relating to property and casualty business have increasingly included integration, or "entire agreement," clauses. Integration clauses generally provide that the contract document itself comprises the entire agreement between the parties, precluding consideration of any evidence outside the four corners of the contract. In the reinsurance context, this prohibition against the consideration of any evidence outside the four corners of the contract would include a prohibition against the consideration of representations and warranties made during the solicitation process. Arbitration panels do often consider representations and warranties made during the solicitation process when resolving disputes, however. Indeed, the "disengagement" provision found in most arbitration clauses arguably provides an arbitration panel with the authority to do so. More specifically, the disengagement provision normally relieves the panel from following the strict rule of law, allowing the panel to render a decision informed by industry custom and practice. Thus, there is a tension between the apparent mandate of the integration clause and the flexibility afforded to a panel by virtue of the disengagement provision. This article examines that tension and proposes several contractual solutions that may resolve the issue in a way that is consistent with custom and practice in the reinsurance industry.

...the disengagement provision normally relieves the panel from following the strict rule of law, allowing the panel to render a decision informed by industry custom and practice.

II. The Effect of Integration Clauses

An integrated agreement "is a writing or writings constituting a final expression of one or more terms of an agreement." (Restatement (Second) of the Law of Contracts § 209 (1981).) The import of an integrated agreement lies in the effect that a finding of integration has on the consideration of terms not found in the writing. An integrated agreement supersedes contrary prior statements. (*Id*., Comment (a).) Moreover, a "completely integrated" agreement – that is, an agreement for which the parties have evidenced their intent that the written document contains all relevant terms and conditions – supersedes even those additional terms that are consistent with the writing. (Id.) These two concepts, taken together, are generally known as the "parol evidence rule." The Second Restatement articulates the parol evidence rule as follows:

> (1) A binding integrated agreement discharges prior agreements to the extent that it is inconsistent with them.
>
> (2) A binding completely integrated agreement discharges prior agreements to the extent that they are within its scope.
>
> (3) An integrated agreement that is not binding or that is voidable and avoided does not discharge a prior agreement. But an integrated agreement, even though not binding, may be effective to render inoperative a term which would have been part of the agreement if it had not been integrated.

(Restatement (Second) of the Law of Contracts, § 213 (1981).) The "prior agreement" referred to in §213 might be either a prior oral or a prior written agreement. Despite its name, the parol evidence rule is neither an evidentiary rule, nor a rule of contract interpretation. Rather, it is a rule of substantive law that defines the subject matter of interpretation. (*Id*., Comment (a).)

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Of course, the applicability of the parol evidence rule depends upon the existence of an integrated contract. The easiest way for parties to effectuate an intent to reduce their entire agreement to writing, thereby creating an integrated contract, is to include an integration or "entire agreement" clause within the written contract document. A simple integration clause in a reinsurance contract might read as follows: "This Agreement of Reinsurance constitutes the entire agreement of Reinsurance between the parties hereto." While this type of integration clause is sufficient to establish the parties' intent to reduce their entire agreement to writing, parties may also use a more comprehensive integration clause, explicitly excluding prior representations and warranties from the contract. For example, a more comprehensive integration clause might provide as follows:

> This Reinsurance Agreement and the exhibits and schedules attached hereto constitute the entire agreement between the parties hereto relating to the subject matter hereof and supersede all prior and contemporaneous agreements, understandings, negotiations, and discussions, whether oral or written, of the parties. There are no general or specific warranties, representations or other agreements by or among the parties in connection with the entering into of this contract or the subject matter of any of the foregoing except as specifically set forth or contemplated herein.

A clause in the form of this latter clause likely establishes that the agreement is "completely integrated." (Restatement (Second) of the Law of Contracts, § 216, Comment e, (1981).)

In the context of reinsurance agreements, the difference between an "integrated" agreement and a "completely integrated" agreement matters to the extent that representations or warranties made during the solicitation or negotiation for the contract do not find their way into the final written agreement. As noted above, the general rule holds that "[e]vidence of a consistent additional term is admissible to supplement an integrated agreement unless the court finds that the agreement was completely integrated." (*Id*. at § 216.) That is, once the court finds that an agreement is "completely integrated," neither party is permitted to offer evidence that additional terms exist -- even if those proffered additional terms are consistent with the terms of the writing. An example may be instructive here: A reinsurer makes its participation on the contract contingent upon a representation by the cedent that the cedent will follow certain underwriting guidelines when writing the subject business. The cedent provides that representation in writing, in a letter sent to the reinsurer during negotiations. The parties, for whatever reason, do not include that representation in the final agreement; rather, the contract is silent on the issue of the underwriting guidelines that the cedent must follow. If the factfinder should determine that the contract is "completely integrated," the reinsurer could not then claim that the cedent breached the agreement by failing to adhere to the agreed-upon underwriting guidelines.

Indeed, the existence of an integration clause identical to the one cited above as evidencing a "completely integrated" agreement provided the basis for one court's denial of a reinsurer's motion to compel the cedent's production of certain documents. *PXRE Reins. Co. v. Lumbermens Mut. Cas. Co.*, 2004 WL 1166631 (N.D. Ill. May 24, 2004.) In *PXRE*, the reinsurer alleged that the cedent had breached its duty of utmost good faith during the due diligence that the reinsurer conducted before it agreed to enter into the reinsurance contract at issue; that alleged breach was the failure of the cedent to inform the reinsurer of certain side deals that the cedent had entered into with respect to risks that the cedent intended to include as part of the subject business under the reinsurance agreement. *PXRE Reins. Co. v. Lumbermens Mut. Cas. Co.*, 2003 WL 2366807 (N.D. Ill. July 24, 2003.) The reinsurer also alleged that, by withholding this information, the cedent had fraudulently induced the reinsurer into entering into the reinsurance agreement at issue. *Id*. During discovery, the reinsurer moved to compel the production of documents that would establish whether the cedent had disclosed the existence of those alleged side deals to other reinsurers in connection with other contracts. See *PXRE Reins. Co. v. Lumbermens Mut. Cas. Co.*, 2004 WL 1608393 (N.D. Ill. April 21, 2004.) The court denied the reinsurers'

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A simple integration clause in a reinsurance contract might read as follows: "This Agreement of Reinsurance constitutes the entire agreement of Reinsurance between the parties hereto."

Presumably, regulators have begun to require parties to include "entire agreement" clauses in their contracts so that the regulators can gain some comfort that there are no conditions to the parties' agreement that fall outside the four corners of the written contract document.

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motion to compel, stating that even if the duty of utmost good faith existed between the parties, that "default rule" did not trump the integration clause. 2004 WL 1166631 at *2. Specifically, the court asserted that

> . . . it is simply not true that a contract freely entered into by parties such as PXRE and Lumbermens is trumped by a doctrine that, like other statements of legal rules, is a default rule. No case suggests that the [integration clause found in the reinsurance contract], with its express negation of any warranties, representations, or other agreements that are not in the document itself, is somehow contrary to public policy so as to be overridden by *uberrimae fidae* or any other doctrine
>
> * * *
>
> here the parties went well beyond the ordinary integration clause to preclude precisely what PXRE is attempting here by seeking to import implied representations found nowhere in the Agreement.

(*Id*. at *2, *3.) The "implied representations" rejected by the court in *PXRE* include representations made during the negotiations for the agreement at issue -- representations that, pursuant to industry custom and practice, arbitrators might normally consider when rendering a decision.

III. Statutorily-Required Use of Integration Clauses in Reinsurance Contracts

Most states have long had regulations on the books requiring reinsurance agreements reinsuring life and health insurance policies to include integration clauses in order for the cedent to take credit for the reinsurance on its statutory financial statements.[1] The regulation found in the Illinois Administrative Code provides a typical example, with respect to "Life Reinsurance Agreements":

> 1103.40 Written Agreements
>
> * * *
>
> c) The reinsurance agreement shall contain provisions which provide:
>
> 1) That the agreement shall constitute the entire agreement between the parties with respect to the business being reinsured thereunder and that there are no understandings between the parties other than as expressed in the agreement . . .

50 Ill. Adm. Code 1103.40.

Following the model of the regulations applicable to the life and health industry, regulators have similarly begun to require that reinsurance contracts related to property and casualty business include integration clauses. To date, five states[2] have promulgated regulations requiring integration clauses in reinsurance contracts for property and casualty business and, given the current regulatory climate regarding "side deals," it is likely that other states will follow suit. The Texas regulation serves as a good example:

> § 7.611 Indemnity Reinsurance Agreements – Required Provisions
>
> Credit will not be granted to a ceding insurer for reinsurance effected with assuming insurers . . . or otherwise in compliance with this subchapter unless the reinsurance agreement:
>
> * * *
>
> (9) includes a provision indicating that the written agreement shall constitute the entire agreement between the parties with respect to the business being reinsured thereunder and that there are no understandings between the parties other than as expressed in the agreement . . .

Presumably, regulators have begun to require parties to include "entire agreement" clauses in their contracts so that the regulators can gain some comfort that there are no conditions to the parties' agreement that fall outside the four corners of the written contract document.[3] The absence of terms falling outside the four corners of the written contract document affords the regulator a reasonable degree of confidence that if the cedent takes credit for the reinsurance, the reinsurance does, in fact, exist. In other words, the cedent has properly stated its capital and surplus.

IV. Disengagement Provisions

The arbitration clauses found in many reinsurance contracts provide that the arbitrators shall interpret the contract "as an honorable engagement, and not merely as a legal obligation." (Brokers & Reinsurance Markets Association, Contract Wording Reference Book, Clause 6C (January 1, 1990)). In addition, an arbitration clause may provide that the arbitrators "are relieved of all judicial formalities and may abstain from following the strict rules of law." (*Id*.) Courts have consistently read such a clause, sometimes referred to as a "disengagement provision" or an "unrestricted submission," to confer expansive authority upon the arbitration panel -- including, for example, the power to ignore the substantive law that the parties have agreed will apply to the contract. *St. Paul Fire and Marine Ins. Co.* v. Eliahu Ins. Co., 1997 WL 357989 at *7 (S.D.N.Y. June 26, 1997). In *Eliahu*, the arbitration provision in the reinsurance contract at issue provided that, "Said arbitration shall take place in a city mutually agreed upon by the Company and the Reinsurer. Failing agreement, the seat of arbitration shall be New York. The laws applicable shall be those of the seat of arbitration." *Id*. In deciding whether that provision conferred personal jurisdiction over the defendant in New York, the court noted that:

> although the certificate states that the law of the seat of arbitration governs, it states also that "[t]he [arbitrators] are relieved of all judicial formalities and may abstain from following the strict rules of law." Therefore, even if New York was the seat of arbitration and New York law governed, the arbitrators would be free to disregard New York substantive law.

(*Id*.)

The breadth of authority afforded to an arbitration panel by virtue of a provision relieving the panel from following the strict rules of law makes perfect sense in light of the fact that arbitrators are normally chosen because of their specialized knowledge regarding the subject matter of the dispute.

V. The Tension Between "Integration" Clauses and "Disengagement" Clauses

As discussed above, an integration clause arguably bars the consideration of evidence of prior agreements and any representations or warranties made during the negotiation process that are not ultimately included in the written contract document -- whether or not one of the parties relied upon those representations or warranties when it entered into the agreement. A finding that a contract is an integrated agreement precludes the introduction of evidence of prior agreements that is meant to alter, vary, or contradict the written terms of the contract document. The existence of a "completely" integrated agreement precludes the introduction of evidence of *any* prior agreements, even those that are consistent with the written terms of the document.

In the context of a reinsurance agreement, strict application of the parol evidence rule in the case of an integrated reinsurance agreement would arguably bar the consideration of certain representations and warranties made during solicitation or negotiation that were not explicitly included within the four corners of the final reinsurance agreement and that contradicted written terms of that agreement. In the case of a completely integrated reinsurance agreement, strict application of the parol evidence rule would arguably bar the consideration of *any* representations and warranties made during solicitation or negotiation that were not explicitly included within the four corners of the final reinsurance agreement. The industry custom and practice in place prior to the time when parties began using integration clauses in their contracts, however, favored the consideration of representations and warranties made during solicitation or negotiation, regardless of whether those representations and warranties found their way into the written document. (*See* Ostrager and Vyskocil, *Modern Reinsurance Law and Practice* at 14-3 (Second Ed. 2000) ("[a]rbitrators may also be more willing to rely upon extrinsic evidence of intent or industry custom and practice with regard to contract provisions that are seemingly unambiguous on their face.") If the reinsurance contract contains a

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The breadth of authority afforded to an arbitration panel by virtue of a provision relieving the panel from following the strict rules of law makes perfect sense in light of the fact that arbitrators are normally chosen because of their specialized knowledge regarding the subject matter of the dispute.

In *Schacht v. Beacon Ins. Co.*, 742 F.2d 386 (7th Cir. 1984), the Seventh Circuit Court of Appeals opined that an arbitration panel faced with a reinsurance agreement containing both an integration clause and a disengagement provision could choose to ignore the parol evidence rule.

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disengagement provision, whereby the arbitration panel is exhorted to treat the contract as an "honorable engagement" and is relieved from following the "strict rules of law," that disengagement from substantive legal rules would arguably include a release from any obligation that the panel might otherwise have had to strictly apply the parol evidence rule to the reinsurance agreement at hand. Rather, the panel could consider representations and warranties made during solicitation and negotiations, in accordance with both the instruction to interpret the agreement as an honorable engagement and industry custom and practice. Accordingly, to the extent that a reinsurance agreement includes both an integration clause and a disengagement provision, there is an inherent tension between those two contractual provisions that a panel charged with resolving a dispute arising under that agreement may need to address.

In *Schacht v. Beacon Ins. Co.*, 742 F.2d 386 (7th Cir. 1984), the Seventh Circuit Court of Appeals opined that an arbitration panel faced with a reinsurance agreement containing both an integration clause and a disengagement provision could choose to ignore the parol evidence rule. In the *Schacht* case, the cedent and reinsurer entered into a reinsurance agreement for automobile business that provided for premium as follows:

> The [cedent] shall pay to the [reinsurer] . . . with respect to business in force at the effective time and date of this Exhibit, 90% of the unearned portion of the [cedent's] net retained premiums for all losses of business reinsured hereunder; 90 days after inception in 10 successive monthly segments net of offsets.

Id. at 388. The treaty also included a termination provision, allowing the reinsurer to terminate the contract upon 180 days notice. *Id.* The contract also contained an integration clause in the contract, which provided: "That the Agreement of Reinsurance . . . and this Amendment constitutes [sic] the entire agreement of Reinsurance between the parties thereto." *Id.* Finally, the reinsurance agreement provided for the arbitration of "any difference of opinion . . . between the [cedent and the reinsurer] which cannot be resolved in the normal course of business with respect to the interpretation of this Agreement or the performance of the respective obligations of the parties under this Agreement." *Id.* The arbitration provision further provided that

> The arbitrators and umpire are relieved from all judicial formalities and may abstain from following the strict rules of law and they shall make their award with a view to effecting the general purpose of this Agreement rather than in accordance with the literal interpretation of the language, and the decision of the majority shall be final and binding upon the parties.

Id.

Approximately three weeks after the parties had executed the reinsurance agreement, the reinsurer threatened to terminate the contract if the cedent failed to pay $1,080,000 purportedly owed as advance premium under the agreement. *Id.* at 388. Approximately a week later, having not received the allegedly overdue advance premium, the reinsurer sent a notice of cancellation "effective back to inception for nonpayment of premium and failure of your company to act in good faith in fulfilling the verbal inducements used to get us to sign the aforementioned treaty." *Id.* The cedent responded that the reinsurer had failed to comply with the 180-day notice period for cancellation, and that the cedent had "made no verbal inducements on the above-mentioned treaty. This treaty stands as written." *Id.*

When the cedent submitted its first claim under the treaty to the reinsurer, the reinsurer refused to pay. *Id.* The cedent then requested arbitration, but the reinsurer refused to arbitrate, claiming that the contract was void at inception, such that the reinsurer had no obligation to submit to arbitration. *Id.* The cedent filed a complaint for declaratory relief and an order to compel arbitration. *Id.* In its answer, the reinsurer alleged that there had been a contemporaneous oral agreement between the parties that the cedent was to pay $1,080,000 in advance premium by a date certain, or else the contract would never come into existence. *Id.* Accordingly, the reinsurer asserted that the contract had never come into existence because of either

the failure of a condition precedent or the fraudulent inducement by the cedent, and, therefore, the arbitration provision had no effect. *Id*. at 389.

The trial court struck the reinsurer's defenses, ordered arbitration, and dismissed the complaint. *Id*. In so doing, the court rejected the reinsurer's argument on parol evidence grounds, finding that the agreement was unambiguous and contained an arbitration clause. *Id*. The trial court also held that since the alleged fraud concerned the entire contract, that issue was properly referred to the arbitrators. *Id*.

The reinsurer appealed. On appeal, the reinsurer argued that the trial court had improperly relied upon the parol evidence rule to exclude evidence of the purported condition precedent regarding the payment of advance premium. *Id*. at 391. The appellate court upheld the trial court's referral of the case to arbitration, finding that the trial court had properly applied the parol evidence rule, given the existence of the integration clause and the fact that the alleged condition clearly contradicted the written contract term relating to the payment of premium. *Id*. The appellate court further found that even if the reinsurer's condition precedent argument were correct, the alleged failure of the condition precedent represented an arbitrable issue. Id. In so finding, the Seventh Circuit advised that:

> Furthermore, we note that, since the parties agreed that the arbitrators "are relieved from all judicial formalities and may abstain from following the strict rules of law," the arbitrators have the authority to consider appellant's evidence concerning the alleged condition, even though the parol evidence rule precluded the district court from considering the same evidence. Thus, since the order to compel arbitration was proper, any error in the application of the parol evidence rule could have no effect on the order of arbitration.

Id.

Thus, in *Schacht*, the Seventh Circuit reconciled the integration clause with the disengagement provision by essentially reading the integration clause out of the contract in the context of an arbitration.

The integration clause in the contract at issue in *Schacht*, however, merely stated that the contract document represented the entire agreement between the parties. It did not expressly provide that no representations and warranties existed other than those found in the contract document. Thus, even if other courts faced with the issue were to adopt the ruling in Schacht, one might argue that an arbitration panel resolving an issue arising out of a contract containing an integration clause and a disengagement provision, and faced with a decision whether to factor representations and warranties made during solicitation and negotiations into its decision, could do so only in circumstances where the integration provision did not expressly negate the effect of prior representations and warranties. In other words, if the contract contained an integration provision similar to that found in *PXRE*, where prior representations and warranties were explicitly excluded from the agreement, the arbitration panel could not consider evidence of such representations and warranties, notwithstanding the existence of a disengagement provision. This issue, however, has not been resolved in the Seventh Circuit. Moreover, apparently no other court has opined on the finding in *Schacht*.

VI. Proposed Contractual Resolution

As noted above, the use of integration clauses in reinsurance contracts is a fairly recent development, likely based in relatively recently enacted regulatory requirements. The extent to which parties have focused on contract drafting to ensure that the integration clause both captures the actual intent of the parties and does not conflict with other provisions in the reinsurance contract, such as the disengagement provision is unclear. We have identified three drafting options potentially available to parties who intend to use both an integration clause and a disengagement provision in a contemplated contract, and yet still wish to ensure that a potential arbitration panel may consider representations and warranties made during the solicitation for and negotiation of the contract.

The simplest -- and likely most effective -- way that parties could ensure that an

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We have identified three drafting options potentially available to parties who intend to use both an integration clause and a disengagement provision in a contemplated contract,...

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arbitration panel could give full consideration to representations and warranties made during the solicitation and negotiation of reinsurance contracts would be to explicitly include those representations and warranties as part of the written contract document. Thus, if agreement to enter into a reinsurance contract depends upon certain critical representations or warranties made during solicitation and negotiation, each side should ensure that the particular representations and warranties upon which it relied are enumerated in the contract. The parol evidence rule would then not become an issue in any dispute. This approach benefits both parties in that each party knows precisely upon which representations and warranties it is entitled to rely, as well as what representations and warranties it is deemed to have made.

Alternatively, the parties could consider drafting the integration provision to incorporate generically all representations and warranties made by both sides during solicitation and negotiation. This alternative is less precise and leaves open to dispute precisely what representations and warranties were, in fact, made. As noted above, the rationale underlying the regulatory requirements that reinsurance contracts include integration provisions likely stem from the regulators' desire to ensure that there is nothing outside the four corners of the reinsurance contract that could affect the reinsurance coverage. This assurance gives the regulator some comfort that the cedent who is taking credit for that reinsurance has done so properly and has, therefore, also properly stated its capital and surplus. If the integration provision merely incorporated by reference all representations and warranties made during the solicitation for and negotiation of the agreement, the regulators would not receive the assurances that they appear to seek. Rather, conditions unknown to the regulator and indeterminable from the face of the document could affect the reinsurance coverage. Accordingly, this option may be less desirable, as parties might be required to justify the provision to a regulator.

The third drafting option consists of a compromise between the first two options. Specifically, the integration clause could incorporate by reference particular documents that contain the specific representations and warranties upon each party relied; the parties could then attach those documents as exhibits to the reinsurance agreement. This compromise would have the effect of incorporating representations and warranties made during the solicitation of and negotiation for the reinsurance contract into the agreement, and would also provide a regulator with one document to which she could refer to confirm the reinsurance coverage.

Finally, parties who include integration provisions in their reinsurance contracts but choose not to include an arbitration provision should be aware of the possible ramifications of that decision -- namely, that a court will find that a party to such a contract has abandoned any argument that it is entitled to rely on representations or warranties made during solicitation, whether or not such reliance is the generally-accepted industry custom and practice. Rather, a court will likely find that the existence of the integration clause precludes any consideration of prior representations and warranties that are not referenced in the agreement, as did the court in *PXRE*.

VII. Conclusion

The tension between an integration clause and the disengagement provision creates a complex issue, especially for an arbitration panel charged with treating the contract as an "honorable engagement," rather than as a strictly legal document. Arbitrators must be conscious of the potential conflict between the two provisions when asked to resolve a matter arising out an agreement containing both an integration clause and a disengagement provision, and must give some consideration to how to address that potential conflict in light of both the language of the integration clause and the breadth of authority afforded by the arbitration clause. To the extent that the integration clause at issue does not contain an explicit exclusion for prior representations and warranties, the *Schacht* case may provide some guidance, and an arbitration panel may decide against strict application of the parol evidence rule. Should the integration clause at issue contain an explicit exclusion for prior representations and warranties, however, an arbitration panel faces a more difficult issue. ▼

1 Ariz. Admin. Code R20-6-307 (1995); Code Ark. R. 054 00 051 (1996); Conn. Agencies Regs. § 38a-72a-4 (1994); Code Del. Regs. 18 1000 1002 (2004); D.C. Mun. Regs. tit. 26, § 2303 (2005); Fla. Admin. Code Ann. r. 690-144.010 (2002); Ga. Comp. R. & Regs. 120-2-61-.05 (1993); Haw. Admin. Rules § 16-20-4 (1994); IDAPA 18.01.67.012 (1993); Ill. Admin. Code tit. 50, § 1103.40 (2004); 760 Ind. Admin. Code tit. 760 (2004), § 1-55-5; Iowa Admin. Code § 191-17.4(508) (1993); 806 Ky. Admin. Regs. 3:160 (1995); LA Admin. Code, tit. 37, Pt. XIII, § 3707 (1995); Code Me. R. 02-031 Ch. 760, § 5 (2004); Md. Insur. Admin. 31.05.07.08 (2004); Mass. Regs. Code tit. 211, § 129.03 (2004); MN St. §60A.803 (1996); Code Miss. R. 28 000 056 (1996); Mo. Code Regs., tit. 20, § 200-2.300 (1993); Mont. Admin. R. 6.6.3603 (1993); 210 Neb. Admin. Code, ch. 57, § 005 (2004); Nev. Admin. Code ch. 681A, § 190 (1996); N.H. Code Admin. R. Ins. 308.04 (1997); N.J. Admin. Code, tit. 11, § 2-40.3 (2001); N.M. Admin. Code tit. 13, § 13.2.7 (2001); N.D. Admin. Code § 45-03-07.2-03 (1995); Okla. Admin. Code § 365:25:7-52 (1994); Or. Admin. R. 836-012-0320 (1995); 31 Pa. Code § 162.8 (2004); RI Gen. Laws § 27-4.2-4 (1995(; S.C. Code of Regs. § 69-48 (1994); S.D. Admin. R. 20:06:30:11 (1995); Tenn. Comp. R. & Regs. 0780-1-62.05 (1994); Utah Admin. Code 590-143 (2002); Vt. Code R. 21 020 032 (1994); 14 Va. Admin. Code § 5-280-50 (1995); W. Va. Code St. R. § 114-48-4 (2004); Wis. Admin. Code § 55.03 (1993); WY St. § 26-5-119 (1994).

2 Alaska Admin Code, tit. 3, § 21.635 (1994); MN St. § 60A.09 (1996) (applicable only to "bulk reinsurance agreements" entered into by insurance companies, other than life insurance companies, that have a capital and surplus or surplus of $5,000,000 or less); 11 N.Y.C.R.R. 127.3 (1993) (applying to property and casualty insurers only with respect to accident and health business); 28 Tex. Admin. Code § 7.611 (1996); Wash. Admin. Code 284-13-860 (1995).

3 In explaining its adoption of a regulation requiring property and casualty insurers to include "entire agreement" clauses in their reinsurance contracts, the Texas Department of Insurance explained, "[this provision is] generally used in reinsurance agreements so the new provision[] codif[ies] standard practices that support the safe and efficient execution of reinsurance agreements." 20 Tex. Reg. 4408 (June 16, 1995).

Recently Certified Arbitrators

Therese A. Adams

In 1974, Therese Adams began her corporate insurance career in Sacramento, California with Allstate Insurance Company in their commercial underwriting division. Allstate transferred her to Northbrook, Illinois to join its international reinsurance division in 1977. In 1985, she joined a division of Crum and Forster in NYC, which underwrote political risk insurance. Ms. Adams joined American Re in 1986 as Vice President in charge of international underwriting. From 1994 until 1998, she provided consulting services to domestic and international insurance and reinsurance clients. During that time, she attended evening law school. Upon graduation, Ms. Adams joined C. V. Starr & Co. in San Francisco as Vice President and Chief Underwriting Officer.

During the course of her corporate/consulting career, Mrs. Adams has traveled worldwide conducting business and negotiating contracts in multiple cultural and business environments. She represented both Allstate and American Re at the International Insurance Advisory Council 1979-89, and was a committee member-Industry Council of OPIC (Overseas Private Insurance Investment Corporation). She authored a textbook on Political Risk Insurance, "Political Risk Insurance; Financial Guarantee or Insurance Risk," and various technical papers. Ms. Adams is fluent in Spanish and Portuguese.

In 2000, Ms. Adams and Susan E. Hayes founded Adams & Hayes Law. This firm's practice includes reinsurance arbitration, mediation, insurance/reinsurance coverage opinions and litigation support, compliance, and consulting services to in-house and outside counsel of insurance/reinsurance companies, brokers/intermediaries, and risk managers.

Ms. Adams is a member of the State Bar of California, Placer and Yuba/Sutter Bar Associations, Women Lawyers of Sacramento, and the Association of Professional Insurance Women. She received a Bachelor of Science degree in Business Administration and an MBA from California Coast University. She received her JD degree from Lincoln Law School of Sacramento in 1998 and ARM certification in 2002.

Ms. Adams is married to Mark B. Adams, grape grower and vintner of Rancho Roble Vineyards in Lincoln, CA. In their spare time Mark and Therese enjoy antiques, hiking, and opera.

Charles G. Ehrlich

Charles Ehrlich is a senior insurance executive and lawyer with over thirty years of experience in the insurance industry and private law practice. He has significant expertise in a broad range of claims matters, reinsurance disputes, litigation management, and contracts.

Mr. Ehrlich serves as Senior Vice President, Claims, of TIG Insurance Company, and Senior Vice President and General Counsel of TIG Insurance Group, Inc, TIG Holdings, Inc., RiverStone Reinsurance Services LLC, and RiverStone Claims Management LLC. He is a member of the Boards of Directors of TIG Insurance Company and various affiliates, including RiverStone Insurance U.K., Ltd.

Mr. Ehrlich directs a rapidly expanding claims organization that specializes in the resolution of complex and long-tail claims for TIG Insurance Company and other domestic and foreign companies within the Fairfax Financial Holdings family. In his capacity as General Counsel he is involved in significant reinsurance disputes and also handles special issues such as corporate investigations.

Mr. Ehrlich joined International Insurance Company (subsequently merged into TIG Insurance Company) in 1994 as Vice President and Deputy General Counsel with the primary responsibility of directing a broad range of reinsurance arbitrations and litigations with values ranging into nine figures. He also managed all internal legal aspects of the $612 million sale of International's holding company and operating units by Xerox Financial Services to a private investor group, as well as consulting with claims management on complex claim matters.

In 1997, Mr. Ehrlich became International's Senior Vice President, Claims, and has since managed high stakes claims emanating from a wide variety of books of business including general liability, directors and

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Therese A. Adams

Charles G. Ehrlich

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Rodney D. Moore

Kevin T. Riley

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officers, asbestos, environmental, professional liability and construction defect.

Mr. Ehrlich came to International after fifteen years as a litigation partner with the San Francisco based national law firm of Pettit & Martin, where he was responsibility for creating and overseeing the firm's comprehensive risk management program. He also served as legal counsel to the firm and was a member of its Executive Committee.

Mr. Ehrlich participated in the founding of MPC Insurance, Ltd., a professional liability captive owned by major California law firms, and served on MPC's Claims Committee for eight years.

In private practice, Mr. Ehrlich specialized in complex litigation involving insurance, financial institutions, real estate, contracts and tort law. He was retained by both insurers and insureds as special counsel in a broad range of matters.

Rodney D. Moore

Prior to his retirement in 1989, Rodney Moore, as a founding member of the law firm of Moore & Peterson in Dallas Texas, maintained a national practice primarily representing insurance companies in connection with leveraged buyouts, mergers and acquisitions, the drafting of reinsurance agreements, disputes relating to reinsurance agreements, public offerings of debt and equity securities and insurance regulatory compliance matters.

Between 1989 and 1996, he engaged in insurance regulatory consulting and was Of Counsel to Winstead Sechrest & Minick. He also served as a director and audit committee member of Western National Insurance Company (NYSE) from its initial public offering until it was acquired by American General Corporation.

Since 1996, Mr. Moore has served as President of Bankers Multiple Line Insurance Company and its subsidiaries, and has been heavily engaged in arbitration and mediation services, mainly in complex proceedings involving insurance companies, reinsurance companies, MGAs, and MGUs.

Mr. Moore graduated from Arlington State College in 1963 with honors in economics, and in 1966 obtained a LLB from Southern Methodist University School of Law, where he was Notes and Comments Editor of the SMU Law Review. He is a member of the Texas Bar and American Bar Association, and is admitted to practice before various federal courts.

Kevin T. Riley

Kevin Riley has been an executive in both the insurance and reinsurance businesses for 39 years.

His career began with The Travelers Insurance Company in 1966 as an All Lines Underwriter specializing in large multi-state retrospectively rated corporate and municipal risks. In 1970, he was appointed a Vice President and Principal with Sweeny & Bell Insurance Brokers specializing in Errors and Omissions, Aviation Business and Corporate Insurance products.

In 1975, he joined the General Reinsurance Corporation. As a Vice President, in the Treaty Department, he managed a multi-line treaty book of business. Consulting with insurance executive clients on the forensic investigation of company operations including the coverage design of reinsurance products and the financial application of treaty contracts, he blended his primary background with reinsurance tools to create unique products.

Recruited as a Principal and Vice President of TPF&C in 1985, Mr. Riley co-founded their Stanford, Connecticut office. He contributed to the success of this office with his involvement in treaty design, pricing and consultative reconstruction of client operations. Mr. Riley joined Willis Faber North America in 1994 as Executive Vice President of Treaty Operations. He assisted in reorganizing the North American division and implementing new production plans, which included adding offices and personnel in the United States.

Currently, he is a principal in REcoverRE LLC with offices in the United States, England, Australia and Hong Kong, providing seamless worldwide consulting on insurance and reinsurance dispute resolution and collection issues. Further, he is Chairman and CEO of Mission Claims Service, a southwest TPA based in San Antonio, Texas.

Mr. Riley's experience in insurance and reinsurance includes negotiations, transactions, and placement of coverage, not only in the United States, but also in England, Continental Europe, Australia, and

Bermuda, which gives him a global view and contacts worldwide.

Paul M. Skrtich

Paul Skrtich has been in the insurance/reinsurance arena for 18 years. For the last 9 years, he has worked at Donnelly Skrtich Underwriters, LLC (DSU). DSU is a successful reinsurance managing general underwriter that has underwritten Group Life, Group Medical, and Special Risk lines of reinsurance.

During his tenure at DSU, Mr. Skrtich has been responsible for underwriting, pricing, and reserving all lines of Group Reinsurance. Being a co-founder of DSU, he was also intimately involved in creating administrative and reserving systems from the ground up. He also has extensive knowledge and experience in creating and managing captive insurance companies. He is now also very involved in commuting Worker's Compensation and other claims.

Mr. Skrtich began his career at Mercantile & General, plc in Toronto, Ontario. Both as an actuarial student during his co-op work terms and as a full-time employee, he was involved in the reserving and financial reporting of Group and Individual lines of reinsurance. He was also intimately involved in creating programs to facilitate easier administration of the Group Reinsurance lines.

In 1992, Mr. Skrtich joined Life Reassurance Corporation in Stamford, CT. While at Life Re, he was once again intimately involved in the pricing and reserving of Group Life and Group Medical lines of reinsurance.

Mr. Skrtich earned a Bachelors of Mathematics degree from the University of Waterloo, with a major in Actuarial Science and minor in Economics. He is an Associate of the Society of Actuaries and a Member of the American Academy of Actuaries. He is also a licensed producer for Life, Accident and Health and Property and Casualty insurance in the State of Connecticut.

Mr. Skrtich and his wife, Corinne, enjoy life in their Easton, Connecticut home with their four children and two dogs. He is also a very active volunteer fire fighter in the town of Easton and has received certifications as Firefighter I, Pump Operator and Hazardous Materials Operational Level.

Timothy W. Stalker

Timothy Stalker has thirty years of industry experience, not only as outside counsel, but also as an officer for both insurance and reinsurance companies. He is a partner with the firm of Nelson, Levine, de Luca & Horst in Blue Bell, PA. As such, his expertise focuses on reinsurance arrangements, contractual wordings, commutations, coverage analysis, claim presentations, and dispute resolution, including litigation and arbitration.

Since his graduation from law school in 1977, Mr. Stalker has functioned in numerous capacities. Among those positions held were Vice President of Claims and Legal within the Liberty Mutual Group; Vice President and Counsel for Gerling Global Reinsurance Corporation of America; Vice President, Director and General Counsel for various companies within Crum & Forster Corporation (Talegen); and Vice President, Director, Secretary and Acting General Counsel for GRE of America. Early in his career, he was also the chief claim officer for PMA Re.

In addition to reinsurance matters, Mr. Stalker has had active involvement in numerous industry issues such as bad faith, fraud, asbestos, environmental, latent injury, and construction defect type cases. His past responsibilities have also included oversight of a marine claim operation and the run-off of a political risk book of business. While with the Liberty Mutual Group, he was a member of the due diligence legal team which resulted in the acquisition of numerous companies within the Liberty Mutual Group.

Born in Kansas City, Missouri, Mr. Stalker graduated from Rutgers University (B.A.) and New York Law School (J.D.). He is admitted to practice law before the Pennsylvania Supreme Court, the United States District Court for the Eastern District of Pennsylvania, and the United States Supreme Court.

He and his wife, Deborah Giss Stalker, live and consult on reinsurance and other life matters in Landenberg, Pennsylvania. He is an avid, yet struggling, golfer.

Paul M. Skrtich

Timothy W. Stalker

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in focus

Harry Tipper, III

Harry Tipper, III

Harry Tipper currently serves as President and Chief Executive Officer for Lyon's Gate Reinsurance Company Ltd., a Bermuda-domiciled reinsurance company that specializes in facilitating the efficient integration of rent-a-captive components into their comprehensive risk management program. His principal focus there is the company's business development and underwriting activities, as well as expanding relationships with its strategic business partners.

Previously, Mr. Tipper oversaw a boutique consulting practice, affiliated with REcoverRE, LLC, having a specific expertise in workers compensation and occupational accident. He focused this practice on revitalizing underwriting managers and insurance/reinsurance companies through refocusing their strategic market focus and client targeting; undertaking due diligence reviews for insurance/reinsurance companies; and providing litigation support services and expert testimony.

Before then, Mr. Tipper served as Senior Vice President and Director of Casualty & Occupational Accident Underwriting for the North American operations of the Duncanson & Holt Group, where his responsibilities included overseeing assumed reinsurance operations for Casualty, Occupational Accident, and Integrated Benefits/Disability business and reengineering administration, claims, accounting, and related IT operations. Before D&H, he created and oversaw the operations of the Alternative Risk Underwriting & Services Department for the Zurich-American Insurance Group. Before then, Mr. Tipper participated in the formation of Genesis Underwriting Management Company (subsidiary of the General Reinsurance Corporation) and oversaw the formation and acquisition of its subsidiaries and affiliated companies.

Previously, he had been a Vice President in the Casualty Facultative Division, where he initiated the development of new, traditional and financial reinsurance and excess insurance products for captive reinsurance companies, intergovernmental agencies, association pools, and trusts. He began his insurance career in 1973 in the Underwriting Department of the National Council on Compensation Insurance.

Mr. Tipper holds a Bachelor of Arts from the College of Arts & Sciences at Cornell University and a Masters of Business Administration from the Stern School of Business at New York University. He currently serves as a member of the Membership Committee of the Self-Insurance Institute of America. Previously, he was the Chair for the Senior Executive Development, General Session, and Property & Casualty/Workers Compensation tracks of the National Conference Committee and was a member of the Property & Casualty and Education committees. He also has been an advisor to the Reinsurance Committee of the American Council on Life Insurance, the Workers Compensation Committee of the American Insurance Association, and ad hoc committees on health records privacy legislation, terrorism, and TRIA. He has written and lectured extensively, conducting workshops and briefings for numerous trade associations, university continuing education and executive development programs, and governmental agencies in both the United States and Canada.

Profiles of all certified arbitrators are on the web site at www.arias-us.org

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and
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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 & Insurance Arbitration Society) since its incorporation in May of 1994 testifies to the increasing importance of the Society in the field of reinsurance arbitration. Training and certification of arbitrators through educational seminars, conferences, and publications has assisted ARIAS·U.S. in achieving its goals of increasing the pool of qualified arbitrators and improving the arbitration process. As of June, 2005, ARIAS·U.S. was comprised of 444 individual members and 81 corporate memberships, totaling 837 individual members and designated corporate representatives, of which 253 are certified as arbitrators.

The society offers its Umpire Appointment Procedure, based on a unique software program created specifically for ARIAS·U.S., that randomly generates the names of umpire candidates from a list of 65 ARIAS 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.

New in 2003 was the "Search for Arbitrators" feature on this website that searches the detailed background experience of our certified arbitrators. Results are linked to their biographical profiles, with specifics of experience and current contact information.

In recent years, ARIAS·U.S. has held conferences and workshops in Chicago, Marco Island, San Francisco, San Diego, Philadelphia, Baltimore, Washington, Boston, Miami, New York, Puerto Rico, Palm Beach, and Bermuda. The Society has brought together many of the leading professionals in the field to support the educational and training objectives of ARIAS·U.S.

In March of 2005, the society is publishing Volume VI of the ARIAS•U.S. Directory, with Profiles of Certified Arbitrators. The organization also publishes the Practical Guide to Reinsurance Arbitration Procedure (2004 Revised Edition) and Guidelines for Arbitrator Conduct. These publications, as well as the Quarterly review, special member rates for conferences, and access to certified arbitrator training are among the benefits of membership in ARIAS.

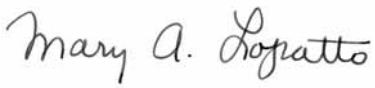
If you are not already a member, we invite you to join and enjoy all ARIAS·U.S. benefits. Complete information is in the membership area of the website; an application form and an online application system are also available there. If you have any questions regarding membership, please contact Bill Yankus, Executive Director, at info@arias-us.org or 914-699-2020, ext. 116.

Join us, and become an active part of ARIAS·U.S., the industry's preeminent forum for the insurance and reinsurance arbitration process.

Sincerely,

Thomas S. Orr

Chairman



Mary A. Lopatto

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Complete information about ARIAS•U.S. is available at www.arias-us.org. Included are current biographies of all certified arbitrators, a current calendar of upcoming events, and online registration for meetings.

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	INDIVIDUAL	CORPORATION & LAW FIRM
INITIATION FEE:	$500	$1,500
ANNUAL DUES (CALENDAR YEAR)*:	$250	$750
FIRST-YEAR DUES AS OF APRIL 1:	$167	$500 (JOINING APRIL 1 - JUNE 30)
FIRST-YEAR DUES AS OF JULY 1:	$83	$250 (JOINING JULY 1 - SEPT. 30)
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* Member joining and paying the full annual dues after October 1 is considered paid through the following calendar year.

NOTE: Corporate memberships include up to five designated representatives. Additional representatives may be designated for an additional $150 per individual, per year. Names of designated corporate representatives must be submitted on corporation/organization letterhead or by email from the corporate key contact and include the following information for each: name, address, phone, fax and e-mail.

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