VOLUME 13 NUMBER 2

ARIAS QUARTERLY U.S.

SECOND QUARTER 2006

AND THE OSCAR GOES TO...

The Cast and Crew of the Stormy Weather 2006 Spring Conference

Discovery from Intermediaries: Interim Report on Developments in Regulation and Case Law

English Arbitration Awards: Appeals on Point of Law

Recently Certified Arbitrators

editor's comments

T. Richard Kennedy

As we go to press, I am happy to report that word has been received of the formation of ARIAS-Germany. The formation takes place with the support of a number of German insurers, reinsurers, reinsurance brokers, lawyers and arbitrators. The first directors are Dr. Herbert Palmberger of DLA Piper Rudnick Gray Cary, Dr. Michael Pickel of Hannover Re and Dr. Hans-Werner Rhein of AON Re. Other directors will be elected shortly upon a meeting of the members.

Having been personally involved in encouraging development of a German chapter, it has been indeed inspiring to see the energy and enthusiasm of the individuals responsible for the formation of ARIAS-Germany. Herbert Palmberger in particular has been diligent in obtaining knowledge about requirements for the organization and operation of the new chapter. This development now brings four major national chapters to the ARIAS organization. Most certainly, it will lead to even greater improvement in the process of resolving insurance and reinsurance disputes involving multinational parties.

Our very best wishes to our new sister ARIAS chapter in Germany.

The problem of obtaining pre-hearing discovery from intermediaries, who oftentimes possess critical information concerning the operation and intent of an insurance or reinsurance program, is revisited in this issue, this time from the perspective of a possible regulatory solution. Robert M. Hall, in *Discovery from Intermediaries: Interim Report on Developments in Regulation and Case Law*, reviews the current split in case law on the authority of a court to enforce a subpoena issued by an arbitration panel requiring discovery from a reinsurance intermediary. The article then discusses an important development before the National Association of Insurance Commissioners, which could lead to requiring reinsurance brokers or managers to comply with such discovery orders as a condition of their continued state licensing. The author is very much involved in that effort.

Our members not infrequently are called upon to act in arbitrations in England. Very useful information regarding the English system is set forth in Jonathan Sacher's article, entitled *English Arbitration Awards: Appeals on Points of Law*. The author discusses the requirement of written reasons for awards and grounds for appeal to the English courts. You may find of particular interest the very limited number of such appeals in England compared to our experience in the United States.

Congratulations to Frank Lattal, Joy Langford and Mark Megaw, as well as Bill Yankus and CINN staff and all participants, for making the Spring Conference at the Breakers one of our best meetings ever. The report of the business and social events in this issue demonstrate what a huge success it was.

This being our Summer issue, I want to remind our members to find time for getting away from business pressures. Regarding the summer recess, one of our U. S. Supreme Court justices (perhaps one of our readers can confirm to me who it was) is said to have remarked, "I can do a year's work in eleven months, but not twelve months." Although you may not be in a position to take a full month, at least take some time to relax with family, friends or just a book at the beach during this wonderful season. You will be better prepared to resume a hectic schedule thereafter.

Our Editorial Board joins me in wishing you a great summer.

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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.

Manuscripts should be submitted as email attachments to trk@trichardkennedy.com .

Manuscripts are submitted at the sender's risk, and no responsibility is assumed for the return of the material. Material accepted for publication becomes the property of ARIAS•U.S. No compensation is paid for published articles.

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feature

Discovery from Intermediaries: Interim Report on Developments in Regulation and Case Law

Robert M. Hall

Robert M. Hall

I. Introduction

In the course of insurance and reinsurance arbitrations, counsel often find it useful to obtain pre-hearing depositions and documents from third parties such as intermediaries. Intermediaries may be critical witnesses in that they often design the reinsurance program, identify markets, draft the contract, process premium and loss payments, allocate them among treaty years and handle all correspondence between the cedent and reinsurer. As such, the intermediary may possess critical information concerning the intent of the program and how it operated. Unfortunately, intermediaries often resist subpoenas for documents and/or testimony.

There is a considerable split in the case law on the authority of a court to enforce a subpoena issued by an arbitration panel obtain discovery from intermediaries.[1] This results from the language of Section 7 of the Federal Arbitration Act:

> The arbitrators . . . may summon in writing any person to attend before them or any of them as a witness and in proper case to bring with him or them any book record, document or paper which may be deemed material as evidence in the case.

Some courts have interpreted such language to mean that a district court is without power to enforce a subpoena for pre-hearing documents and/or testimony.[2]

Efforts have been made to seek a regulatory solution to the problem of obtaining pre-hearing documents or testimony from intermediaries. The purpose of this article is to provide a progress report on such efforts and to examine some recent case law which suggests a partial, albeit inadequate, remedy to the problem.

There is a considerable split in the case law on the authority of a court to enforce a subpoena issued by an arbitration panel to obtain discovery from intermediaries.

Robert Hall is a former law firm partner, a former insurance and reinsurance company executive, and acts as an insurance consultant, as well as an arbitrator and mediator of insurance disputes. The views expressed in this article are those of the author and do not reflect the views of his clients.

Questions or comments may be addressed to Mr. Hall at bob@robertmhall.com.

II. Regulatory Developments

A. An Overview

Most states have enacted licensing laws for intermediaries along the lines of the Reinsurance Intermediary Model Act adopted by the National Association of Insurance Commissioners (hereinafter "Model"). The Model as been adopted as an accreditation standard which demonstrates the quality of state regulation of the insurance industry. The following language was proposed as an amendment to the Model in order to allow licensing states to discipline intermediaries, including revocation of license, for violation of the following:

1. A RB [reinsurance broker] or RM [reinsurance manager] shall comply with any order of a court of competent jurisdiction or a duly constituted arbitration panel requiring the production of non-privileged documents by the RB or RM, or the testimony of an employee or other individual otherwise under the control of the RB or RM with respect to any reinsurance transaction for which it acted as a RB or RM.
2. Compliance shall be subject to the right of the RB or RM, and the parties to the transaction, to object to the court or arbitration panel concerning the nature or scope of the documents or testimony or the time within which it must comply with the order. Failure to comply with the order shall be deemed to be a material non-compliance with the Act. However, in no event shall this section be construed to require more than one appearance by the same witness in a single action or arbitration.

This language is a compromise reached through negotiations between the author and representatives of a prominent intermediary. From a litigator's standpoint, it is not ideal. It obligates the intermediary to appear

only once in the proceeding and, in effect, gives the intermediary standing to protest the nature and scope of the subpoena.

In response, the language is a compromise designed to recognize the time and trouble necessary for a third party, albeit a critical one, to participate in an arbitration proceeding. Counsel have one opportunity to gain the documents and testimony necessary to build their case. Arbitrators have the necessary experience to draw appropriate conclusions from documents and depositions and relate them to live testimony at the hearing.

Secondly, due process considerations support the right of the intermediary to protest the nature and scope of the subpoenas. Oftentimes, third party subpoenas do not receive the same degree of scrutiny as those directed at parties unless there is somebody with an interest to raise appropriate objections.

B. Objections of Intermediaries

At early stages in the effort to amend the Model, intermediaries voiced a variety of objections. Perhaps the primary objection against this proposed amendment is that discovery has become a major burden in arbitrations and that cedents and reinsurers will turn away from the arbitration process as result. Implied, but unstated, was the threat that intermediaries will recommend that their clients not put arbitration clauses in their reinsurance agreements.

Few would argue that there are no problems with discovery in arbitrations.[3] Nonetheless, this was a curious argument for intermediaries to make for several reasons. Initially, it is an attempt to select the appropriate dispute resolution mechanism for the principals based on the convenience of the agent. Moreover, it advocates a default mechanism (litigation) in which there are virtually no limitations on discovery from intermediaries. Stated differently, the proposed alternative (litigation) is worse from the standpoint of intermediaries than the proposed regulatory solution.

In fact, the current status of the law on discovery from intermediaries is more costly than the proposed alternative. Section 7 of the FAA currently allows parties to subpoena intermediaries to bring documents and testify at the hearing. In effect, this allows the equivalent of a discovery deposition (which usually is much longer than ultimate testimony) and review of related documents at a hearing at which there will be many more individuals billing by the hour, usually at a rented facility. In terms of documents, a recent Second Circuit case[4] is instructive in that the third party witness brought 300 boxes of documents to the arbitration hearing. Obviously, a deposition and review of documents before the hearing is much more cost effective.

Another argument of intermediaries was that this effort is unconstitutional in that it is an attempt to overturn a federal statute through a state regulation. While creative, this argument is untrue but if true, would mean the end of state regulation of insurance.

The problem arises from a gap in the authority of a district court to enforce a third party subpoena. State regulation of appropriate intermediary behavior pursuant to a licensing statute cannot be said to overrule a federal statute, especially when the issue is the lack of a federal statute on point. Moreover, the argument necessarily implies that there must be a federal statute specifically authorizing states to regulate intermediaries in order for them to do so. This was hardly an argument designed to appeal to state regulators or legislators. Indeed, this bulked-up vision of federal pre-emption would be an unpleasant surprise to those many state legislatures which have enacted state arbitration statutes.

C. Current Status of the Regulatory Effort

The amendment to the Model described in subsection A above was approved by the Interested Persons Group to the NAIC Reinsurance Task Force without dissent. The Task Force exposed the language for comment at the December 2005 NAIC meeting and adopted it without dissent at the March 2006 meeting. It was approved by the Financial Conditions Committee as the same meeting. In June 2006, the full NAIC approved the amendment to the Model.

The next step at the NAIC would be to consider, at its March 2007 meeting, whether this amendment should be made part of the state accreditation standards. Frankly, it is questionable whether or not the NAIC will do so given the narrow scope of the amendment. However, if the NAIC did chose to do so, it would be a very strong incentive for states to adopt the amendment. Several prominent states have indicated an interest in adopting the amendment and this may be sufficient to produce the desired effect.

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State regulation of appropriate intermediary behavior pursuant to a licensing statute cannot be said to overrule a federal statute when the issue is the lack of a federal statute on point.

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The amendment is supported by the Reinsurance Association of America but it is not at the top of their legislative agenda. ARIAS•US has declined to take a position on this matter to date.

III. Case Law Developments

Hay Group, Inc. v. E.B.S. Acquisition Corp et al., 360 F.3d 404 (3rdCir.2004) involved an attempt to obtain documents prior to an arbitration hearing. Judge (now Justice) Alito writing for the majority ruled that there was no power under Section 7 of the FAA to enforce a subpoena for documents under such circumstances. However, a concurring opinion by Judge Chertoff suggested a means to the desired end:

> Under Section 7 of the Federal Arbitration Act, arbitrators have the power to compel a third party witness to appear with documents before a single arbitrator, who can then adjourn the proceedings. This gives the arbitration panel the effective ability to require delivery of documents from a third-party in advance notwithstanding the limitations of section 7 of the FAA. In many instances, of course, the inconvenience of making such a personal appearance may well prompt the witness to deliver the documents and waive presence.[5]

As recognized by other commentators,[6] this would allow one or more of the panelists to preside over sworn testimony, accompanied by subpoenaed documents, prior to a hearing on the merits.

IV. Subsequent Caselaw Supporting Hay Concurring Opinion Approach

In *Odfjell ASA et al. v. Celanese AG et al.*, 348 F.Supp. 283 (S.D.N.Y. 2004), the court initially denied enforcement of pre-hearing subpoenas to third parties for depositions. However, the arbitration panel later issued subpoenas "to appear and testify in an arbitration proceeding" which was prior to the scheduled hearing on the merits. Counsel for the third parties argued that this was an attempt to evade the court's initial ruling. The court enforced the subpoenas ruling:

> (Section 7) of the FAA plainly contemplates that not every appearance before an arbitrator will consist of a full-blown trial-like hearing, for it provides that the arbitrators may summon the witness to come "before them or any of them." In practical terms, this means that, while the necessity of appearing before at least one arbitrator will prevent parties to an arbitration from engaging in the extensive and costly discovery that is the bane of civil litigation, at the same time preliminary proceedings can proceed expeditiously before a single arbitrator to deal with preliminary questions of admissibility, privilege, and the like before the full panel hears the more central issue.7

After the subpoenas were enforced, a decision was rendered on an appeal. *Stolt-Nielsen SA v. Celanese AG*, 430 F.3d 567 (2nd Cir. 2005). Counsel for the third parties argued that Section 7 of the FAA required a trial-like setting for a district court to enforce subpoenas for testimony and documents from a third party. They argued that the wording of the subpoenas was merely a subterfuge to evade the limits of Section 7.

The court of appeals ruled that the subpoenas were well within the authority of the arbitration panel under Section 7 of FAA noting certain factors which, the court stated, did not necessarily need to be present in each case to justify the subpoenas. These factors were: (1) the third party was not ordered to appear for a deposition but to give testimony before the arbitration panel and all three arbitrators were present; (2) the arbitrators heard the testimony of the third party and ruled on evidentiary issues; (3) the testimony provided became part of the arbitration record. The court rejected the argument that testimony could be required only at a trial-like final hearing. The court noted other situations in which testimony might be required:

> So, too, arbitrators may need to hear testimony or receive evidence on preliminary issues - such as whether an arbitration clause is enforceable or whether a claim is barred by relevant statute of limitations - in advance of an ultimate hearing on the substantive merits of the underlying claims in the arbitration.[8]

The court of appeals did not comment specifically on the issue of testimony before a single arbitrator.

V. Conclusion

The effort to find a regulatory solution to the issue of discovery from intermediaries has been quite successful to date. However, it is not yet enacted into law in any state. Active support by ARIAS•US would be helpful.

The line of cases described above is certainly not an ideal or complete solution to the problem of third party discovery in reinsurance arbitrations. One or all members of the panel must assemble with counsel and the witness for what may be a lengthy and difficult excursion through facts and documents which would better be performed through a discovery deposition. However, it is an option for a panel when a critical third party witness declines to honor a pre-hearing subpoena for documents and/or testimony. ▼

END NOTES

1 Cohen, Royce F., Lewin, Robert, Lewner, Andrew S., Jacobson, Michele J., *Obtaining Discovery from Reinsurance Intermediaries and Other Non-Parties - Updated Caselaw and Commentary*, ARIAS•US *Quarterly*, Third Quarter 2005 at 2 [hereinafter "*Cohen*"]; Hall, Robert M., *Intermediaries and Discovery in Reinsurance Arbitrations*, Mealey's Litigation Report: Reinsurance December 2, 2002 at 30.

2 *Id.*

3 *See* Hall, Robert M., *How to Make Reinsurance Arbitrations Faster, Cheaper and Better*, on the author's website robertmhall.com.

4 Stolt-Nielsen SA et al. v. Celanese AG et al., 430 F.3d 567 (2ndCir.2005).

5 360 F.2d 404, 413 (3rd Cir.2004).

6 *Cohen* at 14.

7 348 F.Supp. 283 at 287.

8 430 F.3d 567 at 578.

news and notices

Board Certifies Nine New Arbitrators; Wilder and Moore Added to Umpire List

At its meeting in Palm Beach on May 18, the Board of Directors added **Michael S. Wilder** and **Rodney D. Moore** to the ARIAS Umpire List, bringing the total to 77.

At the same meeting, the Board approved certification of nine new arbitrators. The following members were certified; their respective sponsors are indicated in parentheses.

- **William K. Borland** (James Stinson, Barbara Niehus, Marvin Cashion)
- **William F. Fawcett, Jr**. (Thomas Newman, Mitchell Lathrop, George Gottheimer, John Diaconis)
- **Ann L. Field** (John Cole, David Raim, Joy Langford)
- **Cathy A. Hauck** (Mary Ellen Burns, Timothy McCaffrey, Richard Shaw)
- **William G. Hauserman** (John Chaplin, Clement Dwyer, James Yulga)
- **Harold Horwich** (Martin Haber, Mark Wigmore, George Reider, Charles Foss)
- **Linda H. Lamel** (Peter Bickford, Donald DeCarlo, Charles Havens)
- **Charles T. Locke** (Debra Roberts, David Thirkill, Robert Mangino)
- **Stephen J. Paris** (Andrew Douglass, Joseph McCullough, Christian Bouckaert)

Qualified Mediator Program Launched on Website

At its March meeting, the ARIAS Board approved a new program for mediators that had been recommended by the Mediation Committee. While ARIAS will not be training mediators, it will recognize those Certified Arbitrators who have completed the requisite training from recognized organizations or who submit other specialized experience in dispute resolution. The names of those who meet the qualifications will be listed on the website in the same way that umpires are listed, with links to their biographical profiles.

In support of the program, the committee is developing a list of facilities that provide mediation training.

A complete explanation of the program and a form to apply for approval are located in the Qualified Mediator Program section of the ARIAS website.

Law Committee Case Notes Available on Website

The Law Committee has created a new section of the ARIAS website providing summaries of recent cases that involve issues of significance to arbitration and reinsurance. Occasionally, it will also feature reports on pending legislation and existing laws and regulations that relate to the industry.

These case notes and reports will remain on the site for future reference. Some will be selected for publication in the Quarterly, as well. Elaine Caprio Brady, committee chair, expressed the hope that these reports will help members stay in touch with the evolving case and statutory law that can impact the practice of reinsurance arbitration.

September Workshop at Glen Cove Mansion on Long Island

Glen Cove Mansion Hotel & Conference Center is the site for the next ARIAS Intensive Arbitrator Training Workshop on September 7-8, 2006. Created around a beautiful turn-of-the-century landmark mansion, the center is located on a 55-acre Long Island estate. Just 23 miles from LaGuardia and 24 miles from Kennedy airports, it allows reasonable access for members traveling from outside the New York region.

This workshop will follow the same format and hypothetical scenario as others in recent years. The fee for attending the event has been set at $595. That payment covers meeting costs, an overnight single room, breakfast, lunch, reception, dinner and refreshment breaks. Only travel and incidental expenses are additional. The reception and dinner are scheduled to begin at 6:15 on September 7, the evening before the day-long sessions.

Registration will begin at 10:00 a.m. EST on Wednesday July 19 from the ARIAS website home page. Due to the mock arbitration format, only 27 student arbitrators can be accommodated. Some of these events have filled up in less than an hour; anyone who wants to attend should be ready when the system opens.

This workshop is for members only, who have not previously attended one of these events; it applies toward ARIAS certification and provides New York State CLE credit.

Complete details are on the website calendar. An announcement was sent to all members in late June.

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2007 Spring Conference Set for Boca Raton Resort (repeat)

The ARIAS-U.S. 2007 Spring Conference will take place for the first time at the Boca Raton Resort. The conference is scheduled for May 9-11, 2007. This scheduling returns to the pattern of noon Wednesday to noon Friday sessions.

First opened in 1926 and situated on 356 acres, the resort is one of the classic American resort hotels, in the heart of Florida's Gold Coast. In addition to great conference facilities, it offers two 18-hole championship golf courses, 30 tennis courts, and a 50,000 square foot spa.

More information will be available on the website calendar as the event draws closer.

2008 Spring Conference Scheduled for Ritz-Carlton Amelia Island (repeat)

With calendars booking earlier and earlier at the top locations, ARIAS is attempting to reach farther out in the future so that our preferred timing can be accomplished. As a result, a contract has been completed with Ritz-Carlton Amelia Island for May 7-9, 2008. The scheduling follows the pattern of noon Wednesday to noon Friday sessions.

This Ritz-Carlton has an outstanding reputation for customer satisfaction. All 444 rooms have balconies and an ocean view; it offers an 18-hole golf course, nine tennis courts, and a dramatic new 26,000 square-foot, state-of-the-art spa facility to be completed in December 2006.

More information will be available on the website calendar as plans develop.

Dennis Gentry Has Died

Dennis C. Gentry, a long-time member of ARIAS and a veteran in the field, with well over 200 arbitrations on his record, passed away on Tuesday evening, June 6. He had lived in Sarasota, Florida.

In forwarding the sad news, Bob Reinarz, commented, "We mourn the loss of a thoughtful, knowledgeable and fair professional and dear friend. He set an example for us all to follow. We will miss him." Paul Hawksworth added, "His friendship is something I will always remember and cherish. He was indeed exemplary in every way and will truly be missed." ▼

members on the move

In each issue of the Quarterly, we list member announcements, employment changes, re-locations, and address changes, both postal and email, that have come in over the quarter, so that members can adjust their address books and Palm Pilots.

Most of these changes have occurred since the new Directory closed.

Do not forget to notify us when your address changes. **If we missed your change here, please let us know at** info@arias-us.org, so it will be included in the next issue.

Recent Moves and Announcements

Crowell & Moring LLP recently announced the addition of partner **William C. O'Neill** to the firm's Insurance/Reinsurance Group. Based in the Washington, DC office, Mr. O'Neill provides increased depth in the field of reinsurance arbitration and litigation. With his arrival there, the firm joined ARIAS as a new corporate member. Mr. O'Neill's new contact information is as follows: 1001 Pennsylvania Avenue, NW, Washington, DC 20004, phone 202-624-2950, fax 202-628-5116, boneill@crowell.com .

Paul Walther is now located at 1399 Foxtail Court, Lake Mary, FL 32746. All other information remains the same.

Thomas McGeough has moved to 28 Forrestal Avenue, Staten Island, NY 10312, phone 718-227-0197, fax 718-948-5852, email lothiangrp@aol.com .

Barbara Murray is now Vice President Reinsurance at Kemper Insurance Companies, 1 Kemper Drive, Long Grove, IL 60049, phone 847-320-2651, cell 708-359-1425.

Patrick Fee has moved to Clarendon and brought the firm in as a corporate member. He can be contacted there at 7 Times Square, 37th Floor, New York, NY 10036, phone 212-790-9839, fax 212-790-9802, email pfee@clarendon-ins.com .

Joseph F. Uvino is now a partner at the New York office of Lewis Brisbois Bisgaard & Smith LLP at 199 Water Street, 25th Floor, New York, NY 10038, phone 212-232-1324, fax 212-232-1399, email Uvino@lbbslaw.com .

John P. Allare has relocated to 6337 Inverness Way, Mason, OH 45040, phone 513-608-9620

ARIAS·U.S. Umpire List

The ARIAS·U.S. Umpire List is comprised of ARIAS·U.S. Certified Arbitrators who have provided the Board of Directors with satisfactory evidence of having served on at least three completed (i.e., a final award was issued) insurance or reinsurance arbitrations. The ARIAS Umpire Selection Procedure selects at random from this list. Complete information about that procedure is available on the website at www.arias-us.org.

David Appel
Richard S. Bakka
Nasri H. Barakat
Frank J. Barrett
Paul A. Bellone
Peter H. Bickford
John W. Bing
John H. Binning
Janet J. Burak
Mary Ellen Burns
Bruce A. Carlson
Robert Michael Cass
Dewey P. Clark
Peter C. Clemente
Robert L. Comeau
Dale C. Crawford
Paul Edward Dassenko
Donald T. DeCarlo
John B. Deiner
A.L. (Tony) DiPardo
John A. Dore
Robert J. Federman
Charles M. Foss
Caleb L. Fowler
James (Jay) H. Frank
Peter Frey
Ronald S. Gass
Dennis C. Gentry
George M. Gottheimer
Robert B. Green
Thomas A. Greene
Martin D. Haber
Franklin D. Haftl
Robert M. Hall
Robert F. Hall
Charles W. Havens III
Paul D. Hawksworth
Robert M. Huggins
Wendell Oliver Ingraham
Ronald A. Jacks
Sylvia Kaminsky
T. Richard Kennedy
Floyd H. Knowlton
Denis W. Loring
Peter F. Malloy
Andrew Maneval
Robert M. Mangino
Lawrence O. Monin
Rodney D. Moore
Diane M. Nergaard
Charles L. Niles Jr.
Herbert Palmberger
James J. Phair
James J. Powers
George C. Pratt
Robert C. Reinarz
Debra J. Roberts
Edmond F. Rondepierre
Peter A. Scarpato
Daniel E. Schmidt IV
Richard D. Smith
David A. Thirkill
Elizabeth M. Thompson
N. David Thompson
Paul C. Thomson III
Kevin J. Tierney
Thomas M. Tobin
Jeremy R. Wallis
Andrew S. Walsh
Paul Walther
Richard G. Waterman
Richard L. White
W. Mark Wigmore
Michael S. Wilder
Eugene T. Wilkinson
Ronald L. Wobbeking
Eugene Wollan

feature

English Arbitration Awards: Appeals on Point of Law

Jonathan Sacher
David Parker

Jonathan Sacher

David Parker

English arbitration law is embodied in the English Arbitration Act 1996 ("the Act"). Unlike many other countries, England did not simply adopt the UNCITRAL Model Law on International Commercial Arbitration.

Perhaps the most striking differences between English arbitration law and arbitration law in other jurisdictions, are that arbitral tribunals must, unless otherwise agreed by the parties, produce written reasons for their award. In addition, in certain circumstances, English law permits an arbitral tribunal's award to be challenged or appealed to the English courts.

The English court has increasingly taken the view that interference in arbitrations should be kept to an absolute minimum. The criteria that need to be satisfied in order for the court to grant leave to appeal (discussed below) have been subject to strict interpretation by the courts. There are a number of reported decisions of the courts refusing leave to appeal on a point of law.

Since the Act came into force in 1997, whilst there have been quite a number of appeals or attempted appeals in shipping and commodity cases, there have been only two appeals of reinsurance cases[1] and in one of them the arbitration award was reinstated by the Court of Appeal. In the *Lincoln National Life Insurance Co v Sun Assurance Co of Canada*, the first instance court allowed the appeal (part of the arbitrators' award being set aside). On appeal, the decision of the arbitrators was upheld and those parts that had been set aside were reinstated.

...arbitral tribunals must, unless otherwise agreed by the parties, produce written reasons for their award.

Form of award in English arbitrations

Parties to an English arbitration are free to agree the form of the award[2]. If there is no such agreement, the award must be in writing[3].

A legislative committee in England (the Departmental Advisory Committee or "DAC") reviewed the law in this area prior to the Act being finalised. On its recommendation, the Act includes provision that, unless otherwise agreed, an arbitration award must contain reasons[4]. The DAC considered that[5]:

> *"... it is a basic rule of justice that those charged with making a binding decision affecting the rights and obligations of others should (unless those others agree) explain the reasons for making that decision..."*

A reasoned award would appear to be a necessary prerequisite for an appeal.

Appeals

English law provides that an arbitration award can be challenged for an alleged lack of jurisdiction on the part of the tribunal[6], for serious irregularity[7] and perhaps most importantly, English arbitration awards can also be appealed on a point of law.

Appeal: point of law[8]

A restricted right of appeal on a point of law had been present in English law for many years prior to the Act. When the Act was being drafted, the DAC considered whether such a right was inconsistent with a decision by commercial entities to arbitrate any dispute. Was it correct that there should be an appeal where the parties had agreed to be bound by the decision of a freely selected arbitration tribunal? A number of interested commercial bodies were in favour of the abolition of the right of appeal. The DAC, however, considered that a right of appeal to English courts should remain[9].

Hurdles to overcome...

Appeal of an award is restricted to questions of English law only[10]. There can be no appeal to the English courts on a question of fact (whether an issue is one of "law" or "fact" is, of course, sometimes open to debate but the courts will be as restrictive as possible on this distinction).

Any available arbitral process of appeal or review (or correction) must have been exhausted[11] before any appeal can be brought

Jonathan Sacher is a partner and David Parker, an associate in the Reinsurance Group of London law firm Berwin Leighton Paisner LLP.

(for example, the Act allows parties to apply to the Tribunal to correct ambiguities). Additionally, any appeal must be brought within 28 days of the date of the arbitration award[12].

Perhaps the most challenging hurdle for a potential appellant to overcome is the requirement to obtain leave to appeal from the court. Unless the parties to an arbitration agreement agree that an appeal should be brought, leave is required to bring an appeal on a point of law[13]. An English court will only grant leave if the statutory criteria laid down in the Act are satisfied :

> *(1) the determination of the question will substantially affect the rights of one or more of the parties*

The question of law must have a substantial effect on the rights of the parties. In this regard, the point of law must not be purely hypothetical in nature. In *CMA CGM SA v Beteiligungs-Kommangitgesellschaft MS*[15], the arbitrators disagreed over interpretation of a "war cancellation" clause in a charterparty. However, the arbitrators did agree that regardless of the interpretation of the clause, it could not have been invoked due to passage of time. This rendered the question hypothetical in nature. With no substantial effect on the parties, there could be no appeal.

In the same way, in *Whistler International v Kawasaki Kisen Kaisha*[16], the question of law was held to be "academic" by the English courts, hence, there could be no appeal.

> *(2) the question is one which the tribunal was asked to determine*

English courts have construed this provision narrowly. Quite simply, it is not possible to raise a question of law on appeal which was not argued before the arbitrators[17]. It is arguable that this does not prevent an appeal on a point of law which was not put to the arbitrators but which they included in an award or a point of law which was put to the arbitrators on which they failed to make an award.

> *(3) on the basis of the findings of fact in the award, either the decision of the tribunal on the question is obviously wrong, or the question is one of general public importance and the decision of the tribunal is at least open to serious doubt*

It is not clear what is meant by "general public importance". The court held in *The Nema*[18] that a decision needed to "add significantly to the clarity and certainty of English commercial law"[19] in order for an award to be capable of appeal.

Permission to appeal under the old law was to be given where the court considered that "a strong prima facie case has been made out that the arbitrator had been wrong".

This language was in fact not incorporated into the Act, the draftsmen preferring the words "open to serious doubt". This is generally considered a broader test than the "strong prima facie" test referred to above.

If the question of law is not of general public importance, a stricter test applies. An appellant must show that an award is "obviously wrong". English authority demonstrates that this is a very high hurdle for a potential appellant to overcome. Even if there is a mere possibility that the arbitrators were correct, permission to appeal will not be granted[21].

Even if an appellant has satisfied the requirements above, there remains a final hurdle to overcome.

> *(4) despite the agreement of the parties to resolve the matter by arbitration, it is just and proper in all the circumstances for the court to determine the question*

The DAC considered it desirable for the court to expressly consider whether granting permission to appeal was "just and proper" in each case. In doing so, the DAC emphasised the necessity to pay attention to the parties' decision to arbitrate[22]:

> *"... the court should be satisfied that justice dictates that there should be an appeal; and in considering what justice requires, the fact that the parties have agreed to arbitrate rather than litigate is an important and powerful factor..."*

The appeal itself...

Where the court has granted leave to appeal, the court is empowered to[23]: (a) confirm the award, (b) vary the award, (c) remit the award to the arbitral tribunal in whole or in part for reconsideration in the light of the court's determination, or (d) set aside the award in whole or in part. The court must only exercise its power to set aside an award (wholly or in part) if it is satisfied that it would be inappropriate to remit matters back to the arbitration tribunal.

Reinsurance Appeal

The English court has allowed only one appeal of a reinsurance arbitration award in the 10 years since the Act came into force. In *CGU v Astrazeneca*[24], the English court allowed reinsurer's appeal from the Tribunal's finding that it was likely that Iowa law applied to the underlying liability.

Conclusion

Clearly, the presence of a right to appeal from an arbitration award on a question of law goes against the principle that the parties should be free to select a dispute resolution mechanism themselves, free from interference.

However, the English courts have been increasingly reluctant to allow appeals from arbitrators' awards based on a point of law. A recent comment in the House of Lords (the highest appeal court in England) illustrates that English courts see arbitration law as a "one stop adjudication"[25] process. ▼

1 *CGU International Insurance Plc v Astrazeneca Insurance Co Ltd* [2005] EWHC 2755 and *Lincoln National Life Insurance Co v Sun Assurance Co of Canada* [2005] 1 Lloyd's Rep 606.
2 Section 52(1) Arbitration Act 1996
3 Section 52(3) Arbitration Act 1996
4 Section 52(4) Arbitration Act 1996
4 Paragraph 247, DAC report on the arbitration Bill, February 1995
6 Section 67 Arbitration Act 1996
7 Section 68 Arbitration Act 1996
8 Section 69 Arbitration Act 1996
9 Paragraph 285, DAC report on the arbitration Bill, February 1995
10 Section 82(1) Arbitration Act 1996
11 Section 70(2) Arbitration Act 1996
12 Section 70(3) Arbitration Act 1996. The Court is empowered to extend this time period under its general powers set out in the Act.
13 Section 69(2)(b) Arbitration Act 1996
14 Section 69(3) Arbitration Act 1996
15 [2003] 1 Lloyd's Rep 212
16 [2001] 1 Lloyd's Rep 147
17 See *CMA CGM SA v Beteiligungs-Kommangitgesellschaft MS* [2003] 1 Lloyd's Rep 212 - "The Northern Pioneer"
18 [1981] 2 Lloyd's Rep 239
19 *The Nema* per Diplock LJ at 248
20 The Act adopts the exact words used by Diplock LJ in *The Nema*
21 *The Marko Polo* [1982] 1 Lloyd's Rep 481
22 Paragraph 290, DAC report on the Arbitration Bill, February 1995
23 Section 69(7) Arbitration Act 1996
24 See footnote 1
25 *Lesotho Highlands v Impregilo* [2005] 3 WLR 129

Spring Conference Features Big Screens, Videos, Oscars, and Greenberg

Mock arbitrations were the focus of the main conference sessions at this year's ARIAS•U.S. Spring Conference at The Breakers. Thursday and Friday meetings consisted of a series of intense interactions in a hypothetical dispute about hurricane damage from multiple storms. The conference theme, "**Stormy Weather...Are Arbitrators in a Power Outage**," used the storm story to illustrate how powers of arbitrators may be challenged at various stages of an arbitration process and the issues arbitrators should consider when deciding the scope of a panel's power.

These hearings were projected on two large screens on either side of the stage. This was the first time that panel discussions have been captured with cameras and projected for the audience to better observe the interactions. "With the large size of our conferences now," Executive Director Bill Yankus said, "we can never go back. Audiences will continue to be larger and this is the only way to be sure the training sessions are effective for everyone."

Each of the four general sessions on Thursday and Friday was introduced by a short video newscast or drama about the storms hitting Florida. The videos were created by the conference co-chairs and starred Ken Pierce, Mark Megaw, Joy Langford, John Cole, Mary Lopatto, Dick Porter, Susan Grondine, Karen Valanzano, and Bob and Ann Mangino.

Joy Langford and Mark Megaw awarded Oscars at dinner Friday night for best performances in the videos, in the mock arbitration panels, and for other contributions to the programs. Of course, the traditional sports awards for golf and tennis were also presented, by Paul Walther and Eric Kobrick.

The highlight of this year's conference was the keynote address. Maurice (Hank) Greenberg, one of the most influential figures in the insurance industry in the past half century, opened the program on Friday morning. His speech covered the major issues facing the industry today. Attendees had an opportunity to ask questions after the address.

Saturday morning opened with a brief explanation by Elaine Caprio Brady of the Newer Arbitrator Program which the Board had approved and has now been established. The program provides procedures for utilizing newer arbitrators for conducting efficient arbitrations involving lower dollar thresholds. One arbitrator is suggested for disputes up to $250,000, while a panel of three is suggested for those involving up to $1,000,000. Each option includes requirements and streamlining parameters. The program was met with a very positive response from the attendees. A complete explanation of it is now on the website.

The remainder of Saturday morning was dedicated to ethics. The advance materials sent to all registrants two weeks before the conference had contained a questionnaire that was to be returned by Friday noon. The first of the two Saturday ethics sessions reported in the results from those questionnaires and a discussion of the ethical situations they presented. The second panel discussed, in detail, the pros and cons of creating a Disciplinary Committee and an Ethics Advisory Committee. Both proposals require full consideration of the complex characteristics and consequences involved. Attendees were asked to provide feedback to members of the subcommittees who are examining the concepts.

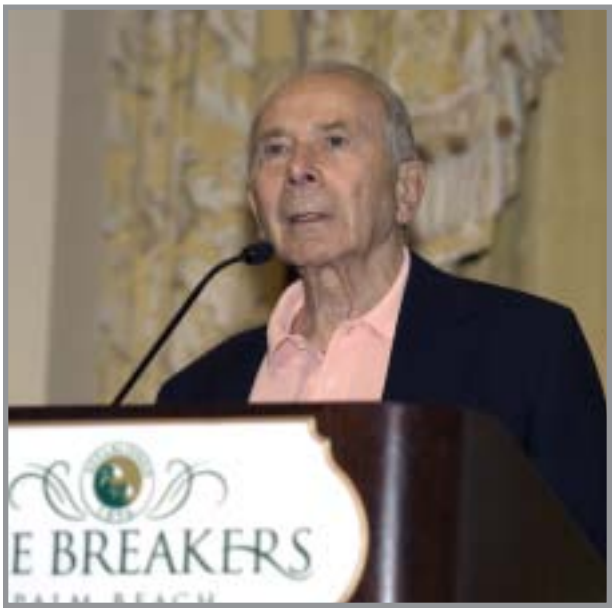
With four outdoor events planned for the three days, weather was a concern. The Breakers had not been able to have any outdoor activities for the previous week, due to showers, humidity, and heat. However, in spite of the stormy weather theme, as ARIAS arrived, the storm clouds cleared and dry, pleasant weather took over. Two lunches on the Ocean Lawn and receptions there and in the Mediterranean Courtyard were enjoyed under perfect conditions.

With several more onsite registrations on the first day, meeting attendance reached 348. Seventy-two spouses and guests brought the total attendance to 420. The conference ended at noon on Saturday, with many attendees claiming that it was the best conference yet. ▼

"This program has set the standard by which all future conferences will be measured."

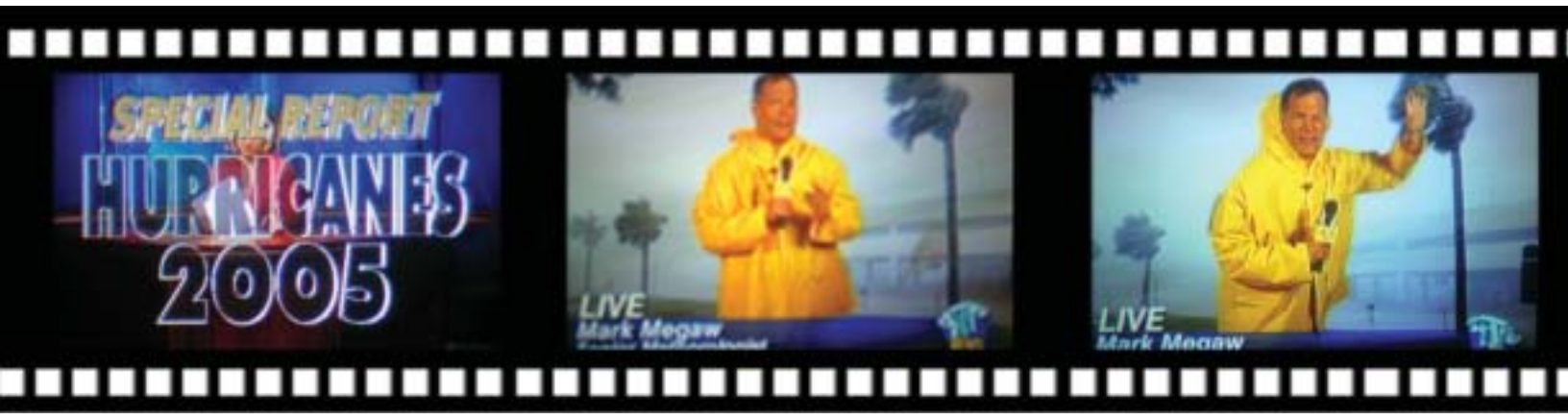
– ATTENDEE –

Frank A. Lattal, Co-Chair



Maurice R. Greenberg, Keynote Speaker

THURSDAY, MAY 18TH




Mark Megaw
Senior Meteorologist
BREAKING NEWS

FRIDAY, MAY 19TH

GOLF & TENNIS AWARDS

Left: Paul Walther and Steve Carney.

Right: Eric Kobrick and Steve Richardson

THE OSCARS

- Nominated for best actor in a leading role but winning for best screenplay: **MARK MEGAW** (just call him George Clooney)
- Best actress in a leading role: **JOY LANGFORD**
- Best actor in a leading role: **KEN PIERCE**
- Best acting ensemble: **BOB** and **ANN MANGINO** for their roles in Desperate Arbitrators
- Best actor in a foreign film: **MICHAEL PAYTON** (graciously crossing the Atlantic to serve as an arbitrator on our mock panel and not being offended by references to Hurricane Fannie since apparently "Fannie" is not an appropriate term to use in mixed company in the UK)

Winners continued on next page...

- Best foreign accent in a film: **JOHN COLE** for his role as the looter from New York on his way to visit his friend, the hot-shot lawyer, Larry Brandes

- Best silent role that the actor knew nothing about before the premier of "Hurricanes 2005: Getting Blown Away":
  NOMINEES: **FRANK LATTAL** in role of Governor Frank Lattal who canceled all applicable deductibles on homeowners policies but still suffered a drop in approval ratings; **LARRY BRANDES** in role of Brandes from Boca whose house was hit by two events—or was it one?
  OSCAR WENT TO FRANK LATTAL

- Best sport: **SUSAN GRONDINE** for traveling from Boston to DC for the filming of "Hurricanes 2005: Getting Blown Away" to play a looter and graciously agreeing to wear a bag over her head for the role

- Best Support: **MARY LOPATTO** for supporting the co-chairs in their decision to turn the conference into a media event

- Best Special Effects:
  NOMINEES: **TOM ALLEN & LINDA DAKIN GRIMM**
  WINNER: **LINDA DAKIN GRIMM** for creating her own hurricane when she spilled water all over her panel

- Best type-cast: **DICK PORTER** as the Attorney General

- Best role in a documentary: **CHARLIE FOSS** for not realizing it was a "mock" arbitration and announcing his retirement in order to serve as umpire on his panel

- Best Shakespearean Actor:
  NOMINEES: **EUGENE WOLLAN**
  DANIEL HARGRAVES
  WINNER: EUGENE WOLLAN, but when he failed to make the Friday night dinner, the Academy Award went to **DANIEL HARGRAVES**

- Best Support Behind the Scenes: **CHRIS MILTON** for assistance in arranging Mr. Greenberg as keynote speaker

Recently Certified Arbitrators

Christine E. Bancheri

As an attorney and executive with the Colonial Penn Group in Philadelphia for 15 years, Christine Bancheri acquired broad and extensive experience in commercial and personal lines, financial services, life and property/casualty products. Ms. Bancheri joined the Colonial Penn law department in 1983 with responsibility for variable insurance products and corporate matters. These responsibilities expanded into banking operations and, beginning in 1986, the run-off of approximately 30 commercial lines programs which Colonial Penn fronted for reinsurers and retrocessionaires, many of which became insolvent in the 1980s. As Vice President ñ Commercial Lines, Ms. Bancheri negotiated commutations, represented Colonial Penn in reinsurer insolvency proceedings, managed arbitrations and litigation against MGAs, cedents and reinsurers, and oversaw claims and reinsurance collections.

In 1995, Ms. Bancheri rejoined Colonial Penn's personal lines operations as Chief Claims Counsel for the property/casualty company. Her responsibilities included establishing litigation management policy for personal lines claims, directly managing high exposure claims litigation and overseeing Colonial Penn's staff counsel offices. In 1996, Ms. Bancheri became Vice President, General Counsel and Secretary of Colonial Penn Insurance Company with responsibility for legal, compliance, government relations, risk management, corporate secretarial and agent licensing functions. Colonial Penn was acquired by General Electric Capital Corporation in 1997 and Ms. Bancheri became a member of the legal division for GE Financial Assurance.

In December 1998, Ms. Bancheri left Colonial Penn and moved with her family to the British Virgin Islands where she oversaw claims in the USVI for a U.S. excess carrier and taught business law.

Prior to joining Colonial Penn, Ms. Bancheri was an associate at Morgan, Lewis & Bockius, specializing in mergers, acquisitions and securities law. She has an A.B. in English from Smith College and a J.D. with High Honors from Rutgers University where she was a member of the *Rutgers-Camden Law Journal*. She is a member of the Pennsylvania and New Jersey bars and the Federation of Defense and Corporate Counsel.

In June 2005, Ms. Bancheri returned to the US and resides in Wenham, Massachusetts with her husband, John Krampf, their two children, and Coco, a chocolate lab, and Trixie, a Tortola terrier. ▼

Christine E. Bancheri

D. Robert Buechel, Jr.

Robert Buechel is Vice President, General Counsel and Secretary of Chubb Atlantic Indemnity Ltd., a Bermuda domiciled Class 4 insurer, and its principal subsidiaries. Located in Bermuda since 2001, Mr. Buechel is responsible for legal issues of the companies, including insurance contract drafting and interpretation (e.g. large risk Bermuda excess general and professional liability business, blended policies, captive programs, proportional, non-proportional, facultative, non-traditional reinsurance contracts), managing the run off of a book of assumed reinsurance and financial lines, commutations, insolvency/liquidation issues, non-claims dispute resolution.

Prior to joining Chubb Atlantic in 2001, Mr. Buechel practiced law with the law firm LeBoeuf, Lamb, Green & MacRae LLP in its San Francisco office, with stints in the London office. At LeBoeuf, he advised property and casualty insurers throughout the US, London, Bermuda and Japan on a wide range of legal, regulatory and legislative matters. He has also represented producers and quasi-regulatory entities.

Mr. Buechel is a graduate of Stanford University ('79) and Santa Clara University School of Law ('86), where he was an editor of the Law Review. He served as an extern to California Supreme Court Associate Justice Otto Kaus ('85) and has been a member of the California bar since 1986. ▼

D. Robert Buechel, Jr.

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

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John W. Dattner

John Dunn

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John W. Dattner

John Dattner retired at the end of January 2006 from General Reinsurance Corp. where his career began in1978. He had held the position of Vice President, and was the Manager of General Re's Environmental Mass Tort ("EMT") Claims Unit until his retirement.

Mr. Dattner began his insurance career in 1970 as a Home Office Claim Examiner at Royal Globe's home office in New York City. He moved on as a Claim Supervisor at the New York City branch of Market Facilities, Inc. from 1973 to 1974. After graduating from St. John's University School of Law in 1977, he joined North American Reinsurance Corp. where he worked for one year in the Claim Department as a Claim Consultant before joining General Re.

The EMT Claims Unit at General Re was created in1984, the first such unit in the domestic reinsurance industry. As the unit's first manager, Mr. Dattner supervised the handling of all assumed EMT reinsurance claims involving continuous torts, especially asbestos and pollution, arising out of General Re's domestic business. He managed all EMT claims arising out of the current business of the General Re direct writing subsidiaries, as well as claims arising out of the runoff direct excess business formerly written by General Re and North Star Reinsurance Corp. In his last six years with General Re, he was also responsible for ceded retrocessional reporting and recovery efforts on all mass tort claims from overseas and domestic retrocessional markets. As General Re's designated deponent, he has testified in various capacities in 60 to 70 various adversarial proceedings, including depositions and arbitrations.

In addition to his claims duties, Mr. Dattner has also spoken at numerous seminars sponsored by various industry groups, including Mealeys, Glasser, the RAA and the Casualty Actuarial Society. His topics have included emerging toxic torts, basic reinsurance claim principles, allocation, coverage issues, and retrocessional issues. Also, for a number of years he was the chief editor of General Re Environmental Claims Case Law book, which became a respected reference source on a number of complex coverage issues. ▼

John Dunn

John Dunn has over thirty years in the insurance and reinsurance industry acquiring in-depth knowledge of both assumed and ceded business. Initial training began with General Reinsurance Corporation in 1971 as a facultative underwriter, where his foundation for risk analysis and pricing was developed.

Mr. Dunn's property and casualty treaty underwriting training began in 1976 with Buffalo Reinsurance Company, a subsidiary of Continental Insurance Companies. As an Assistant Vice President, he began underwriting all lines of business with emphasis on working layer casualty business. In addition to underwriting responsibilities, Mr. Dunn was given authority to manage treaty accounting and contracts, and worked closely with the claims department. Retrocessions for both the treaty and facultative departments were placed through his department. Negotiations for these contracts were coordinated through both London and domestic intermediaries. During his time with Buffalo Re, he became a Senior Vice President and Director of the company.

In 1983, Mr. Dunn joined San Francisco Re, a subsidiary of Fireman's Fund, as Senior Vice President in charge of all domestic and international treaty underwriting. In this position, he was responsible for establishing underwriting policy and procedures. In addition to his underwriting responsibilities, he directed the placement of all retrocessions which were placed in Lloyds of London and domestically.

In 1985, Mr. Dunn joined Mercantile & General Re and Toa-Re of America as a Senior Vice President of treaty underwriting. Over the next nine years, he assumed increased responsibilities, becoming the treaty underwriting manager and actively involved with placement of the companies' retrocessions. Mr. Dunn was promoted to Executive Vice President and Director of both M&G & Toa-Re of America.

In June of 1994, Mr. Dunn joined SCOR Re as Treaty Underwriting manager in its New York office. In this position, he was responsible for establishing underwriting policy and procedures and developed a system to monitor and evaluate security of both assumed and ceded insurance and reinsurance companies. As the company grew both in premium volume and personnel, he became the

corporate Marketing Manager, coordinating activities of the Treaty, Facultative and Alternative Risk departments. Mr. Dunn was also one of the corporate executives responsible for overall corporate planning. He was a Director of California Re, an underwriting facility managed by SCOR Re.

Since 2001, Mr. Dunn has worked as an expert witness and consultant with a number of law firms in New York, Chicago and Kansas City. ▼

George Grode

George Grode has held numerous leadership positions in the insurance arena for the past twenty years, following successful service in the justice system and in public policy formulation.

Mr. Grode was Pennsylvania's Insurance Commissioner from 1985 to 1987, overseeing the regulation of all licensed activity in a major state of domicile for the insurance industry. He was widely recognized for successful efforts to liberalize the insurance industry's investment authority, to address a hard market for commercial liability and medical malpractice coverage, and to combat health care cost inflation and insurance fraud. Mr. Grode placed Mutual Marine Fire and Inland Insurance Company into what has become one of the industry's most successful rehabilitations.

In 1987 Mr. Grode joined Pennsylvania Blue Shield as a Vice President and, following a series of acquisitions and mergers, served its successor organization, Highmark, Inc., as Executive Vice President, one of the three most senior officers of a diversified insurer with over 23 million policy holders nationwide. Mr. Grode's responsibilities included oversight of government contracts, external affairs, most subsidiary operations and, for interim periods, legal services and corporate compliance.

Having taken early retirement in 2003, Mr. Grode is self-employed. During 2006 he is overseeing the wind-down and run-off of an HMO in Erie, Pennsylvania via agreement between the HMO's owners and state regulators. Mr. Grode has gained arbitration experience as one of fourteen individuals trained by the Blue Cross and Blue Shield Association to serve as mediator/arbitrators of disputes between independently licensed Blue plans and their affiliates.

Mr. Grode has served on the Boards of Directors of several insurance companies. They have included a hospital malpractice carrier, a life and casualty company, three Blue-affiliated HMO's and an agency/brokerage. He has also served on multiple boards of prestigious educational, economic development, and human services organizations. ▼

Cathy A. Hauck

Cathy Hauck is an attorney with over 22 years of experience in insurance and reinsurance. She has extensive knowledge of the claims, litigation and regulatory environments impacting these industries. Ms. Hauck commenced her career as in-house counsel at American International Group, Inc. (AIG) in 1984. She further advanced her career at Phoenix of London Group, Inc. ("Phoenix"), where she supervised the handling of all corporate and regulatory affairs for two primary insurance companies. Following her employment with Phoenix, Ms. Hauck joined the law firms of Carter, Ledyard & Milburn and then Wilson, Elser, Moskowitz, Edelman & Dicker as Senior Associate, working in the insurance and reinsurance regulatory group of each law firm. In her capacity as Senior Associate, she represented reinsurers and ceding companies concerning reinsurance recoverables, alternative dispute resolutions, litigations, commutation agreements and arbitrations.

In 1994, Ms. Hauck joined NAC Reinsurance Corporation (subsequently acquired by XL Reinsurance) ("NCA Re"), a property and casualty reinsurer, and its two operating subsidiaries, Greenwich Insurance Company, a primary direct writer, and Indian Harbor Insurance Company, an excess and surplus lines company as Associate General Counsel and Assistant Secretary. While at NAC Re, she managed insurance arbitrations and litigations involving managing general agency disputes, bad faith claims and coverage matters.

In 1999, Ms. Hauck joined PartnerRe US in the capacity of Senior Vice President, General Counsel, Corporate Secretary and Director of Partner Reinsurance Company of the U.S. and PartnerRe Insurance Company of New York, both property and casualty reinsurers. In 2001, she was promoted to Executive Vice President. In her capacity as General

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in focus

George Grode

Cathy A. Hauck

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in focus

William G. Hauserman

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Counsel, she is responsible for the management and oversight of the Legal, Claims and Human Resources Departments. Ms. Hauck manages all matters related to policy wordings, managing general agency agreements, regulatory and corporate governance matters, and all corporate arbitrations, disputes and litigation. She is an active member in industry associations including the National Conference of Insurance Legislators (NCOIL) (Chair of the Industry Advisory Committee in 1991 and Executive Board Officer); Association of Professional Insurance Women (APIW) (Legal Advisor 1994-1996); and the Reinsurance Association of America (RAA) Law Committee. Ms. Hauck is a graduate of LeMoyne College and St. John's University School of Law and a member of the Bar in Connecticut and New York. Ms. Hauck also holds the following insurance industry designations: Associate in Surplus Lines Insurance, Associate in Fidelity and Surety Bonds, Associate in Reinsurance and Chartered Property & Casualty Underwriter. Additionally, Ms. Hauck has been a licensed New York State Property & Casualty Insurance Broker since 1984. ▼

William G. Hauserman

Sandy Hauserman is a Senior Vice President at Guy Carpenter & Company, Inc. where he is a reinsurance intermediary. He runs the Environmental Liability Specialty Practice and is a Member of the Professional Liability Specialty Practice and Cyber Risk initiative. He is also a Member of the Marsh, Inc. Global Climate Change Group.

Mr. Hauserman is responsible for prospecting new accounts, making presentations, and assisting brokers, clients and prospects worldwide with his specialized knowledge. Furthermore, he manages a portfolio of environmental, professional liability and cyber risk treaty accounts.

As part of the Cyber Risk Initiative, Mr. Hauserman has worked with the Federal Government on Internet, Critical Infrastructure and Terrorism issues. He was a member of the subcommittee that wrote the insurance/reinsurance section of The National Strategy to Secure Cyberspace released by the White House in February 2003 and has testified before the National Academy of Engineering. Mr. Hauserman developed a new reinsurance catastrophe product for the accumulation of cyber-risk exposures (called a cyber-hurricane) and successfully marketed it.

In addition, over the years he has negotiated treaties for clients involved in many types of General Casualty and Property lines of business, but has also worked with insurers specializing in Technology E&O and D&O Insurance, Employment Practices Liability, Financial Institutions E&O, Lawyers E&O, Reps & Warranty Insurance, Crop Hail Insurance, and Florida Mobile Home and FL-JUA Take-Out business.

Mr. Hauserman is an attorney licensed to practice in New York State and in the course of his career has monitored insurance regulatory matters, drafted and negotiated reinsurance contracts, and provided in-house advice on reinsurance contract issues. His legal training includes arbitration and mediation and he has served as a moot court judge at the Pace University School of Law, where he holds a JD degree, *cum laude*. He also holds a MSL (Masters of Studies in Environmental Law) from Vermont Law School, summa cum laude where he serves on the Advisory Committee for the Environmental Law Center.

Mr. Hauserman's career in the insurance and reinsurance industry spans over 26 years and during that time he has been involved in many facets of the business including; sales, marketing, management, underwriting, overseeing accounting and claims activity, and writing business plans for start up operations. He has experience as an Expert Witness and frequently lecturers and writes on subjects for which he has expertise.

As a compliment to his Intermediary skills Mr. Hauserman also has significant underwriting experience having been (1) a multi-line primary underwriter for the Fireman's Fund and (2) a Facultative and Treaty Reinsurance underwriter for San Francisco Reinsurance Company. Mr. Hauserman holds a BA in History and a Teaching Credential in History and Broad Field Social Studies from Colorado College. ▼

in focus

Harold Horwich

Harold Horwich is a partner at Bingham McCutchen, where he is the head of the firm's insurance practice. He has over twenty-five years of experience in insurance, reinsurance and insolvency matters. He has represented insurance companies across the industry including property/casualty insurers, life insurers, health insurers, HMO's and financial guarantors. Mr. Horwich has also represented insurance commissioners as regulators and receivers. He has extensive expertise in a number of substantive areas.

Mr. Horwich has represented many major insurers in connection with all aspects of loss sensitive insurance programs. The programs have included retrospectively rated policies, high deductible programs and captive arrangements. He has negotiated these arrangements as well as enforced them in litigation, arbitration and bankruptcy proceedings. He makes a presentation annually on this topic to leading insurers who sell these products.

Since 1980, Mr. Horwich has represented surety companies in a broad range of matters. These include commercial bonds, such as workers' compensation self-insurance, environmental and license bonds. He has also had substantial experience with large and complex claims under contract surety bonds, which cover payment and performance in connection with construction projects.

Mr. Horwich is widely recognized as an expert in the area of insurance company insolvency. He holds the designation of Certified Insurance Receiver from the International Association of Insurance Receivers. He has represented insurance company receivers as well as insurance company creditors and owners in a broad range of insurance receivership cases

Mr. Horwich also has broad experience in property/casualty reinsurance, and some experience in life and health reinsurance. He has drafted numerous reinsurance agreements in a wide array of transactions. He has also represented clients in enforcement actions in both litigation and arbitration proceedings. ▼

Jack E. Koepke

Jack Koepke has 30 years of experience in the insurance / reinsurance industry. He holds an MA from Cambridge University, Fitzwilliam College, and subsequently earned a JD from the University of Nebraska School of Law (1970). He began his insurance career in 1974, working as an attorney for one of the largest European industrial insurance / reinsurance groups, Gerling-Konzern, of Cologne, Germany. One year later, he accepted a position within the group as claims attorney for the primary insurance company, Gerling-Konzern Allgemeine Versicherungs-AG, where he handled large international claims for ten years. His efforts in managing multi-million-dollar US product liability claims litigation for major German manufacturers earned him a promotion to Prokurist within four years.

In 1984, Mr. Koepke joined the reinsurance company within the group, the Gerling-Konzern Globale R ¸ckversicherungs-AG. This was followed by a two-year assignment (1984-1986) as Senior Vice President with Gerling Global Offices, Inc., in New York, where he held responsibility for the regulation of large product liability, asbestos, environmental and mass tort claims. In 1992, he returned again to New York as Executive Vice President of Gerling Global Offices where he continued to have direct responsibility for large reinsurance claims, especially in regard to London Market reinsurers. During his tenure with Gerling Globale, Mr. Koepke wrote numerous articles for German and UK trade journals and made frequent presentation at reinsurance conferences.

In 1994, Mr. Koepke accepted the position of Senior Vice President of General Reinsurance Corporation's Claim Department, in Stamford, Connecticut. General Re's 1985 merger with the Cologne Reinsurance Corporation and the subsequent merger with National Reinsurance Corporation gave him management responsibility for General Re's world-wide claims. At General Re he led a department comprised of 150 claims professionals, most of whom were Claim Executives, with duties in all areas and lines of claims management including on-site claim reviews, operational reviews, pre-quote audits, evaluation of individual claims, loss trend analysis and routine loss processing.

Harold Horwich

Jack E. Koepke

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Mr. Koepke began his insurance / reinsurance arbitration practice in the "early days" of 1985 and continued to serve on numerous arbitration panels until joining General Reinsurance where company policy required cessation of his arbitration activities. Ten years later, having retired from GenRe in 2003, he has resumed his active arbitration practice. Mr. Koepke is a U.S. citizen who has travelled extensively during his professional career. He continues to call Germany home, living near Cologne. ▼

Linda H. Lamel

Stephen J. Paris

Linda H. Lamel

Linda Lamel is an attorney in private practice specializing in insurance regulation, government relations and arbitration. She is also Adjunct Associate Professor at Brooklyn Law School.

Her 30 year insurance career began with her appointment as Deputy Superintendent for the New York Insurance Department. Ms. Lamel's responsibilities focused on regulation of compliance and financial solvency for property and casualty companies. She managed statutory examinations for all licensed companies and presided at department hearings.

After serving as a trustee of The College of Insurance, the board asked her to become president of the College. She led the implementation of updated curriculum and a new international marine insurance fellowship. She also assisted the industry in expanding a claims settlement day concept. Her efforts on behalf of the industry were acknowledged with the APIW Woman of the Year award in 1988.

Ms. Lamel was a senior executive at TIAA-CREF, (a Fortune 100 company) in charge of their group insurance products which included health, life, disability, and long term care. She was responsible for all claims, policy disputes and related litigation. Wherever possible, alternative dispute resolution tools were utilized.

In 1997 Ms. Lamel became the Executive Director of the Risk and Insurance Management Society (RIMS), the premiere trade association for commercial buyers of insurance. As the staff leader of RIMS, Ms. Lamel was identified by *Business Insurance* as one of the 100 leading women in the industry. She developed a Quality Scorecard that enabled risk managers to identify dimensions of quality in claims administration and then rate their vendors on their performances. She later used this knowledge as CEO of Claims on Line, a technology company with a non-proprietary, internet based claim management system. Principal clients included a Lloyds underwriter and public entities.

Ms. Lamel serves on the boards of insurers and non-profit organizations in the industry. She has been a consultant for the New York State Senate Insurance Committee, U.S. Commission on Civil Rights (re: insurance discrimination), and the U.S. Senate Judiciary Committee (re: reinsurance). She has been active in bar associations and published numerous papers on topics. Her arbitration experience has included arbitrations regarding reinsurance recovery, facultative treaty interpretation, and mergers and acquisitions.

Ms. Lamel earned a B.A., *magna cum laude*, Queens College (CUNY), M.A., New York University, J.D., Brooklyn Law School. ▼

Stephen J. Paris

Stephen Paris is Senior Vice President and Deputy General Counsel of AEG's Lexington Insurance Company. Prior to joining the Lexington in July, 2000, he had spent his entire thirty-seven year legal career at Morrison, Mahoney & Miller, a Boston-based law firm specializing in all aspects of insurance, reinsurance and liability law.

Mr. Paris is a graduate of the University of Massachusetts (Amherst) (1960) and the Boston College Law School (1963). He joined Morrison, Mahoney in 1963, becoming a partner in 1968, Managing Partner in 1985, and of Counsel in 1998. Mr. Paris has achieved both the Chartered Property & Casualty Underwriter (CPCU) (1966) and Chartered Life Underwriter (CLU) (1973) designations. He has been active in The CPCU Society having served in a variety of local and national capacities including President of the National Society.

He had been an instructor of law and insurance courses for over twenty-five years. He is a Past Chairman of the Insurance Institute of Northeastern University and is a Past President and a current Trustee of the Insurance Library Association of Boston. He

served as a member of the Board of Overseers of the Supreme Judicial Court Historical Society. He also served on the Board of Directors of The American States Insurance Company prior to its sale to Safeco.

Mr. Paris is also Past President of the Defense Research Institute (DRI), an association of over 22,000 insurance and defense attorneys. Among other associations, he is a member of the Federation of Insurance and Corporate Counsel and the International Association of Defense Counsel. He is a founding member and Past President of the Massachusetts Defense Lawyers Association.

Mr. Paris has lectured extensively on a variety of insurance, reinsurance and law topics throughout the United States, the United Kingdom and Europe. He is the author of numerous articles on a variety of insurance and legal subjects and is co-author of a book on business interruption insurance. ▼

Daniel T. Torpey

Daniel Torpey is a Partner and America's Leader for Ernst & Young's Insurance Claims Service Practice, assisting corporate clients, insurers, reinsurers, policyholders and law firms with analyzing, preparing and settling large complex insurance claims.

Prior to joining Ernst & Young, Mr. Torpey began his career auditing property and other claims for insurance carriers with the accounting firm of Matson Driscoll & Damico in their New York City office. While there he gained deep insight into how insurance companies analyze such claims and look to resolve complex losses. Mr. Torpey has also been an auditor in the New York office of Ernst & Young, auditing financial statements for public, private and not-for-profit companies. Mr. Torpey left Ernst & Young for about a 10-year period where he ultimately became National Partner in Charge and helped develop the PricewaterhouseCoopers Insurance Claims Services and Product Recall Practice. In May 2002, Mr. Torpey returned to Ernst & Young LLP.

Mr. Torpey has worked on a variety of claims including: Property, Business Interruption, Fidelity, Political Risk, Product Liability and Liability and has worked on some landmark property and business interruption insurance and reinsurance claims. His career has ranged from being a forensic auditor in the area of risk and insurance to being one of the leading experts in the area of property, business interruption and product liability claims. Mr. Torpey has also assisted companies, law firms, boards, and audit committees with corporate investigation, including recently the investigation of the wrongdoing of a CEO of a publicly traded SEC Insurance Company.

He has spoken and written on the topic of effective claim settlements, claim valuation, claim processes, and negotiation to the ABA, Mealeys, Annual RIMS conferences, CPCU Society, and the Securities Industry Association in New York,. Mr. Torpey is the co-author of the book *The Business Interruption Book: Coverage, Claims and Recovery*, The National Underwriter Company, 2004, Cincinnati, Ohio. He has been quoted in *Business Insurance, National Underwriter, Los Angeles Times, Dallas Morning News*, and other various trade journals.

Mr. Torpey is a graduate of St. John's University College of Business in Jamaica; NY. He is also a member of The Lumen Institute, helping business leaders instill ethics in the workplace and community. ▼

in focus

Daniel T. Torpey

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 2006, ARIAS•U.S. was comprised of 480 individual members and 101 corporate memberships, totaling 983 individual members and designated corporate representatives, of which 294 were certified as arbitrators.

The Society offers the Umpire Appointment Procedure, based on a unique software program created specifically for ARIAS•U.S., that randomly generates the names of umpire candidates from the list of ARIAS arbitrators who have served on at least three completed arbitrations. The procedure is free of charge. It is described in detail on the website.

Similarly, a random, neutral selection of all three panel members from the list of ARIAS Certified Arbitrators is offered at no cost. Details of the procedure are available on the website.

New in 2003 was the "Search for Arbitrators" feature on the website that searches the detailed background experience of our certified arbitrators. The search results list is linked to their biographical profiles, containing 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, Las Vegas, and Bermuda. The Society has brought together many of the leading professionals in the field to support its educational and training objectives.

In March of 2006, the Society published Volume VII of the *ARIAS•U.S. Directory, with Profiles of Certified Arbitrators*. The organization also publishes the *Practical Guide to Reinsurance Arbitration Procedure,* and *Guidelines for Arbitrator Conduct*. These publications, as well as the *Quarterly* review, special member rates for conferences, and access to intensive arbitrator training, are among the benefits of membership in ARIAS.

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Sincerely,

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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