



ARIAS•U.S. AIDA Reinsurance & Insurance Arbitration Society QUARTERLY

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EX AEQUO

4th Quarter, 1995

ARIAS•U.S. Holds Third Successful Seminar Drawing 110-Plus International Participants in New York



Mr. Abdallah addressed the participants at dinner to kick off the seminar.

ARIAS•U.S. invites guest articles and encourages you to share your opinions. Fax to : (914) 699-2025

**See photos -
pages 6 & 7**

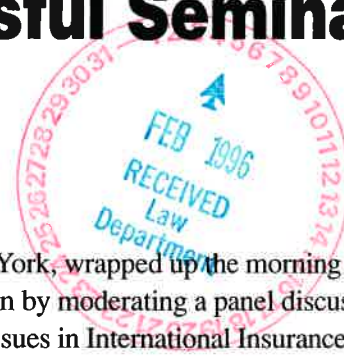
ARIAS members came from all over to participate in the long awaited ARIAS U.S. First Annual General Membership meeting at the Crowne Plaza in New York City. The membership meeting kicked off ARIAS' seminar on the arbitration of disputes in international insurance and reinsurance, which featured an international panel of speakers as well.

Mahmoud Abdallah, Chairman of the International Insurance Council and President of International Operations at American Re, addressed the participants at a dinner on Thursday evening. The following morning, seminar participants convened bright and early to listen to Edmond Rondepierre, President of ARIAS U.S., speak on "The Role of ARIAS in Resolving International Disputes." John Nonna, Werner & Kennedy - New York, and Vincent Vitkowsky, Buchalter, Nemer, Fields & Younger - New York, then acted as counsel in a presentation on selecting arbitrators, with Susan Mack, Aetna Life & Casualty - Hartford, CT, and Robert Mangino, Swiss Re America - New York, acting as ceding company and reinsurer representatives, respectively. T. Richard Kennedy, Werner & Kennedy -

New York, wrapped up the morning session by moderating a panel discussion on "Issues in International Insurance & Reinsurance Arbitration," with Colin Croly, Barlow, Lyde and Gilbert - England, Ronald Jacks, Mayer, Brown and Platt - Chicago, and Derek Luxford, Phillips Fox - Australia, in the role of the panelists.

John Butler, Barlow, Lyde & Gilbert - England, addressed the group during lunch, commenting on ARIAS' successes to date, and plans for the future.

The participants then reconvened for a mock arbitration. Herbert Palmberger, Chubb Insurance Company of Europe - Germany, chaired the arbitration panel, with Peter Tol, P.J. Tol International Consulting - Gladstone, NJ, and Charles Havens, LeBoeuf, Lamb, Greene & MacRae - Washington, DC, supplementing the panel. Thomas Newman, Newman & Harrington - New York, and Jan Woloniecki, Milligan-Whyte & Smith - Bermuda, acted as counsel. The mock arbitration continued on Saturday morning, followed by a critique of the arbitration process by Charles Foss, The Travelers - Hartford, CT, Mark Gurevitz, ITT Hartford - Hartford, CT, and Daniel Schmidt, Sorema, NA - New York.



Report of T. Richard Kennedy Chair, Board of Directors

(As presented to the membership at the ARIAS Seminar in November 1995)

I am pleased to provide you with this report of the activities of the Board of Directors since the initial meeting on May 6, 1994. The Board has held ten meetings in New York during the course of the past one and one half years. In addition, much work has been done outside the regular Board meetings by our active committees.

One of the Board's first projects was to consider and adopt the following ARIAS objectives, which are set out in the By-Laws:

1. To promote the integrity of the arbitration process in insurance and reinsurance disputes;
2. To assure just awards in accordance with industry practices and procedures;
3. To certify objectively qualified and experienced individuals to serve as arbitrators;
4. To provide required training sessions for those persons certified as arbitrators;
5. To adopt rules of arbitration proceedings and development of a model arbitration clause;
6. To develop arbitration law and practice as a means of resolving national and international insurance and reinsurance disputes in an efficient, economical and just manner.

These have been our guiding principles in all our work.

Based on the recommendations of the Membership Committee, with Susan Mack as Chair, the Board considered and established classes of membership, a schedule of initiation fees and dues, application forms and mailing lists of potential members. I am pleased to report that we today have a total of 139 individual, company or law firm members, with total paid-in initiation fees and dues of approximately \$150,000.

Under the guidance of the Newsletter Committee, chaired by Bob Mangino, we are publishing a Quarterly Newsletter. The purpose is to keep members apprised of significant legal and industry developments, both in the U.S. and abroad.

Based on the recommendations of our Law Committee, chaired by Charlie Foss, the Board after extensive deliberations and revisions, adopted the recommended By-Laws that have been presented for your approval today. Charlie has secured a Certificate of Incorporation for ARIAS -U.S. as a not-for-profit corporation, and a 501(c) statement has been filed with the IRS for tax exempt status.

The Law Committee presently is seeking to develop a recommended arbitration clause and rules of procedure for arbitrations. We are always pleased to receive suggestions from the members, and we invite your comments in this undertaking.

In March of this year, a Special Committee on Forms was established with Mark Gurevitz as Chair. The Committee is collecting sample forms, such as hold harmless clauses and organization meeting checklists, with a view to adopting recommended forms to be included in ARIAS arbitration kits.

Thanks to the good work of Charlie Havens, and receipt of your membership dues, we have been able to secure directors and officers liability insurance.

A training program was put in place which began with the conference in New York in January, 1994, and continued with the conference which took place in Chicago in June of this year. These programs were established to train individuals in insurance and reinsurance arbitration proceedings. I am happy to report that both programs were very successful and have led to an increased number of memberships.

Based on the recommendations of a Special Committee on Certification appointed in March of this year, with Bob Mangino as Chair, the Board adopted proposed procedures and criteria for certification of arbitrators by ARIAS-U.S. We recommend them for your approval.

Our program for the next two days, for which we have over 100 registrants, will deal with arbitration of insurance and reinsurance disputes where the parties are domiciled in two different countries. As in the past, our faculty of experts will give primary focus to procedural rather than substantive issues.

The next seminar is scheduled for March 1-3, 1996, in San Francisco. I look forward to seeing many of you there. For those of you attending our seminar here in New York, I trust that you will find it both a worthwhile educational and social experience. Thank you for participating.



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ARIAS • U.S. • BOARD OF DIRECTORS

The Role of ARIAS • U.S. In Resolving International Disputes

by Edmond F. Rondepierre



Welcome to the ARIAS • U.S. Seminar on resolving national and international insurance and reinsurance disputes.

This is the third seminar conducted by ARIAS (US) and this time our program will focus on international arbitration.

You will hear from - and have the opportunity to have discussions with - a distinguished faculty of individuals who have extensive experience in the field of international arbitration, and who present a variety of perspectives on the subject.

Because we are a new organization, I'd like to take a few minutes to describe ARIAS•U.S. and its role in the field of arbitration of insurance and reinsurance disputes.

ARIAS•U.S. is a society organized for the purpose of fostering the development of arbitration law and practice as a means of resolving national and international insurance and reinsurance disputes in an efficient, economical and just manner.

It is affiliated with the International Association of Insurance Law - AIDA - and, through AIDA, with similar arbitration societies existing in the UK and in

The organizers of ARIAS•U.S. felt that there was a need for such an organization because we believe that arbitration should continue to be available to insurers and reinsurers as a means of resolving disputes, and because we recognize that there has been some unease and dissatisfaction with the process in the current environment.

Arbitration has long been the mechanism preferred by insurers and reinsurers for the resolution of disputes, however changing circumstances have brought new challenges for arbitrators and for the arbitration process.

The number of disputes has increased dramatically for a number of reasons. For example:

- The rapid evolution of new theories of liability and new measures of damages both by the courts and through legislation;
- The development of new contract forms and new clauses;

- An increase in the number of reinsurers, including many entities new to the reinsurance field;

- The trend among reinsurers to expand beyond their traditional markets into jurisdictions which are new to them;

- An increase in the number and magnitude of insolvencies;

- An increase in the limits of liability insured by primary insurers and the resulting demand for increased layers of reinsurance involving multiple reinsurers.

As disputes have become more frequent and more complex, involving greater sums of money, there has been an increase in the use of counsel by the parties, and an increase in the use of discovery, depositions, procedural and technical disputes, all contributing to delay and expense and, in the view of many, making arbitration more like the litigation which it was intended to avoid.

It is no doubt true that, in some cases, arbitration has been almost as complex and expensive as litigation. It is also true that in many other cases, arbitration has functioned as intended, producing a just result, in timely fashion, and at minimum expense.

We at ARIAS•U.S. believe that the difference in these cases lies in the composition of the arbitration panel:

- the qualification of the arbitrators;
- their disposition and temperament;
- their knowledge of arbitration procedures and practice;
- their willingness to assert control.

It is easy to engage in the great American pastime of blaming it all on the lawyers - in fact, I guess that's an international pastime - but we all know that the lawyer has an obligation to use all legitimate means to further the interests of his client. It is up to the arbitrators to control the process.

For that reason, we have focused our initial efforts on the training of arbitrators.

Our seminars are designed to educate arbitrators and potential arbitrators in the arbitration practices which control the expenditure of time and money while affording

the parties a fair proceeding and a just result. At its first membership meeting, ARIAS•U.S. adopted criteria for the certification of arbitrators and umpires.

These criteria are designed to increase the number of people qualified to serve as arbitrators and to provide parties with a pool of arbitrators who meet these criteria. The criteria have been drawn with a view to certifying individuals from jurisdictions other than the US, and to enhance the acceptability of non US arbitrators to US parties, and the acceptability of US arbitrators to non US parties.

ARIAS•U.S. will agree to recommend or to name arbitrators or umpires at the request of the parties. We believe that many parties distrust the practice of choosing an umpire by drawing lots. Once we have a sufficient number of arbitrators certified, we believe that some parties will elect to specify that, where the party appointed arbitrators are unable to agree on an umpire within a reasonable time - or within some specified time - they will request ARIAS•U.S. to appoint the umpire.

ARIAS•U.S. plans to develop model rules for the conduct of arbitrations. We believe that it is essential that the arbitration panels have the authority to adopt their own rules on an individual case basis. The purpose of the ARIAS models will be simply to afford ready made examples from which they might choose.

ARIAS will also develop specimen forms for use by arbitrators at their discretion, including disclosure forms, hold harmless agreements, confidentiality agreements, and a specimen agenda and checklist for the organization meeting.

It is our intention that ARIAS•U.S. will serve as a forum for insurers and reinsurers, and their advisers, to air their views on the strong points and the shortcomings of arbitration and to develop improvements in the process.

We welcome your interest and we invite your active participation in this seminar.

"ARIAS: Successes To Date and Plans for the Future"

Address of Mr. John Butler, LL.B, AIDA President

The title of this talk is ARIAS: successes to date and plans for the future. However, first a few words about the background. As the General Counsel of an international reinsurer, I was continually told about the inadequacies of the law as it applied to reinsurance both as regards arbitration and litigation.

Now it always seemed to me that while any reform of court procedure or the law to take account of the idiosyncrasies of reinsurance and reinsurers was highly problematical, particularly on an international basis.

However, it also seems the remedy to any inadequacies where arbitration was concerned, given that it is a essentially a contractual process, lies to a much larger extent in the hands of the parties.

When I became President of AIDA in June 1980, I felt that this would provided a wonderful opportunity to inaugurate an arbitration body dedicated solely to the resolution of insurance and reinsurance disputes and, in any event, it must be said that AIDA itself seemed to me to be an ideal body to sponsor such an organization if only because AIDA is an international association with Chapters in most countries and in addition AIDA is neutral, in the sense, that its membership is drawn from all sections of the insurance industry and the legal and other professions, which means nobody should feel that AIDA was more inclined towards one particular interest rather than another.

ARIAS (UK) was set up in London in 1991 and was formerly inaugurated on the 10th July in that year under the Chairmanship of John Thomas QC with the support and assistance of the British Insurance and Investment Brokers Association, the London Insurance and Reinsurance Market Association and Lloyd's as well as more than twenty leading firms of city solicitors and accountants who together constituted the original members of the society.

The main objectives of ARIAS (UK) are to promote and assist in the development of insurance and reinsurance arbitration, both in the International and the domestic UK market with a view to making such arbitration more responsive to the needs of the industry world wide. Although ARIAS (UK) is concerned for the most part with arbitration in London it is also intended to facilitate participation by those who are resident overseas and ensure that arbitrations under held under its auspices are international in character.

At present, the total membership of the Society, including the 24 original founder members, is 78, it should perhaps be remarked here that the membership is with one or two exceptions corporate. The Society considers that one of its most important functions is the maintenance of the panel of individuals who are qualified and available to act as arbitrators from which arbitrators can be chosen. The Society's panel of arbitrators is steadily growing. At the moment it consists of some 58 persons. At moment there is a strong representation of underwriters on the panel, not only from London but also from Europe and there are also panel Members with broking experience as well as legal and accounting qualifications and background.

The Society is frequently approached by Members for the names of recommended potential arbitrators and it would seem that appointments have been made in most cases as a result of this. However, it is well perhaps to emphasize that the efforts of the Society are mainly aimed at improving standards for the conduct of

arbitration proceedings generally as well as providing members with alternative names of properly qualified persons for use in any particular arbitration disputes that may arise. As, of course, it is thought essential that that anybody who sits as an arbitrator should have some training in the arbitral

process. The Society, with the assistance and guidance of the London Court of International Arbitration, provides facilities for training in the form of practical tutorials. So far, four very successful tutorials have been held, attended by in total by about 40 panel members. In addition to this, work shop conferences are held preceding the annual general meeting in each year. The highly successful workshop conference this year was presented by Mr. Justice Longmore ably assisted by John Thomas.

One of the first steps taken by ARIAS (UK) was to draw up a form of arbitration clause for use in insurance and reinsurance contracts and this was adopted by LIMRA and in 1993 the Association of British Insurers, the trade body representing British insurers as a whole recommended the clause for use by its members. In January last year ARIAS (UK) published Arbitration Rules with the basic objective of providing both those who refer disputes to arbitration and arbitrators themselves with clear and concise rules as to how arbitrations are to be conducted. The Rules also aim to ensure that arbitrations are more self-contained by reserving certain powers to the arbitrators and extending their jurisdiction to cover matters they would otherwise not be able to deal with.

ARIAS (UK) constitutes is a separate Chapter of AIDA and it has always been intended that when other ARIAS are established in different parts of the world it may be considered both possible and desirable to set up on over all coordinating body consisting of representatives of the different National Chapters. Consequently the establishment of ARIAS (US) last year constituted an important step towards this objective and may I take the opportunity here to congratulate everyone concerned and in particular Dick Kennedy on its spectacular success.

Earlier in this year, C.A.R.E.A. which translates as Centre for Reinsurance and Insurance Arbitration was established in France under the Chairmanship of Mikael Hagopian and it may well be that the time is now ripe for the establishment of some form of international coordinating committee. one possible occasion to take this matter further presents itself in the form of the Colloquium to be held in London on the 22nd and 23rd of July next year by BILA, the British Chapter of AIDA. The programme will be largely concerned with the resolution of reinsurance disputes and it is hoped to have the participation of members of ARIAS (UK), ARIAS (US) and C.A.R.E.A. Consequently this might well provide an ideal opportunity to give serious consideration to the future of ARIAS internationally.



John Butler, LL.B
AIDA President

The Value of Party-Appointed "Non-Neutral" Arbitrations

By Vincent J. Vitowsky

Presented at the ARIAS U.S. International Insurance & Reinsurance Seminar on Arbitration of Major Disputes

November 2-4, 1995 / New York, New York

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Note: The inaugural edition of the ARIAS U.S. Quarterly contained a provocative article by John M. Nonna entitled "A Modest Proposal." The article suggested that the current composition of reinsurance arbitration panels, consisting of two party-appointed arbitrators and a neutral umpire, be replaced in favor of a panel of three neutrals. Mr. Vitkowsky disagrees with this view and argues that the current system serves the industry well by encouraging dispute resolution, reducing overall expenses and achieving just results.

The use of party-appointed arbitrators in reinsurance disputes has been criticized by some commentators as resulting in a panel that has only one real decision-maker, the umpire. This article argues that such criticism is not fully justified, and that the use of party-appointed arbitrators provides several important advantages which would be lost if the panel were to consist of three neutral members.

Arbitration is an alternative process for solving problems, utilizing the services of outside participants, including the panel members. In helping to solve problems, a party-appointed arbitrator has three important roles. The first is to serve as wise counselor to the party appointing him¹. The second is to serve as an advocate, but only to a limited extent. The third is to serve as a decision maker, charged with rendering a just decision based on all the facts and arguments ultimately presented.

Admittedly, some party-appointed arbitrators misunderstand their role as advocate, and see themselves as 'hired guns' whose sole objective is to persuade the umpire to rule in favor of their party's position. However, these arbitrators are in the minority, and a qualified umpire will easily recognize one and give diminished weight to his views. Thus, their approach is counter-productive.

Within the tier of the finest arbitrators, a fundamental principle is followed. The mere fact that the party-appointed arbitrator indicates a preliminary predisposition towards his party's position does not mean that his ultimate views and vote are pre-determined. The party-appointed arbitrator generally supports his party's position, but only based upon the initial facts and circumstances described to him. However, he will weigh all of the evidence and arguments as they ultimately are presented, and will 'vote his conscience', i.e., advocate and vote for a decision which does substantial justice. Thus, the party-appointed arbitrator is an advocate only to the extent of insuring that the party appointing him has a full and fair opportunity to present its position, and that the merits of its position are fully understood by the panel. In some ways, this is similar to

the role played by an appellate judge, who assesses the merits of a case, and tests the merits by trying to persuade the other members of the appellate panel to join in his opinion.

Ex Parte Contact

The key distinction between a party-appointed arbitrator and a purely neutral arbitrator is the possibility for ex parte contact. That is, there can be confidential communication between a party or its counsel and the party-appointed arbitrator outside the presence of the other panel members, the adversary party or its counsel. It is this contact which provides the party-appointed arbitrator with the opportunity to play several crucial roles in the arbitration process.

The party-appointed arbitrator serves as a reality check. Through ex parte contact, he can bring his experience and judgment to bear at important junctures. He can prevent cases of questionable merit from proceeding to arbitration, he can assist in smooth administration once arbitration has begun, and he can lend perspective which may lead to settlement prior to a full evidentiary hearing. As a result, the party-appointed arbitrator can reduce the overall expenses of dispute resolution, and ultimately increase the likelihood of achieving substantial justice.

Initial Evaluation of the Dispute

The parties to a dispute usually have strong views of the respective merits. At times, factors such as individual pride or corporate momentum can give a dispute a life of its own. Thus, parties retain outside counsel to review the merits. Outside counsel can play a vital role at this state, especially if he has sufficient experience to assess the range of possible or probable outcomes. However, no private attorney, no matter how experienced, will have the perspective of an arbitrator who has worked in the industry, in a business capacity, for 20 or 30 or more years. Such an arbitrator can have a true feel for the customs, practices and standards in the industry, and thus can offer an intuitive, visceral reaction which supplements the analytical and polemical perspectives provided by attorneys.

Before proceeding with arbitration, it is helpful if the parties and counsel can explain their case, as they then understand it, to an experienced industry professional. Explanations are more effective if they are supplemented by a written description of the issues, together with the critical documents. Given such materials, a dispassionate and objective party-appointed arbitrator can provide



Vincent J. Vitkowsky

Continued on page 8

110+ Attend ARIAS•U.S. Seminar in New York



Presentation on "Selecting Arbitrators": Robert Mangino, Vincent Vitkowsky, Edmond Rondepierre, Susan Mack and John Nonna.

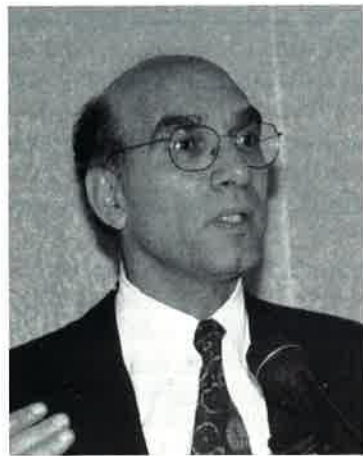


Left: Ronald Jacks, and Peter Tol.

Right: Colin Croly, Ronald Jacks and Derek Luxford. Panel Discussion on "Issues in International Insurance & Reinsurance Arbitration"



Guest Speaker:



Mahmoud M. Abdallah President, International Operations American Re-Insurance Company

Mahmoud M. Abdallah is President of International Operations of American Re and President of Am-Re Brokers, Inc.

He assumed his current positions in September 1994. Prior to this, he served as Senior Vice President of the International Division and Executive Vice President of Am-Re Brokers, Inc. From July 1987 to May 1989, he was Vice President, responsible for International Operations. Mr. Abdallah has 24 years of industry experience including 14 years with American Re.

Prior to joining American Re in 1981, he was with CIGNA International.

Mr. Abdallah serves on the Board of the U.S. International Insurance Council (IIC) and was appointed Chairman in May 1995.

Mr. Abdallah holds a Bachelor of Science and a Masters of Business Administration from Cairo University. He received the Associate in Underwriting Designation from the Insurance Institute of America.





Daniel Schmidt, Stephen Acunto.



James Corcoran, Robert Mangino.



Above: James Lyon, Robert Reinarz, and Charles Havens.



T. Richard Kennedy.



Charles Niles, Dewey Clark.



Left: Michael Pope, Carol Cure.



Lower Left: Michael Mendelowitz, Christian Bouckaert and John Butler.



Dan Reilly, Griffith Parry.



Michael Miron, Robert Huggins.

The Value of Party-Appointed "Non-Neutral" Arbitrations

Continued from page 5

critical perspective, which can prevent many disputes from ever going to arbitration.

In fact, in a dispute involving substantial sums of money, or likely to seriously disrupt or terminate business relations between the parties, it is often advisable to seek dispassionate, objective review by more than one potential party-appointed arbitrator. This permits the parties to better understand the range of reasonably likely outcomes. It permits them to see perspectives they might otherwise have missed, and it helps to identify the most appropriate individual to serve as party-appointed arbitrator. As disputes become more bitter and more expensive, and especially as reciprocal accusations of bad faith are made, substantial comfort can come from knowing that the parties have used their best efforts to understand the ramifications of their position before embarking on arbitration.

Pre-Hearing Matters

If the parties enter into arbitration, the panel frequently will need to render preliminary decisions on discovery of documents and depositions, and on other matters such as the posting of security. At this juncture, ex parte contact permits the party-appointed arbitrator to serve as a sounding board. His views on the merits of a particular discovery request or other request, and the way it is likely to be viewed by the entire panel, are extremely valuable. He can prevent preliminary disputes from ever being presented to the arbitration panel, thereby reducing overall time and expense, or he can assist in presenting the clearest possible case for decision by the entire panel, thereby assisting in a just result.

The Final Pre-Hearing Stages

No matter how careful the parties have been, and no matter how well they know their case when arbitration begins, they will learn more as the matter proceeds through discovery and toward the hearing. Especially in a subtle, complex case with many interrelated issues and requiring numerous depositions, only after discovery has been concluded does a complete picture emerge. And it is only when the parties have sorted, synthesized and crystallized their positions into pre-hearing briefs that the dispute can be most clearly and completely understood. As a result, this is often the most critical juncture in settlement discussions. Once again, input from the party-appointed arbitrator, after reading the briefs, can be absolutely crucial. Sometimes, it can be the dispositive factor in deciding whether to settle the case or proceed through a lengthy and expensive evidentiary hearing.

Cutting Off Ex Parte Contact

For these reasons, it is important that the parties be able to communicate with their party-appointed arbitrator substantially into the arbitration. This should not give anyone a sense of unfairness. Cause for concern only arises when one party is operating on a set of assumptions concerning ex parte contact which the other party does not share. Thus, the limits to ex parte contact should be discussed by the parties and the panel at an early stage in the process, and rules should be set. As long as both parties know what the rules are they will be on equal footing and can conduct themselves appropriately.

In practice, there are several benchmarks at which ex parte contact is cut off. Sometimes panels choose the first pre-hearing conference. This is undesirable, because it deprives the party of the full benefit of its party-appointed arbitrator too early in the process.

Another benchmark sometimes used is the filing of briefs. If this is selected, the party-appointed arbitrator's views can not be given consideration during a critical settlement juncture.

Perhaps the most common and appropriate cutoff is at the commencement of the evidentiary hearing on the merits. It is then that the roles shift, and the party-appointed arbitrator functions most purely as a member of a tribunal charged with achieving substantial justice. It is then that the panel members must be able to have full and frank exchanges during deliberations. (Of course, there is an expectation of confidentiality with respect to the panel's deliberations on preliminary matters as well, and this expectation should be honored.) Even with the best intentions, there is the possibility that a party-appointed arbitrator may subconsciously convey information concerning the deliberations which would violate their confidentiality. By having a firm cutoff date once the evidentiary hearing on the merits begins, this possibility is eliminated.

In addition to these options, there are two undesirable extremes. One is to have no cutoff, so that ex parte contact continues throughout the hearing. As just described, this is undesirable because it intrudes into the confidentiality of deliberations.

At the other extreme, there is an increasing tendency for panels to cut off ex parte contact as soon as the entire panel is selected. This is sometimes referred to as "radio silence." This is a disservice to the parties. By cutting off contact, the panel deprives the parties of one of their most important resources, which is the judgment of an experienced industry professional as counselor, reality check and sounding board.

A Valid Concern

One criticism of panels with only one purely neutral member requires discussion. There is a potential for abuse when an arbitration clause provides that, in the event the parties can not agree on an umpire, the umpire is to be chosen by a coin toss or other method of chance. The risk is that one party will propose a slate of persons so predisposed to its own position, and so close-minded, that the outcome is substantially determined by the coin toss. This is obviously to be avoided. The way to avoid it, however, is not to require an all neutral panel, but to eliminate coin toss clauses. Or if such a clause exists in an old provision, the parties can agree not to enforce it. When an impasse arises, recourse to a court of competent jurisdiction for the purpose of selecting an umpire is available, and usually results in a satisfactory umpire.

Another alternative may soon exist. ARIAS U.S. intends to create a list of certified arbitrators. The arbitration agreement could use the ARIAS U.S. list as a default mechanism in the event the parties can not agree on the umpire.

Conclusion

Broadly understood, the panel's function is to assist the parties in resolving their dispute in the most expeditious and least expensive manner possible, while achieving substantial justice on the merits. If ex parte contact is cut off prematurely, the panel is not contributing all it can to this end.

Thus, preserving the right to ex parte contact serves the best interests of the parties and the industry. That is the true value of party-appointed "non-neutral" arbitrators.

Vincent J. Vitkowsky specializes in reinsurance arbitration, litigation and regulation. He leads the reinsurance practice of Buchalter, Nemer, Fields & Younger, P. C., and is resident in its New York office. He is a Charter Member of ARIAS U. S.

The terms "he," "his" and "him" are used merely for brevity and stylistic ease. They are meant to include female arbitrators, counsel and parties.

ARIAS U.S. Sets Certification Programs

At its first Annual Meeting, the Membership of ARIAS U.S. approved of proposed Certification of Arbitrators Procedures. We present them in full:

ARIAS · U.S. CERTIFICATION OF ARBITRATORS

ARIAS · U.S.



1. GENERAL STATEMENT

ARIAS · U.S. seeks to certify for its members' use knowledgeable and reputable professionals for service as panel members in industry arbitrations.

2. CRITERIA FOR CERTIFICATION

As a minimum for consideration, each candidate should:

- a. **Industry experience** -- have at least ten years of significant specialization in the insurance/reinsurance industry. This specialized experience can be obtained with insurance and reinsurance companies and brokers or with accounting, actuarial, consulting, law, loss adjusting firms or government service, or any combination thereof.
- b. **Arbitration experience** -- have completed at least one ARIAS · U.S. seminar or workshop and two other seminars/workshops and/or insurance/reinsurance arbitrations as arbitrator or umpire for a total of at least three seminars/workshops or arbitrations within two years preceding the date the completed application is received by ARIAS · U.S. Attendance at a foreign ARIAS seminar or workshop (U.K., France, etc.) would be acceptable for these purposes.
- c. **Membership in ARIAS · U.S.** -- be an individual member of ARIAS · U.S.
- d. **Sponsors** -- be sponsored in writing by a person who satisfies the foregoing criteria for certification. Either the sponsor or the candidate for certification can initiate the certification process by requesting a pre-application letter from the Board of Directors. Besides issuing the sponsoring letter, the sponsor should also arrange for two seconding letters from persons who satisfy the same criteria. Upon receipt of satisfactory sponsor and seconding letters, ARIAS · U.S. will mail an application to the candidate.

ARIAS · U.S. certification is available to all candidates regardless of geographic location.

3. CERTIFICATION DETERMINATION

- a. After receiving completed applications together with sponsor and seconding letters from the Administrator of ARIAS · U.S., and any other information deemed appropriate by the Board of Directors, the Board, in its sole judgment and absolute discretion, will evaluate each application and determine certification in light of the above criteria. Any dispute with respect to such

determination shall be resolved by binding arbitration in accordance with the By-laws of ARIAS · U.S.

- b. Certification of a candidate requires the affirmative vote of at least two-thirds of the full membership of the Board of Directors.
- c. A copyrighted list of certified arbitrators will be maintained by ARIAS · U.S. for use by its members and shall not be published or distributed outside of the membership.

4. APPLICATION FOR CERTIFICATION

The application for certification must be on forms provided by ARIAS · U.S. and will contain the following information:

- a. name, address, telephone and fax, home and office.
- b. present and prior business affiliations.
- c. number of completed insurance/reinsurance arbitrations as arbitrator or umpire and related information including, with respect to the three most recently completed arbitrations, the names of the other arbitrators and the date of completion.
- d. number of completed insurance/reinsurance arbitrations as outside counsel and related information including, with respect to the three most recently completed arbitrations, the names of the arbitrators and the date of completion.
- e. areas of specialty.
- f. number of years of industry experience as defined in 2 a., above.
- g. education -- college and graduate.
- h. work and military history.
- i. licenses, professional associations.
- j. ARIAS seminars and workshops attended.
- k. criminal convictions/disciplinary rulings.
- l. statement by applicant that he/she will agree to abide by the By-laws of ARIAS · U.S., including the provisions covering arbitration of disputes; that the information provided is subject to verification; and that the applicant agrees that the information is accurate to the best of his/her knowledge, information and belief.
- m. other information as determined by the Board of Directors.

ARIAS · U.S.



continued on page 10

Certification Programs

continued from page 9

5. MAINTENANCE OF CERTIFICATION

In order to maintain certification, an individual must:

- a. have attended or participated in at least one ARIAS seminar or workshop within the two years immediately preceding recertification.
- b. maintain membership in ARIAS • U.S.
- c. apply bi-annually for certification on forms provided by ARIAS • U.S.

ARIAS•US Objectives

The following are the objectives of ARIAS • U.S.

1. To promote the integrity of the arbitration process in insurance and reinsurance disputes.
2. To promote just awards in accordance with industry practices and procedures.
3. To certify objectively qualified and experienced individuals to serve as arbitrators.
4. To provide required training sessions for those persons certified as arbitrators.
5. To propose model rules of arbitration proceedings and model arbitration clauses.
6. To foster the development of arbitration law and practice as a means of resolving national and international insurance and reinsurance disputes in an efficient, economical and just manner.

**To Join ARIAS•US:
Use the form provided.**



AIDA Reinsurance & Insurance Arbitration Society

Box 9001 • Mt. Vernon, NY 10552-9001
Tel: 800-951-2020 • Fax: 914-699-2025

Membership Application

ARIAS•U.S. is a not-for-profit corporation organized principally as an educational society dedicated to improving reinsurance and arbitration panels and procedures. The Society provides education for arbitrators, attorneys, insurers and reinsurers in practices and procedures which will improve the arbitration of commercial disputes. The Society, through seminars and publications, seeks to make the arbitration process meet the needs of today's insurance/reinsurance marketplace by:

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

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

Name & Position: _____

Company or Firm: _____

Street Address: _____

City, State, Zip: _____

Phone, Fax: _____

Fees and Annual Dues:

	Individual	Corporation & Law Firm
Initiation Fee:	\$500.00	\$1,500.00
Annual Dues:	<u>\$250.00</u>	<u>\$750.00</u>
Total	\$750.00 <input type="checkbox"/>	\$2,250.00 <input type="checkbox"/>

Amount Enclosed: \$ _____

Return this application with check for Initial Fee and Annual Dues to:

ARIAS•U.S. Membership Committee
Stephen H. Acunto
Chase Communications
P.O. Box 9001 Mount Vernon, NY 10552



SAVE THE DATE!

**March 1st - 3rd, 1996
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REINSURANCE ARBITRATION PRACTICE
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