

Support Continuing Education

by Gordon J. Lahti, CPCU, ARe

The Reinsurance Section recently held its symposium, "September 11, 2001: The Insurance/Reinsurance Aftermath" in Philadelphia. It was an excellent program that brought together a diverse group of industry senior executives and attorneys specializing in areas such as coverage analysis and crisis management, as well as representatives from the fields of journalism and investment analysis. Special thanks and appreciation to my fellow committee members Rick Blaum, CPCU, Mike Cass, J.D., CPCU, and Harry O'Shea, CPCU, for all of their fine work in putting this program together.

While the symposium was a success, one thing that concerned me was the fact that I heard from a number of people indicating that they had hoped to attend. However, their companies had stopped allowing employees to go to such outside events with the rationale being that there wasn't sufficient educational value to justify the expense.

Before I go any further, let me first state, for the record, that I am definitely biased on this subject. Having said that, I want to share my viewpoint.

Companies definitely have to monitor and control how their expense dollars are spent. I will admit that it can be a daunting task to review the various educational offerings and then try to select the best value for the money.

I am a firm believer and advocate of continuing education and feel that the various seminars, symposia, and workshops sponsored by the CPCU Society are among the finest in the entire industry in providing educational value at a reasonable cost. Let me also add that there are a number of other organizations that offer excellent programs.

As the chairman of the Reinsurance Section, I would like to make the following appeal to all of you. Continue to be an advocate for industry-related education within your organizations. Encourage your colleagues to attend seminars, symposia, and workshops sponsored by the CPCU Society and other associations.

In conclusion, to paraphrase an old saying, "If you think education is expensive, consider the alternative." ■

Reinsurance Arbitration Resources Revisited

by Bruce D. Evans, CPCU, ARe

When the volume of reinsurance arbitrations suddenly surged in the early 1980s, *RISE* carried several articles intended to streamline the process and increase the value of arbitration to the contesting parties. During the last decade, however, this publication has focused on other topics, causing a gap in our coverage of arbitration matters.

In this issue, we present three informed viewpoints concerning this vital subject. Richard G. Waterman, CPCU, ARe, a frequent writer for *RISE*, discloses the resources of ARIAS-U.S. Being a certified arbitrator of that organization, Waterman describes this group's various educational and certification activities. The procedure to satisfy the certified arbitrator requirements is included in Waterman's writing.

Harry O'Shea, CPCU, ARe, resumes his *RISE* authorship on this topic by reconsidering the present state of reinsurance arbitration. O'Shea traces the recent history in this field, and calls for the CPCU Society's possible involvement to codify the process of selecting impartial umpires and arbitrators who can be deemed as not advocates for their sponsoring parties.

The final segment examines the Reinsurance Association of America facilities. Author Carolyn W. Frongello has documented experience in understanding the RAA offerings. Its commitment to positively contribute toward improving this country's reinsurance dispute resolution process can be gleaned from Frongello's script.

We trust that *RISE* readers will find great value in this trio of skilled writers on the common theme of reinsurance arbitration. ■

AIDA Reinsurance and Insurance Arbitration Society (ARIAS-U.S.)

by Richard G. Waterman, CPCU, ARe

Introducing ARIAS-U.S.

ARIAS-U.S. is a not-for-profit corporation organized principally as an educational society dedicated to promoting the use and development of arbitration as a means of resolving national and international insurance and reinsurance disputes in a just manner. ARIAS-U.S. is affiliated with Association Internationale de Droit de Assurances (AIDA), a worldwide organization comprised of 50 national chapters dedicated to enhancing the understanding and workings of international insurance law.

Established in 1994, ARIAS-U.S. has rapidly grown to an organization of more than 200 individual members and 30 corporate members. Membership includes current or former ceding insurer professionals, current or former reinsurance professionals and attorneys in private law practice. In addition, more than 100 members have attained the "Certified Arbitrator" designation after demonstrating their commitment to the arbitration process through their participation in ARIAS-U.S. seminars and prior industry experience.

ARIAS-U.S. organizes educational programs on arbitration practice and procedure for arbitrators, attorneys, insurers, and reinsurers to encourage high standards for the resolution of industry disputes. By setting forth procedural guidelines and best practices for arbitration, ARIAS-U.S. aims to help reduce costs, streamline processes, curtail unnecessary discovery proceedings, and realize the fair resolution of disputes. ARIAS-U.S. education programs, publications, and benefits of membership are highlighted below.

Seminars, Workshops, and Publications

- **Seminars and Training Workshops**—Through seminars and training workshops, ARIAS-U.S. presents in-depth skill enhancement training that is necessary for effective service on arbitration panels. Training in the practicalities of managing reinsurance arbitration is offered to members and nonmembers who have a

keen desire to either acquire arbitration skills or hone their technique. Arbitration training is recommended to promote expeditious, efficient, and informed arbitration, while adequately protecting the rights of the parties. In addition, lawyers who attend ARIAS-U.S. seminars earn CLE credits in the areas of professional practice, practice management, skills, and ethics.

- **Practical Guide To Reinsurance Arbitration Procedure**—Published in 1998, the *Practical Guide to Reinsurance Arbitration Procedure* contains guidance for procedures to govern an arbitration and sample forms used in arbitration proceedings. The guide is a reference for arbitrators, insurance and reinsurance professionals, and attorneys involved in reinsurance arbitration. Sample forms and arbitration practice information for consideration and uses in reinsurance arbitration were drawn principally from the experience and expertise of its membership.
- **Guidelines for Arbitrator Conduct**—To promote the integrity and professionalism of arbitration as a forum to resolve industry disputes fairly and efficiently, ARIAS-U.S. promulgated the *Guidelines for Arbitrator Conduct*. The guidelines heighten the awareness of standards of conduct for arbitrators certified by ARIAS-U.S. as well as other persons involved in insurance and reinsurance arbitration in the United States. The guidelines do not take the place of, or supersede, agreements entered into by the parties nor do they displace applicable laws or established arbitration procedures.
- **Certification of Arbitrators**—One of the objectives of ARIAS-U.S. is to certify knowledgeable and reputable professionals for service as panel members on industry panels of arbitration. Minimum criteria for certification are as follows:

Richard G. Waterman, CPCU, ARe, is president of Northwest Reinsurance, Inc., Minneapolis, Minnesota. He is a charter member of ARIAS-U.S., a certified arbitrator, and serves as chairman of its Ethics Committee. In addition, Waterman has served as a party arbitrator or umpire on more than 85 arbitration panels to resolve industry disputes.

a. Industry Experience—The candidate must have at least 10 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—The candidate must have completed at least one ARIAS-U.S. seminar or workshop and two other seminars or workshops and/or have served on arbitrations as an arbitrator or umpire for a total of at least three seminars/workshops or arbitrations within two years preceding the application date for certification.

c. Membership—The candidate must be an individual member of ARIAS-U.S.

d. Sponsors—The candidate must be sponsored in writing by a person who satisfies the foregoing criteria for certification. In addition to the sponsoring letter, the candidate must arrange for two seconding letters from persons who also satisfy the criteria for certification.

After receiving a completed application together with sponsoring and seconding letters and considering other information deemed appropriate, the board of directors of ARIAS-U.S. evaluates each application and determines certification based on the above criteria. Members who have been awarded the Certified Arbitrator designation are also eligible for the ARIAS-U.S. Umpire list after serving on at least three insurance or reinsurance arbitrations that have concluded with a final panel award.

Arbitrator certification is reassessed bi-annually. In order to retain certification, an individual must maintain membership in ARIAS U.S. and have attended or participated in at least one ARIAS U.S. seminar or workshop within the two years immediately preceding recertification.

- **Umpire Appointment Procedure**—ARIAS-U.S. has developed an Umpire Appointment Procedure to help parties select the umpire for an arbitration proceeding. By utilizing a unique software program, names of umpire candidates are randomly selected from the ARIAS-U.S. Certified Arbitrators list or Umpire list. The final selection of the umpire is then determined by following a straightforward five-step procedure. The Umpire Appointment Procedure is free to members of ARIAS-U.S. and is available at nominal cost to nonmembers.

Invitation to Join ARIAS-U.S.

ARIAS-U.S. is proud of its accomplishments since its founding in 1994. Anyone interested in insurance/reinsurance arbitration is welcome to join us at an upcoming seminar and become an active member. It is a terrific forum for insurance and reinsurance arbitration professionals. You are also encouraged to visit our web site www.arias-us.org. The *Practical Guide to Reinsurance Arbitration Procedure, Guidelines for Arbitrator Conduct, Umpire Appointment Procedure*, Certified Arbitrators list, and Umpire list are all available on the web site. Any questions regarding membership, upcoming seminars, or publications can be directed to Stephen H. Acunto, vice president and managing director, at (914) 699-2020. ■

Reinsurance Arbitration: Finding the Best Partners

by Harry O'Shea, CPCU, ARe

In reconsidering the present state of reinsurance arbitration, we must examine at least two factors that impact on the matter. I propose to address both the selection of reasonably uncommitted arbitrators and a neutral umpire.

In the 1980s when I first wrote about this subject, we were beginning to see a rash of disputes. These unsolved differences called for technically qualified arbitrators, who were also aware of the customs and practice of the insurance and reinsurance business. They were not to be party-loyal advocates; we could expect them to be impartial.

Arbitration is an indispensable part of any reinsurance relationship; it is heeded only after irreconcilable disputes arise. In 1983, I authored a two-part analysis of the reinsurance arbitration process in *RISE*. The article's final paragraph has continuing relevancy today.

Prudence dictates that we are sure the arbitration process is well established, understood by all parties, and properly provided for in reinsurance agreements. As reinsurers and reinsurance transactions proliferate, and respect for the guiding principles of "uberimmae fidei" and "follow the fortunes" diminishes, there will be an increasing need for an administered system of arbitration. This system must be orderly, impartial and binding in order to fulfill its purpose. Either the Commercial Arbitration Rules of the American Arbitration Association, or the Reinsurance Arbitration Forum of the Insurance Arbitration Forums, Inc. can satisfy this need. Reinsurers and reinsureds alike are strongly encouraged to use one or the other of these systems.

The driving factor influencing the process of year 2002 arbitrator/umpire selection is the volume of disputes. Based on input from active arbitrators, these are estimated to be increasing both in numbers and in complexity. The availability of qualified arbitrators and umpires is the corollary and may not be keeping pace.

The selection process remains set forth in each reinsurance contract's arbitration clause, which reflect the attitudes

(backgrounds and biases) of the parties. A continuing concern for the impartiality of the umpire (or judge) exists: to provide a selection system consistent with an impartial arbitration process. My solution is using panels from the American Arbitration Association or the Insurance Arbitration Forum. In the present day, drafters of the arbitration clause apparently still lean toward the traditional wording, in part, for historical and cultural reasons and absent aggressive promotion by the industry or the sponsoring organization.

Whatever the reason, a vacancy of sufficient qualified participants remains the responsibility of the reinsurance arbitration community. In recent times this void is being filled by guidelines proposed by RAA and ARIAS, as well as continued involvement by AAA. The former are treated elsewhere in *RISE*. We would trust continuing efforts by sponsoring organizations and interested parties, such as the CPCU Society's Reinsurance Section, would codify the process of selecting an impartial umpire and non-advocate arbitrators. I continue to believe that administered arbitration candidates hold the solution.

Nothing in my comments or recommendations presumes that any party-appointed arbitrator acts solely as an advocate and I would say further that a truly ethical appointee would predicate his decision based on all the evidence, not just his appointer's position. He would also so advise his appointers. ■

Harry O'Shea, CPCU, ARe, received his bachelor's degree from Fordham College in New York. He began his insurance career with the Hanover (Allmerica) and served in various positions including corporate secretary and vice president. He was vice president of Midland Insurance Company, president of Ashford Re, and vice president of G.J. Sullivan. Harry retired as vice president of Guy Carpenter. O'Shea received his CPCU designation in 1968 and served the Society as a chapter president, national director, regional vice president, and chairman of the Reinsurance Section Committee. He also serves on the ARe advisory committee. He received the Society's prestigious Leadership Recognition Award in 2000-2001.

The Reinsurance Association of America and the Dispute Resolution Process

by Carolyn W. Frongello

Carolyn W. Frongello, is the legal projects manager at the Reinsurance Association of America. In that capacity she is responsible for the oversight, research, writing, and design of the RAA's major legal reference works—Digest of Reinsurance Caselaw, Compendium of Reinsurance Laws and Regulations, Reinsurance Contract Clauses—Case Law Annotations, and Manual for the Resolution of Reinsurance Disputes. Carolyn holds primary responsibility for the RAA's *Arbitrators Directory* as well as the newly introduced *ReinsuranceArbitrators.com* web site. She is also involved with a number of the RAA's conferences and seminars. Prior to joining the RAA in 1995, she was with the law firm of Howe, Anderson & Steyer in Washington, DC. She resides in Fredericksburg, Virginia with her daughter.

The Reinsurance Association of America (RAA) is committed to making a positive contribution and continuing the improvement of the U.S. reinsurance dispute resolution process. Contracting parties may want to verify the usefulness of a process originally designed to be a more efficient and effective alternative to litigation. The RAA has responded to the needs of the industry in a number of ways.

Specifically, the RAA provides resources and information on:

- How the reinsurance arbitration process works.
- Actively lobbies state legislatures to adopt legislation favorable to reinsurance arbitration.
- Intervenes in court cases where there may be resistance to the use of reinsurance arbitration in insurance liquidations.
- Has led an effort to publish comprehensive reinsurance arbitration procedures.
- Provides a unique and comprehensive source of qualified arbitrators and umpires.

The best place to find a culmination of the RAA's involvement in the reinsurance arbitration front is on our newly established web site—www.ReinsuranceArbitrators.com (ReArb.com). The site contains numerous useful resources, and makes the RAA's *Arbitrators Directory* available on the Internet for the first time.

The RAA began publishing the *Arbitrators Directory* in 1991. More than 200 arbitrators are included in the just-published 2002 directory, making it the most comprehensive listing of both national and international reinsurance arbitrators and mediators available anywhere. Each arbitrator profile contains the person's total number of years and type of industry experience, lists the person's specific areas of expertise, explains the person's actual arbitration and mediation

experience, lists arbitration and mediation certifications and training, and outlines employment history and current contact information. The background and experience of each participant are highlighted in a clear and concise manner.

Anyone who desires to be listed in the *Arbitrators Directory* may request registration, and the RAA does not endorse or pre-qualify those listed persons. The intention of the *Arbitrators Directory* is to offer a comprehensive list of those individuals interested in offering their services as arbitrators or umpires—not to provide any type of screening or qualification. A certification does not necessarily mean that a person is a qualified or quality arbitrator. The parties to the dispute do not have to rely on only a limited pool of arbitrators with a certification, but are free to select an arbitrator or an umpire based on pertinent information and a potential candidate's explanation of his or her credentials. Arbitrators must simply complete an experience form and pay a yearly fee to be listed. Hard copies of the directory are available free of charge from the RAA.

The ReArb.com site contains a comprehensive list of published sources on reinsurance arbitrations, selected articles, as well as the recently adopted Procedures for the Resolution of U.S. Insurance and Reinsurance Disputes. The RAA currently is working with an advisory board to expand and improve the site. In particular, the RAA will soon enhance the *Arbitrators Directory* portion of the site by adding an interactive, parameter-based search engine so that users can easily target those persons who best fit the profile of the arbitrator or umpire they are seeking. Other planned ReArb.com site enhancements include more full-text articles, an "ask the arbitrator" feature, "frequently asked questions" and answers section about arbitration, ethics and guiding principles, downloadable forms, arbitration case and statutory law, and much more.

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The Reinsurance Association of America and the Dispute Resolution Process

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Another important RAA arbitration endeavor is the *Manual for the Resolution of Reinsurance Disputes*, first published by the RAA in 1997 and updated on a yearly basis. The manual is a “how-to” guide for reinsurance arbitration and mediation. Divided into easy-to-read sections, the text presents a historical perspective and step-by-step overview of both the arbitration and mediation processes as well as recommendations for improving the practice of arbitration. The book also offers multiple detailed appendices, including procedural guidelines for arbitration and mediation, ethical standards for arbitrators and mediators, forms intended for duplication and use in actual arbitrations, a topical list of reinsurance arbitration decisions issued by U.S. state and federal courts, resources for domestic and international statutory law on arbitration, a list of alternative dispute resolution service providers, and a bibliography of source materials on reinsurance dispute resolution.

The *Procedures for the Resolution of U.S. Insurance and Reinsurance Disputes* established the RAA as a frontrunner in the reinsurance arbitration field. In 1997, the RAA organized an industry task force to discuss the creation of the procedures. The mission of the task force was to improve the reinsurance dispute resolution process by identifying common problems and recommending flexible and business-like solutions acceptable to ceding insurers, assuming insurers, and brokers alike. In undertaking this effort, the task force attempted to balance several goals. One was to set forth, in writing, the actual practice that exists in insurance and reinsurance arbitrations today. The second was to enhance and clarify minor procedural issues that sometimes result in unnecessary and time-consuming skirmishes between parties. And the third was to tackle some of the major issues that cause a lack of confidence and inefficiencies in the current system, and recommend alternative procedures that might result in greater fairness and a higher level of certainty to the parties. These procedures are included in the *Manual for the Resolution of*

Reinsurance Disputes, on the RAA’s ReArb.com web site, or can be requested from the RAA in a complementary hard-copy format.

In addition to the directory, the web site, the manual, and the procedures, the RAA offers case law-specific information on reinsurance arbitration law as part of three other legal reference works. The *Digest of Reinsurance Caselaw* is a three-volume reference work of U.S. reinsurance case law that is organized, indexed, cross-referenced, and summarized. It contains 22 categories specifically related to arbitration. The *Compendium of Reinsurance Laws and Regulations* contains 20 charts summarizing the laws and regulations of 51 U.S. jurisdictions for key reinsurance topics including state laws pertaining to arbitration agreements. The book *Reinsurance Contract Clauses—Case Law Annotations* compiles decisions of U.S. courts interpreting reinsurance contract provisions. It extracts specific contract language from court decisions and provides the court’s interpretation of that language. There are 38 different arbitration clauses addressed in the annotations.

In addition to acting as a resource of reinsurance arbitration information, the RAA supports the rights of reinsurers in arbitration issues in legislatures and the courts. The RAA takes a three-prong approach by lobbying for state legislation that specifically protects the enforceability of arbitration clauses in reinsurance contract, arguing against restriction or prohibition on the use of reinsurance arbitration in insurance receiverships, and intervening in court cases addressing the use of reinsurance arbitration. On this latter point, the RAA posts its court amicus briefs on its web site (www.reinsurance.org) under the “Policy Update” link.

In the words of an anonymous author, “To disagree is human, to arbitrate, divine.” Through use of the above-discussed vehicles and more, the RAA will continue to promote the improvement of the process and the practice of settling reinsurance disputes through arbitration and mediation. ■

Reinsurance Section Seminars at the 2002 Annual Meeting & Seminars

Your Reinsurance Section will contribute to the CPCU Society's 2002 Annual Meeting and Seminars in Orlando, FL, by offering three seminars. The Reinsurance (Re) section will present its traditional **Reinsurance—State of the Art** seminar. In addition, our section will follow up on the CLEW Section **Mock Trial** with a "mock arbitration." We will also furnish a David Letterman-style seminar entitled **The Top Ten Reasons That Reinsurance Can Be Misunderstood**.

Joining Reinsurance Section *RISE* editor Bruce Evans, CPCU, for the "Top Ten Reasons" seminar will be Tom Pavelko, J.D., CPCU, and Kevin Brawley, CPCU, who are also committee section members. Bruce is an associate professor of management at the University of Dallas; Tom is the contracts and regulatory attorney for American Agricultural Insurance Company; while Kevin is senior vice president of Facultative Resources.

This panel will create both humor and factual content in explaining how

reinsurance really works. The audience will be treated to the panel's response to their top 10 zingers, for instance:

- #10 "BMRA is not a shaving cream."
- #8 "Bordeaux is a reinsurance listing located between border 'N' and border 'P.'"
- #6 ISO replies to your letter. "Sorry, but we can not furnish reinsurance policy forms."
- #4 "Utmost good faith is included at no additional charge."
- #2 "The cut through endorsement does not need to be declared at the airport security gate because it contains no knives, scissors, or nail clippers."

In May, all members will receive an Annual Meeting brochure with registration information. Please check the Society's web site, www.cpcusociety.org for more information. ■



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