AIDA REINSURANCE & INSURANCE ARBITRATION SOCIETY

ARIAS • U.S.

ARIAS•U.S. Quarterly

Volume 5 No. 1 | EX AEQUO | 1st Quarter, 1998

Inside:

ABRITRATION LAW

AGREEING OR REFUSING TO HEAR EVIDENCE

Julie A. Klein

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Arbitrations, parties and their representatives often ask, "At what point may an arbitrator refuse to hear offered evidence?" As with many aspects of arbitral authority, the decision to accept or refuse to hear evidence is within the arbitrator's discretion, and it is thus often difficult to provide an absolute rule. Several sources of authority provide ample guidance, including the applicable arbitration statute, relevant case law, the parties' agreement and, if appropriate, the rules of an administering organization, e.g., the American Arbitration Association.

While each tribunal faces unique evidence determinations, these sources should nevertheless make clear that the arbitrator's basic responsibility is to provide each of the parties a meaningful opportunity to be heard.

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Statutory and Treaty Guidance

Statutes, both state and federal, dictate that an arbitral award shall not be enforced if

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In Recognition:
The Board of ARIAS•U.S. recognized the outstanding service ofT. Richard Kennedy and Edmond F. Rondepierre to the founding of ARIAS•U.S. at its March 10, 1998 Board of Directors Meeting. The two are flanked by Robert M. Mangino and Mark S. Gurevitz, who succeed, respectively, Mr. Kennedy as Chairman and Mr.Rondepierre as President.

Annual Calendar, 1998

FIRST QUARTER

January 21, 1998	Board of Directors Meeting
March 10, 1998	Board of Directors Meeting

SECOND QUARTER

April 15, 1998	Board of Directors Meeting
April 16-18, 1998	Bermuda Spring Conference
May 15, 1998	Newsletter 1st Quarter / Vol 5 No. 1
June 18, 1998	Board of Directors Meeting
June 25, 1998	One-Day Workshop *Streamlining the Arbitration-Expedited Proceedings* Chicago Nick J. DiGiovanni - Co-Chair Richard G. Waterman - Co-Chair
	Newsletter 2nd Quarter / Vol. 5 No. 2

THIRD QUARTER

August 15, 1998	November, 1998 Conference Announcement
September 17, 1998	One-day workshop co-sponsored by: The Association of the Bar of the City of New York and ARIAS•U.S. New York City James A. Shanman - Chair
	Newsletter 3rd Quarter / Vol 5. No. 3

FOURTH QUARTER

October 2, 1998	Annual Meeting Announcement Proxy Mailing
November 5-6, 1998	Board of Directors and Annual Meetings New York City Conference Mark S. Gurevitz - Co-Chair Charles L. Niles, Jr. - Co-Chair
December, 1998	4th Quarter Newsletter / Vol. 5, No.

ARIAS•U.S. Board of Directors Adopts 1998 Goals and Names Team Leaders

The ARIAS•U.S. Board of Directors adopted these goals for 1998 at its March 10th Board Meeting.

1. Work on selection protocol by ARIAS•U.S. for arbitrators and umpires;
   Team Leaders: Charles M. Foss
   Charles L. Niles, Jr.
2. Work with other industry organizations to establish and set up seminars;
   Team Leaders: Stephen H. Acunto
   Charles W. Havens, III
3. Establish a "Code of Conduct";
   Team Leader: Richard G. Waterman
4. Complete "Practical Guide" handbook;
   Team Leaders: Thomas A. Allen
   Mark S. Gurevitz
5. Complete Certified Arbitrators Directory;
   Team Leaders: Stephen H. Acunto
   Daniel E. Schmidt, IV
6. Work with RAA industry task force on arbitration procedure;
   Team Leader: Charles M. Foss
7. Work to expand ARIAS•U.S. membership in insurance and reinsurance markets;
   Team Leaders: Stephen H. Acunto
   Edmond F. Rondepierre
8. Exlore the mediation process.
   Team Leaders: Thomas A. Allen
   Robert M. Hall

Your Association's Board of Directors

Robert M. Mangino

ARIAS•U.S. Chairman

Swiss Re America Holding Corp.

Mark S. Gurevitz

ARIAS•U.S. President

ITT Hartford Insurance Group

Thomas A. Allen

ARIAS•U.S. Vice President

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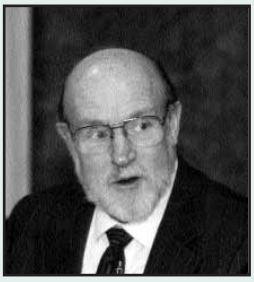
Charles L. Niles, Jr.

ARIAS•U.S. Vice President

Charles L. Niles Reinsurance

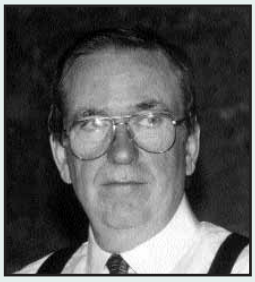
Charles W. Havens, III

LeBoeuf, Lamb, Greene & MacRae



T. Richard Kennedy

Werner & Kennedy



Edmond F. Rondepierre

Daniel E. Schmidt, IV

SOREMA NA

Charles M. Foss

The Travelers Indemnity Co. The Aetna Casualty & Surety Co.

Uberrimae Fidei and Fraud Under New York's Reinsurance Law: An Examination Of The Impact Of IN THE MATTER OF THE LIQUIDATION OF UNION INDEMNITY COMPANY

By Richard S. Feldman

and

James M. Harinski

Recently, the New York Court of Appeals was called upon to decide whether the failure of a ceding insurance company to disclose its insolvency to its potential reinsurer constituted fraud such that its nondisclosure warranted rescission of their reinsurance contract. In that case, *In the Matter of the Liquidation of Union Indemnity Company*,[1] the high Court found the cedent's insolvency to be a material fact, the intentional nondisclosure of which to its reinsurer constituted fraud in the inducement and resulted in the unenforceability of their contract. This article briefly examines the impact of fraud upon the enforceability of a reinsurance contract under New York law and likely implications following the Union Indemnity decision.

Historical Overview Of Uberrimae Fidei

Historically, the reinsurance industry developed and thrived because of the mutual dependence between ceding companies and reinsurers.[2] Indeed, the success of each party depended upon the other, with both being apprised of the nature of the risks and obligations that were undertaken by way of their reinsurance contract.[3] Under traditional reinsurance dogma, a ceding company is saddled with the duty of uberrimae fidei, "of the utmost good faith."[4] Specifically, a burden is placed upon the ceding company to disclose to its potential reinsurers material facts regarding the nature of the original risks.[5] The failure to disclose such risks may render a reinsurance agreement voidable or rescindable.[6] Material facts are those that, had they been revealed, would have caused the reinsurer either not to enter into the reinsurance contract, or to do so only at a higher premium.[7] The determination of whether information is material is ordinarily a question of fact, with the standard being whether, at the time of contracting, a reasonable reinsured would have believed the information was something that a reinsurer would have considered material to the risks.[8] Mere conclusory and self-serving statements by reinsurers that they would not have entered into the reinsurance contracts, or would have only done so at a higher premium, do not warrant the rescission of a reinsurance contract.[9]

In applying the doctrine of uberrimae fidei, New York courts have held that a reinsured does not need to possess a specific intent to withhold information from its reinsurer to make the reinsurance contract voidable; rather, an innocent failure to disclose could also be sufficient to justify rescission of the contract.[10] Additionally, under the uberrimae fidei standard, "[t]here is no principle of imputed knowledge of facts material to the risk that the reinsurer is asked to assume,"[11] and no requirement that the reinsurer make specific inquiries of the reinsured to flesh out the full nature and extent of the risks.[12] There is little dispute that, under traditional notions of uberrimae fidei as applied by the New York courts, once it is determined that a ceding insurer has withheld material information from its reinsurer, either fraudulently or innocently, the reinsurance contract is voidable or rescindable.[13]

Insolvency As A Material Fact

In Union Indemnity, there was little question that, had the reinsurers been advised of Union Indemnity's insolvency, they would not have entered into the reinsurance contracts, or would have only done so at a much higher premium and assumed a much smaller risk.[14] At issue, was whether Union Indemnity's insolvency was a material fact that should have been disclosed, and whether its nondisclosure constituted fraud in the inducement.[15]

The Court of Appeals concluded that Union Indemnity's insolvency was a material fact, the nondisclosure of which was sufficient to void the reinsurance contract. In reaching its decision, the Court likened a ceding company's insolvency to a situation where the cedent issued extended coverage or an unusual term without the reinsurer's knowledge and held that it "has a potential impact on the reinsurers' risk

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sufficient to trigger the uberrimae fidei obligations for disclosure."[16]

Fall Out From Union Indemnity

Since the Court's decision, pro-reinsurer commentators have touted the Union Indemnity decision as a champion for reinsurers which enables them to easily seek rescission of reinsurance contracts.[17] Indeed, in celebrating the decision, they report that "the traditional doctrine of uberrimae fidei is . . . alive and well in New York, the nation's premier reinsurance marketplace. To paraphrase Mark Twain, news of the doctrine's demise seems to have been exaggerated."[18] Taking the view espoused by these commentators, a reinsurer could seemingly seek rescission of a reinsurance contract that has proven to be less profitable than expected by merely asserting that it was not fully apprised of the facts relevant to the original risks. This position, however, exaggerates the Union Indemnity holding.

This burden, although easily satisfied by the facts in Union Indemnity, is not so easily met in most situations.

In situations not involving obvious fraud such as found in Union Indemnity, a reinsurer must satisfy a heavy burden before a reinsurance contract may be rescinded. Specifically, a reinsurer must show that the ceding company had knowledge of information material to the original risks, but withheld that information, and that a reasonable cedent should have believed that the facts were something the reinsurer would have considered material.[19] This burden, although easily satisfied by the facts in Union Indemnity, is not so easily met in most situations. Indeed, courts have not rescinded reinsurance contracts where it is unclear whether at the time the contracts were entered into: (1) the cedent was aware of the significance of the risk and/or (2) a reasonable cedent should have known that its reinsurer would consider the information to be material.[20] In Christiana, the Second Circuit affirmed the dismissal of a reinsurer's misrepresentation claim because it failed to prove that the cedent was aware that the coverage afforded to the insured for all-terrain vehicles posed a significantly greater risk than the insured's other products such that the cedent should have known that the reinsurer's decision to reinsure would have been affected.[21] Similarly, in Fremont Indemnity, a federal court refused to award rescission on summary judgment because an issue of fact existed as to whether the cedent's nondisclosure of internal loss projections was material to the reinsurer's decision to accept the risk when the documentation from which the loss projections were prepared were disclosed.[22] There, the court found that it remained "to be seen whether under the standard by which materiality is judged, an objective one, industry practice would consider the [internal] loss projections as material to a reinsurer's decision to participate in the . . . Treaty."[23]

Pro-reinsurer commentators seemingly gloss over these decisions and overestimate the significance and impact of the Union Indemnity decision. What they apparently seek to minimize is that, before a reinsurance contract can be rescinded, a reinsurer must satisfy each of the above prerequisites. Merely asserting that a reinsurer was incorrect in one of its beliefs about the risk assumed or that it considered an undisclosed fact to be material will not be enough to warrant rescission of a reinsurance contract.[24]

Conclusion

Although the outcome reached by the New York Court of Appeals in Union Indemnity appears to be a just result under the circumstances, the importance of this decision should not be overemphasized. Indeed, Union Indemnity should not be used as a weapon by reinsurers to easily escape their obligations under contracts that prove to be less profitable than expected. Instead, the decision should be viewed in the context in which it was decided — a drastic remedy was warranted where the cedent perpetrated a fraud on its reinsurers to induce them to enter into reinsurance contracts.

1 89 N.Y.2d 94, 674 N.E.2d 313, 651 N.Y.S.2d 383 (1996).

2 See, Kramer, The Nature of Reinsurance, reprinted in Reinsurance at 9 [Strain ed. 1980].

3 Id.

4 Union Indemnity, 651 N.Y.S.2d at 389.

5 Sumitomo Marine & Fire Ins. Co., Ltd. — *U.S. Branch v. Cologne Reinsurance Co. of America*, 75 N.Y.2d 295, 552 N.E.2d 139, 552 N.Y.S.2d 891, 895 (1990); *Royal Indemnity Company v. Preferred Accident Insurance Company*, 243 A.D. 297, 301, 276 N.Y.S. 313, 318 (1st Dept. 1934), aff'd, 268 N.Y. 566, 198 N.E. 407 (1935).

6 Id.

7 Christiana General Insurance Corporation of New York v. Great American Insurance Co., 979 F.2d 268, 278-79 (2nd Cir. 1992) (the alleged material fact was the cedent's coverage to the insured for all-terrain vehicles); *American Home Assur. Co. v. Fremont Indemnity Co.*, 745 F. Supp. 974, 977 (S.D.N.Y. 1990) (the alleged material facts consisted of an internal loss projection report by the cedent which was based on materials that were provided to the reinsurer and information concerning the amount in excess of which the reinsurer would be liable).

8 Christiana, 979 F.2d at 278-79; Fremont Indem., 745 F. Supp. at 977 - 978 (summary judgment denied to the reinsurer because an issue of fact existed as to whether the reinsured's nondisclosure was material). But see, Union Indemnity, 651 N.Y.S.2d at 390; *Curiale v. AIG Multi-Line Syndicate, Inc.*, 204 A.D.2d 237, 613 N.Y.S.2d 360 (1st Dept. 1994) (court found, based on clear and

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the arbitrator has refused to hear pertinent and material testimony. Under New York's Civil Practice Law and Rules (CPLR), an award may be vacated where "the rights of [a] party were prejudiced by...misconduct in procuring the award..."[1] As specifically defined in an earlier version of this provision, the term "misconduct" includes refusing to postpone the hearing upon sufficient cause shown or refusing to hear evidence pertinent and material to the controversy.[2]

The Federal Arbitration Act more explicitly provides that an award may be vacated "[w]here the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy..."[3] For parties seeking to enforce an international arbitral award, Article V(1)(b) of the New York Convention also provides for nonenforcement where: "[t]he party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was *otherwise unable to present his case"* [emphasis added].

Arbitration Association practice has long been to encourage arbitrators to be liberal in the receipt of evidence to help ensure the finality and enforceability of the award. As the use of arbitration has developed into a broadly acceptable and much preferable procedure by which to resolve the gamut of disputes, including large and complex cases, the arbitrator's practice of accepting all offered evidence, whether or not cumulative and/or irrelevant, began unnecessarily to lengthen the process.

Because this practice contravenes the reasons parties choose arbitration in the first instance, i.e., for prompt resolution, efficiency and cost effectiveness, the arbitration association began to amend its education and training of arbitrators to encourage their active management and control of the proceedings — which included the exclusion of evidence the arbitrator deems cumulative, irrelevant and/or immaterial.

Generally, arbitration association arbitrators have been so managing the conduct of the proceedings, even though the Commercial Arbitration Rules do not specifically address such evidence management. As time goes on, this practice is likely to become more explicit in those rules. Currently, Rule 10 of the Commercial Rules provides that the arbitrator may schedule a preliminary conference to specify the issues, to allow stipulations of uncontested facts and to consider other matters that will expedite the proceedings.

Rules 29 and 32, respectively, accord the arbitrator discretion to vary the arbitration procedure and permit the arbitrator to receive and consider evidence by affidavit.

Recently, the association memorialized that trend in evidence management in the recent revisions to its International Arbitration Rules. The International Rules were amended, among other things, to provide arbitrators with greater authority to actively manage the proceedings, which includes the management of evidence.

Article 16 of the International Rules now makes more express:

(1) the preference that arbitrators conduct the proceedings "with a view to expediting the resolution of the dispute";

(2) the ability (but not the duty) of arbitrators to conduct a preliminary conference to organize and schedule the subsequent proceedings; and

(3) that the tribunal may "direct the order of proof, bifurcate proceedings, exclude cumulative or irrelevant testimony or other evidence, and direct the parties to focus their presentations on issues the decision of which could dispose of all or part of the case."[4]

Generally, arbitration association arbitrators have been so managing the conduct of the proceedings, even though the Commercial Arbitration Rules do not specifically address such evidence management.

Case Law

Courts have explored and interpreted to what extent an arbitrator may exclude offered evidence from the proceedings. While there is no indication that this change in approach has resulted in awards being vacated, there have been few exceptions.

In a recent Second Circuit decision, *Tempo Shain Corp. v. Bertek Inc.*[5], the court found that the arbitration panel's refusal to continue hearing certain evidence amounted to fundamental unfairness and misconduct sufficient to vacate the arbitration award under the Federal Arbitration Act.

At the hearings involving, among other things, a breach of contract claim to purchase a license agreement, Bertek intended to call Pollock, the former president of its laminated products division, as a witness to provide what Bertek believed to be crucial testimony concerning the negotiations and dealings between the parties, which it claimed could only be provided by Pollock. Pollock, although willing to testify, became temporarily unable to attend the hearings because of his wife's illness. Bertek urged the panel to keep the case open until Pollock could testify either in person or by deposition.

Despite Bertek's request, the panel closed the hearing without waiting for Pollock's testimony, and subsequently rendered an award in favor of Tempo, et al. The district court confirmed the award based on its conclusion that the arbitration panel correctly understood that it was required to decide whether

Pollock's testimony would add to the panel's knowledge or merely be a cumulative "rehash" of what the panel had already heard from other witnesses.

Fundamental Fairness

While the Court of Appeals conceded that panel determinations are generally accorded great deference under the Federal Arbitration Act, federal courts nonetheless may vacate an award if the arbitrators refuse to hear evidence pertinent and material to the controversy. According to the court, this means that except where fundamental fairness is violated, arbitral determinations will not be opened up to evidentiary review, and arbitrators must give each of the parties to the dispute an adequate opportunity to present its evidence and argument

The Tempo court reasoned, "[b]ecause Pollock as sole negotiator for Bertek was the only person who could have testified in rebuttal of appellees' fraudulent inducement claim, and in support of Bertek's fraudulent inducement claim, and the documentary evidence did not adequately address such testimony," there was no reasonable basis for the arbitrators to conclude that Pollock's testimony would have been cumulative with respect to those issues. Accordingly, the court found that the panel excluded evidence plainly "pertinent and material to the controversy."

In an earlier decision, *Iran Aircraft Industries v. Avco Corp.*[6] the Second Circuit affirmed the District Court's refusal to enforce the award pursuant to Article, V(1)(b) of the New York Convention because defendant Avco was not afforded an opportunity to present its case. A dispute involving a series of contracts pursuant to which Avco was to repair and replace helicopter engines and related parts for the plaintiff, was submitted to the Iran-United States Claims Tribunal. The tribunal rendered an award in favor of the Iranian parties and the District Court subsequently declined to enforce the award from which the Iranian parties had appealed.

At issue in Iran Aircraft was Avco's reliance on a method of proof approved by one of the tribunal judges, namely, the submission of Avco's audited accounts receivable ledgers in lieu of submitting numerous underlying invoices, which was later rejected by the tribunal as insufficient. The court noted that because Avco was not made aware that the tribunal now required the actual invoices to substantiate its claim and was, therefore, misled, it was denied the opportunity to present its claim in a meaningful manner.

However, the Seventh Circuit recently ruled in *Generics Ltd. v. Pharmaceutical Basics Inc.*[7] that the arbitrator's refusal to permit continued cross-examination from a witness that the arbitrator deemed immaterial to the proceedings at issue, did not deny the party Due Process.

The arbitrator established terms of reference, which outlined his authority to determine the admissibility, form and weight of any evidence submitted for consideration.

Generica, an American Pharmaceutical manufacturer, had filed a request for arbitration with the International Court of Arbitration of the International Chamber of Commerce alleging that PBI, a British licensor for manufacture of a fertility drug, had breached their agreement by failing to both "procure the required pharmaceutical development" and move toward Food and Drug Administration approval of the product. PBI responded that the formulation and processes supplied by Generica were so flawed for use in the United States that FDA approval was not practicable.

The arbitrator established terms of reference, which outlined his authority to determine the admissibility, form and weight of any evidence submitted for consideration. In the interim award — which determined liability only — the arbitrator ultimately concluded that PBI breached and repudiated the parties' agreement.

PBI asked the District Court to vacate the award asserting that, in curtailing its opportunity to cross-examine witness Tony Hynds' (the managing director of Athlone Laboratories, a manufacturing company in Ireland that has carried out the formulation and testing of the same fertility drug for production in the United Kingdom), he deprived PBI of a fair hearing. On cross-examination, PBI contended that it would have challenged Hynds' testimony that Athlone's batches of the drug produced consistent, reproductible, properly validated results.

The Generica court found that "PBI's 'central question' of whether the formula and process were amenable to FDA approval was immaterial to the breach of contract determination...that cross-examination of Hynds would not have resolved the real issue of the arbitration." The Court of Appeals agreed, noting that, under Article V(1)(b) of the New York Convention, the lower court was required to enforce the award unless PBI demonstrated that it was unable to present its case before the arbitrator.

The Court discussed decisions of the Second Circuit which described the foregoing defense as "basically correspond[ing] to the due process defense that a party was not given 'the opportunity to be heard at a meaningful time and in a meaningful manner.'"[8]

In further reviewing different circuit court decisions, the court noted that an arbitrator must provide a fundamentally fair hearing, which is one that, "meets 'the minimal requirements of fairness' — adequate notice, a hearing on the evidence, and an impartial decision by the arbitrator."[9] The arbitrator "must give

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each of the parties to the dispute an adequate opportunity to present its evidence and arguments."[10]

Because the Generica arbitrator determined that the key question before him was not whether the Generica formula was susceptible to qualifying under FDA standards, but whether the parties had committed their best efforts to developing a product that would qualify, he did not consider Athlone's experience in working with the formula to be central to the liability issue before him.

Accordingly, the Court held that "the arbitrator's curtailment of cross-examination of Tony Hynds was not such a fundamental procedural defect that it violated our due process jurisprudence and therefore the New York Convention.[11]

Conclusion

While statutory and Convention Provisions, applicable rules of an administering organization, case law and the parties' agreement are helpful when an arbitrator must rule on issues of evidence exclusion, alas, the final determination generally resides within the arbitrator's discretion. It is expected that arbitrators will carefully weigh their need to effectively and efficiently manage the proceedings with the necessary and ultimate requirement that the parties' due process rights be protected.

(1) CPLR §7511(b)(1).

(2) Id., Practice Commentaries, McLaughlin, Joseph M., at 579.

(3) 9 USCS §10(c).

(4) American Arbitration Association Task Force on the International Rules, "Commentary on to the Proposed Revisions to the International Arbitration Rules" 2 ADR Currents 1 (Winter 1996/1997) pps. 6-10.

(5) 120 F3d 16 (2d Cir. 1997).

(6) 980 F2d 141 (2d Cir. 1992)

(7) 125 F3d 1123 (7th Cir. 1997).

(8) *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) and Iran Aircraft Indus, supra note 7, at 146.

(9) See supra note 7, citing *Sunshine Mining Co. v. United Steelworkers*, 823 F2d 1289, 1295 (9th Cir. 1987).

(10) *Hoteles Condado Beach v. Union De Tronquistas*, 763 F2d 34, 40 (1st Cir. 1985).

(11) The arbitrator also expressly noted that he would place diminished reliance on Hynds' direct testimony, thereby eliminating any possibility of prejudice to PBI; see supra note 7, at 1131, note 7.

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substantially uncontradicted evidence, that the insolvent's nondisclosure was material as a matter of law).

9 *Stephens v. American Home Assur. Co.*, 811 F. Supp. 937, 950 (S.D.N.Y. 1993), vacated and remanded on other grounds, 70 F.3d 10 (2nd Cir. 1995).

10 Union Indemnity, 651 N.Y.S.2d at 390; *Reliance Ins. Co. v. Certain Member Cos.*, 886 F. Supp. 1147, 1154 (S.D.N.Y.), aff'd, 99 F.3d 402 (2nd Cir. Dec. 28, 1995). See also, *Sun Mutual Insurance Co. v. Ocean Insurance Co.*, 107 U.S. 485, 17 Otto 485, 1 S.Ct. 582, 27 L.Ed. 337 (1883); Ostrager and Newman, Handbook on Insurance Coverage Disputes, § 16.03 [a], 710 (8th ed. 1995).

11 Union Indemnity, 651 N.Y.S. 2d at 390 (citations omitted).

12 Certain Member Cos., 886 F. Supp. at 1154.

13 Union Indemnity, 561 N.Y.S.2d at 389 and 390; Sumitomo, 552 N.Y.S.2d at 895. See also, Ostrager and Newman, Handbook on Insurance Coverage Disputes § 16.03 [a] at 710 (8th Ed. 1995) ("It is well settled that where a reinsurer is induced to enter into a contract of reinsurance by reason of the reinsured's failure to disclose material facts pertaining to the risk, the agreement is voidable. (Citations omitted) To make the contract voidable, it is not necessary that the reinsured have a specific intent to conceal information from the reinsurer; an innocent failure to disclose a material fact is sufficient.").

14 651 N.Y.S.2d at 386. Indeed, in the District Court's opinion, Judge Ira Gammerman "emphasized and relied upon the fact that 'it had been conceded that had a reinsurer been aware of insolvency it certainly would not have underwritten the sum encompassed by reinsuring the bankrupt company.'" Id.

15 Id. at 388.

16 Id. 390. Indeed, in arguing before the Court, the reinsurers asserted that "insolvency is material and its disclosure crucial, because one way to conceal insolvency is for an insurer to simply keep writing additional pre miums on bad risk situations. . . . [T]he writing of substandard and underpriced risks, which were then subsumed within the reinsurance, constitutes a material fact subject to disclosure because the reinsurers' true risks would not be generating sufficient premiums to justify such unknown exposures." Id. at 388-89.

17 See, Wilker, P. Jay and Lenci, Edward K., Uberrimae Fidei Under New York Law, New York's Highest Court Takes A Pro-Reinsurer Position, printed in Mealey's Litigation Reports: Reinsurance, Vol. 7, No. 17 (Jan. 15, 1997).

18 Id. at 17.

19 Christiana, 979 F.2d at 278-79; Stephens, 811 F. Supp. at 949 (knowledge of the alleged material fact is a precursor to the disclosure requirement); Certain Member Cos., 886 F. Supp. at 1151 (the mere fact that the reinsurer believed the cedent was retaining a portion of the risk at issue did not end the court's inquiry).

20 Christiana, 979 F.2d at 280; Fremont Indemnity, 745 F. Supp. at 977.

21 979 F.2d at 280.

22 745 F. Supp. at 977.

23 Id.

24 Christiana, 979 F.2d at 279; Certain Member Cos., 886 F. Supp. at 1151.

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A series of half day seminars and workshops focused on
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1:00 - 4:00 pm

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Richard G. Waterman, CPCU

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Membership Application

The AIDA Reinsurance and Insurance Arbitration Society, ARIAS•U.S. is a not for profit Corporation that promotes the improvement of the insurance and reinsurance arbitration process for the international and domestic market. 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 procedural guidelines and the best practices for arbitration, by helping to reduce costs, streamline processes, curtail unnecessary discovery proceedings and realize the fair resolutions of disputes

Benefits
Benefits of membership include newsletters, discounts on seminars/workshops, membership directory, and access to certified arbitrators. Membership includes all of the rights and privileges conferred by the Society's By-Laws. 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:	$250.00	$750.00
Total	$750.00 ☐	$2,250.00 ☐

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

Certified Arbitrators

As of April 15, 1998

Howard N. Anderson
Therese Arana-Adams
Richard S. Bakka
Nasri H. Barakat
Peter H. Bickford
John W. Bing
John H. Binning
Robert Michael Cass
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