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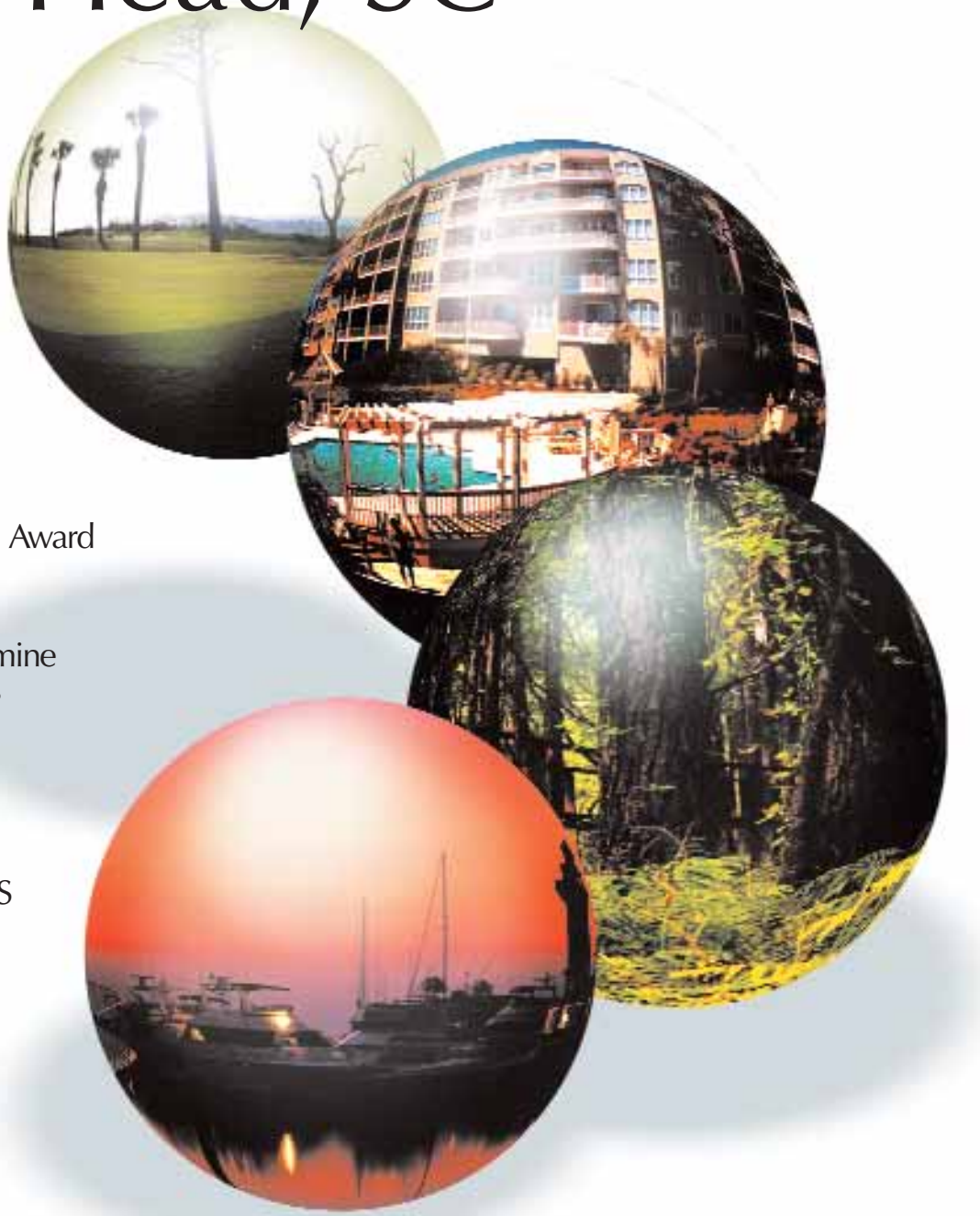

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ARBITRATORS IN FOCUS

PRACTICAL GUIDE: ENFORCEMENT OF AN ARBITRAL AWARD RENDERED IN RUSSIA

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I. LEGISLATIVE FRAMEWORK

There are two bodies of law which need concern those involved in enforcement of arbitral awards: international law and domestic law.

A. International

The fundamental international act that allows the enforcement in one country of arbitral awards rendered in another country is the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention"). The Soviet Union acceded to the New York Convention in 1960. After the collapse of the USSR, the Russian Federation declared itself a successor to the Soviet Union. Thus Russia's official declarations that it would continue to exercise rights and honor obligations arising from international treaties signed by the Soviet Union mean that it is now assumed that Russia is bound by all international acts that were signed by the USSR, including the New York Convention.

The New York Convention provides an exhaustive list of grounds on which an award can be challenged, and specifies that the domestic law of a contracting state is to be used to provide technical enforcement procedures.

B. Domestic

The main legislative act relating to international commercial arbitration is the Law, enacted in 1993, "On International Commercial Arbitration" (the "Arbitration Law"). This Arbitration Law is based on the Model Law adopted in 1985 by UNCITRAL. Basically, the Arbitration Law appears to be a literal translation of the UNCITRAL Model Law. The Arbitration Law is applicable to international commercial arbitration taking place in Russia, both for *ad hoc* and institutional arbitration.

Another important act was adopted in 1988 by the USSR Supreme Soviet: the Decree "On the Recognition and Enforcement in the USSR of Decisions of Foreign Courts and Arbitral Tribunals" (the "1988 Decree"). To date it remains in force in so far as the 1988 Decree fills the gaps in the Arbitration Law.

It should be noted that the Arbitration Law, like the New York Convention, contains provisions regarding enforcement. However, according to Article 1.5 of the Arbitration Law, in the case of discrepancy between an international treaty, to which Russia is a party, and the Arbitration Law, the former will apply. Thus, the New York Convention will always take precedence.

II. ENFORCEMENT PROCEDURE IN RUSSIA

Take the following hypothetical case involving a foreign company ("ForCo") and a Russian company ("RusCo"). The parties entered into a contract providing for arbitra-

tion at the International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation (the "ICAC"). A dispute arose and arbitration conducted in the ICAC and the latter issued an award on the merits of the case that is unfavorable to ForCo. RusCo is willing to enforce the award in Russia, while ForCo seeks to avoid such enforcement. RusCo is immediately faced with a choice: in which court should it seek to enforce the award?

A. Courts of General Jurisdiction v. *Arbitrazh* Courts

At present there is rivalry over jurisdiction between two court systems: the courts of general jurisdiction and the *arbitrazh* courts. Courts of general jurisdiction operate in accordance with the Civil Procedural Code, and *arbitrazh* courts — under the *Arbitrazh* Procedural Code. An *arbitrazh* court is now a specialized commercial state court. In the Soviet period, despite their judicial functions, *arbitrazh* institutions were not considered courts. In 1991, *arbitrazh* bodies were transformed into a new system of commercial courts. In 1995, the *arbitrazh* courts acquired the jurisdiction to adjudicate disputes involving foreign parties. Although previously only courts of general jurisdiction had handled the enforcement of foreign arbitral awards, now *arbitrazh* courts also claim to have similar jurisdiction. Both courts of general jurisdiction and *arbitrazh* courts are vigorously advocating their positions.

Accordingly, the procedure for enforcement can potentially be initiated in either court system. There have been cases in which *arbitrazh* courts dealt with the enforcement of arbitral awards. Technically, the procedural differences between the two courts are insignificant. Arising from this dilemma there is a further complication. Since the two court systems are independent, it is not possible to appeal a decision of the courts of general jurisdiction in the *arbitrazh* courts and vice versa. Therefore, it is unclear how these courts would react if, for example, a motion to enforce an arbitral award were filed with an *arbitrazh* court while a motion to annul the same arbitral award was submitted to a court of general jurisdiction.

Thus, in practice, RusCo may initiate the enforcement procedure in either a court of general jurisdiction or an *arbitrazh* court. *Arbitrazh* courts, as specialized commercial courts, might be regarded more appropriate for the enforcement of arbitral awards. In our view, however, only courts of general jurisdiction are entitled to consider enforcement. The interpretation of the law that the *arbitrazh* courts use to claim jurisdiction seems to go beyond the formal statutory wording. Consequently, we describe below the enforcement procedure in a court of general jurisdiction.

B. Setting an Award Aside

1. Motion

There are two ascending levels of challenge to an arbitral award open to the ForCo: a motion to set aside the award, and a challenge in the Supreme Court. As its first move ForCo can attempt to get the award set aside. Under the Arbitration Law, a motion to set an arbitral award aside should be filed with a court of second instance at the place of arbitration. Since the ICAC is located in Moscow, the motion must be submitted to the Moscow City Court. Pursuant to Article 34.3 of the Arbitration Law, the motion must be filed within three months of the award being officially received, otherwise the court will dismiss it. Under the Civil Procedural Code, the motion should be considered within one month. Nevertheless, due to its workload and other reasons, the courts usually fail to meet the one-month deadline and consideration could last for several months. When a resolution on the motion is finally announced, it takes ten days for the resolution to come into force. Within the ten-day term, ForCo is entitled to appeal the resolution to the Supreme Court of the Russian Federation.

2. Grounds

Article V of the Convention provides a list of grounds that may be used to challenge an arbitral award. Since the New York Convention is designed to promote arbitration, the list of grounds is exhaustive and the grounds mentioned are mostly procedural in nature:

(a) The parties to the arbitration agreement were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made;

(b) The 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;

(c) The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced;

(d) The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place;

(e) The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

It should be noted that the above grounds have to be proved by the party seeking to challenge an arbitral award. On the other hand there are substantive grounds that may be invoked by a court itself. The Convention provides for two substantive grounds:

(a) The subject matter of the difference is not capable of settlement by arbitration under the law of the country where the enforcement is sought;

(b) The recognition or enforcement of the award would be contrary to the public policy of the country where the recognition or enforcement is sought.

So it appears that the burden of proving the procedural grounds rests with ForCo, while two substantive grounds may be identified by the court itself and applied accordingly. On the subject of a public policy defense, the Supreme Court of the Russian Federation recently stated in a decision that: (i) even the existence of a fundamental difference between Russian law and foreign law may not *per se* be reason to apply the public policy defense, (ii) moreover the application of Russian law *per se* makes the public policy defense groundless. In other words, the

Supreme Court tends to interpret the public policy defense narrowly.

3. Appeal to the Supreme Court

As mentioned, ForCo has ten days to appeal the resolution of the Moscow City Court in the Supreme Court of the Russian Federation. According to the Civil Procedural Code, the Supreme Court is to rule on the appeal within thirty days. However, this period may be extended by a month. A ruling of the Supreme Court of the Russian Federation is final and takes effect immediately.

It is important to note that while the arbitral award is being challenged in Moscow City Court and in the Supreme Court, execution against ForCo is postponed until after the final ruling.

4. Preliminary Injunction

Despite the postponement of execution - a period which might be exploited by ForCo to siphon assets out of Russia, RusCo can seek a preliminary injunction to prevent such movement of assets. Consequently, if the idea underlying the appeal of the ICAC award is only to buy time, rather than to obtain the actual reversal of the award, it might not achieve its goal.

5. Possible Outcomes

(i) Refusal to Annul the Award

In case the ICAC's arbitral award is ultimately confirmed, RusCo will receive a writ of execution, i.e. a document enabling RusCo to be compensated. A writ of execution may be submitted by RusCo either to a bank where ForCo has an account or to a marshal. Pursuant to the writ of execution, the bank will have to transfer the amount awarded from ForCo's account to RusCo's account, or, alternatively, the marshal will have to find other assets of ForCo and sell them through a public auction in order to compensate RusCo.

(ii) Annulment of the Arbitral Award

If an arbitral award is annulled, RusCo will, of course, not be able to enforce it. On the other hand, it seems still possible for RusCo, under certain circumstances, to have its case considered anew. This might be done, for example, in an *arbitrazh* court at the place where: (i) ForCo's assets are located, (ii) ForCo has a representative office, or (iii) the performance of the contract occurred.

Certainly, a judgement rendered by an *arbitrazh* court does not constitute an arbitral award as this term is understood in the New York Convention. The enforcement of such a judgement may be effectuated outside Russia only in those countries that have entered into the relevant international treaties with Russia.

(iii) Suspending the Proceedings for Annulment of the Award

It is worthwhile mentioning that a court considering a motion to set an award aside may "where appropriate and so requested by a party, suspend the setting aside proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume arbitral proceedings or to take such other action as in the arbitral tribunal's opinion will eliminate the grounds for setting aside" (Article 34.4 of the Arbitration Law). This actually means that the court may remand the case back to the ICAC to be heard again. In other words, the ICAC may reconsider the case anew, potentially resulting in either the same, a more, or even less, favorable award.

Hence, there is a risk that ForCo's motion to set the ICAC award aside might ultimately result in an even worse award.

C. Request to Refuse Recognition and Enforcement

1. Application for Recognition and Enforcement

In order to enforce the ICAC award, RusCo has to apply to a Russian court having jurisdiction. According to Article 2 and Article 5.5 of the 1988 Decree, this may be done within three years at the place where ForCo is located in Russia (for example, in the court in whose territory the representative office of ForCo is located) or where ForCo's property is located (for example, at a location where ForCo has real estate or bank accounts or the place of registration of shares owned by ForCo, etc.).

The procedure for enforcement by RusCo is similar to that followed by ForCo when seeking to set the award aside. Assuming ForCo has a representative office or some property in Moscow, RusCo's request to enforce the ICAC's award should be filed with the Moscow City Court. The latter has one month to consider the request and to issue its resolution authorizing the enforcement. This resolution can be appealed within the ten days at the Supreme Court of the Russian Federation, which is to rule on the appeal within one month. The ruling of the Supreme Court is final and binding.

2. Grounds

During enforcement ForCo, as defendant, may raise the same arguments, i.e. those for setting the award aside, and exploit the same grounds, i.e. Article V of the New York Convention, in an attempt to have RusCo's request dismissed.

3. Possible Results

(i) Refusal to Enforce

If the court declines to enforce the ICAC award, a writ of execution will not be issued and, accordingly, execution will not be possible.

(ii) Endorsement of Enforcement

If an arbitral award is confirmed, RusCo will be entitled to start the execution thereof.

4. Execution of the Arbitral Award

When and if the ICAC's arbitral award is confirmed and writ of execution is issued, the latter may be submitted to a bank where ForCo has an account or to a marshal for execution. In other words, the execution procedure is similar to that described above regarding the refusal to annul the award.

III. EFFECT OF RUSSIAN PROCEEDINGS ABROAD

It is worth noting a couple of "side-effects" of an attempt to set the ICAC award aside or to impede enforcement by RusCo in Russia, should RusCo seeks to enforce its award abroad. Firstly, a foreign competent authority may refuse enforcement by virtue of Article V.1.(e) of the New York Convention. Secondly, this competent authority "may, if it considers proper, adjourn the decision on the enforcement of the award and may also, on the application of the party claiming enforcement of the award, order the other party to give suitable security" (Article VI of the Convention).

In other words, challenging an arbitral award in Russia can in certain circumstances help evade potential enforcement in ForCo's home country.

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This article is not intended to provide professional advice. For further information and assistance, please contact Olga Anissimova or Alexey Barnashov at (7-501)258-5454.

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Reinsurance Arbitration Trends and Procedures
FEBRUARY 8, 2001
New York, NY

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To receive a copy of the Pennsylvania CLE Credit Request Form for either of these two programs, contact Maria Sclafani at 914-699-2020. Please note that applications for future ARIAS•U.S. programs will be made.

From Our Photo Files...

January 16, 2001

INTENSIVE ARBITRATOR TRAINING WORKSHOP

Mark S. Gurevitz, ARIAS•U.S. Board member and Chairman, (left) and Charles M. Foss, ARIAS•U.S. Board Member and Vice President (right) Co-Chair the first Intensive Arbitrator Training Workshop specifically organized to have all attendees participate on a mock arbitration panel.

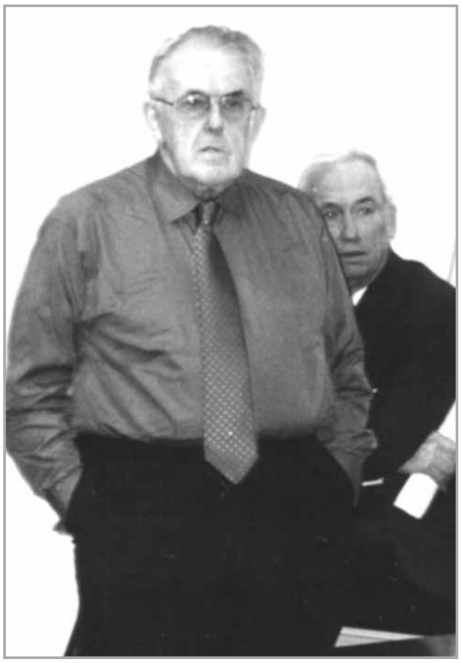
Associates from the Law firms of Bingham Dana, Choate Hall & Stewart, and Simpson Thacher & Bartlett make arguments to the arbitration panel.

From Our Photo Files...

January 16, 2001

INTENSIVE ARBITRATOR TRAINING WORKSHOP

Attendees participate throughout the day by rotating in mock arbitration scenarios.



Robert Hall, (Below) Charles L. Niles, Jr. (Above Right) and Daniel E. Schmidt, IV (Left) moderate questions and answers during the arbitrator feedback session.

From Our Photo Files…

February 8, 2001

REINSURANCE ARBITRATION TRENDS AND PROCEDURES

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Left: Program Co-chairs James Shanman, Edwards & Angell, LLP and R. Steven Anderson, Barger & Wolen, LLP.

Faculty participants Andrew Maneval, President, Horizon Management Group, LLC, (Left) Donald T. DeCarlo, Partner, Lord Bissell & Brook (Center) and Joseph T. McCullough, IV, Partner, Lovells, (Right) facilite interactive discussion to maximize attendee participation.

Among the topics attendees discussed were the selection and briefing of Party-Appointed Arbitrators and the Organizational Meeting.

THIRD CIRCUIT HOLDS THAT FEDERAL COURT MUST DETERMINE ARBITRABILITY OF LIQUIDATOR'S CLAIM AGAINST REINSURER

Dennis G. LaGory • David M. Spector

In a decision with far reaching implications for the insurance industry, the United States Court of Appeals for the Third Circuit has held that Munich Reinsurance Company is entitled to remove a suit brought against it in state court by the Liquidator of Integrity Insurance Company, so that a federal court could determine Munich Re's right to arbitrate the Liquidator's claims. (Suter v. Munich Re, http://pacer.ca3.uscourts.gov/recentop/day/9995611.txt). By a two-to-one decision, with the majority opinion written by Judge Stepleton, the Third Circuit rejected the Liquidator's contention that certain "service of suit" clauses contained in the agreements between Munich Re and Integrity operated as a "waiver" of Munich Re's right to remove the Liquidator's complaint to the District Court, pursuant to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards. The court also rejected the Liquidator's contention that the removal provisions of the Convention were "reverse preempted" by the McCarran-Ferguson Act.

BACKGROUND

The dispute involved Integrity's entitlement to reinsurance proceeds for certain policyholder claims for defense costs that the Liquidator had allowed against Integrity's estate. When Munich Re asserted that these claims were not covered by the reinsurance agreements, the Liquidator filed an adversary complaint in the Liquidation court. Munich Re removed the complaint to the District Court pursuant to the Convention, in order to enforce its contractual right to arbitrate "any dispute or difference of opinion...with reference to the interpretation of [the reinsurance] Agreement or the rights with respect to any transaction involved." The Liquidator moved to remand the complaint to the Liquidation Court, arguing that Munich Re had waived its right to remove by virtue of "service of suit" clauses under which it agreed to "submit to the jurisdiction of any court of competent jurisdiction within the United States."

THE THIRD CIRCUIT OPINION

The Third Circuit held that because the Convention favors arbitration of disputes between entities engaged in international trade-and creates broad removal rights to enforce arbitration clauses-any claim that a party has waived its right to remove under the Convention must be viewed narrowly. The court found that Munich Re's decision to remove the adversary complaint was consistent with its contractual right to arbitrate and not inconsistent with its obligation under the service of suit clause to submit to the jurisdiction of a court of competent jurisdiction.

The court distinguished its prior decision in *Foster v. Chesapeake Insurance Company* (933 F.2d 1207 (3d Cir. 1991)), where it held that the service of suit clause waived a reinsurer's right to remove a liquidator's complaint on the grounds of diversity of citizenship. The court noted that *Foster* did not involve the special federal concerns for international comity and consistency of interpretation implicated when a case is removed pursuant to the convention. These concerns are similar to those the court found decisive in *In re Texas Eastern Transmission Corporation* (15 F3d 1230 (3d Cir. 1994)), which involved an alleged waiver of removal under the special provisions of the Foreign Sovereign Immunities Act.

The court also held that because Munich Re had not filed a claim in the New Jersey liquidation proceedings but had, instead, removed a suit initiated by the Liquidator, there was no potential for interference with the liquidation proceedings such as would trigger reverse preemption under the McCarran Ferguson Act.

CONCLUSION

The Third Circuit's decision has dealt a major blow to the ongoing efforts of insurance company liquidators to limit the scope of arbitration agreements between insurance companies and their reinsurers. Waiver of removal based on the service of suit clause has been advanced recently by a number of liquidators, who believe that state liquidation courts will be sympathetic if they should argue for abrogation of arbitration agreements on public policy grounds. On the other hand, reinsurers of insolvent insurance companies generally prefer to enforce their contractual arbitration rights in federal courts, which they perceive as more neutral and unencumbered by local concerns.

David M. Spector and Dennis G. LaGory of Hopkins & Sutter represented Munich Re.

This article, written by Dennis G. LaGory and David M. Spector, appeared in the Hopkins & Sutter August, 2000 Executive Briefing.

ARBITRATORS IN FOCUS

NEWLY CERTIFIED ARBITRATORS AS OF MARCH 1, 2001

DAVID APPEL

David Appel is a Principal with the New York office of Milliman & Robertson. He has been with the firm since 1989, and is responsible for the development and management of its national economics consulting practice.

As a consultant, Mr. Appel has worked extensively in the application of economic and financial theory to property-casualty insurance issues. His assignments have included the development of cash flow models of insurance contracts; econometric models to forecast insurance loss experience; new methodologies for estimating trend in insurance ratemaking; statistical model to estimate loss severity distributions; and medical cost containment strategies for workers compensation insurers. He has also led engagements involving the valuation of insurance companies, has advised insurers on mergers and acquisition strategy and has testified frequently on rate of return and regulatory issues.

Prior to joining Milliman, Mr. Appel was Vice President in charge of research for the National Council on Compensation Insurance, the nation's largest workers compensation statistical research and ratemaking organization. In that capacity, he was responsible for formulating and executing a wide ranging research agenda on the impact of economic, demographic and social factors on insurance markets.

Mr. Appel has spoken widely on insurance issues before many industry and professional groups. A frequent contributor to scholarly journals, he has published more than 15 articles and is the coeditor of three columns of collected papers on economic issues in insurance. In addition, he has served on the graduate faculty of Rutgers University as an Adjunct Professor of Economics for twelve years and has taught examination courses for several regional actuarial societies.

Mr. Appeal received a BA in Economics (1972) from Brooklyn College, CUNY and Masters (1976) and Ph.D (1980) degrees in economics from Rutgers University. He is a licensed property casualty insurance broker in New York State, a Fellow of the National Academy of Social Insurance, and a member of the American Economics Association and American Risk and Insurance Association. He also serves on the editorial boards of several journals including *Benefits Quarterly* and *The Journal of Insurance Regulation*.

LINDA MARTIN BARBER

Linda Martin Barber is a Director of Peterson Consulting and a leader of the firm's Insurance Practice. Ms. Barber has 25 years of experience as an executive, counsel, and consultant for insurers and reinsurers. At Peterson, she has led engagements involving a wide range of property and casualty, life, health and accident business. She led a market conduct examination of one of the largest life insurers, has assisted insurers and receivers in evaluating asbestos and other long tail claims, assisted ceding companies in resolving disputes with reinsurers, and conducted claims and underwriting reviews of surety and warranty books of businesses. Ms. Barber has testified on numerous claim and reinsurance matters during the past ten years.

Prior to joining Peterson, Ms. Barber was a member of the Board of Directors and Senior Vice President of International Insurance Company where she was head of claims. She had responsibility for Crum & Foster's discontinued lines of business, including E&S commercial casualty, professional liability, aviation, personal lines, and assumed reinsurance. For two years, she was Senior Vice President of Envision Claim Management, an affiliate of International, were she had responsibility for the largest asbestos, hazardous waste, and other long tail claims of the Talegen companies.

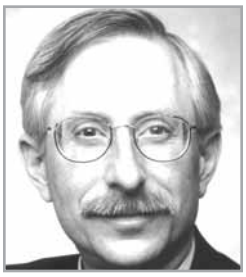
Ms. Barber was Vice President of the CIGNA Companies during the period 1981-1994, serving in a number of capacities. In the Legal Division she headed the Department responsible for counseling CIGNA's property & casualty companies, including reinsurance disputes, compliance and regulatory matters, and business litigation. In 1990, she became Vice President, Major Claims for CIGNA's Property & Casualty Group with responsibility for asbestos, hazardous waste, and long tail claims. As head of the Corporate Task Force with responsibility for reviewing CIGNA'S reinsurance books of business in runoff, she led an intensive review of more than a dozen books of business in London and Bermuda.

At the law firm of Ballard, Spahr, Andrews & Ingersoll during the years 1976-1981, she worked on a diverse array of lawsuits, representing clients in rate proceedings, insurance coverage disputes and insurance defense work.

Ms. Barber is a member of the Pennsylvania Bar and an invited member of the Reinsurance Dispute Resolution Task Force. She has served as a Director of the Pollution Liability Insurance Association. Ms. Barber was elected to Phi Beta Kappa and graduated cum laude from Chatham College. She obtained her Juris Doctorate degree cum laude from Temple University where she was an editor of the *Law Review*.

ARBITRATORS IN FOCUS

NEWLY CERTIFIED ARBITRATORS AS OF MARCH 1, 2001

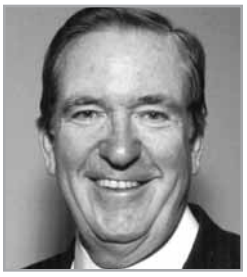


RONALD S. GASS

Ronald S. Gass joined the Legal Division of XL Reinsurance America, Inc. (formerly NAC Reinsurance Corporation) as Associate General Counsel in 1994, specializing in reinsurance, arbitration, litigation, and information technology and general corporate law. He is a graduate of Duke University, The Divinity School of the University of Chicago, and the University of Maryland School of Law and admitted to the Maryland and Connecticut bars.

Mr. Gass currently serves on the ABA's Task Force on Insurance and Corporate Counsel Interests and Involvement of the Tort and Insurance Practice Section and was a Vice Chair of the Excess, Surplus Lines and Reinsurance Committee from 1995-2000. He is also a frequent speaker and contributor to industry publications on a variety of reinsurance-related topics. His latest article regarding Year 2000 "sue and labor" liability entitled *A Test of Seaworthiness* was published in the January 2000 issue of *Best's Review*.

Prior to joining XL Re, Mr. Gass was Assistant General Counsel and Corporate Secretary in the Law Department of the American Insurance Association, a national trade association of stock property and casualty insurers in Washington, D.C. In addition to covering legislative and legal developments affecting reinsurance for AIA, his areas of expertise included medical professional liability insurance, property and catastrophe insurance, insurance antitrust law, and general corporate law. From 1984 to 1986, he served as General Counsel, Secretary, and Assistant Vice President of the physician-owned Medical Mutual Liability Insurance Society of Maryland. From 1981 to 1984, he was assigned to the Maryland Department of Health and Mental Hygiene as a state Assistant Attorney General. He began his legal career in 1979 as an associate practicing hospital and health care law with the Baltimore firm of Venable, Baetjer and Howard.



T. RICHARD KENNEDY

T. Richard Kennedy recently joined Coudert Brothers New York as an insurance and financial services attorney. Prior to joining Coudert Brothers, he had been Managing Partner for 25 years of the nationally prominent insurance law firm, Werner & Kennedy of New York City. He also was an officer and General Counsel of the American Skandia Group from the time it was founded in 1988 through July 2000, overseeing all legal aspects of the Group's operation, including insurance and reinsurance contracts and dispute resolution. He served one year as in-house General Counsel of American Skandia prior to returning to private practice in New York.

Mr. Kennedy served as an Umpire in a major international insurance arbitration which took place over a recent four-year period in London. He also has served as a party-appointed arbitrator, as well as counsel to parties, in numerous arbitrations involving both U.S. and foreign insurance and reinsurance companies.

Mr. Kennedy is a founder and Chairman Emeritus of ARIAS•U.S. He is a member of the Presidential Council of AIDA (International Association of Insurance Law) and serves as Chair of the Financial Services Committee of that Association.

Mr. Kennedy served as a faculty member at the Conference of Chief Justices of the United States, which took place in Del Mar, California in March 2001. From 1994 through 2000, he was the New York State Delegate to the American Bar Association House of Delegates, chairing the 36-lawyer delegation from the New York City, State, and County Bar Associations. From 1997 to 2000, he also chaired the ABA Standing Committee on Lawyer Discipline. He is a former chair of both the ABA and New York State Bar Association sections of insurance law, and has been a member of the House of Delegates of both Associations.

Mr. Kennedy received his LL.B. from Syracuse University College of Law, where he was an Editor of the *Law Review* and a member of the National Moot Court team. He received his A.B. from Villanova University.

WILLIAM M. KINNEY

After graduating from Bucknell University, Mr. Kinney spent eight years on Active Duty as an Army Officer flying helicopters. Seeking even more excitement, in 1981, he joined General Reinsurance Corporation in their Los Angeles office as a Casualty Underwriter. Subsequently, he was chosen to transfer to Bermuda to run their General Re Services subsidiary where he was responsible for producing, underwriting, and managing Captive Insurance Companies. Thereafter, he was transferred to the New York office where he retained responsibility for the Bermuda market as well as specializing in Alternative Risk solutions for General Re clients.

In 1988, Mr. Kinney entered private practice specializing in domestic and international Insurance and Reinsurance litigation and arbitration with prominent Regional and National Insurance Defense firms. Currently, he has his own law firm and is licensed to practice law in State and Federal Courts in New York, New Jersey, Pennsylvania, Connecticut and Washington, D.C.

Mr. Kinney's other qualifications include his dual United States and Ireland citizenships, which allows him to live and work throughout the 16 member countries of the European Economic Community. He has also earned a Master of Science in Systems Management from the University of Southern California, an MBA from Golden Gate University, and a Juris Doctorate from Seton Hall School of Law. He has been extensively published in international insurance publications and has made numerous presentations at insurance industry conferences.

ARBITRATORS IN FOCUS

NEWLY CERTIFIED ARBTIRATORS AS OF MARCH 1, 2001

PAUL C. THOMSON III

Paul C. Thomson III has worked in the insurance industry since graduating from Franklin & Marshall College in 1977. Before founding Reassess, Inc. in 1994, he was VP & Claims Director for SOREMA N. A., and before SOREMA he worked at Royal Insurance and U.S. International Re, all in New York.

As President of Reassess, Inc., Mr. Thomson is active in reinsurance arbitrations (appointed as party arbitrator or umpire in 30+ proceedings), loss portfolio assessments, testimonial and consulting expert work, pre & post-acquisition due diligence inspections, mediations, claims audits and commutations.

Mr. Thomson resides in Huntington, New York with his wife of twenty one years, Kim, their son Jack and daughter Libby. Their eldest son, Paul IV, is a freshman at the University of Delaware, where in addition to his studies, he plays offensive tackle for the nationally prominent Blue Hens. He is also a Director of Huntington Youth Lacrosse, Inc., a not-for-profit organization that promotes the game of lacrosse in his community. His hobbies include gardening, bee keeping and tailgating and spectating at his children's sporting events and occasionally playing golf.

S. ROY WOODALL, JR.

Mr. Woodall, a native of Kentucky, is of Counsel in the Washington, D.C. office of Morris, Manning & Martin, an Atlanta-based law firm. He practices in the areas of insurance and finance, mergers/acquisitions, and regulatory law. Mr. Woodall served as General Counsel and Commissioner of the Kentucky Department of Insurance; President/Rehabilitator of three life insurers; President of the National Association of Life Companies (1980-92); and Vice President and Chief Counsel, State Relations, of the American Council of Life Insurance (1993-98). He is a Phi Beta Kappa graduate of the University of Kentucky (BA, JD) and was a Woodrow Wilson Fellow at Yale University.

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DO YOU KNOW SOMEONE WHO IS INTERESTED IN LEARNING MORE ABOUT ARIAS•U.S.?

IF SO, PASS ON THIS LETTER OF INVITATION AND MEMBERSHIP APPLICATION.

AN INVITATION…

The rapid growth of ARIAS•U.S. (AIDA Reinsurance and Insurance Arbitration Society) gives testimony to the acceptance of the Society since its incorporation in 1994. Through numerous conferences, seminars and literature, and through the establishment of an ambitious certification process, the Association is realizing its goals. Today, ARIAS•U.S. is comprised of 220 individual members and 31 corporate members of which 95 have been certified as arbitrators.

In addition, ARIAS•U.S. is pleased to add to its list of accomplishments the launching of the ARIAS•U.S. Umpire Selection Procedure and the approval of CLE Accredited Provider Status by the New York State Continuing Legal Education Board.

The Umpire Selection Procedure is a unique software program created specifically for ARIAS•U.S. which randomly generates the names of umpire candidates from a list of ARIAS•U.S. certified arbitrators who have served on at least three completed arbitrations. The Procedure is free to members and available at a nominal cost to non-members.

The Accredited Provider Status allows those who attend ARIAS•U.S. conferences and seminars to earn CLE credits in the areas of professional practice, practice management, skills and ethics. ARIAS•U.S. is proud to be placed among the list of other prestigious Accredited Provider organizations.

ARIAS•U.S. also has produced its *Directory, Practical Guide to Reinsurance* and *Guidelines for Arbitrator Conduct.* These publications, as well as quarterly newsletters, discounts to conferences and seminars and access to certified arbitrator training, are available to members without charge.

To date, ARIAS•U.S. has held conferences and seminars across the country including Chicago, San Francisco, San Diego, Philadelphia, Baltimore, Miami, Marco Island, New York City and Bermuda. The Society brings together many of the leading professionals in the field and serves as an educational and training forum.

We invite you to enjoy all its benefits by becoming a member of this prestigious program. If you have any questions regarding membership, please call Stephen H. Acunto, Vice President and Managing Director at 914-699-2020.

Join us and become active in ARIAS•U.S. - the industry's best forum for insurance and reinsurance arbitrations professionals.

Sincerely,

Mark S. Gurevitz
Chairman

Daniel E. Schmidt, IV
President

ARIAS U.S.

MEMBERSHIP APPLICATION

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& Insurance
Arbitration Society
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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 markets. The Society provides continuing in-depth seminars in the skills necessary to serve effectively on an insurance/reinsurance panel. The Society, through seminars and publications, seeks to make the arbitration process meet the needs of today's insurance/reinsurance market place by:

- Training and certifying individuals qualified to serve as arbitrators and/or umpires by virtue of their experience, good character and participation in ARIAS·U.S.-sponsored training sessions;
- Empowering its members to access certified arbitrators/umpires and to provide input in 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.

- MEMBERSHIP BENEFITS

  Benefits of membership include newsletters, discounts to seminars/workshops, membership directory, access to certified arbitrator training, model arbitration classes and practical guidance with respect to procedure.

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