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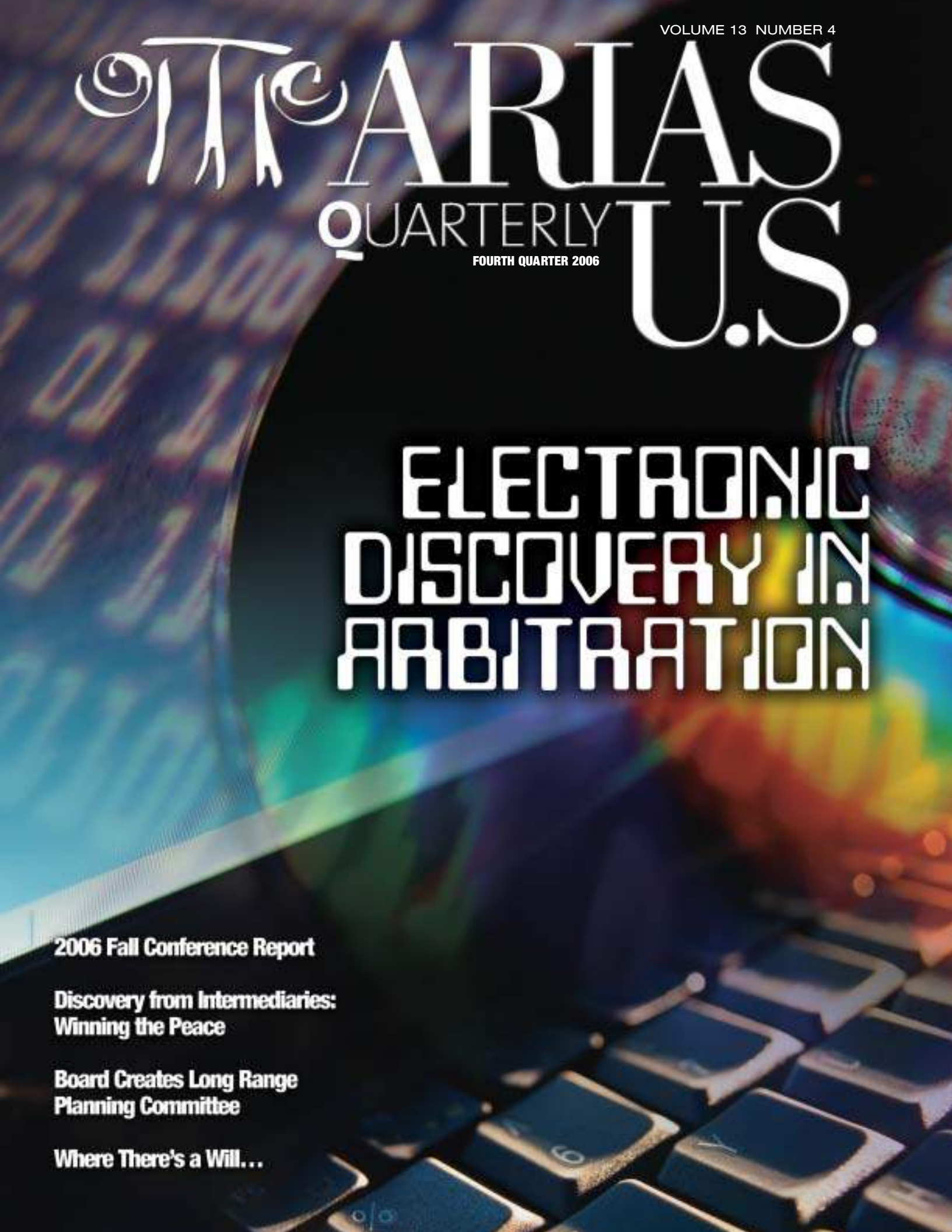

ELECTRONIC DISCOVERY IN ARBITRATION

2006 Fall Conference Report

Discovery from Intermediaries: Winning the Peace

Board Creates Long Range Planning Committee

Where There's a Will…

editor's comments

T. Richard Kennedy

Judge not, that you be not judged! This oft-quoted admonition from Mathew 7.1 should not go unheeded by those of us involved in the arbitration process. That is not to say that arbitrators can avoid the essential process of making judgments in reaching awards, or that lawyers and parties must not be judgmental in evaluating the merits of both their own position and that of an opposing party. But such judgments must be made carefully and without undue haste. Particularly important is to avoid rushing to judgment about other individuals involved in arbitration. Writing in the ABA Journal (January 2006). Steven Keeva observes that by jumping to conclusions about others we hurt ourselves. We quickly may conclude that a witness is not credible, or that a lawyer is overly difficult, or a party petty. We thus inhibit our ability to listen to what that person is seeking to convey. It can be hard to hear what someone is really saying when one has allowed "negative chatter" about that person to enter one's own head.

Each of us needs to think about how we judge others in arbitration. We must strive to keep an open mind and to listen carefully to what other persons are saying. We owe nothing less to the arbitration process.

This issue includes a very timely and comprehensive discussion of problems that can arise upon demands for discovery of vast quantities of documents maintained by parties in electronic format. After reviewing the issues, Peter Chaffetz and Andrew Frishknect, in *Electronic Discovery in the Arbitration Setting*, discuss rules that have evolved in the courts, including recent amendments to the Federal Rules of Civil Procedure, as well as procedural guidelines that have been developed to deal with electronic discovery. The authors suggest that those rules and guidelines may provide a source of practical guidance for arbitrators and parties in insurance and reinsurance arbitrations.

Robert M. Hall in this issue reports on a major development in the effort to require third-party intermediaries to comply with subpoenas issued by an arbitration panel In *Discovery from Intermediaries: Winning the Peace*, the author describes an amendment by the National Association of Insurance Commissioners to the Insurance Intermediaries Model Act, together with a corresponding amendment to California law, that has the potential to facilitate discovery of information from insurance and reinsurance intermediaries. What the article does not mention is that the author played a pivotal role in bringing about this important NAIC Model Act amendment.

Who can resist Shakespeare? Eugene Wollan in *Where There's a Will . . .* provides us with a whimsical look at how some of the Bard's characters might relate to our world of professional activity. We are indebted to the author for bringing a light touch to our publication.

Ron Gass in Case Notes Corner provides an excellent report on a recent decision of a California federal district court involving the all-too-frequent problem of umpire selection stalemate together with the vexing issues that can arise upon applications to consolidate arbitrations.

This being our final issue of the year, I want to take the opportunity again to thank all our Editors and contributors for making the Quarterly an outstanding professional publication and newsletter. Special thanks go to our Managing Editor, Bill Yankus, who not only writes reports on current developments but also rides herd on the rest of us to make sure we get our work done in a timely fashion and keep to our scheduled publication dates.

With best wishes to all our readers for a most Happy and Healthy Holiday Season!

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Editorial Policy

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All contributions must be double-spaced electronic files in Microsoft Word or rich text format, with all references and footnotes numbered consecutively. The text supplied must contain all editorial revisions. Please include also a brief biographical statement and a portrait-style photograph in electronic form.

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

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feature

Electronic Discovery in Arbitration

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...the familiar burdens of complying with broad discovery demands in the paper era pale in comparison...

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Peter R. Chaffetz
Andreas A. Frischknecht

I. Introduction

The conversion of business and personal correspondence from paper to electronic form has caused an unprecedented increase in the volume and duplication of documents. Paradoxically, virtual documents that have no physical existence at all can be far more durable than the paper they replaced. These characteristics of electronic communication have complicated even the most routine business practices. Filing, controlling circulation, and managing document retention have all become far more difficult. In the litigation and arbitration setting, the familiar burdens of complying with broad discovery demands in the paper era pale in comparison to the potential scope and surrounding uncertainties of the parties' obligations in the modern world of e-discovery.

Development of rules and standards to govern electronic discovery is well underway in the courts. In contrast, and as is typically the case, there have been few, if any, comparable efforts to identify practice standards for dealing with electronic information in arbitration. Indeed, as with many issues that confront panels in ad hoc reinsurance arbitrations, there is no clear way to achieve consensus or uniformity as to what, if any, rules of practice should be adopted.

What issues does e-discovery present for arbitrators? One threshold issue — whether discovery practice in arbitration should follow or differ from that in the courts — has been a subject of perennial debate. While some continue to argue that reinsurance arbitration should not embrace the discovery practices of modern litigation, most arbitration panels and practitioners now accept comprehensive document discovery as the norm. Moreover, it is difficult to identify any aspect of the insurance or reinsurance industries that would call for a different approach to e-discovery in reinsurance arbitration practice than has evolved in court and under the rules and best practice guidelines that have been developed to facilitate reasonable resolution of e-discovery issues. Those rules and procedures reflect practical consideration of the intrinsic nature of electronic documentation. Therefore, it makes sense for arbitrators to be familiar with the recurring issues presented by e-discovery and with the basic principles that have evolved to address these issues in the courts.

These recurring issues include: (i) how to balance the cost and burden of e-discovery against its potential benefits and how to allocate those costs; (ii) when to require production of e-data that is no longer readily accessible but that can still be retrieved, sometimes with great difficulty, from alternative sources such as backup tapes; (iii) when to permit discovery of "metadata," that is, the hidden information concerning such matters as date of creation and revision histories that some software programs embed in documents as they are created; (iv) drawing a sensible line between ordinary and reasonable document retention procedures that lead to the overwriting of electronic data and sanctionable spoliation of evidence; (v) what steps need to be taken to impose a "litigation hold" on the routine destruction of data for the duration of a dispute; and (vi) the heightened risk of accidental disclosure of privileged information.

The empirical experience courts have gained with these issues, combined with systematic efforts to address them through such reforms as the new amendments to the Federal Rules of Civil Procedure, have identified an emerging set of "best practices" that can serve as a starting point for assessing issues of e-discovery in arbitration. To put our discussion of these rules in

context, we start first with a review of some leading e-discovery cases.

II. Ensuring Compliance and Avoiding E-Discovery Pitfalls: Recent Case Law

The cases make one thing clear: anything less than full compliance with electronic discovery obligations may expose a party to serious sanctions.

A. Violations of the Duty to Collect and Disclose Relevant Electronic Evidence May Lead to Severe Sanctions: *Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co.*

In one widely publicized recent Florida case, the court sanctioned Morgan Stanley by directing a verdict of fraud liability against it for failure to comply with e-discovery obligations. *Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co.*, 2005 Extra LEXIS 94 (Fla. Cir. Ct. Mar. 23, 2005). That discovery ruling led to a final judgment against Morgan Stanley, for $1.57 billion. The judgment is now on appeal.

Morgan Stanley's problems arose after the court entered an "agreed order" pursuant to which Morgan Stanley would: (i) search its oldest backup tapes for relevant employees; (ii) review any e-mails within a specified date range containing certain specified search terms; (iii) produce all non-privileged responsive e-mails and a corresponding privilege log; and (iv) certify its compliance with the court's order. *id.* at *7-8. Morgan Stanley subsequently produced 1,300 pages of e-mails and a certificate of compliance signed by the Executive Director of its "Law/Compliance IT Group." *id.* at *8.

However, nearly five months after it served the certificate of compliance, counsel for Morgan Stanley informed plaintiff's counsel that Morgan Stanley had discovered additional e-mail backup tapes. Shortly thereafter, Morgan Stanley produced some additional e-mails in a supplemental production. *id.* at *9. Plaintiff's counsel repeatedly attempted to elicit information as to the nature and volume of the additional backup tapes but, according to the court, Morgan Stanley's counsel failed to confirm how many additional backup tapes had been located or when Morgan Stanley would complete its production of responsive e-mails located on the backup tapes. *See id.* at *9-13.

Counsel for Morgan Stanley claimed that its original production "encompassed data from all of the backup tapes known to exist at the time," and that additional tapes that "were not clearly labeled as to their contents" had subsequently been found "in various locations at Morgan Stanley" that were not "locations where e-mail backup tapes customarily were stored." *id.* at *12-13. However, the court determined that these statements were false, and that Morgan Stanley's counsel had made these false statements, because: (i) Morgan Stanley would otherwise have had to admit that its certificate of compliance with the court's order was false because some backup tapes that were never searched had been found long before Morgan Stanley certified its compliance; (ii) Morgan Stanley "desperately wanted to hide" an ongoing SEC investigation of its e-mail retention policies; and (iii) Morgan Stanley did not want to admit that it maintained a historical e-mail archive. *id.* at *16.

The court identified numerous other discovery violations by Morgan Stanley, including: (i) the fact that contrary to the representations of its counsel, *none* of the e-mails in Morgan Stanley's supplemental production actually came from the "newly found" backup tapes; (ii) failure to inform the court of numerous errors in its retrieval of information from the backup tapes, leading both to the loss of information contained on the tapes and a failure to capture entire categories of potentially responsive documents; (iii) failure to promptly notify plaintiff's counsel that Morgan Stanley had subsequently located large numbers of additional backup tapes; and (iv) improper assertions that documents were protected from disclosure because they were privileged. See *id.* at *19-29.

Concluding that these discovery abuses "call into doubt all of [Morgan Stanley's] discovery responses," the court voiced its exasperation by stating: "*The judicial system cannot function this way*." *id.* at *31 (emphasis in original). Finding that Morgan Stanley had "deliberately and contumaciously violated numerous discovery orders," the court granted, in part, plaintiff's motion for entry of

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Therefore, it makes sense for arbitrators to be familiar with the recurring issues presented by e-discovery and with the basic principles that have evolved to address these issues in the courts.

As with conventional document production, timely and complete compliance with e-discovery obligations builds credibility and prevents discovery issues from distracting from the merits of the case. Failure to take these obligations seriously can lead to disaster.

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default judgment, ordering the jury to be instructed that the facts supporting numerous allegations in the complaint had been "deemed established for all purposes in this action." *id.* at *32-33. The court further ordered the jury to be instructed that it could consider Morgan Stanley's discovery violations in determining whether to award punitive damages. *id.* at *33. Finally, the court awarded plaintiff reasonable fees and costs and revoked the *pro hac vice* admission of one of Morgan Stanley's attorneys. *id.*

Such sanctions, while rare, have always been available for deliberate refusal to comply with discovery orders. Without close review of the record or of the briefs on appeal, it is difficult to assess the court's conclusion that the discovery failures were intentional and therefore could serve as a proxy for evidence establishing liability for fraud. But one lesson is clear. As with conventional document production, timely and complete compliance with e-discovery obligations builds credibility and prevents discovery issues from distracting from the merits of the case. Failure to take these obligations seriously can lead to disaster.

B. Counsel Must Take Affirmative Steps to Monitor the Client's Preservation of Electronic Evidence: *Zubulake v. UBS Warburg LLC.*

The series of five decisions that issued over the course of the drawn-out litigation between UBS and Ms. Zubulake, the plaintiff in a sex discrimination case, probably stands as the best-known e-discovery dispute. In *Zubulake v. UBS Warburg LLC*, 229 F.R.D. 422 (S.D.N.Y. 2004) ("*Zubulake V*"),[1] Judge Shira Scheindlin sanctioned defendant UBS "for its failure to produce relevant information and for its tardy production of such material," finding that these discovery violations were the product of a "failure to communicate" by both UBS and its counsel. *id.* at 424. The court found that certain UBS employees had deleted relevant e-mails in spite of instructions from both their in-house and outside counsel to retain relevant electronic information. Other UBS employees never produced relevant information to their counsel. *id.* As a result, some responsive e-mails that had been deleted could not be produced at all, and many discoverable e-mails that were recovered from alternative sources-such as backup tapes-were not produced until almost two years after service of plaintiff's document requests. *id.* at 424, 427.

In an authoritative discussion of the concept of the "litigation hold" and the compliance duties associated with e-discovery, Judge Scheindlin held that it is "counsel's obligation to ensure that relevant information is preserved by giving clear instructions to the client to preserve such information and, perhaps more importantly, a client's obligation to heed those instructions." *id.* at 424. Where a party reasonably anticipates future litigation, that party must suspend its normal document retention and destruction policies and take action to ensure that potentially relevant documents and electronic information are retained. Judge Scheindlin noted that "[a] party's discovery obligations do not end with the implementation of a 'litigation hold'-to the contrary, that's only the beginning. Counsel must oversee compliance with the litigation hold, monitoring the party's efforts to retain and produce the relevant documents." *id.* at 432.

The court outlined the "reasonable steps" counsel must undertake to ascertain that sources of relevant information are located, including (i) "speaking with [the client's] information technology personnel"; (ii) interviewing the "key players" in the litigation; and (iii) potentially running a "system-wide keyword search" of the client's electronic documents and preserving copies of each "hit" resulting from that search. *See id.* Judge Scheindlin also noted that a party's duty to preserve relevant information is *continuing in nature*, and that much of this burden falls on counsel, although "[a] lawyer cannot be obliged to monitor her client like a parent watching a child." *id.* at 433.

The court identified a number of failures on the part of UBS's counsel: (i) failure to request retained information from one key UBS employee and failure to provide litigation hold instructions to another; (ii) failure to communicate adequately with another employee as to how that employee maintained her computer files; and (iii) failure to safeguard backup tapes that might have contained some of the deleted e-mails. *id.* at 424.

Concluding that UBS's discovery violations were willful, the judge imposed sanctions, including: (i) an adverse inference instruction to the jury regarding the e-mails that were deleted and could not be recovered; (ii) an order that UBS pay for the costs of any depositions or re-depositions necessitated by the delay in producing many other relevant e-mails; and (iii) the "self-executing sanction" that plaintiff would be free to use at trial deposition testimony by UBS employees that contradicted the newly produced e-mails, which had not yet been discovered when those depositions took place. *id.* at 437.

Zubulake V shows that communication between the client's outside and in-house counsel and the client's employees is essential to ensuring compliance with electronic discovery obligations. It will not suffice to issue a litigation hold memorandum and assume that the client's employees will understand and comply with their obligation to retain potentially responsive electronic information. Rather, counsel must take affirmative steps to ascertain the sources of potentially responsive electronic information, ensure that procedures are in place to retain such information, and periodically remind the client's employees of their obligation to comply with the litigation hold.

C. A Party Seeking to Avoid the Production of Metadata Should Make a Timely and Specific Objection to That Effect: *Williams v. Sprint/United Management Co.*

The Federal Rules of Civil Procedure do not address whether a party must produce the metadata associated with responsive electronic information. "Metadata" has been defined as "information about a particular data set which describes how, when and by whom it was collected, created, accessed or modified and how it is formatted (including data demographics such as size, location, storage requirements and media information)."[2]

Where a party is required to produce electronic information as it is maintained in the ordinary course of business, that party may have an obligation to produce the metadata associated with that electronic information. A recent opinion by a magistrate judge in a collective employment action, *Williams v. Sprint/United Management Co.*, 230 F.R.D. 640 (D. Kan. 2005), concluded that: (i) a responding party may have an obligation to produce metadata, but only if that party is aware or should reasonably be aware that particular metadata is relevant to the dispute; and (ii) a responding party wishing to avoid the production of metadata should make a timely objection to that effect or seek a protective order and cannot unilaterally decide to produce electronic information that has been "scrubbed" of potentially relevant metadata.

Following a court order to produce certain *Excel* spreadsheets as they were maintained in the regular course of business, the defendant in *Williams* "scrubbed" the files to remove any metadata before producing them, utilizing software developed for that purpose. *See id.* at 643-44. Having concluded that neither the existing case law nor the Federal Rules of Civil Procedure provide sufficient guidance regarding a party's obligation to produce metadata, the court turned to the e-discovery "best practices" outlined in the *Sedona Principles for Electronic Document Production* for further guidance.[3] *id.* at 650. The court determined

> that when a party is ordered to produce electronic documents as they are maintained in the ordinary course of business, the producing party should produce the electronic documents with their metadata intact, unless that party timely objects to production of metadata, the parties agree that the metadata should not be produced, or the producing party requests a protective order. The initial burden with regard to the disclosure of the metadata would therefore be placed on the party to whom the request or order to produce is directed.

id. at 652.

Even a timely objection to the production of metadata, however, does not end the inquiry. Although "there is a general presumption against the production of metadata," a party will be required to produce metadata if it "is aware or should be reasonably aware that particular metadata is relevant to the dispute." *id.*

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Rather, counsel must take affirmative steps to ascertain the sources of potentially responsive electronic information, ensure that procedures are in place to retain such information, and periodically remind the client's employees of their obligation to comply with the litigation hold.

The court also emphasized that "if Defendant believed the metadata to be irrelevant, it should have asserted a relevancy objection instead of making the unilateral decision to produce the spreadsheet with the metadata removed."

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The court concluded that in light of the allegations and the nature of the metadata at issue, at least some of the metadata was "relevant and likely to lead to the discovery of admissible evidence." *id.* at 653. The court also emphasized that "if Defendant believed the metadata to be irrelevant, it should have asserted a relevancy objection instead of making the unilateral decision to produce the spreadsheet with the metadata removed." *id.* The court similarly concluded that the defendant should have raised any privilege or confidentiality issues "prior to its unilateral decision to produce the spreadsheets with the metadata removed." *id.*

Although it ordered the defendant to produce the metadata associated with the Excel spreadsheets, the court determined that sanctions were not warranted under the circumstances, acknowledging that "the production of metadata is a new and largely undeveloped area of the law." *id.* at 656.

III. Amendments to the Federal Rules of Civil Procedure Regarding E-Discovery

Recognizing that the importance of electronic evidence has increased dramatically in recent years, the Supreme Court has approved substantial amendments to the Federal Rules of Civil Procedure to address electronic discovery issues.[4] The new amendments will take effect on December 1, 2006, marking the culmination of a process that began in 1999. These new rules provide the most widely recognized and authoritative source of guidance on e-discovery issues.

The key principles underlying the new rules include the following: First, they require that the parties and the court address electronic discovery issues at an early stage in the discovery process. Second, while reaffirming the principle that "electronically stored information" is generally discoverable, the amendments place limits on a party's obligation to produce electronically stored information that is "not reasonably accessible," a concept the rules attempt to define. Third, recognizing that businesses must adopt sensible document retention procedures, the new amendments contain a limited "safe harbor" provision in the event that electronically stored information no longer exists "as a result of the routine, good-faith operation of an electronic information system." Finally, recognizing the greater risk of accidental disclosure that goes along with the enormous volume of e-documents that must now be manipulated in the discovery process, the new rules include a "claw back" procedure for the resolution of privilege claims where privileged information has been inadvertently produced. The following reviews the main provisions that address these principles.

A. Amendments to Rule 16 (Pretrial Conferences; Scheduling; Management)

Subsections 16(b)(5) and 16(b)(6) provide that the pretrial scheduling order to be issued within 120 days after service of the complaint may include "provisions for disclosure or discovery of electronically stored information" as well as "any agreements the parties reach for asserting claims of privilege or of protection as trial-preparation material after production."

B. Amendments to Rule 26 (General Provisions Governing Discovery; Duty of Disclosure)

This is where the drafters of the revisions explicitly confirmed the obligation to make broad e-discovery disclosures at the outset of the case. First, they amended Subsection 26(a)(1)(B) to include the broad terms "electronically stored information"-in place of the previous term "data compilations"-among a party's required initial disclosures. They then provided that each party must, "without awaiting a discovery request, provide to other parties . . . a copy of, or a description by category and location of, all . . . electronically stored information . . . in the possession, custody or control of the party and that the disclosing party may use to support its claims or defenses, unless solely for impeachment." Fed. R. Civ. P. 26(a)(1)(B). In order to comply with these disclosure obligations, it is essential that counsel discuss electronic discovery issues with the client at a very early stage in the litigation.

It is in new Subsection 26(b)(2)(B) that the drafters addressed the issue of electronically stored information that is "not reasonably accessible." As noted, this includes items that have been deleted but which might still be recoverable from alternative sources such

as backup tapes. The Rules take a balancing approach. They provide that a party generally "need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost." However, the court may order the production of such information "if the requesting party shows good cause." The responding party's identification of the sources it believes are not reasonably accessible "should, to the extent possible, provide enough detail to enable the requesting party to evaluate the burdens and costs of providing the discovery and the likelihood of finding responsive information on the identified sources." Committee Note to Fed. R. Civ. P. 26(b)(2). Moreover, a party may be required to preserve unsearched sources of potentially responsive information that it believes are not reasonably accessible, depending on the circumstances of the case. *id.* Where the disclosing party has objected to the production of electronically stored information it maintains is "not reasonably accessible," that party should consider moving for a protective order rather than awaiting a motion to compel by the requesting party.

The rules also address accidental disclosure. Especially in early case law, even an entirely inadvertent disclosure of privileged information could result in a broad waiver of any applicable privilege. The reasoning was that there can be no privilege for information that is not confidential. Even an accidental disclosure destroys confidentiality and, therefore, the requisite condition for continuation of the privilege. However, even before electronic data was a common subject of discovery, courts had been softening that hard approach in recognition of the increasing volume of documents parties were required to screen and produce even in the days of paper. Now, Subsection 26(b)(5)(B) sets forth a procedure to address the inadvertent production of privileged information in electronic form. The Committee Notes acknowledge that the production of electronically stored information may substantially increase the risk of waiver, "because of the volume of electronically stored information and the difficulty in ensuring that all information to be produced has in fact been reviewed." Accordingly, the new rules state that in the event of an inadvertent disclosure, the producing party must notify any party that received the purportedly privileged information of the basis for its claim of privilege. The receiving party must then either destroy, sequester or return the specified information to the producing party until the privilege claim is resolved or promptly present the information to the court under seal for a determination of the claim.

Subsections 26(f)(3) and 26(f)(4) were added to ensure that the discovery conference to be held before the pretrial scheduling order is due under Rule 16(b) addresses "any issues relating to disclosure or discovery of electronically stored information, including the form or forms in which it should be produced," as well as "any issues relating to claims of privilege or of protection as trial-preparation material." The parties must confer to consider these issues "as soon as practicable and in any event at least 21 days before a scheduling conference is held or a scheduling order is due under Rule 16(b)." Fed. R. Civ. P. 16(f). In particular, the parties should discuss the possibility of a "claw back" agreement to deal with the inadvertent disclosure of privileged information; such an agreement can be memorialized in the scheduling order pursuant to Rule 16(b).

C. Amendments to Rule 33 (Interrogatories to Parties)

Rule 33(d) was amended to include "electronically stored information" among the business records from which the answer to an interrogatory may be derived or ascertained.

D. Amendments to Rule 34 (Production of Documents, Electronically Stored Information, and Things and Entry Upon Land for Inspection and Other Purposes)

The amendments to Rule 34, which is where the Federal Rules address document production, are perhaps the most significant new provisions regarding electronic discovery. Rule 34(a) now expressly includes "electronically stored information" among the categories of discoverable material. The Committee Notes state that Rule 34(a), as amended, "is expansive and includes any type of information that is stored electronically." The new provision "is intended to be broad enough to cover all current types of computer-based

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...the Supreme Court has approved substantial amendments to the Federal Rules of Civil Procedure to address electronic discovery issues. The new amendments will take effect on December 1, 2006, marking the culmination of a process that began in 1999.

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information, and flexible enough to encompass future changes and developments."

Rule 34(b) now sets forth a procedure for specifying and objecting to the form in which electronic information must be produced. Newly added subsection 34(b)(ii) provides that "if a request does not specify the form or forms for producing electronically stored information, a responding party must produce the information in a form or forms in which it is ordinarily maintained or in a form or forms that are reasonably usable." As explained in the Committee Notes, this new subsection "permits the requesting party to designate the form or forms in which it wants electronically stored information produced." The responding party must respond in writing and "must state the form it intends to use for producing electronically stored information if the requesting party does not specify a form or if the responding party objects to a form that the requesting party specifies." Committee Note to Fed. R. Civ. P. 34(b).

It is important to note that "[a] party that responds to a discovery request by simply producing electronically stored information in a form of its choice, without identifying the form in advance of the production as required by Rule 34(b), runs a risk that the requesting party can show that the produced form is not reasonably usable and that it is entitled to production of some or all of the information in an additional form." Committee Note to Fed. R. Civ. P. 34(b).

Newly added subsection 34(b)(iii) provides that "a party need not produce *the same* electronically stored information in more than one form" (emphasis added). This does not mean that a party cannot "ask for different forms of production for different types of electronically stored information." Committee Note to Fed. R. Civ. P. 34(b).

E. Amendments to Rule 37 (Failure to Make Disclosures or Cooperate in Discovery; Sanctions)

Newly added subsection 37(f) is often referred to as a "safe harbor provision" and provides that "[a]bsent exceptional circumstances, a court may not impose sanctions under these rules on a party for failing to provide electronically stored information lost as a result of the routine, good-faith operation of an electronic information system." This "safe harbor" provision is a limited one: "The protection provided by Rule 37(f) applies only to sanctions 'under these rules.' It does not affect other sources of authority to impose sanctions or rules of professional responsibility." Committee Note to Fed R. Civ. P. 37(f).

The Committee Notes explain the rationale behind this provision: "Many steps essential to computer operation may alter or destroy information, for reasons which have nothing to do with how that information might relate to litigation. As a result, the ordinary operation of computer systems creates a risk that a party may lose potentially discoverable information without culpable conduct on its part." The key requirement is that a party must act in good faith. This "means that a party is not permitted to exploit the routine operation of an information system to thwart discovery obligations by allowing that operation to continue in order to destroy specific stored information that it is required to preserve." Accordingly, "[g]ood faith . . . may involve a party's intervention to modify or suspend certain features of that routine operation to prevent the loss of information, if that information is subject to a preservation obligation." Committee Note to Fed. R. Civ. P. 37(f).

F. Amendments to Rule 45 (Subpoenas)

The amendments to Rule 45 "recognize that electronically stored information, as defined in Rule 34(a), can also be sought by subpoena." Most of the amendments to Rule 45 therefore mirror the amendments to Rule 34(b).

The Committee Notes acknowledge that "[a]s with discovery of electronically stored information from parties, complying with a subpoena for such information may impose burdens on the responding person." The existing provisions in Rule 45(c) provide protection against "undue impositions on nonparties." Committee Note to Fed. R. Civ. P. 45. Moreover, newly added subsection 45(d)(1)(D) states that the responding person need not provide discovery of electronically stored information from sources the party identifies as not reasonably accessible, unless the court orders such discovery for good cause.

IV. E-Discovery Best Practices Beyond the Federal Rules

A. The Role of Best Practices

Although the new amendments to the Federal Rules of Civil Procedure provide a degree of clarity, many e-discovery issues remain unsettled. In light of these uncertainties, the e-discovery best practices developed in recent years by organizations such as the American Bar Association's Section of Litigation[5] and the Sedona Conference(r), a nonprofit research and education institute,[6] can assist parties in ensuring that they comply with their electronic discovery obligations. The role of such standards and principles is not to replace existing law or rules, but rather "to address practical aspects of the discovery process that may not be covered by the rules or other law in a given jurisdiction or may be covered only in part." ABA *Civil Discovery Standards*, at 1.

B. The Sedona Principles

The Sedona Conference Working Group on Best Practices for Electronic Document Retention and Production has published detailed, peer-reviewed best practices concerning electronic document production ("The Sedona Principles").[7] These principles "are intended to complement the Federal Rules of Civil Procedure, which provide only broad standards, by establishing guidelines specifically tailored to address the unique challenges posed by electronic document production." *id.* at iii. Although they do not constitute binding authority, a court may turn to these principles for additional guidance when faced with an issue of first impression not addressed in either the Federal Rules or existing case law. *See, e.g., Williams v. Sprint/United Management Co.*, 230 F.R.D. 640 (D. Kan. 2005), discussed supra.

The Sedona Principles consist of the 14 general guidelines on electronic discovery issues, each of which is outlined in greater detail in a series of comments. These general guidelines outline the electronic discovery obligations of both parties - the party seeking electronic discovery and the party responding to the discovery request. While some of the issues addressed in these guidelines are not new, such as a party's document retention obligations or the need to balance the costs and burdens of electronic discovery with the need for electronically stored information, a number of other issues have only gained prominence in recent years, such as whether a party may be required to produce "deleted, shadowed, fragmented, or residual data or documents" (see Principle No.9, *infra*) or the metadata associated with electronic documents (*see* Principle No. 12 and Section II C, *supra*). The individual Sedona Principles provide as follows:

Principle No. 1: Electronic data and documents are potentially discoverable under Fed. R. Civ. P. 34 or its state law equivalents. Organizations must properly preserve electronic data and documents that can reasonably be anticipated to be relevant to litigation.

Principle No. 2: When balancing the cost, burden, and need for electronic data and documents, courts and parties should apply the balancing standard embodied in Fed. R. Civ. P. 26(b)(2) and its state law equivalents, which require considering the technological feasibility and realistic costs of preserving, retrieving, producing, and reviewing electronic data, as well as the nature of the litigation and the amount in controversy.

Principle No. 3: Parties should confer early in discovery regarding the preservation and production of electronic data and documents when these matters are at issue in the litigation, and seek to agree on the scope of each party's rights and responsibilities.

Principle No. 4: Discovery requests should make as clear as possible what electronic documents and data are being asked for, while responses and objections to discovery should disclose the scope and limits of what is being produced.

Principle No. 5: The obligation to preserve electronic data and documents requires reasonable and good faith efforts to retain information that may be relevant to pending or threatened litigation. However, it is unreasonable to expect parties to take every conceivable step to preserve all potentially relevant data.

Principle No. 6: Responding parties are best situated to evaluate the procedures, methodologies, and technologies appropriate for preserving and producing their own electronic data and documents.

Principle No. 7: The requesting party has the burden on a motion to compel to show that the responding party's steps to preserve and produce relevant electronic data and documents were inadequate.

Principle No. 8: The primary source of electronic data and documents for production should be active data and information purposely stored in a manner that anticipates future business use and permits efficient searching and retrieval. Resort to disaster recovery or backup tapes and other sources of data and documents requires the requesting party to demonstrate need and relevance that outweigh the cost, burden, and disruption of retrieving and processing the data from such sources.

Principle No. 9: Absent a showing of special need and relevance a responding party should not be required to preserve, review, or produce deleted, shadowed, fragmented, or residual data or documents.

...the e-discovery best practices developed in recent years by organizations such as the American Bar Association's Section of Litigation and the Sedona Conference(r), a nonprofit research and education institute, can assist parties in ensuring that they comply with their electronic discovery obligations.

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Compliance with e-discovery "best practices" beyond the Federal Rules, such as those embodied in the Sedona Principles, will enable parties to avoid many of the e-discovery pitfalls that have been identified by the courts in recent years.

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Principle No. 10: A responding party should follow reasonable procedures to protect privileges and objections to production of electronic data and documents.

Principle No. 11: A responding party may satisfy its good faith obligation to preserve and produce potentially responsive electronic data and documents by using electronic tools and processes, such as data sampling, searching, or the use of selection criteria, to identify data most likely to contain responsive information.

Principle No. 12: Unless it is material to resolving the dispute, there is no obligation to preserve and produce metadata absent agreement of the parties or order of the court.

Principle No. 13: Absent a specific objection, agreement of the parties or order of the court, the reasonable costs of retrieving and reviewing electronic information for production should be borne by the responding party, unless the information sought is not reasonably available to the responding party in the ordinary course of business. If the data or formatting of the information sought is not reasonably available to the responding party in the ordinary course of business, then, absent special circumstances, the costs of retrieving such electronic information should be shifted to the requesting party.

Principle No. 14: Sanctions, including spoliation findings, should only be considered by the court if, upon a showing of a clear duty to preserve, the court finds that there was an intentional or reckless failure to preserve and produce relevant electronic data and that there is a reasonable probability that the loss of the evidence has materially prejudiced the adverse party.

In sum, simply adhering to the Federal Rules of Civil Procedure may not always be sufficient to ensure full compliance with a party's e-discovery obligations. Compliance with e-discovery "best practices" beyond the Federal Rules, such as those embodied in the Sedona Principles, will enable parties to avoid many of the e-discovery pitfalls that have been identified by the courts in recent years.

V. Conclusion

It goes without saying that unless specifically made applicable by the terms of an arbitration clause, none of these rules or guidelines controls in the arbitration setting. However, they can be expected to be influential. They provide a source of practical guidance that practitioners will cite and that arbitrators will consult. Parties may be expected to propose procedures that are consistent with these sources, and compliance practices that live up to these standards will be difficult to challenge. ▼

1 Because this was the fifth discovery-related opinion in the *Zubulake* case, the opinion is commonly referred to as "*Zubulake V*."

2 Appendix F to *The Sedona Guidelines: Best Practice Guidelines & Commentary for Managing Information & Records in the Electronic Age*, available at http://www.sedonaconference.org/dltForm?did=TSG9_05.pdf.

3 *The Sedona Principles for Electronic Document Production* are discussed in Section IV, *infra*. While they do not constitute binding authority, a court may turn to these principles for additional guidance when faced with an issue of first impression not addressed in either the Federal Rules or existing case law.

4 The text of the new amendments, including the corresponding Committee Notes, is available at http://www.uscourts.gov/rules/EDiscovery_w_Notes.pdf.

5 Section VIII of the revised 2004 ABA *Civil Discovery Standards*, available at http://www.abanet.org/litigation/discoverystandards/2004civildiscoverystandards.pdf, addresses electronic discovery issues.

6 The Sedona Conference is a nonprofit research and educational institute founded in 1997 that seeks to contribute to the development of the law in the areas of antitrust, intellectual property rights, and complex litigation. Additional information regarding the Sedona Conference is available at www.sedonaconference.org .

7 The most recent version of *The Sedona Principles: Best Practices, Recommendations and Principles for Addressing Electronic Document Production*, dated July 2005, is available at http://www.sedonaconference.org/dltForm?did=7_05TSP.pdf.

news and notices

Board Certifies Eighteen New Arbitrators; Cole, Dowd, Elgee, Hunter, and Kunze Added to Umpire List

At its meeting in New York on **September 18**, the Board of Directors added **James Dowd**, **Michael W. Elgee**, and **Klaus H. Kunze** to the ARIAS Umpire List, bringing the total to 79.

At the same meeting, the Board approved certification of nine new arbitrators, bringing the total to 300. The following members were certified; their respective sponsors are indicated in parentheses.

- **Donald S. Breakstone** (David M. Spector, Everett Cygal, Ronald Jacks)
- **David S. Brodnan** (James Sporleder, Richard Bakka, Michael Cass)
- **Sheila J. Carpenter** (Lawrence Harr, Ronald Gass, Roderick Mathews)
- **Thomas F. Conneely** (Fred Marziano, Lawrence Monin, John Tickner)
- **Javier Fernandez-Cid** (Jeremy Wallis, Dewey Clark, Timothy Rivers)
- **George E. Hartz III** (Ronald Wobbeking, Jack Scott, Howard Denbin)
- **Robert E. Kenyon III** (Paul Hawksworth, Frank Haftl, James Dowd)
- **Richard Mancino** (Jeremy Wallis, Robert Reinarz, Diane Nergaard)
- **Patrick J. Murphy** (Thomas McGeough, John Deiner, Joseph Carney)

Then, at its meeting in New York on **November 1**, the Board added **John D. Cole** and **Ian Hunter** to the ARIAS Umpire List, bringing the total to 81.

At the same meeting, the Board approved certification of nine new arbitrators, bringing the total to 309. The following members were certified; their respective sponsors are indicated in parentheses.

- **George J. Biehl** (Richard Waterman, John Dore, Frank Haftl)
- **Daniel G. Brehm** (Thomas Allen, Howard Denbin, Patrick Cummings)
- **Frank T. Buziak** (David Thompson, Peter Gentile, Joseph DeVito)
- **Charles F. Cook** (Richard White, Robert Bear, Soren Laursen)
- **Joel D. Klaassen** (Richard Smith, Diane Nergaard, James Veach)
- **Frank A. Lattal** (Robert Mangino, Ronald Jacks, Mark Wigmore)
- **John McKenna** (Paul Dassenko, Jens Juul, Paul Walther)
- **Brenda L. Ross-Mathes** (John Sullivan, Richard Waterman, David Tritton)
- **Griffith T. Parry** (Robert Mangino, Robert Mangino, Jr., Dale Crawford) ▼

Board Approves Five Mediators

In a vote on November 8, the Board of Directors approved five applicants as ARIAS·U.S. Qualified Mediators. The five were **Hugh Alexander**, **James H. (Jay) Frank**, **Robert B. Miller**, **Kevin J. Tierney**, and **George G. Zimmerman**.

The Qualified Mediator Program was established last May to provide a means for ARIAS•U.S. Certified Arbitrators with mediation training to be easily contacted for service in mediation of disputes.

Successful mediation generally requires a mediator who has been professionally trained in consensual dispute resolution or has substantial experience in the field. While ARIAS•U.S. does not provide this training, it now recognizes the qualifications of its arbitrators who have been so trained.

The Qualified Mediator Program area of the website includes a full explanation of how this recognition may be obtained, along with links to the contact information of those who have qualified. ▼

Tom Orr Appointed to Fill Board Vacancy

Former Chairman of the Board of Directors Thomas S. Orr has been appointed by the Board to serve the final year of the three-year term of Steven J. Richardson, who resigned recently, leaving a vacancy in one of the reinsurance positions. Mr. Orr is Senior Vice President for North American Claims at General Reinsurance Corporation in Stamford, Connecticut. He was a member of the Board for six years, retiring as Chairman in 2005.

The ARIAS By-Laws specify that whenever any vacancy occurs, it shall be filled without undue delay by a majority vote of the remaining members. In this case, the vote was unanimous. ▼

ARIAS Membership Reaches 1000

With the application for ARIAS•U.S. membership on October 6 by Lena K. Heynes of Stockholm, Sweden, the total number of individual members and designated corporate representatives reached the 1000 mark. Ms. Heynes, who is with Sirius International Insurance Corp., also represents our first member from Sweden, though we do have Jens Juul in Bermuda. ▼

ARIAS 2007 Dues Increased by 10%

After twelve years of unchanged membership dues, the Board of Directors on September 29 voted to increase dues for 2007 by 10%. As costs of administering the organization have gradually increased over the years, conference fees have been increased, but dues remained fixed. With the current increase, a better balance of funding sources is achieved.

The effect of the increase is that the fee

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for individual member dues is now $275, while for corporate members it is $825 per year. The prorated first-year dues for those joining part way through the year are respectively higher.

The increase was effective October 1. Anyone joining after that date pays the basic initiation fee, which has not changed, plus the new dues, which covers all of 2007. ▼

Arbitrator Profile Pages Adjusted for Speed

In an effort to help users of the online arbitrator profiles to look through the pages more easily, a new feature has been added. Any time you open an arbitrator's profile, you can now move to the next profile by clicking at the top of the page. If you came through the alphabetical listing, you will move to the next profile in the alphabet. If you came from a results list in the search system, you move to the next arbitrator on that list.

The feature also works with the Umpire List, the Qualified Mediator List, and the Newly Certified Arbitrator List. ▼

Directory to be Replaced by Website and Membership List

The ARIAS Annual Directory that has been sent to members for many years will not be printed in 2007. Nearly all of the content is available on the ARIAS website. The recent streamlining of arbitrator profile scanning (see item above) makes it easier to review credentials online, further diminishing the need for printed pages.

The principal section that is not online is the membership contact information. Such information could be easily converted into electronic lists that outsiders could use for all-member solicitation. Therefore, it will not be made available online. However, in the interest of continuing to assist members in contacting each other, that information will now be printed in a separate booklet and distributed to members. The exact nature of the booklet is being determined.▼

Glen Cove Mansion Effective for Workshop; Traffic a Problem

The Glen Cove Mansion Hotel and Conference Center worked out well as a site for the workshop sessions, but getting there was more of a problem than expected. While it is conveniently located just one-half hour from LaGuardia and Kennedy, that is true anytime except late in the afternoon (which was when attendees were arriving). The trip ended up taking an hour or more, instead.

The hotel rooms were nicely decorated, the meeting rooms afforded good space for mock arbitrations, and the food was plentiful and quite good.

Two registrants of the 27 did not show up due to last-minute health emergencies, but several student arbitrators doubled up to fill the gaps.

The law firms **Clifford Chance** (New York), **Milbank Tweed** (Los Angeles), and **Simpson Thacher** (New York) assigned top-level teams to present arguments in the dispute. They were all well prepared and effective.

Tom Tobin, **Ron Gass**, and **Andrew Rothseid** provided the voices of arbitration experience for the general sessions.

Apart from the traffic, it proved to be worthwhile experience for all. ▼

Sponsors Asked to Check Guidelines

Executive Director Bill Yankus is asking that anyone who is asked to nominate or second someone for certification first review the guidelines for sponsorship. Some very specific comments are required in the sponsor letters. When those comments are missing, the letter is not accepted and certification can be delayed.

Full details are available in the Certification Procedure area of the website.▼

Greater Care Asked in Entering Data

That same executive director is asking a favor. When registering online, please enter your email address carefully. Mistakes delay information (and the confirmation) getting to you on a timely basis and take time to correct and resend at the busiest period for the ARIAS staff.

Equally inconvenient is having to re-key the registration because it is entered in all capital letters (or no caps). It may be more convenient to register that way, but the attendee list and workshop assignments would look very messy if the words were not re-typed. ▼

Certified Arbitrators: Update your online profile!

The only way that your online profiles can be accurate is through timely submission of updates. Send changes of contact information and numbers of arbitrations, etc. by email to info@arias-us.org . That address goes directly to Bill Yankus, who maintains the system. Changes are usually made within hours (if not minutes). Also, feel free to send changes that fine-tune the text of the profile so that it best represents your experience and capabilities.▼

March Workshop Returns to Tarrytown

The next Intensive Arbitrator Training workshop will take place on Tuesday March 6, 2007 at Tarrytown House Conference Center in Tarrytown, New York. Registration is planned for January 17, beginning at 10:00 a.m. on the website. Details about the workshop and registration will be mailed to members in early December. This workshop is for members only, who have not previously attended one of these events. ▼

November 1-2 set for the 2007 Fall Conference

The dates for next year's Fall Conference and Annual Meeting are November 1-2, 2007. Again, the event will be located at the Hilton New York Hotel. ▼

ARIAS 2007 Spring Conference

Boca Raton Resort • May 9-11, 2007

We will arrive at the Boca Raton Resort at a perfect point in its 80-year history. The resort has just undergone a wide-ranging renovation to bring it to a new level of luxury and beauty. The main public spaces have been dramatically renovated. Guest rooms have been tastefully refreshed. The fitness centers have been expanded and updated.

Boca Resort offers some impressive characteristics:

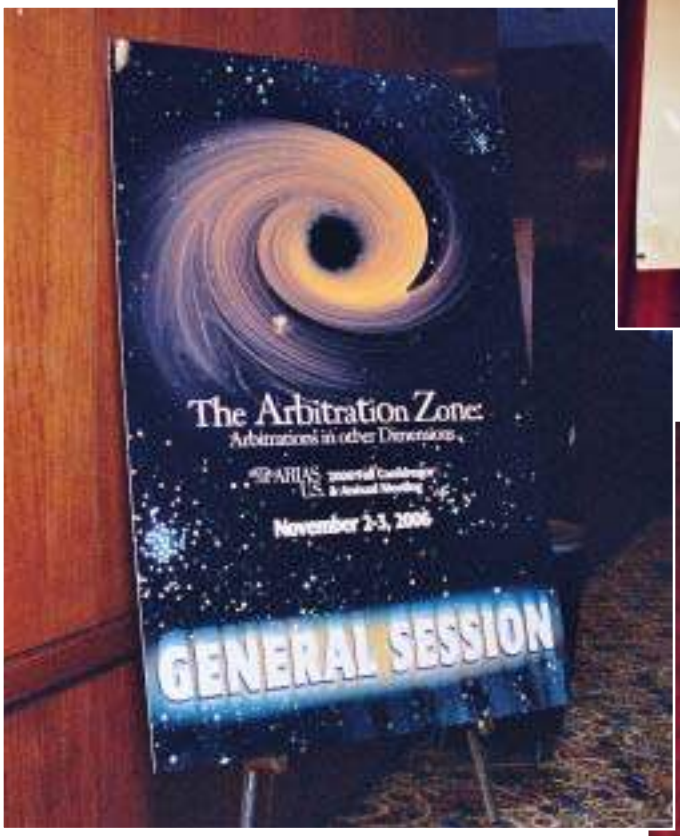
- 1,043 luxurious guest rooms and suites, in five distinct styles
- Outstanding conference facilities and support services
- A half-mile stretch of private Atlantic oceanfront, at Boca Beach Club
- Two 18-hole, private championship golf courses
- Highly acclaimed Spa Palazzo
- World-class restaurants and dining options
- 30 award-winning tennis courts
- Three state-of-the-art fitness centers, and six swimming pools

Our conference will run from Wednesday noon until Friday noon, offering the option for attendees to enjoy a weekend vacation after adjournment.
We will take a break on Thursday afternoon for recreation.

Information will be posted on the website as the event approaches.
Full details will be sent in March and be available on the website along with online registration.


RECORD
616
ATTENDEES AT
ARIAS FALL CONFERENCE

The Hilton New York Hotel in New York City became "The Arbitration Zone" on November 2nd and 3rd, as 616 members and interested non-members filled the Grand Ballroom for the 2006 Fall Conference. The attendance set a new record, beating last year's Fall Conference by 16%.



For the first time at a fall event, speakers' images were projected onto large screens at either side of the stage. This technique gave the panels much more presence in the room and greatly improved communication of the subjects being discussed.

Scott Moser provided the Keynote Address

Equitas CEO Scott Moser provided the keynote address on the first day. He recounted the recent history of one of the most significant insurance challenges of recent years, the asbestos crisis, in which Equitas was deeply involved. Starting with an acceleration of claims that promised to overwhelm any attempt to handle reasonable settlements, the crisis was eventually brought under control through a practical protocol for uncovering fraudulent claims and a no-nonsense judge who did not tolerate frivolous lawsuits. Decisions in that crisis have set a pattern for handling of

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Above:
"The Process of Selecting Arbitrators"

other types of high-stakes cases that followed.

The general sessions reflected "The Arbitration Zone" theme by looking toward the future dimensions of arbitration practices. Discussions ranged from the client zone (what clients feel needs to happen to improve the process), across new arbitration clauses for contracts, and a future look at application of custom and practice, to an examination of the evolving role of umpires.

WORKSHOPS

Right:
"Electronic Discovery"

Above:
"Mandating Ethics – The Role of ARIAS"

Workshops proliferated from six topics last year to ten this year. Even though each attendee could only attend two, all of them generated significant participation. The following topics were presented:

- Electronic Discovery: A Benefit or a Burden in the Arbitration Zone
- Ethics One - Multiple Assignments: Too Much of a Good Thing?
- The Process of Selecting Arbitrators
- Actuarial Science Made Easy

WORKSHOPS

Right:
"Confidentiality in Arbitrations"

- US/UK Comparison: Arbitrations on Both Sides of the Pond
- Privilege versus Access to Records: To Give or Not to Give?
- Ethics Two - Mandating Ethics: The Role of ARIAS in Ethics Issues
- Legal Terms for Non-Lawyers
- Confidentiality in Arbitrations
- Top Ten Things Parties Can Do to Win their Cases.

Above: "Legal Terms for Non-Lawyers"

WORKSHOPS

Right: "Top Ten Things Parties Can Do to Win their Cases"

The last topic generated a level of interest that required conducting the session in the Grand Ballroom to accommodate nearly 200 who signed up for it.

With longer refreshment breaks during the day and a larger room for the Thursday reception, the level of interaction among attendees was noticeably more animated.

Evaluation sheets gave generally high grades to all aspects of the event.

If growth continues at the current rate for several more years, the Hilton may become too small for ARIAS. The Javits Center expansion begins soon; we may need it!▼

Left: Mary Lopatto Addresses the Annual Meeting

Right: Retiring Board Member Steve Richardson

Left: Dick Kennedy Congratulates Tom Forsyth on Re-election

Above: Dick White Takes the Treasurer's Report Seriously

Right: Newly Certified Arbitrator Griff Parry and Deborah


MARTIN D. HABER


MARY KAY
VYSKOCIL

report

Lopatto and Forsyth Re-elected Chairman and President

Caprio Brady and Forsyth Re-elected to Board

Mary A. Lopatto

Thomas L. Forsyth

At the Board of Directors meeting held during the 2006 Fall Conference on November 2, Mary A. Lopatto, a partner in the Washington, D.C. office of Chadbourne & Parke LLP, was re-elected as Chairman of ARIAS•U.S. and Thomas L. Forsyth, General Counsel and Secretary of OneBeacon Insurance Company, was re-elected as President.

At the annual membership meeting, just before the Board meeting, Elaine Caprio Brady, Senior Corporate Counsel to Liberty Mutual Insurance Company and Mr. Forsyth were re-elected to new three-year terms on the Board.

Chairman Mary Lopatto has been with Chadbourne & Parke for nearly a year. Previously, she had been a partner at LeBoeuf, Lamb, Greene & MacRae. She has over 20 years of insurance and reinsurance experience, with particular expertise in handling international reinsurance disputes, especially arbitrations subject to Bermuda arbitration law. Ms. Lopatto has arbitrated disputes relating to allocation of environmental claims, insolvency and run-off matters, MGA and broker negligence, life reinsurance, variable annuity products, financial reinsurance, surety bonds, and reinsurance accounting. She has been involved in numerous arbitrations, as well as litigation in state and federal courts.

Newly Re-elected Board Members Elaine Caprio Brady and Tom Forsyth.

Ms. Lopatto is also Co-Chair of the ARIAS•U.S. Ethics Committee and is a member of the Long Range Planning Committee.

President Thomas Forsyth has been with OneBeacon for one year. Since 1994, he had been General Counsel of Swiss Reinsurance America Corporation and Chief General Counsel of the Americas Division of Swiss Re's Property and Casualty Business Group. In this position, he was responsible for legal issues in North and South America as well as a variety of claims, contracts and compliance matters. Previously, he had been with Travelers and the law firm of Barger & Wolen in Los Angeles.

An ARIAS Board member is elected for a three-year term and may be re-elected for one additional three-year term.

Mr. Forsyth is also Co-Chair of the ARIAS Mediation Committee and recently co-chaired the Fall Conference.

An ARIAS Board member is elected for a three-year term and may be re-elected for one additional three-year term. The Board consists of nine members, three representing insurance companies, three representing reinsurance companies, and three representing law firms.

Elaine Caprio Brady had been elected to the Board last year, filling an unexpired term of a retiring director. She now begins her first three-year term. Ms. Caprio Brady advises Liberty departments worldwide that handle ceded and/or assumed facultative, treaty and retrocessional reinsurance matters.

Ms. Caprio Brady is Co-Chair of the ARIAS Law Committee and creator of the Newer Arbitrator Program.▼

members on the move

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

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

Recent Moves and Announcements

Hugh Alexander has relocated Alexander Law Firm, P.C. to 1580 Lincoln St., Suite 700, Denver, CO 80203-1501, phone 303-825-7307, fax 303-825-3202, email ha@alexlawfirm.com.

David Beebe has joined the Contracts Department at Munich Re America, as Assistant Vice President. His new contact information is 555 College Road – East, Princeton, NJ 08543, phone 609-243-4320, fax 609-243-4300, email dbeebe@munichreamerica.com .

James Cameron is now located at Cameron & Associates Insurance Consultants Limited, 55 York Street, Suite 400, Toronto, ON M5J 1R7.

In other Toronto moving news, **Brian Williams** has moved Dispute Resolution Services LP to 4100 Yonge Street, Suite 606, Toronto, ON, M2P 2B5 Canada, phone 416-250-5050, ext 24, fax 416-250-0636, cell 647-393-7264.

Patrick Cummings is still with Resolute Management Inc., Mid-Atlantic Division, but his personal email address has changed to pbcummi@msn.com and his office has relocated to 30 South 17th Street, Suite 700, Philadelphia, 19103, phone 267-765-5940, fax 267-765-5941. No change of office email.

Sue Kempler has prepared for the ARIAS 2007 Spring Conference by moving from Palm Beach to Boca Raton. Her new contact information is Cecelia Kempler, Kempler Consulting Corp., 6963 Queenferry Circle, Boca Raton, Fl. 33496, phone 410-310-5363, fax 561-477-9197. Email is unchanged.

Jeffrey Phillips can now be found at AlixPartners, LLP, 515 S. Flower Street, Suite 3050, Los Angeles, CA 90071

Edgar Phoebus has moved his home to 140 Cormorant Drive, Vonore, TN 37885-5366, phone 423-884-2779, e-mail phoebus@tds.net. Business information remains the same.

Raymond Prosser has left Indiana for the East Coast. He is now Senior Vice President & General Counsel at Transamerica Reinsurance. His new address is 401 North Tryon Street, Charlotte, NC 28202, phone 704-330-7615, fax: 704-330-5879, email ray.prosser@transamerica.com

New Email Addresses

Steve Radcliffe
ridgecliffe@msn.com

SAVE THE DATE May 7-9, 2008 SAVE THE DATE May 7-9, 2008 SAVE THE DATE

The ARIAS 2008 Spring Conference will be located at the beautiful Ritz-Carlton Hotel on Amelia Island. The island is located on the Atlantic Ocean in Florida, near the border with South Carolina. All 444 rooms have balconies and an ocean view; it offers an 18-hole golf course, nine tennis courts, and a dramatic new 26,000 square-foot, state-of-the-art spa facility just completed in December 2006. The excellent conference facilities are perfectly sized for ARIAS sessions. **Details will be on the website calendar as they develop**.

You will not want to miss this event!

feature

Discovery from Intermediaries: Winning the Peace

Robert M. Hall

Robert M. Hall

I. The Lever

The legal and policy issues involved in discovery from reinsurance intermediaries in arbitration proceedings have been recounted at length elsewhere[1] and need not be repeated here. It is sufficient to note that the National Association of Insurance Commissioners ("NAIC") saw fit in early 2006 to provide a regulatory solution as an amendment to the Insurance Intermediary Model Act. The following language has been inserted into the Model:

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

Violation of this language may subject the intermediary to certain penalties, including loss of license.

The California legislature has passed AB 2400 which contains a version[2] of this language and it has been signed by the governor. It will go into effect on January 1, 2007.

This action has the potential to conclude the struggle over discovery from intermediaries. Major intermediaries must possess a license in California to do their business. The California Insurance Department believes that it has the power to regulate the activities of California-licensed entities (*e.g.* insurers and reinsurers) which take place outside the state of California and often seeks to do so. Intermediaries, and other regulated entities, cannot put their business activities on hold in California for several years while they mount a constitutional challenge to the Insurance Department's effort to regulate in an extra-territorial fashion. Thus, this new California law is a major lever for arbitration panels in the effort to obtain necessary information from intermediaries.

II. Responsibility with Respect to the Lever

It is no accident that the language adopted by the NAIC and enacted into law by California, in effect, gives intermediaries standing to object to the arbitration panel concerning the "nature or scope of the documents or testimony or the time within which it must comply with the order." This is not just a due process afterthought.

When subpoenas are issued to parties, their affiliates or employees, the parties are quick to object to over breadth, irrelevancy, unrealistic timeframes and the like. A party is often much less inclined to make the same objections on behalf of a third party such as an intermediary. Indeed, it is questionable

This action has the potential to conclude the struggle over discovery from intermediaries. Major intermediaries must possess a license in California to do their business.

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

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

whether a third party has standing, in a contractual arbitration proceeding, to make such objections on its own behalf.

The dynamics of an arbitration proceeding are that arbitrators respond most readily to objections about discovery. Even for those arbitrators who look closely at third party subpoenas without objections, it may be difficult to judge the reasonableness or unreasonableness of a third party subpoena without input from the third party.

Intermediaries have their own businesses to conduct. While they should be responsible to provide a reasonable amount of discovery in a reasonable time frame, it is easy to conjure "all documents" subpoenas for materials not readily available in electronic form within a short timeframe in the midst of renewal season. Scope of discovery has become a significant problem in arbitrations and visiting it on intermediaries is not a solution.

III. The Way Forward

There is a practical way to get counsel and arbitration panels the information they need to resolve disputes between the intermediaries' clients and markets without shutting down the intermediaries' business operations. Counsel need to describe to intermediaries with some precision the type of information being sought *i.e.* placement package for the 2000 First Excess of Loss Treaty between cedent A and its reinsurers. A request for "all documents related to cedent A" is seldom necessary and is certain to meet resistance.

Secondly, counsel need to discuss with intermediaries the form in which the desired information may be obtained. Information in a particular form may be very expensive or difficult to provide. Substantially the same information in a somewhat different form may be readily available. Cost effectiveness must be an important consideration.

Finally, the panel itself needs to make itself available to referee problems with intermediary discovery, not just in formal proceeding with respect to a subpoena but informally, before a license may be at stake. Having worked at companies and intermediaries, the panelists will have a good idea where relevant information can be found most readily and what types of information will be most probative with respect to the relevant issues.

IV. Conclusion

The lever enacted in California concerning discovery from intermediaries opens the door to more cooperation among the relevant parties and a better focus on the information necessary for arbitration panels to resolve disputes between cedents and reinsurers. Hopefully, this lever will never have to be utilized. If so, we will have won the peace. ▼

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

2 AB 2400 deletes the last sentence of the language adopted by the NAIC prohibiting testimony more than once by the same witness. This deletion was brought about by trial lawyers in the legislature and was not proposed or supported by any of the insurance industry proponents of this provision.

The lever enacted in California concerning discovery from intermediaries opens the door to more cooperation among the relevant parties and a better focus on the information necessary for arbitration panels to resolve disputes between cedents and reinsurers.

report

Board Creates Long Range Planning Committee

Mark Gurevitz

Eugene Wollan

Daniel L. FitzMaurice

Mary A. Lopatto

Paul E. Dassenko

In conjunction with the Fall Conference and Annual Meeting, the Board of Directors gave final approval to the establishment of a Long Range Planning Committee to chart the future of the organization and its service to its more than 1000 members. To chair the Committee, the Board appointed Mark Gurevitz, former ARIAS Chairman and Senior Vice President and Director of Property & Casualty Law at the Hartford Financial Services Group, Inc. Mr. Gurevitz and Eugene Wollan (Mound Cotton Wollan & Greengrass) will represent former ARIAS Directors on the Committee. Representing present ARIAS Directors are Daniel L. FitzMaurice (Day, Berry & Howard LLP) and Mary A. Lopatto (Chadbourne & Parke LLP). Representing ARIAS Certified Arbitrators are Paul E. Dassenko (Converium Reinsurance, North America, Inc.) and Eric S. Kobrick (American International Group, Inc.). Ann L. Field (Zurich American Insurance Company) and Mark Megaw (ACE Group Holding, Inc.) represent ARIAS members.

Eric S. Kobrick

Ann L. Field

Mark Megaw

The idea for the Long Range Planning Committee was hatched at a retreat held by the Board of Directors in January 2006. The Retreat included former ARIAS Directors, including the founders of this twelve-year old organization. The retreat participants focused on the purpose and mission of ARIAS•U.S., its growth and expansion, its role in the insurance and reinsurance community, and issues for the future. The Board continued discussion on the retreat agenda items and prioritized issues for consideration and recommendations by the Long Range Planning Committee. These issues include a comprehensive review of the arbitrator and umpire certification requirements, whether the requirements should be enhanced, whether additional educational requirements should be required to maintain certification (beyond the required attendance at an ARIAS meeting within a two-year period), and whether there should be a mechanism to regularly review an arbitrator's or umpire's certification. The Committee will also consider what ARIAS offers to insurance and reinsurance companies and to individual members, how ARIAS can demonstrate the value it adds to the arbitration process, and how ARIAS can continue to address its members' needs and interests.

The Committee will also tackle the organization's role with respect to ethical issues confronting arbitrators and requests for more guidance with respect to questions of ethics and appropriate conduct in the arbitration process. The Committee will consider proposals for an advisory group to handle member requests for counsel on ethical issues, the development or refinement of guidelines or a code, and whether there should be an enforcement mechanism for ethical violations.

The Committee will be considering some of the most pressing issues confronting ARIAS and welcomes comments from the membership. An initial report is expected by June.

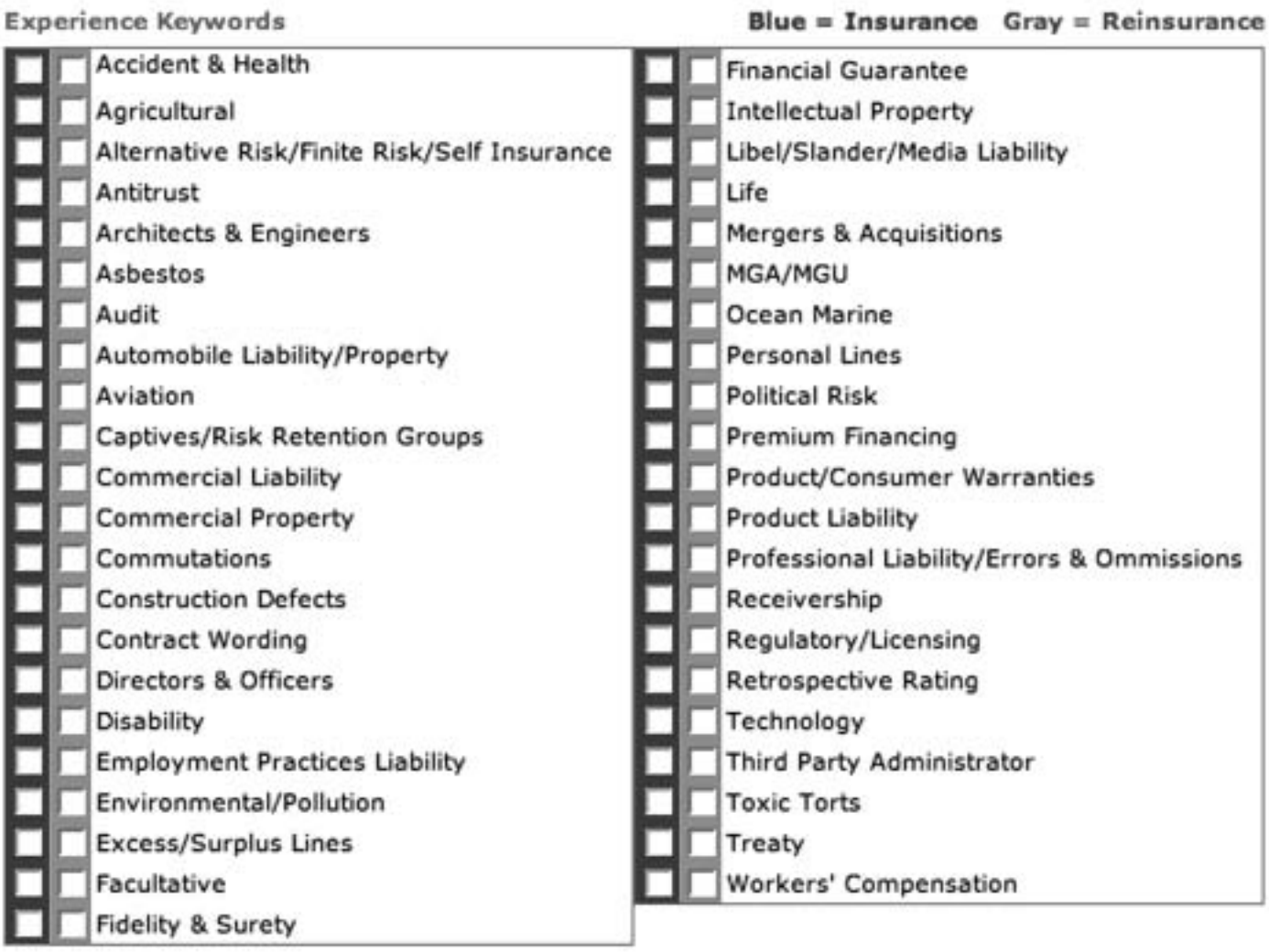
Modification of Arbitration Search System Completed

report

Since 2003, when the "Search for Arbitrator" system was created, users of the system have often found long lists of names on the results pages. Arbitrators who had extensive exposure to a wide range of insurance areas during their careers had listed all those in which they felt ready to serve. No numerical limit had been specified. This tendency did not necessarily serve the needs of parties who were looking for arbitrators with the most thorough understanding of a specific discipline.

In an effort to give the system a tighter focus on those with the most extensive experience in each area, all arbitrators were resurveyed recently, asking them to indicate up to 20 areas in which they have the most significant experience. By repopulating the database with this new information for each arbitrator, the search results lists are now shorter and include those who are most likely to have the deeper experience being sought.

As part of the modification, a new list was created that removes some term redundancies of the old list. This adjustment also increases accuracy in finding those most suited for specific areas of dispute. The new list, as it appears on the website, is shown below.▼



ARIAS·U.S. Certified Arbitrators

as of December 2006

Therese A. Adams
Hugh Alexander
John P. Allare
David Appel
David V. Axene
Richard S. Bakka
Christine E. Bancheri
Martha G. Bannerman
Nasri H. Barakat
Linda Martin Barber
Frank J. Barrett
Robert A. Bear
Clive A. R. Becker-Jones
David L. Beebe
Paul A. Bellone
Dennis A. Bentley
Peter H. Bickford
George J. Biehl NEW
Katherine Lee Billingham
John W. Bing
John H. Binning
Edgar Ward Blanch Jr.
William K. Borland
Christian H. Bouckaert
Donald S. Breakstone
Daniel G. Brehm NEW
Paul D. Brink
David S. Brodnan
Robert C. Bruno
D. Robert Buechel Jr.
Janet J. Burak
Robert K. Burgess
Mary Ellen Burns
W. Lockwood (Locke) Burt
Malcolm B. Burton
Frank T. Buziak NEW
Cecil D. Bykerk
James I. Cameron
David L. Cargile
Bruce A. Carlson
Joseph E. Carney
Sheila J. Carpenter
Charles W. Carrigan
John R. Cashin
Marvin J. Cashion
Robert Michael Cass
John F. Chaplin
Susan S. Claflin
Dewey P. Clark
Peter C. Clemente
Martin B. Cohen
John D. Cole
Richard E. Cole
Robert L. Comeau
William P. Condon
Thomas F. Conneely
Charles F. Cook NEW
James P. Corcoran
Carol K. Correia
John W. Cowley
Peter L. Craft
Dale C. Crawford
John J. Cuff
Patrick B. Cummings
Cathryn A. Curia
Bina T. Dagar
Thomas M. Daly
Paul Edward Dassenko
John W. Dattner
Michael S. Davis
Donald T. DeCarlo
John B. Deiner
Howard D. Denbin
Joseph J. DeVito
John S. Diaconis
Theodor Dielmann
A.L. (Tony) DiPardo
Brian J. Donnelly
John A. Dore
Andrew Ian Douglass
James F. Dowd
John H. Drew
John Dunn
Clement S. Dwyer Jr.
Charles G. Ehrlich
Michael W. Elgee
Charles S. Ernst
William F. Fawcett
Robert J. Federman
Paul Feldsher
Javier Fernandez-Cid
Ann L. Field
Mark J. Fisher
Paul R. Fleischacker
Charles M. Foss
Caleb L. Fowler
William W. Fox Jr.
James (Jay) H. Frank
Richard C. Franklin
Gregg C. Frederick
Kenneth H. French
Peter Frey
Steven A. Gaines
James P. Galasso
Ronald S. Gass
Peter A. Gentile
Ernest G. Georgi
Joseph A. Gervasi
George M. Gottheimer
Colin L. Gray
Robert B. Green
Thomas A. Greene
George F. Grode
Susan E. Grondine
Mark S. Gurevitz
Martin D. Haber
Franklin D. Haftl
William D. Hager
Robert F. Hall
Robert M. Hall
Lawrence F. Harr
George E. Hartz III
Stanley Hassan
Cathy A. Hauck
William G. (Sandy) Hauserman
Charles W. Havens III
Paul D. Hawksworth
Alan R. Hayes
James S. Hazard
John Heath
Robert D. Holland
Harold Horwich
John H. Howard
William H. Huff III
Robert M. Huggins
Ian A. Hunter
Fritz K. Huszagh
Louis F. Iacovelli
Wendell Oliver Ingraham
Ronald A. Jacks
Robert S. James
Bonnie B. Jones
Leo J. Jordan
Jens Juul
Lydia B. Kam Lyew
Sylvia Kaminsky
Keith E. Kaplan
Jerome Karter
James Ignatius Keenan Jr.
Cecelia (Sue) Kempler
T. Richard Kennedy
Robert Edwin (Pete) Kenyon III
Bernard A. Kesselman
James K. Killelea
William M. Kinney
Patricia M. Kirschling
Joel D. Klaassen NEW
David D. Knoll
Floyd H. Knowlton
Eric S. Kobrick
Jack E. Koepke
Klaus H. Kunze

Biographical profiles are available at www.arias-us.org

John M. Kwaak
Linda H. Lamel
Anthony M. Lanzone
Mitchell L. Lathrop
Frank A. Lattal NEW
Soren N. S. Laursen
Jim Leatzow
Y. John Lee
Raymond J. Lester
Charles T. Locke
Denis W. Loring
Douglas R. Maag
W. James MacGinnitie
Susan E. Mack
Lawrence C. Magnant
Peter F. Malloy
Richard Mancino
David J. Nichols
Barbara Niehus
Charles L. Niles Jr.
Patrick J. O'Brien
Robert J. O'Hare Jr.
Reinhard W. Obermueller
Elliot S. Orol
James M. Oskandy
Michael W. Pado
Herbert Palmberger
Stephen J. Paris
Griffith T. Parry NEW
Glenn R. Partridge
James J. Phair
Edgar W. Phoebus Jr.
Joseph J. Pingatore
Andrew J. Pinkes
Michael R. Pinter
Thomas A. Player
James J. Powers
George C. Pratt
Raymond L. Prosser
Robert C. Quigley
Frank E. Raab
R. Stephen Radcliffe
Peter F. Reid
George M. Reider Jr.
Robert C. Reinarz
Steven J. Richardson
Kevin T. Riley
Timothy C. Rivers
David R. Robb
Eileen T. Robb
Debra J. Roberts
Robert L. Robinson
Edmond F. Rondepierre
Jonathan Rosen
Angus H. Ross
Brenda L. Ross-Mathes NEW
Andrew N. Rothseid
Don A. Salyer
Peter A. Scarpato
Daniel E. Schmidt IV
Jack R. Scott
Savannah Sellman
James A. Shanman
Richard M. Shaw
Radley D. Sheldrick
Richard M. Shusterman
Frederick M. Simon
Paul M. Skrtich
David W. Smith
Richard D. Smith
Richard E. Smith
David Spiegler
Walter C. Squire
Timothy W. Stalker
J. Gilbert Stallings
Paul N. Steinlage
Richard E. Stewart
Michael H. Studley
C. David Sullivan
John D. Sullivan
David A. Thirkill
Elizabeth M. Thompson
N. David Thompson
Paul C. Thomson III
John J. Tickner
Kevin J. Tierney
Harry Tipper III
Thomas M. Tobin
Michael J. Toman
Daniel T. Torpey
William H. Tribou III
David W. Tritton
William J. Trutt
Jacobus J. Van de Graaf
James D. Veach
Theodore A. Verspyck
Robert C. Walker
William J. Wall
Jeremy R. Wallis
Andrew S. Walsh
Michael T. Walsh
Paul Walther
Richard G. Waterman
Barry Leigh Weissman
Alfred O. Weller
Emory L. White Jr.
Richard L. White
Charles J. Widder
William Wigmanich
W. Mark Wigmore
Michael S. Wilder
P. Jay Wilker
Eugene T. Wilkinson
William A. Wilson
W. Rodney Windham
Ronald L. Wobbeking
Eugene Wollan
James D. Yulga
Michael C. Zeller
George G. Zimmerman

ARIAS·U.S. Umpire List

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

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

feature

Where There's a Will...

Eugene Wollan

Eugene Wollan

It is not easy to spend a good deal of time in London, as I do, without being exposed to serious doses of William Shakespeare. His presence is virtually ubiquitous. At least one of his plays is always being performed, either by the Royal Shakespeare Company or in the West End. Many a pub has a Shakespearean name, and many more have names that, while not literally Shakespearean, certainly evoke his Elizabethan times ("The Hung, Drawn and Quartered," "The Queen of Scots," "The Archer," etc.)

Not that there is anything bad about exposure to Master Will. Although not everyone necessarily shares Harold Bloom's opinion that Shakespeare was, in Hamlet, the inventor of modern man, there certainly is a near-unanimous view that Mr. S. was the greatest master of the English language who ever put pen (quill or otherwise) to paper. And this despite the fact that Shakespeare's English was apparently quite different from what we today know as English, or even British English. If you ever have the opportunity to hear any of his writings recited as they would have been at the Globe Theatre (as I did by an English professor with a flair for the dramatic), you will find the words sounding something like a mixture of Geoffrey Chaucer and James Joyce spoken by someone with a particularly heavy Irish brogue combined with an equally strong Scottish burr.

Shakespeare's use of language was, of course, unique, not just for his time but for all time. He probably coined more phrases than any other source (possibly apart from the compilers of the King James Bible) that have come down to us as common and colorful locutions, many of them by now so overused that they have become cliches. I will resist the temptation to quote even a few examples here; if you question my statement, just check out Bartlett's Familiar Quotations.

But it wasn't only his way with words that placed him at the very apex of the Pantheon of Great Writers (well, he occasionally mixed a metaphor too); it was just as much his ability to invent and portray fascinating, realistic, three-dimensional characters (pace, Harold Bloom). To see and hear the depths of one of these characters plumbed by a great actor or actress (Richardson as Falstaff, Olivier as Richard, Plummer as Iago, Anderson as Lady Macbeth) is a revelation in the truest sense of the word.

It was this train of thought that led me to play the game with myself of trying to transport some of Shakespeare's characters to my own playground of professional activity. (It's really remarkable what lengths the human mind will go to in order to find excuses for not returning to the work at hand.) Here are some of the personalities I toyed around with (in no particular sequence):

- **Hamlet** might, in his chronic indecision, be the coverage counsel whose legal analysis consists of three pages of on-the-one-hand followed by three pages of on-the-other-hand, winding up with the really helpful conclusion that the question is a toss-up.
- **Falstaff** could be the hail-fellow-well-met broker who is terrific at acquiring new accounts (with steak dinners at The Palm substituting for a yard of ale at The Garter Inn) but can't be bothered with the mundane details of the day-to-day servicing of the account.
- **Friar Lawrence** could only be the corporate lawyer who gets the "poison pill" embodied in the bylaws of the insurance company to deflect any takeover attempt.
- **Henry V of England and Katherine of France** could be the mismatched companies whose efforts to merge failed because of irreconcilable cultural differences.
- **Polonius** might be the garrulous retired reinsurance executive who rambles on and on about the good old days before every

It was this train of thought that led me to play the game with myself of trying to transport some of Shakespeare's characters to my own playground of professional activity.

Eugene Wollan is a former senior partner, now counsel of Mound Cotton Wollan & Greengrass. He is resident in the New York Office.

disagreement went to arbitration.

- **Banquo's ghost** is the spectre of additional reserves for asbestos exposures hovering over so many balance sheets.
- **The Soothsayer** who warns Caesar to "Beware the Ides of March" is the doom-and-gloom financial analyst who prognosticates the endless continuation of a soft market and loss ratios in the triple digits.
- **Hotspur** is the up-and-coming young executive who wants to change every industry practice that goes back hundreds of years and runs into an immovable stone wall.
- **Richard III** is the cutthroat, take-no-prisoners, anything-to-win litigator whose methods sooner or later come back to bite him on his own Bosworth Field.
- **Richard II**, by contrast, is the low-keyed, intellectual insurance lawyer who can analyze a claim beautifully but hasn't a clue how to go for the jugular in a courtroom.
- **Beatrice and Benedict** are the underwriters whose infatuation with words leads them into creating policy language that turns out to be incomprehensible or ambiguous.
- **Lear** wandering erratically through the raging storm is the overwhelmed adjuster trying desperately to cope with the after-effects of the latest Cat. Number.
- **Prince Hal** is the reinsurer that cuts its cedent loose ("I know thee not, old man."), leaves it to its own devices, and accepts no responsibility for its actions.
- **Bianca** is the profitable small insurance company being courted by innumerable established companies, and playing coy to a fare-the-well.
- **Kate** is her sibling, the unprofitable sister company that generates interest only from someone prepared to be ruthless in stripping her assets and reducing her to abject dependence.
- **Iago** is the smooth-talking London broker who is all things to all people and leaves disaster in his wake.
- **Shylock** is the plaintiff's personal injury lawyer whose pound of flesh usually comes to at least one-third of the total weight.
- **Dogberry** is the forensic accountant whose testimony is an utter, incomprehensible shambles.
- **Lady Macbeth** is the plaintiff who invokes the "innocent coinsured" doctrine and claims she had not a clue what her husband was up to.
- **Puck** is the court clerk buzzing around officiously, trying to look busy, and throwing sand in everyone's (especially counsel's) eyes.
- **The Archbishop of Canterbury** babbling on interminably and incoherently about the Salic Law could easily be your professor of the College of Insurance rambling on incoherently about McCarran and Sarbanes-Oxley.
- **Calpurnia** is the virtuous, stay-at-home wife who attends the PTA meetings and church bake sales while her husband, the Claims VP, is off globe-trotting in a desperate effort to persuade his reinsurers to follow his fortunes.
- **Prospero** is the expert witness whose "junk science" cannot get past the Daubert test and is unceremoniously rejected by the judge.
- **Yorick and Lear's Fool** are the two clowns who drank too much at last year's Christmas party and staged an impromptu performance of "Brush Up Your Shakespeare" from Kiss Me, Kate.
- **Cleopatra** is the receptionist who thinks she can get by on looks rather than skills, and ends up making an asp of herself.
- **Horatio** is the loyal, steadfast second chair during a particularly difficult, contentious trial, who offers solid support but is unable to fend off disaster.
- **The Three Witches** are the three jurors who hold your fate in their hands and to whom you just can't seem to be able to get through.
- **Caliban** is the trial judge who absolutely knows that "those damn insurance companies are all alike" and can't be bothered with the facts.
- **Bottom** is the self-assured witness you have utmost confidence in but who behaves like a perfect ass at the crucial time.
- And **Portia** the litigator, on her feet in the courtroom, is of course The Adversary From Hell.

Well, you get the idea. Some of these comparisons are obviously very far-fetched, others are a little closer to home. But the game is fun.

Next time - maybe - some colorful characters out of Charles Dickens or William Schwenk Gilbert.

Polonius might be the garrulous retired reinsurance executive who rambles on and on about the good old days before every disagree-ment went to arbitration.

in focus

Recently Certified Arbitrators

George J. Biehl, Jr.

Daniel G. Brehm

Frank T. Buziak

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

George J. Biehl, Jr.

George Biehl began his insurance career in the Philadelphia based World Headquarters of the former INA Group in 1956. He worked initially in the Special Risks Department which was the Home Office Casualty underwriting clearing unit for large Fortune 1000 accounts. He was a graduate of the INA Underwriting School. In 1965 he moved to the Commercial Insurance Department and specialized in commercial umbrella and professional liability lines. He completed his underwriting career in 1970 after three years in the INA Detroit branch.

Mr. Biehl began a long career as a reinsurance intermediary in 1970 when he joined Towers, Perrin, Forster & Crosby in its Philadelphia Home Office and worked on Casualty facultative and Treaty accounts. In 1973 he joined Booth Potter Seal as Assistant Vice President for production of Treaty and Casualty Facultative reinsurance. He joined E.W. Blanch in 1976 and worked as Vice President for Treaty reinsurance in its Minneapolis and Chicago offices through 1981. In 1982 he joined the newly established Chicago office of Thomas A. Greene as Vice President of Treaty Reinsurance.

In 1986 he was a Co-founder and Vice President of the Seattle based Taylor Reinsurance Intermediaries and remained in that office through its acquisition by AON Re in 1990 until 1994. At that point, he became Senior Vice President and Branch Manager for G.J. Sullivan Company until that reinsurance intermediary retired from the business. During this long span, Mr. Biehl produced and serviced all types of Property and Casualty reinsurance to domestic, Bermudan, London and other foreign reinsurance markets. He worked with many UK and European correspondent reinsurance brokers.

In 1998 Mr. Biehl joined Edgewater Holdings Ltd. as a Senior Vice President and President of its subsidiary, Edgewater Consulting Services. He served in several capacities for this Chicago based Underwriting Manager with heavy emphasis on soliciting new client carriers for a Turnkey Employment Practices Liability Reinsurance Program. Mr. Biehl retired in 2000, and since 2003 has provided consulting services as an expert witness in various insurance and reinsurance disputes drawing on his forty two years experience. In 2006 he began his arbitration career and is presently serving as a party appointed arbitrator. ▼

Daniel G. Brehm

Daniel Brehm is Senior Vice President and Chief Claim Officer of the Mid-Atlantic Division of Resolute Management (a Berkshire Hathaway company), where he manages a claim organization responsible for resolving A&E exposures for a number of entities, including a number of ACE affiliates. He began his insurance career during law school, manning the night claim line at Allstate in King of Prussia, Pennsylvania. After his graduation from law school, he worked in in-house counsel operations, defending cases on behalf of SEPTA (Southeastern Pennsylvania Transit Authority), Allstate and AIG. In 1986, he joined the Environmental Pollution Unit at INA and has held a number of positions with that organization, in its various corporate incarnations until, in April 2003, he was appointed Senior Vice President and Chief Claims Officer. He continues to serve in that position.

Mr. Brehm has managed and participated in over a thousand coverage disputes and hundreds of coverage declaratory judgment actions. He has participated in two dozen coverage and reinsurance mediations. He has become familiar with reinsurance issues by virtue of his executive position (including supervision of reinsurance dispute resolution for a period of time), by appearing as a witness in a number of reinsurance arbitrations, and by attendance at ARIAS conferences and workshops. Mr. Brehm has a thorough understanding of a wide variety of claims issues, including allocation, various "occurrence," limits, and deductible issues, defense obligation, "bad faith" assertions, primary/excess issues, decision tree analysis, issues arising in the bankruptcy context, and many others. ▼

Frank T. Buziak

Frank Buziak has spent over 35 years working in the property and casualty insurance and reinsurance industries. He began his career at Peat, Marwick, Mitchell & Co. and for ten years specialized in auditing major insurance companies which included Royal-Globe, The Home, AIG and WR Berkley.

In 1980, Mr. Buziak joined Great Atlantic Insurance Company, a property & casualty insurer that underwrote general liability policies of NYC apartment houses. In 1984, he was promoted to President and CEO. Great Atlantic was acquired by Kramer

Capital Corporation, a world renowned consulting organization which also acquired NAC Re Corporation. In October 1985, Mr. Buziak was appointed CFO for the NAC Re initial public offering. In 1987, he was recruited to spearhead the turnaround of Investors Insurance Group and in 1994 was named President and CEO.

In 1995, Mr. Buziak joined Swiss Re initially as EVP and COO of Swiss Re Financial Products. Two years later, he was named President and CEO of Facility Insurance Corporation, a Swiss Re subsidiary with over $1 billion in Texas worker's compensation loss reserves. In January 2005, he joined Exporters, a Bermuda based group captive provider of credit and political risk insurance, as President and CEO.

Mr. Buziak is currently self-employed as a consultant, arbitrator and mediator. He is a CPA in the states of New York and New Jersey and has passed Financial Security Examinations # 7, 27 and 63. He has served as both an umpire and an arbitrator, and has testified as an expert witness in both litigations and arbitrations.▼

Ann L. Field

Ann Field is an Attorney and Vice President of Zurich in North America, the fourth largest property and casualty company in North America. She is the Director of the Reinsurance Claims and Legal Department which is dedicated to the handling of all reinsurance claims and all disputed reinsurance recoveries for Zurich within North America. Accordingly, she oversees all reinsurance arbitrations and litigation of the in-house and external attorneys for Zurich in North America. Ms. Field directs and manages a staff of attorneys and reinsurance claim specialists who are responsible for the largest and most complex claims of the company, as well as the reinsurance issues related to those claims. She also directs and manages attorneys and reinsurance claim specialists who are responsible for the reinsurance issues and disputes surrounding "non-complex" claims.

Additionally, Ms. Field's department acts as a resource and legal advisor for the Claims, Reinsurance Accounting, Ceded Reinsurance, Business Units, and Corporate Law departments for issues pertaining to reinsurance cessions, allocation, treaty and facultative contract interpretation, reinsurance claim audits, commutations, and liquidations. She also oversees the management and distribution of the reinsurance responses to inquiries and reinsurance notices for the Environmental Claims, Construction Defects, and Specialties departments. All of the above-described responsibilities assist with the management of reinsurance assets in excess of $8-billion per year.

Since entering the insurance industry in 1995, Ms. Field has had a broad range of experience with reinsurance claims including mass litigation, asbestos, silica, mold, pollution, construction defects, medical devices, bad faith, pharmaceutical, property, terrorism, property and casualty catastrophes (including extensive clash experience), professional liability, product liability, excess, D&O and captives. Ms. Field has a J.D. from Valparaiso University School of Law, Valparaiso, Indiana and a B.A. degree from Macalester College, St. Paul, Minnesota. She has been licensed to practice law in Illinois since 1991. She resides in Barrington, Illinois with her law-professor husband, three children, two cats, and a chocolate labrador retriever.▼

Joel D. Klaassen

Joel Klaassen was President and Chief Executive Officer at Centre Re prior to starting his consulting career in 2005. Centre Re was the international structured risk property & casualty (re)insurance arm of the Zurich Financial Services Group and was the leading provider of customized solutions for its customer's risk transfer and risk financing needs. Centre Re operated in 11 offices worldwide with over 350 employees. He was a member of the Zurich North America Executive Management Group and board member of numerous Centre Re entities, including primary insurers, surplus lines insurers and reinsurers. He was also a board member of a specialty commercial insurance writer, a MGA for voluntary and forced-placed homeowners insurance and the second reinsurer to implement a Regulation 141 plan under the New York insurance law.

During his 13 years at Centre Re, Mr. Klaassen successfully underwrote and managed all types of (re)insurance transactions and developed and approved contract wording and pricing models. He is well versed and experienced in property & casualty structured risk transactions. He led Centre Re's North America property & casualty business, including the origination, structuring, negotiating and managing of both traditional and structured risk (re)insurance transactions. In addition, he managed several reinsurance arbitrations and workouts.▼

CONTINUED ON PAGE 32

in focus

Ann L. Field

Joel D. Klaassen

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Before joining Centre Re, Mr. Klaassen was an insurance tax partner with KPMG (working in the New York, Dallas and Des Moines offices) specializing in both life and property & casualty insurance tax matters. His clients ranged from multinational organizations to small mutual companies. He consulted on tax compliance matters, tax planning strategies, financial statement tax provisions, IRS audit and protest matters, tax legislation, mergers & acquisitions and international tax matters. He was a contributing author to Federal Income Taxation of Insurance Companies by KPMG Tax partners.

Mr. Klaassen is a graduate of Morningside College in Sioux City, Iowa. He is a member of the American Institute of Certified Public Accountants and the Iowa Society of Certified Public Accountants. He resides in Weston, Connecticut.▼

Frank A. Lattal

Griffith T. Parry

Brenda L. Ross-Mathes

Frank A. Lattal

Frank Lattal serves as Chief Claims Officer, and is the senior executive responsible for all aspects of claims management and administration for the ACE Group of Companies, worldwide. He has held that position since 2003.

Mr. Lattal joined ACE in December 1998 as Senior Vice President and Claims Counsel. In July 2000 he was promoted to manage the entire claims operation in Bermuda and, in January 2002, was appointed Executive Vice President and General Counsel with responsibility for the consolidated Claims and Legal departments of ACE Bermuda.

Prior to joining ACE, Mr. Lattal spent 14 years in private practice specializing in tort and insurance law as a partner in the New Jersey law firm of Connell, Foley & Geiser, LLP. He spent most of his legal career counseling, litigating and arbitrating on behalf of insurers and their insureds in a variety of areas including property, casualty and professional liability.

Mr. Lattal is admitted to practice law in both New York and New Jersey. He holds a Bachelor of Science degree in Accounting from Bucknell University, received his law degree from Valparaiso University School of Law, and holds a Master's Degree in Environmental studies from Montclair State University. He is a member of the Board of Directors of ARIAS•U.S.▼

Griffith T. Parry

Griffith Parry is an attorney with over thirty years experience in insurance and reinsurance, both as an insurance executive and private practice attorney. He commenced his insurance career with Metropolitan Life Insurance Company and started working with reinsurance at SwissRe Holding (North America) Inc.

From 1979 to 1984, Mr. Parry was an Assistant General Counsel for the Armco Insurance Group. He was then General Counsel and Secretary, Lyndon Insurance Company and ITT Lyndon Life Insurance Company, where he negotiated and drafted financial reinsurance treaties with nonaffiliated insurers. He was Vice President and General Counsel of Ranger Insurance Company, where he oversaw litigation and reinsurance arbitrations. In 1988 he joined a Newark law firm where he worked on the liquidation of Integrity Insurance Company. In 1997 he went to work for Delta America Re Insurance Company (In Liquidation) where he collected reinsurance recoverables and oversaw litigation against former managing general agents and former officers and directors of the company.

Since 2000, Mr. Parry has provided arbitration, audit and expert witness services. He has participated in over fifty arbitrations as a party appointed arbitrator, umpire and expert witness. He has also testified before a congressional subcommittee on the dangers of insurers giving broad underwriting authority to MGAs.

Mr. Parry received his BA from Trinity University and his JD from Duke University School of Law. His insurance industry credentials include an FLMI and CPCU. He is a member of the New York Federal Bars, and is admitted to practice law in Maryland, New York, New Jersey and Texas.▼

Brenda L. Ross-Mathes

Brenda Ross-Mathes is President of Grandview Re/Insurance Solutions, LLC, a consulting firm established to provide innovative solutions to solve complex issues in the fields of reinsurance, insurance and risk management.

Prior to starting her consulting business in 2006, Brenda was Vice President - Risk Management and Reinsurance at Nationwide, providing reinsurance and risk management services for the Fortune 100 corporation. This included balancing desired coverage, cost, availability and terms for Nationwide's reinsurance and corporate risk contracts, as well as efficient and effective

claims recovery from reinsurers and insurers.

During her 27 year career at Nationwide, Ms. Ross-Mathes practiced commercial insurance and assumed reinsurance underwriting, provided business continuity leadership, and brought integrity and creative solutions to ceded reinsurance and risk management. Her extensive experience includes property casualty insurance, reinsurance and retrocessions, life reinsurance, loss portfolio and merger and acquisition related reinsurance contracts, aggregate stop loss reinsurance, captives, and corporate insurance including directors and officers and errors and omissions.

In 1998 Best's Review profiled Ms. Ross-Mathes as one of "The newest crop of rising insurance leaders." A graduate of Denison University, she also achieved the Chartered Property and Casualty Underwriter (CPCU) designation and was a charter recipient of the Associate in Reinsurance (ARe) designation. Her professional training included time in the London insurance/reinsurance market and attending a reinsurance course at SAFR Re, Paris, France. Her speaking engagements have included topics such as "Improving Efficiency and Effectiveness in Reinsurance Claims Recovery", "Buying Catastrophe Reinsurance, Its Critical Clauses," and "Dynamic Financial Analysis."

Along with establishing Grandview Re/Insurance Solutions, LLC, she is taking classes at Columbus College of Art and Design. Her expert arbitration skills are also valuable in life with her husband, two sons, and a menagerie of animals.▼

David W. Smith

David Smith is an experienced lawyer with an extensive insurance/reinsurance background. He is skilled in domestic and international problem-solving, negotiation, compliance, corporate governance and investor relations. He is experienced as a senior executive, general counsel and Board member. He began his career with the American International Group in 1976 and soon became its Director of State Relations and Compliance, where he was involved in all aspects of the state regulation of insurance from supervising form and rate filings to handling Administrative Hearings throughout the United States. In addition, he launched a successful workers' compensation reform effort in Texas and represented the domestic companies before state legislatures and trade groups on tort reform.

In 1988, Mr. Smith moved to the international side of the business and was the Vice President and Associate General Counsel of AIU's Political Risk Division. While there, he facilitated claims matters, litigation, recoveries, and conducted negotiations with foreign governments. Most notably, he negotiated with the Joint Chiefs of Staff in a South American country and achieved a successful Debt Swap between a middle-East country and a European nation. In 1990, he joined the Transatlantic Reinsurance Company as its General Counsel and helped it become publicly listed on the New York Stock Exchange as Transatlantic Holdings, Inc. In addition to being its Senior Vice President and General Counsel, Mr. Smith was its Investor Relations representative to Wall Street analysts and investors.

In 1998, he joined the Gerling Global Reinsurance Corporation of America. Here, he provided leadership and guidance on legal and corporate initiatives for this U.S. subsidiary of a multinational company based in Germany. He managed the legal team and supervised the Human Resources Department. He left the organization in 2003 as it had stopped actively writing business and had entered run-off. Thereafter, Mr. Smith served as the umpire in an international arbitration and was briefly engaged in private practice. He rejoined its successor company, GLOBAL Reinsurance Corporation of America and its affiliates as its Executive Vice President and General Counsel in 2005. He is currently working in all aspects of its continuing run-off.

Mr. Smith is a graduate of the Trinity-Pawling School, Hobart College and Suffolk University in Boston from which he has a Masters in Business Administration and a Juris Doctor.▼

in focus

David W. Smith

feature

Federal Court Breaks Umpire Selection Deadlock

Case Notes Corner is a periodic feature on significant court decisions related to arbitration

Ronald S. Gass

When party-arbitrators (and their appointing parties) are at loggerheads over umpire selection, the entire arbitral process quickly grinds to a halt.

Ronald S. Gass

When party-arbitrators (and their appointing parties) are at loggerheads over umpire selection, the entire arbitral process quickly grinds to a halt. Usually one party or the other is then compelled to seek judicial relief pursuant to §§ 4 and 5 of the Federal Arbitration Act ("FAA") if the matter is subject to federal court jurisdiction. The courts have taken a variety of approaches to resolve such problems as illustrated by a recent California federal district court decision, which dealt with an umpire selection stalemate in combination with an effort by one party to stay four related arbitrations and consolidate them with a fifth after a state court in another jurisdiction had appointed an umpire that party had proposed.

The party-arbitrators in the four related arbitrations between a cedent and three reinsurer affiliates of the same parent company had been wrangling over umpire selection and apparently bogged down at the point when umpire slates were to be exchanged. The arbitration clauses in each of the four reinsurance contracts at issue were identical and provided for the two party-arbitrators to attempt to agree on a third. If they were unable to do so within 30 days of their appointment, each was to name two candidates, decline one, and then draw lots. As is typical, no time frame was specified for the exchange of umpire slates. To break this multiple umpire selection deadlock, the cedent petitioned the California federal district court for relief.

Meanwhile, a fifth arbitration had been commenced between the same parties, and, again, umpire selection was at an impasse. This dispute was referred to a Massachusetts state court, which had issued an order appointing an umpire whose name happened to have been proposed by the reinsurer. Before the now fully constituted Massachusetts panel, the reinsurer was allegedly planning to seek consolidation of all five arbitrations and sought to stay the four California arbitrations so that the other panel would be the first to rule on its consolidation motion.

The California federal district court cited as the applicable standard § 5 of the FAA, which provides that if a party fails to avail itself of the umpire selection method prescribed by the parties' agreement, then upon application of either party, the court "shall designate and appoint an arbitrator or arbitrators or umpire, as the case may require." Citing a 1987 U.S. Court of Appeals for the Ninth Circuit decision, *Pacific Reinsurance Management Corp. v. Ohio Reinsurance Corp.*, 814 F.2d 1324 (9th Cir. 1987), the court adopted a two-prong procedure to break the umpire selection deadlock.

The first prong of the court's order mandated compliance with the terms of the parties' arbitration agreement. The parties were required to exchange umpire slates within 30 days of the court's ruling. Seven days thereafter, the arbitrators were ordered to decline one from the other's slate and draw lots to select the umpire. If the arbitrators failed to follow this procedure, the second prong was to order the parties to submit their umpire slates in each of the four arbitrations, with umpire curricula vitae attached, within 37 days of the order. The court would then select the umpires from those slates.

As for the reinsurer's effort to stay the California arbitrations to seek consolidation with the one pending in Massachusetts, the court agreed that consolidation might be the parties' "most efficient course" (e.g., it probably would make more economic and practical sense from a business perspective and avoid the risk of inconsistent rulings), but it was not persuaded that a stay of these proceedings was warranted because "[t]he issue of whether, when, and how to consolidate these arbitrations is for the arbitration panels to decide." It found no

Mr. Gass is an ARIAS•U.S. Certified Arbitrator and umpire. He may be reached via e-mail at rgass@gassco.com or through his Web site at www.gassco.com.

legal basis under the case law, the FAA, or the parties' arbitration clause for it to refrain from proceeding with its statutory duty under § 5.

The court's ruling, however, highlights the evolving, and still murky, status of arbitration consolidation motions under the current law. Which of the five panels in this scenario gets to decide whether one or more of the other arbitrations will be stayed and consolidated? The first to rule? What happens if the various panels reach different conclusions about which, if any, of the other arbitrations ought to be consolidated or one declines to obey another panel's consolidation order? Reciting their mantra that the consolidation issue is one for the arbitration panels to decide, will the courts continue to refuse to get involved in such disputes? The potential tactical benefits of getting the panel with your umpire candidate on it to seize control of the other arbitrations by means of a consolidation motion, particularly when the adverse party's candidate is the umpire in some or all of them, underscores the many challenging issues that will be playing out before arbitration panels and the courts in the years, if not decades, ahead.

Clearwater Insurance Co. v. Granite State Insurance Co., 2006 U.S. Dist. LEXIS 74771 (N.D. Cal. Sept. 29, 2006). ▼

The court's ruling, however, highlights the evolving, and still murky, status of arbitration consolidation motions under the current law.

ARIAS U.S.

Do you know someone who is interested in learning more about ARIAS•U.S.?

If so, pass on this letter of invitation and membership application.

An Invitation...

The rapid growth of ARIAS•U.S. (AIDA Reinsurance & Insurance Arbitration Society) since its incorporation in May of 1994 testifies to the increasing importance of the Society in the field of reinsurance arbitration. Training and certification of arbitrators through educational seminars, conferences, and publications has assisted ARIAS•U.S. in achieving its goals of increasing the pool of qualified arbitrators and improving the arbitration process. As of early November 2006, ARIAS•U.S. was comprised of 503 individual members and 103 corporate memberships, totaling 1040 individual members and designated corporate representatives, of which 309 were certified as arbitrators.

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

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

New in 2003 was the "Search for Arbitrators" feature on the website that searches the detailed background experience of our certified arbitrators. The search results list is linked to their biographical profiles, containing specifics of experience and current contact information.

In recent years, ARIAS•U.S. has held conferences and workshops in Chicago, Marco Island, San Francisco, San Diego, Philadelphia, Baltimore, Washington, Boston, Miami, New York, Puerto Rico, Palm Beach, Las Vegas, and Bermuda. The Society has brought together many of the leading professionals in the field to support its educational and training objectives.

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

If you are not already a member, we invite you to enjoy all ARIAS•U.S. benefits by joining. Complete information is in the membership area of the website; an application form is on the following page and on the website, along with an online application system. If you have any questions regarding membership, please contact Bill Yankus, Executive Director, at info@arias-us.org or 914-966-3180, ext. 116.

Join us and become an active part of ARIAS•U.S., the leading trade association for the insurance and reinsurance arbitration industry.

Sincerely,

Mary A. Lopatto
Chairman

Thomas L. Forsyth
President

ARIAS U.S. Membership Application

AIDA Reinsurance & Insurance Arbitration Society
PO BOX 9001
MOUNT VERNON, NY 10552

Complete information about ARIAS•U.S. is available at www.arias-us.org. Included are current biographies of all certified arbitrators, a current calendar of upcoming events, online membership application, and online registration for meetings.

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