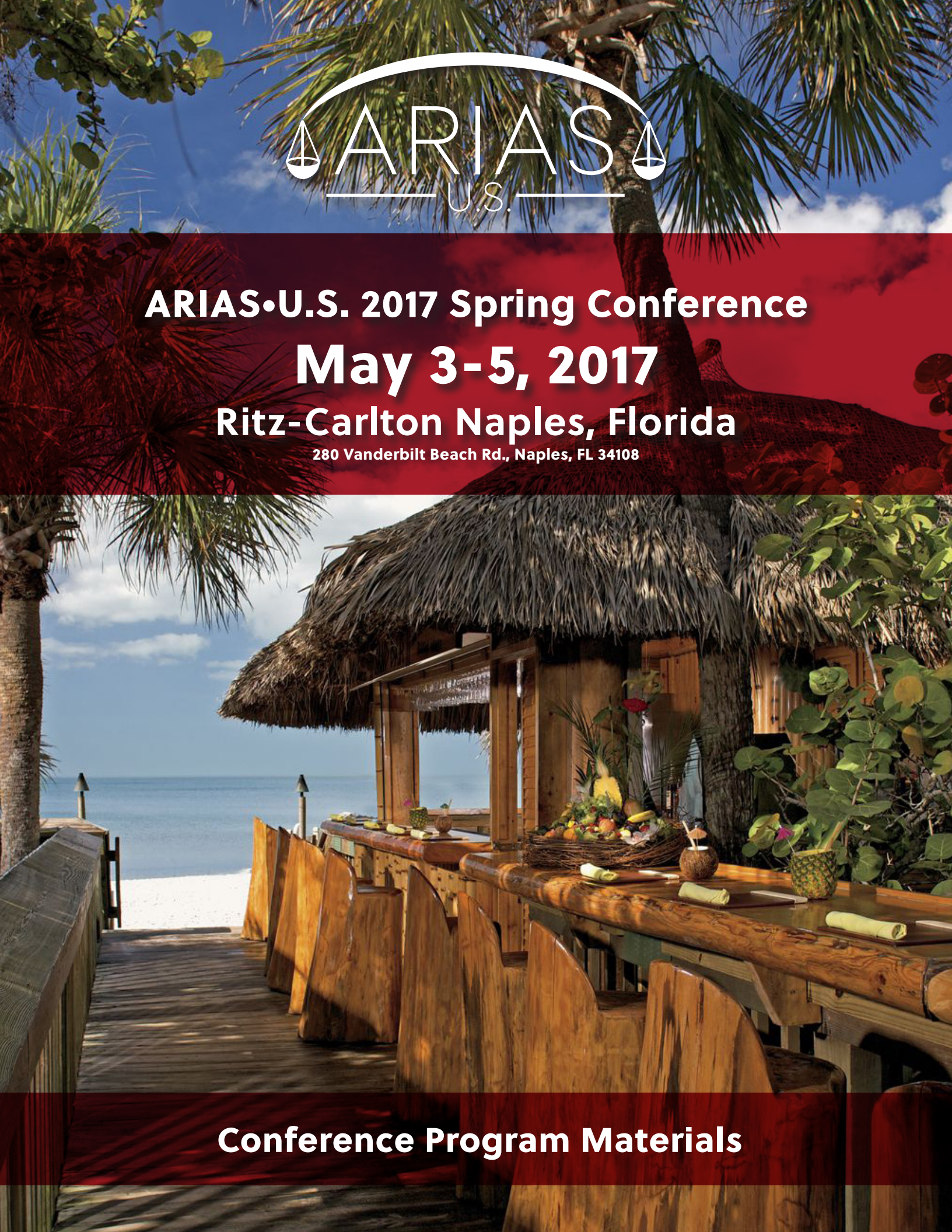

ARIAS•U.S. 2017 Spring Conference

May 3-5, 2017

Ritz-Carlton Naples, Florida

280 Vanderbilt Beach Rd., Naples, FL 34108

Conference Program Materials

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General Information

Welcome to the 2017 ARIAS•U.S. Spring Conference!

ATTIRE – The general dress code for the conference is "business casual." This means that while speakers and panel members may be in business professional attire with a tie or suit jacket, it is not a requirement for attendees. Usually at these conferences, attendees will dress up a bit more for the evening reception.

BADGES – Conference badges will be issued to all attendees. Please wear your badge at all times to access all conference functions.

SESSION MATERIALS – While most session materials are in the conference program, some materials may be published online due to length.

BREAKOUT SESSION ROOM ASSIGNMENTS – Room assignments for the Wednesday afternoon Emerging Risks Roundtable topics and the Thursday morning Ethical Issues Breakout Session will be included your materials distributed onsite during registration. Please refer to the appropriate lists for your assigned session room. Be sure to attend your assigned session and fill in each seat to ensure that all attendees have a seat and sessions can begin on time.

CONTINUING LEGAL EDUCATION – Continuing legal education credits will be awarded for the State of New York and are pending for Illinois and Pennsylvania. Sign-in and sign-out sheets are for attorneys who wish to receive CLE Credit. Certificates of attendance will be based solely upon these sheets. You must sign in and out each day to receive credit for the day. There will be sign in and out sheets on tables outside the General Session, next to registration. The sign in and out sheets for the Thursday Breakout Sessions will be on tables near each room, and signage will be displayed clearly for each session. Make sure you sign in and out of the various sessions with the time you arrive and the time you leave in order to receive full credit. Certificates of attendance will be sent via email to everyone who has signed in and out. **This is required by the New York State CLE Board.**

ARIAS•U.S. CERTIFICATION – Anyone receiving credit for ARIAS•U.S. Certification does not have to sign in and out and will not be provided with a certificate of completion for the training. Participants however must be in the training session and not in the hallways. This is a directive from the ARIAS•U.S Board of Directors.

OBTAINING CREDIT FOR THE CONFERENCE – You will not receive full credit for a session if you are standing in the hallways or arrive late or leave early. The training is taking place in the session rooms; you must be inside. This is true both for CLE training and for ARIAS•U.S. Certification credit. To be clear, anyone who is not in the session rooms will not receive credit for attendance in order to meet the requirements for certification/recertification.

OPINIONS AND COMMENTS – Opinions and comments expressed in the enclosed materials and during the conference sessions are not necessarily those of ARIAS•U.S., the firms or companies with which the speakers are associated, or even the speakers themselves. Some arguments are made in the context of fictitious disputes to illustrate methods of handling issues; others are individual opinions about the handling of an issue. Every dispute or matter presents its own circumstances that provide the context for decisions.

Finally, please note that this conference will be conducted in accordance with the ARIAS•U.S. Antitrust Policy, which is enclosed and is also available in the About ARIAS·U.S. section of the website (www.arias-us.org).

We hope you enjoy the conference!

Welcome from the Conference Program Co-Chairs

Dear Colleagues,

We invite you to join us at the Ritz-Carlton in Naples, Florida, for what we promise will be a thought provoking program where you will have the opportunity to express your views on the issues discussed. The sessions will feature small groups and fast-paced panel discussions with attendees' participation. We have worked to include arbitrators, company representatives and attorneys in private practice as discussion leaders and moderators. The sessions are designed for everyone's active participation. Once again, the programs are the product of submissions by our members in response to a request for proposals that emphasized and required programs that were interactive and lively.

Prior to the official opening of the conference, there will be a data protection workshop for arbitrators. Secure e-mail and encryption will be covered. Technical assistance will be provided to arbitrators in downloading appropriate software, so bring your laptop. Prior to the official opening, the women's networking group will meet for breakfast.

The opening panel will address the pending New York Court of Appeals acceptance of the certified question from the Second Circuit Court of Appeals regarding the long-standing *Bellefonte* issue.

You will enjoy the next segment, which will be a series of roundtable discussions on emerging issues. Attendees will be invited to be active participants in these small group discussions. The emerging issues to be discussed include autonomous vehicles, big data, blockchain technology, cybersecurity, drones, enterprise risk management, genetically modified organisms, opioids and talc.

We lead off Thursday morning with a panel discussion on the limits of extra-contractual obligations in both property casualty and life reinsurance.

Our ethics segment this year will have a different focus. We will focus on ethical issues faced by attorneys in litigation collateral to arbitrations–before, during and after the arbitration process. This session will be conducted as a series of breakout sessions where debate and discussion of best practices will be encouraged.

Friday morning will lead off with a panel discussion on the business aspects of commutations. Topics such as commutation strategy and the role of commutations in runoff will be covered.

In mid-morning, we will move to a case presentation competition. Ten presenters will each be allotted three minutes to discuss what they believe has been the most critical and important insurance or reinsurance case in the last three years. After the presentation, there will be questions and discussions and the attendees will vote on who made the most persuasive argument for the most significant case.

We will continue on Friday with a panel on the recently negotiated Covered Agreement between the United States and the European Union. This will take the form of an exchange of views for and against the agreement.

We will conclude with a segment geared to international arbitration. The panel on this program will discuss dispute resolution involving U.S. and Latin American reinsurance relationships.

As is customary, each evening will feature a networking reception and an opportunity to catch up with fellow attendees.

All program materials will be provided electronically in advance of the conference, and hard copies will be provided onsite when attendees check into the conference at the registration desk. No conference materials will be mailed out in advance.

This conference will be conducted in accordance with the ARIAS·U.S. Antitrust Policy, which is available in the *About ARIAS•U.S.* section of the website at www.arias-us.org.

Sincerely,

Program Co-Chairs:

Deidre Derrig
Allstate Insurance Company

Sylvia Kaminsky
ARIAS•U.S. Arbitrator

John M. Nonna
Squire Patton Boggs (US) LLP

Larry P. Schiffer
Squire Patton Boggs (US) LLP

Wednesday, May 3, 2017

Pre-Conference Sessions

8:30 a.m. – 10:30 a.m.

WOMEN'S NETWORKING GROUP

Artisans

Engage and inspire at this year's women's networking event! Meet with (re)insurance industry colleagues and discuss important topics pertaining to enhancing your brand, tapping into a supportive network, and building stronger alliances. *Please ensure your travel arrangements allow you the chance to attend this exciting event.*

10:00 a.m. – 12:00 p.m.

PRE-CONFERENCE WORKSHOP:
Data Protection for Arbitrators Workshop – Secure Email and Encryption

Salon III & Salon IV

Data protection has become an increasingly important issue in this connected age where data information is constantly being gathered and shared. Even tech giants such as Apple, Google, and Facebook are enhancing online protection and expanding encrypted messages for millions of users. This hands-on, practical workshop with cybersecurity experts will include an overview of how to use and where to obtain secure email, disk, and file encryption software programs. Handouts will provide various software options and instructions. Technical assistance will be available to help arbitrators download and install software if needed. Arbitrators should bring their business laptops with them to this workshop.

Rotation 1: 10:00 – 10:55
Rotation 2: 11:00 – 11:55

Workshop Leaders: *Michael Menapace, Wiggin and Dana*
Randi E. Ellias, Butler Rubin Saltarelli & Boyd LLP

11:00 a.m. – 1:00 p.m.

ARIAS•U.S. Board Meeting

Boardroom - Mezzanine Level

Wednesday, May 3, 2017

11:30 a.m. – 1:00 p.m.

REGISTRATION

Registration Foyer

Thank you to our Lanyard sponsor FTI Consulting

11:30 a.m. – 1:00 p.m.

OPENING LUNCHEON

Center Court

1:00 p.m. – 1:05 p.m.

GENERAL SESSION: Welcome from the Chairman

Vanderbilt Ballroom

James I. Rubin, ARIAS·U.S. Chairman
Butler Rubin Saltarelli & Boyd LLP

1:05 p.m. – 1:15 p.m.

GENERAL SESSION: Welcome from the Conference Co-chairs

Vanderbilt Ballroom

Deidre Derrig, Allstate Insurance Company
Sylvia Kaminsky, ARIAS•U.S. Arbitrator
John M. Nonna, Squire Patton Boggs (US) LLP
Larry P. Schiffer, Squire Patton Boggs (US) LLP

1:15 p.m. – 2:05 p.m.

GENERAL SESSION: Opening Keynote

Vanderbilt Ballroom

Michael T. McRaith,
Former Director of the Federal Insurance Office

2:05 p.m. – 2:35 p.m.

Refreshment Break

Vanderbilt Courtyard

2:35 p.m. – 3:25 p.m.

GENERAL SESSION: Looking Back and Fast Forwarding – Is *Bellefonte* Dead or Destined to Rule?

Vanderbilt Ballroom

In one of the most significant cases for the industry in years, the Second Circuit and New York Court of Appeals have insurers, reinsurers, and intermediaries alike on edge. Will the New York Court of Appeals answer the Second Circuit's certified question to create a presumptive rule from its decision in *Excess*? How will the Second Circuit react to the answer to the certified question? Will *Bellefonte* expand beyond facultative certificates? And does any of it matter for arbitration? Come prepared to participate as our expert panel engages a lively and thought-provoking discussion of these and other issues. Not to be missed!

Panel:
Amy S. Kline, Saul Ewing LLP
Charles Scibetta, Chaffetz Lindsey LLP
Sean T. Keely, Hogan Lovells US LLP
Patricia Taylor Fox, American International Group

3:35 p.m. – 5:25 p.m.

New!

CONVERSATIONS THAT MATTER – ROUNDTABLE DISCUSSIONS: Emerging Risks– New and Evolving

Room assignments will be provided onsite at check-in based on preferences provided during online registration. Please check the handout you receive with your on site materials.

The risk landscape is ever evolving as emerging risks continue to develop and change at a rapid pace. For the (re)insurance industry, the march of progress and modern technology have heightened the awareness of risk, creating a sense of uncertainty as well as unexpected opportunities. What are these new and unforeseen risks, and what opportunities do they present to (re)insurers? Connect with other participants in small, in-depth, roundtable discussions moderated by industry experts. Seize the opportunity to discuss new trends, exchange best practices, and build on existing knowledge. Each roundtable will focus on an emerging risk topic, including autonomous vehicles, big data, blockchain technology, cybersecurity, drones, ERM, GMOs, nanotechnology, the opioid crisis, and talcum powder.

Round 1: 3:35 p.m. – 4:25 p.m.

Round 2: 4:35 p.m. – 5:25 p.m.

Roundtable Leaders:

Kelsey Brunette, Munich Re America (Autonomous Vehicles)
Dale Crawford, ARIAS•U.S. Arbitrator (Autonomous Vehicles)
Carl Harris, ISC Strategies Consulting (Big Data)
Royce Cohen, Tressler LLP (Big Data)
Jonathan Kline, Smith, Gambrell & Russell (Blockchain Technology)
Jay Kenigsberg, Rivkin Radler (Blockchain Technology)
Tom Cunningham, Sidley Austin LLP (Cybersecurity)
Elizabeth Kniffen, Zelle LLP (Cybersecurity)
David McLauchlin, The McLauchlin Law Group (Drones)
Laura A. Foggan, Crowell & Moring LLP (Drones)
Timothy Morris, Hanover Stone Solutions, LLC (ERM)
Robert DiUbaldo, Carlton Fields (GMOs)
Mitchell Gibson, Swiss Re (GMOs)
Joseph Sano, Prince Lobel Tye LLP (Nanotechnology)
Tom Bernier, Goldberg Segalla LLP (Nanotechnology)
Ryan Russell, San Francisco Reinsurance Company (Talc)
Timothy Curley, San Francisco Reinsurance Company (Talc)
Kevin J. Tierney, Disability RMS (Opioid Crisis)

6:00 p.m. – 7:30 p.m.

COCKTAIL RECEPTION

Center Court

Thursday, May 4, 2017

6:15 a.m. – 7:15 a.m.

ARIAS·U.S. 3K or 5K Fun Run

Thank you to our Fun Run sponsor Crowell & Moring LLP

Rise and run! Join us for a 3K or 5K race on the Ritz-Carlton property. Runners will pace themselves around the scenic course while walkers circumnavigate the course on one rotation. Juice, fruit and iced towels will be made available at the finish line.

7:00 a.m. – 8:00 a.m.

BREAKFAST

Center Court

7:00 a.m. – 8:00 a.m.

ARIAS•U.S. COMMITTEE MEETINGS

Strategic Planning Committee *- Plaza II*

International Committee *- Plaza III*

Arbitrator Committee *- Artisans*

8:00 a.m. – 9:00 a.m.

GENERAL SESSION:
Coloring Outside the Lines: The Limits of Extra-Contractual Obligations in Life and Property/ Casualty Reinsurance

Vanderbilt Courtyard

How can ceding companies collect problematic exposure under extra-contractual obligations provisions? This looming issue cuts across both the life and property-casualty industries. Join us as present and former reinsurance executives and counsel explore the commonalities and differences posed by ECO clauses in life and property-casualty reinsurance contracts. Together with audience participants, this interactive panel will tackle the issues that arise in reinsurance arbitrations, such as how to deal with allocation among underlying primary and excess policies and whether to cede high-profile life settlements involving costs of insurance and abandoned property.

Panel:
Susan E. Mack, Adams and Reese LLP
Michael Steinlage, Larson King, LLP
Steven Najjar, Hannover Life Reassurance Co. of America
John M. Parker, Reinsurance Arbitrator

9:00 a.m. – 9:40 a.m.

ORGANIZATIONAL UPDATES AND COMMITTEE REPORTS

Vanderbilt Ballroom

9:40a.m. – 10:10 a.m.

REFRESHMENT BREAK

Vanderbilt Courtyard

10:10 a.m. – 12:00 p.m.

BREAKOUT SESSION DISCUSSIONS: Best Practices and Ethical Issues in Collateral Litigation – Pre-, During, and Post-Arbitration

Room assignments will be provided onsite based on preferences provided during registration.

What is best practice when it comes to confidentiality, venue, and the role of courts in collateral litigation? Although arbitration produces a great deal of collateral litigation, the industry still has no established or shared best practices on these topics. During this session, participants will demonstrate their knowledge, experience, and lessons learned in handling complex matters. This session will be divided into three interactive segments: pre-, during, and post-arbitration. It will focus on the hot-button legal and ethical issues that companies and their outside counsel face on a regular basis when managing arbitrations. Get ready to debate topics where reasonable minds can differ!

Rotation 1: 10:10 – 10:40
Rotation 2: 10:50 – 11:20
Rotation 3: 11:30 – 12:00

Discussion Leaders:
Matthew T. Furton, Locke Lord LLP
Nick J. DiGiovanni, Locke Lord LLP
Peter Gentile, ARIAS•U.S. Arbitrator
Stephen M. Kennedy, Clyde & Co US LLP
Kim D. Hogrefe, Independent Arbitrator
Katherine Billingham, Scottish Re Life Corporation
Howard R. Page, Resolute Management Services Ltd.
David Bradford, Zurich North America
Jonathan Bank, Locke Lord LLP
Spiro Bantis, London Fischer LLP
Bruce Engel, Freeborn & Peters
John O'Bryan, Freeborn & Peters
Bill O'Neill, Crowell & Moring LLP

12:00 p.m. – 1:00 p.m.

LUNCHEON

Center Court

12:00 p.m. – 12:30 p.m.

TRANSPORTATION TO TIBURON GOLF COURSE & BOXED LUNCHES

(Available for Golf activity participants)

Tiburon Golf Course

1:00 p.m. – 6:00 p.m.

OPEN FOR OPTIONAL ACTIVITIES AND NETWORKING

1:30 p.m. – 5:30 p.m. — GOLF TOURNAMENT

Tiburon Golf Course

Thank you to our Golf sponsor

VOCKE LAW GROUP

2:00 p.m. – 4:00 p.m. — BOCCE BALL TOURNAMENT

Beachside

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Allstate. You're in good hands.

6:30 p.m. – 8:00 p.m.

COCKTAIL RECEPTION

Poolside

Friday, May 5, 2017

7:15 a.m. – 8:15 a.m.

BREAKFAST

Center Court

8:15 a.m. – 9:00 a.m.

GENERAL SESSION:
A Fresh Perspective on the Business Aspect of Commutations

Vanderbilt Ballroom

What are the keys to a successful commutation strategy? What pitfalls should be avoided? What approaches and techniques can be used with the commutation of reinsurance agreements, and what is the rationale for their use? Join our panel of highly qualified industry practitioners for key insights on successful commutation strategy and the role of commutation agreements in managing runoff in the current business environment. This session will engage participants through interactive discussions on topics, including key issues related to commutation of reinsurance agreements and understanding the current business climate and impact on commutations of reinsurance agreements.

Panel:
Wm. Gerald McElroy, Jr., Zelle LLP
Leah A. Spivey, Munich Re America, Inc.
Richard Dupree, Travelers Insurance Companies
Andre Lefebvre, Arrowpoint Capital
Paul Edward Dassenko, AzuRe Advisors, Inc.

9:00 a.m. – 10:00 a.m.

GENERAL SESSION:
New! Rapid Fire Case Presentations

Vanderbilt Ballroom

Join us for this unique and fast-paced session! Hear from experienced and distinguished practitioners as they compete to convince the audience that they have the most important case in insurance and reinsurance law. Each presenter will be given three (3) minutes to provide a snapshot of their case, using just a few illustrative slides regarding, ***"the most critical or important reinsurance or insurance case within the last three years."*** The session will consist of 10 presentations in 30 minutes, followed by 30 minutes of moderated questions, discussion and audience voting for the winner. This is one session you don't want to miss!

Moderator: *Damon N. Vocke, Vocke Law Group LLP*
Presenters:
Scott R. Osterichер, Vocke Law Group LLP
Eridania Perez, Squire Patton Boggs (US) LLP
Alysa B. Wakin, Odyssey Reinsurance Company
David Bradford, Zurich North America
Wesley Sherman, Transatlantic Reinsurance Co.
Robert A. Badgley, Karbal Cohen Economou Silk & Dunne
Jan Woloniecki, ASW Law
Perry Granof, Granof International
Jeffrey Burman, American International Group
Brendan McQuiggan, Chubb
Michael Thompson, Wiggin and Dana LLP

10:00 a.m. – 10:30 a.m.

REFRESHMENT BREAK

Vanderbilt Courtyard

10:30 a.m. – 11:20 a.m.

GENERAL SESSION:
Is the New U.S.-EU Covered Agreement Good for the Industry, and Will the New Administration Make Changes?

Vanderbilt Ballroom

On January 13, 2017, the U.S. Treasury Department and the Office of the U.S. Trade Representative advised Congress that they had negotiated a bilateral trade agreement, known as a "covered agreement," with the European Union ("EU"). The covered agreement impacts reinsurance collateral, group supervision, and the exchange of insurance information between U.S. and EU regulators. Yet unknown is whether the new administration will allow for the implementation of the covered agreement and, if so, its effective date. Learn about the covered agreement as representatives from the reinsurance community and the National Association of Insurance Commissioners debate its "pros" and "cons" in what is expected to be a very lively and informative session.

Moderator: *Bruce Baty, Dentons US LLP*

Panel: *Tracey Laws, Reinsurance Association of America*
John Huff, Immediate Past President of the NAIC and Immediate Past Director of the Missouri Insurance Department

11:20 a.m. – 12:10 p.m.

GENERAL SESSION:
Dispute Resolution Involving U.S./Latin America Reinsurance Relationships

Vanderbilt Ballroom

Increasingly common, cross-border disputes involve different cultures, legal systems, and business concepts. Likewise, the resolution of disputes arising from U.S./Latin America reinsurance relationships has gone from handshake deals to highly disputed arbitration and litigation. Thinking globally, this panel will examine, compare, and contrast how disputes arising out of U.S./Latin America reinsurance relationships have been, are, and should be resolved. Panelists will discuss the approach of national laws to arbitration of disputes as well as relevant international conventions and current trends and best practices.

Panel: *Yves Hayaux-du-Tilly, Nader Hayaux & Goebel*
Edward K. Lenci, Hinshaw & Culbertson LLP
Ricardo Morales-Gomez , Assurant
Carlos A. Romero, Jr., Post & Romero
Raymundo Arenas, AXA Seguros

12:10 p.m. – 12:15 p.m.

CLOSING REMARKS

Vanderbilt Ballroom

James I. Rubin, ARIAS·U.S. Chairman, Butler Rubin Saltarelli & Boyd LLP

NYS CLE Credit: Ten hours of Continuing Legal Education credits are available to those who attend this conference, which breaks down as follows: 1.5 CLE credits for Ethics, 8.5 CLE credits for Areas of Professional Practice. This program is structured for both newly-admitted attorneys and experienced attorneys. Sign-in and sign-out sheets will verify attendance at all sessions and will be the basis upon which certificates of attendance will be prepared and sent, but certification of completed credit hours to CLE Boards is the responsibility of each attorney.

Raymundo Arenas Pereda, LLM
AXA Seguros

Raymundo Arenas is a Litigation & Dispute Resolution attorney in AXA Seguros, Mexico. A significant part of Mr. Arenas' practice centers on complex claims, civil and commercial litigation. His experience also includes coverage, general liability, breach of contract, reinsurance, real estate and corporate disputes. Mr. Arenas has represented AXA Seguros in litigation in state and federal courts throughout Mexico and abroad.

Mr. Arenas has also experience in US litigation. Before joining AXA Seguros in 2011, he worked in a regional law firm in Arizona assisting attorneys in civil in commercial litigation.

Mr. Arenas graduated in 2005 with a bachelor degree of laws from Universidad La Salle in 2005. He continued his legal education in The University of Arizona, earning a master degree in International Trade and Business Law in 2009.

In 2009, The University of Arizona selected Mr. Arenas' thesis entitled "Registering and Enforcing Security Interests: A Comparative Analysis between Mexican and American Law" to be presented at the North American Consortium for Legal Education workshop, which was published in 2011 by LAP Lambert Academic Publishing.

Robert A. Badgley
Karbal Cohen Economou Silk & Dunne

Robert Badgley is a member of the Chicago law firm Karbal Cohen Economou Silk & Dunne. Since 1991, he has represented domestic and overseas reinsurers in numerous reinsurance lawsuits and arbitrations involving a wide range of claims (*e.g.*, first-party property, long-tail casualty, 9/11, Enron, storm catastrophes). He has conducted scores of cedent audits and rendered reinsurance coverage opinions for thousands of claims. He also manages the coverage and claims issues for a major professional liability insurance program underwritten by Lloyd's of London syndicates. In addition, he has served as arbitrator in 200 cases for the World Intellectual Property Organization as one of WIPO's panelists for Internet domain name disputes. In 2002, he published a 600-page treatise, "Domain Name Disputes," through Aspen Law & Business. He received undergraduate degrees from the University of Illinois and the Université de Bourgogne, and received his law degree from the University of Chicago Law School.

Bruce Baty
Dentons US LLP

Bruce Baty is the co-chair of Dentons' Insurance Regulatory Practice Group and co-chair of the Firm's Insurance Sector. With more than 30 years of experience, his practice focuses exclusively on representing property & casualty and life, accident and health insurance companies and reinsurance companies in regulatory, transactional and litigation matters. He is particularly known for his work in designing and implementing reinsurance programs and other alternative risk transfer vehicles, his regulatory experience in dealing with state insurance departments and advising clients with respect to insurance insolvencies.

Thomas P. Bernier
Goldberg Segalla LLP

Thomas P. Bernier is a partner in Goldberg Segalla's Baltimore office and Chair of the Nanotechnology Practice Group — a subgroup of the Toxic Torts and Environmental Practice Group. Mr. Bernier has spent more than three decades defending complex toxic tort actions, with particular concentration on claims alleging exposure to Legionella and other waterborne pathogens, asbestos, lead paint, carbon monoxide, and mold. He is a frequent author and presenter on topics pertaining to his areas of practice, and has had two seminars recognized by the Maryland Institute for Continuing Professional Education of Lawyers (MICPEL) as "Best of MICPEL" seminars. Mr. Bernier is an active member of several prominent legal and professional organizations, including the Defense Research Institute, the American Bar Association, and the Maryland Defense Counsel, Inc. He has also been recognized as a Top 100 Litigation Lawyer, and in *The Best Lawyers in America* and Maryland *Super Lawyers*.

Katherine Billingham
Scottish Re

Katherine Billingham has thirty-five years of reinsurance and insurance experience as an attorney, arbitrator and mediator. She currently serves as VP and General Counsel for Scottish Re, a life reinsurance company. After working in an insurance defense law firm in the early 1980's, she moved into reinsurance as VP and General Counsel of Universal Reinsurance Corporation (Bellefonte) and its affiliates. In 1990 she started her own firm and has represented insurance and reinsurance companies in various matters, both in direct coverage cases as well as reinsurance disputes, including environmental, asbestos and other commercial general liability exposures. She has also served as the Reinsurance Consultant to the Ohio Insurance Department Liquidation Office.

In 2003 Ms. Billingham also started a consulting firm with a focus on providing mediator and arbitrator services for the insurance/reinsurance industry. She is a certified arbitrator and mediator with ARIAS, and a certified neutral with the American Arbitration Association. She has given numerous presentations and published several articles on mediations and arbitrations, and has taught many courses at the Charlotte School of Law.

She received a Juris Doctor from Stetson in 1982. Ms. Billingham is licensed to practice law in Florida, Ohio and North Carolina.

David Bradford
Zurich North America

David Bradford is a Vice President and Senior Assistant General Counsel within the Zurich Insurance Group. As such he provides counseling, regulatory and contract wording advice in connection with complex reinsurance transactions concerning North American business. In this capacity, Mr. Bradford furnishes legal advice regarding many different lines of Zurich's business. In addition, Mr. Bradford manages all reinsurance arbitrations and litigation concerning the Zurich North America underwriting companies. Prior to joining Zurich, Mr. Bradford practiced at the Chicago office of Lord, Bissell & Brook, where he concentrated his practice upon the litigation and arbitration of disputes of interest to reinsurers. His practice included the representation of reinsurers in disputes involving a broad range of contracts including general liability, property/casualty and surety reinsurance agreements. Mr. Bradford is admitted to practice law in Illinois. He is a graduate of the John Marshall Law School, and Luther College.

Kelsey Brunette
Munich Reinsurance America, Inc.

Kelsey Brunette is an Ideation Analyst at Munich Reinsurance America, Inc.'s (Munich Re) Incubator, a strategic business unit within New Strategic Markets. Her main responsibilities are vetting and analysis of new products and services, project management and coordination for Innovation Domains.

Kelsey is a graduate of the University of Michigan's Stephen M. Ross School of Business and Michigan State's College of Law as well as a member of the New Jersey Bar. She also spent time at the Michigan Department of Insurance, Michigan Millers Mutual Insurance, Ford Motor Company and GMAC. Speaking engagements include the Missouri Director's Regulatory Summit The Innovation Imperative and NAIC CIPR Regulatory Evaluation 2.0 – Meeting the Challenges of Innovation in addition to authoring, Back into the sandbox: How assumptions are the cornerstone of innovation, THE REGULATOR, Winter 2017.

Royce F. Cohen
Tressler LLP

A partner in Tressler's New York office, Royce Cohen is co-chair of the firm's reinsurance practice group. She focuses her practice on insurance and reinsurance arbitration and litigation. She has represented both cedents and reinsurers in a variety of matters, including comprehensive general liability, excess and umbrella liability, workers' compensation, asbestos, and environmental and property/casualty insurance. These matters include misrepresentations in connection with the placement of reinsurance, disputes as to the coverage provided by treaties and policies, standards of accountability of cedents as fronting

companies, standards of conduct applicable to ceding companies in their dealings with reinsurers, and disputes involving program managers. Royce also has extensive experience with e-discovery issues and regularly helps clients address the costs and risks associated with managing electronically stored information, particularly in connection to litigation and regulatory compliance.

Dale Crawford
ARIAS•U.S. Arbitrator

Dale Crawford began his career as an underwriter with Allstate, later moving to North American Reinsurance Corporation (Swiss Re America), and Bellefonte Re. Following a move west, he served as president and director of National Home Insurance Company RRG. His experience encompasses standard lines, worker's compensation, excess and surplus, managing general agents, and specialty markets in both insurance and reinsurance. Dale has attended ARIAS meetings since the 1994 inaugural conference. He has been a Certified Arbitrator since 1998, and has been appointed to 33 panels as arbitrator and umpire and has also served as an expert witness in numerous insurance and reinsurance matters including asbestos, environmental and construction defect disputes. Appointments have included parties in North and South America, Europe, Australia, and Bermuda. Dale has the CPCU and ARe designations, and an MBA degree from the University of Houston. He has taught numerous insurance courses and training seminars throughout his career.

Thomas D. Cunningham
Sidley Austin LLP

Tom Cunningham represents insurance companies in litigation, regulatory investigations, unclaimed property examinations, and compliance matters, including cybersecurity and data breach response. He regularly represents insurers and reinsurers in state and federal court or arbitration proceedings, including life reinsurance and health disputes, and is representing multiple life and health insurers in ongoing single and multi-state unclaimed property examinations. He has advised insurance and reinsurance companies on privacy, cybersecurity and data breach laws. Tom is a member of his firm's insurance and financial services group and its privacy, data security and information law group.

Timothy E. Curley
San Francisco Reinsurance Company

Tim is a reinsurance and insurance coverage attorney who currently serves as Senior Reinsurance Counsel at San Francisco Reinsurance Company. Tim previously served as an associate and counsel in the Insurance/Reinsurance Group at Crowell & Moring, where his practice included representing cedents and reinsurers in disputes involving a wide spectrum of reinsurance issues. Tim also previously practiced reinsurance at Chadbourne & Parke.

Tim's legal career outside of reinsurance has included periods of government service at the U.S. Department of Justice, the Department of Navy, and the U.S. Navy Judge Advocate General's Corps.

Paul E. Dassenko
Azure Advisors, Inc.

Paul Dassenko is an internationally recognized leader in the field of insurance runoff, restructuring and reorganization. He has also been responsible for two start-ups in the insurance space, most recently Risk Transfer Underwriting, Inc. ("RTU") in 2011. RTU is a Managing General Agent serving the self-insured and captive market.

During the past 24 years of his insurance career, Paul has maintained an active calendar of arbitration appointments, having been appointed in over 250 arbitrations. He is an ARIAS•U.S. Certified Arbitrator and Umpire, and is listed on the panel of ARIAS (UK) arbitrators.

Paul's arbitration experience in the "center chair" includes writing decisions in the UK, Bermuda, South America (in Spanish), and the US. He has been appointed as an arbitrator in AAA, ICDR, JAMS, ICC International Court of Arbitration, LCIA, and DIPC-LCIA (Dubai) arbitrations.

He's been an active member of the State Bar of California since 1979.

Deidre B. Derrig
Allstate Insurance Company

Deidre Derrig is corporate counsel with Allstate Insurance Company in Northbrook, Illinois. She joined Allstate in 1989 and provided legal services to the company's Reinsurance Division, which was sold in 1996 to SCOR Reinsurance Company. After serving as an assistant vice president and associate general counsel at SCOR, she returned to Allstate in 1999. Since 2006, Deidre has been involved with the negotiation, placement, and execution of Allstate's Catastrophe Reinsurance Program. In that role, she has gained experience in catastrophe reinsurance bonds, side-car arrangements, and fully collateralized catastrophe reinsurance placements. She is also involved with regulatory oversight of the program, including statutory reinsurance credit issues.

Nick J. DiGiovanni
Locke Lord LLP

Nick J. DiGiovanni leads Locke Lord's global reinsurance and insurance litigation groups, which include more than 40 lawyers nationally and internationally. He has more than 35 years of experience in commercial litigation, concentrating in reinsurance and insurance-related issues. His practice and experience involve national and international reinsurance disputes across all lines of business in litigation, arbitration, insolvency and rehabilitation proceedings. His clients include many of the world's major insurance and reinsurance companies in their roles as ceding companies, reinsurers, and retrocessionaires.

Robert W. DiUbaldo
Carlton Fields

Rob DiUbaldo is a Shareholder in the New York office of Carlton Fields and a member of its Property & Casualty Insurance and Life Insurance & Annuity practice groups. His practices focuses on commercial litigation and arbitration, with an emphasis on insurance and reinsurance disputes, as well as coverage and regulatory matters. Rob has litigated and arbitrated cases involving a broad range of issues in the P&C and life & health sectors, as well as various specialty re/insurance products. On the insurance coverage side, he represents primary and excess insurers in matters involving many different types of business, including CGL/GL, D&O/E&O, professional liability, property, cyber, life and health, workers' compensation, environmental, aviation, marine and energy, as well as in extra-contractual matters. Rob also represents insurers, banks and financial services companies in disputes involving their products or other commercial issues, including class actions.

Richard Dupree
Travelers Insurance Companies

Rick is responsible for ceded commutation and reinsurance insolvency activities in connection to all Travelers US Companies. He has held this position since 1998. Under Rick's direction, Travelers has secured over $2.7B in commutation funds and $160M insolvency collections. He also has extensive experience in the global reinsurance space including pooling arrangements, captives, solvent schemes, and Part VII Transfers. Rick sits on the Travelers Security Committee and chairs the Travelers Commutation Committee. He has also served on numerous UK insolvent creditor committees.

Since joining Travelers in 1989, Rick has worked in a wide variety of roles, including actuarial loss reserving and rate making, reinsurance security, reinsurance captive placement, collateral management, and Schedule f reporting.

Randi Ellias
Butler Rubin Saltarelli & Boyd LLP

Randi Ellias focuses her practice on complex commercial litigation and arbitration, including complex insurance coverage disputes and reinsurance matters. She has handled matters concerning allegations of nondisclosure and misrepresentation, treaty interpretation, ownership of common account reinsurance, direct access to reinsurance proceeds by policyholders, number of occurrences, contractual and statutory obligations regarding security, and compliance with actuarial standards of practice. She was named a leader in insurance law in *The Best Lawyers in America* (2016 and 2017).

Randi is a co-founder of Butler Rubin's Women in Reinsurance organization and she is a member of the Publication Committee of AIRROC Matters. She has spoken at AIRROC meetings and the Women in Insurance Leadership Forum.

She graduated *cum laude* and Phi Beta Kappa from Franklin & Marshall College, and received her J.D., *cum laude,* from Northwestern University School of Law.

Laura Foggan
Crowell & Moring LLP

Laura Foggan is a partner in Crowell & Moring's Washington, D.C. office, where she is a member of the firm's Insurance/Reinsurance Group. Ms. Foggan serves as lead counsel in a wide range of complex insurance matters, such as coverage disputes involving products liability, privacy and cyber claims, environmental and toxic tort claims, and construction claims, among others. She reviews and drafts policy language; monitors and advises insurers with respect to underlying claims; and counsels insurers on coverage issues under traditional and specialized policy forms. Ms. Foggan has participated in more than 200 appellate cases including key national precedents on insurance issues. She counsels property and casualty insurers on emerging risks and litigation trends including unmanned aircraft systems (UAS, or more commonly, drones), cyber-liability, global warming (climate change), nanotechnology, and additive ("3D") printing.

Patricia Taylor Fox
American International Group

Patricia Taylor Fox has almost 20 years experience in the insurance and reinsurance industry. She currently serves as Deputy General Counsel in the Reinsurance Legal Division of American International Group, Inc., where she is the head of the Dispute Resolution Unit. Ms. Fox began her career in reinsurance as an associate attorney at Werner & Kennedy. Before joining AIG's legal department, she was an associate with the law firm of Simpson Thacher & Bartlett LLP, where she concentrated her practice on the resolution of reinsurance litigations and arbitrations. Ms. Fox has co-authored articles on evidence in arbitrations, attorney-client privilege, the common-interest privilege and developments in reinsurance law, and is a frequent speaker on issues relating to the arbitration of reinsurance disputes.

Matt T. Furton
Locke Lord LLP

Matt Furton has a national business litigation and arbitration practice that includes representation of both plaintiffs and defendants, from pre-suit investigation through trial and appellate proceedings. Mr. Furton's commercial litigation experience includes claims for breach of contract, fraud, RICO and antitrust violations, securities fraud, consumer fraud, and various business torts. Much of the commercial litigation that Mr. Furton handles arises from the business of insurance. In the insurance industry, Mr. Furton represents insurers, reinsurers, brokers, third-party administrators, premium financiers, guaranty funds, and joint self-insurance pools. Mr. Furton also represents clients in connection with intellectual property disputes and litigation, including many disputes involving information technology assets such as software, hardware, databases, and networks. A significant portion of Mr. Furton's work includes arbitration. Mr. Furton has significant experience litigating the scope of arbitration agreements and the enforcement of arbitration awards. Mr. Furton has arbitrated multiple matters through a final hearing on the merits.

Peter Gentile
ARIAS•U.S. Arbitrator

Peter Gentile has served the insurance and re-insurance industries for over forty years; during the last fifteen years as an ARIAS – US Certified Umpire and Arbitrator. He has served on several arbitration panels both as an Umpire and Party Appointed Arbitrator. Mr. Gentile has also served as a litigation consultant and expert witness in a number of complex disputes involving insurers and re-insurers. Previously, Mr. Gentile was CEO. President and CFO. of major reinsurers where his responsibilities included all aspects of underwriting, claims, contracts and financial matters. Among his areas of expertise are alternative approaches to transferring both

long tail casualty and property risk, mergers and acquisitions, captives and run-off. Mr. Gentile is a Certified Public Accountant and began his career at the accounting firm of KPMG where he was a Partner and leader of the Insurance Practice in New York. He is both Treasurer and a Member of the Board of Directors of ARIAS•U.S.

Mitchell Gibson
Swiss Reinsurance America Holding Corporation

Mitchell Gibson is a Vice President and Claims Expert at Swiss Reinsurance America Holding Corporation. He leads Swiss Re's Global Latent/ Asbestos Expert Network and manages the resolution of reinsurance claims involving Asbestos, Pollution, and Health Hazard ("APH") exposures. He authors Swiss Re's EMF-RF summary paper. Prior to joining Swiss Re, Mr. Gibson established AXA's North American Commutation Department. Mr. Gibson earned his Bachelor of Science degree in Business from Mankato State University and a Master of Science degree in Insurance Management from Boston University. He is an ARIAS-US certified arbitrator.

Perry S. Granof
Granof International Group LLC

Perry S. Granof is the Managing Director of Granof International Group LLC. He is a recognized authority on Professional Indemnity insurance having overseen and negotiated to successful resolution thousands of complex domestic and multinational lawsuits in a 30 + year career. He has authored and co-authored numerous articles, and has spoken extensively throughout the world. Mr. Granof is also the Global Coordinator, Co-Editor and an Author of The Global Directors and Officers Deskbook published by the ABA in September 2014. Mr. Granof is a Member of the State Bar of Wisconsin, the Washington State Bar, and the American Bar Association (ABA). He serves on the Executive Board of the North American Branch of the Chartered Institute of Arbitrators (CIArb), as Chair of the ABA Tort Trial and Insurance Practice Section's (TIPS) Dispute Resolution Committee, and as Past Chair of the TIPS Professionals' Officers' and Directors' Liability and International Committees. He became a certified Mediator through Northwestern University's School of Continuing Studies, and obtained his Fellowship designation in International Commercial Arbitration from the CIArb. Mr. Granof can be reached at pgranof@granofinternational.com.

Carl Harris
ISC Strategies Consulting

Carl Harris is the Managing Principal of Insurance Strategies Consulting, LLC and ISC Strategies Consulting, Inc. He has worked in the life and health insurance industry since 1979 with experience in the US., Canada, South America, Latin America, Asia and the Caribbean and has worked for stock and life insurance companies and as a consultant. Carl has worked with clients in such areas as litigation support; product pricing; mutual reorganizations; reinsurance strategies including financial reinsurance; corporate appraisals, mergers & acquisitions and all forms of financial reporting. Carl is a Fellow of the Society of Actuaries, a member of the American Academy of Actuaries, a Fellow of the Conference of Consulting Actuaries and a Fellow of the Singapore Actuarial Society. Carl's publications include "What Is This Thing Called Mutual Insurance Holding Company" - IASA Interpreter, April, 1997, "Forthcoming NAIC White Paper Could Spur MHC Formation" – National Underwriter, June 22, 1998 and "Regulators and Insured's also have a stake in mergers and acquisitions" – The Actuary, May, 2003

Yves Hayaux du Tilly
Nader, Hayaux & Goebel

Better known as the Mexican lawyer with a French name in the City of London, Yves is the managing partner of the London office of the Mexican independent Law Firm, Nader, Hayaux & Goebel (www.nhg.com.mx), the only Mexican law firm with an office in London and splits his time between London and Mexico. Yves has been more than 25 years advising foreign investors into entering the Mexican market and in their Mexican related operations and transactions. Yves is a leading specialist in insurance and reinsurance matters in Mexico and throughout Latin America, where he advises clients in both corporate,

regulatory, product development and merger and acquisitions, and also in coverage issues and contentious matters, including arbitration. Yves has been a member of the Presidential Council of the International Association of Insurance Law (AIDA) since 2010, and a member of AMEDESEF (the Mexican Chapter of AIDA) since 1998. He served as President of AMEDESEF from 2005 to 2009, where he led the efforts to create ARIAS Mexico with the Centro de Arbitraje de Mexico (CAM). Yves is also an honorary member of the Commercial Bar (COMBAR) and participates actively in its North American Committee since 2008.

Kim D. Hogrefe
Independent Arbitrator

Kim D. Hogrefe is the Chair-Elect of the Board of Trustees of the National Judicial College (NJC), which provides educational programs and training to State Court, Administrative Law and Tribal Judges in the United States. He also currently serves on the Executive Committee of the NJC and is the Chair of its Finance and Audit Committee. Mr. Hogrefe is a retired Senior Vice President of Chubb & Son. He was the Worldwide Claim Technical Officer of Chubb's Claim Department, with responsibility for direct and reinsurance claims of the highest complexity and financial exposure. Mr. Hogrefe joined Chubb in 1986 after nine years of experience as a trial attorney, supervisor and administrator in the New York County District Attorney's Office. A graduate of Yale University and the University of Pennsylvania Law School, he is a member of the American Bar Association and served as the Financial Officer of the Tort Trial & Insurance Practice Section (TIPS). Mr. Hogrefe is a frequent speaker on the topics of cyberliability risks, mediation and resolution strategies, and Directors' and Officers' (D&O) liability claim handling.

John Huff
Immediate Past President of the NAIC and Immediate Past Director of the Missouri Insurance Department

John Huff is an insurance sector leader. He was appointed director of the Missouri Department of Insurance, Financial Institutions and Professional Registration by Gov. Jay Nixon and served eight years from Feb. 2009 until Feb. 2017. An attorney, Huff led the department that protects consumers through the regulation of professionals and businesses that impact Missourians' lives daily.

As director, Huff was elected by his peers to serve as the 2016 president of the National Association of Insurance Commissioners, the national insurance standard-setting organization for the United States.

In September 2010, he was appointed to the U.S. Financial Stability Oversight Council. Director Huff served two terms on the council and was the initial state insurance regulator appointed. The council was created by the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act.

Before entering public service, he spent 11 years as an executive with leading insurers and reinsurers, including Swiss Re and GE Insurance Solutions, with global responsibilities. Mr. Huff earned his bachelor's degree in business administration from Southeast Missouri State University. He earned an MBA at Saint Louis University and his juris doctor degree from the Washington University School of Law in St. Louis.

Sylvia Kaminsky
Insurance/Reinsurance Consultant

Sylvia Kaminsky is a certified ARIAS·U.S. arbitrator and umpire and an independent insurance/reinsurance industry consultant. For the first 15 years of her career, she was in private legal practice, focusing on coverage, defense, insurance, and reinsurance arbitration and litigation matters. She then joined Constitution Reinsurance Corporation as senior vice president, general counsel, and corporate secretary and served on the board of directors. She also served in the same capacity for Sirius Reinsurance Corporation (later Sirius America Insurance Company). Sylvia has served as a consultant and arbitrator, having participated in well over 175 arbitrations involving insurance, reinsurance, and security matters. She is the co-chair of the ARIAS Arbitrators Committee and a member of the ARIAS Law Committee. She is also on the Panel of Commercial Arbitrators and the Complex Coverage Neutral Evaluation Panel of the American

Arbitration Association; the arbitration panel of FINRA; and the panel of the International Institute for Conflict Prevention.

Sean T. Keely, Esq.
Hogan Lovells

Sean Keely is a partner in the New York office of Hogan Lovells. He has been involved in (re)insurance matters for more than 20 years, litigating and arbitrating commercial disputes with a particular focus on the (re)insurance industry.

Over the past several years, Sean has been at the center of cases addressing developing issues in the industry, including late notice, allocation and aggregation of losses, follow-the-settlements, breaches of the duty of utmost good faith, material misrepresentation, and insurer insolvency. Sean has been a ranked lawyer in Chambers USA for Insurance Dispute Resolution for 2014 and 2015, and he has been listed in Who's Who Legal Insurance and Reinsurance for 2012 through 2015.

Jay D. Kenigsberg
Rivkin Radler LLP

Jay D. Kenigsberg represents major domestic insurance carriers in a wide variety of coverage disputes, including actions involving pollution liability, individual disability, and Employee Retirement Income Security Act (ERISA) claims. Over the course of more than twenty years with Rivkin Radler, Jay has successfully argued motions for summary judgment before both federal and state courts, and frequently has represented clients in reinsurance disputes before arbitration panels. He not only litigates – he also routinely advises leading insurers throughout the country on insurance coverage law. Jay is a prolific author and speaker and is a frequent presenter at the Eastern Claims Conference and the International Claim Association's Education Conference. Jay is currently the chairperson for the International Claim Association's Reinsurance Committee, where he is organizing a blockchain technology workshop for this year's Education Conference. Rivkin Radler's Insurance Coverage Practice Group has been included in the 2016 Chambers USA directory.

Stephen M. Kennedy
Clyde & Co US LLP

Stephen M. Kennedy serves as lead counsel representing insurers and reinsurers in complex coverage disputes involving a wide range of issues across all lines of business, including accident and health, energy, environmental, general liability, political risk, property, and trade credit, and represents insurers and reinsurers in high dollar bad faith claims. Mr. Kennedy also has substantial experience advising insurers and reinsurers with respect to contract drafting, risk management, and regulatory matters. He is an active member of industry organizations including ARIAS•U.S., having recently served on a three-member task force that authored the ARIAS•U.S. Rules for the Resolution of US Insurance and Reinsurance Disputes, as well as the ARIAS•U.S. Streamlined Rules for Small Claim Disputes. Mr. Kennedy is a regular speaker at industry seminars sponsored by ARIAS•U.S., HB Litigations and the Practicing Law Institute. He has also written numerous articles in industry publications including the *Journal of Insurance Coverage, Reinsurance Magazine, ARIAS U.S. Quarterly, Insurance & Reinsurance International Comparative Legal Guide*, and *ABA Tort & Insurance Law Journal*.

Amy S. Kline, Esq.
Saul Ewing LLP

Amy is a Partner and Vice Chair of Saul Ewing LLP's Insurance Practice Group and a Vice Chair of the firm's Litigation Department. She has extensive trial and appellate experience in federal and state courts, as well as before private arbitration panels. Amy focuses her practice on representing insurance and reinsurance companies in complex civil litigation matters on issues such as follow the fortunes, the duty of utmost good faith, underwriting, claims handling, insolvency, cut-throughs, MGAs and MGUs. Amy also represents and defends clients facing large-scale investigations. Amy is an Adjunct Professor of Law at Villanova University School of Law. Prior to joining Saul Ewing, Amy served as a law clerk to the Honorable Morton I. Greenberg of the U.S. Court of Appeals for the Third Circuit, and the Honorable James McGirr Kelly of the U.S. District Court for the Eastern District of Pennsylvania. Amy is

a summa cum laude graduate of Villanova University School of Law where she was the Editor-in-Chief of the Villanova Law Review, and a cum laude graduate of Boston University.

Jonathan Kline
Smith, Gambrell & Russell

Mr. Kline practices general commercial litigation, devoting a substantial portion of his practice to representing insurers, reinsurers, insurance brokers in connection with business disputes. He also represents insurance industry clients in transactional and regulatory matters. Mr. Kline also has experience in estate fiduciary litigation, in real estate disputes, and in business disputes.

Mr. Kline is a member of the Connecticut State Bar, the New York State Bar, the New York City Bar Association and ARIAS. He currently serves on the New York City Bar Insurance Law Committee. He served on the Executive Committee of the Connecticut Bar Association Young Lawyers Section from 1995 to 1997, where he co-chaired the Committee on Ethics and Professional Conduct and the Federal Practice Committee.

Elizabeth Kniffen
Zelle LLP

Liz Kniffen is a partner in Zelle's Minneapolis office where her practice is focused on insurance and reinsurance disputes. Liz has represented cedents, reinsurers, and retrocessionaires in confidential arbitrations concerning a wide range of matters. She has also handled first-party property coverage disputes in a variety of contexts and has dealt extensively with issues relating to policy interpretation, as well as the application of coverage exclusions and policy endorsements. Liz is actively involved with Twin Cities Diversity in Practice and serves on its Professional Development and Recruiting committees. She is also the Chair of the ABA Tort Trial and Insurance Practice Section, Excess, Surplus Lines and Reinsurance Committee for 2015-2016. Liz is currently a member of the ARIAS Law Committee and Technology Committee. She earned her J.D., *cum laude*, from the University of Minnesota Law School.

Tracey Laws
Reinsurance Association of America

Tracey Laws is Senior Vice President and General Counsel of the Reinsurance Association of America ("RAA"), with responsibility for developing RAA policy, filing *amicus curiae* briefs, and assisting the RAA's lobbyists in implementing RAA policy at the state, federal and international level. From 1999-2005, Ms. Laws was a partner at Chadbourne & Parke LLP in Washington, D.C., where she specialized in reinsurance and dispute resolution. She was an associate at the firm from 1993-1999. Prior to that, she was General Litigation Associate for Jenkins & Gilchrist in Dallas. Ms. Laws is a member of the District of Columbia and Texas Bars and the American Bar Association. She is also a board member of the Institute for Global Environmental Studies. Ms. Laws received a Bachelor of Arts from The College of William and Mary, and a Juris Doctorate from the University of Virginia.

Andre Lefebvre
Arrowpoint Capital

Andre Lefebvre has almost 30 years in the insurance and reinsurance areas. He is a Fellow of the Casualty Actuarial Society and a Member of the American Academy of Actuaries. He started his career as a consulting actuary and for the past 13 years has been Arrowpoint Capital's Financial Risk Officer. In this capacity, he is responsible for the actuarial department as well as all the reinsurance functions.

Edward K. Lenci
Hinshaw & Culbertson LLP

Edward K. Lenci is a partner in the New York office of Hinshaw & Culbertson LLP and chairs the firm's reinsurance practice. He has won important rulings involving arbitration, including *Affiliated Computer Servs., Inc. v. Fensterstock*, 564 U.S. 1001 (2011) (upholding class action waiver in a student loan's arbitration provisions), *Mutual Marine Offices, Inc., et al. v. Banco de Seguros del Estado*, 344 F.3d 255 (2d Cir. 2003) (reinsurer owned by Uruguay's government not entitled to sovereign immunity in arbitration), and *Skandia Am. Reins. Corp. v. Caja Nacional de Ahorro y Seguro*, 1997 WL 278054 (S.D.N.Y. 1997) (reinsurer owned by

Argentina's government not entitled to sovereign immunity in arbitral confirmation proceeding). He Co-Chairs the Insurance & Reinsurance Committee of the N.Y. State Bar Association's International Section, is a charter member of the Editorial Board of *Reinsurance & Arbitration* (HarrisMartin), and is a member of Law360's International Arbitration Editorial Advisory Board.

Susan E. Mack
Adams and Reese LLP

Susan Mack serves as special counsel with the Jacksonville office of Adams and Reese LLP, following a 25-year career as general counsel and chief compliance officer of both insurers and reinsurers in the life/health and property/casualty sectors. Although she is engaged in the practice of insurance regulatory law, she still accepts appointments as an arbitrator, umpire, mediator, and expert witness. A founding director of ARIAS·U.S. and the first woman to serve on the organization's board of directors, she currently holds ARIAS·U.S. certifications as an umpire and arbitrator and is also a qualified mediator. Susan promotes the organization's development by her service on the ARIAS-US Ethics Committee. She is admitted to practice in Florida, California, Connecticut, North Carolina, and South Carolina.

Wm. Gerald McElroy, Jr.
Zelle LLP

Jerry is a member of the reinsurance practice group at Zelle LLP, which includes attorneys who represent cedents, reinsurers, retrocessionaires and reinsurance intermediaries in litigation, arbitration, and specific claim analysis. Jerry has been involved with a variety of issues in handling complex reinsurance disputes, including issues relating to the commutation of reinsurance agreements. He has also represented insurers in major cases, including environmental, toxic tort and asbestos insurance coverage litigation; first-party property insurance coverage cases; negligent inspection cases; bad faith litigation; and other third-party liability insurance coverage cases. Jerry has authored and/or co-authored numerous articles in the reinsurance area and has served as a moderator and panelist at numerous reinsurance symposia. Jerry graduated summa cum laude, Phi Beta Kappa, from the University of Note Dame in 1972. He received his J.D. from Yale Law School, and his Ph.D. in Government from Harvard University in 1977.

David C. McLauchlan
McLauchlan Law Group LLC

David C. McLauchlan is a highly respected business advisor, litigator, trial lawyer, arbitrator, and mediator.

Mr. McLauchlan is a business counselor, trial lawyer, arbitrator and mediator. He is a former partner in the law firm of Locke Lord LLP, where he was head of the firm's London insurance practice and a member of the firm's Executive Committee. In 2009, he founded The McLauchlan Law Group LLC. He is a certified ARIAS-Arbitrator and Mediator, Member of the Chartered Institute of Arbitrators and certified as an arbitrator and mediator by numerous courts. Hs has litigated cases all over the U.S.A. David's litigation expertise and professional regard has been recognized by the Leading Lawyers Network, Illinois Super Lawyers, Best Lawyers in America and he is AV peer rated by Martindale Hubbell. He is a Fellow of the Litigation Counsel of America and a Fellow of the American Academy of Alternative Dispute Resolution. David is an aviation enthusiast, an instrument rated private pilot and an experienced Drone pilot.

Michael T. McRaith

Michael T. McRaith was appointed by U.S. Department of the Treasury Secretary Timothy Geithner to serve as the Director of the Federal Insurance Office (FIO) in June 2011. As Director of FIO, McRaith advises the Secretary on domestic and prudential international insurance matters of importance. FIO monitors all aspects of the insurance sector, including access to affordable insurance for traditionally underserved communities and consumers, minorities and low- and moderate income persons. McRaith also serves as a non-voting member of the Financial Stability Oversight Council (FSOC). Director McRaith is responsible for coordination of Federal efforts and the development of Federal policy on prudential aspects of international insurance matters. As FIO Director, McRaith represents the United States at the

International Association of Insurance Supervisors (IAIS) and in other bi-lateral and multi-lateral international insurance matters. McRaith also serves on the IAIS Executive Committee and as Chair of the IAIS Financial Stability and Technical Committee. Immediately prior to his appointment as FIO Director in June 2011, McRaith served more than 6 years as the Director of the Illinois Department of Insurance. Prior to his public service, McRaith practiced law for fifteen years in Chicago. McRaith received his J.D. from Loyola University of Chicago and his B.A. from Indiana University. McRaith serves on the Board of Directors for the American Foundation for Suicide Prevention – Illinois Chapter, and as Director Emeritus for the AIDS Foundation of Chicago.

Michael Menapace
Wiggin and Dana LLP

Michael Menapace represents insurers in court cases and arbitrations and has litigated numerous disputes through final verdict, including disputes concerning bad faith, insurance coverage, reinsurance, premium calculations, and allocation among policies. Leading insurance industry trade groups have engaged Michael to represent them on matters of industry-wide importance before trial and appellate courts; he has also advised insurers on policy construction, coverage, compliance, and regulatory issues and often represents stock, mutual, and captive insurers on their dealings with state regulators, including proceedings concerning rates, applications for acquisition of control, and market conduct exams. In addition, he advises companies on a variety of privacy and data protection issues, defends companies facing potential data breach liability, and advises clients in connection with internal and government investigations and responses thereto, including cyber breaches. Michael teaches insurance law at the Quinnipiac University School of Law and is co-editor of *The Handbook on Additional Insureds*, published by the ABA (2012).

Ricardo Morales-Gomez
International Legal

Ricardo has been with Assurant for 10 years. In his current role he manages the International Legal Department for the Company which operates in several countries outside the United States including Argentina, Brazil, Canada, China, France, Mexico, South Korea and the United Kingdom. Prior to his current responsibilities he worked for other departments within Assurant including Compliance and Government Relations. Ricardo has an extensive background in insurance regulatory matters.

Prior to his time with Assurant, Ricardo was in private practice at a firm that defended design professionals in complex construction cases where arbitration was many times the preferred dispute resolution method.

Timothy Morris
CEO Hanover Stone Solutions, LLC

Timothy Morris is President & CEO of Hanover Stone Solutions (HSS), an affiliate of Hanover Stone Partners that provides customized enterprise risk management solutions, ORSA compliance and related services for property/casualty insurance companies. Mr. Morris, whose career in the property casualty insurance industry spans more than 40 years, has held a number of senior positions with leading insurers as well as with financial advisory firms serving the insurance sector and investment banking institutions. He joined Hanover Stone Partners in 2015 to establish and lead HSS. Mr. Morris earned a BBA degree in Risk Management & Insurance, Cum Laude, Phi Kappa Phi, Beta Gama Sigma and an MBA from the University of Georgia. Tim is founding director of the Financial Institutions Insurance Association; a past vice chairman of Minnesota Fair Share and a former board member of the French-American Chamber of Commerce. He also served on several committees of the American Insurance Association.

Steven Najjar
Hannover Life Reassurance Co. of America

Steven Najjar is the Executive Vice President & General Counsel for Hannover RE US. He has responsibility for all legal, regulatory and compliance activities of the Company, and is the head of Hannover Re US' Health & Special Risk

business unit. He has served as President and Chief Executive Officer of Clarendon Insurance Group; Chief Compliance Officer, General Counsel and Chief Operating Officer of Universal American Corp.; and practiced law with Morris, Manning & Martin. He is an ARIAS certified arbitrator with both L&H and P&C executive officer experience, and is the Chairman of the CEO Deputies Committee of the American Council of Life Insurers. Steve has a journalism degree from the University of Georgia and a law degree from Georgia State University. He is a former law clerk for US District Court Judge Marvin Shoob and Georgia Supreme Court Justice Leah Ward-Sears.

John Nonna
Squire Patton Boggs (US) LLP

John Nonna is a partner at Squire Patton Boggs (US) LLP. He is an experienced practitioner in the areas of litigation and arbitration. His practice is concentrated in business and commercial disputes and insurance and reinsurance disputes. He leads an experienced team of insurance and reinsurance practitioners at Patton Boggs. He and his colleagues have arbitrated and litigated cases involving the major areas of controversy in insurance and reinsurance, including contract formation, fraudulent inducement claims, coverage issues, including allocation and trigger of coverage, security, finite reinsurance and life and health insurance disputes, including recent disputes involving reinsurance of variable annuity benefits. He has also handled and tried jury and non-jury cases in other areas of business and commercial litigation including accountants' malpractice, mergers and acquisitions, employment discrimination and distributorship and supply contracts. He is a fellow of the American College of Trial Lawyers.

Scott R. Osterichер
Vocke Law Group LLP

Scott concentrates his practice in representing financial services industry clients in a wide range of matters including: complex (re) insurance disputes, insurance bad faith claims, internal investigations, electronic discovery matters, commercial contract disputes, and business tort claims. He also assists clients in complying with the U.S. Treasury Department's OFAC screening requirements and the USA Patriot Act's anti-money laundering provisions. He is a former partner at Locke Lord LLP, an assistant general counsel at General Reinsurance Corporation and Vice President and Claims Counsel for General Star and Genesis.

Howard R. Page
Resolute Management Services Limited

Howard Page is the Vice President of Assumed Claims for Resolute Management Services Limited in London. He is responsible for managing the run-off of assumed reinsurance claims emanating for all the Resolute run-offs managed in London involving claims from hundreds of US cedants over a seventy year span and across virtually every class of business. As well as overseeing a large claims department, his role extends to active management of all US reinsurance arbitration and litigation. Howard has participated I arbitrations on many occasions as a witness and/or client representative, has acted as an arbitrator in US arbitration, and is a certified member of ARIAS UK.

John M. Parker
Silvercreek Reinsurance Arbitration Services

Mr. Parker was Senior Vice President-Reinsurance and Reinsurance Counsel of RiverStone US, which manages the run-offs of TIG, Fairmont and International Insurance Company. Prior to that John served as General Counsel of TIG Insurance Company and its eight insurance company affiliates. Prior to joining RiverStone, John was in private practice at the law firm of Sidley Austin where he represented cedents and reinsurers in reinsurance disputes. John has an undergraduate degree in Accounting from Dominican University, a Master of Business Administration from DePaul University and a Juris Doctor from the John Marshall Law School. He also holds an Associate in Reinsurance certificate and is a Chartered Property Casualty Underwriter. John was a founding board member of the Association of Insurance and Reinsurance Runoff Companies. He has lectured at

numerous conferences including those sponsored by Mealey's, ARIAS•U.S. and Strain. He has also taught classes in Reinsurance at the College of Insurance.

Eridania Perez
Squire Patton Boggs

She has tried in US courts and arbitrated cases involving a wide range of contractual disputes, as well as complex fraud and misrepresentation claims, breaches of warranties and representations, stock and asset purchase agreements, and insurance and reinsurance disputes, among others. Eridania also regularly advises non-US multinationals regarding defense and strategy in potential US litigation and international arbitration proceedings involving complex civil and common law issues. Eridania has been recognized in Legal 500 US Rankings for the past three years, and has published and presented on various topics. She is resident in the New York office of Squire Patton Boggs.

Carlos A. Romero, Jr.
Post & Romero

Carlos A. Romero, Jr., a partner of Post & Romero, has been practicing in a broad array of insurance matters since early 1980s (starting with captive insurance companies and IRS challenge of tax deductibility of premiums). Among his achievements, Mr. Romero is a Florida Supreme Court Certified Court Mediator, a certified arbitrator of Tribunal General de Justicia de Puerto Rico (a branch of the state court system of Puerto Rico) for cases referred by the courts in Puerto Rico, panel of arbitrators of American Arbitration Association (AAA) and International Centre for Dispute Resolution (ICDR), and Distinguished Neutral of International Institute for Conflict Prevention & Resolution (CPR) for panels of insurance policyholder coverage, certified public accountants, Miami ADR, real estate, cross border, and taxation. He is also a Chartered Arbitrator, Presidential Panel of Arbitrators, and Fellow Member of The Chartered Institute of Arbitrators. He is an inactive Certified Public Accountant in Florida and Puerto Rico.

James I. Rubin
Butler Rubin Saltarelli & Boyd LLP

James Rubin is a trial lawyer and head of the reinsurance litigation and arbitration practice at Butler Rubin Saltarelli & Boyd LLP. He is a founding partner of the firm and has extensive experience representing insurance and reinsurance companies and brokers in hundreds of disputes. Mr. Rubin has repeatedly been named as a national leader in insurance and reinsurance law in publications including Chambers USA, The Legal 500, The Best Lawyers in America and Super Lawyers. He is a member of the Board of Directors of ARIAS-U.S. and Chair of the ARIAS Ethics and Publications committees and he co-wrote ARIAS' *Guidelines for Arbitrator Conduct*. Mr. Rubin obtained his law degree from Loyola University School of Law, where he was a member of the Law Review.

Ryan Russell
San Francisco Reinsurance Company

Ryan Russell is an Assistant General Counsel at San Francisco Reinsurance Company (ARM US) located in Petaluma California. He is in charge of reinsurance disputes and litigation, extra-contractual matters and complex claims litigation. He received his J.D. from University of California Hastings College of the Law in 1986 and was with litigation firms in San Francisco before joining Fireman's Fund Insurance Company in 1999. SFRe/ARM US now handles the runoff liabilities of Fireman Fund and other Allianz companies.

Joseph Sano
Prince Lobel's Insurance and Reinsurance, Nanotechnology, and Litigation Practice Groups

Joseph S. Sano is an equity partner in Prince Lobel's Insurance and Reinsurance, Nanotechnology, and Litigation Practice Groups where he provides strategic advice and representation in the litigation, arbitration, and resolution of specialized insurance and reinsurance coverage matters and insurance and reinsurance policy drafting and risk recognition. Joe founded and is the principal contributor to the firm's first law-related blog, Consider The Risks,

addressing current issues in insurance law and risk management. He is a frequent author and speaker regarding insurance, reinsurance, risk management and emerging risks, including nanotechnology.

Larry P. Schiffer
Squire Patton Boggs (U.S.) LLP

Larry Schiffer is a partner in the New York office of Squire Patton Boggs (U.S.) LLP, where he practices complex commercial, insurance, and reinsurance litigation, arbitration, and mediation. He also advises on coverage, insurance insolvency, and contract wording issues for a variety of insurance and reinsurance relationships. He is chair of the ARIAS•U.S. Technology Committee and a member of the ARIAS•U.S. Ethics Discussion Committee; he is also a member of the ABA's Tort Trial & Insurance Practice Section, where he was chair of the Excess, Reinsurance & Surplus Lines Committee. He was chair of the New York State Bar Association Committee on Association Insurance Programs for nine years and has lectured and has been published on reinsurance and insurance topics for ARIAS•U.S., ABA, ACI, Mealey's, PLI, C-5, HarrisMartin, HB Litigation, Lloyd's Market Association, *Reinsurance* Magazine, *Insurance Day*, the *Tort & Insurance Law Journal*, *Westlaw Journal – Insurance Coverage*, and others. Larry edits the Squire Patton Boggs Reinsurance Newsletter and the Insurance and Reinsurance Disputes Blog, InReDisputesBlog.com. He also is the moderator of the Reinsurance Disputes Group on LinkedIn. He has been recognized by *Chambers USA*, *Euromoney Guide to the World's Leading Insurance and Reinsurance Lawyers*, *The International Who's Who of Insurance & Reinsurance Lawyers*, *The Legal 500*, and *Super Lawyers.* He serves as a mediator for the United States District Court for the Southern District of New York and the New York Supreme Court Commercial Division.

Charles Scibetta, Esq.
Chaffetz Lindsey LLP

Charlie Scibetta is a founding and managing partner of Chaffetz Lindsey LLP. He has more than 20 years of litigation and arbitration experience across a broad variety of industries, with a heavy concentration in insurance and reinsurance disputes. He is recognized as a leader in his field in industry publications, including Legal 500 United States, SuperLawyers, and Who's Who International. Prior to forming Chaffetz Lindsey, Charlie was a partner in the insurance and reinsurance disputes practice at Clifford Chance.

Wesley Sherman
Transatlantic Reinsurance Co.

Wesley Sherman is a Vice President and Assistant Claims Manager at TransRe. He joined TransRe in 2012 after working as a litigation associate at insurance defense firms in Florida and then New York. He handles legacy claims, commutations, and disputes. He also oversees the claims operations for TransRe's primary insurance companies, FAIRCO and FASIC, which write niche program business.

Leah A. Spivey
Munich Re America, Inc.

Leah A. Spivey is Senior Vice President and Head of Business Runoff Operations at Munich Reinsurance America, and has results responsibility for all of its 2001 and prior liabilities. Leah manages a staff of Insurance and Reinsurance Professionals with a portfolio of current and former clients. Her department partners with Munich Re America Business Divisions' and Financial Management Resources to arrive at customized solutions for the optimum disposition of these legacy accounts.

Leah was graduated from the University of Massachusetts in Amherst with a BA in Journalism and Communications. She currently serves on the AIRROC (Association of Insurance and Reinsurance Runoff Companies) Board of Directors, is a certified training designer and developer and has her CPCU designation.

Michael Steinlage, Esq.
Larson King, LLP

Michael Steinlage is a partner with Larson King, LLP, in St. Paul, Minnesota. For more than 20 years, Michael has represented insurers and reinsurers in disputes relating to insurance and reinsurance coverage for catastrophic property and

business interruption losses, mass tort and class action exposures, professional and environmental liability, and extra-contractual claims in courts and arbitrations throughout the country. Michael also regularly consults with companies regarding contract formation and claim related issues. Michael is a past chair of the Excess, Surplus Lines and Reinsurance Law Committee of the American Bar Association and frequently speaks on reinsurance issues before industry organizations and trade groups, including BRMA, RIMS, CPCU, IAIR and ABA. Michael is a 1990 graduate of the University of Notre Dame, and received his JD from the William Mitchell College of Law in St. Paul.

Kevin Tierney
Disability Reinsurance Management Service

Kevin Tierney is an ARIAS•US certified arbitrator and qualified mediator and a recognized expert in disability insurance. He has served as the General Counsel of UNUM Corp. and Disability Reinsurance Management Services, Inc. A graduate of Bowdoin College and the University of Maine School of Law, he was a member of the core team responsible for the demutualization of Union Mutual Life Insurance Company and its related initial public offering. He has served as a board member of a Merrill Lynch mutual fund and a publicly traded property and casualty holding company. In his spare time, he is an avid golfer and the owner and creator of an internet based art gallery.

Damon N. Vocke
Vocke Law Group LLP

Damon Vocke is Managing Partner of the Vocke Law Group based in Stamford CT and Chicago IL. A seasoned trial lawyer and business counselor, Damon served as the Global General Counsel of General Re and most recently as President. At General Re, he had responsibility for all corporate legal matters, global claims, and served as Executive Chairman of its Lloyd's Syndicate, its Aviation Unit, and its German subsidiary. Before joining Gen Re in 2004, Damon was an equity partner at Lord, Bissell & Brook, and represented a variety of clients and industries as lead counsel in arbitrations, complex coverage matters, business torts, RICO and fraud disputes, class actions, and receiverships. He has also conducted internal investigations.

Damon has chaired the RAA Law Committee and served on the ARIAS Board. He frequently presents on issues relating to the (re)insurance business, corporate governance, and internal investigations. Damon attended the University of Michigan for his undergraduate and law degrees.

Alysa Wakin
Odyssey Re

Alysa Wakin is Vice President and Claims Counsel for Odyssey Reinsurance Company where she manages the litigation and arbitration of disputes on behalf of that company and its subsidiaries. Prior to joining Odyssey Re, Ms. Wakin was a litigator with the firm of Wiley Rein & Fielding where she represented insurers and reinsurers in complex litigation and arbitration matters and provided advice and counsel on a wide range of insurance and reinsurance topics. Ms. Wakin first entered the world of reinsurance arbitrations in 1995 as an associate with the firm of Werner & Kennedy.

Ms. Wakin previously served on the ARIAS·U.S. Education Committee and currently serves on the Strategic Planning Committee.

Jan Woloniecki
ASW Law

Mr. Woloniecki is Head of Litigation at ASW. Mr. Woloniecki has appeared as counsel before the Supreme Court of Bermuda and Court of Appeal for Bermuda in over 50 cases reported in Bermuda. In addition to his practice as an advocate before the Bermuda courts, he has an extensive international arbitration practice, and has accepted appointments as an arbitrator in international arbitrations (ICC / LCIA) and domestic (Bermudian) arbitrations. As counsel and arbitrator he has participated in arbitrations held in London, Singapore, Hong Kong, Bermuda and the United States. He has acted as an expert witness (on Bermudian and English law) in numerous cases before United States courts and arbitration tribunals.

Wednesday, May 3, 2017, 2:35 p.m. – 3:25 p.m.

GENERAL SESSION

Looking Back and Fast Forwarding – Is *Bellefonte* Dead or Destined to Rule?

SESSION MATERIALS:

Summary of *Bellefonte* Cases

Excess Ins. Co. Ltd. V Mut. Ins. Co., 3 N.Y.3d 577 (2004)

Global Reinsurance Corporation of America v. Century..., 843 F.3d 120 (2016)

PRESENTED BY:

Amy S. Kline, Saul Ewing LLP
Charles Scibetta, Chaffetz Lindsey LLP
Sean Thomas Keely, Hogan Lovells US LLP
Patricia Taylor Fox, American International Group

Summary of *Bellefonte* Cases

***Utica Mutual Insurance Co. v. Abeille General Insurance Co., et al*.**
Index. No. 1302320/2013

Court: New York Supreme Court

Date Filed: November 15, 2013

Status: Partial summary judgment entered in favor of defendant-reinsurers; Appeal of summary judgment order pending in the New York Supreme Court Appellate Division – Fourth Department

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Utica Mutual Insurance Co. v. R&Q Reinsurance Co.
No. 6:13-CV-1332 (BKS/ATB)

Court: United States District Court for the Northern District of New York

Date Filed: October 25, 2013

Status: Voluntarily dismissed on March 14, 2016

Utica Mutual Insurance Co. v. Clearwater Insurance Co.
No. 6:13–CV–1178

Court: United States District Court for the Northern District of New York

Date Filed: September 20, 2013

Status: Final judgment entered in favor of Utica; Appeal of partial summary judgment in favor of Clearwater pending in the United States Court of Appeals for the Second Circuit (No. 16-2535)

Global Reinsurance Corp. of America v. Century Indemnity Co.
No. 1:13-cv-06577-LGS

Court: United States District Court for the Southern District of New York

Date Filed: September 17, 2013

Status: Summary Judgment granted in favor of Global Re and final judgment entered pursuant to Stipulation for Entry of Final Order and Judgment on June 3, 2015; Appeal of summary judgment order pending in the United States Court of Appeals for the Second Circuit (No. 15-2164-cv); Question certified to New York Court of Appeals

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Continental Casualty Co. v. MidStates Reinsurance Corp.
No. 2012-CH-42911

Court: Circuit Court of Cook County, Illinois, Chancery Division

Date Filed: November 30, 2012

Status: MidStates' motion for judgment on the pleadings granted; Affirmed on appeal (Ill. Ct. App. No. 1–13–3090)

Century Indemnity Co. v. OneBeacon Ins. Co.
No. 120702928

Court: Pennsylvania Court of Common Pleas, 1st District

Date Filed: July 23, 2012

Status: Finding in favor of Century Indemnity entered on February 23, 2016 after bench trial; Judgment entered in favor of Century Indemnity on April 26, 2016; Appeal pending in the Superior Court of Pennsylvania (1280 EDA 2016)

Utica Mutual Insurance Co. v. Munich Reinsurance America, Inc.
No. 6:12-cv-0196 (LEK/ATB)

Court: United States District Court for the Northern District of New York

Date Filed: January 27, 2012

Status: Summary judgment entered in favor of Munich Re on September 30, 2013; Vacated on appeal and remanded for further proceedings (13-4170)

Pacific Employers Ins. Co. v. Global Reinsurance Corp. of America
No. 09-6055

Court: United States District Court for the Eastern District of Pennsylvania

Date Filed: December 18, 2009

Status: Global Re's summary judgment motions denied; Final judgment in favor of Pacific Employers entered pursuant to Stipulation for Entry of Final Order and Judgment on August 10, 2011.

Excess Insurance Co., Ltd. v. Factory Mutual Insurance
Index No. 605759/1999

Court: New York Supreme Court, Appellate Division, First Department

Date Filed: March 1, 2000

Status: Partial summary judgment granted in favor of Factory Mutual; Reversed by New York Supreme Court - Appellate Division, First Department and cross-motion by reinsurers granted; Judgment in favor of reinsurers affirmed by Court of Appeals

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TIG Premier Insurance Co. v. Hartford Accident & Indemnity Co.
No. 1:97-cv-05717-JSR-THK

Court: United States District Court for the Southern District of New York

Date filed: July 31, 1997

Status: Voluntarily dismissed on May 14, 1999

Unigard Security Insurance Co. v. North River Insurance Co.
No. 1:88-cv-00789-RWS

Court: United States District Court for the Southern District of New York

Date Filed: February 3, 1988

Status: Judgment in favor of North River after bench trial; Judgment affirmed in part and reversed in part by Second Circuit (No. 91-7534)

Bellefonte Reinsurance Co., et al v. Aetna Cas. & Sur. Co.
No. 1:85-cv-2706 (JFK)

Court: United States District Court for the Southern District of New York

Date Filed: April 8, 1985

Procedural posture: Summary judgment entered in favor of reinsurers; Affirmed by Second Circuit (No. 1164, Docket 90-7009)

KeyCite Yellow Flag - Negative Treatment
Declined to Extend by Utica Mut. Ins. Co. v. Munich Reinsurance America, Inc., 2nd Cir., December 4, 2014

3 N.Y.3d 577, 822 N.E.2d 768, 789 N.Y.S.2d 461, 2004 N.Y. Slip Op. 08979

**1 Excess Insurance Company Ltd. et al., Respondents
v
Factory Mutual Insurance Company, Formerly Known as Allendale Mutual Insurance Company, Appellant

Court of Appeals of New York
Argued October 13, 2004
Decided December 2, 2004

CITE TITLE AS: Excess Ins. Co. Ltd. v Factory Mut. Ins. Co.

SUMMARY

Appeal, by permission of the Appellate Division of the Supreme Court in the First Judicial Department, from an order of that Court, entered December 4, 2003. The Appellate Division (1) reversed, on the law, an order of the Supreme Court, New York County (Karla Moskowitz, J.), which had denied plaintiffs' motion for partial summary judgment and granted defendant's cross motion for partial summary judgment to the extent of declaring that the limit clause and the follow the settlements condition of the reinsurance contract, read together, are unambiguous, and that the portion of the reinsurance contract requiring plaintiffs to bear their proportionate share of any expenses incurred, whether legal or otherwise, in the investigation and defense of any claim is not subject to the contract limit of $7 million; (2) denied defendant's cross motion; and (3) granted plaintiffs' motion so as to declare that the portion of the reinsurance agreement between the parties requiring plaintiffs to bear their proportionate share of expenses incurred in the investigation and defense of any claim under the underlying policy is subject to the $7 million limit stated in the agreement. The following question was certified by the Appellate Division: "Was the order of this Court, which reversed the order of Supreme Court, properly made?"

Excess Ins. Co. v Factory Mut. Ins. Co., 2 AD3d 150, affirmed.

HEADNOTE

Insurance
Reinsurance

"Follow the Settlements" Clause--Obligation under Clause Subject to Indemnification Limit

Plaintiff reinsurers' obligation to pay sums for certain loss adjustment expenses arising from a "follow the settlements" clause in the parties' reinsurance contract was subject to the $7 million indemnification limit stated in the reinsurance policy. Plaintiffs could not be required to pay loss adjustment expenses in excess of the stated limit in the reinsurance policy. Any obligation on plaintiffs' part to reimburse defendant, whether for settling the original insurance claim or for their proportionate share of the $35 million in expenses incurred in the protracted litigation that ensued, must have been capped by the negotiated limit under the policy. If not, plaintiffs would have been subject to limitless liability, and the liability cap would have been rendered a nullity.**578**

TOTAL CLIENT-SERVICE LIBRARY REFERENCES

Am Jur 2d, Insurance §§ 1811, 1819, 1823.

Couch on Insurance (3d ed) § 9:25.

NY Jur 2d, Insurance §§ 2199, 2207, 2210.

ANNOTATION REFERENCE

See ALR Index under Insurance and Insurance Companies; Reinsurance.

FIND SIMILAR CASES ON WESTLAW

Database: NY-ORCS

Query: re-insur! & follow /3 settlement & indemni!

POINTS OF COUNSEL

London Fischer LLP, New York City (*Bernard London*, *James L. Fischer* and *James Walsh* of counsel), for appellant.
I. A property reinsurance contract should not be interpreted by reference to liability insurance precedents. (*Bellefonte Reins. Co. v Aetna Cas. & Sur. Co.*, 903 F2d 910; *Unigard Sec. Ins. Co., Inc. v North Riv. Ins. Co.*, 4 F3d 1049; *Great N. Ins. Co. v Mount Vernon Fire Ins. Co.*, 92 NY2d 682; *Becarie v Union Bank of Switzerland*, 272 AD2d 162; *Port Auth. of N.Y. & N.J. v Affiliated FM Ins. Co.*, 311 F3d 226; *Ryan v Royal Ins. Co. of Am.*, 916 F2d 731; *Allendale Mut. Ins. Co. v Excess Ins. Co.*, 992 F Supp 271, 62 F Supp 2d 1116; *Commercial Union Ins. Co. v Seven Provinces Ins. Co., Ltd.*, 217 F3d 33, 531 US 1146; *Kass v Kass*, 91 NY2d 554; *Aetna Cas. & Sur. Co. v Home Ins. Co.*, 882 F Supp 1328.) II. Alternatively, the reinsurance agreement is ambiguous as a matter of law. (*Sumitomo Mar. & Fire Ins. Co. v Cologne Reins. Co. of Am.*, 75 NY2d 295; *United Fire & Cas. Co. v Arkwright Mut. Ins. Co.*, 53 F Supp 2d 632; *Eskimo Pie Corp. v Whitelawn Dairies, Inc.*, 284 F Supp 987; *Menke v Glass*, 898 F Supp 227; *Canusa Corp. v A & R Lobosco, Inc.*, 986 F Supp 723; *Board of Mgrs. of Yardarm Condominium II v Federal Ins. Co.*, 247 AD2d 499; *Preminger v Columbia Pictures*, 49 Misc 2d 363, 25 AD2d 830, 18 NY2d 659; *Fox Film Corp. v Springer*, 273 NY 434; *Franklin Sugar Ref. Co. v Lipowicz*, 247 NY 465; *Newhall v Appleton*, 114 NY 140.)
Kaplan & von Ohlen, Chicago, Illinois (*Richard A. Walker*, of the Illinois Bar, admitted pro hac vice of counsel), and *D'Amato & Lynch*, New York City (*Jan H. Duffalo* of counsel), forrespondents.***579**
I. The reinsurance agreements "limit" of $7,000,000 caps plaintiffs-appellants' entire liability to defendant-respondent Factory Mutual Insurance Company. (*West 56th St. Assoc. v Greater N.Y. Mut. Ins. Co.*, 250 AD2d 109; *Sanabria v American Home Assur. Co.*, 68 NY2d 866; *Rhodes v Newhall*, 126 NY 574; *Bracher v Equitable Life Assur. Socy.*, 186 NY 62; *Allendale Mut. Ins. Co. v Excess Ins. Co., Ltd.*, 970 F Supp 265, 992 F Supp 271; *Ruttenberg v Davidge Data Sys. Corp.*, 215 AD2d 191; *Unigard Sec. Ins. Co. v North Riv. Ins. Co.*, 79 NY2d 576; *Bellefonte Reins. Co. v Aetna Cas. & Sur. Co.*, 903 F2d 910; *Travelers Cas. & Sur. Co. v Certain Underwriters at Lloyd's of London*, 96 NY2d 583; *Christiania Gen. Ins. Corp. of N.Y. v Great Am. Ins. Co.*, 979 F2d 268.) II. The courts below correctly determined, as a matter of law, that the reinsurance agreement at issue is unambiguous. (*Mallad Constr. Corp. v County Fed. Sav. & Loan Assn.*, 32 NY2d 285; *Unisys Corp. v Hercules Inc.*, 224 AD2d 365; *West, Weir & Bartel v Mary Carter Paint Co.*, 25 NY2d 535; *Ruttenberg v Davidge Data Sys. Corp.*, 215 AD2d 191; *Airco Alloys Div., Airco Inc. v Niagara Mohawk Power Corp.*, 76 AD2d 68; *Bethlehem Steel Co. v Turner Constr. Co.*, 2 NY2d 456; *United Fire & Cas. Co. v Arkwright Mut. Ins. Co.*, 53 F Supp 2d 632; *Menke v Glass*, 898 F Supp 227; *Canusa Corp. v A & R Lobosco, Inc.*, 986 F Supp 723; *Board of Mgrs. of Yardarm Condominium II v Federal Ins. Co.*, 247 AD2d 499.)

OPINION OF THE COURT

G.B. Smith, J.

The issue presented by this appeal is whether respondents' obligation to pay sums for certain loss adjustment expenses arising from a "follow the settlements" clause is subject to ****2** the indemnification limit stated in a reinsurance policy. Like the Appellate Division, we conclude that it is, and therefore affirm the order of the Appellate Division.

In December 1990, appellant Factory Mutual Insurance Company (formerly known as Allendale Mutual Insurance Company) entered into an agreement with Bull Data Systems Inc. to provide property insurance with an indemnification limit of $48 million. Specifically, the policy covered against the risk of loss or damage to Bull Data's personal computer inventory stored in a warehouse located in Seclin, France. In turn, Factory***580** Mutual obtained facultative reinsurance[1] from various London reinsurers which have severally subscribed to the reinsurance agreement at issue in this litigation. The reinsurance policy states, in pertinent part:

"REASSURED: ALLENDALE INSURANCE COMPANY

"ASSURED: BULL DATA CORPORATION and/or as original.

"PERIOD: Twelve months at 1st June, 1991 and/or as original. Both

	days inclusive.
"LOCATIONS:	Bull Data Corporation, Seclin, France as original.
"INTEREST:	Goods and/or Merchandise incidental to the Assured's business consisting principally of personal computers and/or as original.
"LIMIT:	US$ 7,000,000 any one occurrence p/o US$ 13,500,000 any one occurrence excess of US$ 25,000,000 any one occurrence.
"CONDITIONS:	As original and subject to same valuation, clauses and conditions as contained in the original policy or policies but only to cover risks of All Risks of Physical Loss or Damage but excluding Inventory Shortage. Including Strikes, Riots, Civil Commotions and Malicious Damage risks if and as **3 original. Premium payable as in original. Reinsurers agree to follow the settlements of the Reassured in all respects and to bear their proportion of any expenses incurred, whether legal or otherwise, in the investigation and defence of any claim hereunder. Service of Suit Clause (U.S.A.). Insolvency Clause."

In June of 1991, a fire that generated a spate of litigation, inthe*581 United States and abroad, destroyed the warehouse. Bull Data presented a claim to Factory Mutual and, suspecting that the fire was the result of arson, Factory Mutual refused to satisfy it.

Bull Data brought suit in the courts of France to recover under its insurance policy. Factory Mutual also commenced an unsuccessful litigation against Bull Data in the United States District Court for the Northern District of Illinois, claiming that the loss was due to arson, and the limit of liability under the insurance policy was $48 million. After incurring approximately $35 million in litigation expenses, both lawsuits were terminated and Factory Mutual settled the claims with Bull Data for nearly $100 million.

Factory Mutual thereafter sought payment from respondent reinsurers. The reinsurers refused payment and filed an action in the courts of England seeking a declaration that the reinsurance contract was invalid. The English courts dismissed the case for lack of jurisdiction. During that period, Factory Mutual commenced a declaratory judgment action in the United States District Court for the District of Rhode Island seeking $7 million from the reinsurers and an additional $5 million in loss adjustment expenses, allegedly the proportionate share of expenses that the reinsurers owed Factory Mutual for having defended the Bull Data claim. Factory Mutual later discontinued the action upon stipulation and commenced a similar action in the United States District Court for the Southern District of New York.

District Judge Shira A. Scheindlin granted partial

summary judgment to the reinsurers and dismissed Factory Mutual's claim for loss adjustment expenses (*Allendale Mut. Ins. Co. v Excess Ins. Co. Ltd.*, 970 F Supp 265 [SD NY 1997], *amended upon rearg* 992 F Supp 271 [SD NY 1997]). During the pendency of Factory Mutual's appeal to the United States Court of Appeals for the Second Circuit, that court decided an unrelated case which affected the subject matter jurisdiction of the pending case, resulting in dismissal of the appeal and vacatur of the judgment of the District Court (*Allendale Mut. Ins. Co. v Excess Ins. Co. Ltd.*, 62 F Supp 2d 1116 [SD NY 1999]).**4

The reinsurers thereafter commenced this declaratory judgment action in Supreme Court, New York County, seeking to annul the reinsurance agreement based on material nondisclosures and misrepresentations or, in the alternative, a judgmentawarding*582 damages.[2] Factory Mutual interposed a counterclaim, seeking the $7 million indemnification limit under the reinsurance policy as well as $5 million in loss adjustment expenses incurred by Factory Mutual in the litigation of the original claim with Bull Data. Both Factory Mutual and the reinsurers moved for partial summary judgment on Factory Mutual's counterclaims seeking loss adjustment expenses in excess of the amount stated in the indemnification limit. Supreme Court denied the reinsurers' motion, granted Factory Mutual's cross motion and declared that the reinsurers' obligation to pay their proportionate share of the loss adjustment expenses was not subject to the stated indemnity limit of $7 million.

The Appellate Division reversed by granting the reinsurers' motion and denying Factory Mutual's cross motion. The Court thus declared that any portion of the loss adjustment expenses that the reinsurers were obligated to bear was subject to the $7 million limit stated in the reinsurance policy. The Appellate Division granted Factory Mutual leave to appeal to this Court. We now affirm the order of the Appellate Division.

In resolving the issue before us, we are mindful that in interpreting reinsurance agreements, as with all contracts, the intention of the parties should control. To discern the parties' intentions, the court should construe the agreements so as to give full meaning and effect to the material provisions (*see Breed v Insurance Co. of N. Am.*, 46 NY2d 351, 355 [1978]; *see also Greenfield v Philles Records, Inc.*, 98 NY2d 562, 569 [2002]; *Slatt v Slatt*, 64 NY2d 966, 967 [1985]).**5

Here, there is no dispute that the reinsurance agreements set the policy limit at $7 million per occurrence. The so-called "follow the settlements" clause is thereafter set forth in the section of the policy entitled "CONDITIONS."[3] As provided in the agreement, the clause requires the reinsurers to pay their portion*583 of expenses incurred in the investigation and defense of any claim under the agreement. The reinsurers, however, contend that their liability to pay is subject to the $7 million cap negotiated under the policy. By contrast, Factory Mutual argues that the reinsurers' liability to pay the defense expenses is separate and apart from the indemnification cap on the policy.

We agree with the reinsurers and hold that they cannot be required to pay loss adjustment expenses in excess of the stated limit in the reinsurance policy. Once the reinsurers have paid the maximum amount stated in the policy, they have no further obligation to pay Factory Mutual any costs related to loss adjustment expenses. In so holding, we follow the decisions of the United States Court of Appeals for the Second Circuit as expressed in *Bellefonte Reins. Co. v Aetna Cas. & Sur. Co.* (903 F2d 910 [2d Cir 1990]) and *Unigard Sec. Ins. Co., Inc. v North Riv. Ins. Co.* (4 F3d 1049 [1993]). In both cases, the ceding insurers claimed that a similar "follow the fortunes" clause required the reinsurers to reimburse litigation costs beyond the stated limit in the policy. The court in both cases concluded that such a reading of the policy would render meaningless the liability cap negotiated in the policy. According to the *Bellefonte* court, to "allow[ ] the 'follow the fortunes' clause to override the limitation on liability--would strip the limitation clause and other conditions of all meaning; the reinsurer would be obliged merely to reimburse the insurer for any and all funds paid. . . . The 'follow the fortunes' clauses in the certificates are structured so that they coexist with, rather than supplant, the liability cap. To construe the certificates otherwise would effectively eliminate the limitation on the reinsurers' liability to the stated amounts" (903 F2d at 913).

Likewise here, the parties negotiated an indemnity limit of $7 million per occurrence. Thus, any obligation on the part of the reinsurers to reimburse Factory Mutual, whether it be for settling the original insurance claim with Bull Data or for the loss adjustment **6 expenses incurred in the protracted litigation that ensued, must be capped by the negotiated limit under the policy. Otherwise, the reinsurers would be subject to limitless liability. Indeed, this case well illustrates such an injustice as Factory Mutual now seeks to saddle the reinsurers with a portion of alitigation*584 bill that exceeds the negotiated policy limit by more than 70%.[4] To permit such a result would render the liability cap a nullity.

Factory Mutual asserts that this case is distinguishable

from *Bellefonte* and *Unigard* in that those cases involved liability insurance while this case involves property insurance. According to Factory Mutual, a liability insurance product normally encompasses the obligation to pay the legal defense costs on behalf of the insured as well as the cost of the loss itself. Thus, the risk to be spread in reinsurance would already include loss adjustment expenses. However, a property insurance product would cover only the value of the property item to be insured. Under those circumstances, Factory Mutual contends, an insurer would have no contractual obligation to incur investigation or litigation costs and the risk of those costs is not already included in the reinsurance product. We find this argument unpersuasive and conclude that this distinction does not provide a sufficient basis to extend the reinsurers' liability beyond the limit stated in the reinsurance policy.

The limit clause in the policy is intended to cap the reinsurers' total risk exposure. Although Judge Scheindlin's decision in *Allendale* was vacated and is not binding, we find her reasoning persuasive, "Whether [the reinsurers] reimburse [Factory Mutual] for claims for property losses or defense costs makes no difference to them. Reinsurers of property insurance policies have the same interest in controlling their maximum exposure as do reinsurers of liability insurance policies. Thus, *Bellefonte* and *Unigard*'s holdings that the limit clauses define the reinsurers' bargained-for maximum exposure to liability inclusive of all costs and expenses are applicable even where the underlying insurance policy does not oblige the insurer to cover the insured's defense costs" (992 F Supp at 277).

Of course, both parties were well aware of the type of product that was being reinsured. It would be far from unreasonable to expect that at the time of procuring reinsurance, Factory Mutual could anticipate the possibility of incurring loss adjustment expenses in settling a claim from Bull Data. Certainly, nothing prevented Factory Mutual from insuring that risk either **7 by expressly stating that the defense costs were excluded from theindemnification*585 limit or otherwise negotiating an additional limit for loss adjustment expenses that would have been separate and apart from the reinsurers' liability on the insured property. Failing this, the reinsurers were entitled to rely on the policy limit as setting their maximum risk exposure.

Accordingly, the order of the Appellate Division should be affirmed, with costs, and the certified question answered in the affirmative.

Read, J. (dissenting). I see no way to tell from the plain language of this certificate whether the parties intended for costs and expenses to be included in the reinsurance limit or excluded from it. Further, in my view the majority has misinterpreted *Bellefonte Reins. Co. v Aetna Cas. & Sur. Co.* (903 F2d 910 [2d Cir 1990]) in ways that augur further expansion of its much debated holding. Accordingly, I dissent.

I.

The certificate pertains to reinsurance of a $13,500,000 layer ($25,000,000 to $38,500,000) of a $48,000,000 *property* insurance policy issued by Factory Mutual. Two provisions are at issue. The first provides that the "LIMIT" is "US $ 7,000,000 any one occurrence [part of] US$ 13,500,000 any one occurrence excess of US$ 25,000,000 any one occurrence."[1] The second notes several "CONDITIONS," including one whereby the certificate is made "subject to same valuation, clauses and conditions as contained in the original policy" (a "following form" provision) and one whereby "[r]einsurers agree . . . to bear their proportion of any expenses incurred" (a "follow the settlements" provision).

In essence, the majority concludes that the only reasonable interpretation of these provisions is that the policy contains a $7,000,000 limit (any one occurrence) which is cost-inclusive. This conclusion rests too heavily on the "follow the settlements" provision of the certificate, and fails to consider the "following form" provision. An equally plausible reading is that the parties, who "conditioned"[2] the certificate on the same "valuation, clauses and **8 conditions" as exist in the primary *property* policy-- *586 where costs are commonly paid in addition to the policy limit[3]---could have intended to create a cost-exclusive reinsurance limit. Moreover, the parties did not expressly state that the limit was "subject to" the conditions and therefore capped all liability under the certificate (*see e.g. Bellefonte*). Because the certificate may reasonably be interpreted in either of two ways, I conclude that it is ambiguous (*see Evans v Famous Music Corp.*, 1 NY3d 452 [2004]).[4]

Moreover, I disagree with the majority's apparent reading of *Bellefonte*. In *Bellefonte*, Aetna issued primary and excess *liability* policies to A.H. Robins Co., the manufacturer of the Dalkon Shield. Aetna reinsured the excess policies with various reinsurers. After an "explosion" of litigation over the device, Aetna and Robins disputed the extent of Aetna's liability for defense expenses under the excess policies, and ultimately reached a **9 monetary settlement in excess of the limit stated in the excess policy. Aetna then looked to the reinsurers for the excess paid on the underlying policy.

The reinsurers refused to pay, arguing that their liability was limited by the reinsurance certificate.

The certificate stated that the reinsurance was provided "subject to the . . . amount of liability set forth herein" (903 F2d at 911). The court concluded that this created a cap on the reinsurers' liability whether reached through payment of expenses or settlement of claims. The Second Circuit reasoned that "[a]ny other construction of the reinsurance certificates would negate" the "subject to" provision of the certificate (*id.* at 914; *see also Unigard Sec. Ins. Co. v North Riv. Ins. Co.*, 4 F3d 1049***587** [2d Cir 1993] [following *Bellefonte* as certificate included same "subject to" language]).

The *Bellefonte* court also considered and rejected a second argument made by Aetna, which the Appellate Division applied below (2 AD3d 150 [1st Dept 2003]) and the majority now adopts. Aetna argued that the "follow the fortunes" doctrine, as embodied in a clause in the certificate,[5] obligated the reinsurers to pay all Aetna's settlements even if they were in excess of the liability limit in the reinsurance policy. The *Bellefonte* court rebuffed this argument, noting that "[t]he 'follow the fortunes' clauses in the certificates are structured so that they coexist with, rather than supplant, the *liability cap*. To construe the certificates otherwise would effectively eliminate the limitation on the reinsurers' liability to the stated amounts" (903 F2d at 913 [emphasis added]). Critically, this prong of the court's analysis was based on its conclusion that the certificate created a cap on liability through the "subject to" and the "limitation" clauses, and that "the 'follow the fortunes' doctrine does not allow Aetna to recover defense costs beyond the express cap stated in the certificates" (*id.*).

The Appellate Division disregarded the "subject to" analysis in *Bellefonte*, as does ****10** the majority, summarily concluding that "all contracts are subject to their terms and conditions" (2 AD3d at 152). Instead, the Appellate Division relied on *Belle-fonte*'s "follow the fortunes" analysis, and concluded that the "overriding determination in *Bellefonte* and *Unigard* was that the 'follow the fortunes' clauses of the reinsurance contracts considered there coexisted with, and did not supplant, the contract limitations" (*id.*). In my view, this was error.

Bellefonte's holding was not intended as a general rule applicable to any and all reinsurance certificates (*see* Goldstein, *Bellefonte Lives*, 8-10 Mealey's Litig Rep Reinsurance 9 [1997] [noting that *Bellefonte* should have been limited to "the specific contract language" in the certificate]). The holding relies on specific certificate language--"the first two provisions of the reinsurance***588** certificates" (903 F2d at 913)--which the court determined contained a "cap" on the reinsurers' liability. Because the certificate had a cap, the "follow the fortunes" clause in the certificate could not supplant the cap, which therefore limited expenses.[6]

The Appellate Division and now the majority have converted a rule unique to the specific certificate language in *Bellefonte* into a general principle that a "follow the fortunes" clause never supplants a policy limit. Thus, the majority, like the Appellate Division before it, expands *Bellefonte* from a contract-specific holding into a rule of general applicability.

When the holding of *Bellefonte*--that the reinsurance certificate's specific policy language controls whether costs are included or excluded from the limit--is applied here, it is easily distinguished. There is no "subject to" language in the reinsurance certificate at issue on this appeal. Rather, the certificate contains two discrete provisions--"LIMIT" and "CONDITIONS"--and neither offers any guidance as to whether the "CONDITIONS" are subject to the "LIMIT."

Further, it is worth observing that practitioners in the reinsurance industry have consistently criticized *Bellefonte*. Specifically, commentators have noted that in ruling "based ****11** solely on a textual interpretation of the language of the certificates," the *Bellefonte* court ignored important extrinsic evidence of industry custom and practice showing that the nature of the underlying policy often controlled whether the reinsurance limit was cost-inclusive or cost-exclusive (*see* Goldstein, *Bellefonte Lives* ["(n)otwithstanding *Bellefonte* . . . the industry for the most part has continued to follow the custom and practice of reinsurers providing coverage for expenses in addition to limits where the reinsured policy also covers expenses in addition to limits"]). There was a fear "that the *Bellefonte* rule would be applied to the same certificate language but where the reinsured policy covered defense costs in addition to limits" (*id.*).***589**

When *Unigard* was decided, this fear was realized. There, the certificate language was nearly identical to that in *Bellefonte*. The Second Circuit rejected extrinsic evidence that the reinsurers covered expenses in addition to the policy limit, instead choosing to rely on its holding in *Bellefonte* and the similar certificate language (4 F3d at 1071).

Commentators have similarly faulted *Allendale Mut. Ins. Co. v Excess Ins. Co. Ltd.* (970 F Supp 265 [SD NY 1997], *rearg granted and original decision adhered to* 992 F Supp 271 [1997], *vacated* 172 F3d 37 [table, text at

1999 WL 55313, 1999 US App LEXIS 1735 (2d Cir 1999)]). The federal District Court in *Allendale* was the first court to rule on the case now before us, holding that the plain language of the certificate meant that expenses were included in the policy limit.[7] Citing *Bellefonte* and *Unigard*, the court rejected Factory Mutual's request to distinguish these cases on the basis of the specific certificate language or the nature of the underlying policies (992 F Supp at 274-275). *Allendale* was thus judged to be "a significant extension" of *Bellefonte* on both fronts (*see* Goldstein, *Bellefonte Lives*; *see also* Goldstein, *For Whom Does Bellefonte Toll? It Tolls for Thee*, 9-7 Mealey's Litig Rep Reinsurance 12 [1998] ["Because *Allendale* involved reinsurance of a property policy, rather than a liability policy that provided a defense for the insured, and because the contract at issue lacked certain critical language contained in the *Bellefonte* and *Unigard* certificates, ****12** *Allendale* clearly expanded the breadth of the *Bellefonte* Rule"]).[8]****13 *590**

Today, the majority adopts the *Allendale* rationale, and sug- gests that Factory Mutual should have negotiated language "expressly stating that the defense costs were excluded from the indemnification limit," or otherwise setting forth "an additional limit for loss adjustment expenses that would have been separate and apart from the reinsurers' liability on the insured property" (majority op at 584-585). But Factory Mutual first obtained the relevant certificate in London in December 1990, about eight months after the Second Circuit decided *Bellefonte*. It seems harsh and unrealistic for us to fault Factory Mutual for not having drafted this certificate to conform with a recently decided case whose potential future reach could hardly have been predicted at the time.

Here, both parties moved for summary judgment, arguing that the certificate was unambiguous. Although neither party argued that the certificate was ambiguous, ambiguity is an issue of law for the courts (*Greenfield*, 98 NY2d at 569). Factory Mutual opposed the reinsurers' motion for summary judgment with extrinsic evidence of industry custom and practice, and thereby created a question of fact concerning the parties' intent (*Mallad Constr. Corp. v County Fed. Sav. & Loan Assn.*, 32 NY2d 285, 290-293 [1973]). Our precedent establishes that where there is ambiguity in a reinsurance certificate, the surroundingcircumstances,***591** including industry custom and practice, should be taken into consideration (*see London Assur. Corp. v Thompson*, 170 NY 94 [1902];[9] *see also Christiania Gen. Ins. Corp. of N.Y. v Great Am. Ins. Co.*, 979 F2d 268, 274 [2d Cir 1992] [citing *London Assur.*]; 1 Couch on Insurance 3d § 9:15, at 9-53).

Accordingly, I would modify the order of the Appellate Division by denying both motions, and remand the matter for further proceedings consistent with this opinion.

Chief Judge Kaye and Judges Ciparick, Rosenblatt, Graffeo and R.S. Smith concur with Judge G.B. Smith; Judge Read dissents and votes to modify by denying both motions for summary judgment in a separate opinion.

Order affirmed, etc.

FOOTNOTES

II.

Footnotes

1 "Facultative reinsurance is policy-specific, meaning that all or a portion of a reinsured's risk under a specific contract of direct coverage will be indemnified by the reinsurer in the event of loss" (*Travelers Cas. & Sur. Co. v Certain Underwriters at Lloyd's of London*, 96 NY2d 583, 587 [2001]).

2 Factory Mutual moved Supreme Court to dismiss the action on the grounds of forum non conveniens and also commenced an action in the Superior Court of Providence, Rhode Island. Supreme Court granted Factory Mutual's motion. While the reinsurers appealed the order, they sought a preliminary injunction in Supreme Court to enjoin the Rhode Island proceeding, which that court denied. While the Rhode Island court was considering Factory Mutual's motion for partial summary judgment on its claims for loss adjustment expenses in excess of the indemnification limit, the Appellate Division reversed the order of Supreme Court, reinstated the reinsurers' lawsuit and enjoined the Rhode Island litigation.

3 In the reinsurance industry a "follow the settlements" clause "refers to the duty to follow the actions of the cedent in adjusting and settling claims"

(Barry R. Ostrager and Thomas R. Newman, 2 Handbook on Insurance Coverage Disputes § 16.01 [b], at 1020 [12th ed 2004]). Thus, the reinsurers will be bound by the settlement or compromise agreed to by the cedent unless they can show impropriety in arriving at the settlement (*id.*).

[4] Such an outcome would be particularly unfair given that the "follow the settlements" clause gave the reinsurers no control over the management of the unsuccessful litigation that Factory Mutual launched against Bull Data and no voice in limiting the $35 million litigation expense.

[1] Sorema N.A. reinsured the remaining $6,500,000 of the $13,500,000 layer. Unlike Excess, Sorema paid up to its limit and also paid its proportion of costs.

[2] The word "conditions" is not illuminative. Restatement (Second) of Contracts § 224 defines a condition as "an event, not certain to occur, which must occur, unless its non-occurrence is excused, before performance under a contract becomes due." As the Comments note, the term "condition" "is used with a wide variety of other meanings in legal discourse" (Restatement [Second] of Contracts § 224, Comment *a*).

[3] The courts below did not determine whether or not this was the case here.

[4] Indeed, the history of this case betokens ambiguity: five courts have now interpreted the certificate with varying results. Supreme Court and the Rhode Island Superior Court concluded that the certificate does not contain a cap and therefore the limit is cost-exclusive (*see Factory Mut. Ins. Co. v Excess Ins. Co.*, Super Ct, Providence, RI, May 22, 2001, Hurst, J., PC 00-0760 [litigation enjoined 285 AD2d 351 (1st Dept 2001)]; *Excess Ins. Co. v Factory Mut. Ins. Co.*, Sup Ct, NY County, Aug. 22, 2002, Moskowitz, J., Index No. 605759/99). The majority now joins the Appellate Division and the United States District Court for the Southern District, which found that the limit is cost-inclusive (*see* 2 AD3d 150 [1st Dept 2003]; *Allendale Mut. Ins. Co. v Excess Ins. Co. Ltd.*, 970 F Supp 265 [SD NY 1997], *rearg granted and original decision adhered to* 992 F Supp 271 [1997], *vacated* 172 F3d 37 [table, text at 1999 WL 55313, 1999 US App LEXIS 1735 (2d Cir 1999)]).

[5] The clause provided that "the liability of the Reinsurer . . . shall follow that of [Aetna]" (903 F2d at 911). These clauses are generally construed to mean that "the reinsurer follows the insurer's fortunes under the latter's insurance policies, subject to the stated exclusions and limitations in the reinsurance agreement . . . Without such a concept--and on occasion even with it--the reinsurer could successfully assert a defense to a claim under the reinsurance agreement, that was not asserted by the insurer with respect to the insurance claim, leaving the insurer with an unidentified liability" (Staring, Reinsurance § 18:1).

[6] Our decision in *Travelers Cas. & Sur. Co. v Certain Underwriters at Lloyd's of London* (96 NY2d 583 [2001]) is not to the contrary. There, we were asked whether a "follow the fortunes" clause negated an insurer's obligation to apply the allocation methodology contained in the reinsurance policy. In rejecting this argument, we agreed with the "rationale" of the Second Circuit that the follow the fortunes doctrine "does not alter the terms or override the language of reinsurance policies" (*id.* at 596). Thus, *Travelers* supports the proposition that each reinsurance policy must be interpreted according to its own terms.

[7] On reargument, however, the *Allendale* court acknowledged that "[i]n a purely semantic sense, the Reinsurance Agreement is ambiguous" (992 F Supp at 276). Nonetheless, the judge concluded that the certificate was only reasonably interpreted to be cost-inclusive. The *Allendale* court (like the majority) seemed concerned that a reinsurer would otherwise accept open-ended liability for costs (992 F Supp at 276 n 4), and thus appears to have "alter [ed] the contract to reflect its personal notions of fairness and equity" (*Greenfield v Philles Records*, 98 NY2d 562, 570 [2002]).

[8] Other courts have regarded *Bellefonte* and *Unigard* skeptically. *Aetna Cas. & Sur. Co. v Philadelphia Reins. Corp.* (1995 WL 217631, 1995 US Dist LEXIS 4806 [ED Pa, Apr. 13, 1995]) followed *Bellefonte*, but only because Aetna was a party in *Bellefonte* and therefore was collaterally estopped from relitigating the issue. The court in *Philadelphia Reinsurance* preferred the analysis used in *Penn Re, Inc. v Aetna Cas. & Sur. Co.* (1987 WL 909519, 1987 US Dist LEXIS 15252 [ED NC, June 30, 1987]). There, the court (deciding the issue prior to *Bellefonte*) interpreted a reinsurance policy containing a "subject to" provision and found that the reinsurer was liable for costs in addition to the limit of the policy. *Bellefonte* rejected the analysis of *Penn Re*. In *North Riv. Ins. Co. v CIGNA Reins. Co.* (52 F3d 1194 [3d Cir 1995]), the court was faced with a *Bellefonte* question, which it avoided by holding that whether the certificate placed a cap on the policy was not timely raised. In *TIG Premier Ins. Co. v Hartford Acc. & Indem. Co.* (35 F Supp 2d 348, 350 [SD NY 1999]), the court sidestepped *Bellefonte* by applying California law, which allows use of extrinsic evidence to reveal a "latent ambiguity" in a contract that "appears unambiguous on its face." Accordingly, the court reviewed extrinsic evidence

showing that reinsurers commonly pay expenses in addition to limits. Finding a genuine issue of fact, the court denied the motion for summary judgment. In addition, arbitrators have apparently declined to follow *Bellefonte*, at least in some cases (*see* Monin and Brady, *Reinsurance Disputes: Death of the Handshake*, 61 Def Couns J 529, 538 n 22 [Oct. 1994]; Monin and Brady, *Updating Reinsurance Law Developments: The Gloves are Beginning to Come Off*, 63 Def Couns J 219, 223 [Apr. 1996]; *see also* Wilker and Lenci, *Much Ado About Nothing: A Response Regarding Bellefonte's Reach*, 9-10Mealey's Litig Rep Reinsurance 16 [1998] [stating that "arbitration panels, even those sitting in the Second Circuit, are free to ignore *Bellefonte*, *Unigard*, and *Allendale*" and suggesting that "most properly constituted arbitration panels will not follow those decisions or any generalized *Bellefonte* rule unless it is shown that it was clearly the cedent's and reinsurer's intention not to cover expenses in addition to the liability limit of the certificate in question"]).

[9] "Reinsurance, like any other contract, depends upon the intention of the parties, to be gathered from the words used, taking into account, when the meaning is doubtful, the surrounding circumstances. Custom or usage is presumed to enter into the intention when it is found as a fact, not only that it existed, but was uniform, reasonable and well settled, and either known to the parties when the contract was made, or so generally known as to raise a presumption that they had it in mind at the time" (170 NY at 99).

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843 F.3d 120
United States Court of Appeals,
Second Circuit.

Global Reinsurance Corporation of America, successor in interest to Constitution Reinsurance Corporation,
Plaintiff–Counter–Defendant–Appellee,
v.
Century Indemnity Company, successor in interest to CCI Insurance Company, successor in interest to Insurance Company of North America,
Defendant–Counter–Claimant–Appellant.[1]

Docket No. 15-2164-cv
|
August Term, 2015
|
Argued: May 5, 2016
|
Decided: December 8, 2016

Synopsis

Background: Reinsurer brought action against reinsured, an insurance company that had issued various general liability insurance policies to entity that was subsequently the subject of thousands of asbestos-related lawsuits, seeking declaration of its rights and obligations under nine certificates of reinsurance issued by its predecessor-in-interest to reinsured's predecessor-in-interest. The United States District Court for the Southern District of New York, Lorna G. Schofield, J., 2014 WL 4054260, granted partial summary judgment in favor of reinsurer and declared that dollar amount stated in certificates' "Reinsurance Accepted" sections unambiguously capped the maximum amount that reinsurer could be obligated to pay reinsured for both "losses" and "expenses" combined. Following denial of its motion for reconsideration, 2015 WL 1782206, reinsured appealed.

[Holding:] The Court of Appeals, Pooler, Circuit Judge, held that question would be certified to New York Court of Appeals as to whether that court's decision in *Excess Ins. Co. Ltd. v. Factory Mut. Ins.*, 3 N.Y.3d 577, 789 N.Y.S.2d 461, 822 N.E.2d 768 (N.Y. 2004), imposes either rule of construction, or strong presumption, that per occurrence liability cap in reinsurance contract limits the total reinsurance available under the contract to the amount of the cap regardless of whether the underlying policy is understood to cover expenses such as, for instance, defense costs.

Question certified.

West Headnotes (9)

[1] **Federal Courts**
Summary judgment
Federal Courts
Summary judgment

Court of Appeals reviews the district court's grant of summary judgment de novo and will affirm if, viewing the evidence in the light most favorable to the non-moving party, there is no genuine dispute as to any material fact.

Cases that cite this headnote

[2] **Insurance**
Following fortunes, form, and settlement

Under New York law, the "follow the fortunes" doctrine burdens a reinsurer with those risks which the direct insurer bears under the direct insurer's policy covering the original insured.

Cases that cite this headnote

[3] **Insurance**
Reinsurance

Purpose of reinsurance is to enable the reinsured to spread its risk of loss among one or more reinsurers.

Cases that cite this headnote

[4] **Courts**
Decisions of Same Court or Co-Ordinate Court

Principle of stare decisis counsels against overruling a precedent of the Court of Appeals, especially in cases involving contract rights, where considerations favoring stare decisis are at their acme.

Cases that cite this headnote

[5] **Courts**
Decisions of Same Court or Co-Ordinate Court

In determining whether to overrule a precedent of the Court of Appeals, the economic impact of a reversal of the rule set forth in the subject case may counsel in favor of retaining the status quo.

Cases that cite this headnote

[6] **Insurance**
Construction in general

Efficiency of the reinsurance industry would not be enhanced by giving different meanings to identical standard contract provisions depending upon idiosyncratic factors in particular lawsuits.

Cases that cite this headnote

[7] **Federal Courts**
Particular questions

Federal appellate court would certify question to New York Court of Appeals as to whether that court's decision in *Excess Ins. Co. Ltd. v. Factory Mut. Ins.*, 3 N.Y.3d 577, 789 N.Y.S.2d 461, 822 N.E.2d 768 (N.Y. 2004), imposes either rule of construction, or strong presumption, that per occurrence liability cap in reinsurance contract limits the total reinsurance available under the contract to the amount of the cap regardless of whether the underlying policy is understood to cover expenses such as, for instance, defense costs. N.Y. Comp. Codes R. & Regs. tit. 22, § 500.27(a).

Cases that cite this headnote

[8] **Federal Courts**
Withholding Decision; Certifying Questions

Federal appellate court may certify a question to the New York Court of Appeals where determinative questions of New York law are involved for which no controlling precedent of the Court of Appeals exists. N.Y. Comp. Codes R. & Regs. tit. 22, § 500.27(a).

Cases that cite this headnote

[9] **Federal Courts**
Withholding Decision; Certifying Questions

Even where the parties do not request certification of question to the New York Court of Appeals, federal appellate court is empowered to seek certification nostra sponte. N.Y. Comp. Codes R. & Regs. tit. 22, § 500.27(a).

Cases that cite this headnote

***121** Appeal from the United States District Court for the Southern District of New York

Attorneys and Law Firms

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Before: POOLER, LIVINGSTON, and CARNEY, Circuit Judges.

Opinion

***122** POOLER, Circuit Judge:

This appeal arises out of a dispute between Century Indemnity Company ("Century") and Global Reinsurance Corporation of America ("Global") over the extent to which Global is obligated to reinsure Century pursuant to certain reinsurance certificates. The United States District Court for the Southern District of New York (Lorna G. Schofield, *J.*) held that the dollar amount stated in the "Reinsurance Accepted" section of the certificates unambiguously caps the amount that Global can be obligated to pay Century for both "losses" and "expenses" combined. Century contends that Global is obligated to pay expenses in addition to the amount stated in the "Reinsurance Accepted" provision and that, at a minimum, the district court erred in concluding that the certificates were unambiguous. Because this case presents an important question of New York law that the New York Court of Appeals has never directly addressed, we certify to the New York Court of Appeals the following question:

> Does the decision of the New York Court of Appeals in *Excess Insurance Co. v. Factory Mutual Insurance Co.*, 3 N.Y.3d 577 [789 N.Y.S.2d 461, 822 N.E.2d 768] (2004), impose either a rule of construction, or a strong presumption, that a per occurrence liability cap in a reinsurance contract limits the total reinsurance available under the contract to the amount of the cap regardless of whether the underlying policy is understood to cover expenses such as, for instance, defense costs?

BACKGROUND

Between 1971 and 1980, Century issued nine reinsurance certificates with Global.[2] The certificates provided that Global would reinsure specified portions of general liability insurance policies that Century had issued to Caterpillar Tractor Company. In such an arrangement, Century is known as the "ceding insurer" because it is "ceding" or spreading its risk of loss among one or more reinsurers.

Beginning in 1988, thousands of lawsuits were filed against Caterpillar alleging bodily injury resulting from exposure to asbestos. A coverage dispute then arose between Century and Caterpillar, and both companies filed suit in Illinois seeking declaratory judgments concerning their obligations under the insurance policies. As a result of the Illinois litigation, Century became obligated to reimburse Caterpillar for defense expenses in addition to the indemnity limits of the policies. Global alleges that Century has already paid more than $60 million to Caterpillar and has agreed to pay an additional $30.5 million. Global further alleges that only about 10% of this amount represents what Century refers to as "loss," whereas about 90% represents what Century refers to as "expenses."

Century then sought reimbursement from Global for portions of its payments to Caterpillar pursuant to the reinsurance certificates. One of those certificates, which the parties call "Certificate X," provides in relevant part as follows:

> [Global] [d]oes hereby reinsure [Century] in respect of [Century's liability insurance policy with Caterpillar] and in consideration of the payment of the premium and subject to the terms, conditions, and amount of liability set forth herein, as follows: ...
>
> ***123** Item 1—Type of Insurance
>
> Blanket General Liability, excluding Automobile Liability as original.
>
> Item 2—Policy Limits and Application
>
> $1,000,000. each occurrence as original.
>
> Item 3—[Century] Retention
>
> The first $500,000. of liability as shown in Item #2 above.

Item 4—Reinsurance Accepted

$250,000. part of $500,000. each occurrence as original excess of [Century's] retention as shown in Item #3 above.

Item 5—Basis

Excess of Loss.

App'x at 88.[3] The certificate goes on to state that "the liability of [Global] specified in Item 4 above shall follow that of [Century] and, except as otherwise specifically provided herein, shall be subject in all respects to all the terms and conditions of [the underlying liability insurance policy]." App'x at 89. The certificate also provides that "[a]ll claims involving this reinsurance, when settled by [Century], shall be binding on [Global], who shall be bound to pay its proportion of such settlements, and in addition thereto, in the ratio that [Global's] loss payment bears to [Century's] gross loss payments, [Global's] proportion of expenses ... incurred by [Century] in the investigation and settlement of claims or suits." App'x at 89. Though not all of the certificates are in the record before us, the parties suggest that other eight certificates are materially similar.

In Global's view, the amount stated in the "Reinsurance Accepted" section caps the maximum amount that it can be obligated to pay for both loss and expenses combined. Thus, Global contends that the maximum amount that it can be required to pay under Certificate X is $250,000. Century contends that the amount stated in the "Reinsurance Accepted" provision applies only to "loss" and that Global must pay all expenses that exceed that amount.

In the district court, Global moved for partial summary judgment seeking a declaration that its interpretation of the certificates was correct. The district court granted Global's motion and held that the certificates unambiguously capped Global's liability for both losses and expenses. *See Glob. Reins. Corp. of Am. v. Century Indem. Co.*, No. 13 Civ. 06577, 2014 WL 4054260, at *4–7 (S.D.N.Y. Aug. 15, 2014), *reconsideration denied*, 2015 WL 1782206 (S.D.N.Y. Apr. 15, 2015). In reaching this conclusion, the district court relied primarily on this Court's decision in *Bellefonte Reinsurance Co. v. Aetna Casualty & Surety Co.*, 903 F.2d 910 (2d Cir. 1990), which considered a similar reinsurance certificate. The *Bellefonte* court affirmed a judgment declaring that the reinsurers "were not obligated to pay ... any additional sums for defense costs over and above the limits on liability stated in the reinsurance certificates." *Id.* at 910. The district court also relied on this Court's decision in *Unigard Security Insurance Co. v. North River Insurance Co.*, 4 F.3d 1049 (2d Cir. 1993), which applied *Bellefonte* to conclude that a reinsurer was "not liable for expenses beyond the stated liability limit in the [c]ertificate." *Id.* at 1071. Century timely appealed the district court's grant of summary judgment to Global.

DISCUSSION

[1]We review the district court's grant of summary judgment de novo and will affirm if "viewing the evidence in the light most favorable to the non-moving party, ***124** there is no genuine dispute as to any material fact." *Baldwin v. EMI Feist Catalog, Inc.*, 805 F.3d 18, 25 (2d Cir. 2015) (internal quotation marks and citation omitted).[4]

In *Bellefonte*, we considered a reinsurance certificate that provided as follows:

Provision 1

Reinsurer does hereby reinsure Aetna (herein called the Company) in respect of the Company's contract hereinafter described, in consideration of the payment of the premium and subject to the terms, conditions and amount of liability set forth herein, as follows[.]

Provision 2

Reinsurance Accepted

$500,000 part of $5,000,000 excess of $10,000,000 excess of underlying limits[.]

Provision 3

The Company warrants to retain for its own account the amount of liability specified above, and the liability of the Reinsurer specified above [i.e., amount of reinsurance accepted] shall follow that of the Company.

Provision 4

All claims involving this reinsurance, when settled by the Company, shall be binding on the Reinsurer, which shall be bound to pay its proportion of such settlements, and in addition thereto, in the ratio that the Reinsurer's loss payment bears to the Company's gross loss payment, its proportion of expenses incurred by the Company in the investigation and settlement of claims or suits[.]

903 F.2d at 911 (brackets in Provision 3 in original). The district court in *Bellefonte* had held that, under this certificate, the reinsurers "were not obligated to pay Aetna any additional sums for defense costs over and above the limits on liability stated in the reinsurance certificates." *Id.* at 910.

[2]Aetna raised two arguments on appeal. First, Aetna argued that the third provision of the certificate contained a "follow the fortunes" clause and that the " 'follow the fortunes doctrine' of reinsurance law obligates a reinsurer to indemnify a reinsured for all of the reinsured's defense expenses and costs, even when those expenses and costs bring the total amount to more than the explicit limitation on liability contained in ... [the] reinsurance certificate." *Id.* at 912.[5] Second, Aetna argued that the phrase "in addition thereto" in the fourth provision of the certificate "indicates that liability for defense costs is separate from liability for the underlying losses sustained by [the insured]." *Id.* at 913.

We rejected both of Aetna's arguments. First, we held that "allowing the 'follow the fortunes' clause to override the limitation on liability ... would strip the limitation clause and other conditions of all meaning." *Id.* The " 'follow the fortunes' clauses in the certificates," we reasoned, "are structured so that they coexist with, rather than supplant, the liability cap." *Id.* "To construe the certificates otherwise," we held, "would effectively eliminate the limitation on the reinsurers' liability to the stated amounts." *Id.* (citation omitted).

***125** Second, we rejected Aetna's argument that the phrase "in addition thereto" in the fourth provision of the certificate indicated that liability for defense costs was separate from liability for the underlying losses sustained by the insured. We read the phrase "in addition to" "merely to differentiate the obligations for losses and for expenses." *Id.* And, noting that Provision 1 of the contract explicitly made reinsurance under the certificate "subject to the amount of liability set forth therein," we held that the "in addition to" language "in no way exempts defense costs from the overall monetary limitation in the certificate." *Id.* at 913–14.

These were the only two arguments that were addressed in *Bellefonte*. Significantly, although we described the amount stated in the "Reinsurance Accepted" provision as an "explicit limitation on liability," *id.* at 912, we never explained why this was so.

In *Unigard*, we again confronted the issue of a reinsurer's liability for expenses. *See* 4 F.3d at 1070–71. There, the ceding insurer, North River, raised two arguments as to why the reinsurer, Unigard, was required to pay expenses that exceeded the "limits" of liability of the certificate.[6] *Id.* First, North River noted that the certificate at issue contained a "follow the form" clause that was not considered in *Bellefonte* and argued that this clause required Unigard to pay expenses in excess of the policy limit.[7] *Id.* at 1070. Second, North River argued that "past practices" demonstrated that Unigard "expected to pay expenses." *Id.* at 1071.

As in *Bellefonte*, we again rejected the ceding insurer's arguments. Regarding the argument based on the "follow the form" clause, we noted that the clause stated that the liability of the reinsurers would be subject to the terms and conditions of the underlying policy "except as otherwise provided by th[e] [c]ertificate." *Id.* at 1070 (emphasis omitted). We held that the certificate "otherwise provide[d] for the policy limits" because another provision of the certificate, "like the certificate in *Bellefonte*, provide [d] that Unigard agreed to reinsure North River 'in consideration of the payment of the reinsurance premium and subject to the terms, conditions, *limits of liability*, and [c]ertificate provisions set forth herein.' " *Id.* at 1071 (citation omitted). We noted that *Bellefonte* stated that "the limitation on liability provision capped the reinsurers' liability under the [c]ertificate" and that "[a]ll other contractual language must be construed in light of that cap." *Id.* at 1071 (quoting *Bellefonte*, 903 F.2d at 914). We also rejected as irrelevant Unigard's expectations or past practices, holding that "*Bellefonte*'s gloss upon the written agreement is conclusive." *Id.*

As noted, the district court in this case held that, under *Bellefonte* and *Unigard*, Global's "total liability for both loss and expenses is capped at the dollar amount stated in the 'Reinsurance Accepted' section of each [c]ertificate." *Global*, 2014 WL 4054260, at *5. The court concluded that the relevant language in the certificates at issue in this case was "nearly identical to the language" in *Bellefonte*. *Id.* The court rejected Century's argument that ***126** *Bellefonte* was distinguishable on the ground that, here, the insurer on the underlying policies pay expenses above and beyond limits for loss, noting that, in *Unigard*, this court "followed the reasoning of *Bellefonte* when dealing with underlying policies that pay expenses above and beyond the limits for loss." *Id.* (citation omitted).

Century now argues, with the support of four large reinsurance brokers, that *Bellefonte* and *Unigard* were wrongly decided. *See* Appellant's Br. at 13, 20; Brief for Aon Benfield U.S.; Guy Carpenter & Co., LLC; JLT Re (N. Am.) Inc.; and Willis Re Inc. as Amicus Curiae Supporting Appellant at 15–17 (hereinafter "Brief for Reinsurance Brokers") (noting that "*Bellefonte* and its

progeny have been roundly criticized in the insurance industry"). Their argument is not without force. In particular, we find it difficult to understand the *Bellefonte* court's conclusion that the reinsurance certificate in that case *unambiguously* capped the reinsurer's liability for both loss and expenses. Looking only to the language of the certificate, we think it is not entirely clear what exactly the "Reinsurance Accepted" provision in *Bellefonte* meant. Evidence of industry custom and practice might have shed light on this question, but the *Bellefonte* court did not consider any such evidence in its decision, although it is unclear if any was presented.

[3]The purpose of reinsurance is to enable the reinsured to "spread its risk of loss among one or more reinsurers." *Travelers Cas. & Sur. Co. v. Certain Underwriters at Lloyd's of London*, 96 N.Y.2d 583, 587, 734 N.Y.S.2d 531, 760 N.E.2d 319 (2001). If the amount stated in the "Reinsurance Accepted" provision is an absolute cap on the reinsurer's liability for both loss and expense, then Century's payments of defense costs could be entirely unreinsured. This seems to be in tension with the purpose of reinsurance. Further, Century and amici note that the premium Global received was "commensurate with its share of policy risk." Appellant's Br. at 10; *see also* Brief for Reinsurance Brokers at 8. Thus, under Certificate X, Global "received 50% of the net (risk) premium" because it "reinsured a 50% part of the [underlying policy] risk." Appellant's Br. at 10 (internal quotation marks omitted). Interpreting the "Reinsurance Accepted" provision as a cap for both losses and expenses, as we did in *Bellefonte*, could permit Global to receive 50% of the premium while taking on less than 50% of the risk.

Amici warn that continuing to follow *Bellefonte* could have "disastrous economic consequences" for the insurance industry. Brief for Reinsurance Brokers at 16. They contend that "potentially massive exposures to insurance companies throughout the industry would be unexpectedly unreinsured [,]" thereby, in amici's view, "create a gaping hole in reinsurance for many companies, and potentially threaten some with insolvency." Brief for Reinsurance Brokers at 16.

[4] [5]We find these arguments worthy of reflection. But there are other considerations as well. For example, the principle of stare decisis counsels against overruling a precedent of this Court, especially in cases involving contract rights, where "considerations favoring stare decisis are at their acme." *Kimble v. Marvel Entm't, LLC*, —— U.S. ——, 135 S.Ct. 2401, 2410, 192 L.Ed.2d 463 (2015) (italics and internal quotation marks omitted). Here, reinsurers may have relied on this Court's opinions in *Bellefonte* and *Unigard* in estimating their exposure and in setting appropriate loss reserves. If the interpretive rule set out in those opinions were to shift, such reinsurers would be exposed to unexpected claims beyond their current reserves. Granted, the ceding insurers who are now being ***127** required to cover defense costs they apparently never contemplated at the time the policies were issued may currently be experiencing the same shift in expectations. Nonetheless, the economic impact of a reversal of the *Bellefonte–Unigard* rule may counsel in favor of retaining the status quo.

[6] [7]Ultimately, as we noted in *Unigard*, "[t]he efficiency of the reinsurance industry would not be enhanced by giving different meanings to identical standard provisions depending upon idiosyncratic factors in particular lawsuits." 4 F.3d at 1071. Our intention, therefore, is to seek the New York Court of Appeals as to whether a consistent rule of construction specifically applicable to reinsurance contracts exists; we express no view as to whether such a rule is advisable or what that rule should be. The interpretation of the certificates at issue here is a question of New York law that the New York Court of Appeals has a greater interest and greater expertise in deciding than do we. Accordingly, we conclude that it is prudent to seek the views of the New York Court of Appeals on this important question.

[8]We may certify a question to the New York Court of Appeals where "determinative questions of New York law are involved ... for which no controlling precedent of the Court of Appeals exists." *See* N.Y. Comp. Codes R. & Regs. Tit. 22, § 500.27(a). Global contends that the Court of Appeals' decision in *Excess Insurance Co. v. Factory Mutual Insurance Co.*, 3 N.Y.3d 577, 789 N.Y.S.2d 461, 822 N.E.2d 768 (2004) controls this case. We disagree.

In *Excess*, the Court of Appeals considered whether a reinsurer was obligated to pay expenses that exceeded the limit provided for in the reinsurance policy.[8] *Id.* at 579, 789 N.Y.S.2d 461, 822 N.E.2d 768. In *Excess*, however, the parties agreed that the reinsurance policy contained a liability cap. *See id.* at 582, 789 N.Y.S.2d 461, 822 N.E.2d 768 ("[T]here is no dispute that the reinsurance agreements set the policy limit at $7 million per occurrence."). Having assumed that a such a cap existed, the Court of Appeals then followed *Bellefonte* and *Unigard* to hold that subordinate clauses could not expand reinsurer liability "beyond the stated limit in the policy" because doing so would "render meaningless the liability cap negotiated in the policy." *Id.* at 583, 789 N.Y.S.2d 461, 822 N.E.2d 768. The *Excess* court never addressed, much less decided, the antecedent question of whether the stated limited represented an absolute coverage limit for losses and expenses combined, which is the question that

is presented in this case. Moreover, in *Excess*, the Court of Appeals considered whether a reinsurer was required to cover the ceding insurer's loss adjustment expenses—the costs of litigating with the insured—in excess of the policy limit, not whether a reinsurer was required to cover the insured's own defense costs. *Id.* at 583–84, 789 N.Y.S.2d 461, 822 N.E.2d 768. But whether a reinsurer is responsible to reimburse the ceding insurer for the cost of litigating with the insured over the insured's claim is a potentially different question than whether an insurer who has been held liable on the underlying policy for the expenses of defending claims against the insured may then demand that its reinsurers share their proportional cost of the underlying coverage. Thus, *Excess* is not controlling.

[9]Although *Excess* does not directly control this case, the decision of the Court ***128** of Appeals to expand on our holding in *Bellefonte* and *Unigard* might fairly be taken to imply a rule of construction governing the interpretation of reinsurance policies. In other words, we are uncertain whether *Excess* imposes a rule (or, potentially, creates a rebuttable presumption) that, where a reinsurance contract is subject to a per occurrence liability cap, the cap limits the total reinsurance available regardless of whether the underlying insurance policy is understood to include expenses other than losses, for instance, defense costs. If *Excess* imposes a clear rule (or a presumption) with respect to these reinsurance policies, the rule would guide our interpretation of this and substantially similar policies. If, on the other hand, the standard rules of contract interpretation apply, we would construe each reinsurance policy solely in light of its language and, to the extent helpful, specific context. Because this is ultimately a determination to be made by New York, we certify[9] the following question to the New York Court of Appeals:

> Does the decision of the New York Court of Appeals in *Excess Insurance Co. v. Factory Mutual Insurance Co.*, 3 N.Y.3d 577 [789 N.Y.S.2d 461, 822 N.E.2d 768] (2004), impose either a rule of construction, or a strong presumption, that a per occurrence liability cap in a reinsurance contract limits the total reinsurance available under the contract to the amount of the cap regardless of whether the underlying policy is understood to cover expenses such as, for instance, defense costs?

Footnotes

CONCLUSION

For the foregoing reasons and pursuant to New York Court of Appeals Rule 500.27 and Local Rule 27.2 of this Court, we certify the following question to the New York Court of Appeals:

> Does the decision of the New York Court of Appeals in *Excess Insurance Co. v. Factory Mutual Insurance Co.*, 3 N.Y.3d 577 [789 N.Y.S.2d 461, 822 N.E.2d 768] (2004), impose either a rule of construction, or a strong presumption, that a per occurrence liability cap in a reinsurance contract limits the total reinsurance available under the contract to the amount of the cap regardless of whether the underlying policy is understood to cover expenses such as, for instance, defense costs?

In certifying this question, we do not bind the Court of Appeals to the particular question stated. The Court of Appeals may modify the question as it sees fit and, should it choose, may direct the parties to address other questions it deems relevant. This panel will resume its consideration of this appeal after the disposition of this certification by the Court of Appeals.

It is hereby **ORDERED** that the Clerk of Court transmit to the Clerk of the New York Court of Appeals this opinion as our certificate, together with a complete set of the briefs, the appendix, and the record filed in this Court by the parties. The parties shall bear equally any fees and costs that may be imposed by the New York Court of Appeals in connection with this certification.

All Citations

843 F.3d 120

1 The Clerk of Court is respectfully directed to amend the caption as above.

2 The certificates were entered into by Century's predecessor in interest, the Insurance Company of North America, and Global's predecessor in interest, the Constitution Reinsurance Corporation. For simplicity, we use the names of the current parties in interest: Century and Global.

3 Century suggests that later agreements modified the total dollar amounts covered by the reinsurance certificate. Such modifications do not affect the issues in this appeal.

4 The district court concluded that the substantive law of New York applies to this diversity action because Global is located in New York and because the certificates were issued in New York. *See Global*, 2014 WL 4054260, at *3–4. Neither party challenges this conclusion on appeal.

5 In *Bellefonte*, we described the "follow the fortunes" doctrine as "meaning that the reinsurer will follow the fortunes or be placed in the position of the insurer." 903 F.2d at 912 (internal quotation marks and citation omitted). "[T]he doctrine burdens the reinsurer with those risks which the direct insurer bears under the direct insurer's policy covering the original insured." *Id.* (citation omitted).

6 Again, in *Unigard*, we described the amounts stated in the certificate as "limits" on liability, though we did not explain why this was so. *See* 4 F.3d at 1070.

7 The "follow the form" clause stated:

> The liability of Unigard shall follow that of North River and, except as otherwise provided by this [c]ertificate, shall be subject in all respects to all the terms and conditions of North River's policy except such as may purport to create a direct obligation of Unigard to the original insured or anyone other than North River.

Id. at 1055.

8 The provision at issue in *Excess* was titled "Limit," as opposed to "Reinsurance Accepted." 3 N.Y.3d at 580, 789 N.Y.S.2d 461, 822 N.E.2d 768.

9 The parties did not request certification. However, even where the parties do not request certification, "we are empowered to seek certification nostra sponte." *10 Ellicott Square Court Corp. v. Mountain Valley Indem. Co.*, 634 F.3d 112, 125 (2d Cir. 2010) (italics omitted).

End of Document

Wednesday, May 3, 2017, 3:35 p.m. – 5:25 p.m.

ROUNDTABLE DISCUSSIONS

Emerging Risks– New and Evolving

SESSION MATERIALS:

Blockchain Technology and Reinsurance

LED BY:

Jonathan Kline, Smith, Gambrell & Russell (Blockchain Technology)
Jay Kenigsberg, Rivkin Radler (Blockchain Technology)

EXPERT COMMENTARY

Blockchain Technology and Reinsurance

by Larry Schiffer
Partner, Squire Patton Boggs (US) LLP

March 2017

By now, most of you have heard of Bitcoin, the digital currency that has been used across the world for significant purchases and forms the preferred currency for perpetrators of ransomware. You may even know that it relates to something called blockchain technology. The news is full of stories about blockchain technology and is certainly big news in the financial services markets.

Recently, an insurance industry group has formed called B3i, which is an international insurance industry blockchain technology consortium. Now, I don't profess to be a blockchain expert or visionary, but given that at this writing 15 insurance and reinsurance groups have joined B3i, something must be going on. Let's take a look.

What Is Blockchain Technology?

Blockchain is a distributed ledger technology. Blockchain technology is defined in an article on PwC's website by Alan Morrison, titled "Blockchain and Smart Contract Automation: Blockchains Defined," as "a distributed, decentralized transaction ledger, saved by each node in the network, which is owned, maintained, and updated by each node. It's a peer-to-peer system. No central authority manages the transaction flow."

So, analogizing it roughly to reinsurance, it is a form of a shared bordereaux, where the entries are made, saved, verified, and continued in order of transaction entry on each counterparties' secure computer system involved in a reinsurance transaction. Each of the individual bordereaux entries is related to the previous entry to ensure validity and immutability of the overall transaction. Essentially, the ledger is shared by all the parties to the transaction, and it allows all of them to see and verify the complete transaction and to avoid redundancy and inconsistency.

One of the touted values of blockchain technology is that each transaction is time-stamped, cannot be altered, and is verifiable. This reduces the need to audit and decreases human error. What this also means is that

each company in the blockchain holding sensitive and confidential information can better ensure that this information is protected from outside threats.

Where Is Blockchain Being Used?

Blockchain is the technology behind Bitcoin. It is also being used in certain financial services and banking sectors. It provides for a more secure way of doing direct business between peers and requires less human intervention. Using a common buzzword of today, it is a disruptive technology and has the potential to radically change the way certain business transactions are handled. It is also being used, at least as an experiment, for certain insurance-linked products like natural catastrophe swaps.

Why Is the Insurance and Reinsurance Industry Interested?

The insurance and reinsurance industry is interested in blockchain technology because it has the potential of reducing administrative workload, eliminating frictional costs, reducing, if not eliminating, inconsistency, and improving auditability. In other words, using blockchain technology may make certain insurance and reinsurance transactions faster, more convenient, and more secure. It also may make customers happier, especially with peer-to-peer transactions that are transparent between the contracting parties.

So, to figure all this out, some of the largest insurance groups in the world have come together in a consortium to test out blockchain technology in the insurance and reinsurance context. As Swiss Re describes it in "Insurers and Reinsurers Launch Blockchain Initiative," "Blockchain offers huge potential for enabling digital contracts and transactions amongst multiple parties to be executed in a secure, transparent, and auditable way." The testing will include transacting reinsurance contracts among consortium members to realize a proof of concept. If it works, it will streamline communications and transactions and create a shared, transparent, and secure record of contract-related information. It will also reduce costs and improve efficiency in the way the industry works with its customers.

Another reason for the B3i consortium is to develop an industry-wide blockchain standard so that all members of the insurance and reinsurance industry will be able to transact business using the same blockchain methodology to ensure consistency and accuracy. Like all digital technologies, there are multiple ways to do similar things. To allow for a platform to exist for the entire industry, standardized methodologies are necessary to avoid disruptions and conversions between multiple systems. In other words, with an industry standard for digital contracting via a distributed ledger, the industry will avoid the problems it has with constantly having to convert or recode data from legacy systems or from one company or broker's system to the other.

What Will Blockchain Disrupt?

If used to facilitate reinsurance transactions, Blockchain has the potential to radically change how certain reinsurance transactions are handled. Certainly, the use of reinsurance intermediaries will diminish in the process given the peer-to-peer nature of the technology. Gone will be the need for the reinsurers to ask the cedent for detailed premium and loss data on the reinsured book of business when all that detail will be part of the blockchain transaction ledger. Given that it will reside on both the cedent's and reinsurers' secure computer systems simultaneously, the need for separate premium and loss bordereau will be eliminated. A reinsurer can merely examine the ledger and will have at its fingertips all the premium and loss transactions entered by the cedent as part of the blockchain.

On the underwriting side, a similar disruption may occur. If insurance or reinsurance is placed directly from the policyholder or cedent to the insurer or reinsurers, the entire contracting process will be on one continuous blockchain ledger. As part of the contracting process, prior loss information, payroll information, property and location information, and the like will be entered as transactions on the ledger for the underwriter to see in real time. On the flipside, the policyholder or cedent will be able to see the transactions entered by the underwriters as the contract is put into place. Policy issuance will be more efficient and automated with digital signatures.

How Will Blockchain Make Reinsurance More Efficient?

According to a PwC report titled *Blockchain: The $5 Billion Opportunity for Reinsurers*, the cost savings for reinsurers could be in excess of $5 billion. This includes reducing processing time and cost of placement, reducing the time to settle losses, and bringing more efficiency to compliance issues, such as sanctions or cyber-security. Using blockchain technology for "smart contracts" could also increase efficiency and reduce costs. Imagine an entire reinsurance transaction on a single ledger from the original cession all the way through each retrocessional assumption. The entire process of placement, premium cession, loss cession, and payment can be shared among all parties simultaneously.

PwC believes that blockchain technology may reduce claims leakage and fraud and provide sufficient efficiency so as to remove 15 to 25 percent of current expenses. Part of this includes avoiding having to rekey data. If the data is on the ledger, and each party can access the ledger, it does not need to be rekeyed into the reinsurer's system and then into a retrocessionaire's system and certainly not into a broker's system.

Conclusion

With the rise of alternative capital and capital market instruments being used in the risk transfer domain traditionally dominated by reinsurers, reinsurers have long recognized the need to become more efficient and effective in providing risk transfer products to support their clients. Blockchain technology is just the latest effort by the reinsurance industry to modernize its way of doing business. The disruptive nature of blockchain technology has the potential of radically changing the way insurance and reinsurance are placed and used in the future. With B3i, the insurance and reinsurance industry is out front on this concept. How this will all shake out is hard to predict, but it certainly looks like blockchain technology may take the reinsurance business into the future.

Thursday, May 4, 2017, 8:00 a.m. – 9:00 a.m.

GENERAL SESSION

Coloring Outside the Lines: The Limits of Extra-Contractual Obligations in Life and Property/ Casualty Reinsurance

SESSION MATERIALS:

Claim Scenario

Sample ECO Clauses

PRESENTED BY:

Susan E. Mack, Adams and Reese LLP
Michael Steinlage, Larson King, LLP
Steven Najjar, Hannover Life Reassurance Co. of America
John M. Parker, Silvercreek Reinsurance Arbitration Services

Coloring Outside the Lines: The Limits of Extra-Contractual Obligations in Life and Property/Casualty Reinsurance

Session Materials

Claim Scenario
Sample ECO Clauses

ARIAS Spring Conference May 2017

Coloring Outside the Lines:
The Limits of Extra-Contractual Obligations
in Life and Property/Casualty Reinsurance

Claim Scenario

ECO Claim Scenario

Careless Corporation was sued in a wrongful death action arising from a gas explosion at a corporate farm operated by Careless Corporation and owned by a joint venture partnership between Careless Corporation and an affiliated company, Slightly Better Company. Inc.

Insurer Beleaguered Company issued a $1 million primary policy and $5 million umbrella policy to Company X. Both Careless Corporation and the joint venture sought coverage from Bealeaguered Company for the wrongful death claims. Bealeaguered Company agreed to defend and indemnify Careless Corporation but denied coverage for the joint venture.

Beleaguered Company's casualty business was reinsured under an excess of loss tower, comprised of three separate layers: $500,000 XS $500,000, $1 million XS $1 million, and $3 million XS $2 million. Each excess of loss treaty expressly excluded umbrella business. The umbrella business was separately reinsured under a quota share reinsurance treaty covering 90% of loss up to a $5 million limit.

All reinsurance contracts included coverage for ECO and XPL loss. Some of the reinsurance contracts covered LAE within limits and others covered LAE in addition of limits.

Immediately prior to trial, Beleaguered Company tendered its $1 million primary policy limit on behalf of Careless Corporation to settle the claims. During trial, the claimants in the wrongful death action made a combined demand to settle their claims against all defendants in an amount within the combined limits of the primary and limits. Before Beleaguered Company could respond, the jury rendered its verdict, awarding claimants $12 million total against Careless Corporation and the joint venture. Beleaguered Company, Careless Corporation and Slightly Better Company subsequently settled the wrongful death claims on appeal for $9 million, with Insurer contributing the full amount of its limits and a proportionate share of prejudgment interest, which was covered as a supplementary payment outside of limits.

Careless Corporation and Slightly Better Company subsequently sued Insurer for bad faith, based on numerous alleged wrongful acts relating to the Beleaguered Company's denial of coverage as to the joint venture, investigation, handling and defense of the wrongful death claims and trial, and failure to settle the claims within limits.

Beleaguered Company had a $5 million E&O policy written on a defense within limits basis to which it tendered the bad faith claim, and the E&O insurer, denied the claim.

Keep in mind that Bealeaguered Company incurred $5 million defending the bad faith claims and ultimately settled the bad faith lawsuit for $7 million.

Coloring Outside the Lines: The Limits of Extra-Contractual Obligations in Life and Property/Casualty Reinsurance

Sample ECO Clauses

LH 1-2
PC 1-4
BMRA 1-4

LH-1

EXTRA CONTRACTUAL OBLIGATIONS (CONSULT AND CONCUR)

In no event, except as allowed for in the following paragraph, shall the Reinsurer participate in punitive or compensatory damages or statutory penalties or declaratory judgments (hereinafter called "Extra Contractual Obligations") which are awarded against the Company as a result of an act, omission, or course of conduct committed by or on behalf of the Company, which arise from the handling of any Claim on Policies reinsured under this Agreement.

The Company shall notify the Reinsurer in writing of any impending Claim likely to involve Extra Contractual Obligations as soon as practicable, but within ten (10) business days of the Company receiving notice of such impending Claim. The Company's notification to the Reinsurer shall include all Claim information and a suggested course of action or inaction for the Reinsurer's review. The Reinsurer then has the obligation to notify the Company in writing, within ten (10) business days from the date the Reinsurer received such notice of the impending Claim, with its decision to concur or not concur in the Company's suggested actions to be taken, or not taken. Failure of the Reinsurer to notify the Company within ten (10) business days, after acknowledgment of its receipt, of its decision shall be deemed agreement by the Reinsurer with the Company's suggested course of action or inaction. Company and Reinsurer recognize that there could be circumstances, where through no fault on the part of the Company or any of its agents, the Company requires a response from the Reinsurer in less than the time frame allowed herein. In such event, the Company shall advise the Reinsurer of the circumstances and the response time needed, and the Reinsurer shall make every reasonable effort to meet the Company's request. If the Reinsurer concurs with the Company's action, payment of such damages shall be shared by both Company and Reinsurer in the same proportions which govern this Agreement.

If the Reinsurer does not concur with the Company's action, the Reinsurer shall so state its reasons for not concurring in writing and deliver same to the Company. Company shall review such Reinsurers' response, and reassess the course of action taking into consideration the reasons so stated by the Reinsurer. If the Reinsurer and the Company agree on a mode of handling such impending extra contractual obligation, the Reinsurer shall not be afforded an opportunity to relieve itself of potential liability on the subject Claim by paying its proportionate share of the disputed Claim and attendant expenses. If the Reinsurer disagrees with the recommended action or decision that the Claim should be denied and/or defended, then the Reinsurer may discharge its liability hereunder by paying its proportionate share of the underlying Claim from which the matter arose, and will have no further liability for such matter.

The Company and the Reinsurer shall cooperate in every respect in the defense of such claim, suit, or proceeding when working in concert. At the request of the Reinsurer, the Company shall afford the Reinsurer every opportunity to be associated with the Company, at the Reinsurer's expense, in the defense of any claim, suit or proceeding involving the Reinsurer's liability hereunder toward such claim, suit or proceeding. Should the Reinsurer choose to participate in the defense, any settlement negotiation involving the Reinsurer's liability with regard to such claim, suit or proceeding shall be mutually agreed upon by the Company and the Reinsurer. The Company and the Reinsurer shall cooperate in every respect in the defense of such claim, suit or proceeding.

For purposes of this Article, the following definitions will apply:

LH-1

"Punitive damages" are those damages awarded as a penalty, the amount of which is not governed, nor fixed by statute.

"Statutory penalties" are those amounts which are awarded as a penalty but fixed in amount by statute.

"Compensatory damages" are those amounts awarded to compensate for the actual damages sustained, and are not awarded as a penalty nor fixed in amount by statute.

The language of this Article shall be deemed effective only as and to the extent permitted by the law of any applicable jurisdiction.

A loss awarded or Extra Contractual Obligations will be deemed to have occurred on the same date as the loss covered or alleged to be covered under the Policy.

Notwithstanding anything stated herein, this Agreement will not apply to any Extra Contractual Obligation incurred by the Company as a result of any fraudulent and/or criminal act by any officer or director of the Company acting individually or collectively, or in collusion with any individual or corporation or any other organization or party involved in the presentation, defense, or settlement of any claim covered hereunder.

Recoveries from any form of insurance or reinsurance maintained by the Company against claims, which are the subject matter of this Article, will inure to the benefit of this Agreement.

LH-2

EXTRA CONTRACTUAL OBLIGATIONS AND EXCESS OF POLICY LIMITS

A. This Agreement covers any Extra Contractual Obligations which are paid or payable by the Company. "Extra Contractual Obligations" means those liabilities not covered under any other provision of this Agreement, which arise from business covered hereunder, such liabilities arising because of, but not limited to, the following: failure by the Company to settle within the Policy limit, or by reason of alleged or actual negligence, fraud or bad faith in claims handling or in rejecting an offer of settlement or in the preparation of the defense or in the trial of any action against its insured or reinsured or in the preparation or prosecution of an appeal consequent upon such action.

B. In addition, this Agreement covers amounts in Excess of Policy Limits which are paid or payable by the Company. Amounts in "Excess of Policy Limits" means any amount payable in excess of the Policy limit for reasons including alleged or actual negligence, fraud or bad faith in failing to settle or rejecting a settlement within the Policy limit, in preparation of the defense, in the trial of any action involving the insured or the Company, or in the preparation or prosecution of an appeal consequent upon such action. Coverage under this Article extends only to amounts that would have been covered had it not been for the limit of the original Policy.

C. For the purpose of this Article, amounts in Excess of Policy Limits and/or Extra Contractual Obligations shall become payable by the Company subsequent to a judgment which the Company does not intend to appeal, or on conclusion by the Company of a settlement agreement, or when a release has been obtained by the Company as regards any Extra Contractual Obligation or Excess of Policy Limits loss.

D. The date on which any Extra Contractual Obligation or Excess of Policy Limits loss is incurred by the Company will be deemed, in all circumstances, to be the same date established in respect of the claim from which the Extra Contractual Obligation or Excess of Policy Limits loss arose and shall constitute part of the original loss. In addition, Loss Expenses incurred in connection with any Extra Contractual Obligation or Excess of Policy Limits loss shall be paid in the same manner as paid in connection with other losses under this Agreement.

E. This Article will not apply where the loss has been incurred due to a final legal adjudication of fraud of a member of the Board of Directors or a duly elected corporate officer of the Company acting individually or collectively or in collusion with any individual, corporation or any other organization or party involved in the presentation, defense or settlement of any claim covered hereunder.

F. Enforcement. If any provision of this Article is rendered invalid, illegal or unenforceable by the laws, regulations or public policy of any jurisdiction, such provision will be considered void in such jurisdiction, but this will not affect the validity or enforceability of such provision in any other jurisdiction.

PC-1

EXTRA CONTRACTUAL OBLIGATIONS AND EXCESS LIMITS LIABILITY

A. This Agreement will extend to cover any claims-related Extra Contractual Obligations and/or Excess Limits Liability arising because of, but not limited to, the following:

1. Failure of the Company to agree to pay a claim within the Policy limits or to provide a defense against such claims or to pay a claim under the Policy reinsured within a reasonable time.

2. Actual or alleged bad faith, fraud, or negligence in investigating or handling a claim or in rejecting an offer of settlement.

3. Negligence or breach of duty in the preparation of the defense or the conduct of a trial or the preparation or prosecution of any appeal and/or subrogation and/or any subsequent action resulting therefrom.

B. "Extra Contractual Obligations" as used in this Agreement will mean those liabilities not covered under any other provision of this Agreement for which the Company is liable to its insured or a third-party claimant, or that the Company paid as its share of a claims-related extra contractual obligation awarded against one or more of its co-insurers.

C. "Excess Limits Liability" as used in this Agreement will mean any amount for which the Company would have been contractually liable to pay had it not been for the limits of the reinsured Policy.

D. There will be no recovery hereunder where the Extra Contractual Obligation or Excess Limits Liability has been incurred due to fraud committed by a member of the board of directors or a corporate officer of the Company, acting individually, collectively, or in collusion with a member of the board of directors, a corporate officer, or a partner of any other corporation, partnership, or organization involved in the defense or settlement of a claim on behalf of the Company.

E. The date on which any Extra Contractual Obligation and/or Excess Limits Liability is incurred by the Company will be deemed, in all circumstances, to be the date of the original loss. Nothing in this Article will be construed to create a separate or distinct loss apart from the original covered loss that gave rise to the Extra Contractual Obligations and/or Excess Limits Liability discussed in the preceding Paragraphs. The Reinsurer's liability as respects Extra Contractual Obligations and/or Excess Limits Liability under this Agreement will be proportionate and in addition to the other coverage set forth in this Agreement, but the Reinsurer's additional liability as respects Extra Contractual Obligations and/or Excess Limits Liability shall not exceed an amount equal to 200% of its limit of liability as set forth in this Agreement as respects each and every loss, each and every insured, such additional liability not to exceed the Reinsurer's share of [the limits of liability] in the aggregate under this Agreement.

PC-2

CASUALTY EXCESS OF LOSS (BROKER MARKET)

NET LOSS

12. A. The term "net loss" shall mean the actual loss incurred by the Reassured under policies covered hereunder but shall exclude allocated loss adjustment expenses. Such loss shall include sums paid in settlement of claims and suits and in satisfaction of judgments, including prejudgment interest when added to a judgment. Such loss also shall include 90% of any Losses in Excess of Policy Limits and 90% of any Extra Contractual Obligations incurred by the Reassured, the remaining 10% of which shall be retained net and unreinsured.

B. All salvages, recoveries, payments and reversals or reductions of verdicts or judgments whether recovered, received or obtained prior or subsequent to loss settlement under this Contract, including amounts recoverable under other reinsurance whether collected or not, shall be applied as if recovered, received or obtained prior to the aforesaid settlement and shall be deducted from the actual losses sustained to arrive at the amount of the net loss. Nothing in this article shall be construed to mean losses are not recoverable until the net loss to the Reassured finally has been ascertained.

C. All allocated loss adjustment expenses paid by the Reassured as a result of net losses covered hereunder shall be divided between the Reassured and the Reinsurers, without regard to the limit of this Contract, in proportion to their share of the net loss. Allocated loss adjustment expenses shall include but not be limited to: a) expenses sustained in connection with settlement and litigation of claims and suits, satisfaction of judgments, resistance to or negotiations concerning a loss (which shall include the pro rata share of the Reassured's outside employees according to the time occupied in adjusting such loss and the expenses of the Reassured's employees while diverted from their normal duties to the service of field adjustment but shall not include any salaries of officers nor normal overhead expenses of the Reassured), b) all other defense, litigation and medical cost containment expenses, whether internal or external, arising out of specific claims, c) all interest on judgments other than prejudgment interest when added to a judgment and d) expenses sustained to obtain recoveries, salvages and other reimbursements, or to secure the reversal or reduction of a verdict or judgment.

PC-2

EXTRA CONTRACTUAL OBLIGATIONS

13. A. The Reinsurers shall reinsure the Reassured, within the limit of this Contract, for Extra Contractual Obligations losses. Such losses are defined as those liabilities (whether they constitute compensatory, incidental, exemplary or punitive damages) not covered under any other provision of this Contract and which arise from the handling of any claim on business covered hereunder, such liabilities arising because of, but not limited to, the following: failure by the Reassured to settle within the policy limit, or by reason of alleged or actual negligence, fraud or bad faith in rejecting an offer of settlement, in the preparation of the defense or in the trial of any action against its insured or Reassured or in the preparation or prosecution of an appeal consequent upon such action.

B. The date on which any Extra Contractual Obligation is incurred by the Reassured shall be deemed, in all circumstances, to be the date of the original accident, casualty, disaster or loss occurrence. Any loss under this Article shall be deemed to be part of the original accident, casualty, disaster or loss occurrence which gave rise to the claim by the insured under the original policy; in no event shall the Reinsurers' limit of liability for any accident, casualty, disaster or loss occurrence, including Extra Contractual Obligations, exceed the limit of the Contract.

C. However, this Article shall not apply where the loss has been incurred due to the fraud of a member of the Board of Directors, or a corporate officer of the Reassured, acting individually, or collectively or in collusion with a member of the Board of Directors, a corporate officer or a partner of any other corporation or partnership.

D. If any provision of this Article shall be rendered illegal or unenforceable by the laws, regulations or public policy of any state, such provision shall be considered void in such state, but this shall not affect the validity or enforceability of any other provision of this Article or the enforceability of such provision in any other jurisdiction.

E. Recoveries or collectibles from any other form of insurance or reinsurance which protect the Reassured against Extra Contractual Obligations, shall inure to the benefit of the Reinsurers and shall be deducted from the total amount of Extra Contractual Obligations for purposes of determining the Net Loss hereunder.

PC-2

LOSSES IN EXCESS OF POLICY LIMITS

14. A. The Reinsurers shall reinsure the Reassured, within the limit of this Contract, for any loss in excess of the limit of its policy, such loss in excess of the limit having been incurred because of the failure by it to settle within the policy limit, or by reason of alleged or actual negligence, fraud or bad faith in rejecting an offer of settlement, in the preparation of the defense or in the trial of any action against its insured or Reassured or in the preparation or prosecution of an appeal consequent upon such action.

B. For the purposes of Paragraph A. of this Article, the word "loss" shall mean any amounts for which the Reassured would have been contractually liable to pay had it not been for the limit of the policy.

C. The date on which any Excess of Original Policy Limits loss is incurred by the Reassured shall be deemed, in all circumstances, to be the date of the original accident, casualty, disaster or loss occurrence.

D. However, this Article shall not apply where the loss has been incurred due to the fraud of a member of the Board of Directors, or a corporate officer of the Reassured, acting individually, or collectively or in collusion with a member of the Board of Directors, a corporate officer or a partner of any other corporation or partnership.

PC-3

EXTRA CONTRACTUAL OBLIGATIONS AND EXCESS LIMITS JUDGMENTS

This Agreement will extend to cover Eighty Percent (80%) of any losses arising from claims related extra contractual obligations and/or One Hundred Percent (100%) of any losses arising from claim related excess limits judgments.

"Extra contractual obligations" as used in this Agreement will mean those liabilities not covered under any other provision of this Agreement, which arise from the handling of any claim on business covered hereunder, such liabilities arising because, of but not limited to, the following: failure by the Company to settle within the policy limit, by reason of alleged or actual negligence or bad faith in rejecting an offer of settlement, in the preparation of the defense, in the trial of any action against its insured or reinsured, or in the preparation or prosecution of an appeal consequent upon such action.

"Excess limits judgments" as used in this Agreement will mean damages payable to the Company's insured or its assignee as a result of an action brought by the same against the Company to recover damages payable to a third party claimant in excess of the Company's original policy limit as a result of the Company's alleged or actual negligence or bad faith in failing to settle and/or rejecting a settlement within its policy limit, in the preparation of the defense, in the trial of any action against its insured, or in the preparation or prosecution of any appeal consequent to such action. Excess limits judgments will not include any loss suffered by the insured other than loss to a third party claimant in excess of the Company's original policy limit.

The date on which any extra contractual obligation and/or excess limits judgment is incurred by the Company will be deemed, in all circumstances, to be the date of the original occurrence.

There will be no recovery hereunder where the extra contractual obligation or excess limits judgments loss has been incurred due to the fraud committed by a member of the Board of Directors or a corporate officer of the Company or any other employee with claims settlement authority acting individually, collectively, or in collusion with a member of the Board of Directors or a corporate officer or a partner of any other corporation, partnership, or organization involved in the defense or settlement of a claim on behalf of the Company.

Nothing in this Article will be construed to create a separate or distinct occurrence apart from the original covered occurrrence that gave rise to the extra contractual obligations and/or excess limits judgment discussed in the preceding paragraphs. In no event will the total liability of the Reinsurers exceed their applicable limit of liability as set forth in the Retention and Limit Article.

PC-4

Claim Notification Provision

The Company shall promptly advise the Reinsurer of the following:

1. Any time a lawsuit is instituted against the Company wherein pleadings allege unfair claim handling on the part of the company, a violation of any insurance claim handling law, statute or regulation, or any time a claim alleges "bad faith" claim handling on the part of the Company.

2. Any time a policyholder has assigned its right under a reinsured Policy to another person or entity.

3. Any time there is a verdict in excess of policy limits or an offer of settlement in excess of policy limits otherwise covered hereunder.

4. Any time the Company has offered to settle a claim in an amount equal to the reinsured policy limit and such offer has been rejected by the plaintiff.

BRMA SAMPLE CLAUSES

BRMA 1

"COMBINED" DEFINITION FOR EXCESS OF LOSS AGREEMENTS

Combined Extra Contractual Obligations

"Extra contractual obligations" means any liability for damages, including related allocated loss adjustment expenses [and any related pre or post judgment interest,]* arising out of policies reinsured by this Agreement including any loss in excess of its policy limits, but otherwise within the terms of a policy reinsured by this Agreement, paid or payable by the Company as a result of a claim against it by its insured, which claim alleges negligence or bad faith in rejecting a settlement within policy limits, or in discharging its duty to defend or prepare the defense in the trial of a lawsuit against its insured, or in discharging its duty to prepare or prosecute an appeal consequent upon such a lawsuit. ___% of any related allocated loss adjustment expenses will be handled in accordance with the Article entitled _____.

For purposes of this definition "payable" means the existence of a judgment which the Company does not intend to appeal, or existence of a settlement offer which the Company has accepted, or when a release has been obtained by the Company as respects any extra contractual obligation.

An extra contractual obligation shall be deemed to have occurred on the same date as the loss covered under the Company's original policy and shall constitute part of the original loss. All payments by the Reinsurer to indemnify the Company for an extra contractual obligation shall be subject always to the limit, retention and other terms and conditions of this Agreement.

However, this Article shall not apply where the extra contractual obligation has been incurred due to fraud and/or criminal act(s) by a member of the Board of Directors or a corporate officer of the Company acting individually or collectively or in collusion with any individual or corporation or any other organization or party involved in the presentation, defense or settlement of any claim covered hereunder.

Recoveries, whether collectible or not, including any retentions and/or deductibles, from any form of insurance which protect the Company against any loss or liability covered under this Article shall first be applied and shall be deducted from the total amount of any extra contractual obligation.

The Company shall be indemnified in accordance with this Article to the extent permitted by applicable law.#

May be required by various state laws.
*Optional - pre and post judgment interest may be addressed elsewhere in the agreement.

BRMA 2

"COMBINED" DEFINITION FOR PROPORTIONAL AGREEMENTS
(limits recovery to agreement limit)

Combined Extra Contractual Obligations

The Company may include __% of any extra contractual obligation in calculating the loss under this Agreement.

"Extra contractual obligations" means any liability for damages, including related allocated loss adjustment expenses [and any related pre or post judgment interest,]* arising out of policies reinsured by this Agreement including any loss in excess of its policy limits, but otherwise within the terms of a policy reinsured by this Agreement, paid or payable by the Company as a result of a claim against it by its insured, which claim alleges negligence or bad faith in rejecting a settlement within policy limits, or in discharging its duty to defend or prepare the defense in the trial of a lawsuit against its insured, or in discharging its duty to prepare or prosecute an appeal consequent upon such a lawsuit. _____% of any related allocated loss adjustment expenses will be handled in accordance with the Article entitled _____.

For purposes of this definition "payable" means the existence of a judgment which the Company does not intend to appeal, or existence of a settlement offer which the Company has accepted, or when a release has been obtained by the Company as respects any extra contractual obligation.

An extra contractual obligation shall be deemed to have occurred on the same date as the loss covered under the Company's original policy and shall constitute part of the original loss. All payments by the Reinsurer to indemnify the Company for an extra contractual obligation shall be subject always to the limit and other terms and conditions of this Agreement.

However, this Article shall not apply where the extra contractual obligation has been incurred due to fraud and/or criminal act(s) by a member of the Board of Directors or a corporate officer of the Company acting individually or collectively or in collusion with any individual or corporation or any other organization or party involved in the presentation, defense or settlement of any claim covered hereunder.

Recoveries, whether collectible or not, including any retentions and/or deductibles, from any form of insurance which protect the Company against any loss or liability covered under this Article shall be deducted first from the total amount of any extra contractual obligation in determining the amount of such extra contractual obligation.

The Company shall be indemnified in accordance with this Article to the extent permitted by applicable law.#

May be required by various state laws.
*Optional - pre and post judgment interest may be addressed elsewhere in the agreement.

BRMA 3

"COMBINED" DEFINITION FOR PROPORTIONAL AGREEMENTS
(payment in addition to limit - no limit)

Combined Extra Contractual Obligations

The Company may include __% of any extra contractual obligation in calculating the loss under this Agreement.

"Extra contractual obligations" means any liability for damages, including related allocated loss adjustment expenses [and any related pre or post judgment interest,]* arising out of policies reinsured by this Agreement including any loss in excess of its policy limits, but otherwise within the terms of a policy reinsured by this Agreement, paid or payable by the Company as a result of a claim against it by its insured, which claim alleges negligence or bad faith in rejecting a settlement within policy limits, or in discharging its duty to defend or prepare the defense in the trial of a lawsuit against its insured, or in discharging its duty to prepare or prosecute an appeal consequent upon such a lawsuit. __% of any related allocated loss adjustment expenses will be handled in accordance with the Article entitled _____.

For purposes of this definition "payable" means the existence of a judgment which the Company does not intend to appeal, or existence of a settlement offer which the Company has accepted, or when a release has been obtained by the Company as respects any extra contractual obligation.

An extra contractual obligation shall be deemed to have occurred on the same date as the loss covered under the Company's original policy. The Reinsurer will indemnify the Company for any extra contractual obligation without regard to the limit of this Agreement, but subject to all of the other terms and conditions of this Agreement.

However, this Article shall not apply where the extra contractual obligation has been incurred due to fraud and/or criminal act(s) by a member of the Board of Directors or a corporate officer of the Company acting individually or collectively or in collusion with any individual or corporation or any other organization or party involved in the presentation, defense or settlement of any claim covered hereunder.

Recoveries, whether collectible or not, including any retentions and/or deductibles, from any form of insurance which protect the Company against any loss or liability covered under this Article shall be deducted first from the total amount of any extra contractual obligation in determining the amount of such extra contractual obligation.

The Company shall be indemnified in accordance with this Article to the extent permitted by applicable law.#

May be required by various state laws.
*Optional - pre and post judgment interest may be addressed elsewhere in the agreement.

BRMA 4

"COMBINED" DEFINITION FOR PROPORTIONAL AGREEMENTS
(payment in addition to limit, but capped)

Combined Extra Contractual Obligations

The Company may include __% of any extra contractual obligation in calculating the loss under this Agreement.

"Extra contractual obligations" means any liability for damages, including related allocated loss adjustment expenses [and any related pre or post judgment interest,]* arising out of policies reinsured by this Agreement including any loss in excess of its policy limits, but otherwise within the terms of a policy reinsured by this Agreement, paid or payable by the Company as a result of a claim against it by its insured, which claim alleges negligence or bad faith in rejecting a settlement within policy limits, or in discharging its duty to defend or prepare the defense in the trial of a lawsuit against its insured, or in discharging its duty to prepare or prosecute an appeal consequent upon such a lawsuit. _____% of any related allocated loss adjustment expenses will be handled in accordance with the Article entitled _____.

For purposes of this definition "payable" means the existence of a judgment which the Company does not intend to appeal, or existence of a settlement offer which the Company has accepted, or when a release has been obtained by the Company as respects any extra contractual obligation.

An extra contractual obligation shall be deemed to have occurred on the same date as the loss covered under the Company's original policy. The Reinsurer will indemnify the Company for any extra contractual obligation without regard to the limit of this Agreement, but subject to all of the other terms and conditions of this Agreement. However in no event will the Reinsurer's liability for any extra contractual obligation exceed $_____ (use dollar limit, or cession amount, or Agreement limit or multiples thereof as negotiated).

However, this Article shall not apply where the extra contractual obligation has been incurred due to fraud and/or criminal act(s) by a member of the Board of Directors or a corporate officer of the Company acting individually or collectively or in collusion with any individual or corporation or any other organization or party involved in the presentation, defense or settlement of any claim covered hereunder.

Recoveries, whether collectible or not, including any retentions and/or deductibles, from any form of insurance which protect the Company against any loss or liability covered under this Article shall be deducted first from the total amount of any extra contractual obligation.

The Company shall be indemnified in accordance with this Article to the extent permitted by applicable law.#

May be required by various state laws.
*Optional - pre and post judgment interest may be addressed elsewhere in the agreement.

Friday, May 5, 2017, 8:15 a.m. – 9:00 a.m.

GENERAL SESSION

A Fresh Perspective on the Business Aspect of Commutations

SESSION MATERIALS:

Judicial Resolution of Disputes Relating to Commutation of Reinsurance Agreements

PRESENTED BY:

Wm. Gerald McElroy, Jr., Zelle LLP
Leah A. Spivey, Munich Re America, Inc.
Richard Dupree, Travelers Insurance Companies
Andre Lefebvre, Arrowpoint Capital
Paul Edward Dassenko, AzuRe Advisors, Inc.

JUDICIAL RESOLUTION OF DISPUTES RELATING TO COMMUTATION OF REINSURANCE AGREEMENTS

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In the reinsurance context, a commutation agreement is an "agreement between a ceding insurer and the reinsurer that provides for the valuation, payment, and complete discharge of all obligations between the parties under a particular reinsurance contract."[2] This paper discuses case law relating to the resolution of disputes arising from commutation agreements. Based on the cases discussed, some practical suggestions will be made about commutation agreements.

The Importance of Designating Specifically The Reinsurance Contracts To Be Commuted And The Parties Subject To The Agreement And Understanding The Scope Of The Release

It would appear to be obvious and a matter of common sense that any commutation agreement should designate with specificity the reinsurance contracts being commuted and the parties who are subject to the commutation agreement and that the parties to the agreement should be fully conversant with the contract terms relating to the scope of the release. Nonetheless, there are numerous cases where the courts have adjudicated disputes over the scope of the release in a commutation agreement and the parties who are subject to the release. In some of these cases, one party to the agreement was careless in not understanding contract terms or business relationships relating to the scope of the release.

In *Continental Cas. Co. v. Northwestern National Insurance Co.*,[3] the court affirmed summary judgment in favor of the reinsured Continental Casualty Company ("CCC") and Continental Insurance Company (CIC") (collectively "Continental") and ruled that a commutation agreement applied only to three facultative reinsurance contracts between CCC and the reinsurer Bellefonte

Insurance Company ("Bellefonte") and not to all (approximately 2,200) facultative reinsurance contracts between CIC and Bellefonte. The commutation agreement required Northwestern National Insurance Company ("NNIC"), Bellefonte's successor-in-interest, to pay $6.1 million to CCC in return for a release from NNIC's obligations under Reinsurance Contracts identified in Schedule A to the Agreement. Schedule A included reinsurance treaties which were listed by number, program, and effective date. Under the title "Through Facultatively Placed," the Agreement included one entry ("0709 Bellefonte Reins"). The dispute focused on the meaning of this term, which the parties agreed was ambiguous.

NNIC's position that this term encompassed all of the facultative reinsurance agreements between CIC and Bellefonte was undermined by negotiations between CNA Financial Corporation ("CNA"), an insurance holding company which owned CIC and CCC, and Bellefonte after the execution of the commutation agreement at issue. During those negotiations, NNIC expressed an interest in "commuting all 2,200 facultative certificates at issue with CNA, which included certificates between Bellefonte and CIC."[4] As the district court noted, NNIC would "not have considered entering into a commutation agreement for facultative certificates that had already been commuted."[5]

There had also been a dispute between NNIC and CIC with respect to whether CIC was bound by the commutation agreement between CCC and Bellefonte. The commutation agreement defined the term "Reinsured" to include CCC and all of its "affiliates." Since CIC and CCC were "sibling corporations related

to another corporation, CNA," the district court had previously ruled CIC and CCC were affiliates and CIC was thus bound by the commutation agreement. *See Continental Cas. Co. v. Northwestern Nat'l Ins. Co.*[6]

In *Mid Century Insurance Co. v. American Centennial Insurance Co.*,[7] the court affirmed summary judgment in favor of the reinsurer and held the commutation agreement applied not only to two treaties between Mid Century Insurance Company ("Mid Century") and American Centennial Insurance Company ("ACIC") (its reinsurer) but also to facultative certificates between Truck Insurance Exchange ("Truck"), a subsidiary of Mid Century, and ACIC. The court relied upon the broad release language in the commutation agreement in support of its ruling that the parties intended the commutation to be a "global settlement of all agreements between them."[8] The court rejected Mid Century's argument that ACIC had misrepresented the scope of the commutation agreement and stated that Mid Century was negligent in failing to "determine the precise extent of its reinsurance business with ACIC."[9]

In *National Union Fire Ins. Co of Pittsburgh v. Walton*,[10] the court rejected a claim by National Union Fire Insurance Company of Pittsburgh ("National Union") that a commutation agreement it entered into with its reinsurer Walton Insurance Limited of Bermuda ("Walton") did not include a reinsurance agreement between the parties involving the Interstate Towers Insurance Program ("Interstate Towers"). The court relied upon the release language in the commutation agreement which specifically identified the Interstate Towers program by Walton contract

number. National Union's "unilateral mistake" in failing to know the meaning of the Walton contract number did not constitute a basis for overturning an otherwise unambiguous contract.[11] Just as the court in *Mid Century Insurance Co.* criticized Mid Century, the court chided National Union for its carelessness: "If National Union signed the release mistakenly, it did so as a result of its own carelessness and, therefore, is barred from contesting the release's validity on the grounds of mistake."[12]

In *Old Republic Insurance Co. v. Ace Property and Casualty Insurance Co.*,[13] the court held a commutation agreement between Old Republic Insurance Company ("Old Republic") and Ace Property and Casualty Company's ("Ace's) predecessor-in-interest Central National Insurance Company of Omaha ("Central National") was unambiguous and included all of the reinsurance agreements between Old Republic and Central National, including some agreements where Central National reinsured Old Republic and other agreements where Old Republic reinsured Central National. The court rejected the contention by Ace that the term "various reinsurance contracts" in the commutation agreement only terminated the reinsurance agreements where Central National reinsured Old Republic and not those where Old Republic reinsured Central National Union. In support of its ruling, the court relied upon language in the second paragraph of the commutation agreement, stating "Old Republic and Central National have heretofore entered into various reinsurance contracts with one another, under which reinsurance agreements there are or may be certain liabilities and obligations outstanding (the

'[r]einsurance [a]greements')" and in the third paragraph of the commutating agreement, stating the parties "now wish to fully and finally determine and settle all liabilities and obligations of the parties to each other under the [r]einsurance [a]greements."[14] The court also cited provisions in the commutation agreement stating that each party would "hereby release and forever discharge" the other party from "any and all liabilities and obligations" arising under or related to the reinsurance agreements.[15]

Whether Commutation Agreements Are Binding On Retrocessionaires

Even where no disputes arise between the parties to a commutation agreement, disputes may arise between the reinsurer and its retrocessionaire(s) regarding the impact of the commutation upon the obligations of the retrocessoinaire(s).

In *Global Reinsurance Corp. of America v. Argonaut Ins. Co.*,[16] the court upheld an arbitration award requiring Argonaut Insurance Company ("Argonaut") to pay its reinsured Global Reinsurance Corporation of America ("Global") $1,975,747.55 pursuant to reinsurance agreements. In 2003, Global reached a settlement and commutation agreement with its reinsured Home Insurance Company ("Home") (hereinafter the "Home Settlement") settling all outstanding claims and releasing Global from its reinsurance contracts with Home for a lump sum payment. The Home Settlement included existing liabilities as well as contingent liabilities. With the assistance of a consulting firm, Global utilized actuarial methods to allocate the lump sum settlement among the retrocessionaires

with whom Global had reinsured its Home exposure, including Argonaut. In challenging the arbitration award, Argonaut argued it was not responsible for paying four of the "claims" allocated to it, which represented "contingent liabilities."

In ruling against Argonaut, the court upheld the arbitration panel's rejection of the following two arguments advanced by Argonaut. First, Argonaut argued Global failed to give notice of the claims as required by the Treaties between Global and Argonaut. Second, Argonaut argued the commutations were not "claims" within the meaning of the Treaties because they did not fit within the coverage defined by the Treaties.

With respect to the notice issue, the Treaties required Global to advise Argonaut with reasonable promptness of any accident or event in which Argonaut was known to be involved. The notice provision also stated Argonaut had the right to cooperate with Global in the defense and/or settlement of any claim in which Argonaut may be interested. In rejecting Argonaut's late notice argument, the court stated that under New York law, a "reinsurer must show that the failure to give notice was prejudicial or material to the reinsurance contract."[17] While the arbitration award did not offer any explanation with respect to the late notice issue, the court concluded "nothing in the record suggests that the failure to give notice of Global's negotiations with Home regarding the Home Settlement was material to the Treaties or prejudicial to Argonaut."[18]

With respect to Argonaut's argument that the commutation agreement did not fall within the coverage it afforded to Global, the court upheld the arbitration

panel's conclusion that the claims comprising the Home Settlement were covered by the original reinsurance agreements between Global and Argonaut. According to the court, the question for the arbitration panel was "whether a loss settlement, as used in these [Treaties], includes compromise of liability under all the [Original Reinsurance Contracts] as distinct from the liability of an individual loss settlement under a single [Original Reinsurance Contract]."[19] As the court states, the arbitration panel found the commutation agreements were covered by the Treaties based on the following reasoning:[20]

> Noting that "virtually all loss settlements, both in insurance and reinsurance, involve compromise and include a so-called contingent component…" and that "the comprehensive nature of the commutation between [Home] and [Global] represents a distinction without a difference to the validity of a loss settlement under the [Treaties][.]" the Panel found the Commutations were covered by the Treaties….

The Treaties at issue in *Global Reinsurance* defined "Loss Occurrence" as "any one disaster, casualty, accident, or loss or series of disasters…arising out of or caused by one event or occurrence."[21] The arbitration panel construed the Loss Occurrence language broadly to include all the claims and commutations at issue between the parties. While a narrow construction of the clause "might exclude contingent liabilities, the Treaties were interpreted by the Panel as 'honorable undertakings' not as strict legal documents."[22]

Once the arbitration panel determined the claims comprising the commutation transaction (including contingent claims) were covered by the original reinsurance contracts issued by Global, the panel applied the "follow-the-fortunes" doctrine to preclude review of Global's decision to settle the contingent claims.

According to the court, "because the Panel properly applied the 'follow-the-fortunes' doctrine to its interpretation of the scope of the treaties, there was "no manifest disregard of the law."[23]

In *Insurance Co. of Pennsylvania v. Associated International Ins. Co.*,[24] the court held a settlement between an insured and its insurer addressing future claims was reimbursable under a reinsurance certificate. Although this case deals with a reinsurer's obligations to pay a settlement between the cedent and its insured, the reasoning of the court is applicable to the issue of whether a retrocessionaire is obligated to reimburse a reinsurer for a settlement involving future/contingent claims. The reinsurer Associated International Insurance Company ("Associated") had argued that a settlement agreement between Insurance Company of Pennsylvania ("ICP") and its insured, which called for the payment of "future, unidentified" asbestos claims was not covered by a reinsurance certificate because "payment is required only for funds actually expended to injured claimants by way of settlement or judgment."[25] Associated took this position even though it stipulated that the funds paid by ICO pursuant to the settlement agreement would be used for payment by the insured Fibreboard Corporation ("Fibreboard) of "actual claims made against Fibreboard."[26]

In support of its ruling, the court noted the ICP-Fibreboard settlement agreement required ICP to pay asbestos claims "as and if such claims arise." Pursuant to the reinsurance contract, Associated's liability "shall follow that of [ICP] and shall be subject in all respect to the terms and conditions of the [ICP-

Fibreboard] policy."[27] The ICP-Fibreboard policy required ICP to "indemnify [Fibreboard] for all sums which [Fibreboard] shall be obligated to pay by reason of the liability…."[28] Since the asbestos claims represented a liability Fibreboard was obligated to pay, ICP was required to indemnify Fibreboard and Associated was required to indemnify ICP pursuant to the reinsurance contract. To hold otherwise would violate "California's policy against implying provisions in insurance contracts that would defeat the contractual purpose" and "would frustrate the public policy which encourages settlement."[29]

Impact of Commutation Agreements Upon Contingent Commission Calculations

In *Acumen Re Mgmt. Corp. v. Gen. Sec. Nat'l Ins. Co.*,[30] the court granted summary judgment in favor of the defendant General Security National Insurance Company ("GSNIC") with respect to substantially all of the breach of contract claims asserted by plaintiff Acumen Re Management Corporation ("Acumen"). In 1994, GSNIC's predecessor-in-interest Sorema North American Reinsurance Company ("Sorema") entered into an Underwriting Agency Agreement ("UAA"), pursuant to which it appointed Acumen as its exclusive non-employee excess workers' compensation facultative reinsurance underwriter. In that capacity, Acumen assessed the risks of various insurance policies and entered into reinsurance agreements on behalf of Sorema. Under the UAA, Sorema received a base compensation for its services, consisting of underwriting commissions calculated as a percentage of premiums on Acumen's portfolio of business. Under a Contingent Commission Addendum ("CCA"), executed in 1994 by Acumen and

Sorema, Acumen was entitled to receive a "contingency commission" equal to thirty percent of Sorema's annual net profits, if any, on the reinsurance certificates underwritten by Acumen. On May 1, 2002, Acumen and GSNIC entered into a Termination Agreement which provided that certain provisions of the UAA survived the termination of the UAA (including the requirement that quarterly reports with a current report of incurred loss on all outstanding claims be provided by GSNIC to Acumen).

Between July 2004 and December 2007, GSNIC executed four commutation agreements on a contract, rather than claim-specific basis. Certificates of reinsurance underwritten by Acumen represented a "fraction" of the commuted business; however, they represented a "substantial portion" of Acumen's income-deriving business with GSNIC.[31] GSNIC did not consult with Acumen prior to executing the commutation agreements at issue "though the potential impact on Plaintiff was considered by certain personnel."[32]

After each commutation, GSNIC "allocated the losses without differentiating between Plaintiff-produced certificates and the rest of the commuted policies – that is, according to Defendant, losses were attributed based on a proportional application of the settlement payment in proportion to the reserve carried on the contracts at the time of the commutation."[33] In January 2008, GSNIC performed the contingency commission calculations to determine commissions which were potentially owed to Acumen for the underwriting years at issue. GSNIC's calculations "ultimately revealed that there were no net profits in any of the

underwriting years" at issue.[34] GSNIC found Acumen's book of business "generated underwriting losses in excess of $56.7 million, with over $47 million representing outside case reserves and IBNR on non-commuted Plaintiff produced business."[35]

While Acumen initially took the position that GSNIC violated the CCA by commuting a substantial portion of its portfolio of business, it subsequently claimed GSNIC violated the CCA by including the commutation payments in the contingent commission calculation. According to Acumen, such inclusion was not permitted by the CCA "because the contract contains no reference to commutations."[36] Acumen also contended such inclusion was not permitted by the CCA since there was "no category in the formula for the contingent commission calculation that allows Defendant to allocate a portion of the losses incurred as a result of the commutation, without verifying what losses were attributable to Plaintiff-produced certificates."[37]

In rejecting Acumen's contentions, the court cited the provisions in the CCA setting forth "in a clear and unambiguous fashion" the formula that GSNIC was required to use to calculate the contingency commission.[38] Pursuant to Section A.2 of the CCA, in computing net profits, a deduction is made for "loses…paid by [Defendant]…arising from facultative certificates bound or written with effective dates during the Underwriting Year under calculation."[39] According to the court, while the formula did not specifically reference commutation transactions, "the only evidence in the record on commutation indicates that commutations generally result in losses and that, in this instance, the commutation transactions did in fact result

in actual losses paid by Defendant."[40] Thus, the court ruled it was not a violation of the CCA for GSNIC to use losses resulting from the commutation agreements in calculating Acumen's contingency commission.[41]

The court also noted that GSNIC presented evidence that its methodology for calculating Acumen's contingency commission "did differentiate between the profitability of Plaintiffs produced certificates and all other commuted certificates – namely, by allocating the commutation price to each commuted certificate proportionally based on its carried reserves at the time of the commutations."[42]

Applicability of Arbitration Provisions To Resolution Of Disputes

The courts in numerous cases have addressed the question of whether disputes between the parties to reinsurance and commutation agreements are subject to arbitration where the reinsurance agreement includes an arbitration provision but the commutation agreement does not include such a provision. In *Repwest Insurance Co. v. Praetorian Insurance Co.*, *et al*,[43] the court held the arbitration provisions of a Quota Share Agreement and Aggregate Loss Reinsurance Contract entered into by Repwest Insurance Company ("Repwest") were applicable and rejected Repwest's claim that its claims against the defendants were subject to the provisions of a commutation agreement which it sought to invalidate and which did not include an arbitration provision.

In *Continental Casualty Co. v. LaSalle Re LTD*,[44] the court held the provisions of a commutation agreement between Continental Casualty Company ("Continental") and LaSalle Re LTD ("LaSalle") extinguished their obligations

under a retrocession agreement, including the duty to arbitrate. Since the commutation agreement did not include an arbitration provision, the court held Continental could not be compelled to arbitrate a dispute with LaSalle over Continental's purported obligation to pay its share of claims paid by LaSalle to its cedent Hartford Insurance Company of Canada.

Similarly, in *Continental Casualty Co. v. Commercial Risk Re-Insurance Company*,[45] the court held a dispute between plaintiff Continental Casualty Company ("Continental") and the defendants (collectively "SCOR") concerning the scope of a commutation agreement and whether it covered certain reinsurance agreements (the "Unity Fire Contracts") was not subject to the arbitration provisions in the Unity Fire Contracts since the commutation agreement did not include an arbitration provision.

In *Trenwick Am. Reinsurance Corp. v. CX Reinsurance Co. Ltd.*,[46] the court addressed a dispute involving a reinsurance agreement between Commercial Casualty Insurance Company (CCIC) and Trenwick Reinsurance Corporation ("Trenwick") and a subsequent commutation agreement under which all reinsurance obligations between Trenwick and CCIC were extinguished. When CCIC became insolvent, Trenwick was obligated through a "cut-through" provision to pay claims to CX Reinsurance Co. Ltd ("CX"). After Trenwick refused to pay a claim submitted by CX before the execution of the commutation agreement, CX demanded arbitration pursuant to the reinsurance agreement at issue and moved to compel arbitration. Trenwick sought to enjoin the arbitration on the ground that

there was no arbitration provision in the commutation agreement, which commuted and extinguished all reinsurance obligations between Trenwick and CCIC.

The court ruled in CX's favor and held an arbitrator should resolve the dispute between Trenwick and CX concerning whether CX's claims were subject to arbitration. The court distinguished *LaSalle* (relied upon by Trenwick) on the ground that CX was not a party to the commutation agreement at issue and was vested with certain rights under the reinsurance agreement at issue which could only be terminated as provided for in the reinsurance agreement. In support of its ruling, the court relied upon Second Circuit case law, including *ACE Capital Re Overseas Ltd. v. Central United Life Insurance Co.*[47] In *ACE*, the court held a clause in a reinsurance agreement requiring arbitration "as a condition precedent" to resolution of any dispute between the parties "with reference to the interpretation" of the agreement or "their rights with respect to any transaction involved" was a "broad one that encompasses the parties' disputes regarding fraudulent inducement and contract termination." *See also Connecticut General Life Insurance Co. v. Houston Scheduling Services*[48] (stating, [w]here there is a broad arbitration clause, the arbitrator resolves any claim of contract termination.").

Impact of Breach of Commutation Agreement

In *Korea Foreign Insurance Co. v. Omne Re SA*,[49] the U.K. Court of Appeal ruled that a breach of a commutation agreement by a reinsurer gave the reinsured the option of affirming the agreement or wholly discharging it. Pursuant to a

commutation agreement, the reinsurer Omne Re SA ("Omne") agreed to pay the reinsured Korea Foreign Insurance Company ("KFIC") $1,350,000 in full and final settlement of all outstanding claims arising from the reinsurance contracts between them. Omne paid the $100,000 due upon execution of the commutation agreement but failed to pay any of the $1,250,000 balance due. Article 3 of the commutation agreement, captioned Special Condition provided that if Omne defaulted in any of its payment obligations, "this Commutation and Release Agreement shall be wholly null and void, and KFIC shall be entitled to reserve its full rights without prejudice to its rights under the Reinsurance Agreements and the claims recoveries."

The court applied the "general rule of contract law that upon a repudiatory breach by one party, the other party has a right to elect whether or not to affirm that agreement or to treat it as wholly discharged." Thus, upon Omne's failure to meet its payment obligations, KFIC had the "right, either to affirm the compromise agreement and to insist upon performance of its terms or, alternatively, to disregard the compromise agreement and revert to the underlying reinsurance contracts." Since KFIC elected to rely upon the commutation agreement, it was entitled to a recovery based on that agreement.

Practical Suggestions

There are a number of practical suggestions which can be derived from the case law discussed above, including the following:

First, the commutation agreement should identify clearly and specifically the reinsurance contracts being commuted as well as the parties subject to the

commutation agreement. Since many insurance and reinsurance companies utilize a holding company structure, it is essential that the commutation agreement designate correctly the parties which are subject to the commutation agreement. Defining terms used in the release, such as "affiliates," is important in avoiding disputes over the scope of the release.

Second, to decrease the likelihood of disputes with retrocessionaires, reinsurers entering into commutation agreements should consider providing notice to the retrocessionaires of their intent to commute reinsurance agreements and express their expectation that the retrocessionaires will be honor their obligations with respect to such commutations. This does not guarantee there will be no disputes concerning the impact of the commutation agreements upon the retrocessionaires' obligations with respect to such commutations. However, there is no downside to providing such notification and the potential upside that disputes may be avoided.

Third, the position of the reinsurer in seeking reimbursement from its retrocessionaire(s) for sums paid pursuant to a commutation agreement is enhanced if the commutation agreement includes an Extended Reporting Clause, requiring the reinsured to provide the same notice(s) of loss(es/occurrence(s) as it would have been obligated to provide to the reinsurer under the reinsurance agreements. The inclusion of a Continued Access to Records Clause in the commutation agreement is also beneficial.

Fourth, reinsurers should be cognizant of the impact of commutation agreements upon commissions which are due based on reinsurance agreements which are being commuted and consider providing notice to the parties affected by the commutation prior to execution of the commutation agreements. As noted above, in *Acumen*, GSNIC personnel considered the impact of the commutation agreements upon Acumen but did not consult with Acumen prior to completing the agreements. Again, there would not appear to be any downside to such consultation even though it may not have eliminated the subsequent dispute between GSNIC and Acumen.

Fifth, given the conflicting case law on the issue of whether disputes between parties to a reinsurance agreement (which includes an arbitration provision) and a subsequent commutation agreement (which does not include such a provision) are subject to arbitration, a cedant or reinsurer who favors arbitration of disputes versus litigation would be well-advised to include an arbitration clause in the commutation agreement which is consistent with the arbitration clause(s) in the reinsurance agreements being commuted.

Sixth, to avoid any uncertainty concerning the impact of any breach by the reinsurer of its payment obligations under the commutation agreement, the agreement should make clear that such a breach does not void the terms of the commutation agreement and the reinsured is entitled to a recovery based on these terms.

[1] Wm. Gerald McElroy, Jr. is a Senior Partner with the Boston office of Zelle LLP. The author acknowledges with gratitude the research assistance for this paper provided by Jeffrey Gordon, a Senior Associate in the Boston office of Zelle LLP. Any views expressed in this paper re those of the author and do not necessarily reflect those of Zelle LLP or Zelle LLP's clients.

[2] http://www.irmi.com/online/insurance-glossary/term/c/commutation -- agreement.aspx. In its "simplest form," a "lump sum payment by the reinsurer is substituted for the unknown future liabilities on ceded risks and it is done for reasons on both sides having to do with the relative advantages of current and long-term money or the convenience of closing certain yearly accounts." A commutation may also be "partial, leaving some long-term obligations in effect, and it may be a contract for a series of fixed future payments rather than a present lump sum." Staring, Graydon S., **Law of Reinsurance**, Section 14.6 (March 2016 Update). In either case, it "terminates the liabilities for indemnities on the one hand and premiums on the other, with respect to the risks specified." *Id.*

[3] 427 F.3d 1038 (7th Cir. 2005).

[4] 427 F.3d at 1042.

[5] *Id.*

[6] No. 03 C 1455, 2003 WL 21801022 (N.D.Ill. Aug. 4, 2003) at *4.

[7] 108 F.3d 1385 (9th Cir. 1997) (unpublished).

[8] 108 F.3d at *3.

[9] *Id.* at *4.

[10] 696 F. Supp. 897 (S.D.N.Y. 1988).

[11] 696 F. Supp. At 902.

[12] *Id.* at 903-904.

[13] 389 Ill.App.3d 356, 906 N.E.2d 630 (lst District, 2009).

[14] 906 N.E.2d at 637.

[15] 906 N.E.2d at 637-38.

[16] 634 F.Supp.2d 342 (S.D.N.Y. 2009).

[17] 634 F.Supp.2d at 349.

[18] *Id.*

[19] *Id.* at 347.

[20] *Id.*

[21] *Id.* at 350.

[22] *Id.*

[23] *Id.*

[24] 922 F.2d 516 (9th Cir. 1991).

[25] 922 F.2d at 525.

[26] *Id.*

[27] *Id.* at 526.

[28] *Id.*
[29] *Id.* at 526.
[30] No. 09 CV 01796 (GBD), 2012 WL 3890128 (S.D.N.Y. Sept. 7, 2012),
[31] 2012 WL 3890128 at*3.
[32] *Id.*
[33] *Id.*
[34] *Id.* at *4.
[35] *Id.*
[36] *Id.* at *8.
[37] *Id.*
[38] *Id.*
[39] *Id.*
[40] *Id.*
[41] *Id.*
[42] *Id.*
[43] 890 F.Supp.2d 1168 (U.S.D.C. Arizona 2012).
[44] 511 F.Supp.2d 943 (N.D.Ill. 2007).
[45] No. 07 cv 6912 (HDL), 2009 WL 1034951 (N.D. Ill. April 16, 2009).
[46] No. 3:13cv1264 (JBA), 2014 WL 2168504 (D. Conn. May 23, 2014).
[47] 307 F.3d 24 (2nd Cir. 2002).
[48] No. 3:12 cv 01456 (MPS), 2013 WL 4l647252 (D. Conn. Aug. 29, 2013).
[49] No. 299057402 (U.K. Ct. App., Civil Div., April 14, 1999). The decision can be accessed at http://vlex.com/vid/ur-judge-david-smith-52581560.

Friday, May 5, 2017, 10:30 a.m. – 11:20 a.m.

GENERAL SESSION

Is the New U.S. – E.U. Covered Agreement Good for the Industry, and Will the New Administration Make Changes?

SESSION MATERIALS:

NAIC Letter to the Treasury on Covered Agreements

Joint Trades Letter to the Treasury on Covered Agreements

— AVAILABLE IN ONLINE MATERIALS ONLY —

Covered Agreement Letters to Congress

PRESENTED BY:

Tracey Laws, Reinsurance Association of America
John Huff, Immediate Past President of the NAIC and Immediate Past Director of the Missouri Insurance Department

NAIC National Association of Insurance Commissioners & The Center for Insurance Policy and Research

March 15, 2017

The Honorable Steven Mnuchin
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Ave., NW
Washington, D.C. 20220

Dear Secretary Mnuchin:

On behalf of the National Association of Insurance Commissioners (NAIC)[1], we write regarding the Bilateral Agreement Between the European Union and the United States of America on Prudential Measures Regarding Insurance and Reinsurance, what is commonly referred to as the "covered agreement" (hereinafter "the Agreement"), submitted to Congress on January 13, 2017. Since that time, it has become clear that there is significant confusion among current and former government officials, insurance regulators and the industry regarding the nature of the obligations to be undertaken, the purported benefits that were gained, and the concessions that were made. As state insurance regulators would be responsible for implementing most aspects of the Agreement, we respectfully request that you engage the European Union to seek written confirmation regarding the interpretation and application of many of the Agreement's terms. Such clarification is necessary not only to fully evaluate whether the Agreement is in the best interest of the United States insurance sector, but also to ensure any implementation is consistent with the intent of those that negotiated it. We would be pleased to lend our technical assistance to your Department to help ensure a productive dialogue with the EU.

On February 16, 2017, the House Financial Services Committee's Subcommittee on Housing and Insurance, chaired by Congressman Sean Duffy, held an oversight hearing regarding the Agreement. At that hearing, former director of the Treasury's Federal Insurance Office, Michael McRaith, one of the lead negotiators of the agreement, testified that the agreement "puts America's interest first" and "U.S. consumers, industry, and the U.S. national economy will benefit." Importantly, he asserted that key aspects of the agreement either recognized existing state authorities or otherwise merely obligated the states to take actions they were already undertaking. In Mr. McRaith's view, "the Agreement affirms that the U.S. supervises its insurance sector as the U.S. deems appropriate." Specifically, he claimed that the Agreement only required the states to eliminate collateral requirements in a manner that was supportive of state regulator efforts to implement changes to their Credit for Reinsurance laws and regulations that would reduce reinsurance collateral, finish our ongoing work on a group capital calculation, and, for purposes of group supervision, treat EU-based insurance companies operating in the

[1] Founded in 1871, the NAIC is the U.S. standard-setting and regulatory support organization created and governed by the chief insurance regulators from the 50 states, the District of Columbia and the five U.S. territories. Through the NAIC, state insurance regulators establish standards and best practices, conduct peer review, and coordinate their regulatory oversight. NAIC members, together with the central resources of the NAIC, form the national system of state-based insurance regulation in the U.S.

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CAPITAL MARKETS & INVESTMENT ANALYSIS OFFICE • One New York Plaza, Suite 4210 • New York, NY 10004 p | 212 398 9000 f | 212 382 4207
www.naic.org

U.S. as they are treated today. In exchange for those concessions, he claimed the Agreement recognizes the current U.S. insurance group supervision practices, prohibited Europe from extraterritorial application of its requirements on a U.S.-based holding company or legal entity, and required certain EU jurisdictions to immediately lift their requirements that U.S. reinsurers maintain a local presence as a condition of doing business. With respect to the foregoing claims, these outcomes are not clear from a plain reading of the text of the Agreement, and although Mr. McRaith's opinion is informative, it does not necessarily reflect the views or interpretation of any of the current parties to the Agreement.

Our analysis suggests that the Agreement operates differently than Mr. McRaith claimed. First, the Agreement completely eliminates collateral requirements. Though, over the course of the past few years, states have reduced collateral requirements, they have not been eliminated. Our approach is risk-based and reinsurer collateral requirements range from 0% to 100% based on an assessment of the financial strength of the reinsurer and quality of its supervision. While there are conditions in the Agreement that reinsurers would have to meet to avoid being subject to collateral requirements, several of those conditions differ materially from current state credit for reinsurance laws. In light of these differences, states may have to take alternative measures to ensure that ceding U.S. insurers, and, by extension, U.S. policyholders are protected from any risks posed by reinsurance counterparties. Second, section 4(h) of the Agreement, which requires a group capital assessment, is ambiguous and it is not clear that the NAIC's ongoing work to develop a group capital calculation will satisfy the provisions or the EU's interpretation of it. The Agreement suggests the states should impose a capital requirement, with specific corrective capital measures, at the group level of a U.S. insurer, rather than at the legal entity level. Current work of the NAIC does not presently include a requirement for additional capital at either the group or legal entity level, so this could clearly add costs for U.S. insurers unless Mr. McRaith's assertion that our current work is sufficient to meet the terms of the Agreement as understood not just by Treasury, but by the EU. Third, the Agreement imposes group supervisory framework that differs from existing group supervisory authorities. The Agreement appears to place conditions upon the use of longstanding regulatory authorities to protect U.S. consumers. Finally, we remain concerned the Joint Committee established by the Agreement will invite perpetual renegotiation of the Agreement's terms that could significantly impact the insurance sector. Also, there is no assurance that state insurance regulators will be among the committee's members, even though we are responsible for key components of Agreement's implementation and would likely be responsible for implementing any decisions reached by the Joint Committee. We appreciate Mr. McRaith's personal view that state insurance regulators should be a part of that committee, but we urge Treasury to confirm that point and also limit the Committee's focus to discussing significant deviations to the terms of the Agreement.

To be clear, state insurance regulators are committed to expeditious resolution of the disparate treatment of U.S. insurers operating in the EU and we are committed to working with your Department to address such concerns. However, the significant differences of opinion regarding the terms and operation of this Agreement necessitate, at a minimum, formal clarification and confirmation of its terms through the exchange of formal side letters with the EU. Absent such assurances, we urge you to formally reopen negotiations as we are deeply concerned about the prospect of the states making significant changes to its insurance laws, regulations and procedures that inure to the benefit of the EU and its insurance sector without our sector receiving certainty surrounding their business activities in the EU.

We would greatly appreciate the opportunity to meet with you and your staff to further discuss ways we can work together to seek the appropriate confirmation of the EU's interpretation of the Agreement, and to discuss a path forward that addresses the treatment of U.S. insurers operating within the EU while also ensuring that appropriate protections remain in place for U.S. insurers and consumers. For the purposes of scheduling such a meeting or if you or your staff have any follow-up questions, please don't

hesitate to contact Ethan Sonnichsen, NAIC's Managing Director, Government Relations at (202) 471-3980 or esonnichsen@naic.org. Thank you for attention to this important matter.

Sincerely,

Ted Nickel
NAIC President
Commissioner
Wisconsin Office of the
Commissioner of Insurance

Julie Mix McPeak
NAIC President-Elect
Commissioner
Tennessee Department of
Commerce & Insurance

Eric A. Cioppa
NAIC Vice President
Superintendent
Maine Bureau of Insurance

David C. Mattax
NAIC Secretary-Treasurer
Commissioner of Insurance
Texas Department of Insurance

Michael F. Consedine
Chief Executive Officer

cc: Gary Cohn, Director, United States National Economic Council

March 16, 2017

The Honorable Steven T. Mnuchin
Secretary of the Treasury
U.S. Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, DC 20220

Re: Insurance Industry Support for the U.S.-EU Covered Agreement

Dear Secretary Mnuchin:

This letter is submitted by the undersigned U.S. insurance trade associations: the American Council of Life Insurers, the American Insurance Association, the Council of Insurance Agents and Brokers, and the Reinsurance Association of America. Collectively, we represent U.S. life insurance, property and casualty insurance, and reinsurance companies, and U.S. insurance agents and brokers. Many companies represented by these groups are international and provide products around the globe, including the European Union. Equally important, all of our respective member companies have substantial U.S. operations and employ thousands of individuals in this country. We strongly support the "Covered Agreement" that was recently negotiated by the United States and the European Union, resolving several significant prudential insurance and reinsurance matters. For the reasons set forth below, we urge you to support the Agreement, provide the certification it requires in a timely manner, and move forward with implementation.

- **The Covered Agreement officially affirms the U.S. integrated system of insurance regulation, including the state role and approach as the primary regulators of the insurance business**. This benefit cannot be understated for all U.S. based insurers (without regard to whether they also operate in the EU): for the first time, the EU has acknowledged and accepted our state based regulatory system. These "wins" were achieved in exchange for something the state regulators have already been working on since 2011: reducing the amount of collateral that non-U.S. reinsurers must post on their U.S. obligations. The Covered Agreement builds on the states' work, and establishes financial strength and market conduct conditions that EU and U.S. reinsurers must first meet, including robust capital and solvency standards and maintaining a record of prompt claims payment.

- Without the Covered Agreement, U.S. based reinsurers would be forced to create branches in numerous EU Member States to conduct any future business, including the renewal of existing business. This would require capital and potentially personnel to be moved to the EU and would subject these companies to unnecessary EU Member State regulation. **With the Agreement, U.S. reinsurers can conduct business on a cross-border basis throughout the EU from their U.S. operations**.

- Without the Agreement, U.S. based companies with EU intermediate holding companies would be subject to Solvency II's onerous requirements for capital, governance and reporting on a worldwide basis (not just on their EU operations). **With the Agreement, the EU will not attempt to subject U.S. holding companies (or other U.S. entities) that are "upstream" to Solvency II's standards.**

The benefits to U.S. based companies are immediate upon certification by the U.S. and the EU. The Covered Agreement is clearly a significant win for U.S. based insurers and reinsurers because it clarifies and solidifies the terms upon which they can do business in the EU. While negotiations concluded only recently, the covered agreement achieves competitive benefits that industry has sought for nearly two decades. We encourage you to sign the Agreement.

We appreciate your consideration of this matter. Preserving the domestic and international benefits of the Covered Agreement will enhance the competitiveness of the U.S. insurance industry to the benefit of consumers, and provide the basis going forward to reinforce the strength and capability of our member companies, the U.S. insurance industry, and the U.S. state based regulatory system.

Respectfully submitted,

GOVERNOR DIRK KEMPTHORNE
President and CEO
American Council of Life Insurers

LEIGH ANN PUSEY
President and CEO
American Insurance Association

KEN CRERAR
President and CEO
The Council of Insurance Agents and Brokers

FRANK NUTTER
President
Reinsurance Association of America

The American Council of Life Insurers (ACLI) is a Washington, D.C.-based trade association with approximately 280 member companies operating in the United States and abroad. ACLI advocates in state, federal, and international forums for public policy that supports the industry marketplace and the 75 million American families that rely on life insurers' products for financial and retirement security. ACLI members offer life insurance, annuities, retirement plans, long-term care and disability income insurance, and reinsurance, representing 95 percent of industry assets.

Celebrating its 150th year in 2016, The American Insurance Association (AIA) is the leading property-casualty insurance trade organization, representing approximately 320 insurers that write more than $125 billion in premiums each year. AIA member companies offer all types of property - casualty insurance, including personal and commercial auto insurance, commercial property and liability coverage, specialty, workers' compensation, homeowners' insurance, medical malpractice coverage, and product liability insurance.

The Council of Insurance Agents & Brokers is the premier association for the top regional, national and international commercial insurance and employee benefits intermediaries worldwide. Council members are market leaders who annually place 85 percent of U.S. commercial property/casualty insurance premiums and administer billions of dollars in employee benefits accounts. With expansive international reach, The Council fosters industry wide relationships around the globe by engaging lawmakers, regulators and stakeholders to promote the interests of its members and the valuable role they play in the mitigation of risk for their clients. Founded in 1913, The Council is based in Washington, D.C.

The Reinsurance Association of America (RAA) is a national trade association representing reinsurance companies doing business in the United States. RAA membership is diverse, including reinsurance underwriters and intermediaries licensed in the US and those that conduct business on a cross border basis. The RAA also has life reinsurance company affiliates.

Friday, May 5, 2017, 11:20 a.m. – 12:10 p.m.

GENERAL SESSION

Dispute Resolution Involving U.S./Latin America Reinsurance Relationships

SESSION MATERIALS:

Insurance Regulations to Hydrocarbon Industry – Overview of Mandatory Insurance Requirements

— AVAILABLE IN ONLINE MATERIALS ONLY —

The Insurance and Reinsurance Law Review
New Mexican Insurance and Bonding Companies Law LISF
Sovereign Immunity Issues in U.S. Cases Involving Insurance and Reinsurance

PRESENTED BY:

Edward K. Lenci, Hinshaw & Culbertson LLP
Yves Hayaux-du-Tilly, Nader Hayaux & Goebel
Ricardo Morales-Gomez , Assurant
Carlos A. Romero, Jr., Post & Romero
Raymundo Arenas, AXA Seguros

EXCLUSIVE COMMUNICATION FOR CLIENTS OF NADER, HAYAUX & GOEBEL

INSURANCE REGULATIONS TO HYDROCARBON INDUSTRY

OVERVIEW ON MANDATORY INSURANCE REQUIREMENTS

24 May, 2016

As part of the Mexican Energy Reform[1] (**"Energy Reform"**), the Ministry for the Environment and Natural Resources (Secretaría del Medio Ambiente y Recursos Naturales) (**"SEMARNAT"**), through the National Agency of Industrial Security and Ecological Protection in the Hydrocarbon Sector[2] (Agencia Nacional para la Seguridad Industrial y de Protección al Medio Ambiente del Sector Hidrocarburos) (**"ASEA"**) shall issue regulation on the minimum insurance requirements applicable to companies carrying out construction works or exploration and extraction activities in the hydrocarbon sector, processing and refining of oil and processing of gas (*Disposiciones Administrativas de Carácter General que Establecen las Reglas para el Requerimiento Mínimo de Seguros a los Regulados que lleven a cabo Obras o Actividades de Exploración y Extracción de Hidrocarburos, Tratamiento y Refinación de Petróleo y Procesamiento de Gas Natural*) (**"Insurance Rules for the Hydrocarbon Industry"**).

The Insurance Rules for the Hydrocarbon Industry require all upstream, midstream and downstream companies **("Companies") (i)** exploring and extracting hydrocarbons, **(ii)** processing and refining oil, and **(iii)** processing gas (**"Hydrocarbon Activities"**) to obtain the following mandatory insurance coverage subject to article 150 Bis of the Insurance Contract Law[3]: **(x)** civil liability insurance, **(y)** environmental insurance

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[1] In December 2013 a number of constitutional amendments were enacted, liberalizing the energy industry in Mexico after more than 70 years of being a Government monopoly. For more information please read 'Mexican Senate Passes Bill on Oil, Gas & Electricity' by Michell Nader S. and José Sifuentes D.: http://www.nhg.com.mx/pdfs/NHG_v7_Propuesta_de_Energia.pdf

[2] The National Industrial Security and Environmental Protection for Hydrocarbon sector Agency (*Agencia* Nacional de *Seguridad Industrial* y de *Protección al Medio Ambiente* del *Sector Hidrocarburos*) is a administrative deconcentrated agency of SEMARNAT created as a consequense of the Energy Reform. It has technical and operational autonomy. Its main purpose is the protection and security of individuals, the environment and hydrocarbon facilities through regulation and supervision.

[3] Pursuant to article 150 Bis of the Insurance Contract Law compulsory liability insurance cannot be avoided, rescinded or terminate before the date of termination of the contract. If the insurer indemnifies a third party for the occurrence of an insured peril and proves that the insured fail to disclose relevant information, misrepresented or failed to notify the insurer about an essential aggravation of the risk, in accordance with the applicable provisions of the Insurance Contract Law, the insured may recover directly from the insured.

and, in its case, **(z)** operators extra expense insurance **("Policies")** in all stages of their activities and operations.

The Insurance Rules for the Hydrocarbon Industry impose a number of obligations to the Companies, among them:

1. Safeguard the information related to the insurance policies available to ASEA for potential inspections and verification.
2. Register the Policies and evidence of the payment of the premium with ASEA within 30 working days from inception of the policy.
3. Upon the renewal of the policies, register with ASEA a copy of the policy and the respective evidence of payment of the premium.
4. File with ASEA all reports and relevant information produced by the insurance and reinsurance companies arising from inspections or verification procedures on the activities of the insured and to the construction works or facilities, including copy of the well design report, within 30 working days following receipt of any such documentation.
5. File with ASEA the reports and relevant information issued by the insurance company regarding the occurrence of a peril, within 30 days following payment of the indemnity.
6. Require all its contractors, subcontractors, employees, suppliers or service providers to have suitable and valid insurance policies in effect.

The Companies shall be liable for any damage resulting from their construction works or activities, even if such damage is not covered by the Policies and shall be liable for any loss caused by their contractors, subcontractors, employees, suppliers or service providers when performing activities for the Companies.

In order to comply with the indemnity limits of the Policies, the Companies may either:

a) Comply with the minimum indemnity limits set forth in the Insurance Rules for the Hydrocarbon Industry; or

b) Comply with the indemnity limits resulting from a Probable Maximum Loss (PML) assessment performed by an authorized third party, based on the procedures and methods determined by ASEA.

Minimum Amounts according to the Rules

Liability and environmental insurance	
Type of construction and activities	**Minimum coverage per event and annual aggregate coverage**
Exploration and extraction in onshore wells	USD$ 100,000,000
Exploration and extraction in onshore wells with a remaining volume of hydrocarbons of less than 100 million barrels of oil equivalent	USD$ 25,000,000
Exploration and extraction in shallow water (less than 500 meters depth)	USD$ 500,000,000
Exploration and extraction in deep water and ultra-deepwater (more than 500 meters depth)	USD$ 700,000,000
Construction works or activities and risks related to processing and refining of oil and processing gas	USD$ 500,000,000

Operators extra expense insurance (OEE)	
Type of well	**Investment percentage of authorized drilling (AFE) and the respective factors to calculate coverage per event and annual aggregate coverage**
Onshore	300% of the authorized drilling investment (3 x AFE)
Wells operating with a remaining volume of hydrocarbons of less than 100 million barrels of oil equivalent, including construction works and extraction activities	Drilling investments estimated for wells in operation and the respective 1.5 factor (1.5 x estimated drilling investments for wells in operation)
Shallow water	400% of authorized drilling investment (4 x AFE).
Deep water and ultra-deepwater	600% of authorized drilling investment (6 x AFE). In which case the amount may not exceed USD$ 800,000,000

Minimum Amounts according to the Rules

Protection and indemnity insurance (P&I)	
Type of boats or mobile platforms used in construction works or in exploration and hydrocarbon extraction, processing and refining oil and processing natural gas	**Minimum coverage per event and annual aggregate coverage**
Mobile platforms, Jack-Ups or similar (any weight)	USD$ 300,000,000
Speedboats and Underservice boats (i.e. less than 75 feet length)	USD$ 5,000,000
Assistants and operators	USD$ 10,000,000
Floating Production, Storage and Offloading vessel (FPSO), Floating, Storage and Offloading vessel (FSO) and similar (any weight)	USD$ 1,000,000,000
Any other kind of vessels	USD$ 100,000,000

Breach to the Insurance Rules for the Hydrocarbon Industry may be penalized with fines ranging from approximately MXN$ 54,780,000 (approximately US$3,096,439) to MXN$ 547,800,000 (approximately US$30,964,395).

Companies subject to the Insurance Rules for the Hydrocarbon Industry operating shall register their Policies with ASEA within 60 days following the date in which the Rules become effective. Companies subject to the Insurance Rules for the Hydrocarbon Industry starting construction works or activities after the Rules become effective have 60 days to file their Policies with ASEA.

Please note that to the date hereof, the Insurance Rules for the Hydrocarbon Industry are currently in the last stage of the Regulatory Improvement Commission (COFEMER) assessment process and have not yet been published nor enacted and, therefore, are not yet in full force and effect. It is expected that the Insurance Rules for the Hydrocarbon Industry will be published in the Official Gazette beginning of June 2016.

For more information, in connection with this newsletter, please contact Yves Hayaux du Tilly (yhayaux@nhg.com.mx) or Juan Pablo Sainz (jsainz@nhg.com.mx).

THE ARIAS•U.S. 2017 SPRING CONFERENCE WILL BE CONDUCTED UNDER THE ARIAS•U.S. ANTITRUST POLICY

ARIAS•U.S. POLICY STATEMENT AND GUIDELINES CONCERNING ANTITRUST COMPLIANCE

ARIAS•U.S. is a not-for-profit corporation that promotes improvement of the insurance and reinsurance arbitration process for the international and domestic markets. ARIAS•U.S. provides initial training, continuing in-depth conferences and workshops in the skills necessary to serve effectively on an insurance/reinsurance arbitration panel. In addition, ARIAS•U.S. certifies a pool of qualified arbitrators and serves as a resource for parties involved in a dispute to find the appropriate persons to resolve the matter in a professional, knowledgeable and cost-effective manner.

ARIAS•U.S. members include representatives of insurance companies, reinsurance companies, law firms and independent contractors with experience in the field. Some of the participants in ARIAS•U.S. meetings may be in competition with one another. For this reason, ARIAS•U.S. wishes to state unequivocal support for the policy of competition served by the antitrust laws.

The Policy of ARIAS•U.S. Requires Full Compliance with the Antitrust Laws

ARIAS•U.S. is firmly committed to free competition. In particular, ARIAS•U.S. stresses that members have and retain full and exclusive authority for making their own decisions in arbitrations or litigations in which they are involved, as well as in all of their business activities. ARIAS•U.S. does not in any way serve to facilitate agreements among competitors to coordinate their activities with respect to billing practices, collections, underwriting, or any other competitively sensitive activity of insurers or reinsurers. Rather, ARIAS•U.S. exists solely in order to provide educational and informational assistance in connection with the dispute-resolution process of arbitration or litigation.

Although the activities of ARIAS•U.S. are not intended to restrain competition in any manner, it is always possible that meetings involving competitors could be seen by some as an opportunity to engage in anti-competitive conduct. Good business judgment requires making substantial efforts to safeguard against any appearance of an antitrust violation -- both because ARIAS•U.S. has a firm commitment to the principle of free competition, and because the penalties for antitrust violations are severe. Certain violations of the Sherman Act, such as price fixing, are felony crimes for which individuals may be imprisoned or fined. In recent years, corporations have paid hundreds of millions of dollars in fines for these antitrust offenses. In addition, class actions and other treble damage claims by private parties are very expensive to litigate and can result in large judgments. Penalties might be imposed upon ARIAS•U.S., its individual and corporate members, and their individual representatives if they were adjudged to have violated the antitrust laws in connection with their ARIAS•U.S. activities. Members should not count on an antitrust immunity simply because insurance is a highly regulated industry.

It is the responsibility of every member of ARIAS•U.S. fully to comply with the antitrust laws in all ARIAS•U.S. activities. In order to assist members in recognizing situations that may raise the appearance of an antitrust problem, the meeting chair shall furnish at each meeting a copy of this Policy Statement and the following Guidelines.

Guidelines to Ensure Antitrust Compliance

Many ARIAS•U.S. members are skilled in the legal process and may be expected to understand their responsibility under the antitrust laws. Nonetheless, it is useful to state, as a reminder, some basic guidelines that will minimize potential antitrust risk.

1. ARIAS•U.S. members may freely discuss matters that are not competitively sensitive, such as legal developments, ethical principles, procedures, laws that affect the industry, ways to make proceedings more efficient, and technical problems involved in arbitration or litigation. It is permissible, for example, to draft sample arbitration clauses that parties may select on a voluntary basis.

2. ARIAS•U.S. meetings and activities shall not be used as an occasion to reach or attempt to reach any understanding or agreement among competitors -- whether written or oral, formal or informal, express or implied -- to coordinate their activities with regard to billing, collections, premiums, terms or conditions of contracts, territories or customers. Thus, for example, competing cedents (or competing reinsurers) should not agree with one another that they will require use of a particular arbitration clause, and especially should not agree that they will boycott parties that reject the clause.

3. The best way to guard against the appearance of such an agreement is to avoid any discussion of subjects that might raise concern as a restraint on competition. Accordingly, ARIAS•U.S. meetings and activities shall not be used as the occasion for competitors to exchange information on any competitively sensitive subjects, including the following:

(a) ARIAS•U.S. activities and communications shall not include discussion among competitors to coordinate their activities with respect to billing practices, collection activities, premium setting, reserves, costs, or allocation of territories or customers.

(b) ARIAS•U.S. members shall not use the occasion of any ARIAS•U.S. activities to discuss coordinated actions involving other competitors, suppliers or customers. Such discussions could be misconstrued as an agreement to boycott third-parties. For example, if a member decides it will decline to pay certain types of billings from a customer, the member should not discuss this decision with a competitor, because a common plan on such a subject could be considered an unlawful conspiracy or boycott. Accordingly, ARIAS•U.S. members should not discuss any proposal: to coordinate policies or practices in, billings or collections; to prevent any person or business entity from gaining access to any market or customer; to prevent any business entity from obtaining insurance or reinsurance services or legal or consulting services freely in the market; or to influence the availability, terms, provisions, premiums or other aspects of any reinsurance policy or line of insurance.

4. A written agenda shall be prepared in advance for every formal ARIAS•U.S. meeting. Where practical, the agenda shall be reviewed in advance by counsel. The written agenda shall be followed throughout the meeting. Where minutes are kept, the minutes of all meetings shall be reviewed by counsel (if possible) and, after such review, shall be distributed to all members of the body holding the meeting. Approval of the minutes shall be obtained after review at the next meeting.

5. Members are expected to observe the standards of conduct stated above in all informal discussions that take place at the site of ARIAS•U.S. meetings, and in all communications concerning ARIAS•U.S. business.

6. If a member suspects that any unlawful agreements are being discussed, the member should leave the discussion immediately and should consult counsel.

7. Questions concerning these Guidelines may be directed to the Chairman of the Law Committee of ARIAS•U.S.

First Name	Last Name	Badge Organization	City	State/ Country
Marc	Abrams	Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.	New York	NY
Syed	Ahmad	Hunton & Williams	Washington	DC
Walter	Andrews	Hunton & Williams	Washington	DC
Rod	Attride-Stirling	ASW Law Limited	Hamilton	Bermuda
Rob	Badgley	Karbal Cohen Economou Silk & Dunne	Chicago	IL
Jonathan	Bank	Locke Lord LLP	Los Angeles	CA
Spiro	Bantis	London Fischer LLP	New York	NY
Karen	Baswell	Chaffetz Lindsey LLP	New York	NY
Bruce	Baty	Dentons US LLP	Kansas City	MO
Thomas	Bernier	Goldberg Segalla	Baltimore	MD
Alan	Bialeck	Arbitrator	New York	NY
Katherine	Billingham	Scottish Re	Charlotte	NC
Christian	Blocher	R+V Versicherung AG	Wiesbaden	Germany
Hannah Ruehlman	Blase	Zurich North America	Schaumburg	IL
Bill	Bouvier	Riverstone Resources LLC	Manchester	NH
David	Bradford	Zurich North America	Saint Charles	IL
Paul	Braithwaite	FTI Consulting, Inc.	New York	NY
Kelsey	Brunette	Munich Re America		NY
Jeff	Burman	AIG - American International Group, Inc.	New York	NY
Jeff Burt	Burt	Gilbert, Kelly, Crowley, Jennett LLP	Los Angeles	CA
Paul	Buxbaum	Buxbaum, Loggia & Associates. Inc.	Fullerton	CA
Matthew	Byrne	XL Catlin	Stamford	CT
Elaine	Caprio	Caprio Consulting	BOSTON	MA
Bruce Carlson	Carlson	CP Consultants LLC	St James City	FL
Michael	Carolan	Crowel & Moring LLP	Washington	DC
Suman	Chakraborty	Squire Patton Boggs (US) LLP	New York	NY
Kathryn	Christ	Swiss Re Management (US) Corporation	Armonk	NY
Susan	Claflin	Claflin Consulting Services LLC	East Haddam	CT
Beth	Clark	Stroock & Stroock & Lavan LLP	New York	NY
Royce	Cohen	Tressler LLP	New York	NY
Dale	Crawford	N/A	Littleton	CO
Thomas	Cunningham	Sidley Austin LLP	Chicago	IL
Glenn	Cunningham	Cunningham Advisory LLC	Charlotte	NC
Tim	Curley	SF Re / ARM US	Petaluma	CA
Everett	Cygal	Schiff Hardin LLP	Chicago	IL
Paul	Dassenko	Azure Advisors, Inc.	New York	NY
John	DeLascio	Hinshaw & Culbertson LLP	Chicago	IL
Howard	Denbin	HDDRe Strategies LLC	Bala Cynwyd	PA
Deidre	Derrig	Allstate Insurance Company	Northbrook	IL

Nick	DiGiovanni	Locke Lord LLP	Chicago	IL
Robert	DiUbaldo	Carlton Fields Jorden Burt	New York	NY
John	Dore	Sheridan Ridge Advisers LLC	Northfield	IL
Andy	Douglass	Morrison Mahoney, LLP	Boston	MA
Jim Dowd	Dowd	TigerRisk Partners	Stamford	CT
Richard	Dupree	The Travelers Insurance Company, Inc.	Hartford	CT
Andrew	Earl	Resolute Management Services Ltd	London	UK
Randi	Ellias	Butler Rubin Saltarelli & Boyd LLP	Chicago	IL
Bruce	Engel	Freeborn & Peters LLP	Chicago	IL
Matt	Ferlazzo	Hinshaw & Culbertson LLP	New York	NY
Ann	Field	Willis Re	Chicago	IL
Laura	Foggan	Crowell & Moring LLP	Washington	DC
Charlie	Fortune	Chubb - Cohn Baughman & Martin	Chicago	IL
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Glenn	Frankel	The Hartford Financial Services Group, Inc.	West Hartford	CT
Michael	Frantz	Munich RE	Princeton	NJ
Donald	Frechette	Locke Lord LLP	Hartford	CT
Matt	Furton	Locke Lord LLP	Chicago	IL
Tony	Gambardella	Rivkin Radler	Uniondale	NY
Peter	Gentile	ARIAS•U.S.	West Palm Beach	FL
Michelle	George	Chadbourne & Parke LLP	London	England
Mitch	Gibson	Swiss Re America Holding Corporation	Armonk	NY
Joe	Goldberg	Joseph M. Goldberg, Esq.	Edina	MN
Michael	Goldstein	Mound Cotton Wollan & Greengrass	New Rochelle	NY
Jack	Gordon	Lewis Baach pllc	Washington	DC
Perry Stuart	Granof	Granof International Group LLC.	Glencoe	IL
Susan	Grondine-Dauwer	SEG-D Consulting, LLC.	Scituate	MA
Lloyd	Gura	Mound Cotton Wollan & Greengrass	New York	NY
Daniel	Hargraves	Freeborn & Peters LLP	New York	NY
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Carl	Harris	Insurance Strategies Consulting, LLC	West Des Moines	IA
Kendall	Harrison	Godfrey & Kahn, S.C.	Madison	WI
Cliff	Hendler	Crowell & Moring LLP	Washington	DC
Robert	Hermes	Butler Rubin Saltarelli & Boyd LLP	Chicago	IL
Kim	Hogrefe		Washington Township	NJ
John	Huff	Immediate Past President of the NAIC and Immediate Past Director of the Missouri Insurance Department	Washington	DC
David	Ichel	David W. Ichel Dispute Resolution LLC	New York	NY
Aluyah	Imoisili	Greenberg Gross LLP	Los Angeles	CA

J.P.	Jaillet	Choate, Hall & Stewart LLP	Boston	MA
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Paul	Kalish	Crowell & Moring LLP	Washington	DC
Amy	Kallal	Mound Cotton Wollan & Greengrass	New York	NY
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Sylvia	Kaminsky		Upper Montclair	NJ
Sean	Keely	Hogan Lovells US LLP	New York	NY
Lisa	Keenan	Odyssey Reinsurance Co.	Stamford	CT
Jay	Kenigsberg	Rivkin Radler	Uniondale	NY
Stephen	Kennedy	Clyde & Co US LLP	Bronxville	NY
Mitchell	King	Prince, Lobel & Tye LLP	Boston	MA
Amy	Kline	Saul Ewing LLP	Philadelphia	PA
Jonathan	Kline	Smith Gambrell & Russell LLP	New York	NY
Elizabeth	Kniffen	Zelle LLP	Minneapolis	MN
Michael	Knoerzer	Clyde & Co US LLP	New York	NY
Eric	Kobrick	AIG - American International Group, Inc.	New York	NY
Marcelline	Kochan	Arrowpoint Capital Corp	Charlotte	NC
Cindy	Koehler	XL Catlin	Hartford	CT
Jeanne	Kohler	Carlton Fields Jorden Burt	New York	NY
Mark	Kreger	Tressler LLP	Chicago	IL
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Joy	Langford	Chadbourne & Parke LLP	Washington	DC
Charles	Leasure	Shipman & Goodwin LLP	Washington	DC
Andre	Lefebvre	Arrowpoint Capital Corp	Nashua	NH
Edward	Lenci	Hinshaw & Culbertson LLP	New York	NY
Robert	Lewin	Stroock & Stroock & Lavan LLP	New York	NY
Bill	Littel	Allstate Insurance Company	Cary	IL
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Rich	March	March Resolution Services, LLC	Voorhees	NJ
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Dave	McLauchlan	The McLauchlan Law Group LLC	Chicago	IL
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Brendan	McQuiggan	Chubb	Philadelphia	PA
Michael	McRaith	Former Director of the Federal Insurance Office	Washington	DC

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Cia Froelich	Moss	Chaffetz Lindsey LLP	New York	NY
Betty	Mullins	Swiss Re Management (US) Corporation	Armonk	NY
Michael	Mullins	Day Pitney LLP	Boston	MA
Steve	Najjar	Hannover Re	Orlando	FL
Norma	Newell	FM Global	Waltham	MA
Kelly	Nickerson	FTI Consulting	New York	NY
John	Nonna	Squire Patton Boggs (US) LLP	New York	NY
John	O'Bryan	Freeborn & Peters LLP	Chicago	IL
Tom	O'Kane	Munich RE	Princeton	NJ
Michael	Olsan	White and Williams LLP	Philadelphia	PA
Robert	Omrod	Brandywine Group of Insurance & Reinsurance Companies	Wayne	PA
William	O'Neill	Crowell & Moring LLP	Washington	DC
Jim Oskandy	Oskandy	Oskandy & Associates	Chicago	IL
Scott	Ostericher	Vocke Law Group LLP	Chicago	IL
Mike	Pado	Aurigen Reinsurance	Red Bank	NJ
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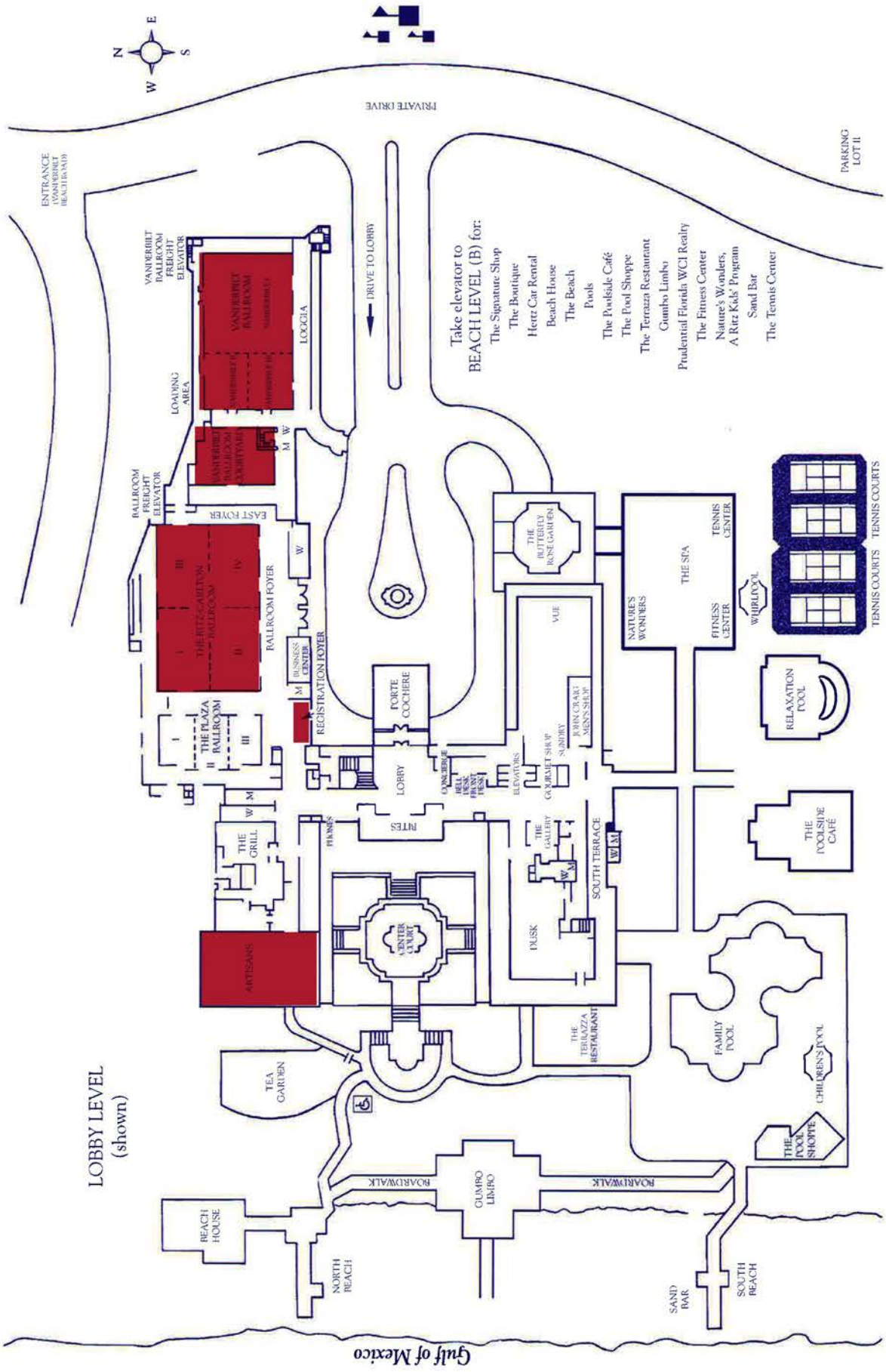
John	Parker	Silvercreek Reinsurance Arbitration Services	Riverside	IL
Eridania	Perez	Squire Patton Boggs (US) LLP	Hempstead	NY
David Pi	Pi	Schiff Hardin LLP	Chicago	IL
Amy	Piccola	Saul Ewing LLP	Philadelphia	PA
Fred	Pinckney	Business Law & Arbitration Services, Inc	Atlanta	GA
Joseph	Pingatore	None	St. Paul	MN
David	Pitchford	Pitchford Law Group LLC	New York	NY
Michael	Pontrelli	Foley & Lardner LLP	Winchester	MA
Andrew	Poplinger	Chaffetz Lindsey LLP	New York	NY
David	Raim	Chadbourne & Parke LLP	Washington	DC
Randy	Rinicella	HCC Insurance Holdings, Inc.	Houston	TX
John	Rodewald	BatesCarey LLP	La Grange Park	IL
Carlos	Romero	Post & Romero	Coral Gables	FL
Eve	Rosen	Arbitrator/ Mediator/Consultant	Cincinnati	OH
Jonathan	Rosen	Arbitration, Mediation & Expert Witness Services	New York	NY
Linsey	Routledge	Clyde & Co US LLP	New York	NY
Jeffrey	Rubin	Odyssey Reinsurance Company	Stamford	CT
Jim Rubin	Rubin	Butler Rubin Saltarelli & Boyd LLP	Chicago	IL
Daryn	Rush	White and Williams LLP	Philadelphia	PA
Christine	Russell	Brandywine Group of Insurance & Reinsurance Companies	Philadelphia	PA

Ryan	Russell	SFRe/ARM US	Petaluma	CA
Timothy	Russell	RussellADR, LLC	Bryn Mawr	PA
Joseph	Sano	Prince, Lobel & Tye LLP	Boston	MA
Joseph	Schiavone	Budd Larner, P.C.	Short Hills	NJ
Larry	Schiffer	Squire Patton Boggs (US) LLP	New York	NY
Stephen	Schwab	DLA Piper LLP (US)	Chicago	IL
Steven	Schwartz	Chaffetz Lindsey LLP	New York	NY
Josh	Schwartz	Chubb	Philadelphia	PA
Stacey	Schwartz	Swiss Re Management (US) Corporation	Armonk	NY
Charles	Scibetta Jr.	Chaffetz Lindsey LLP	New York	NY
Scott	Seaman	Hinshaw & Culbertson LLP	Chicago	IL
Wesley	Sherman	Transatlantic Reinsurance Co.	New York	NY
Alison	Shilling	Odyssey Reinsurance Company	Stamford	CT
Matt	Shiroma	Day Pitney LLP	Hartford	CT
Eileen	Sorabella	Clyde & Co	New York	NY
Brian	Snover	Berkshire Hathaway Group	Stamford	CT
David	Spector	Schiff Hardin LLP	Chicago	IL
Leah	Spivey	Munich Re America	Princeton	NJ
Andreas	Stahl	Allianz Re	Munich	Germany
Michael	Steinlage	Larson - King, LLP	St. Paul	MN
Aaron	Stern	Stern A. B. Inc.	Briarcliff Manor	NY
Ross	Sturm	Munich RE	Princeton	NJ
Bob	Sweeney	CNA Insurance	Chicago	IL
David	Thirkill	The Thirkill Group, Inc.	Bedford	NH
Michael	Thompson	Wiggin and Dana LLP	Stamford	CT
Tomas	Thompson	Vocke Law Group LLP	Chicago	IL
Kevin	Tierney	Disability RMS	South Portland	ME
John	Tiller	Butterfly Financial	Punta Gorda	FL
Dr. Thomas	Ullrich	R+V Versicherung AG	Wiesbaden	Germany
Pieter	Van Tol	Hogan Lovells US LLP	New York	NY
Donna	Vobornik	Dentons US LLP	Chicago	IL
Damon	Vocke	Vocke Law Group LLP	Stamford	CT
Alysa	Wakin	Odyssey Reinsurance Co.	Stamford	CT
Jerry	Wallis	www.wallisresolutions.com	Basking Ridge	NJ
W.	Wigmore	Avalon Consulting, LLC	Key Biscayne	FL
Susan	Wilcher	AXA Liabilities Managers, Inc.	New York	NY
Ron	Wobbeking	Wobbeking Network	Naples	FL
Jan	Woloniecki	ASW Law Limited	Hamilton	Bermuda
Jim	Wrynn	FTI Consulting	New York	NY


LOBBY LEVEL
(shown)
Take elevator to
BEACH LEVEL (B) for:
The Signature Shop
The Boutique
Hertz Car Rental
Beach House
The Beach
Pools
The Poolside Café
The Pool Shoppe
The Terrazza Restaurant
Gumbo Limbo
Prudential Florida WCI Realty
The Fitness Center
Nature's Wonders,
A Ritz Kids' Program
Sand Bar
The Tennis Center
PRIVATE DRIVE
DRIVE TO LOBBY
ENTRANCE
(VANDERBILT BEACH RA319)
PARKING LOT II
VANDERBILT BALLROOM FREIGHT ELEVATOR
VANDERBILT BALLROOM
LOADING AREA
LOGGIA
VANDERBILT BALLROOM COURTYARD
BALLROOM FREIGHT ELEVATOR
EAST FOYER
THE RITZ-CARLTON BALLROOM
BALLROOM FOYER
REGISTRATION FOYER
BUSINESS CENTER
THE PLAZA BALLROOM
PORTE COCHERE
LOBBY
CONCIERGE
BELL DESK
FRONT DESK
CASHIER
ELEVATORS
GOURMET SHOP
SUNDRY
JOHN CRAIG MEN'S SHOP
VUE
THE BUTTERFLY ROSE GARDEN
THE SPA
TENNIS CENTER
NATURE'S WONDERS
FITNESS CENTER
WHIRLPOOL
TENNIS COURTS
TENNIS COURTS
RELAXATION POOL
THE POOLSIDE CAFÉ
THE GRILL
PIANOS
FLUTES
THE GALLERY
SOUTH TERRACE
ARTISANS
CENTER COURT
DUSK
THE TERRAZZA RESTAURANT
FAMILY POOL
CHILDREN'S POOL
THE POOL SHOPPE
TEA GARDEN
BOARDWALK
GUMBO LIMBO
BOARDWALK
BEACH HOUSE
NORTH BEACH
SAND BAR
SOUTH BEACH
Gulf of Mexico

2017 Calendar of ARIAS•U.S. Programs

Details for all events are on the ARIAS•U.S. website

2017 Webinar Program

June 8 — Social Media and Personal Cybersecurity

September 26 — After the Final Award: When is it Permissible and Appropriate for Panels to Retain Jurisdiction?

October TBD — Primary Insurance Arbitrations

December TBD — What are the "CAT" Bonds and How Do They Differ from Insurance and Reinsurance?

Seminars and Networking Events

July — ARIAS•U.S. Educational Seminar/Networking Event

ARIAS·U.S. is planning a joint educational seminar and networking event this summer. This event will provide engaging content and an interactive discussion of issues of interest to the industry, allowing for greater interaction among arbitrators, company representatives and firm attorneys.
East Coast Location — exact date coming soon.
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
666 Third Avenue, New York, NY 10017

September — Intensive Arbitrator Training Workshop

Full-day program, with lectures and mock arbitrations
New York, NY
Exact location and date coming soon.

November 1 — Fall Educational Seminars

Half-day session including lunch starting at 12:00p.m.
Educational Seminar credit
The New York Marriott Marquis, New York, NY

November 2-3 — Fall 2017 Conference

The New York Marriott Marquis, New York, NY