



**ARIAS•U.S. 2017 Fall Conference**  
**November 2-3, 2017**  
*New York Marriott Marquis*

# *The Bermuda Form: Can ARIAS Disrupt the Traditional Model?*

Moderators:

*Gregory Hoffnagle*  
*Mintz, Levin, Cohn, Ferris,*  
*Glovsky and Popeo, P.C.*  
*New York, NY*

*John L. Jacobus*  
*Stephoe & Johnson LLP*  
*Washington, DC*

# Panel Members

- Jonathan Goodman, General Electric
- Mike Merlo, Aon (Bermuda)
- Len Romeo, Arch Insurance (Bermuda)
- Robin Saul, XL Bermuda Ltd/Insurance

## Moderated By:

- Greg Hoffnagle, Mintz, Levin, Cohn, Ferris, Glovsky and Popeo
- John Jacobus, Steptoe & Johnson

# 1. Panelist Conflicts and Disclosures

- Background: Confidentiality and lack of disclosure regime
- Discussion Point: Perception that policyholders lack information on UK arbitrators – Insurers are “repeat players”
- Disruption Point: Require use of ARIAS-Umpire Questionnaire or other information-forcing rules

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## 2. ARIAS Panelist Neutrality/Experience

- Background: Past non-neutrality of arbitrators, lack of exposure to Bermuda Form
- Discussion Point: Do ARIAS arbitrators offer a sound choice?
- Disruption Point: Create a “Bermuda Form” pool of pure neutral arbitrators with special expertise

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### 3. Jurisdictional Issues

- Background: Concerns of Bermuda carriers subjecting themselves to US courts and potentially exposing themselves to regulatory or tax issues
- Discussion Point: Would carriers have issues creating additional “contacts” with the US (e.g., arbitrating in US, US ARIAS Rules, confirming awards in US)?
- Disruption Point: Would parties need to reach an agreement of jurisdiction or would arbitrations need to occur outside the US?

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## 4. Replacing Confidentiality with Anonymity

- Background: Currently all arbitrations are confidential
- Discussion Point: Would stripping away some confidentiality improve proceedings and future results?
- Disruption Point: Introduce the concept of anonymity, all with respect to publishing awards, and create archive of decisions similar to ARIAS•US Law Committee Reports

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## 5. Proper Crediting of NY Substantive Law

- Background: Perception that UK barrister sitting as chair will be insensitive to NY law and instead apply UK insurance principles
- Discussion Point: Would ensuring that chair has NY law experience ensure that NY law is properly credited?
- Disruption Point: Require chair to be an ARIAS-certified arbitrator with proven substantive experience in NY law

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## 6. Scope of ARIAS Rules

- Background: For procedural purposes, the Bermuda Form operates under the Arbitration Act of 1996
- Discussion Point: ARIAS Rules are designed for a “less stringent” form of arbitration
- Disruption Point: Would new Bermuda Form ARIAS rules need to be created?

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