



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
Step toe & 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

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

Step toe & Johnson LLP
Washington, DC

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

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

Step toe & Johnson LLP
Washington, DC

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?

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

Step toe & Johnson LLP
Washington, DC

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

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

Step toe & Johnson LLP
Washington, DC

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

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

Step toe & Johnson LLP
Washington, DC

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?

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

Step toe & Johnson LLP
Washington, DC

Moderators



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



John L. Jacobus
Steptoe & Johnson LLP
Washington, DC