

2024 Spring Conference

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Puerto Rico



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What Arbitrators Want: A Panel Discussion of Arguments and Litigation Practices Arbitrators Find Persuasive . . . or Not

May 1, 2024

I. Panel Selection



What makes for a successful panel dynamic, and what advice do you have for parties in the panel-selection process to create the best panel dynamic for their objectives?



II. Organizational Meeting



What role do position statements serve for you as an arbitrator, and what tips do you have for litigants to make them most useful for the Panel?



Leading up to the Organizational Meeting there is often a question as to whether litigants will deliver an oral statement at the meeting or stand on their position statements. Under what circumstances do you think it is useful to have oral statements, and what makes for an effective (or ineffective) oral statement?



III. Discovery



In the context of a motion to compel, what can litigants do to convince you that certain documents are relevant and necessary, and the other side should produce them?



IV. Pre-Hearing Briefs



What tips do you have for parties to prepare their party-appointed arbitrator for the briefs and eventual hearing (keeping in mind ex-parte cutoff)?



How do you use the pre-hearing briefs in preparation for the hearing, and what can parties do to make their briefs as effective and persuasive as possible to set themselves up well for the hearing?



What is the best way for litigants to deal with bad facts in their case?



V. Merits Hearing



Often reinsurance treaties will expressly free the panel from a strict application of the rules of law. In that case, to what extent is it persuasive for litigants to base arguments on formal rules (ex. Federal Rules of Civil Procedure or Evidence)?



Relatedly, to what extent is it useful for litigants to cite case law in support of their arguments. And, is there any difference in the usefulness of reinsurance-specific case law or case law cited for general legal principles, such as contract interpretation principles?



We often see treaties either requiring or permitting the panel to consider evidence of industry custom and practice. What advice do you have for litigants for how to best support a custom and practice argument?



What are some tips for how parties can best address, or prepare witnesses to address, umpire and PAA questions during the hearing?



How can litigants best educate the Panel on the significance of key documents through witness testimony?



What contribution does expert evidence (reports and testimony) provide in the Panel's understanding of the case? What can litigants do to make their expert most useful to the Panel?



What are some overall best practices for an effective, persuasive closing argument, including both the presentation itself and any accompanying written material?



Questions?

