
ARIAS
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Beyond the Treaty: Should ARIAS Expand Beyond Reinsurance to Handle More Arbitrations of Direct Insurance Disputes?

An Open Discussion With ARIAS Members



Steven J. Brodie, Carlton Fields LLP
Elane A. Caprio, Caprio Consulting
Peter A. Halprin, Haynes Boone LLP
David W. Ichel, X-Dispute LLC



MANY DIRECT INSURANCE POLICES HAVE ARBITRATION CLAUSES

- BERMUDA FORM
- EXCESS + SURPLUS COMMERCIAL LINES
- LONDON MARKET

NUMEROUS AAA/ICDR, JAMS and AD HOC DIRECT INSURANCE ARBITRATIONS EVERY YEAR



POLL 1: **How many ARIAS Arbitrators here have arbitrated direct insurance coverage disputes?**

a. None

b. 10 or less

c. 20 or more

d. 50 or more

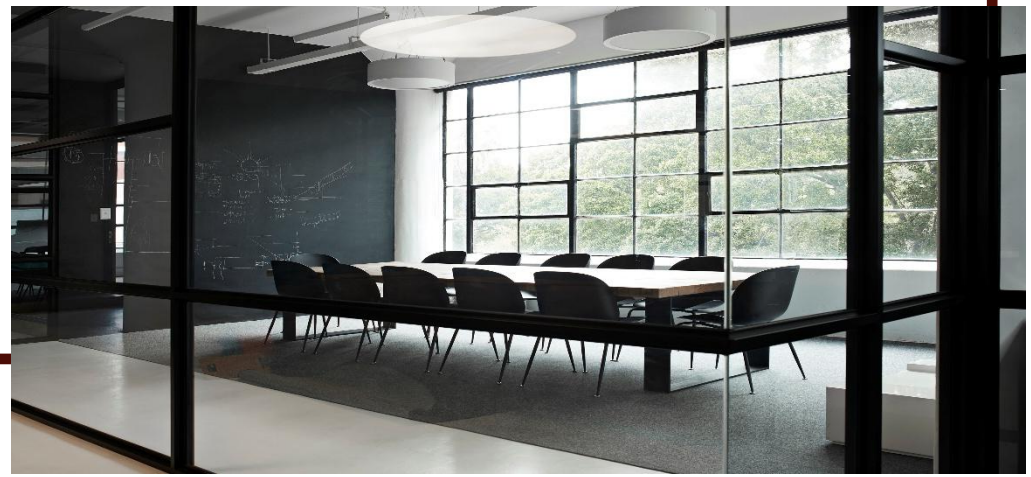


Some Recent History:

2018: ARIAS issued "*ARIAS-US Rules for the Resolution of Insurance and Contract Disputes*"—intended for direct insurance disputes.

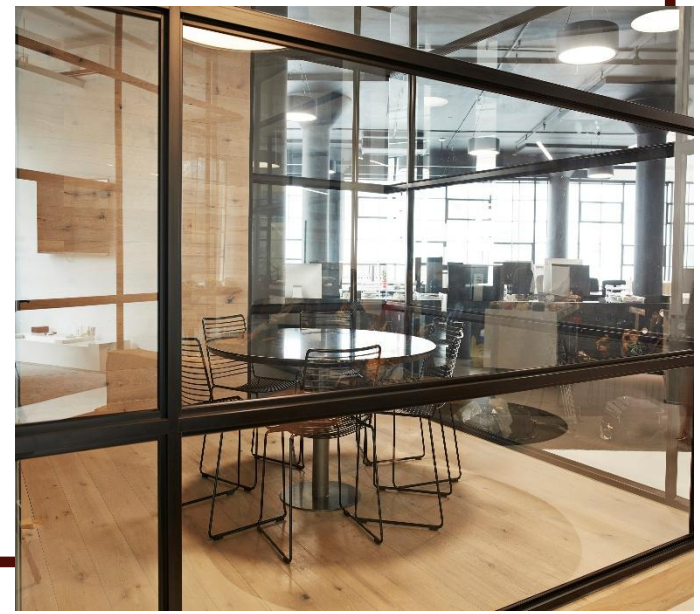
--The Working Group included two policyholder counsel Peter Halprin (Anderson Kill, now at Haynes Boone) and Peter Rosen (Latham & Watkins; now at JAMS)

--But: little interest was generated in the brokerage and policyholder community—or even among ARIAS companies



2024: ARIAS Board-Led Effort to Re-examine Promotion of Direct Insurance Disputes (Included Sarah Gordon, Seema Misra, Jonathan Rosen, Alysa Wakin)

2024-2025: ARIAS Direct Insurance Task Force working group. Led by Jeff Rubin, and included contributions from Jim Fitzgerald, Kim Hogrefe, Amy Kallal, Eric Kobrick and David Ichel.



September 2025:

Package of new *Proposed* ARIAS Direct Insurance Materials:

- new Panel Rules
- new Single Arbitrator Rules
- new Direct Insurance Arbitration Oversight Committee (50% policyholder/50% insurer appointed) for:
    1. certifying and training new arbitrators
    2. resolving umpire and sole arbitrator challenges
- new Eligibility Requirements for Certified Direct Insurance Arbitrators and Umpires
    --to bring in policyholder-side expertise





Potential Benefits:

+ Expanding breadth of ARIAS educational programs & networking with policyholder-side input

+Expanding networking to corporate policyholder counsel and executives who select arbitrators, thus expanding arbitrator opportunities

+Expanding networking to brokers who place arbitration provisions in policies

BUT: would there be dilution of ARIAS focus, identity or resources???

Challenges in Arbitrating Direct Insurance Coverage Disputes and How ARIAS Can Address Them

Getting Policyholder Buy-In

Brokers
Policyholder Counsel
Risk Managers



Trust that the Process Will Work for Them

Mark Miller, *Why Insurance Carriers Prefer Insurance Coverage Arbitration Over Litigation*, available at https://millerfriel.com/insurance-carriers-love-insurance-coverage-arbitration/ :

"[I]nsurers have formed specific trade associations disguised as arbitration tribunals. The most infamous of these is ARIAS. ARIAS arbitrators have experience working for insurers, and they translate this knowledge into finding for insurers in arbitration. An arbitration before ARIAS is like an arbitration with the insurance company claims adjuster who denied the claim acting as arbitrator. Policyholders should never agree to an arbitration with an ARIAS arbitrator."

Potential Solutions:

--New ARIAS Direct Insurance Committee with 50% Insurer/50% Policyholder Appointments as recommended by ARIAS direct-side working group

--Proactively market ARIAS arbitrators to policyholders, brokers and counsel

--Targeted marketing of ARIAS membership to policyholders, brokers and counsel

--Create direct insurance programming opportunities for policyholder counsel, brokers, risk managers

--Consider future expansion of the Board to include policyholder-side representatives



Potential Solutions:

Would All Neutral Panels Help Gain Buy-In?

- AAA and JAMS have default rule of arbitrator neutrality.
- But both have “Cannon X” exception where party-appointed arbitrators can be pre-disposed, but must act/decide fairly
- ARIAS has its own neutral panel rules
- But do either insurers or policyholder companies want all-neutral panels?



POLL 2: SHOULD ARIAS EXPAND EFFORTS TO ARBITRATE DIRECT INSURANCE DISPUTES BETWEEN POLICYHOLDERS AND INSURERS?

ARBITRATORS: ***YES*** ***NO***

COMPANIES: ***YES*** ***NO***

OUTSIDE COUNSEL: ***YES*** ***NO***



***POLL 3*: WOULD EFFORTS TO INCORPORATE POLICYHOLDERS IN ARIAS MEMBERSHIP ARBITRATOR TRAINING, CERTIFICATION AND EDUCATIONAL PROGRAMMING ADD TO ARIAS VALUE ?**

ARBITRATORS: ***YES*** ***NO***

COMPANIES: ***YES*** ***NO***

OUTSIDE COUNSEL: ***YES*** ***NO***



Questions? Thoughts?



Additional Hurdles to ARIAS Being Selected for Arbitration of Insurance Coverage Disputes



Making Rulings Based on "Law" vs. Equity and Good Conscience

- Arbitrators may be permitted to make rulings based on "equity and good conscience" as opposed to "dry law." *See Advanced Micro Devices, Inc. v. Intel Corp.*, 9 Cal. 4th 362, 374-75 (1994).
- This flexibility creates uncertainty for the parties
- **Concern:** arbitrator may reach a decision that is inconsistent with the plain language of the insurance policy and substantive insurance law
- **Potential Solution:** require arbitrators to issue rulings that are consistent with the policy language and substantive insurance law

  --can be addressed in arbitration clause or Rules



Dispositive Motions



- Some believe that Arbitrators tend to disfavor dispositive motions
- But insurance coverage disputes often involve questions of law best resolved via dispositive motions
- **Concern:** an arbitration panel's reluctance to grant dispositive motions can make arbitration a longer and more expensive process than litigation
- **Potential Solution:** require arbitrators to resolve issues via dispositive motions when possible
  --can be addressed in arbitration clause, in the Rules or by the parties themselves

POLL 4: DO ARBITRATORS GRANT DISPOSITIVE MOTIONS OFTEN ENOUGH?

ARBITRATORS: ***YES*** ***NO***

COMPANIES: ***YES*** ***NO***

OUTSIDE COUNSEL: ***YES*** ***NO***



Bad Faith Claims

- Policyholders routinely assert bad faith claims in connection with insurance coverage disputes, regardless of the likelihood of success
- **Concern:** Bad faith claims are often more expensive and time-consuming than coverage claims (more fact-intensive, broader discovery, often involve expert witnesses). But the time/money spent on the bad faith claim becomes moot if the insurer prevails on coverage.
- **Potential Solution:** require bifurcation of coverage and bad faith claims



Expense of Arbitration



- Arbitrating insurance coverage disputes is often more expensive than litigation
- **Potential Solution:** develop procedures uniquely tailored to insurance coverage disputes that will encourage cost-effectiveness. The Parties should control the process in arbitration.

Has Arbitration Been More Successful in Reinsurance Than In Direct Insurance Disputes?

- At ARIAS, reinsurance is overwhelmingly more successful in terms of adoption.

- But direct insurance arbitrations are common at AAA/ICDR, JAMS and ad hoc as numerous business insurance policies require it.

But is the direct insurance coverage dispute any less susceptible to a fair and efficient arbitration?

Thank you !



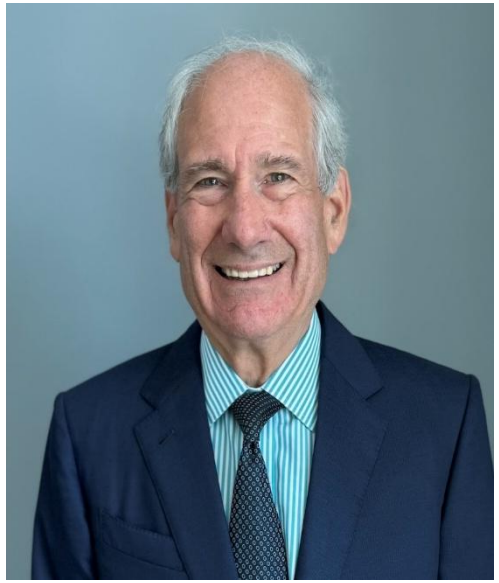
Elaine A. Caprio
Caprio Consulting
Elaine@CaprioConsulting.com



Steven J. Brodie
Carlton Fields LLP
sbrodie@carltonfields.com



Peter A. Halprin
Haynes Boone LLP
Peter.Halprin@haynesboone.com



David W. Ichel
X-Dispute LLC
dichel@xdispute.com