

COMPLIANCE & LEGAL SECTIONS ANNUAL MEETING 2019

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FORT LAUDERDALE MARRIOTT HARBOR BEACH RESORT & SPA

FORT LAUDERDALE, FL

ACLI
Financial Security... for Life.



Do You Have a Future as a Life Industry Arbitrator?

ARIAS-US and Life
Reinsurance and
Insurance Arbitrations



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Agenda - Do You Have a Future as a Life Industry Arbitrator?

- What You Need to Know about ARIAS-US
 - History and Purpose
 - Differences from Other Arbitration Societies
 - How to Become a Certified Arbitrator
- Current Sea Change in Life Industry Disputes
 - Overview of Life Reinsurance Disputes in Prior Decades
 - Subject Matters of Current Life Reinsurance Disputes
- Plunging into that Sea – Arbitrator Opportunities

What You Need to Know about ARIAS-US

- History
 - Founded in 1994, ARIAS-US was founded to address the need for qualified arbitrators in escalating asbestos, pollution and health hazard (APH) disputes between property/casualty insurers and their reinsurers
 - Intended as a neutral society, the initial directors consisted of three insurers' counsel (including me), three reinsurers' counsel and three retained counsel
- Purpose
 - Certifies arbitrators and umpires and provides arbitration-related education

ARIAS-US-Differences from Other Arbitration Societies

- ARIAS-US Specializes in the Resolution of Insurance and Reinsurance Disputes
 - Besides life, ARIAS-US handles health reinsurance disputes and disputes between property-casualty insurers and either their large commercial policyholders or managing general agents (MGAs)
 - ARIAS-US also qualifies mediators of insurance and reinsurance disputes
- Most typically, ARIAS-US arbitrators consist of a three person panel
 - Two party-appointed arbitrators and a neutral “umpire”
 - Neutrality not required initially of party-appointed arbitrators
 - Ex Parte communication allowed to limited extent
- Unlike American Arbitration Association, there is no case administrator

ARIAS-US: How to Become a Certified Arbitrator

- Certified Arbitrator Requirements
 - ARIAS-US Member in Good Standing (\$450 per annum)
 - Must have 10 or more years of insurance/reinsurance specialization
 - Attendance at ARIAS-US Intensive Training Workshop
 - Two Credits – See next slide
- Keeping the Certification Updated
 - Every two years:
 - Attend an ARIAS-US Spring or Fall Meeting
 - On-line Ethics Course
 - Three live webinars or one in-person education seminar or faculty service at an ARIAS-US conference or other event

ARIAS-US: How to Become a Certified Arbitrator

Two Credits Available

- Party's employee manager with principal responsibility for insurance or reinsurance arbitration
- Lead trial counsel in insurance and reinsurance arbitration
- Company representative at insurance and reinsurance arbitration
- Attendance at ARIAS-US seminar (other than Fall or Spring Meetings) or three webinars (equivalent to one seminar)
- Serve as faculty member at ARIAS-US conference workshop or seminar (only one credit available)

Sea Change in Life Reinsurance Disputes

- Historically, life reinsurance disputes were resolved in a different manner than P&C disputes, leading to fewer arbitrations
- In the decades prior to the late 1990s, life reinsurance disputes were extremely rare
- Most market participants from that era were never involved in an arbitration, or at most one or two, often relating to an insolvency or scandal
- When disputes arose, they tended to be resolved via negotiated resolution, with perhaps concessions or accommodations going forward or on other contracts

1990s and Early 2000s

- Disputes increased gradually but still remained infrequent
- Disputes were varied in subject matter rather than centered on industry-wide issues
- Life companies were drawn into the workers' comp carve-out scandals of the late 1990s

- Far greater (and increasing) levels of arbitrations since 2010
- Typically larger amounts in controversy than P&C
- Drivers of increases:
 - Placement of Stranger-Owned Life Insurance (STOLI)
 - Variable Annuity Guarantees and Associated Losses
 - Run-offs / Divestitures / Consolidation
 - Increase in Older Age Coverages and Large Resulting Losses
 - Very Large Reinsurance Losses from Highly Competitive Era from Late 1990s-2004
 - YRT Rate Increases

Current Challenges

- Few ARIAS-US accredited and experienced arbitrators with a background in the life insurance/reinsurance industries and resulting impacts
- Companies' lack of experience with reinsurance disputes
- Disputes are focused on treaties negotiated 15-20+ years ago – unavailable witnesses, fading memories, sparse records

YRT Rate Increase Disputes

- Overview of YRT Reinsurance
 - Historical development
- The NY position regarding deficiency reserves and the resulting development of clauses
- Historic custom and practice and industry expectations
- Increasing numbers of disputes over the past decade

YRT Rate Increase Disputes (cont.)

- Typical arguments by cedents
- Typical arguments by reinsurers
- Features of these disputes:
 - Focus on contract language and industry custom/exceptions
 - The role of custom and practice experts
 - Regulatory issues
- Frustrations/challenges with the current state of disputes

YRT Rate Increase Disputes (cont.)

- Rates guaranteed for one year only and guaranteed not to exceed valuation net premium for any year thereafter
- Require notification and acceptance

Other Issues Causing Disputes

- Variable Annuities/Annuity Guarantee issues stemming from 2008 economic downturn
- Reinsurer challenges to cedents' underwriting and pricing practices
- Stranger-Owned Life Insurance (STOLI)
- Life administration disputes/E&O issues
- Misrepresentation claims regarding original pricing assumptions and age/distribution cohorts within treaties
- Large individual death claims

Takeaways and Conclusions

- The current state of relationships between life insurers and life reinsurers differs from all earlier periods
- Many more executives with genuine life insurance and reinsurance experience are needed as arbitrators-avoid the opportunity for “gaming the system”

Plunging Into that Sea – Arbitration Opportunities

- Potential Differences between Reinsurance Contract Requirements and ARIAS-US Requirements
 - Life insurance company or reinsurance company length of service
- Unlike Other Arbitration Societies, ARIAS-US Roster Not Confined to Attorneys and Former Judges

QUESTIONS?