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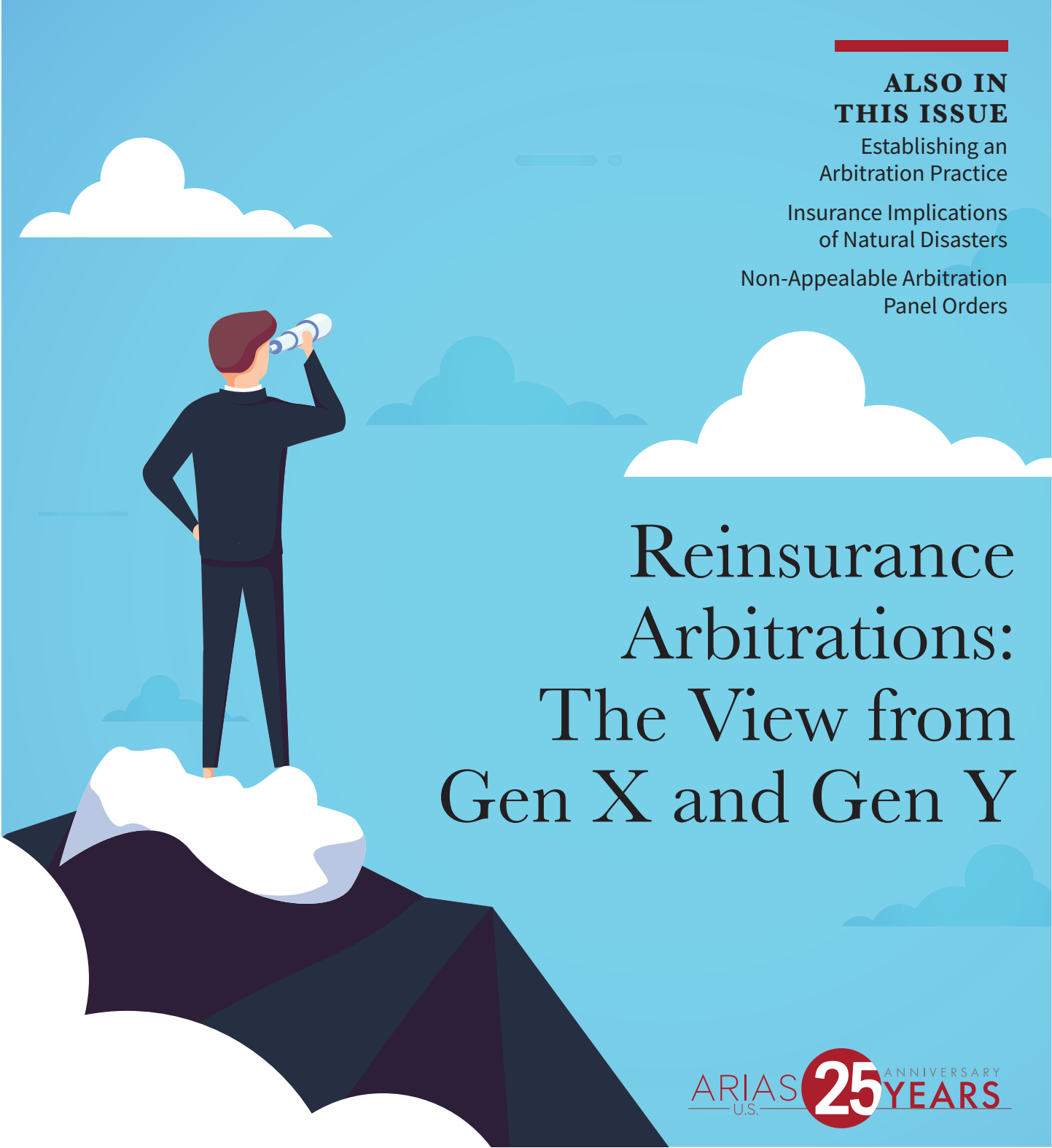
QUARTERLY

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Arbitration Practice

Insurance Implications
of Natural Disasters

Non-Appealable Arbitration
Panel Orders



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U.S. **25** ANNIVERSARY
YEARS

Q3 • 2019

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ARIAS•U.S. 2019 FALL CONFERENCE

Our 25th anniversary celebration continues with two symposia in this issue and more coming in the fourth quarter.

For this issue, I had the pleasure of moderating a discussion consisting of several up-and-coming ARIAS members. This symposium brought together Jenna Buda from Allstate Insurance, Suman Chakraborty from Squire Patton Boggs (US) LLP, Sarah Gordon from Steptoe & Johnson LLP, and Eileen Sorabella from Arch Capital Services for a conversation about how they became involved in reinsurance arbitrations, who influenced them, what they think about the state of reinsurance arbitration, and how they see the future of ARIAS. Their comments are important given that Generation X and Generation Y will be the new leaders of this organization.

We also have another terrific roundtable symposium article featuring some of our certified arbitrators. Dee Dee Derrig from Willkie Farr & Gallagher LLP and Dan FitzMaurice from Day Pitney LLP moderated this roundtable, with arbitrators Elaine Caprio from Caprio Consulting and Coaching LLC, John Dore from Sheridan Ridge Advisers LLC, Jonathan Rosen from Arbitration, Mediation and Expert Witness Services, and Jamie Scrimgeour from Travelers Companies sharing tips on establishing and maintaining a successful arbitration practice.

Mark A. Bradford and Damon N. Vocke from Duane Morris LLP give us a fine article about subrogation following natural catastrophes. This article is very timely considering the issues arising out of the recent California wildfires. The article is titled “The Hunt for Yield: Subrogation and Related Implications Following Natural Catastrophes.”



We always encourage those who present programs at any ARIAS event to turn them into an article for the *Quarterly*. That’s exactly what Michele Jacobson, Beth Clark and Talona Holbert from Stroock & Stroock & Lavan LLP did with their paper from the recent spring conference rapid-fire session on the power of arbitrators to determine gateway issues. For a comprehensive review of the law on gateway issues in light of a recent Supreme Court decision, I recommend you read their article, “Arbitrability: The Implications of *Henry Schein v. Archer and White Sales, Inc.*, 139 S.Ct. 524 (2019) for the Reinsurance Industry.”

Arbitrator Bob Hall, a prolific author, has written an interesting article uncovering what the courts think about an arbitration clause with non-appealability language. Spoiler alert: Bob concludes that the cases seem consistent in protecting the integrity of the arbitration process, but allowing the merits of the issues to be decided by arbitrators.

From the International Committee, we have a report on the International Arbitration Form (IAF) that was created by the committee under the leadership of co-chairs Jonathan Sacher of Bryan Cave Leighton Paisner and Edward Lenci of Hinshaw & Culbertson LLP. The IAF was approved in March 2019 by the ARIAS Board of Directors for use and is published in this issue after the report. The IAF and the report will also be posted on the ARIAS•U.S. website (arias-us.org).

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lished in this issue after the report. The IAF and the report will also be posted on the ARIAS•U.S. website (arias-us.org).

Also from Jonathan Sacher and the International Committee is an article about the affiliation between ARIAS•U.S. and AIDA. Jonathan explains the affiliation and why future collaboration is in the best interest of ARIAS•U.S.

Our Technology Committee continues its torrid pace of providing useful technology-related articles. Following up on the Tech Corner article in the Fourth Quarter 2018 issue, this issue brings us David Winters and Andy Foreman from Porter Wright Morris & Arthur LLP and their article, “Increase Your Tech IQ (Part Two).” The authors explain some additional tech terms that are associated with electronic discovery.

Our fall conference is again being held at the Marriott Brooklyn Bridge. By the time you read this issue, the program should be set and the conference almost upon us. We surely can look forward to another great experience. Don’t forget to look back at last year’s issues of the *Quarterly* for helpful articles about Brooklyn.

As always, we encourage you to submit articles. If you were on a Spring Conference panel, turn your hard work into an article just like Michele, Beth and Talona did. If you lead a committee, write something up about what your committee is doing, as the International Committee did for this issue. If you’ve written a blog post or client alert, turn it into an article for the *Quarterly*. We welcome your submissions.

Larry P. Schiffer
Editor

EDITORIAL POLICY — ARIAS • U.S. welcomes manuscripts of original articles, book reviews, comments, and case notes from our members dealing with current and emerging issues in the field of insurance and reinsurance arbitration and dispute resolution. All contributions must be double-spaced electronic files in Microsoft Word or rich text format, with all references and footnotes numbered consecutively. The text supplied must contain all editorial revisions. Please include a brief biographical statement and a portrait style photograph in electronic form. The page limit for submissions is 5 single-spaced or 10 double-spaced pages. In the case of authors wishing to submit more lengthy articles, the *Quarterly* may require either a summary or an abridged version, which will be published in our hardcopy edition, with the entire article available online. Alternatively, the *Quarterly* may elect to publish as much of the article as can be contained in 5 printed pages, in which case the entire article will also be available on line. Manuscripts should be submitted as email attachments. Material accepted for publication becomes the property of ARIAS • U.S. No compensation is paid for published articles. Opinions and views expressed by the authors are not those of ARIAS•U.S., its Board of Directors, or its Editorial Board, nor should publication be deemed an endorsement of any views or positions contained therein.



Reinsurance Arbitrations: The View from Gen X and Gen Y

Moderated by Larry P. Schiffer

Schiffer: Welcome, everybody. I appreciate all of you being here today. We have Suman Chakraborty from Squire Patton Boggs, Jenna Buda from Allstate, Sarah Gordon from Steptoe, and Eileen Sorabella from Arch.

We're going to have what I hope to be a good discussion about yourselves and about the insurance and reinsurance arbitration process. So why don't we start off with just a brief discussion of how you got involved in reinsurance disputes.

Sorabella: I got involved in reinsurance disputes when I was a summer associate and then a first-year associate at LeBoeuf, Lamb. I wanted to work

in the Litigation Department. There were basically two litigation areas in the firm those days: one was the reinsurance and insurance arbitration and litigation practice, and the other area was the securities litigation practice. It quickly became clear to me that if I went into the securities practice, I would likely be reviewing the same documents six years down the road that I would be reviewing in my first year—or maybe in charge of that document review.

I took a look at the insurance and reinsurance dispute practice, and I really liked the people in that group. I saw that you could really cut your teeth as a litigator early on. You could see a

dispute from beginning to end within a relatively short period of time compared to litigation. You could really get a lot of experience in a relatively short period of time.

Buda: I started my career as a litigator, but did direct insurance defense. My experience at that time in the arbitration arena was limited to mandatory arbitration and AAA arbitration. About three years into my career, I transitioned to the Chicago office of what was then Sedgwick, Detert, Moran & Arnold and started doing reinsurance and insurance coverage, counseling, and monitoring work for Bermuda, for various European insurers and reinsurers, but primarily in the healthcare space.

While we had reinsurance disputes, many of those were in litigation as opposed to arbitration. And when we were arbitrating disputes, it was a London arbitration subject to the London Court of International Arbitration using English Model Law, very different than what we see in domestic arbitration. I spent about 10 years in that space, primarily representing foreign insurers and reinsurers.

Then, about five and a half years ago, I came to Allstate and made a transition to property and casualty work. That was my first introduction to ARIAS and the ARIAS rules. The transition has been interesting. I've been in the reinsurance dispute arena for many years, but I'm still relatively new to the ARIAS model.

Gordon: I came over to Steptoe from a federal clerkship in the Eastern District of Virginia, which is affectionately known as the "rocket docket" because the cases move very, very quickly, and there's a very short period between the start and the trial. I found that that was a pretty effective and efficient way to try cases, and I felt that the lawyers really got to the heart of things a lot faster than elsewhere, from what I was hearing from friends and colleagues.

The clerkship is actually how I arrived at Steptoe. They were presenting a few cases in my courthouse, and I was observing Steptoe lawyers in practice, and I thought, I want to work there, because they're making very complicated matters simple and straightforward. And they're nice, decent people to work with, especially as a clerk. So I came over to Steptoe.

Within maybe two weeks of my starting, there was a large reinsurance arbitra-

tion that was just getting under way, with several hundred million dollars in dispute. They needed some help on the case, and I got involved. And similar to what Eileen was saying, it really was fascinating to me and exciting to me that we would be able to try this big and complicated matter within about a year.

We were in a hearing within about a year, and it was great. I got to see the whole case from soup to nuts. It started at the stage where there was demand for arbitration, and it finished with a multi-week hearing and a big team. As a young associate, I loved being able to see every aspect of the case, including expert discovery—which, if you are working on matters in court, you may not see for many, many years in the process.

Shortly thereafter, I had a series of other reinsurance arbitrations, all of a different nature. Each one left me with the same feeling of satisfaction of being able to help companies resolve their dispute in a forum where the decision makers had the necessary expertise, and in a fashion where the dispute was resolved in a timely manner. And I stayed involved in reinsurance for that reason.

It was also fun, as a trial lawyer, to get a lot of stand-up experience and to be able to be creative, which you're not always able to do under the constraints of the court system. But in arbitration, you can exercise some more creative theories and get a lot of stand-up experience, which is very good as a young lawyer. So that's how I became involved, and why I stayed involved.

Chakraborty: Well, like Eileen, I was a summer associate at LeBoeuf, then a first-year associate, and then started

my career there. I was in the Washington office of LeBoeuf, and at the time, you were either going to be an insurance lawyer or an energy lawyer. I thought I was going to be an energy lawyer. I was more interested in how the government worked. We had a great energy regulatory practice, and I thought that's where my interests were going to lie.

But my first day at work ended up being 9/11, and obviously, given our role in the insurance industry, there were a lot of cases and work coming into the firm in those first few weeks. They needed people to help, and so, as a first-year associate, I took every assignment that came my way. Almost all of those were insurance and reinsurance assignments related to 9/11 lawsuits. So that's what really started my career in the insurance field—certainly not a pleasant reason to start, but once I started working in that area, especially in the Washington office where there were very few associates compared to some of our bigger offices, you got a lot of experience really, really quickly.

I was lucky to have had some great mentors in our Washington office. I happened to sit next to one of the reinsurance partners, and she gave me more and more work as the years went on. So it didn't take long for me to become a reinsurance and insurance specialist.

Schiffer: So, how did you all get involved in ARIAS? Jenna already spoke about her coming to Allstate and starting to learn about ARIAS.

Gordon: Well, Steptoe has had a long-standing membership in ARIAS, and some of the colleagues I worked with on my early matters were in-

volved, so it was always something in my consciousness. But I became an active member through a client who said, Sarah does a lot of work on our cases, and it would make sense to see her here, and it would be a good experience. And that's how I became an attendee at the conferences and a more active member.

As I've been in the organization for some time now, I have found that I really admire many of the individuals I've met, and I've found a lot of excellent strategic thinkers with whom I have wanted to collaborate. And I liked coming to the meetings, and I liked just sitting on the panels and being a part of the community. So I've continued to increase my involvement over the years.

Sorabella: I remember the first ARIAS event I went to was the fall conference cocktail party at the New York Hilton about 19 years ago. I wasn't attending the conference, but the associates in our group were invited to attend the cocktail party. I was a first-year associate, and to be quite honest it did give me pause to walk into the room and see that there were very, very few women in the room. And I thought, wow, am I getting myself into an uphill battle in this industry? Fortunately, I didn't spend too much time worrying about that.

From there, I started writing articles and attending conferences and getting to know others in the organization by working on arbitrations. I met many friends and colleagues in the industry working on disputes in the early days—some of them were even once opposing counsel.

Chakraborty: Because LeBoeuf was so involved in ARIAS when I started,

everyone wanted to go. So if you were an associate, you were not going to go—there were too many partners who had signed up for it. I think we had six slots. And going to ARIAS, particularly the spring conference where you could get a mini-vacation, was like the golden goose that you were trying to reach. But it took a while to get involved.

I don't think I started going to ARIAS conferences until I was a senior associate at Dewey LeBoeuf, when it was finally my turn in the rotation to take one of those slots. It was one of the New York conferences; I wasn't lucky enough to go to a spring conference that early. Once I got involved, it became pretty clear that it was a centerpiece for our industry, that it was hard to be a respected and involved practitioner in the reinsurance field if you were not an active member of ARIAS.

I was also fortunate to have had many mentors and partners who have been very active in the organization. They always created opportunities for us to be even more involved, including running sessions, both general and breakout sessions. Now it's just become an integral part of my calendar during the year.

Sorabella: Suman's comments bring to mind the networking aspect of ARIAS. When I really began trying to build business for myself and promote my firm's brand, I became much more involved in ARIAS. Going to conferences and being involved in the organization gave me the opportunity to build relationships with people upon which I would, hopefully, build business.

Buda: Like Suman, I think that there was priority given to certain people, even here at Allstate, to attend ARIAS

conferences. I didn't attend my first fall conference until I assumed my current position, which was a few years after being at Allstate. And I, too, appreciated the opportunity to network and to learn from some of my peers and colleagues who had more experience with the ARIAS platform, and more experience in different areas of insurance and reinsurance than I had prior to coming to Allstate.

Additionally, I think Sarah might have referenced the community, and Eileen talked about women's networking. The fact that we've been able to build communities and mentoring circles out of the ARIAS platform has really been meaningful to me in terms of networking. Because I'm not in New York, I don't often get to network with a lot of people in our industry outside of Chicago.

And I also appreciated—and I can thank Larry for this—the opportunity to present some continuing education through ARIAS and to educate our industry on non-dispute work. I do a lot of work with reinsurance transactions, and I've had some opportunities to discuss those areas with some of my peers, and I've been very grateful for the opportunity to do that.

Schiffer: Any of you have thoughts on how we can get younger or newer members of either firms or companies to attend an ARIAS conference or an event where, otherwise, they're somewhat limited by budgetary or numerical restraints?

Sorabella: The easy answer is to give them a discount. Aside from that, one of the things that we have tried to do in the Women's Networking Group is to hold events outside of the confer-

ence schedule that are free to attend. We try to target people in more junior roles or who are newer to the organization and have not been involved before, perhaps for the reasons we just spoke about, because it's just hard to get people to attend the conferences given the cost. If we create opportunities to engage with ARIAS outside of the traditional conference structure, I think we have a better chance of bringing the next generation into the fold.

Buda: I think the organization has a good start into the virtual learning space in doing continuing legal education and other education online or via webinar. But making a more robust program there, and potentially publicizing it outside of the organization—maybe in other industry publications, or just asking people to share it with their network—might be a good way, a free and easy way, to introduce some people to the organization.

The education presentations are always top notch, I think. And if you get someone introduced to the organization by giving them continuing legal education, which is always something that is highly desired by attorneys in particular, that might be a good way to give them an introduction to the organization and give them some information about the organization. Then hopefully they can attend a conference and do more face-to-face networking with others in the organization. But I think continuing to have a robust virtual presence is something that will be appealing to a younger generation.

Chakraborty: The other way is to figure out a way to give younger members of our industry and our community access to speaking slots and presentation slots. I think one of the challenging

things, when you go to ARIAS for the first time or if you're still early in your career, is that you're in a room with people who have known each other for decades, who have served on panels together, and who have argued in front of arbitrators. It feels hard to break in. It feels hard to sit in a room or be at a cocktail party where everyone seems to know each other and are you new to the organization. You feel like you don't know anyone except the people from your firm or your company.

“And I thought, wow, am I getting myself into an uphill battle in this industry?”

—Eileen Sorabella

So one of the ways that helps get around that problem is to create opportunities for younger members to be moderators at breakout sessions, to participate in the arbitrator training workshops and in stand-alone CLEs that we run. Get them in front of the people that they are trying to meet and be introduced to. Because, otherwise, it's really hard to come into that space and feel like you can reach out and develop relationships when everyone seems to know each other already.

Gordon: I echo what everyone else has said. And one thing I think that people really like about ARIAS is that it's twice a year, there's a set conference, and you're going to see the same group of people at a known time. But, as Suman was referencing, it can create a problem or barrier to entry for new people

because they feel like they're trying to break into a circle that already exists. There are more routine and less expensive things that can be done. A monthly happy hour or quarterly happy hour or that kind of thing would go a long way, because seeing people throughout the year and at similar times can help build those relationships so it doesn't feel daunting the first time you're coming to a meeting. And, as Eileen said, there's the cost aspect of it, which is obviously an avenue to consider as well.

Chakraborty: I think one thing that happens absolutely in private practice is law firms will pay if their associates have an opportunity for a speaking role, whether that means sending them to a training or sending them to a workshop. If associates can say, hey, I need to go to this conference because I'm going to be in front of a room full of clients, that will convince firms to pay for them to go.

Schiffer: These were all great points and important ideas, so thank you for that. What I want to turn to next is who you consider your mentors or role models in the insurance and reinsurance dispute space.

Gordon: For me, internally, it's John Jacobus, who is the first person I worked with on a reinsurance matter and with whom I've worked for many

NEW PERSPECTIVES

years since. John is an excellent lawyer and a great practitioner, but he also taught me all of the things you can't necessarily pick up from law school.

He taught me how to mentor and train the people with whom you work. He also taught me the importance of providing a lot of good opportunities early on, which he did for me. He taught me how to run a big team, and how to be fair and efficient in what you do. And he taught me how not to lose yourself in the process of your work.

Externally, I've got to say the ARIAS community. I find it to be a really excellent concentration of smart, interesting women lawyers, in-house and outside. And I—there are just too many people to mention that I admire and have learned from in the course of my involvement with ARIAS.

Sorabella: Sarah, I would agree with that now. It's a different-looking organization than it was 20 years ago.

Gordon: I think it's a particularly good group in the ARIAS community.

Sorabella: It sure is. As for mentors, I have had many over the years. As a young associate at LeBoeuf, I was looking to the partners and the more senior associates with whom I worked. I got a lot of guidance, and it was an incredible team of people. And I think the education that I got working with that team was really priceless. Certainly, Mike Knoerzer was someone who I worked with for many years at LeBoeuf and then at Clyde's and I looked to him for guidance at just about every stage.

But I would say that, like Sarah, I kind of view mentorship as something

broader than just looking to the more senior people in your organization. Sometimes mentors can be people at your level or people who are coming up behind you as well.

Mentors also can be external to your organization. When I transitioned to an in-house role a couple of years ago, I found several mentors in women I had known through ARIAS. People like Cindy Koehler, Betty Mullins, Stacy Schwartz, Ann Field—I'm certain I'm forgetting someone—all gave me invaluable advice about making that transition. So you can look around, not only internally but within the larger ARIAS community, for people who can contribute to your career and your professional development.

Buda: Like Eileen and Sarah, I, too, have had so many mentors over the course of my career who have lifted me up and allowed me to reach goals and achieve things in my career that I probably wouldn't have been able to on my own. But, in this space, I think my most notable mentor started out internal and is now external, and that is Dee Dee Derrig, who serves on the ARIAS Board of Directors currently. Dee Dee was my first manager here at Allstate, and I succeeded her after her retirement when I assumed my current position.

As I mentioned, when I started at Allstate, I had arbitration experience, but I didn't have ARIAS arbitration experience. Dee Dee was a tremendous mentor in teaching me about the space, in that she came with an in-house perspective as someone who worked closely with our business partners and outside counsel on reinsurance disputes, but she also had opportunities here at Allstate to represent the

company in reinsurance disputes and to arbitrate the cases directly, without engaging outside counsel.

Dee Dee came with a very holistic view of disputes, a varied view of the disputes, as I think she is a reinsurance savant. She just knows things and sees things in a way that I think not many others do. And while having that knowledge and, indeed, being incredibly talented in the space, she too, as Sarah alluded to in her relationship with John, taught me a lot about work/life balance and the kind of person you want to be when you are making your way in this industry. Also, as a female professional who has achieved great things, she truly was a role model to me, and she continues to be a very important part of both my professional life and my personal life.

So, overall, the industry and the ARIAS organization allow you to surround yourself with talented people with lots of experience, which is always helpful in your development. But in terms of a single individual, Dee Dee definitely has had a profound impact on me in my career.

Chakraborty: Well, in terms of my mentors at the firms I've been at, two stand out in particular. My earliest mentor in the reinsurance field was Mary Lopatto. When I was a first-year associate at LeBoeuf in Washington, I was randomly assigned to the office next to Mary. That made it very easy for her to give me assignments, so most of my work in my early career was because of Mary. She was wonderful about giving me opportunities that junior associates did not frequently get, including deposition work as a second-year associate and trial work as a third-year associate.

She really gave me opportunities to be on my feet in the litigation setting that was hard to come by at a big firm.

Then John Nonna took over the role of mentor and played such an integral part of my career—in my development as a lawyer, as a reinsurance specialist, and even as a human being, because John was really more than just a mentor, he was a friend. Our team at Squire, and formerly at LeBoeuf, was like family more than anything. We were together for about 15 years.

I do want to say, though, listening to Jenna talk, that it's important to mention that I've had clients who have been mentors as well, because they teach us about this business in a way that, as outside counsel, you don't always get early in your career. I actually had the good fortune of having Dee Dee as a client when I was an associate. And when you talk to your clients and hear how they view the case, how they think about settling the case, how they value a case, and how they value their businesses, you learn so much about how to best serve your clients and how to best serve their business interest, in a way that your partner mentors can't always teach you. So I won't go through the list of my clients who played that role, but it's been an important part of my career development.

Schiffer: Those are all great observations and great thoughts. I want to turn to substance now, and I would be interested in each of your observations about the insurance and reinsurance arbitration process as you see it.

Buda: As I mentioned, my transition was from international arbitration to domestic arbitration. I started working

with arbitrators at ARIAS and using ARIAS•U.S. as the appointing body for panels in our disputes here at Allstate. It was a stark contrast for me. I was used to full statements of claims and detailed witness statements, with no depositions and no direct witness testimony. So, for me, making the transition was much more of a hearkening back to my days as a litigator and seeing that an ARIAS arbitration was far more like the trials that I used to participate in when I was a younger attorney.

Confidentiality wasn't as much of a focus in our international arbitrations. Honorable engagement clauses were not common. There were a lot of things that were very different to me. The primary thing that I have loved about working with ARIAS is the available supply of industry professionals who, unlike judges and even arbitrators that I dealt with earlier in my career, are so well-versed in the practical realities of the reinsurance business. Having that knowledge, and

having people who have been in my shoes, is invaluable to me.

One observation that I would make is that it isn't as efficient and economical as my past experience with arbitration was. I think that the disputes may have become a little bit more adversarial, and there might be a lot more back and forth with the panel and more motion practice on discovery disputes. So that's a little bit in contrast to what I was used to, and I think that's evolved over time. But it continues to be our preferred method for dispute resolution because of what I referenced earlier—just the robust knowledge of our party-appointed arbitrators and our umpires that are available to us. And confidentiality, obviously, is important to us.

But I think my primary observation over the last several years has been with the disputes that I have been involved in, and in speaking to my peers at other companies, is how ARIAS a

“ So, overall, the industry and the ARIAS organization allow you to surround yourself with talented people with lots of experience, which is always helpful in your development. ”

—Jenna Buda

arbitration is much more like traditional litigation up until the hearing begins. So those are my observations as someone who was more of an outsider for more of my career than not.

Gordon: If I can echo Jenna, it becomes very much similar to litigation up until the point you go to a hearing. And then it becomes the universe that I think people tended to anticipate, where you have your panel of individuals who are experts in the insurance and reinsurance industry, and they're putting on evidence without being constrained by the rules of evidence, and you have the flexible forum of an arbitration. So I have to agree with Jenna that it mirrors litigation a lot more, as the years have gone by, than it did when I started. And it has a lot of the same flavor as litigation with discovery.

I'll reiterate that it gives lawyers a chance to be creative. And I have found in arbitration that you get a lot of common-sense practical arguments presented in a creative and interesting way, because lawyers and panels are not typically constrained by rules of evidence or other rules of procedure, and everybody has a pretty similar baseline knowledge about the industry. And I found, as a practical matter, that you can really put on a lot of evidence and exercise a lot of creativity in the process, which you don't get to do quite as much in litigation.

The thing that has surprised me the most about the arbitration process and going through it is the length of time it can often take to pick a panel, or an umpire, really. It can take quite a significant amount of time to get a panel in place. And I found that interesting because, of course, coming from litigation, you just have a judge who's

been selected for you through whatever mechanism that court uses to do it.

Chakraborty: I have just a couple of comments about the issue of clients saying that arbitration is turning too much into litigation, traditional litigation at least, until you get to the hearing, and they're concerned about that. It's also hard to strike the right balance there.

We have some people who say the good thing about arbitration is that you're not bound by the rules of evidence, and you can be creative and really go to the practical realities of the business. And yet, the first time an arbitration panel ignores a legal issue, people get upset as well, because they want certainty in that process. I think we continue to struggle with finding that right balance, between wanting some certainty in a dispute resolution process and leaving the flexibility that arbitration is intended to create. Usually, whoever wins the arbitration is fine with the balance, and whoever loses the arbitration is not so fine with the balance.

So figuring out, as an organization, how we keep the essential flavor of arbitration—which is that we have some really knowledgeable people listening to a dispute that they understand because of their background, and they implement a real-life business solution to it, versus, I want my contract interpreted exactly as it is written as a legal matter because that's what my internal folks expect—I think we're going to continue to struggle with that.

In terms of the process going forward, I want to pick up on what Sarah just said about the umpire selection process. I think our challenge will continue to be that panel selection process, and there

are a lot of issues that go into that. Part of it is the concern that we have too small a pool of arbitrators to pick from. Are we doing enough to bring in new arbitrators, so that the organization has a good roster going forward? That includes people who have a different view of the industry, because they have come up in the industry at a different time or through a different company.

I think that is such a critical part of the health of the organization going forward, so that we know that we are continuously regenerating the core of our practice: arbitrators who can resolve the issue in a way that our business clients expect them to.

Sorabella: I think what Suman just said about striking the right balance between arbitration that looks like litigation and arbitration that is more free-form is exactly right. Imagine a process in which a party believes the other party isn't producing documents that they should be producing, and there is no avenue to address that failure. You would have parties who would be pretty unhappy with the arbitration process. So I think, to some extent, it's necessary to have some of the aspects of traditional litigation present in the arbitration process.

Perhaps I'm overly optimistic, but I do still believe that the arbitration process is a more efficient vehicle than litigation to resolve disputes in our industry. In litigation, the substance of the dispute so often gets consumed by procedure, and so much time and attention and energy are spent on the procedural aspects of litigation, both before hearing and during. Obviously, we can't say that time and attention and energy are not spent on procedure in arbitration. But I think that if you really compare

the two side by side, there is much more focus on the substance of the dispute in reinsurance arbitration than you would see if that same dispute were being resolved in a court.

Schiffer: I want to give you all a minute or two to let us know your thoughts on how you see the future of insurance and reinsurance arbitration, and the role of ARIAS in that process.

Chakraborty: I think the organization is at an important transition time right now, and the people in this symposium are part of that transition. We have people who started off as young associates or young in-house staff who are now in positions of being partners at their firms or general counsel with their companies, who are taking on a larger and larger role in the dispute resolution process, and who are going to take on a larger and larger role in ARIAS. The people who will be running ARIAS in the next few years, and for the next few years after that, are going to be different than the people who started the organization and who have nurtured it for the last couple of decades. That, in and of itself, is going to change the organization.

In part because people who are coming up in the ranks now have different backgrounds and different experiences, and have had the benefits of being raised in this industry through ARIAS, they are going to have their own views on what makes ARIAS better going forward. And I think that's a challenge for the organization. But it's also what makes the next few years and next decade exciting—that we have an ability to keep what's working really, really well, but also to come up with fresh ideas of how to keep the organization responsive to our industry.

Sorabella: To build on what Suman said, I agree that we're seeing a transition within ARIAS. We're trying to figure out what the role of the organization is going to be going forward. How active and empowered will the organization be to try to resolve some of the procedural issues? How involved is the organization going to be in ethical issues among members? Will we look more like the AAA or JAMS as an administrator of arbitration? Do we successfully move into areas like policyholder disputes, or do we stick

And I think, to the extent there are ongoing relationships between companies because they have a future or long-standing existing business, how they resolve those disputes may differ than if they're in a position of runoff or otherwise. And I think those sorts of trends in the industry as a whole are going to have an impact on ARIAS and how we resolve our disputes amongst the various constituents.

Buda: I want to piggyback a bit on what Sarah just said, because I think

“Are we doing enough to bring in new arbitrators, so that the organization has a good roster going forward?”

—Suman Chakraborty

to the bread and butter of what we've traditionally done? I can't predict what the outcome of all of that will be, but I think it will be interesting to see where we go from here.

Gordon: I agree with what's been said so far. And just taking a step back to the industry as a whole, I think the demand for legal services was down for a period, and the economics of our industry have changed significantly over the last 10 or 11 years. There's been a lot of consolidation and a shrinking of the industry, I think, in many ways.

That is going to have a knock-on effect, if it hasn't already, on the number of disputes and the number of disputes that will be arbitrated or litigated.

there's other things that contribute to how to view our disputes coming in front of ARIAS panels, and just kind of a decrease in the number of arbitrated and litigated disputes. For us at Allstate, there is a focus on data analytics and using past experience and analyzing data to determine whether or not to go forward with a dispute. We're not using it so much in the reinsurance dispute space, but we're using it more generally with our litigation. And I think a lot of my peers are doing the same thing and looking at decision trees and looking at whether it makes economic sense to go all the way to an arbitration panel or go all the way to trial in a case.

I think companies are relying more and more on data, and I think it's

driving their decision making and often driving their decision making to early resolution as opposed to complete arbitration or litigation. I think it will be interesting to see how that has an impact on the organization and, to Eileen’s point, about whether the organization needs to pivot in a way to provide different services or stick to, as she said, its bread and butter of reinsurance disputes.

Another thing I know that we’re seeing a lot of, in terms of technological advances and of our growing and changing world, is other arbitration organizations using things like online arbitration for smaller disputes. Really, the way that disputes are resolved generally is changing significantly. It will be interesting to see how the organization pivots and responds to just the way our world is changing as a whole.

Schiffer: Well, this has really been an interesting discussion. I’ll make a couple of closing observations.

Nobody mentioned neutral arbitration and neutral panels, which I found interesting. That’s certainly something that I personally hope is going to be more of a trend in the future, to take away some of the issues associated with selecting the panel and some of the other issues about credibility and interest in continuing the process. So we’ll see how that goes.

I also found it interesting that we’ve talked about whether the organization should get into some of the other insurance-related disputes that are out there, and I think that decision has been made. I think the question is whether it actually comes to fruition. Presently, there’s a strong focus on

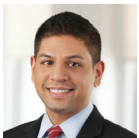
policyholder arbitration, but there are other insurance arbitration opportunities out there that, frankly, are more low-hanging fruit and clearly are in the wheelhouse of our group and our certified arbitrators—those being arbitrations between insurance companies, which can range from contribution, indemnification and allocation, and other kinds of things to disputes with TPAs and MGAs and other service providers. And I’m sure there are other things we can think of as well. So we’ll see if the organization focuses somewhat on those issues, because those seem to be easier to incorporate into what the organization is doing.

I want to thank Suman, Jenna, Sarah, and Eileen for taking the time to participate in this symposium. We look forward to seeing what all of you do in the future as you move up and start leading this organization, and as your practices move forward. Thank you all very, very much.

This roundtable symposium was transcribed by Yvette Mosley of Winter Reporting, which provides court reporting services for depositions, arbitrations, meetings, hearings and conferences. The participants and ARIAS thank Winter Reporting and Ms. Mosley for the generous donation of their services. The transcript has been edited for clarity and improved readability.



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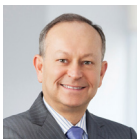
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Roundtable: Establishing and Maintaining an Arbitration Practice

Moderated by Deidre Derrig and Dan FitzMaurice

This year marks the 25th anniversary of the founding of ARIAS•U.S.¹ Late last year, Deidre Derrig and Dan FitzMaurice moderated a roundtable discussion among four ARIAS•U.S. Certified Arbitrators with varying degrees of arbitration experience: Elaine Caprio, John Dore, Jonathan Rosen, and James Scrimgeour. An account of the roundtable discussion appears below.

Derrig: Why did you choose to become certified by ARIAS•U.S.?

Caprio: I was a company person who was in charge of managing litigation, and that included insurance and reinsurance disputes. Because of that, I was recruited to become a member

of ARIAS•U.S. I joined the ARIAS•U.S. board in 2005 and was a board member for seven years. I left my employer, Liberty Mutual Insurance Company, in 2014, and only then did I decide to become certified as an arbitrator.

I believe ARIAS•U.S. is the pre-eminent organization in the United States for the training and education of reinsurance arbitrators. There are other organizations that train and certify insurance arbitrators, but ARIAS•U.S. has the niche for reinsurance arbitrators.

Scrimgeour: I’m like Elaine in that my background is in-house, managing arbitrations, primarily reinsurance arbitrations, for the Travelers Companies. I actually completed the arbitrator

training offered by ARIAS•U.S. when I first joined Travelers in 2004, because I thought it would give me more insight into the process. I didn’t choose to become certified until another 10 or 11 years later.

The main reason I chose to seek ARIAS•U.S. certification was because I thought, and still think, I am filling a need. In my day job, I’m always looking for arbitrators who fit all of the requirements in clauses mandating that the arbitrators be “active” or current employees/officers of insurance or reinsurance companies.

Rosen: ARIAS•U.S. is the “go-to” organization to determine who’s actually arbitrating reinsurance disputes—who’s