MReBA Cover Notes --

A Publication of the Massachusetts Reinsurance Bar Association

Fall 2010

In This Issue:

Welcome to the Second Annual MReBA Symposium!

As Chair of MReBA's Sympoisum Committee, I hope that you will join us on September 23 for **Boston Tea Party 2010: Changing Times in Reinsurance Disputes**. The program for our **Second Annual Symposium** will explore emerging issues in reinsurance contract wordings, ethical dilemmas in arbitrations, Massachusetts and national developments in the consolidation of arbitrations, an update on foreign arbitrations, and how these and other issues are changing the face of modern reinsurance relationships in the 21st Century.

We are delighted that ***David R. Robb***, formerly Executive Vice President of The Hartford Financial Group, Inc. and President of Reinsurance Operations at HartRe (and now a leading ARIAS arbitrator) will be our featured keynote speaker. Having been on "both sides of the fence," Mr. Robb is sure to offer a unique and insightful perspective on the changing dynamics unfolding in reinsurance disputes and will address some of the "myths" surrounding the arbitration process.

We have assembled a team of top-notch insurance executives, claims professionals, arbitrators and attorneys to assist everyone in navigating this "brave new world" of reinsurance claims through a series of panels, mock deliberations and working sessions that reflect both the ceding company and reinsurer perspectives. We also are developing a "real world" fact pattern that will be used throughout the day to illustrate the issues being considered.

Our program this year will include:

- ***Contract Wordings: Old Dilemmas and New Solutions***-A panel of industry experts will explore the many innovations in reinsurance contract forms.
- ***Navigating Through the Ethical Thicket in Reinsurance Arbitrations***-Recent cases have brought to the fore the complexities of key ethical issues which affect the fairness and integrity of the reinsurance arbitration process. This session will explore these issues, including through an interactive workshop in which everyone will have an opportunity to participate in crafting the arguments and seeing how they play out before a panel.
-

MReBA
Massachusetts Reinsurance Bar Association

Join Our Mailing List!

MReBA Calendar

MReBA Second Annual Symposium

Boston Tea Party 2010: Changing Times in Reinsurance Disputes
September 23, 2010
Harvard Club
Boston, MA

MReBA Meetings

September
Wednesday, September 8
12:30 pm
Location: Robins, Kaplan, Miller & Ciresi

October
Wednesday, October 13
12:30 pm
Location: Morrison Mahoney

November
Wednesday, November 10
12:30 pm
Location: Mintz Levin

December
Wednesday, December 8
12:30 pm
Location: TBD

General Interest

- ***Reinsurance in the Global Age***-A panel of very experienced attorneys and arbitrators from London, Bermuda and Paris will offer their insights on how the globalization of insurance markets affects the arbitration and litigation of claims.

- ***Considering Consolidation***-This program will explore the strategic and tactical considerations affecting consolidation, including developing case law under the FAA and the Uniform Arbitration Act.

On behalf of everyone who is working to make this year's program a repeat of last year's tremendous success, I hope that you will join us on September 23. I have provided a link below to the detailed program agenda that will allow you to easily complete your registration on-line. ***We are pleased to advise you that the cost of attending this year's program is the same as last year. Further, any company that registers four attendees is welcome to register additional attendees at no cost.***

Best wishes for the remainder of our quickly vanishing summer and I look forward to welcoming you to the Harvard Club on September 23 for an exciting, informative and enjoyable event.

PROGRAM AGENDA

John T. Harding

Chair, MReBA Symposium Committee
Partner, Morrison Mahoney LLP
jharding@morrisonmahoney.com

Industry Spotlight: Lexington Insurance Company's Rhonda L. Rittenberg

By Anne-Marie Regan,
Prince Lobel Glovsky & Tye LLP

From young lawyer to dynamic litigator to her current position as senior in-house advisor, Rhonda Rittenberg brings an intensity and energy to everything she does. Today she views the professional world from her post as Senior Vice President and Senior Associate General Counsel of the Lexington Insurance Company.

Refreshingly, Rhonda often interjects humor and levity into an otherwise serious profession: she's armed with her signature blue marker, a giant Starbucks cup and the ability to laugh at herself. Rhonda and I have been friends for twenty years, since our days together at Morrison, Mahoney & Miller.

A Burlington, Massachusetts native, Rhonda attended college at the University of Arizona, where she graduated *Phi Beta Kappa*, earning a Bachelor of Arts degree in Political Science in 1983. She returned to Massachusetts to attend Northeastern University School of Law where she earned her J.D. in 1987. It was as a Northeastern Law co-op student at Morrison, Mahoney & Miller that she became utterly smitten by insurance coverage and reinsurance. Who wouldn't be?

RAA Reinsurance Claims and Loss Management Conference
September 15-16
New York City

CPCU Society Annual Meeting
September 25-28
Orlando, FL

Reinsurance Contract Wordings and Disputes Conference
October 6-7
Hamilton, Bermuda

2010 ARIAS Fall Conference
November 4-5
New York City

National Conference of Insurance Legislators Annual Meeting
November 18-21
Austin, TX

DRI Insurance Coverage and Practice Symposium
November 19-21
New York City

New Members

MReBA is pleased to welcome the following new members:

Charles Connon, **The Hartford (Heritage Holdings, Inc.)**

Deborah Griffin, **John Hancock Life Insurance Company**

Andrew Maneval, **Chesham Consulting LLC**

John Rosenquest, **Edwards, Angell, Palmer & Dodge LLP**

Barbara Smith, **FM Global**

John Sullivan, **Greenwood International Insurance Services, Inc.**

Ethan Torrey, **Choate Hall & Stewart LLP**

MReBA Officers

In 1987, Rhonda took an associate position at MM&M in the insurance and reinsurance coverage group. In her words, she "grew up" at Morrison. During her 13 years there, she tried, arbitrated and settled a wide array of cases. Well before before being named partner in 1996, Rhonda was a mentor, leader and role model. She took on pro bono cases and managed junior lawyers. She was a fastidious professional and a patient teacher. It was during these years that Rhonda began wielding the bright blue marker. No one was safe: she tore apart the most well-intentioned sentences, including her own, determined to "tell our story." Rhonda had several important mentors at MM&M, including Steve Paris, the firm's managing partner. From the start, she admired him for his leadership and support as well as his tremendous business acumen.

In 2000, Rhonda, Mitchell King, Joe Sano, Tom Elcock and I left MM&M to start up the insurance and reinsurance group of Prince, Lobel, Glovsky & Tye. Rhonda and Mitchell co-chaired the group. As a new partner at Prince Lobel, she wasted no time making her mark on the firm. Among her many accomplishments, Rhonda argued before the Massachusetts Supreme Judicial Court in *The Matter Of The Liquidation of American Mutual Liability Insurance Co*., 434 Mass. 272; 747 N.E.2d 1215 (2001), an oft-cited insurer insolvency case, on the issue of offset of case reserves and IBNR. Another important achievement during this time was settling on the perfect power beverage: venti decaf mocha, no whip, no foam. She'll tell you, she never leaves home without it.

Rhonda made marketing a priority at Prince Lobel. Despite managing a heavy arbitration case load and several associates, Rhonda became active on the lecture circuit. She was a frequent speaker at industry conferences, including ARIAS US, ACI and PLI, with appearances at various other seminars held for insurance and reinsurance professionals. To her audiences' delight, Rhonda often abandoned convention to enliven her presentations. At one memorable James Bond-themed conference, Rhonda donned spy clothes - dark glasses, hat and trench coat - and assumed the persona of a "Bond Girl," all the while educating the audience on grounds for vacating arbitration awards.

Rhonda has authored several articles, with her best known effort as co-author of the innovative "Is it Broken?" survey. The survey was provided to some 1,000 industry professionals, asking probing questions about the effectiveness of the arbitration process for resolving reinsurance disputes. *Results of Our Arbitration Survey* appeared in *ARIAS U.S. Quarterly*, Fall 2005 and revealed that, despite growing criticism of the process, parties still favored arbitration over litigation, arbitrators as advocates (albeit not unrelenting advocates) rather than as neutrals, summary dispositions when feasible, restricted discovery, reasoned decisions, confidential awards, attorneys' fees and *res judicata* where the subsequent case involves the same parties and issues. Rhonda has published and presented numerous other industry-related papers and articles, including; *Honorable Engagement Among Countries-Enforcing Arbitral Awards Abroad*, ACI Reinsurance Arbitrations Conference, February 2005; *An Arbitration Survey By Any Other Name...*, Reynolds Porter Chamberlain Reinsurance Newsletter, January 2005; *"Unrelenting Advocates" - A Disservice To The Industry?*, PLI Reinsurance Law & Practice 2004; *Workers' Compensation "Carve-Out" Disputes: The Odyssey Continues*, Mealey's Reinsurance 101 Conference, February 2004; *An Exercise in Futility? Grounds for Vacating Arbitration Awards*, *ARIAS U.S. Quarterly*, Spring 2003 (co-authored); *The Federal Government Comes to the Rescue...Or Does It? Implications of the Terrorism Risk Insurance Act of 2002*, *Women's Business Boston*, February 2003; and *Review of Insurance Regulation and New Reinsurance Products, Journal of Reinsurance*, Summer, 1996, Volume 3, No. 4 (co-authored).

In 2005, Rhonda shifted gears to again work with her old friend and mentor, Steve Paris, who had left MM&M to become Lexington Insurance Company's General Counsel. Rhonda began her Lexington career as Vice President and Associate General Counsel in the Legal Department. Last year, Rhonda moved over to the business side at Lexington, accepting the position of Senior Vice President and Senior Reinsurance Officer, heading the Ceded Reinsurance Department. In that capacity, she managed the company's treaty reinsurance purchasing strategy, overseeing the negotiation of the company's property, casualty, healthcare and program treaty

reinsurance portfolio placed in the domestic and international reinsurance markets. Rhonda returned to the Legal Department this year as Senior Vice President and Senior Associate General Counsel and advises senior management and the various business units on transactional, compliance, and regulatory matters, as well as on ceded and assumed reinsurance disputes, audits, collections and contract wording. In 2008, Rhonda obtained her Associate in Surplus Lines (ASLI) designation from the Insurance Institute of America. Rhonda was selected as a Massachusetts Super Lawyer (2005, 2006, 2008) and a New England Super Lawyer (2007).

Recently, I asked Rhonda a few burning questions about the transition from private practice to in-house lawyer and the issues that are currently of most interest to her. Here is what Rhonda had to say:

> *My biggest challenge in going from private practice to becoming in-house counsel was to stop thinking in six minute (billable hour) increments. I really enjoyed marketing our reinsurance group when I was in private practice and I knew I would miss doing that when I transitioned to my in-house counsel role. So I picked up right where I left off and find myself "marketing" the Legal Department to our internal client(s). My in-house marketing story line: "We are production enhancers and we welcome the opportunity to assist."*
>
> *Proactive communication is of paramount interest to me. What I have found in both my legal and business roles at Lexington is that management decisions are more likely to be executed seamlessly when they take into account input from all relevant disciplines, including underwriting, claims, legal, compliance, accounting, actuarial and systems & operations. I'm a strong advocate of an inter-disciplinary team approach and, as I like to say, I view the Lexington Legal Department as "production enhancers." We pride ourselves on enhancing the Company's ability to remain nimble, innovative, entrepreneurial, disciplined and responsive to our clients' needs.*

On a personal note, Rhonda is one of those rare individuals who brings excitement to the otherwise ordinary, and is always keen to meet new people, learn new concepts and ideas and foster the best in those around her. On the rare occasion when she puts down her Starbucks cup, she may raise a glass of Veuve Clicquot.

Anne-Marie Regan can be reached at AMRegan@PrinceLobel.com.

Back to Top

Case Note: *Travelers Cas. & Sur. Co. v. Insurance Co. of North America*, No. 06-4100 (3rd Cir. June 9, 2010)

Third Circuit Analyzes Post-Settlement Allocation Decisions

By Michael F. Aylward, Morrison Mahoney LLP

Long-tail claims present peculiar difficulties for ceding carriers and reinsurers. Not only is the legal mosaic governing the resolution of such claims ever-shifting, but the settlement of long-tail claims involves numerous intangible factors that make assigning specific dollar values to each element of the settlement a process that is more art than science.

Now the U.S. Court of Appeals for the Third Circuit has produced a lengthy and provocative analysis of the standards that should be applied to a reinsurer's challenge to a liability insurer's post-settlement allocation of massive underlying products and toxic tort claim liabilities. In Travelers Cas. & Sur. Co. v. Insurance Co. of North America, No. 06-4100 (3rd Cir. June 9, 2010) the court ruled that the "follow the fortunes" rule applies to post-settlement allocation decisions and that insurers are not acting in bad faith as long as they cede such losses to reinsurers in a reasonable manner that can be justified independently of reinsurance considerations. Accordingly, an insurer is free to consider the reinsurance implications of its settlement so long as its cession reflects reasonable, businesslike decisions made in good faith.

To read this Case Note in full, please click here.

Back to Top

Case Note: *Insurance Co. of North America v. Public Service Mut. Ins. Co.*, No. 09-3640 (2nd Cir. June 23, 2010)

Absent Friends: Responding To The Loss of an Arbitrator

By Michael F. Aylward, Morrison Mahoney LLP

The process of arbitration is sometimes disrupted by the loss of a panel member, whether due to death or resignation. In an interesting new case that we spotlighted in our Summer 2009 issue when it was decided in the District Court, the Second Circuit has considered whether the general rule that it articulated two decades ago in *Marine Products*, requiring the formation of a completely new panel in the event of a member's death, should extend to situations in which a member voluntarily resigns.

In Insurance Co. of North America v. Public Service Mut. Ins. Co., No. 09-3640 (2nd Cir. June 23, 2010), Public Service had commenced an arbitration proceeding against INA in 2007, seeking reimbursement for sums that it had paid to settle various pollution liability claims. The arbitration proceeded before a three-member panel consisting of arbitrators appointed by the parties and a neutral umpire. After receiving briefing and hearing oral argument on PSMIC's motion for summary judgment on what it perceived to be INA's chief legal defense, the panel ruled 3-0 to grant PSMIC's motion for partial summary judgment. INA moved for reconsideration and a briefing schedule was set. Before the motion for reconsideration could be heard and decided, however, Sullivan, INA's party-appointed arbitrator, was diagnosed with cancer and advised the panel that he did not believe that he could continue to perform in a professional or timely manner given his grueling upcoming course of medical treatment. The panel accepted his resignation.

To view this Case Note in full, please click here.

Back to Top

Case Note: *Stolt-Nielsen, S.A., et al. v. AnimalFeeds International Corp.*, 130 S. Ct. 1758 (2010)

"Just Because You Agree to Arbitration Does Not Mean You Agree to Class Arbitration," so says the Supreme Court.

By John N. Love and Ann F. Ketchen, Robins, Kaplan, Miller & Ciresi LLP

In Stolt-Nielsen, S.A., et al. v. AnimalFeeds International Corp., 130 S. Ct. 1758 (2010), the Supreme Court considered whether the Federal Arbitration Act ("FAA") permits arbitrators to impose class arbitration on parties whose arbitration agreements are silent regarding class arbitration. Given the ubiquitous use of arbitration agreements in the insurance and reinsurance arena, the Court's holding that class arbitration requires express consent could have far-reaching effects.

The petitioners ("Stolt-Nielsen") were a group of four maritime shipping companies accused of price-fixing by their customers, including the respondent, AnimalFeeds. The shipping transactions between Stolt-Nielsen and its customers were governed by form contracts with arbitration clauses. In 2003 AnimalFeeds and other customers filed separate lawsuits in federal district court. Their claims were ordered to arbitration pursuant to the parties' arbitration agreements. The parties agreed that their arbitration agreements were silent regarding class arbitration, but they disagreed about whether that silence precluded the claims from being arbitrated on a class basis. The dispute was resolved by the arbitrators, who favored AnimalFeeds and allowed class arbitration. Stolt-Nielsen sought judicial review, and the federal district court vacated the arbitrator's decision. *See, Stolt-Nielsen, S.A., et al. v. AnimalFeeds International Corp.*, 435 F. Supp. 2d 382 (S.D.N.Y. 2006). On appeal, the Second Circuit reversed. *See, Stolt-Nielsen, S.A., et al. v. AnimalFeeds International Corp.*, 548 F.3d 85 (2d Cir. N.Y. 2008).

To view this Case Note in full, please click here.

Back to Top

Practice Note: Can Arbitration Panels Retain Their Own Experts?

An Expert Dilemma: Arbitrators & Independent Experts in Reinsurance Disputes

By Alexander G. Henlin, Edwards Angell Palmer & Dodge LLP

Rare is the reinsurance arbitration proceeding that does not feature an expert. Parties routinely employ consultants to vet their case theories or steer their questioning by examining reams of data. Many will introduce expert reports or, if the matter goes to formal hearing, bring their experts to testify before the panel. But what happens when the panel needs more guidance? Can the panel itself employ independent experts to offer advice about the case? Would that act deprive the parties of the procedural and substantive rights they bargained for as part of the arbitration clause in their reinsurance agreement?

These were some of the questions before the Ninth Circuit in United States Life Insurance Company v. Superior National Insurance Company, 591 F.3d 1167 (9th Cir. 2010). A unanimous panel held that a reinsurance arbitration award would not be set aside, where the panel had employed independent experts to help it sort through a complex case, and the panel afforded the parties an opportunity to question the experts about their qualifications and conclusions.

To view this Practice Note in full, please click here.

Back to Top

MReBA Cover Notes Editorial Board:

To submit an article, or for further information about *MReBA Cover Notes*, please contact any of us directly. Articles from past issues of *Cover Notes* are available at our website.