

In This Issue:

[Welcome Note](#)

[Record of Annual Meeting](#)

[Industry Spotlight: William Fawcett](#)

[Case Notes: Two Recent Decisions Address the Duties of a Disinterested Arbitrator](#)

[Case Note: *State of Connecticut v. Amer. Electric Power Co.*](#)

Welcome!

On April 7th, MReBA celebrated another milestone: our first annual meeting. In a little over a year, our organization has evolved from an idea, to a loose gathering of passionate, engaged reinsurance lawyers, to a corporation. Far from becoming "corporate," however, we've gathered and organized our enthusiasm for what we do into a forum for improving it-through education, sharing and mutual respect.



An annual meeting provides a time for reflection. As our outgoing president, founder Bill Erickson, observed at the meeting, we've accomplished a lot in a year, from this newsletter (now in its fifth issue), to a successful symposium, to a series of engaging educational discussions at our monthly meetings, to a website, to our recent cocktail reception and program. As of April 7th, we've also accomplished our first (peaceful) transition of power. (Our new officers and directors are announced below).

So what's next? The challenge for the next year, is to draw in all of you: the silent readers of this newsletter.

Of course, many of the benefits of MReBA do not require membership: non-members receive this newsletter and are welcome to attend our symposium and public functions. But there is much more to membership. If you're like us, you enjoy discussing reinsurance, thinking about it, brainstorming, debating the impact of recent developments, and imagining ways to improve the system in which we all function. That's what we do at MReBA. We do it every month in our meetings. We do it as we design and create content for this newsletter. We do it as we plan for the next symposium or webinar.

If you are reading this newsletter, then you are similarly engaged by reinsurance. That passion may be difficult to explain at a community cocktail party, but we understand it.

Our next meeting is May 12 at [Morrison Mahoney LLP](#). Meetings last approximately



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MReBA Calendar

MReBA Meetings

May

Wednesday, May 12
12:30 pm
Focus: How will recent developments in global warming litigation impact reinsurers?
Location: [Morrison Mahoney](#)

June

Wednesday, June 9
12:30 pm
Focus: *Ex parte* use of experts by arbitration panels
Location: [Mintz Levin](#)

July

Wednesday, July 14
12:30 pm
Focus: TBD
Location: TBD

General Interest

[ARIAS Spring Conference](#)

May 5-7
San Diego, CA

[RAA 2010 Current Issues Forum](#)

May 18-20
Philadelphia, PA

[National Conference of Insurance Legislators Summer Meeting](#)

an hour, and lunch is served. We hope to see you there. ([Click here](#) to RSVP.).

Catherine M. Colinvaux

President, MReBA
Partner, Zelle Hofmann Voelbel & Mason LLP
ccolnvaux@zelle.com

Record of Annual Meeting

MReBA held its first annual meeting on April 10, 2010. The membership voted to expand the number of members of the Board of Directors to seven. A new board was elected, comprising the five members of last year's board-each of whom agreed to serve a second term-and two new members. The new board consists of Nick Cramb, Bill Erickson, Ana Francisco, John Harding, John Love, Jerry McElroy, and Joe Sano. As its first act, the new board elected new officers. The new officers are Catherine Colinvaux (President), Ben Hincks (Vice President), Michael Aylward (Secretary), and Paul White (Treasurer).

[Back to Top](#)

Industry Spotlight: William Fawcett of Flagstone Re, Speaks at MReBA's Spring Cocktail Event

By [Paul White](#) and [Shanel Lindsay](#), Sugarman, Rogers, Barshak & Cohen, P.C.

One of the most common questions that we hear debated by reinsurance practitioners everywhere is "what do I need to do to impress my client's general counsel?" Who better to answer that question than the general counsel of a major reinsurance company, who also happens to be a seasoned trial lawyer himself. Meet William Fawcett, General Counsel of Flagstone Re, a global insurer and reinsurer based in Hamilton, Bermuda. Will was the featured speaker at MReBA's first Spring Cocktail Event which took place on March 10, 2010 at the Hampshire House in Boston's Beacon Hill where he spoke on the topic, "What GC's want to hear about Litigation and Arbitration from In-House Representatives and Outside Counsel."



With over twenty years of national and international in-house experience with some of the largest insurance and reinsurance companies in the world, it would be difficult to find a person better qualified to speak on the do's and don'ts for meeting the expectations of your client's general counsel than Will Fawcett. Will's in-house career was preceded by successful stints at two nationally recognized firms where he became an accomplished trial attorney before moving in-house with St. Paul Insurance Company. At St. Paul, Will was given the opportunity not only to manage claims but to be intricately involved with shaping and directing the company's business process. In 2000, Will joined Swiss Reinsurance Corporation in Zürich, Switzerland as Managing Director and Deputy General Counsel, where he was responsible for the Financial Services Business Group's global claims operation. He was lead in-house counsel in the World Trade Center litigation and the Enron litigation. In 2002, Will became Senior Vice President of the start-up operation of Endurance Specialty Holdings, Ltd. in Bermuda, where he was active in all phases of corporate governance and built a successful Claim & Liability Management infrastructure for worldwide operations. In his current position as General Counsel for Flagstone Re, Will has responsibility for enterprise level supervision of all legal activities including corporate governance, compliance, claims, M&A, and regulatory functions.

Although Will now oversees the myriad of functions that fall within the ambit of a corporate general counsel, he remains intimately involved in the business of the company - the handling of claims, including the selection and assessment of outside counsel. Speaking to a rapt audience of reinsurance practitioners at the Hampshire House, Will minced no words in outlining what he expects from those he hires to provide legal services to his company. Key skills that Will looks for include the following:

1. Take a Position - Don't be a "50-50" Lawyer

July 8-11
Boston, MA

RAA "The Art of Designing Reinsurance Contracts and Programs"
July 20-23
New York

NAIC National Meeting
August 14-17
Seattle, WA

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While overseeing litigation in every hemisphere at Flagstone, Will's job responsibilities make it impossible for him to be up to date on the law of every jurisdiction and therefore he relies heavily on outside counsel to accurately evaluate and strategize cases. As he put it, "difficult cases don't settle for a reason and slam dunk cases don't go to trial", which is why as General Counsel he looks for outside attorneys who can give him frank and accurate advice "straight up." So, while he expects all his outside counsel to be good lawyers, Will also looks for something else - the ability to distill information so as to provide him with succinct, concrete advice that helps him make difficult choices about which cases to settle and which to try. As Will put it, outside counsel should resist the temptation to defensively report that a case "could go either way" or insist that the chances are "50%-50%" and instead should "take a position" and recommend specific action based on a realistic assessment of the merits of a particular case. In short, don't be a "50-50" lawyer.

2. Know Your Client's Goals

One of the most important criteria Will uses in selecting -- and assessing -- outside counsel is whether he or she understands and is sensitive to the client's short-term and long-term goals. Will explained that understanding the assignment and the objectives that would represent success in its handling is particularly important in the reinsurance industry where the interests of the stakeholders are not always obvious. Accordingly, it is essential to identify what role the litigation is playing against the larger backdrop of the reinsurer's business as a whole. Specifically, as Will put it, "you must determine precisely what you are managing when you begin to work on a particular case." Is in-house counsel simply concerned with costs and maximizing/minimizing the potential judgment, or is the claim part of a larger portfolio that the reinsurer wishes to resolve? Perhaps the case involves a reputational issue that could have implications broader than the instant claim. The status of the relationships between the two parties will also often determine the case's trajectory, and, indeed, Will observed that there is often a markedly more aggressive approach to reinsurance cases where the treaty is in run-off. On the other hand, Will recalled instances where claims were removed from the table all together for the purposes of ensuring continued business relationships. Outside counsel must also be cognizant of the mechanisms by which a case can be resolved, and be able to determine whether a case is best suited for arbitration or litigation.

Focusing on the issue of how to "add value," Will recommended that outside counsel should be sure to "check their egos at the door," and have the confidence to step back from the claim and ask the following types of questions: "What is our objective in this matter?", "how does this matter impact the client's business?" and "what solution will provide the maximum value to the client?" Doing so will demonstrate to your general counsel that you understand and share the business objectives in each matter in which you are engaged as outside counsel.

3. Communication is "Coverage"

The ability to evaluate and communicate effectively is key to a successful relationship with a general counsel. Will reminded the audience that lawyers and cases are constantly being evaluated internally -- and that a general counsel's job is made easier by receiving reports early and often. It is critical to have agreed upon criteria for the evaluation (including the level of detail needed) and to ensure that reports are based on reliable information. General counsel will be loathe to find that something that he or she confirmed as true internally, based on input from outside counsel, turns out to be just the opposite. Equally important, however, is what Will terms "coverage." General counsel understand that not every case will be a winner. However, in the event that a case does take an unfortunate turn, the client will be looking to its general counsel to justify the action that was taken. This is where prior effective communication pays off-if well reasoned and documented evaluations have been provided by outside counsel as a case progresses, the job of defending the decisions that were made along the way is made commensurately easier. And in the same vein, Will also pointed out that outside counsel who provide support and assistance to general counsel in the aftermath of an unfavorable outcome are, like that well-known credit card, "priceless."

4. Serve the Client

Will ended his remarks by reminding the audience of the cardinal rule of effectively serving the client: "Understand a client's long term goals and handle a particular matter with those goals in mind if you want to ensure a long term relationship with a client."

Will's comments reflected not just years of experience but also a reservoir of good humor. They inspired a very interactive audience response from MReBA members

who greatly appreciated Will's willingness to share his experiences and wisdom with them. Two of MReBA's principal goals are to provide education and to enhance the collegiality of the reinsurance bar. Having Will Fawcett as our speaker at our first Spring Cocktail Event ensured that we achieved both goals on this enjoyable evening.

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[Back to Top](#)

Case Notes: Two Recent Decisions Address the Duties of a Disinterested Arbitrator

The two recent decisions discussed below are among the growing number of cases that address what it means to be a "disinterested arbitrator." In the [Scandinavian Re](#) case, the Second Circuit vacated an award based on two arbitrators' failure to disclose their participation in a separate arbitration, despite the arbitrators' belief that they would not be influenced by that separate proceeding. In the [Wausau](#) case, a federal district court in Wisconsin considered whether a party-arbitrator's *ex parte* communications with the party who had appointed him required his disqualification under a state law that required that party-appointed arbitrators be true "neutrals." These cases, and similar challenges to arbitrator qualifications and disclosures, highlight the importance of panelists' full disclosure of all potentially material information, and the need to consider whether to clearly define the role of the party-appointed arbitrator in arbitration agreements.

To read these Case Notes in full, please [click here](#).

[Back to Top](#)

Case Note: [State of Connecticut v. Amer. Electric Power Co.](#), 582 F.3d 309 (2d Cir. 2009)

By [Seth V. Jackson](#), Zelle Hofmann Voelbel & Mason LLP

Green Light for Global Warming Suits Against Power Plants Could Have a Big Impact

Shoring up the legal foundation for a recent spate of global warming lawsuits, a September 2009 decision by the U.S. Court of Appeals for the Second Circuit ruled for the first time that public nuisance claims arising from global warming could be brought against power plants. Since this decision, leading industry commentators have speculated in blogs and articles that these global warming cases may ultimately have a significant effect on the insurance and reinsurance industry. Although the insurance impact of this trend remains speculative, a better understanding of the Second Circuit decision may assist insurers and reinsurers in understanding increasingly likely future developments.

To view this Case Note in full, please [click here](#).

[Back to Top](#)

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