

# A Look at the Impact of ARIAS•U.S.

Moderated by Teresa Snider

**Snider:** In recognition of ARIAS•U.S.'s 25th anniversary, I've brought together four of the organization's founders to discuss the impact of ARIAS and how arbitration has changed in the past 25 years. Mark S. Gurevitz, Susan E. Mack, and Daniel E. Schmidt IV are founding directors of ARIAS, and Debra J. Hall is an original organizer of ARIAS on behalf of the Reinsurance Association of America. Between the four of them, they have served as arbitrators, umpires, or employee managers of more than 750 proceedings.

The first question is for all four of you: What are the most significant changes you have seen in arbitration over the past 25 years?

**Schmidt:** I would say the quality of the legal representation, especially

the briefing. That is the first thing that hit me—also, of course, the amount of discovery, and the length of the hearing itself, and the amount of time it takes now to get to a hearing.

I go back to my first days as an arbitrator. I started in '87, and it was fairly simple, to such a point I remember Dick Bakka and I and another arbitrator were simply handed files by the parties. They asked us if we'd go in the back room and take a look, answer some questions, and come back and give them a decision. Pretty simple, pretty quick, pretty dirty. No lawyers involved.

It's gotten more sophisticated since then. It's gotten to such a point where I had one hearing involving a lot of money, a rescission, where we had

53 hearing days over a two-and-a-half-year period. Things seem to have settled down a bit, but I still have hearings that are over a month long.

**Mack:** I'm focusing on the major changes in the past five years. We have moved away in the past five years from property/casualty reinsurance alternative dispute resolution. I see a substantially growing number of life and health reinsurance disputes; I see a number of direct insurance matters between policyholders and insurers.

Of course, this is a big departure from where ARIAS started 25 years ago, when it was largely asbestos, pollution, and health hazard disputes between insurers and their reinsurers. So I think we have a prospect for bringing in more and different types of members. I don't

think, with the life side of the reinsurance disputes, that we will see that happen immediately, because we do see a lot of life side of both reinsurers and insurers that also have a predominant property casualty business.

It's interesting that we don't see that much of a change in the identity of counsel in the life and health reinsurance disputes. I see the same counsel that I would in property casualty reinsurance disputes. Where you see counsel changing is between the reinsurance disputes and the insurance disputes; when you have a property casualty insurer versus their policyholder, it brings in a whole new dynamic and a change of characters among the attorneys.

**Gurevitz:** I agree with what both Dan and Susan have said. I would add a couple things.

Number one, I think one of the biggest changes is that the arbitration process itself has become fairly standardized and routine in a way that 25 years ago was simply not the case. I think it's not too far off to say that back around the time ARIAS was formed and in the years prior to that, there was a little bit of the wild west approach—there were no rules. Other than Dan and a few other people, there were very few arbitrators who had any real experience with arbitration, either as an arbitrator or as a company, and there were no expectations and no norms.

So one of the most significant changes is that the arbitration process itself has become normalized and much more routine and standard. I attribute a lot of that to ARIAS itself.

The other thing that is a big change—

and Dan touched on this earlier—is that there's much more significant analysis of the issues, in a much more methodical approach to deciding the issues that are presented to an arbitration panel. Early on, and I think most people experienced the same thing, you would have an arbitration for a week or two weeks and sometimes that very afternoon you would get an award issued and it would be a one-line award. I think that has become, for the most part, an historical anomaly, and I think for the better.

The panels will spend time to go through all of the issues that are presented and the sub-parts of the issues to make sure there's a full discussion of those issues before deciding. Panels give a lot more detail. I won't say that it rises to the level of a reasoned decision, but we'll go through the issues that had to be decided and the thought process. And we'll give a lot more detail and explanation in the written award. That, I think, is more of a comfort to parties, to know that the panel really did spend a lot of time looking at their issues and weighing their issues before making a decision. So I think those are all improvements for the better.

**Hall:** First, I agree with everything that my three colleagues have said. One thing that I would add is that I think the arbitration umpire appointment process has changed quite a bit—a lot of procedures have changed, and sometimes for the better, as noted by Mark. I think that for umpire selection, though, it used to be that the arbitrators were much more involved than the lawyers, and it didn't take as long to get an umpire appointment. Of course, there's a lot of strategy, and all that goes into that decision. I understand why it happens, but that's been a big change.

**Snider:** If we could go back to something that Susan touched on, that she's seeing more life and health reinsurance disputes and more direct insurance matters. Has the pool of arbitrators expanded to accommodate these disputes, or are you seeing the same arbitrators as well as seeing the same reinsurance counsel?

**Gurevitz:** I think generally we're seeing the same arbitrators, and I don't think that's necessarily a bad thing. There are a fair number of arbitrators that, number one, have experience in the life sector, including Susan and myself; and others have had experience in dealing with life arbitrations even if they didn't have experience directly when they were with a company. In terms of the direct policyholder or non-reinsurance-type arbitration, again, I think that the ARIAS certified arbitrators and umpires are pretty capable of dealing with the disputes. The only thing that I would add is that, to the extent we handle more policyholder disputes and policyholder counsel want other arbitrators added to the mix, that would be a natural progression.

On the policyholder side, I think we see a lot of disputes around MGAs and other agency agreements, captives, and other type of things that are not the traditional reinsurance disputes. But I think that the arbitrators that are current ARIAS arbitrators are pretty well equipped to deal with that.

**Schmidt:** I would agree with that. Not that many certified arbitrators have that life or accident health credential, as Mark said. I'm fortunate that I just happened to luck out and have it, so I can technically qualify. But a lot of people whom I'm sure would do great on those panels don't have that credential.

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**Mack:** You're probably right, Dan. I do agree with both you and Mark that in the majority of life cases, a very competent, highly seasoned arbitrator who is technically qualified can do a fine job. But there's a significant minority of life and accident and health disputes where I think it does help to have some significant life insurance or reinsurance history as an executive.

I, together with Dee Dee Derrig and the Life Subcommittee of the ARIAS Membership Committee, have a continuing mission to get life executives interested in becoming members and, later, arbitrators at ARIAS. In fact, I spoke with Tom Zurek at the American Council of Life Insurers annual meeting to get out the word that the pool could conceivably expand. And in October, Dennis Loring and I will be speaking at the Society of Actuaries annual meeting in Toronto. So I think there is room for expansion in the pool. That's not to detract from the existing qualities of those seasoned arbitrators that we already have.

**Hall:** At the formation of ARIAS, one of the perceived needs at that time among the company representatives when I was at the RAA was the lack of a sufficient pool of arbitrators. At that time, it was a lack of perceived experience in property and casualty arbitrators, when we were dealing with the RAA in its early days before it had life and health members. And I know that this has been a somewhat controversial topic at ARIAS, but I do agree with Mark and Dan—there are people who are experienced arbitrators who are, I think, very competent to deal with life matters. And there might be more of us than people realize in terms of having experience.

I had experience when I was a receiver in life matters; I was responsible for the administration and closure of life estates. Later, at the RAA, we established a life component within the RAA and addressed life matters. At Swiss Re, I also had life reinsurance involvement. I was asked to chair the international (IAIS) task force at the ACLI, and I was involved in policy and regulatory life reinsurance matters within Swiss Re. So some of us do have more life experience than some folks may know.

Right now, I'm an umpire in a very significant life reinsurance arbitration. I find the panel to be eminently qualified to deal with the issues that are presented, even though you might normally associate those panel members with P/C more than you would a life background.

**Mack:** I do think that it's very interesting that the four of us all have some significant life experience.

**Hall:** I also think it's interesting that the organization continues to evolve. And one of the aspects of that is the outreach process, in order to make sure that the members' needs are being served. It sounds like one of those things that is helpful is making sure that people's experience is out there and available so people are aware of it.

One thing that has been discussed in the past is how to make the umpire and arbitrator information on the website more accessible, because there's so much information there. But it's sometimes hard to gauge the experience that people have, because they end up putting 2 percent down for each category of substantive experience, which doesn't quite capture the quality of that experience.

**Gurevitz:** That's a really good point.

**Mack:** I like Debra's point about outreach. It reminds me that ARIAS is in the business of outreach to the parties who are the principal participants in the dispute. It is the parties' perspective, if they think a seasoned arbitrator who technically qualifies as a life-qualified arbitrator can adjudicate their dispute well. Some parties prefer someone who was deep in the industry and is a former traditional life insurance or reinsurance executive. So the parties control the arbitration. It's up to the parties to determine how best those disputes can be arbitrated.

**Snider:** We've talked about the pool of arbitrators who are available for disputes. Does anyone have a view on whether there's a more diverse group of individuals now who are involved as counsel, or has it been pretty consistent over the years?

**Mack:** I was approaching this particular question in terms of diverse representation among the presenting counsel in arbitrations from the gender perspective. And I do see many more women counsel who advocate for clients in reinsurance arbitration, but frankly, I don't see enough. I think there are many, many more reinsurance attorneys who are women, but not enough who are perhaps lead counsel in an arbitration. I think of you, Teresa; I think of Michele Jacobson of Stroock; and there are a few others. But I would like to see more gender parity and gender diversity in both the counsel ranks and the arbitrator ranks.

**Gurevitz:** But I do think it's a lot better than it used to be, for sure.

**Schmidt:** No question about that. Thankfully so.

**Gurevitz:** I was looking at this question more from the perspective of arbitrators. I think in terms of diversity of arbitrators, yes, in some ways it's more diverse. In some ways, it's not. Some of those points have already been addressed in terms of gender.

But in terms of background of arbitrators, as the number of arbitrators grew—I think we were up to 350 certified arbitrators at one point, at the zenith of this process—we had arbitrators from all facets of the industry. Not just people involved in dispute resolution, but actuaries, accountants, people not just from insurance companies, but brokers and law firms and things like that. But when we first started, there were quite a few chief executive officers and underwriters who were part of the arbitrator pool. And now I think it's shifted a little bit, in the sense that the vast majority of arbitrators are lawyers. I think there are very few underwriters, and a few actuaries, accountants, and brokers.

But my personal view of that is that it's a natural consequence of the fact that arbitrations have become quite complex, both procedurally and substantively. And outside counsel view that lawyers are generally—not entirely, but generally—better equipped and have better experience to deal with those issues. I'm not saying whether that's right or wrong, it's just a change that I've observed.

In terms of diversity, I've been disappointed, however—not in terms of gender, where I think we have made strides, but diversity in terms of how it applies to people of color. I think there's a lot more that we can do there. I don't mean this as a reflection on ARIAS per se, but on the industry as a whole. It becomes a

problem for the arbitrators, who come from the industry. If the industry isn't more diverse, then we don't have the ability to find experienced people to add to the ranks of certified arbitrators.

**Schmidt:** I agree with everything Mark just said. When I first started, mainly it was senior executives that I served on panels with, not lawyers. Dennis Gentry, Bill Gilmartin, Rick Gilmore, Charlie Niles, Jim Phair, Ted Strenk—these are all giants, really. They were extremely knowledgeable and certainly needed no experts per se. And people like me, we learned, we learned. Earlier on, other general counsel like Darry Semple, Tim McCaffrey, and Jim Powers would be involved. But again, very, very few lawyers, other than in-house lawyers, were involved.

I guess there are a lot of reasons for it, but I wonder if one of the reasons is that not that many companies, whether ceding or assuming, have underwriters heading up their operations; so many of them are financial people. Maybe they just don't get involved or don't want to be involved in dispute resolution. These other guys did it as retirees. Some were still active.

**Hall:** The one group I would add to what Mark and Dan have said is there used to be a lot more claims professionals, senior VPs of claims, that were involved. In fact, when I was at the RAA, it was really the senior VPs of claims pushing for the expansion of the pool and also pushing to have, at that time, active senior executives be arbitrators, and pushing their companies to allow them to do a certain number of arbitrations, even if they were not compensated back in those days. But I agree with the observation of the proliferation of lawyers.

**Schmidt:** I might just add one other thing to what's been said. We talked about one of the primary goals: expanding the pool of arbitrators. Yes, there was an underlying rationale for that, because you might have heard stories of ultimate decisions being based on the flip of a coin, meaning the decision depended on which side's umpire candidate gets selected. And when you have a relatively small number, and presumably people on both sides knew how one tilted one way and one tilted the other, and there were no specific procedures on trying to reach an agreement—that was the perception, anyway. My involvement in ARIAS was generated in large part by the concern of that perception, the flip of a coin, being a reality. But I do know that's not the case now, for the most part.

**Snider:** One of the ways ARIAS has tried to address that perception is to promulgate a code of conduct, and that code of conduct continues to be updated and revised. Mark, I know you've been involved with that. What do you think the impact of having ethical canons has been?

**Gurevitz:** First of all, I would preface my comments by saying that I think all of our arbitrators at ARIAS are ethical, and I have no doubt they would be ethical whether we had canons or not. However, we decided early on that a world-class organization required canons of ethics. I think it's important that this be the case, for several reasons.

One is that outsiders who are going to be involved in the process in the first instance could have greater confidence in the process knowing that there was a canon of ethics that governed the arbitrators in the process. Second, arbitration was a second career for most

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arbitrators. A lot of arbitrators had not been involved in the arbitration process while they were at companies, so this was new to them. They weren't sure how to behave and wanted to know what the standards were that applied. So one of our prime goals—and Dan was instrumental, being on the original Ethics Committee and developing the initial ethical guidelines that were developed, which I think have truly stood the test of time; Dan was involved, along with Jim Rubin and Richard Waterman—was to make sure that everybody understood what was proper behavior for arbitrators and knowing how the process would work.

It's been my experience that arbitrators take this very, very seriously. There have been countless times that I've had somebody call me, on an anonymous basis, in terms of what the underlying arbitration might have involved, but who said, if you had this type of circumstance, would you be able to accept an appointment or not? And then, in the course of an arbitration, if there was a concern, should I disclose this or not disclose this, or was my behavior appropriate? So people are very, very serious about making sure that they comport their behavior with what is expected of them. I think that is a credit both to the code that's been developed and to the certification and education of arbitrators that we do have.

**Mack:** I concur with Mark's comments. Like Mark, I'm currently on the Ethics Committee. What strikes me about the good work being done by that committee is how dynamic it is in trying to reinforce the code of conduct. What I mean by that is, when you have to recertify your credentials, you take an online ethics course that was produced as a collaborative process of the

Ethics Committee, and which most recently has been spearheaded by Stacey Schwartz of Swiss Re. There's also the fact that every spring and fall there's a great ethics continuing education session that highlights pragmatic problems that may come up in arbitration that can be resolved by correct reliance on the code of conduct.

**Snider:** One of the things that was mentioned when we were talking about the ARIAS Code of Conduct is the certification procedures. Those go beyond the code of conduct to require training of arbitrators so that they understand the process. Over the course of these past 25 years, have those certification procedures changed industry arbitrations?

**Gurevitz:** I think certification, at least in my view, has had less of an effect on arbitration than some of the other changes. Remember, there was only a small group of identified arbitrators in the early '90s, and one of our primary goals was to increase the number of arbitrators. I think we did that fairly well, maybe too well. The standards were intentionally left at a level that was significant—10 years' experience in the industry—but still really a threshold entry level that many could meet. It was not considered to be too onerous a requirement.

There was talk later of making the requirement more difficult and coming up with a super-category of arbitrators. Instead, we created a subset of certified umpires that was based on the number of completed arbitrations. So I don't think that the certification process per se has had an effect.

But adding to what Susan said, the certification requirement includes educational components. And I think that's the area where the certification process

has really helped to improve the arbitration process. It's enhanced the level of competency by explaining and teaching the process to those new to dispute resolution, and it has helped those who have been involved in arbitration but are new to the decision-making process of being on a panel. I would say personally that you don't realize how different it is, even when you've been involved in many different arbitrations from the viewpoint of a party, until you see for the first time how a panel operates.

Also, as Susan had mentioned, the educational requirement on ethics, requiring the ethics test every two years, is also important. It was not intended to see how ethical someone is and to judge that; it's really just to make sure that arbitrators familiarize themselves with the canons. It is important to do that because they are complex—maybe a little too complex, some might say, and I take some responsibility for that. But I do know it is important for people to read them every once in a while, because there are a lot of things that go on in the decision-making process where arbitrators are trying to decide whether to accept an appointment, or whether to make a disclosure. I do think the canons are tremendously helpful in ensuring that people are very sensitive to those types of issues.

**Schmidt:** Is the phraseology for certification still something like “10 years of specialized experience in insurance or reinsurance”? Is the word “specialized” still there? I remember when Bob Mangino and I were involved in looking at a lot of the initial applications, and there were some people who did not qualify. Not that many, obviously, because we had quite a few, ultimately. But there were some who did not qualify, and the focus was on “specialized.”

**Snider:** Ten years of specialization in the insurance/reinsurance industry.

**Schmidt:** That's how I vaguely recall it. If somebody was, let's say, a VP admin only, it had to be questioned whether that person actually had specialized experience in the business of insurance and reinsurance. I can't think of anybody who fell into that particular category. But that was important to us.

And the other thing was, when I was no longer involved in reviewing applications, I remember hearing people talk about some who qualified because they had been with a law firm for 10 years and had been involved in some cases that didn't go a full 10 years, but might have started in 2007, and they had another one in 2011, and that qualified as well. So right, wrong, or indifferent, because I don't know what the actual technical standards were over time, but I do remember people speaking about, gee, it's not just being in a law firm, or even being in a company. You're supposed to be developing, over that time period, specialized knowledge and understanding of the business. I don't know if that is even a problem anymore, because it seems that the persons who are being certified are very experienced people. But for a while there, there was some question.

**Hall:** The certification process is important as part and parcel of what ARIAS does. In the beginning days before ARIAS, when I was at the RAA, we had the RAA arbitrators directory, which I don't even know, frankly, if it's in existence anymore. In that situation, all you had to do is submit your name, pay your money, be somewhat tangentially involved in reinsurance, and you could be in the arbitrators directory, because it was the RAA's point

of view that we're not going to sift through who can and can't be in the directory, for good reasons, including legal reasons. So the differentiating factor between that and ARIAS was the certification process.

As other people on this call know as well as I do, in those early days of forming ARIAS, we had these discussions about whether or not you're certified based on your experience, as Dan alluded to, in the reinsurance business, or whether there should be some component of completed arbitrations. And there was a recognition that everybody has to have their first arbitration. So the specialization was there, I think, because the focus was really on the "experience related to." You may not be an experienced arbitrator, but you are experienced in the substantive reinsurance business, and you can obtain the necessary skills to be an arbitrator, the procedural part of it, through education and training. So that was the balance that those of us who were originally putting together ARIAS wrestled with quite a bit.

**Mack:** I do think the certification requirement has promoted and enhanced the professional reputation of ARIAS. I remember those early discussions about certification and whether you needed to have past arbitration experience. ARIAS long ago jumped over that hurdle, because there are a variety of different ways to become a certified arbitrator. Some include having past arbitration experience, and some are gaining expertise in other ways, such as attending webinars or fall and spring meeting events.

The basis for the admission process for individuals without past experience in arbitrations—I believe it's called

Type C applications—is the amount of experience as a claims person, an underwriter, or an insurance attorney. So we've opened the door to folks who are experienced from an industry perspective and who have that, plus arbitration experience.

**Schmidt:** I want to go back a little bit to the diversity aspect, tying it in with certification. Right from the start—and I know that the rest of the people on the phone will remember—we decided that we're not going to limit it just to company people, that you can gain the specialized experience not just with law firms, but with regulatory agencies, actuarial firms, accounting firms, auditing firms, you name it. The focus was, as everyone has been saying, gaining that specialized experience over a 10-year period.

**Snider:** One of the nice things about the improvement in technology over the years is while I still have my RAA list of arbitrators in a drawer somewhere, with the Internet it's a much more transparent process with people who are certified with ARIAS, to see who they are and to have this big list of people. Before, you had to know the RAA had a list of arbitrators that you could go look at and review their bios in a book.

**Hall:** I agree with that, Teresa. I think ARIAS has expanded the information that's available, too. Keep in mind that at the RAA, we were limited to what company people wanted us to have on those RAA profiles. ARIAS has expanded that, and all for the better.

**Gurevitz:** Debra and the RAA in the early '90s did a great job of trying to fill this void and fill this need for having an arbitrator directory. And you're right, Teresa, that was the sole source

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to go to for arbitrators at one point in time. But I will say that, as the discussions began about forming ARIAS, one of the great attractions that ARIAS had is that it brought forth all of the components in the industry, not just the reinsurance aspect of the triangle, to the table. And we created the opportunity for a lot of people to become certified arbitrators and provided different choices for people in terms of who they might want to use as arbitrators, and the information that was provided as to each person. Then the users could look at that. It was more transparent, and with technology it became even more transparent and easier to use, and people could decide what type of person they wanted for a particular dispute.

The other aspect—it's not really related to the question, but it's important to note in this discussion—is that one of the great achievements of ARIAS is that ARIAS became the forum for discussing all these issues relating to arbitration. It was representative of every segment of the business that was involved in insurance and reinsurance arbitrations. So the fact that it became the forum, the discussion point for all of the issues in terms of changes and improvements to the process, I think really should be stated as a very important concept.

**Snider:** Mark, you're absolutely right. One of the great things about ARIAS, from my perspective as a practitioner, is that I go to the ARIAS forms and the practical guide, and the list of certified arbitrators and the list of certified umpires, and the list of people who are neutrals. I'm on that website constantly in my day-to-day practice. And that, as Mark said at the outset, made the process more standardized and routine which, it could be argued, helps you get

to the merits in a more efficient way. Do you have comments on the development of ARIAS forms and the practical guide, and what effect those have had on arbitrations over the years?

**Mack:** In particular, the development of the ARIAS hold harmless and confidentiality forms has gone a long way in promoting the professionalism of reinsurance arbitration. Certainly, the hold harmless agreements have served to make arbitrators more willing to serve. There's case law existing for the proposition that arbitrators acting in official capacities are immune from civil liability. But it's much more comforting with an ARIAS hold harmless agreement that assures you that both parties ascribe to that benefit.

**Gurevitz:** It is a broader protection, too.

**Mack:** It is a broader protection. What I'd really like to hear, though, is from Debra, who I think had a large part in developing the practical guide. Didn't you, Debra?

**Hall:** Back in the '90s, ARIAS developed the Practical Guide to Reinsurance Arbitration Procedure. These guidelines were really suggestive in nature. It was at an RAA conference when we realized that the construction industry had their own set of arbitration procedures. So that was the genesis of creating arbitration procedures to be incorporated into contracts, which became known as the U.S. Insurance and Reinsurance Dispute Resolution Procedures.

We tried to make this an industry-wide task force for the resolution of insurance and reinsurance disputes, incorporating procedures that had been in use out there in the industry. I was

very deeply involved in that process, which really was the first time that we came up with specialized insurance/reinsurance procedures that could be referenced in a contract. Some who had been involved in that process were very instrumental in taking those industry procedures and incorporating them into an ARIAS effort that I was not involved in, that kind of molded those and borrowed from them in large part to become the actual ARIAS Rules.

**Mack:** The practical guide is wonderful because it really helpfully charts the entire procedure, from initiating the arbitration to post-hearing conduct with the panel. I was not involved in the writing of the practical guide, but I commend those at ARIAS who had a hand in it, because it really, truly is a wonderful resource.

**Schmidt:** I think that Charlie Foss was one of the leaders in the RAA industry procedures.

**Hall:** Charlie was involved in our process.

**Gurevitz:** I was involved in it, too, mostly in the initial process and in the revisions that were done at a later point in time. The RAA was gracious enough to print out the first set and help us with the publicity.

The practical guide was a whole different process; that was an ARIAS effort. It was really developed by Tom Allen and myself with the assistance of an associate at White and Williams who was helpful in putting the actual words together, once we had all the ideas. The purpose of it was to capture custom and practice in terms of arbitration procedure.

One of the goals of ARIAS—I'm not sure whether it's a formal goal or one that I

thought was a necessary goal—is to try to level the playing field and take away the cloak of mystery of arbitration so that the process, and what happens in arbitration, was going to be more transparent to those who became involved in it. So the practical guide, where we didn't have actual procedural rules, was a way to create a universal understanding of the way things were typically done. I think it could also be described as best practices.

But I think, given the fact that the reinsurance bar today is much more sophisticated and the practice involved in doing arbitration within companies is much more developed as well, that there's probably less relevance today to the practical guide than there was for the first 10 or 15 years of ARIAS's existence. I think that's just a tribute to some of the other things we have been talking about, and the level of education and the amount of focus and attention that's been devoted to the arbitration process over the years.

**Hall:** We might be sort of mixing apples and oranges in terms of the actual titles of some of these documents. As Mark said, I think the practical guide is one that existed for quite some time, as he's described. I think it was through Eric Kobrick's [AIG] efforts in large part that they took what a lot of us had developed through that industry task force, a non-ARIAS effort that I described a little earlier, and then modified them, expanded on them, et cetera, to result in the actual ARIAS Rules that we have now that can be referenced in contracts, just as those industry procedures are incorporated into contracts.

**Mack:** Really, model arbitration clauses and procedures that could be incorporated into the contract, versus the

practical guide, which was kind of the step-by-step, here is what usually happens at an arbitration.

**Hall:** Right.

**Snider:** One of the things to consider, as ARIAS continues to evolve over the years, is how these resources can be used to assist a whole other group of constituents with disputes, such as policyholders. ARIAS certainly has not been stagnant; it's always looking to evolve and to figure out how to make the arbitration process as useful as possible for its members.

**Hall:** When we put together the U.S. Resolution of Insurance and Reinsurance Disputes in this RAA-sponsored effort, we attempted to include insurance and reinsurance companies, brokers, people from different perspectives, to come up with those procedures. We had a number of people who represented direct primary insurance companies. ARIAS then brought those procedures forth into the ARIAS setting. I would think that a lot of those procedures are as applicable to insurance disputes as they are to reinsurance disputes. That was the intent, even in the title. I don't know how others feel, if they're successful in doing that.

**Mack:** The ARIAS procedures on how to run the best possible arbitration are equally applicable to policyholder versus insurer as they are to reinsurer versus insurer. It holds up a standard against which proceedings should be judged. In that respect, the policyholder disputes are no different from the more traditional reinsurer-versus-insurer disputes.

**Gurevitz:** I also think that we have a lot of expertise and experience and knowledge about arbitration, and we

ought to find every opportunity to apply those in a broader sense.

**Schmidt:** I focused on the word "forms," and then what came to mind was my least favorite form, the umpire questionnaire form.

*(Peals of laughter)*

**Snider:** I knew that was going to be what you suggested.

**Schmidt:** I hope that the laughter gets added to the transcript. When I have a little bit of extra time, I'm going to try and come up with some sort of letter to the committee who deals with that and ask them to consider different approaches. I've been a AAA arbitrator even longer than with ARIAS. I think Mark and Susan, maybe you as well, Debra ...

**Mack:** All four of us are AAA.

**Schmidt:** Then you know the questionnaire is a little bit less complex. I'm not saying that it would work well in our own system, but when it takes me a few minutes to do one and it takes me many hours to do the other, wow.

**Gurevitz:** Right.

**Schmidt:** I just leave that on the table.

**Mack:** I want to highlight what Dan just said. If you take the standard umpire questionnaire seriously, you are going to spend at least two hours completing it. Particularly for the four of us, who have known each other for years and years, it takes a major effort just to think of all the panels we've served on together. It's fine for the last five years; those come to mind and are on our records. Dan, you started in the late 1980s. I started in 2001. Mark, when was your first arbitration?



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**Gurevitz:** Probably sometime in the late '90s.

**Mack:** So, to have detailed records going back 20 years is a lot to ask of an arbitrator or an umpire. I think what's important, though, is we really strive to do our best. Those people who take it seriously and spend two hours filling out the form, they're doing the right thing as far as the form is worded.

**Hall:** I agree with what you both said. I think that the current umpire questionnaire form is overkill. I do think there are ways it could be streamlined in a sensible way and still provide the parties with the necessary information and assurances about the potential umpire candidates.

**Snider:** It sounds like we've identified the next thing for one of the committees to address.

**Gurevitz:** Lots of volunteers.

**Snider:** Please give us your final thoughts on the role of ARIAS as we celebrate its 25th anniversary.

**Mack:** ARIAS is wonderful as an organization because it evolved as the needs of parties and needs of counsel presenting the disputes before arbitration panels evolved. The number and size of disputes, as both Dan and Mark alluded to, have changed vastly in the past 25 years. I mentioned life reinsurance disputes at the beginning of this call, and I know Debra mentioned she's currently an umpire in one of them. It's not unusual for one of those arbitrations to range between \$50 million to \$500 million. Of course, we've had a number of property/casualty disputes that have had many, many millions of dollars as well. So the importance of ARIAS to

professional dispute resolution just continues throughout the decades, and I'm proud to be a part of it.

**Gurevitz:** The way I think about it is, if ARIAS no longer existed tomorrow, what would we do? And I'm not sure we'd have a good answer for that. That alone says that ARIAS continues to have great relevance in this area. I also want to go back to 25 years ago and more, when ARIAS was first being formed. We weren't sure there would be enough people interested in ARIAS that it would take off, so to speak, and become the viable organization that it has become. We weren't sure that we would get enough people to pay for membership in ARIAS so that we would be able to offer all of the things that we wanted to offer to the industry. So there are a lot of variables and a lot of unknowns. But the fact that we're looking back on 25 years, I think, by itself, says it all.

**Schmidt:** I think that all of us here, and those who aren't on this call who participated in creating ARIAS, should be proud parents. Yet, as all of us who are parents know, your responsibilities as a parent, your concerns and even worries as a parent, never end.

I think ARIAS has some challenges. Mark mentioned the high-water number of arbitrators certified—I think it was at 351. And now we're 150-something. I don't know what the membership is. I don't know who is a member, who's not, whether it's growing or not. I think the current board and the officers, they certainly have challenges ahead. And the people on this call, obviously, continue to try and help the organization in any way we can. But it's really the next generation or two that will be carrying it forward.

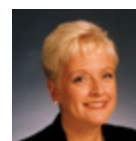
**Hall:** I agree with everything that all three of you said. I think it's great to look back after 25 years, and we should all be proud. A lot of people who are not on this call who worked very hard should be proud of the organization, because it's not only viable, it's essential to reinsurance arbitration as an organization. As Mark said, where would we be if it didn't exist?

Equally, as Dan says, the current board and staff do face some challenges ahead. I think that ARIAS has been very successful in accomplishing some of the most important things that the industry sought to do in establishing ARIAS, expanding the pool of arbitrators, providing education and transparency—all of which contributed to the credibility of the arbitration process within the industry.

This roundtable discussion was reported by Aline Akelis, Winter Reporting, and later edited for clarity and length.



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