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Welcome!

On behalf of the Education Committee of the Massachusetts Reinsurance Bar Association, welcome to the Winter/Spring 2010 edition of the MReBA *Cover Notes*. This quarter's edition of *Cover Notes* is rich with content - read on to enjoy Mike Aylward's case note on *Boston Gas* which made new law in Massachusetts on allocation; Alex Henlin's piece on the growing phenomenon of attorney fee awards in arbitration; and Mitchell King's profile of Andrew Maneval. As always, our Calendar lists upcoming events of interest, including MReBA meetings. As we wrap up our first year, we also extend an invitation to all of MReBA's members to join one of our many active committees. You will find a description of each committee in this Issue of *Cover Notes* and how to join. We want your ideas and hope to see many new faces at our meetings and on our committees.

Congratulations go out to the MReBA Symposium Committee for its very successful first annual MReBA Symposium. As many know, the symposium was held at the Harvard Club in October and drew almost 100 attendees from the bar and industry - an impressive feat for a new bar association! On March 10, 2010, MReBA will hold its [Spring 2010 Cocktail Reception](#) at the Hampshire House in Boston. Come hear our speaker, Will Fawcett, and network with colleagues from both industry and the bar.



Our work on MReBA's Education Committee begins where the work of MReBA's Newsletter and Symposium Committees ends. At most MReBA meetings, the Education Committee sponsors a client or attorney presentation on an important legal or practice issue followed by collegial discussion over lunch. Lunch is free, and the discussion is lively. Come learn with us. Our next monthly meeting is at 12:30 p.m. on Wednesday, February 10, 2010 at Morrison Mahoney LLP and will feature a presentation by Andrew Maneval, the subject of this issue's Profile spotlight. Partners, associates and corporate counsel practicing or interested

in the reinsurance field are all welcome. Attendance arrangements for the February meeting can be made by contacting John Harding via e-mail at jharding@morrisonmahoney.com.

Education and collegiality are hallmarks of the MReBA experience, but our interest in education extends beyond the confines of our membership. Following on the success of MReBA's October 2009 Symposium and our upcoming Cocktail Reception, planning is underway to add a new webinar program that will complement our annual symposia and monthly lunch meeting programs. Education, collegiality, and innovation - something good is always happening at MReBA! Join us!

You're Invited!

You are invited to MReBA's Spring 2010 Cocktail Reception!



For more information, please [click here](#).



[Join Our Mailing List!](#)

MReBA Calendar

[MReBA Cocktail Party](#)

March 10
4:30-7:00 pm
Speaker: William Fawcett,
Flagstone Reinsurance
Location: [Hampshire House](#)

MReBA Meetings

February
Wednesday, February 10
12:30 pm
Focus: ARIAS Arbitrator and
Umpire Andrew Maneval will
reflect on the arbitration process
Location: [Morrison Mahoney
LLP](#)

March
Wednesday, March 10

[Jim Harrington](#)

Chair, MReBA Educational Committee
Partner, Robins, Kaplan, Miller & Ciresi L.L.P.
jsharrington@rkmc.com

We're Looking for a Few Good Reinsurance Lawyers...

MReBA is entering its second year, and we're putting together committees for 2010. We'd love to have you! Please look over the committee descriptions by clicking on the link below and email the corresponding committee chairperson if you have questions, ideas or, most of all, if you'd like to be involved!

Current MReBA committees are: Education; Newsletter; Website and Database; Membership; and Symposium. For more information, please [click here](#).

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Industry Profile: Andrew Maneval - A Broad Portfolio Yields a Balanced View

By [Mitchell King](#), Prince Lobel Glovsky & Tye LLP



With over 30 years of experience as a lawyer, business executive and independent arbitrator and umpire, Andrew Maneval blends leadership, negotiating, and advocacy skills with a deep knowledge of the insurance industry, making him one of the bright lights in the reinsurance arbitration business. Having worked with Andrew as co-counsel, client and arbitrator since 1987, it has been my pleasure to chronicle his journey for our members and readers.

A Lawyer First

Andrew and I first met in 1987, working together as co-counsel on disputes involving a number of complex reinsurance programs. He was an up and coming young partner at the New York firm of Mound Cotton & Wollan, specializing in property insurance and reinsurance. Our first encounter was mildly rocky when I called to introduce myself and he corrected me that his name was "Andrew" and not "Andy;" once I established myself as "Mitchell" and not "Mitch," it was pretty smooth sailing. Working with Andrew involved a steep learning curve. While we were both well-versed in the then sparse body of reinsurance law, it was his deep understanding of the structure, custom and practice of the reinsurance business, and his mastery of the highly complex reinsurance programs that we were working with, in particular, that set him apart within the legal team. As time went on, Andrew's understanding of the business of reinsurance did more than make him a strong advocate and successful law firm partner. In 1993, The Hartford enticed Andrew to relocate to Boston as an executive with The Hartford's First State Ins. Co., New England Reinsurance Corp., and New England Ins. Co., where his initial responsibilities included managing disputes, commutations and negotiations on inward and outward reinsurance programs.

The Hartford Years

Andrew ultimately had many different responsibilities for The Hartford. As President of ITT New England Management Company (later renamed Horizon Management Group), he was responsible for the run-off of the First State and Nerco business. This later extended to include responsibility for the Excess Insurance Co. Ltd. and Hart Re's domestic and international business. These positions gave him wide-ranging perspective and experience regarding the run-off of insurance and reinsurance portfolios and companies.

Andrew rounded out his own portfolio as an executive during his last four years at The Hartford, during which he was responsible for reinsurance collections and

3:15 pm (note time change)
Focus: Quarterly Business Meeting
Location: [The Hampshire House Hotel](#)

April

Wednesday, April 7
12:30 pm
Focus: Annual Meeting of the Corporation, Election of Officers
Location: [Ropes & Gray](#)

General Interest

[Cat Modeling Conference 2010: Probabilities and Possibilities](#)

February 9-11
Orlando

[2010 NCOIL Spring Meeting](#)

March 5-7
Isle of Palms

[Captive Insurance 2010 Claims Conference](#)

March 7-9
Orlando

[RAA: Basics of Property and Casualty Reinsurance](#)

March 10-13
Chicago

[NAIC Spring Meetings](#)

March 25-28
Denver

[Opening Day: Major League Baseball](#)

April 4
Fenway Park

[RIMS Annual Conference](#)

April 25-29
Boston

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Committee Chairs

commutations for the company generally, in both its run-off and ongoing segments. He describes this broader platform, which included recent and current business, as a welcome change after spending over a decade in the arcane, pre-1986 world of "APH", MGA programs, and line slips.

After leading this unit and building structures and procedures for managing collections and commutations for the future, Andrew decided to set out on his own, forming the Chesham Consulting, LLC firm. Most of his work has been as an insurance/reinsurance industry arbitrator or umpire, but he also has now been qualified to arbitrate FINRA disputes, and to serve as a mediator in New Hampshire state courts.

Industry Leadership - AIRROC

Andrew has always been genuinely passionate about his work, with particular focus on improving professionalism and procedures in the insurance industry. One labor of love which evolved out of his extensive experience in managing run-off operations was his involvement with the Association of Insurance and Reinsurance Run-Off Companies ("AIRROC"). In 2000, Andrew and several other run-off professionals began a forum for discussing issues confronting the newly emerging and developing industry. These efforts did not gain immediate traction because of lack of organizing resources, but the interest remained strong. When the Reinsurance Association of America ("RAA") formed (and then rejected) a "Run-Off Section" of their association, the old "forum" group, aided significantly by Debra Hall (of the RAA) and Trish Getty (who became the Executive Director), set up AIRROC.

Andrew was honored to become AIRROC's founding Board Chairman, a role that lasted for three years. Under Trish Getty's able stewardship, AIRROC grew and found an important niche for risk-bearing entities in any degree of run-off, including insolvent estates, companies being managed to a professional and successful dissolution, and major multi-line companies managing some lines or portfolios of business off their books. Under Andrew's leadership, AIRROC developed a quarterly educational program and the Annual Commutation and Networking Convention which has become a significant and productive industry event for companies from all over the world.

Fair and Balanced

As this brief sketch of his experience indicates, Andrew approaches the reinsurance business with a broad perspective. He has been an attorney specializing in insurance and reinsurance. He has managed assumed and ceded operations, claims and commutation units, and legal and actuarial activities. He has overseen back office, line, and automated billing and collection functions. He has been responsible for UK and European companies. His work has involved run-off and ongoing operations, and he has had corporate responsibility for negotiations, ADR, litigations and arbitrations.

Experience is, of course, a critical credential, but industry colleagues-including adverse parties-also recognize and value Andrew's intellect, insight and integrity which make him a highly effective arbitrator and a balanced and fair-minded umpire. Beginning during his tenure at The Hartford when he sat on numerous arbitration panels requiring "active" executives, through his present work as a full time arbitrator and umpire, Andrew has now had experience in over fifty arbitrations, as an Umpire or an arbitrator, including some of the largest disputes in the industry.

Andrew has always enjoyed the sense of community that exists in the reinsurance business. This "community" of reinsurance professionals is a very long-standing and honored tradition, but it has many new features. Andrew was very pleased to have been asked to participate in the first conference put on by MReBA recently in Boston. He sees MReBA as fostering precisely the type of professionalism and collegiality that he has worked to increase throughout his career. His membership in our association is just one more way in which Andrew acquires and adds to his perspective on the world of reinsurance.

Mitchell King can be reached at mking@princelobel.com.

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Implications of Recent Allocation Ruling For Reinsurance Claims

Newsletter:
[Susan A. Hartnett](#)

Symposium:
[Wm. Gerald McElroy](#)

Education/Meetings:
[James S. Harrington](#)

Web/Database:
[Steven J. Torres](#)

Membership:
[Stephen M. Rogers](#)

By [Michael F. Aylward](#), Morrison Mahoney LLP

Long-tail claims—those involving claims for bodily injury and property damage arising out of exposure to asbestos, pollutants, products and various alleged toxins—have been responsible for some of the most contentious disputes between cedents and reinsurers of the past decade. Reinsurance litigation ranged from the First Circuit's bad faith opinion in *Commercial Union Ins. Co. v. Seven Provinces Ins. Co.*, 27 F.3d 333 (1st Cir. 2000) to the recent "follow the settlements" ruling of the House of Lords in *Lexington Ins. Co. v. AGF Ins., Ltd.*, UKHL 40 (July 30, 2009). The difficulty and frequency of these disputes mirrors both the amount of money involved and the general sense that U.S. courts are forcing insurers to pay losses well beyond those contemplated in the insurance contracts. Now, the recent opinion of the Massachusetts Supreme Judicial Court in *Boston Gas Co. v. Century Ind. Co.*, 910 N. E.2d 290 (Mass. 2009) may open a new front in the presentation and resolution of such claims.

Boston Gas is hardly the first major appellate opinion to construe allocation issues in the context of long-tail claims. Indeed, over twenty such opinions already exist, with insurers holding a slight majority in the overall count. What is striking about *Boston Gas*, however, is not its determination that such loss should be pro-rated on a "time on the risk" basis but its emphatic refusal to constrict the period of allocation to ignore years where insurance is unavailable for such losses.

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

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ReliaStar Life v. EMC National: Sanctioning Bad Faith in Reinsurance Arbitrations

By [Alexander G. Henlin](#), Robins, Kaplan, Miller & Ciresi LLP

It is no secret that reinsurance arbitrations can be expensive. Reinsurance disputes, by their nature, tend to involve large losses on the part of the ceding carrier. Resolving the dispute typically involves selecting arbitrators, retaining outside counsel, and then working through the procedures designated by the reinsurance agreement. What if, at the conclusion of those arbitration proceedings, the panel simply decided to award the prevailing party its attorneys' fees and arbitration costs, without explanation?

Second Circuit Upholds Fee Award Citing Inherent Authority to Sanction

The MReBA Education Committee's first report explored this issue at the group's November 2009 monthly meeting, sparking a lively discussion about the limits of arbitral authority and the soundness of the arbitration process itself. The starting point for the discussion was *ReliaStar Life Ins. Co. v. EMC National Life Co.*, 473 F. Supp. 2d 607 (S.D.N.Y. 2007), 564 F.3d 81 (2d Cir. 2009). There, the Second Circuit affirmed an arbitration panel's award of \$3.85 million in costs and fees to the prevailing party, despite language in the reinsurance agreement that seemingly prohibited such an award.

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