

MReBA Cover Notes --

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Winter 2012

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Fourth Annual Symposium "A Fresh Perspective . . ." - A Success

The Massachusetts Reinsurance Bar Association held its fourth annual Symposium at the Harvard Club of Boston on October 11, 2012. The topic was "A Fresh Perspective. . ." Over 100 insurance professionals and attorneys from across the United States attended the exciting day-long program. The December issue of our newsletter has traditionally provided a recap of the Symposium, and this year's edition is no exception.

Adam Doherty highlights the keynote address, with its speaker, **Melissa Salton**, Chief Risk Officer and Senior Vice President of Munich Reinsurance America, Inc., as she shared her insights on Enterprise Risk Management.

Christine Phan's article offers a detailed summary of our first panel of industry insiders that discussed the issues that frequently arise in connection with reinsurance audits.

Steve Torres' article analyzes the second panel, a no-holds barred discussion of the realities of effectively presenting your reinsurance dispute to an arbitration panel.

Alex Henlin offers a useful summary of the interactive workshop's lively discussion concerning the topics addressed by the reinsurance audit panel.

John Love rounds out the issue with a summary of remarks made by the final panelists who compared and contrasted current regulatory efforts domestically and internationally.

Copies of the Symposium presentations and related materials and pictures will soon be available in their own section on MReBA's website.

This year's Symposium would not have been such a success without the tireless efforts of the Symposium Committee: Nicholas C. Cramb, John T.

MReBA

Massachusetts Reinsurance
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MReBA Calendar

MReBA Meetings (lunch is served):

January 9, 2013 at 12:30 p.m.

[Edwards Wildman Palmer LLP](#)

Boston, MA

Focus: Educational Meeting

February 13, 2013 at 12:30 p.m.

[Robins, Kaplan, Miller & Ciresi, L.L.P.](#)

Boston, MA

Focus: Educational Meeting

March 13, 2013 at 12:30 p.m.

[Morrison Mahoney, LLP](#)

Boston, MA

Focus: Business Meeting

General Interest

[ARIAS Annual Meeting](#)

New York City

December 17, 2012

Boston Beanpot Hockey

Tournament

Boston Garden

February 11, 2013

[RAA Cat Modeling](#)

[Conference](#)

Orlando, FL

February 12-14, 2013

Harding, John N. Love, Wm. Gerald McElroy, Jr., Steven Morris, Michael P. Mullins, Anne-Marie Regan and Robert Whitney. A special thank you also goes to our keynote speaker, panel members and participants for their hard work and insight.

I would also like to extend thanks to the sponsors who graciously enhanced our Symposium offerings: Matson Driscoll & Damico; Zelle, McDonough & Cohen LLP; Alan Gray Inc; FTI Consulting; Insurance Resolutions and RICOH (formerly IKON).

Please enjoy this issue of the newsletter and, on behalf of the Symposium Committee, we look forward to seeing you at next year's Symposium.

Greetings from the Massachusetts Reinsurance Bar Association! The newsletter committee has been busy over the hot summer months and is pleased to offer this issue of MReBA's quarterly newsletter.

Rhonda L. Rittenberg, ASLI

2012 Symposium Chair
Lexington Insurance Company
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Scenes from the Symposium



NAIC Spring National Meeting

Houston, TX
April 6-9, 2013

Red Sox Home Opener

Fenway Park
April 8, 2013

MReBA Spring Reception

Boston, MA
TBD

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Keynote Speaker Addresses Enterprise Risk Management Issues

By [Adam Doherty](#)
Prince Lobel Tye LLP

MReBA was delighted to present [Melissa Salton](#) as the Keynote Speaker at its fourth annual Reinsurance Symposium. Ms. Salton is currently Chief Risk Officer and Senior Vice President of Munich Reinsurance America, Inc. ("Munich Re") and a member of its Risk Management Committee. In her position at Munich Re, Ms. Salton is responsible for the company's risk identification and modeling, risk governance, risk reporting, risk control, and business continuity planning functions.

Ms. Salton provided the audience with an overview of the current regulatory environment and Munich Re's approach to Enterprise Risk Management (ERM), which Ms. Salton defined as "an enterprise-wide discipline by which risks from all potential sources are identified, measured, exploited, controlled, and monitored for the purpose of achieving [the company's] risk management objectives."

As described by Ms. Salton, risk management should be designed to align with a company's business objectives and also be guided by certain principles deduced from regulatory requirements. These principles include, among others: risk transparency, which enables senior management to understand the risks and adequately balance them against business goals; risk management convergence, which avoids overlaps and inconsistencies by standardizing risk management procedures across groups of companies; and proportionality, focusing risk management on those significant risks that could potentially have a more sustained negative impact on the company. With these principles in mind, Ms. Salton outlined Munich Re's approach to identifying and managing risk, segregating its risk taking and control activities and implementing the company's strategic risk management framework.

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

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Panelists Offer Differing Viewpoints on Reinsurance Audits

By [Christine Phan](#)

[Andrew Costa](#) of Devonshire Group, Alexandra Furth of Liberty Mutual, and Mitchell Gibson of Swiss Re broadly commented on the respective perspectives of an auditor, a cedent, and a reinsurer relating to reinsurance audits at the Fourth Annual MReBA Symposium. [Jerry McElroy](#) of Zelle Hofmann Voelbel & Mason moderated the panel.

MReBA member [John Matosky](#) of Prince Lobel Tye set the stage for the panel dialogue by discussing the purpose and scope of reinsurance audits. Reinsurers audit or examine the books and records of cedents for many reasons, including to set reserves and to obtain information about the underlying claim. One fundamental point of contention between reinsurers and cedents is whether an audit is a contractual right to be exercised by the reinsurer, or an obligation that the cedent must comply with. A reinsurer, it was remarked, often feels that an audit is a right stemming from the "access to records" clause contained in reinsurance certificates, while a cedent typically takes the view that an audit is an obligation.

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A View From the Panel: Hot Topics in Arbitration

By [Steven Torres](#)
Torres, Scammon & Day, LLP

The mid-morning panel at this year's MReBA Symposium provided an insightful glance into the minds of current arbitrators and umpires. The session featured panelists [W. Mark Wigmore](#), [Jonathan Rosen](#) and [Eugene Wollan](#) with [John Harding](#) moderating the lively discussion. The panel shared their knowledge, wisdom and practical advice on a wide array of topics, with a focus directed to three "hot button" issues currently at the forefront of reinsurance practice: (i) panel neutrality - does it exist and is it a good idea?; (ii) the role of fee and cost awards; and (iii) the role of "custom and practice" in reinsurance arbitration, including the issue of who determines what qualifies as "custom and practice."

As one panelist remarked, the topic of arbitrator neutrality is an issue that comes up at every reinsurance conference. Yet despite the frequent debate as to whether to move away from party-appointed arbitrators and towards a truly neutral panel, there are indications that the actual participants in reinsurance arbitrations prefer the current process and its use of party-appointed arbitrators. As one panelist observed, the option to assemble an entirely neutral panel through the "Neutral Selection Procedure" offered by ARIAS has been generally ignored. The reason for that, the panelist

suggested, is the tension between a party's recognizing the abstract value of a process that is inherently fair and that party's need to win each particular case. And that need to win one's case, according to another panelist, renders a litigant unwilling to relinquish the perceived advantage of being able to select its party appointed arbitrator.

One panelist suggested that the clamoring for neutrality may come from arbitrators themselves - not parties - because it would be easier for the arbitrators if they could feel truly neutral. Parties tend to view their seeking to assemble a panel that would be receptive to their arguments as being no different from selecting a particular court or judicial forum that they believe will be more receptive to their arguments. Summing up the recurring dialogue on a more objectively neutral system, one panelist noted that people have been debating the benefit of neutrality for the last twenty years and are likely to still be doing so twenty years from now.

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Interactive Workshop Participants Examine Thorny Issues Relating to Reinsurance Audit Rights

By [Alexander Henlin](#)
Edwards Wildman Palmer LLP

Attendees at this year's MReBA Symposium spent the first part of the afternoon session participating in the interactive workshop. Questions raised during the morning session about the scope of reinsurance audit rights found practical application in the context of hypothetical claims under three bond insurance policies. The workshop consistently highlighted areas where tension can develop between cedents and their reinsurers, even when the claim may appear to be routine.

The workshop was moderated by MReBA members [Nicholas Cramb](#), [Adam Doherty](#), [Bill Erickson](#), [Michael Mullins](#), and [Anne-Marie Regan](#). The hypothetical focused on four series of bonds that had been issued by an economically-distressed municipality. Echoing the LIBOR scandal that has been in the news these past several months, the bonds' interest payments were tied to a floating rate that reset dramatically when news broke that various banks had colluded to keep the rate artificially low for a number of years. Among those banks whose benchmarks were used to set the rate was the largest single purchaser of the municipality's debt. The sudden increase in interest rates on the bonds caused the municipality to default.

The default triggered certain insurance coverage that the municipality had purchased for its three later series of bonds. The issuer of the bond insurance, at the insistence of the bank that had purchased the lion's share of the municipal debt, had included in its policies a non-standard fraud exclusion that waived all defenses based on the fraud of any party other than the municipality.

The bond insurance issuer, in turn, ceded a 25% quota share of its policy for one of the bond series to a first reinsurer via a facultative certificate. For the other two series, the bond insurance issuer had entered into an excess-of-loss treaty with a second reinsurer. The treaty reinsured all of the cedent's policies written on the "customary form," to which the cedent could make "reasonable modifications" without the reinsurer's approval. Both the facultative certificate and the reinsurance treaty contained independent

terms, conditions, and exclusions about receiving notice of a claim from the cedent, dispute resolution, access to records, and restrictions on coverage in the event of fraud.

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Regulatory Specialists Provide the Latest Word from the U.S., U.K. & E.U.

By [John Love](#)
Robins, Kaplan, Miller & Ciresi, L.L.P.

Daniel Schelp (Managing Counsel - NAIC Reinsurance Task Force), [Chris Finney](#) (Edwards Wildman Palmer - London), and [Barry Leigh Weissman](#) (Edwards Wildman Palmer - Los Angeles and New York) compared and contrasted current regulatory efforts in the U.S. and the E.U./U.K., focusing heavily on collateral requirements. Led by moderator [John Love](#) (Robins, Kaplan, Miller & Ciresi, L.L.P.), the panel began with a description of the alphabet soup of insurance-related regulatory bodies: the National Association of Insurance Commissioners ("NAIC"), the Federal Insurance Office ("FIO"), the European Insurance and Occupational Pensions Authority ("EIOPA"), the Financial Services Authority ("FSA"), and the International Association of Insurance Supervisors ("IAIS"). In the U.S., insurers and reinsurers are subject to regulation by the Insurance Commissioner/Superintendent in each of the 50 states. The NAIC facilitates coordination of these 50 regulatory authorities and proposes model acts and regulations. The FIO remains in its infancy, having only two or three full time people on its staff. The FIO was established in 2010 to monitor all aspects of the insurance industry and identify issues or gaps in regulations that could contribute to a systemic crisis. It is not a regulator, but was designed to coordinate and develop federal policy.

In the E.U., the goal is a more unified regulation of insurers and reinsurers throughout its 27 member states. The European Parliament, the Council of the European Union, and the European Commission all play a role in the regulation of insurers and reinsurers. EIOPA advises the European Parliament and the Council of the European Union on regulatory efforts such as Solvency II. Supervision, implementation, and enforcement of such regulations are carried out in large part by bodies within each of the member states, such as the FSA in the U.K.

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

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