


IRLA and AIRROC Reinsurance Arbitration Workshop Highlights

Munich, Germany | October 4, 2016

BY: ROBIN C. DUSEK



 On October 4, 2016, The Insurance & Reinsurance Legacy Association (IRLA) and The Association of Insurance and Reinsurance Run Off Companies (AIRROC) came together in Munich, Germany to present a day-long exercise to educate the European audience about allocation issues that arise in reinsurance arbitration, and how those issues might be viewed by an arbitration panel.

The day kicked off with a panel discussion covering recent developments in the US, UK, and Germany relating to allocation and number of occurrences issues. Moderated by Joe McCullough of Freeborn & Peters LLP (“Freeborn”), Bob Baratta (Freeborn), Nick Bradley of Pinsent Masons, and Prof. Ina Ebert of Munich Re presented the legal issues of the various jurisdictions. The panel was joined by Robin Dusek (Freeborn) who explained how the legal standards in the US relating to allocation and number of occurrences may play out in the insurance coverage disputes between the National Football League and its various insurance carriers relating to the settlement the league entered into with former American Football players over what they allege was the league’s role covering up the link between playing American Football and developing Chronic Traumatic Encephalopathy (“CTE”).

The relevance of CTE to the day’s events was explained in more detail by Robin Dusek before she and Dr. Steffen Ernemann of BLD Bach Langheid Dallmayr (“BLD”) presented a case study to the audience. The underlying claim of the hypothetical focused on a fictional football/soccer player who played for a number of years and, after retiring, began showing symptoms of CTE. The player sued the leagues he had played in because they had not warned him of the dangers of CTE nor did they have concussion protocols in place.

Following the presentation of the hypothetical (which participants also had a copy of), the audience watched a mock negotiation session between the ceding company and the second-layer reinsurer impacted by the settlement. The reinsurer complained that the settlement was improperly allocated to just three out of seven years of coverage and also complained about late notice. Tom Taylor (AXA Liabilities Managers USA) played the role of the cedent head of reinsurance collections, with Joe McCullough playing the role of the cedent’s lawyer. Dan Maranger (Munich Re) played the reinsurer claims head, while Dr. Theo Langheid (BLD) played the reinsurer’s lawyer.

At the end of the day, participants had an opportunity to discuss the similarities and differences between American and European arbitrations and came away better understanding the process in different jurisdictions.

When negotiations did not lead to a settlement, the parties proceeded to a very much abbreviated mock arbitration. First the parties presented the arbitration as if it was a US proceeding. After, they presented as if the arbitration was a European proceeding.

Jim Boland and Bob Baratta (both of Freeborn) argued in front of a US arbitration panel consisting of Paul Thomson (Reassess Inc.) as the umpire and Kathy Karnell (Transatlantic Re Co.) and Mark Karnell (Endurance Specialty Holdings) as the arbitrators. Boland and Baratta argued each side of the case, following the arguments, the Panel deliberated in front of the audience, so that the audience could watch a deliberative process. Ultimately the Panel reached a decision where they took issue with the allocation and determined it should be spread across the seven years of coverage provided by the insurer. However, the American panel did not disturb the settlement, nor give the reinsurer any relief due to the late notice.

Following the US arbitration panel's deliberations, Katrin Schumacher (Hannover Re) and Dr. Theo Langheid argued to the European Panel. For this part of the exercise, Andreas Stahl (Allianz Group) played the role of umpire. Paul Moss and Nicholas Roenneberg were the party arbitrators. Again, Schumacher and Langheid argued the case, so that the audience could compare and contrast an American presentation versus a European presentation. Following that argument, the European panel deliberated in front of the audience, similarly concerned about the allocation, but determining that the player's entire soccer/football career should be considered for allocation purposes and that he was actually exposed to nine years of conditions causing his injury. Thus, the European panel allocated the settlement over nine years.

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ABOUT THE AUTHOR:



Robin C. Dusek

Partner

311 South Wacker Drive
Suite 3000
Chicago, IL 60606
(312) 360-6328

rdusek@freeborn.com

Robin Dusek is a Partner in the Litigation Practice Group and a member of the Insurance & Reinsurance Team. Robin concentrates her practice in Insurance/Reinsurance and related client counseling. She represents cedents, reinsurers and pools in arbitrations and litigations throughout the United States.

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CHICAGO

311 South Wacker
Drive
Suite 3000
Chicago, IL 60606
(312) 360-6000
(312) 360-6520 fax

SPRINGFIELD

217 East Monroe Street
Suite 202
Springfield, IL 62701
(217) 535-1060
(217) 535-1069 fax

RICHMOND

411 East Franklin Street
Suite 200
Richmond, VA 23219
(804) 644-1300
(804) 644-1354 fax

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