

## *Treaty Tips*

### Nailing Down the Arbitration Process

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A companion article in this section demonstrates that appropriate focus on the arbitration provisions of a reinsurance agreement can do much to advance timely and efficient dispute resolution. For example, the dispute resolved in the Allstate/Liberty Mutual case could have been avoided had the parties addressed consolidation in their agreement. Similarly, the parties in the Munich Re/National Casualty matter could have provided contractually for contingencies in the event the “act-as-one” mandate was not honored by all reinsurers.

The benefits of addressing reasonably foreseeable events apply equally to the most basic elements of arbitration, such as selection of the arbitration panel. In *Northwestern National Insurance Co. v. Insko, Ltd.*, the reinsurance agreement provided that each party would appoint one arbitrator, with the two party-appointed arbitrators then selecting a neutral umpire. The agreement did not prescribe a method for replacing an arbitrator. When reinsurer Insko’s arbitrator resigned, Northwestern petitioned the court to appoint an ARIAS-certified arbitrator to fill the void. Two weeks later, however, Insko gave notice that it had appointed an ARIAS-certified arbitrator of its own choosing. Although the court recognized that Section 5 of the Federal Arbitration Act authorized it to appoint a replacement arbitrator when an arbitration agreement does not specifically provide a method for doing so, it denied Northwestern’s petition. The court concluded that allowing Insko to appoint a replacement was consistent with the intent of the reinsurance agreement and the underlying goal of arbitration by a mutually acceptable panel. The court also determined that manipulation of the arbitration process was not a concern under the circumstances presented.

This end result and underlying reasoning are sound. Nevertheless, one must recognize that the time and expense of this litigation could have been avoided had the reinsurance agreement included a simple sentence addressing the method for selecting replacement arbitrators.

