



SOCIETY OF ACTUARIES

Article from:

Reinsurance Section News

March 2003 – Issue 51

Reinsurance Arbitration Survey - 1998-2001

Future Trends in a Shrinking Marketplace

presented by Joseph F. Kolodney

The following survey was done in the middle of 2002 and reflected arbitration activity in the period from 1998 through 2001. As you will note, the last survey on this topic covered the years 1994 through 1997. The amount of reinsurers responding to the survey questions have steadily diminished. There were 26 respondents in the 1990-1993 and 24 in the 1994-1997 survey. For the 1998-2001 survey, 21 reinsurers were approached and 15 responded.

The diminution of participating reinsurers can be attributed to two things; first the wave of acquisitions of reinsurance companies/divisions by other reinsurers, and second, the hesitancy of some reinsurers to even acknowledge that they may be involved in any arbitration. To those reinsurers who have responded, we are appreciative of the effort they made, especially those who elaborated on the reasons and outcomes of the arbitrations.

As a matter of information, we thought it might be interesting for you to see which reinsurers have “disappeared” from the scene, thus eliminating capital and capacity to support primary companies’ new business and financial management practices, and who their acquirers were. This is important inasmuch as the current climates, both economic and risk, has been driving regulators to more closely scrutinize the recoverability of reinsurance ceded, security of reinsurers and, a trend which has become more prevalent in the United Kingdom, of encouraging strategic diversification so that no ceding company will be overly dependent on any one reinsurer from both a credit and risk aggregation point of view. We suspect that at some point, this could also evolve into an audit comment as well.

1. Swiss Re’s acquisition and/or consolidation of the following companies: Mercantile & General, Life Reassurance Corp., Lincoln National Life Re, Union Re, Unione Italiana Riassicurazione, and Bavarian (Bayerische) Re.
2. Munich Re’s acquisition of CNA Life Re’s operation.

3. ERC’s acquisition of both American United Life’s and Phoenix Mutual Life’s Life Re operation.
4. AXA Corporate Solutions Life Reinsurance is, as we understand, now in “run-off” and is no longer accepting new treaties.

So, in total, ten reinsurance “players” of varying capacity and economic strength no longer exist. Both the Gerling Life Re companies and Annuity & Life Re have recently had to deal with capital issues in order to maintain their presence in the life reinsurance market.

Who is there to fill the void? In addition to the remaining life reinsurers, two non-U.S. companies, XL Ltd. and Ace Tempest, have started life reinsurance operations as niche players without offering the plethora of services or range of support that multi-function reinsurance providers such as Swiss, Munich, GeneralCologne Re, RGA, Transamerica and ERC (whose owners, GE, announced their intent to dispose of GE’s reinsurance operations and have formally put the life re company up for sale) are used to providing on both a national and international basis. In addition, Allianz, Hannover, ING Re, SCOR, BMA, Scottish Re, Optimum Re and specialist financial reinsurers (other than their role of retrocessionaires) such as London Life, ManuLife and Sun Life are still very much in business. Bermuda companies, e.g., XL, Ace, Hampton and Max Re are focusing on specialist areas as are certain banking institutions that have their own reinsurance operations.

The very diminution of the “professional” life reinsurance marketplace and the nature of the business segments pursued by some of the new players is creating an environment that is now breaking down into service providers and non-service providers. Ceding companies will have to recognize that (to paraphrase Alan Greenspan), the “irrational exuberance” in the life reinsurance market in the ‘90s is being dampened by the economic realities manifested in 2000, 2001 and 2002. There is an infinitesimal market, compared to what existed in the past, for certain kinds of accident & health business. Benefit

continued on page 26



Joseph F. Kolodney is managing director at Aon Worldwide in Stamford, Conn. He can be reached at joseph_kolodney@arw.aon.com.

enhancements such as GMDB, GMIB, etc., are realistically no longer available both from a capacity point of view as well as price. Reinsurance support for XXX issues and UL secondary guarantees to age 100 has narrowed to the point of almost lack of availability. Reinsurer pricing is reflecting a more realistic cost for providing services many ceding companies have heretofore taken for granted and on which they have not placed as big an economic value.

On an anecdotal basis, we believe there appears to be an increase in reinsurance arbitrations, which are not truly reflected in the survey. Many of these were entered into in the second-half of 2002, indicating an increasing willingness of both ceding companies and reinsurers to pursue their remedies under the arbitration provision as disputes emerge that have potential negative economic consequences for both parties. The old “Gentleman’s Agreement,” which encouraged dialog among

the parties and helped to avoid a formal arbitration process has become the first casualty on the road to resolution—a road that is definitely not a super highway that will expedite the time to get to a destination—or solution—but a road of heavy traffic, lots of stop and go and some detours.

We believe that with a shrinking market, perceived insufficiency of ROE, continued bifurcation between service and non-service providers, the industry is being confronted with a “new world” as to how life reinsurance will be bought, sold and priced with many more transactions taking on a totally commercial aspect involving hard bargaining and use of leverage by both parties to achieve optimal economic results.

The questionnaire reproduced below follows the format of previous questionnaires. ✍

REINSURANCE ARBITRATION SURVEY

The last survey on the topic was done covering the years 1994 through 1997. Twenty-four reinsurers responded to that survey. In the 1990-1993 survey, 26 reinsurers responded. In the interim period between surveys, several participating reinsurers/reinsurance operations have been acquired. Twenty-one reinsurers were approached to contribute to this current study and 15 responded. The results are recorded below with Column 2 representing current responses and Columns 3 and 4 representing previous responses.

1a. How many times in the past four years (1998-2001) have you demanded arbitration pursuant to a treaty provision?

	1998-2001	1994-1997	1990-1993
Zero	10	20*	21
One	1	2	3
Two		1	2
Three	1	-	-
Four	2	1	-
Nine	1	-	-

*One company resolved through mediation.

1b. How many times in the last four years has the other party to the treaty made a demand on your company for arbitration of a dispute?

Zero	11	12	18
One	1	8	2
Two	2	4	3
Four	1	-	-

2a. How many times in the last four years have you actually arbitrated a matter? That is, how many times have you concluded the arbitration process, complete with a formal decision rendered by the arbitration panel?

Zero	11	20	20
One	2	3	5
Two	2	1	1

2b. How many arbitration proceedings are you currently involved in (as of April, 2002)?

Zero	11	15	18
One	-	7	6
Two	-	2	2
Three	2	-	-
Six	1	-	-
Nine	1	-	-

3. For those cases decided in 2a above, please provide the following information:*

- a) Primary issue
- b) Amount in dispute
- c) Resolution
- d) Whether the solution was satisfactory, very satisfactory or unsatisfactory.

4. For those cases described in 2a above, please provide the following information:**

- e) Primary issue being arbitrated
- f) Amount in dispute

Four reinsurers responded to Questions 3. and 4. The following references the questions and the subset responses for each reinsurer:

- 3a) Reinsurer A. Default in payment of amounts due.
Failure to underwrite/price A&H business.
- Reinsurer B. Recision/Misrepresentation/Nondisclosure.
- Reinsurer C. Treaty interpretation and intent.
- Reinsurer D. (A&H Issue). Was pool manager an agent of fronting company?
What duties did fronting company owe to its retros (i.e., the pool members)?

continued on page 28

3b)	Reinsurer A.	Over \$1 million Over \$10 million
	Reinsurer B.	\$1 million / \$62 million
	Reinsurer C.	\$300,000
	Reinsurer D.	\$10 million (Reinsurer's share)
3c)	Reinsurer A.	Favorable decision to obtain payment of amounts due: rescision of disputed treaty and commutation payment
	Reinsurer B.	Reinsurer ordered to pay: \$96,000 \$46,000,000
	Reinsurer C.	Judgment in reinsurer's favour.
	Reinsurer D.	Pool manager not agent of fronting company Fronting company did not owe duties to pool members (all were equal).
3d)	Reinsurer A.	Satisfactory. Reinsurer satisfied with the decisions. However, the problem arose post-arbitration in enforcing it as a judgment. Opposing side challenged the validity of the award and it is now tied up in litigation.
	Reinsurer B.	Satisfactory, considering facts of dispute and amounts at issue.
	Reinsurer C.	N/A
	Reinsurer D.	Unsatisfactory. Fronting company not liable for underwriting results of Pool manager.
4a)	Reinsurer A.	See answer to 3a.
	Reinsurer B.	N/A
	Reinsurer C.	N/A
	Reinsurer D.	Note the following responses: 1. Number of "occurrences" on September 11. 2. Share of pool. 3. Failure to underwrite and administer claims properly.
4b)	Reinsurer A.	See answer to 3b.
	Reinsurer B.	N/A
	Reinsurer C.	N/A
	Reinsurer D.	Note the following responses: 1) \$15 million 2) \$20 million (Pool) 3) \$10 million (Pool)

The author is the Global Life Reinsurance product group leader for Aon Re Worldwide, the largest reinsurance broker in the world. The life reinsurance Intermediary operation does business in North America and the UK and Europe, having consummated transactions in the United States, England, France, Italy, Spain and the Netherlands.