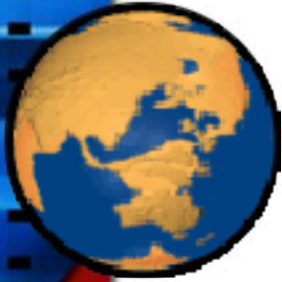




Arbitration *in the Insurance Industry*

A presentation to
Association of Lloyd's Brokers
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Arbitration for Dispute Resolution

- Preferred & traditional method of dispute resolution in the insurance industry



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- Arbitrators are (or should be) generally knowledgeable industry executives



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- Arbitrators are (or should be) generally knowledgeable industry executives
- The industry generally uses a tripartite panel consisting of:
 - ✧ A party-appointed arbitrator chosen by each party to the dispute
 - ✧ A neutral umpire selected by the two party appointed arbitrators or their parties



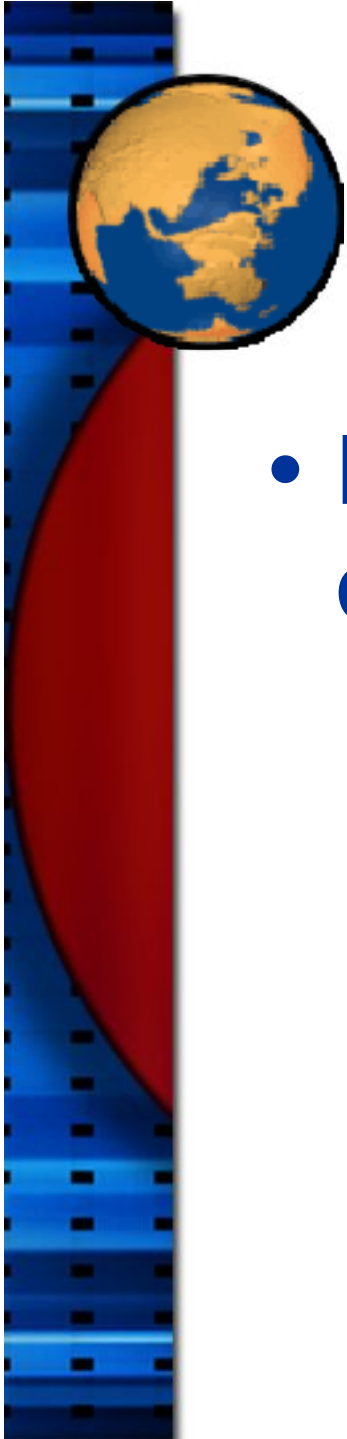
Differences between Arbitration & Mediation

- *Arbitration generally:*
 - ✧ Binding on all parties
 - ✧ A “creature” of contracts
 - ✧ Confidential
 - ✧ Trumps a party’s ability to go to court
 - ✧ Panel made up of 2 party-appointed arbitrators & a neutral umpire
 - ✧ Arbitration hearings are similar to court proceedings but less formal
 - ✧ Process begins when one party invokes the contractual arbitration clause



Differences between Arbitration & Mediation

- *Mediation generally*
 - ✧ Non binding
 - ✧ Not found in contracts
 - ✧ Voluntary
 - ✧ Mutually agreed upon by parties
 - ✧ Mediator typically a single person
 - ✧ A mediator meets with parties together & alone to assist/facilitate parties moving toward an agreed-upon solution
 - ✧ Can occur anytime during a dispute



Arbitration Clauses

- **Found in most insurance contracts between insurers &:**
 - ✧ **Agents**



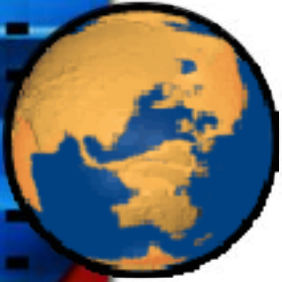
Arbitration Clauses

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 - ✦ Agents
 - ✦ Managing General Agents (MGA's)



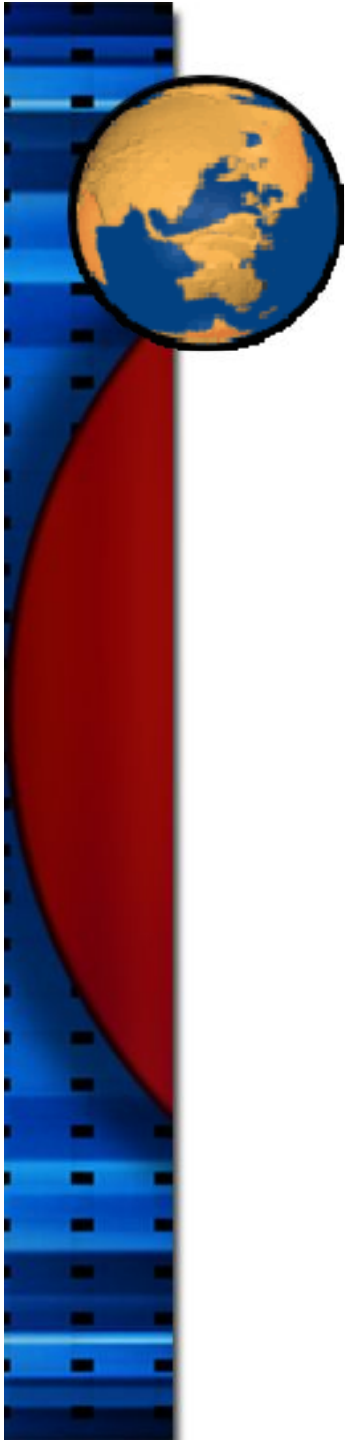
Arbitration Clauses

- **Found in most insurance contracts between insurers &:**
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 - ✧ **Managing General Agents (MGA's)**
 - ✧ **Third Party Administrators (TPA's)**



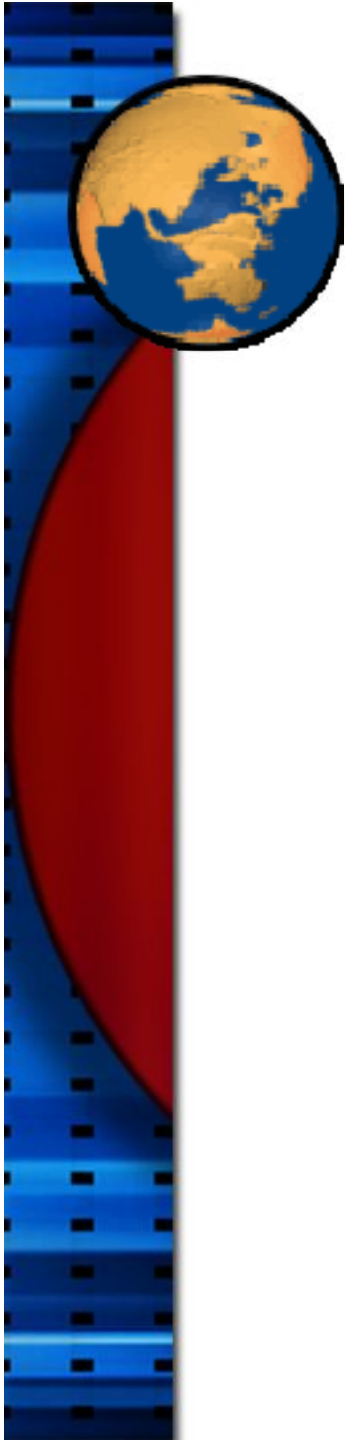
Arbitration Clauses

- **Found in most insurance contracts between insurers &:**
 - ✦ **Agents**
 - ✦ **Managing General Agents (MGA's)**
 - ✦ **Third Party Administrators (TPA's)**
 - ✦ **Reinsurers**



Arbitration Clauses

- **Generally Arbitration Clauses are “boilerplate” verbiage within the “Conditions” of a contract**



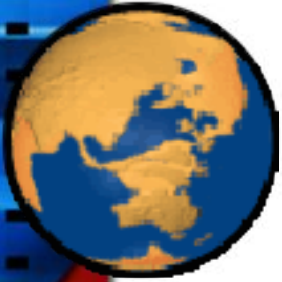
Arbitration Clauses

- Generally Arbitration Clauses are “boilerplate” verbiage within the “Conditions” of a contract
- Most parties to the contract pay *little attention* to the clause when the contract is negotiated



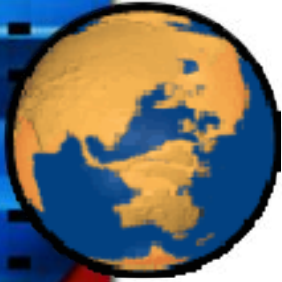
Importance of the Arbitration Clause

- You are giving up your rights to go to a court of law (to appeal); it's FINAL!
- If done correctly, arbitration can save time & expense in a dispute
- Keeps disputes private while maintaining on-going relationship
- With disputes arising more frequently, parties need to know what they are facing
- There may be “bad blood” between parties already & the contract may have been terminated or about to be terminated



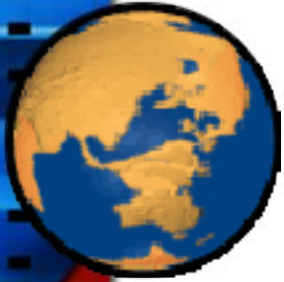
Typical Arbitration Clause

- **As a condition to any right of action, in the event of any dispute or difference of opinion...arising with respect to this agreement...**
- **It is mutually agreed that such dispute or difference of opinion shall be submitted to arbitration...**
- **One arbitrator to be chosen by the Company, one arbitrator chosen by the Agent & an impartial umpire chosen by the two party appointed arbitrators...**



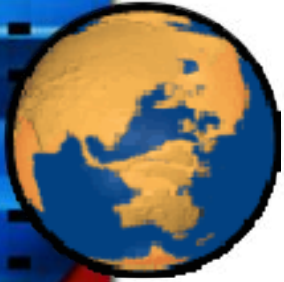
Typical Arbitration Clause

- The arbitrators and umpire shall be active or disinterested officers of insurance companies and general agency companies...
- Each party arbitrator shall nominate 3 umpire candidates.
- Each party arbitrator shall strike 2 names from the other arbitrator's list and the remaining candidates shall be chosen by a flip of a coin...
- The law of the State of _____ shall govern the interpretation and application of this agreement and the enforcement of the arbitration award...



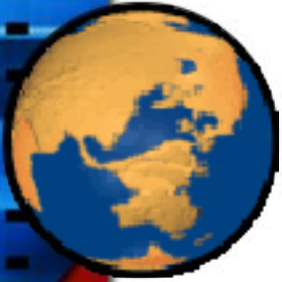
Typical Arbitration Clause

- Each party shall present its case to the panel within 60 days following the date of the appointment of the umpire...
- The arbitrators are relieved from all judicial formalities and may abstain from following the strict rules of law. They shall interpret this Agreement as an honorable engagement and their decision shall be final and binding upon both parties...



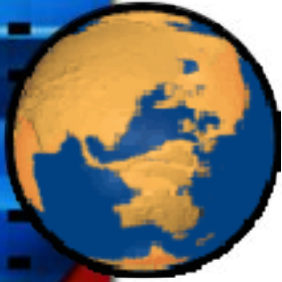
Typical Arbitration Clause

- **The arbitrators shall render their decision within 30 days of the close of the parties' case. Judgment upon the final decision of the arbitrators may be entered in any court of competent jurisdiction...**
- **Each party shall bear the expense of its own arbitrator and shall jointly and equally bear the expense of the umpire and the arbitration...**



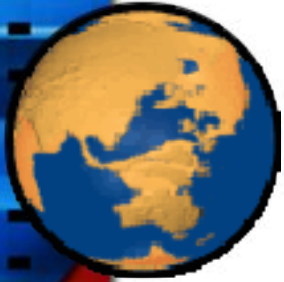
Typical Arbitration Clause

- **The arbitration shall take place in (City, State), unless otherwise mutually agreed...**
- **If either party fails to name its arbitrator within 30 days after receiving written request of the other party to do so, the latter shall name both arbitrators and the named arbitrators shall select an umpire as described above.**



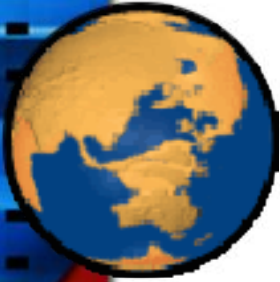
The Arbitration Process

- **One party triggers the arbitration clause**
- **Selection of Arbitrators**
- **Organizational Meeting**
- **Document discovery and depositions**



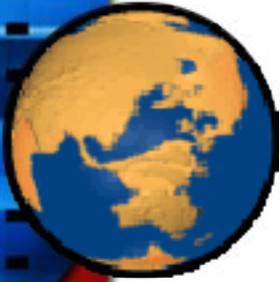
The Arbitration Process

- **Filing of Pre Hearing Brief**
- **Hearing**
- **Panel Deliberation**
- **Final Award**



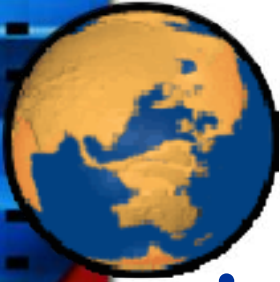
Example of Disputes

- Agent violated underwriting guidelines
- Company failed to pay contingent commissions
- Company incorrectly calculated contingent commissions
- Dispute over the ownership of business
- Often, other party (*Respondent*) will bring counter claims against the party bringing the matter to arbitration (*Petitioner*)



Avoiding the Dispute

- The 3 “D’s”: *Document, Document, Document!!*
- Follow the contract to the letter
- If you informally & mutually change a procedure, put it in writing, even if the Company does not
- Company personnel changes!
An oral agreement by one person may not be honored by their replacement person
- Companies get sold and new management may not have the same working relationship with your firm as did the previous management



Selecting an Arbitrator

- Choose your party-appointed arbitrator who is knowledgeable about the disputed issues;
- Your party-appointed arbitrator, by definition, has an initial bias toward your case. Make sure the arbitrator sees the wisdom of your dispute before selecting him or her;
- Once deliberations begin, a party-appointed arbitrator should be your advocate to make certain your position is properly heard;
- A party-appointed arbitrator, once in deliberation, should vote his or her conscience, based on the facts presented, & that may or may not necessarily be your way;
- Make sure your selection of umpire candidates has the necessary experience or knowledge in matters regarding the dispute. The umpire typically decides the outcome.



Sources of Arbitrators

ARIAS-U.S.

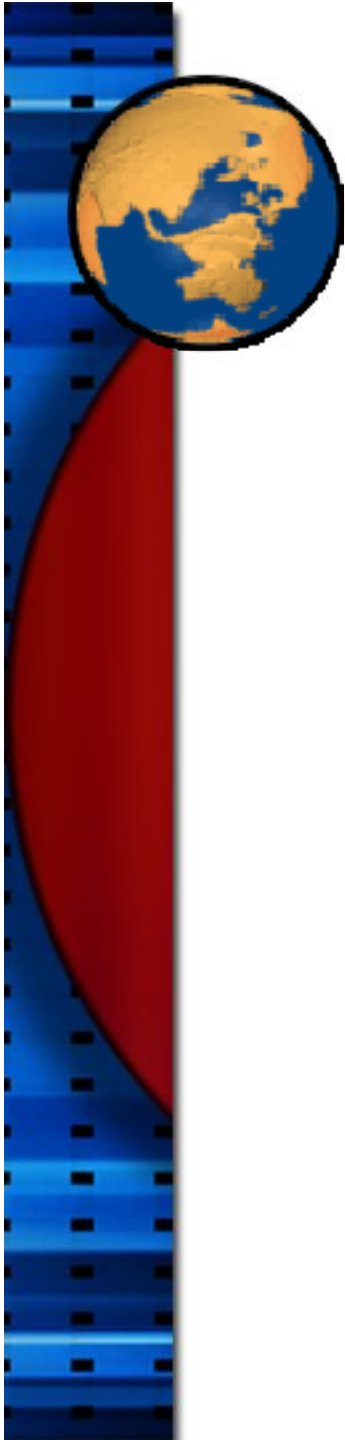
(U.S. Chapter of AIDA Reinsurance & Insurance Arbitration Society)

To view “certified arbitrators & umpires, go to: www.ARIAS-US.org

- ✦ 350 certified arbitrators
- ✦ 80 certified umpires
- ✦ 30 certified mediators

RAA Arbitrators Directory (Reinsurance Assn. of America)
www.ReinsuranceArbitrators.com

American Arbitration Association (triple A or AAA)
www.ADR.org



Thanks for your time!

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