

Contents

Introduction	1
1.1 General	1
1.2 Reinsurance Aspects and History	3
1.2.1 Reinsurance Treaties	3
1.2.2 The History of Reinsurance	5
1.3 Reinsurance Relationship	14
1.3.1 General	14
1.3.2 Modern Times	14
1.3.3 The Use of Arbitration in Reinsurance	15
1.3.4 Choice of Forum: Litigation Versus Arbitration	20
1.4 Aims, Outline and Scope	34
1.4.1 General	34
1.4.2 Aims	34
1.4.3 Background Justification	35
1.4.4 Research Purpose	35
1.4.5 General Outline	35
1.4.6 Detailed Outline	36
References	36
The Reinsurance Contract	39
2.1 Formation of Contracts	39
2.1.1 The Role of Industry, Custom and Practice	39
2.1.2 The Procedure	40
2.1.3 Identification of the Contract	41
2.1.4 The Contract Terms	44
2.2 Rules of Construction	47
2.2.1 The Role of Industry Custom and Practice	47
2.2.2 Interpretation and Construction	48
References	72

The Need for Reinsurance Arbitration: The Legal Framework	73
3.1 General Introductory Remarks on Arbitration in Reinsurance	73
3.2 The Legal Framework in England	75
3.2.1 Scope of the Arbitration Act 1996	76
3.3 Reinsurance in the USA	81
3.3.1 General	81
3.3.2 The Legal Framework in the USA	84
3.4 Reinsurance in Germany and Arbitration Within It	101
3.4.1 Statistical and Anecdotal Evidence	102
3.4.2 An Empirical Evaluation	104
3.4.3 Party Neutrality	105
3.4.4 Arbitral Law and Environment	105
3.4.5 Substantive Law	105
3.4.6 Expertise and Infrastructure	106
3.4.7 Convenience	106
3.4.8 Language	107
3.4.9 Confidentiality	107
3.4.10 The Practice of Arbitration in Germany	107
3.4.11 Arbitrating in Germany in Practice	113
3.5 Overall Conclusions	120
References	121
The Reinsurance Arbitration Clause	123
4.1 Introductory Remarks	123
4.1.1 The Arbitration Clause	124
4.2 The Everlasting Struggle: Arbitration or Litigation?	130
4.2.1 Procedural Difficulties in Arbitration	133
4.2.2 Arbitration: The Quick Result	133
4.2.3 The Advantages of Expert Knowledge	134
4.2.4 Where Avoidance of Precedent Is Preferred	135
4.2.5 The Relative Costs of Litigation and Arbitration	135
4.2.6 Joining Third Parties to the Proceedings	135
4.2.7 The Flexibility of Arbitration	136
4.3 The Arbitration Procedure	137
4.3.1 Does the Arbitration Agreement Cover the Dispute?	138
4.3.2 Provisions with Ambiguous Scope	139
4.4 Considering the Obligation to Arbitrate	140
4.4.1 The Agreement to Arbitrate	140
4.4.2 Scope of the Agreement to Arbitrate	141
4.4.3 Arbitrability	146
4.4.4 Intent to Arbitrate	148
4.4.5 The Arbitration Notice	152

4.4.6	Response to the Arbitration Notice	153
4.4.7	Demanding Arbitration	153
4.4.8	Avoiding Arbitration	155
4.4.9	Lack of a Written Agreement to Arbitrate	156
4.4.10	The Dispute Is Not Arbitrable	156
4.4.11	Fraud	157
4.4.12	Waiver of the Right to Arbitrate	157
4.4.13	Multiple Parties and Multiple Actions	159
4.4.14	Service of a Demand for Arbitration	161
4.4.15	Selection of Arbitrator	161
4.4.16	Challenging an Arbitrator: The Position Under the FAA	172
4.4.17	Removal or Resignation of Arbitrators	173
4.5	Jurisdiction of Courts	190
4.5.1	Choice of Law in Reinsurance Arbitration Disputes	191
4.5.2	The Law Governing the Agreement to Submit the Dispute to Arbitration	191
4.5.3	The Law Governing the Reference to Arbitration	193
4.6	Conclusions	197
	References	200
	The Reinsurance Arbitration Proceedings	201
5.1	Procedure at the Hearing	201
5.1.1	Ensuring Procedural Justice in Arbitrations	203
5.1.2	General Duty of Arbitrators	204
5.1.3	Powers of the Court	204
5.1.4	Enforcement of Peremptory Orders	204
5.1.5	Injunctions and Similar Orders	205
5.1.6	Determination of Preliminary Points of Law	205
5.1.7	Staying Court Proceedings	206
5.1.8	“Domestic” and “Non-domestic” Arbitration Agreements . .	207
5.1.9	Arbitration and the Service of Suit Clause	208
5.1.10	Pre-answer Security	209
5.1.11	Organisational Meeting	210
5.1.12	Hearing	211
5.1.13	Post-hearing Issues	211
5.1.14	Enforceability of the Arbitration Agreement	211
5.1.15	Enforcing a Reinsurance Arbitration Provision	214
5.2	Salient Differences Between the U.S. and English Arbitration Systems	224
5.3	Consolidation of Arbitration Proceedings	224
5.4	Critique	226
5.5	Existing Panel Approach	236
5.5.1	Critique	238

5.6	Discovery	238
5.6.1	Contractual Limitations Are Enforceable	239
5.6.2	Discovery Under the FAA	239
5.6.3	Non-party Discovery	240
5.6.4	Other Discovery Issues	244
5.7	Confidentiality	246
5.8	Summary Adjudication	259
5.9	Hold Harmless Agreements	260
5.10	The Honorable Engagement Clause	261
5.11	Conclusions	262
	References	262
	The Reinsurance Arbitration Award	265
6.1	The Reinsurance Arbitration Award	265
6.1.1	The Arbitration Award	265
6.1.2	Formalities	266
6.1.3	Effect of a Valid Award	267
6.1.4	Enforcement	269
6.1.5	Confidentiality of Awards	276
6.1.6	Enforceability of Reinsurance Arbitral Awards: The US Approach	278
6.2	Reinsurance Arbitrations and the Issue of the Application of Strict Rules of Law	294
6.2.1	Relevant Jurisprudence of the Court of Appeal	296
6.3	The Effect of an Arbitration Award on a Subsequent Arbitration Between Different Parties	302
6.4	The Facts and Arbitral Holding in <i>Lincoln National Life Insurance Co v Sun Life Assurance Co of Canada</i>	303
6.4.1	<i>The Cigna Award</i>	304
6.4.2	Were the Arbitrators in the <i>Lincoln</i> Arbitration Bound by the Award in <i>Cigna</i> ?	304
6.4.3	Previous Cases on the Effect of an Earlier Award on Subsequent Arbitration Between Different Parties	305
6.5	Conclusions	315
	References	316
	Discussion	317
7.1	General Remarks	317
7.2	Overall Conclusions in Relation to Arbitration	319
7.2.1	An Overview	319
7.2.2	General Observations in Relation to Reinsurance Arbitrations	319
7.3	More Specific Observations: Critique	322
	References	325

Table of Cases	327
A. England	327
B. USA	329
C. Germany	332
Table of Statutes	333
A. International	333
B. England	333
C. USA	334
D. Germany	334
About the Author	335
Index	337



<http://www.springer.com/978-3-642-45145-4>

Reinsurance Arbitrations

Noussia, K.

2013, XVII, 339 p. 1 illus., Hardcover

ISBN: 978-3-642-45145-4