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Headlines

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Proposed Reform of Reinsurance Collateral Requirements

Legislative efforts to reform reinsurance collateral requirements have been gaining momentum. Proposed reforms are currently under consideration by the Reinsurance Task Force of the National Association of Insurance Commissioners (NAIC) and are the subject of proposed regulations in the States of New York and Florida as well as several bills pending in the U.S. Congress.

Under NAIC model laws that have been enacted in almost every state, a ceding company is denied financial statement credit for reinsurance provided by a reinsurer that lacks a license or accreditation in the ceding company's state of domicile, unless the reinsurer provides acceptable collateral for 100 percent of the reinsured liabilities.[1] Proponents of reform claim that these requirements add unnecessary costs to reinsurance transactions with well-capitalized reinsurers and discriminate unfairly against non-U.S. reinsurers that lack U.S. licenses and accreditations. Opponents of reform claim that the current collateral requirements are appropriate for reinsurers that choose not to submit themselves to regulatory oversight in the ceding company's state of domicile and are particularly appropriate for non-U.S. reinsurers that are otherwise not required to maintain assets in the United States out of which reinsurance claims may be satisfied.

NAIC's Proposed Reforms

The NAIC has been debating the issues relating to reinsurance collateral requirements for many years. In 2007, the NAIC's Reinsurance Task Force developed a set of proposed reforms, which would have substantially reduced collateral requirements for many non-U.S. reinsurers. However, in December, 2007, the Task Force tabled these proposals and adopted a "Framework Memorandum" that sets forth broad principles for reform but offers no specifics on implementation. In 2008, the Task Force has resumed work on practical reform measures with the intent of presenting a comprehensive package for consideration by the full NAIC at the end of the year.

The Task Force has outlined its current approach to reform in a memorandum dated July 3, 2008 (the "Task Force Memorandum"). The regulatory system outlined in the Task Force Memorandum is very similar to the reforms that the Task Force considered but did not adopt last year. Pursuant to these proposals, both U.S. and non-U.S. reinsurers may apply for certification by a single U.S. regulator — a "port of entry supervisor" in the case of non-U.S. reinsurers and a "home state supervisor" in the case of U.S. reinsurers. A Reinsurance Supervision Review Department to be established within the NAIC (the "RSRD") would determine which state insurance regulators are qualified to serve as port of entry and home state supervisors, depending on factors such as the size and expertise of a state's insurance regulatory staff and whether the state has been accredited by the NAIC.

In part, the jurisdiction in which a reinsurer is domiciled will determine whether the reinsurer may apply for certification. No U.S. reinsurer may apply unless its domiciliary regulator has qualified as a home state supervisor. No non-U.S. reinsurer may apply for certification by a port of entry supervisor unless the RSRD has recommended its domiciliary jurisdiction for eligibility. The procedures for a non-U.S. jurisdiction to obtain such eligibility are left unclear in the Task Force Memorandum. However, it is expected that they will involve an evaluation of the efficacy of reinsurance regulation in the non-U.S. jurisdiction and may involve entry into an agreement with the jurisdiction providing for mutual recognition of the "functional equivalency" of reinsurance regulation in the United States and the non-U.S. jurisdiction. Entry into such agreements raises Constitutional issues regarding limits on state authority in dealing with foreign governments. The NAIC may seek federal legislation to clarify the states' authority

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Federal Arbitration Act Provides Exclusive Grounds for Vacating or Modifying Arbitration Awards

The United States Supreme Court has recently addressed an important question of federal arbitration law: Whether private parties to an arbitration agreement may expand a court's scope of review of an arbitral award. On March 25, 2008 the Court held that Sections 10 and 11 of the Federal Arbitration Act (FAA) establish the exclusive grounds for vacating or modifying arbitration awards, and that parties to an arbitration agreement cannot expand these grounds in their contract. *Hall Street Associates L.L.C. v. Mattel, Inc.*, 128 S.Ct. 1396, 170 L.Ed.2d 254 (Mar. 25, 2008).

The basis of the dispute was a commercial lease between Hall, the landlord, and Mattel, the tenant. At issue was Mattel's right to terminate the lease and its obligation for certain environmental clean-up costs resulting from the manufacturing activities of a former tenant. The lease did not contain an arbitration clause.

Hall filed suit against Mattel in the United States District Court for the District of Oregon, contesting Mattel's right to terminate and seeking indemnification for clean-up costs. Following a bench trial, the District Court ruled that Mattel had the right to terminate the lease. The parties then proposed to submit the issue of Mattel's obligation to pay clean-up costs to arbitration. The District Court agreed, and the parties drafted an arbitration agreement which the court approved and entered as an order. The agreement provided that, following the arbitration, "the Court shall vacate, modify or correct any award: (i) where the arbitrator's findings of fact are not supported by substantial evidence, or (ii) where the arbitrator's conclusions of law are erroneous."

The arbitrator decided in favor of Mattel, but the District Court vacated the award, finding an erroneous conclusion of law. Ultimately, the Ninth Circuit Court of Appeals ruled that the parties' agreement providing for judicial review based on legal error was unenforceable because legal error was not one of the grounds for vacatur or modification specified in Sections 10 and 11 of the FAA. The Supreme Court agreed to hear the case to decide whether the grounds provided by Sections 10 and 11 are exclusive.

> ...challenges to arbitration awards could be governed by state statutory or common law where such law expands the scope of judicial review...

In a 6-3 decision, the Supreme Court ruled that the FAA's grounds for vacatur and modification are exclusive. The Court's opinion, written by Justice David Souter, reasoned that the text of the FAA "compels a reading of the §§ 10 and 11 categories as exclusive." The Court noted that the FAA provides for vacatur and modification only for "egregious" conduct by an arbitrator, such as "fraud," "corruption" and "evident partiality." The Court found the specific, limiting language of the FAA persuasive, stating that " '[f]raud' and mistake of law are not cut from the same cloth."

The Court rejected Hall's argument that, because an arbitrator's "manifest disregard of the law" is a judicially-recognized (if seldom applied) basis for overturning an arbitration award, the grounds for vacatur in Section 10 are not exclusive. The Court distinguished "a supposed judicial expansion by interpretation" from "an expansion by private contract," and also questioned whether "manifest disregard of the law" was simply a "collective" reference to the Section 10 grounds such as arbitrators engaging in "misconduct" or "exceed[ing] their powers."

The Court also found that reading Sections 10 and 11 as exclusive was consistent with Section 9 of the FAA which states that a court "must" confirm an arbitrator's award unless the award is vacated or modified "as prescribed in sections 10 and 11."

The obvious practical application of this decision is that parties cannot in their contracts expand the scope of judicial review of arbitration awards under agreements that are governed by the enforcement provisions of the FAA. This would appear to include every contract involving a transaction in interstate commerce. The Court did raise the possibility that challenges to arbitration awards could be governed by state statutory or common law where such law expands the scope of judicial review, but did not explain how this might occur.

In some respects, the *Hall* decision raises as many questions as it answers, including how state statutory or common law might be applied to expand judicial review, the scope of "manifest disregard of the law" as a basis for overturning arbitration awards, and whether parties can, with court approval through the court's exercise of its case management powers, agree to an arbitration with enforcement provisions that are stricter than those set forth in the FAA. It remains to be seen how lower courts will treat these issues in the wake of *Hall*.

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The Significance of Pre-Hearing Security Awards for Run-Off Reinsurers

In the run-off context, where claims issues cannot be resolved by promises of new premium on wonderful (loss free!) new business, run-off reinsurers find themselves with more disputes, and in many of those disputes which end up in arbitration, pre-hearing security has become a threshold issue with the possibility of significant adverse consequences for a run-off company.

Typically, cedents, contesting the adequacy of the reinsurers' reserves, assert there will be a shortfall at the end of the day. They claim the reinsurer is in reality an extortionist seeking to force settlement with the insolvency card and frivolous defenses, and at the very start of the arbitration, ask the arbitrators to require the reinsurer to post security for the full amount in dispute before any consideration of the merits. The run-off reinsurer in turn asserts that, unblinded by the flash of potential new business it is simply taking a more objective, careful view of claims, rather than simply paying quickly for reputational reasons, and is entitled to arbitrate legitimate disputes without elevating the cedent to preferred creditor status. With many reinsurance arbitrators being retired officers of insurers or reinsurers, who practiced in an era when run-off invariably meant a failed or likely to fail operation, there is a distinct possibility that the train will leave the station early with a pre-hearing security order, leaving the reinsurer to ponder whether it can continue the fight. For a run-off reinsurer, a panel's grant of such relief can have disastrous consequences. As overall reserves get portioned off to elevate particular cedents to "secured creditor" status, the reinsurer's financials may take on a grim look and, in the most severe case, a death spiral to insolvency results as other cedents and the regulators lose confidence in the run-off's ability to manage the book to a successful conclusion.

This article: 1) focuses on U.S. case law on pre-hearing security; and 2) offers a few suggestions on preparation for this issue in the run-off context.[1]

Case Law in the Arbitration Context Supports Both Sides

The reported decisions arise in the context of courts deciding motions to vacate an arbitration award. Under the Federal Arbitration Act (9 U.S.C. § 1, et seq.), to prevail on a motion to vacate such an order, the cedent need only show that the decision of the arbitrators can be "rationally derived" from the reinsurance agreement. *Yasuda Fire & Marine Ins. Co. of Europe v. Continental Cas. Co.* 37 F. 3d 345, 350 (7th Cir. 1994). This has led to two decisions upholding arbitrators' pre-hearing security awards, which arbitrators may rely on as a grant of authority to do so, based on a mere showing that issuance of a final award "might" be futile due to a reinsurer's possible insolvency in the future.

> {Cedents} ask the arbitrators to require the reinsurer to post security for the full amount in dispute before any consideration of merits.

The stage for arbitrator power to issue drastic pre-hearing relief was set by the Seventh Circuit in *Yasuda Fire & Marine Ins. Co. v. Continental Cas. Co.*, 37 F. 3d 345 (7th Cir. 1994), which set a high bar for court review of such awards, but offered no guidance to arbitrators on when such relief should be ordered. The Circuit Court affirmed the arbitrators' award requiring the reinsurer to post a letter of credit, despite the fact that the arbitrators made no finding on the merits and apparently focused only on a possibility that an award might issue and the "risk" that by the time such award was confirmed, assets to satisfy it might not be available (of course always a risk in any litigation or arbitration). This is a slippery slope indeed.

In another U.S. case dealing with pre-hearing security in the reinsurance context, *British Insurance Co. of Cayman v. Water Street Ins. Co.*, 93 F.Supp.2d 506 (S.D.N.Y. 2000), an arbitration panel issued an interim order requiring the defendant reinsurer to post $1.7 million security before any hearing on the merits of the underlying claims was held.

British Insurance appears to be a classic instance of a hard case making bad (or at least questionable) law. Leaving aside the merits of the dispute in this case, it does appear that the ceding company was in fact faced with a fly by night reinsurer with shifting and shadowy Caribbean domiciles. While the facts in *British Insurance* suggest that even under traditional equitable injunctive principles security would have been appropriate, the language in *Yasuda* and *British Insurance* seemed to suggest that arbitrators may issue the equitable relief of pre-hearing security largely insulated from any real review by a court. That, in turn, has encouraged a lack of any real analysis by panels in considering the need for and the ramifications of such relief. It can thus boil down to a subjective analysis of the possibility that an award may be "rendered meaningless" by a potential lack of funds, with an automatic grant of security in response to the "specter" of possible insolvency.

However, there are District Court cases going the other way, which, contrary to the *laissez-faire* approach of *Yasuda*, suggest that, even under the low standard for confirmation under the FAA, courts will reverse arbitrators who issue orders of security at a preliminary stage as a prereq-

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to negotiate such agreements.

A port of entry or home state supervisor who certifies a particular reinsurer will assign the reinsurer a rating from 1 (secure) to 5 (vulnerable), which will determine the amount of collateral (if any) required of that reinsurer in order to allow ceding companies to take financial statement credit for its reinsurance. Under the proposal, each of these ratings is paired with corresponding financial strength ratings used by nationally recognized statistical rating organizations (NRSROs), and supervisors may not assign a reinsurer a rating that is higher than the corresponding ratings that it has received from the NRSROs. However, a supervisor may assign a lower rating based on factors such as the reinsurer's disputed or overdue recoverables and a review of its business practices in dealing with ceding companies.

> The jurisdiction in which a reinsurer is domiciled will determine whether the reinsurer may apply for certification.

Under the proposal, collateral requirements differ for U.S. and non-U.S. reinsurers and depend on the ratings assigned by the reinsurer's port of entry or home state supervisor. For non-U.S. reinsurers, no collateral is required if the highest rating is attained, 10 percent collateral is required of reinsurers with a rating of 2, 20 percent for reinsurers with a rating of 3, 75 percent for reinsurers with a rating of 4, and 100 percent for reinsurers with a rating of 5. For U.S. reinsurers, no collateral is required for reinsurers with ratings of 1, 2 or 3, while 75 percent collateral is required of reinsurers with a rating of 4 and 100 percent collateral for reinsurers with a rating of 5. The proposal cites prudential U.S. reinsurance regulatory requirements as the reason for imposing lighter collateral requirements on U.S. reinsurers. However, some non-U.S. reinsurers have questioned the rationale for such unequal treatment given the fact that eligibility of non-U.S. jurisdictions under this proposal entails a determination of the adequacy of their regulatory regimes.

All states would be required to grant balance sheet credit for reinsurance ceded to a reinsurer certified by a port of entry or home state supervisor. However, the domiciliary regulator of a ceding company will continue to apply its risk transfer rules and will retain authority to require diversification of reinsurance risk. The RSRD will develop mandatory contractual clauses, such as insolvency and service of suit clauses, that will be uniform across the country and displace differing state requirements regarding such clauses.

The proposal set forth in the Task Force Memorandum is subject to further comment and revision and must be fleshed out by the NAIC in the form of a replacement to, or amendment of, the current Credit for Reinsurance Model Law and Credit for Reinsurance Model Regulation, unless federal legislation implementing the proposal is contemplated. A public meeting on the proposal was held on July 23-25, 2008. Even if the proposal is adopted by the NAIC later this year, implementation of the reforms will require either legislative action in all fifty states to replace or amend the current laws governing credit for reinsurance or the adoption of federal legislation implementing the proposal and preempting inconsistent state law. Thus, there is likely to be considerable delay in effecting these reforms.

New York and Florida

New York and Florida insurance regulators have proposed regulations that would reform reinsurance collateral requirements in those states. Like the NAIC reform proposal, these regulations would eliminate collateral requirements for the highest-rated reinsurers while reducing collateral requirements for other highly-rated reinsurers. However, despite this similarity in broad approach, there are significant differences between the way in which the NAIC and these two States would implement their reforms. For example, the ratings that determine collateral requirements under the last publicly-released drafts of these regulations are ratings supplied by commercial rating organizations, such as A.M. Best and Moody's, rather than ratings assigned by an NAIC department like the RSRD.

The release of these draft regulations last year and the fact that both states have taken steps this year toward their adoption apply considerable pressure on the NAIC to take action on its own reform proposal. However, the effect that adoption of the regulations by New York and Florida would have on the collateral provided by non-U.S. reinsurers is unclear since those reinsurers would remain subject to current collateral requirements in all other states.

Congressional Bills

There are several bills pending before Congress that could have an impact on state reinsurance collateral requirements. The bill that deals with these issues most directly is the Reinsurance Intermediary Solvency Standards Evaluation Board Act of 2008 (H.R. 6213) introduced by Representative Tom Feeney (R-FL) on June 9, 2008. This bill would establish a board of persons appointed by the President for the purpose of evaluating the reinsurance supervisory systems of U.S. states and non-U.S. jurisdictions. The board would certify those states and non-U.S. jurisdictions that provide adequate capital and risk management standards and an acceptable level of prudential supervision over the reinsurers domiciled in such states and jurisdictions. The bill would preempt a state's credit for reinsurance laws to the extent that the laws treat reinsurers domiciled in a state or other jurisdiction certified by the board differently

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than the state's domestic reinsurers. In effect, the bill would eliminate collateral requirements for certified reinsurers.

A bill with more legislative momentum at present is the Insurance Information Act of 2008 (H.R. 5840), which was introduced on April 17, 2008 by Representative Paul Kanjorski (D-PA), the Chairman of the Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises of the House Financial Services Committee (the "Subcommittee"). This bill would establish an Office of Insurance Information ("OII") within the Department of the Treasury. The OII would provide information and expertise on insurance matters to the Treasury and Congress. In addition, it would be responsible for setting federal policy on international insurance matters and for advising the Secretary of the Treasury on such matters, including reinsurance requirements. In the event that the United States enters into agreements with non-U.S. jurisdictions regarding international insurance matters, the bill would preempt state insurance law to the extent that it is inconsistent with a federal policy included in such agreements.

On July 9, 2008, the Subcommittee approved an amended version of H.R. 5840 introduced by Representative Kanjorski. The amendments added privacy protections for information and data submitted to the OII that are not publicly available and placed procedural safeguards and limitations on the preemption of state law contemplated by the bill.

> In effect, [H.R. 6213] would eliminate collateral requirements for certified reinsurers.

The new provisions regarding preemption (1) require multiple reviews with opportunity for public comment before the Director of the OII may determine that there is an inconsistency between a state law and a policy included in an agreement with a non-U.S. jurisdiction, (2) subject any such determination to review under the federal Administrative Procedures Act, (3) require the Treasury Secretary to stay preemption for a 90-day period in order to permit Congressional action preventing the preemption if the Treasury Secretary finds that such a stay is necessary for prudential reasons, such as a finding that the state law is needed to protect policyholders or claimants, and (4) specify that state law shall only be preempted to the extent that it discriminates for or against non-U.S. insurers or reinsurers as compared to insurers or reinsurers domiciled in the state. These new provisions of H.R. 5840 would likely delay, but would not rule out, preemption of state law in the event that the United States were to enter into agreements with non-U.S. jurisdictions designed to eliminate or reduce collateral requirements applied to non-U.S. reinsurers.

Two other federal bills introduced in Congress in 2007 may affect reinsurance regulation. The Nonadmitted and Reinsurance Reform Act of 2007 (H.R. 1065) is intended to streamline state regulation of both surplus lines insurance and reinsurance. The provisions of the bill that deal with reinsurance would restrict reinsurance regulation to the domiciliary state of the cedent but would not restrict a state's power to impose reinsurance collateral requirements. State insurance regulators are reportedly close to endorsing the surplus lines reforms of H.R. 1065 but do not support the reinsurance provisions of the bill. The National Insurance Act of 2007 (H.R. 3200 & S. 40) is the big prize for those who favor federal regulation of insurance. It would give insurers the option of electing federal regulation. This bill would also prohibit a state from applying reinsurance collateral requirements to federally-licensed reinsurers, unless they apply such requirements to reinsurers domiciled in the state. However, there is very little chance that federal charter legislation will be enacted any time soon, and the best hopes for effective reform of reinsurance collateral requirements in the near term lie with the current efforts at the NAIC and more narrowly-focused federal reform efforts such as H.R. 5840.

End Notes

1 As used in this article, the term "accreditation" does not apply to trustee reinsurer status held by non-U.S. reinsurers which maintain U.S. multi-beneficiary reinsurance trusts.

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uisite "ticket of admission" to an arbitration on the merits.

In *Recyclers Ins. Group, Ltd. v. Ins. Co. of North America*, Misc. No. 91-503, 1992 WL 150662 (E.D.Pa. 1992), an arbitration panel entered an interim award ordering that the reinsurer open an escrow account to cover a cedent's present (disputed) unreimbursed paid losses, outstanding losses, and incurred but not reported losses. *Id.* at *2. The District Court vacated the Order. While noting that the reinsurance agreement contained a standard collateral/security clause, *Id.* at *1, the Court noted that the parties had agreed that the arbitrators could only issue an award "in writing based upon a hearing" which, the Court concluded, meant that a hearing on the merits was required before any such relief could be granted. *Id.* at * 5. Additionally the Court noted that "the panel's award cannot be rationally derived from the terms of the Reinsurance Agreement" because "nowhere in the Agreement…is it stated that the arbitration panel has the authority to require a party to post security **as a condition** to having its claims resolved by the panel or while the

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claims are being arbitrated." (emphasis added) *Id.* at *5. The decision indicates that, even given the low standard for confirmation of arbitrators' awards, courts are wary of granting security prior to any consideration of the merits, which may have the effect of precluding a litigant from a fair hearing of its case.[2]

> Panels...have virtually total flexibility in establishing their procedures, which offers litigants possibilities for creative approaches.

A similar result was reached by a New York District Court in *Home Indemnity Company v. Affiliated Food Distributors, Inc.*, No. 96 Civ. 9707(RO), 1997 WL 773712 (S.D.N.Y. 1997). Here, an arbitration panel granted an interim award of security to the insurer and precluded the insured from discovery and review of disputed claim files for use in the arbitration unless and until the security award was posted. The Court held that arbitrators "…must, in any event, 'give each of the parties to the dispute an adequate opportunity to present its evidence and argument'" with a "touchstone" of "fundamental fairness". *Id.* at * 3 Here, where the arbitrators did not do so, the Court concluded that "fundamental fairness" was not present, which constituted "arbitrator misconduct" justifying reversal under 9 U.S.C. § 10(a)(3).

While *Home Indemnity* and *Recyclers* strongly suggest that the party opposing security is entitled to discovery and consideration of the merits prior to issuance of a security order, *Yasuda* affirmed an award of security which appears to have been based solely on a finding that ultimately the reinsurer might not have sufficient assets to satisfy a final award. Cedents can argue that security ought to be awarded in any case in which is there is some doubt as to the reinsurer's viability if all liabilities were to mature at their highest cost – an argument which can be made against most run-off reinsurers. Accordingly, security is an issue which should be considered carefully in preparation for any arbitration in which a run-off company is involved.

Suggestions for Anticipating and Dealing With the Issue of Pre-Hearing Security

1. Get The Facts Re the Finances

For the cedent, careful review of the reinsurer's publicly-filed accounts and public statements of employees are the basic tools. What is the trend of reserves and claims? What was said when the reinsurer was put into run-off? What unexpected losses have recently been incurred? While many (retired executive) arbitrators are inherently suspicious of run-off companies, hard factual evidence which suggests that the run-off will not end well is necessary to provide a "hook" for a security award. On the other hand, the reinsurer should also prepare, emphasizing any regulatory approval of reserve amounts, the experience and reputation of current management, especially prior successful run-off management. Is there a Reg. 114 Trust? Has the adequacy of same been accepted by a regulator?

2. Prepare the Party Arbitrator/Consider the Issue in Umpire Selection

While experienced reinsurance practitioners always sound out their party arbitrators on the facts of the dispute, in the context of a run-off situation, the party arbitrator should also be consulted and prepared on the pre-hearing security issue. Has he/she dealt with it before? What evidence does he/she think would merit such award and at what stage of the proceedings? The issue should also factor into umpire nominations. As a general matter, arbitrators with legal training seem more likely to appreciate the inequity of reversing the usual litigation risk calculus by an award of pre-hearing security, while "business" types seem more inclined to the "where's the harm?" approach.

3. Have a Plan

Arbitration panels acting under reinsurance agreements which provide few rules have virtually total flexibility in establishing their procedures, which offers litigants possibilities for creative approaches. Do you want an early hearing on the security issue alone? Is there particularized discovery which is needed on the issue? Are you prepared to trade an early hearing date for avoidance of security (reserves are adequate now, and will likely also be so in x months), or offer security in exchange for an early date (we are prejudiced by such grant and in exchange want a quick hearing)? Early consideration of alternatives and preparation will be key to achieving the desired result.

End Notes

1 We have assumed for the purposes of this article that the reinsurance agreement does not contain a specific clause or directive for pre-hearing security.

2 But see *Meadows Indemnity Co. Ltd. v. Arkwright Mutual Ins. Co.*, No. Misc. 88-0600, 1996 WL 557513 (E.D. Pa. 1996) which upheld a pre-hearing security award and purportedly declined to follow *Recyclers*.

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Event Notes

2008 Reinsurance Rendez-Vouz

September 7-10, 2008
Monte Carlo , Monaco

Nick DiGiovanni, Jonathan Bank and Norris Clark will attend the annual Reinsurance Rendez- Vouz in Monte Carlo. The event is an international convention of insurers, reinsurers, brokers and reinsurance consultants.

Mealey's Global Reinsurance Forum

October 6-7, 2008
Boston, Massachusetts

Jonathan Bank will speak at the Forum. LLB&L will also co-host the cocktail reception on October 6.

AIRROC/Cavell Commutation & Networking Event

October 20-22, 2008
Meadowlands, New Jersey

LLB&L is participating once again as a sponsor of this event, which brings together more than 400 delegates from around the world. LLB&L attendees will include Jonathan Bank (who is serving as co-chair of the educational sessions), Norris Clark, Joseph Froehlich and Kevin Walsh.