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Chapter 36

USA

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1 Regulatory

1.1 Which government bodies/agencies regulate insurance (and reinsurance) companies?

The McCarran-Ferguson Act (the "Act"), passed by Congress in 1945, explicitly provides for state regulation of the "business of insurance", with the result that the insurance industry is primarily regulated by the governments of the fifty individual states (as well as of the District of Columbia and the five inhabited US territories). Each state has an insurance or financial services department which implements and administers regulations concerning a wide variety of matters, such as premium rates and policy forms, the amount and type of capital insurers must hold as security for their policy obligations, and insurers' financial reporting obligations. The state-level regulators are members of the National Association of Insurance Commissioners ("NAIC"), which is a regulatory support and standard-setting organisation that promulgates model laws and regulations in an effort to standardise and coordinate insurance regulation on the state level.

Even so, the U.S. federal government does play some role with respect to insurance regulation. For example, the U.S. federal government provides insurance or reinsurance for certain types of risks such as banking deposits, political risk, floods, crop failure and terrorism. Through the 1986 Liability Risk Retention Act, the U.S. federal government also permits the formation (and provides for the streamlined state regulation of) insurers known as "risk retention groups", by individuals or businesses with similar or related risk profiles.

More recently, under the 2010 Wall Street Reform and Consumer Protection Act ("Dodd-Frank"), Congress created a Financial Stability Oversight Council ("FSOC") and a Federal Insurance Office ("FIO") within the U.S. Department of the Treasury, which are responsible for monitoring the financial stability of the insurance industry. The FSOC also has the authority to designate insurers as "Systematically Important Financial Institutions", a designation which results in those institutions also being regulated by the Federal Reserve Board.

Dodd-Frank also includes the Nonadmitted and Reinsurance Reform Act ("NRRA"). Generally speaking, the NRRA: (1) provides that all insurance surplus lines transactions are to be regulated exclusively by the insurance department of the insured's "Home State"; (2) establishes federal standards for the collection of surplus lines premium taxes and for the eligibility of non-admitted insurers; and (3) pre-empts states from (i) denying surplus lines eligibility to certain non-U.S. carriers approved by the NAIC, and (ii) imposing credit for reinsurance requirements on cedents not domiciled in the state.

1.2 What are the requirements/procedures for setting up a new insurance (or reinsurance) company?

The specific requirements for forming a new insurance company vary from state to state. While the requirements of the state where a company will be domiciled generally control, states have adopted standardised application forms collectively known as the Uniform Certificate of Authority Application ("UCAA"). The UCAA Primary Application, which a newly-formed company would use to seek a certificate of authority in its domicile state, calls for the disclosure of information related to minimum capital and surplus requirements, statutory deposit requirements, name approval, a plan of operation (which includes financial statements and projections), holding company financial information, biographical information regarding officers and directors, and other similar matters. Once formed in its domiciliary state, an insurer may gain admission in other states by filing an application in that state.

1.3 Are foreign insurers able to write business directly or must they write reinsurance of a domestic insurer?

Generally speaking, a non-U.S. insurer can write business directly to policyholders in a state if it is admitted and licensed by the state's insurance department to write direct business. A non-U.S. insurer may also write business directly in the U.S. on a non-admitted basis if: (1) the insured purchases the policy out-of-state, with no part of the transaction taking place in the state (e.g., solicitation of the policy, correspondence, and issuance and delivery of the policy); or (2) a non-admitted insurer writes a policy on a surplus lines basis when the type of insurance is not available in the admitted market. (Some states and the NRRA also permit large commercial insureds to purchase insurance from foreign insurers without complying with the requirements of (1) or (2), above.)

The eligibility requirements for non-U.S. surplus lines carriers have been simplified under the NRRA. Now, non-U.S. (or "alien") insurers may apply for inclusion on a Quarterly Listing of Alien Insurers, which is published by the NAIC. Applicants are required to establish a trust fund for the benefit of U.S. policyholders and to provide certain financial, organisational and operational information. The NRRA prohibits any state from refusing to allow NAIC-listed alien insurers from placing surplus lines coverage.

1.4 Are there any legal rules that restrict the parties' freedom of contract by implying extraneous terms into (all or some) contracts of insurance?

Depending upon the jurisdiction, there are terms and conditions required by state laws and regulations to be included in, or omitted from, insurance policies. Courts have also interpreted terms to be implied in policies.

The types of terms and conditions required to be included under state insurance laws vary by state and line of business. Generally, however, required terms in insurance policies relate to: (1) cancellation and renewal; (2) notice of loss requirements; (3) incontestability clauses in life insurance policies; (4) prohibitions against mandatory arbitration; and (5) appraisal clauses in fire or property.

With respect to judicial decisions, courts in many states have found a prohibition against coverage for "known losses" into insurance contracts. This prohibition recognises that insurance will protect only against fortuitous losses and thus will not cover losses that were known to the insured prior to the policy's inception. Like all contracts, courts have also implied a duty of "good faith and fair dealing" owed by parties to insurance contracts. Various states recognise a cause of action against insurers for alleged breaches of this duty, and some states permit insureds to seek damages beyond their policy limits for alleged breaches.

Specific to reinsurance contracts, most states require the inclusion of an "insolvency clause", which requires the reinsurer to make payments directly to the statutory receiver in the event of a ceding company's insolvency. Separately, courts have implied a duty of utmost good faith on the part of the cedent and the reinsurer. Under this duty, cedents have an obligation to share with reinsurers on a timely basis all material underwriting and claims information concerning the reinsured policies. Reinsurers, in turn, owe their cedents an obligation to professionally and timely respond to claims when presented by the cedent.

1.5 Are companies permitted to indemnify directors and officers under local company law?

All fifty states permit corporations to indemnify directors and officers who act reasonably and in good faith when carrying out their responsibilities on behalf of the corporation.

1.6 Are there any forms of compulsory insurance?

Compulsory insurance varies among the states. The most common types are automobile insurance, which requires motorists to purchase insurance, and workers' compensation insurance, which requires employers to provide workers' compensation benefits to their employees. In addition, the 2010 Patient Protection and Affordable Care Act ("PPACA") requires individuals to carry some form of health care insurance, subject to certain exceptions.

Under the Terrorism Risk Insurance Act ("TRIA") and the Terrorism Risk Insurance Program Reauthorization Act of 2015, which extended TRIA until 31 December 2020, insurers writing certain types of commercial property and casualty insurance must make terrorism coverage available under their policies. Insureds, however, are not required to purchase cover for terrorist acts.

2 (Re)insurance Claims

2.1 In general terms, is the substantive law relating to insurance more favourable to insurers or insureds?

Whether the law favours the insured or the insurer depends upon the disputed issues, the relevant facts, and the governing law.

For example, state law determines which party is favoured in coverage disputes regarding late notice. Some states favour insurers, allowing them to disclaim coverage of untimely claims without showing prejudice. In the majority of states, however, insurers must establish prejudice arising from the insured's untimely notice of a claim. (In the reinsurance context, the law is mixed in terms of whether a showing of prejudice is required, and may turn on whether timely notice is a condition precedent to coverage.) In cases involving non-disclosure, even an innocent misrepresentation permits an insured to rescind a policy in some states. In others, rescission may occur only if the insurer established that the insured intended to mislead or conceal a material fact.

Policy interpretation rules also impact whether an insurer or insured has an advantage in a given dispute. Insureds bear the initial burden of demonstrating that their claims are covered by the policy. Insurers then must show that an exclusion applies.

Like other contracts, if an insurance policy is determined to be ambiguous, extrinsic evidence may be used to clarify the ambiguity and determine the parties' intent at the time the contract was entered. If extrinsic evidence does not clarify the policy language, the *contra proferentem* doctrine may be applied depending on the facts, and the ambiguity will be resolved against the insurer and in favour of the policyholder. In certain instances, for example, where two insurers or two sophisticated parties are involved, the doctrine of *contra proferentem* may not apply, since the rationale behind the rule lies in the unequal bargaining power between an insured and its insurer.

As respects the location of coverage disputes, some jurisdictions may be considered less friendly to insurers, fostering a belief that courts and juries favour insureds. In other jurisdictions, however, some believe that courts and juries tend to favour insurers in coverage disputes.

2.2 Can a third party bring a direct action against an insurer?

Under common law, a third party generally cannot bring a direct action against an insurer. In some states, "direct action" statutes allow injured parties to directly sue a tortfeasor's liability insurer, usually only after the injured party has obtained a judgment against the tortfeasor. A few states, however, allow an injured party to directly sue an insurer prior to obtaining a judgment against the tortfeasor. Also, a third party may be able to directly sue an insurer if the insured's rights under the policy are assigned to the third party.

2.3 Can an insured bring a direct action against a reinsurer?

Typically, an insured cannot directly sue its insurer's reinsurer, since the insured and reinsurer lack privity of contract. Direct action against reinsurers may be possible in fronting and other similar scenarios where the court finds the reinsurer essentially acts as a direct insurer. In addition, a reinsurer may also agree to a "cut through" clause in the reinsurance contract under which insureds may have a direct right of action against the reinsurer under certain circumstances, e.g., in the event of the insurer's insolvency or failure to pay claims.

2.4 What remedies does an insurer have in cases of either misrepresentation or non-disclosure by the insured?

Insurers may seek rescission of a policy where the policyholder makes a material misrepresentation or omission during the underwriting of the policy. If the insurer succeeds, the policy is void *ab initio*, and the premiums would be returned to the insured. As an alternative to rescission, in some jurisdictions a misrepresentation allows insurers to deny the claim or cancel the policy. Where non-disclosure is an issue, an insured may seek either rescission or non-payment, but some states provide for such remedies only upon proof that the insured intended to mislead or conceal a material fact.

2.5 Is there a positive duty on an insured to disclose to insurers all matters material to a risk, irrespective of whether the insurer has specifically asked about them?

An insured's disclosure duties are defined by the laws of the various states. In some instances, an insured may be found to have no duty to disclose a fact unless the insurer either inquires about the fact or otherwise identifies such fact as a material basis for the issuance of the policy. However, courts have imposed a good faith duty of disclosure where the insured has exclusive or peculiar knowledge of a material fact which it knows would influence the insurer in writing the policy. Further, courts have found a duty of full disclosure if a party makes a partial disclosure of information and only full disclosure of information would prevent the underwriter from being misled.

In reinsurance, ceding companies have a "duty of utmost good faith" to disclose all information material to the risk irrespective of whether the reinsurer asks for such information.

2.6 Is there an automatic right of subrogation upon payment of an indemnity by the insurer or does an insurer need a separate clause entitling subrogation?

An insurer's right to subrogation may arise by operation of law ("equitable subrogation"), pursuant to a contractual subrogation provision, or by statute. With some exceptions, equitable subrogation will typically apply regardless of whether a contractual agreement exists and allows an insurer to recover against a third party tortfeasor. Statutory subrogation rights frequently arise in connection with government-mandated benefits and insurance such as workers' compensation, uninsured/underinsured motorist coverage, Medicare/Medicaid, and the federal Employee Retirement Income Security Act of 1974 (ERISA). Where a statute provides the right to subrogation, the statute's terms and conditions govern those rights.

3 Litigation – Overview

3.1 Which courts are appropriate for commercial insurance disputes? Does this depend on the value of the dispute? Is there any right to a hearing before a jury?

The U.S. employs a system of parallel state and federal courts, each with their own jurisdictional requirements. Insurance coverage actions may be brought in either state or federal courts, depending on the facts and circumstances of the dispute. Generally, if a dispute involves an amount under $75,000 or involves adverse parties considered residents of the same state, the case must be brought in state court. If, however, the amount in controversy is $75,000 or more and there is a complete diversity of citizenship among adverse parties, then the case may be brought in or transferred to federal court. Additionally, some federal statutes permit cases to be brought in federal court irrespective of residency or amount in controversy considerations.

In federal courts, the Seventh Amendment of the U.S. Constitution guarantees the right to a jury trial in civil cases for certain legal claims, including breach of contract. It does not, however, guarantee jury trials for equitable claims, like actions for rescission or injunctive relief. The Seventh Amendment does not apply to state courts, but in practice nearly every state constitution guarantees a similar right to a civil jury trial for legal claims.

3.2 How long does a commercial case commonly take to bring to court once it has been initiated?

Generally, cases will take at least a year to resolve, although it is not uncommon for cases to last significantly longer than that. The time it takes to resolve a commercial case through the court system depends in large part on where the case is filed, the complexity of the issues, and the number of parties involved. Additionally, the duration of similar commercial cases may vary even within the same court depending upon the preferences and tendencies of the assigned judge.

4 Litigation – Procedure

4.1 What powers do the courts have to order the disclosure/discovery and inspection of documents in respect of (a) parties to the action and (b) non-parties to the action?

State and federal rules of procedure permit broad pre-trial discovery of relevant, non-privileged information. To that end, the rules generally permit parties to request documents or testimony that are either directly relevant, or that could lead to the discovery of relevant information. Discovery requests can be served on both parties and non-parties, subject to jurisdictional limitations. Party discovery is generally conducted through an exchange of requests by counsel, whereas non-party discovery generally requires a subpoena. Parties can also seek discovery from entities in other jurisdictions, although it is usually more limited, and may be difficult to obtain.

If a party refuses to comply with a valid discovery request, the court can compel production of the requested documents or witnesses. However, there are limits on a party's right to discovery. Procedural rules set forth specific criteria for serving discovery requests, and sometimes limit the number of requests that can be served. Additionally, a court may limit discovery if it finds that: (1) the information sought is cumulative or can be obtained from another, less burdensome source; (2) the party seeking discovery has had ample prior opportunity to obtain the information in the action; and (3) the burden or expense of producing the requested information outweighs its likely benefit, considering the needs of the case, the amount in dispute, the parties' resources, the importance of the issues at stake in the action, and the information's importance in resolving the issues. In certain cases, the court may shift the expense of production to the party requesting discovery.

4.2 Can a party withhold from disclosure documents (a) relating to advice given by lawyers or (b) prepared in contemplation of litigation or (c) produced in the course of settlement negotiations/attempts?

Communications between attorneys and their clients are generally privileged and shielded from disclosure, so long as they are reasonably related to the representation. Similarly, materials prepared in anticipation of litigation are generally protected from disclosure under the attorney work-product doctrine, unless the party seeking discovery can demonstrate: (1) a substantial need for the materials; and (2) the inability to obtain the substantial equivalent of the materials by other means without undue hardship. Whether the attorney work-product doctrine applies is determined by the nature of the work product at issue and the circumstances of its preparation.

Like attorney-client communications and attorney work product, documents produced through settlement negotiations are typically inadmissible at trial, with limited exceptions. However, unlike attorney-client communications and attorney work product, settlement negotiations materials may be subject to disclosure requirements. Although some courts have found these materials to be protected by a "settlement negotiations privilege", some courts have rejected this rationale and require disclosure pursuant to the rules of discovery.

4.3 Do the courts have powers to require witnesses to give evidence either before or at the final hearing?

Courts can generally compel witnesses to testify either before or at the trial. The scope of the court's authority depends on whether the witness is a party or non-party and whether the testimony is sought before or during trial. The court's authority to compel testimony is also generally limited to those persons within its jurisdictional reach.

Subject to certain procedural rules and requirements, subpoenas issued by courts in one state to compel the pre-trial testimony of non-parties residing in other states are enforceable. With limited exceptions, U.S. courts do not have the power to compel a foreign (outside of the U.S.) non-party witness to appear for deposition or trial. As a result, unless otherwise agreed, the testimony of a foreign witness must be obtained according to the Federal Rules of Civil Procedure or an international treaty such as the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters.

4.4 Is evidence from witnesses allowed even if they are not present?

The testimony of a witness who is not present at trial is admissible under certain circumstances, which vary depending upon the jurisdiction. For example, the Federal Rules of Civil Procedure allow parties to use the deposition of a witness who is unable to testify at trial if: (1) the witness has died; (2) the witness is more than 100 miles from the place of hearing or trial or is outside the U.S.; (3) the witness cannot attend or testify because of age, illness, infirmity, or imprisonment; (4) the party offering the deposition testimony could not procure the witness's attendance by subpoena; or (5) upon a showing of exceptional circumstances. Such testimony is typically only allowed if the adverse party had an opportunity to cross-examine the witness when the testimony was taken. So, for example, a party could not present in a trial against Party A the prior deposition or trial testimony of a witness taken in a case against Party B, if Party A (or another party sharing Party A's interests) did not have an opportunity to cross examine that witness.

4.5 Are there any restrictions on calling expert witnesses? Is it common to have a court-appointed expert in addition or in place of party-appointed experts?

Expert testimony is admissible at trial subject to the evidentiary rules of each jurisdiction. While those rules vary to some degree, in general, courts permit a qualified expert witness to testify if: (1) the expert's scientific, technical, or other specialised knowledge will help the trier of fact to understand the evidence or to determine a fact in issue; (2) the testimony is based upon sufficient facts or data; (3) the testimony is the product of reliable principles and methods; and (4) the expert has applied the principles and methods reliably to the facts of the case. Parties to insurance coverage disputes may be able to rely upon expert testimony about industry custom and practice to aid in the interpretation of an ambiguous contract provision, but courts generally find expert testimony regarding conclusions of law to be inadmissible. Courts have the power to appoint their own experts but rarely do so, and it is much more common for the parties themselves to retain experts and present the evidence. When courts do appoint experts, they typically do so in cases involving highly technical and specialised subject matter.

4.6 What sort of interim remedies are available from the courts?

Interim relief is available in most jurisdictions in the form of temporary restraining orders and preliminary injunctions. Courts may also, in very limited circumstances, bar the removal of assets from a jurisdiction through the use of temporary injunctions and pre-judgment attachment. Parties seeking interim relief must show that they are likely to succeed on the merits of the case and would suffer irreparable harm if such relief were not granted. Courts generally consider "irreparable harm" to mean that a party could not be made whole through the payment of money damages.

4.7 Is there any right of appeal from the decisions of the courts of first instance? If so, on what general grounds? How many stages of appeal are there?

In the U.S., the court of first instance is a trial court. The federal court system and most state courts have two levels of appellate courts. In the federal system, ninety-four judicial districts – known as District Courts – serve as the trial courts and are organised into twelve regional circuits. The intermediate appellate system contains thirteen U.S. Courts of Appeal – one for each regional circuit and one for the nationwide "Federal Circuit", which specialises in intellectual property matters. The U.S. Supreme Court serves as the court of last resort. State courts are similarly structured, with trial courts, intermediate appellate courts, and courts of last resort.

A party's right to appeal is governed by the applicable rules of procedure, which vary between jurisdictions. Generally, parties may appeal any *final* trial court decision to the appropriate intermediate appellate court. Interlocutory decisions – those which do not dispose of the case on its merits – are generally not appealable unless delay would be particularly prejudicial to one of the parties. In most jurisdictions, the right to appeal from the trial court is automatic. However, appeals from the intermediate appellate court to the court of last resort are generally not automatic.

The scope of appellate review is generally limited to issues raised before the lower court. The applicable standard of review – and the deference accorded to the lower court's decision – is dependent upon the type of question presented. Questions of law (including contract interpretation) are reviewed "*de novo*" meaning the trial court's decision is owed no deference. Questions of fact are usually reviewed under a "clearly erroneous" standard, and the trial court's findings are afforded substantial deference. Meanwhile, matters committed at the discretion of the trial court – including evidentiary decisions, scheduling orders, enforcement of local rules, and discovery rulings – are reviewable only for "abuse of discretion".

4.8 Is interest generally recoverable in respect of claims? If so, what is the current rate?

Interest is generally recoverable in civil matters brought in U.S. federal and state courts. Prejudgment interest may apply to an award as compensation for lost use of monies up until the date of judgment. Typically, the court determines the date from which prejudgment interest runs. The rate of interest varies by jurisdiction and is typically determined by statute or contract. Post-judgment interest is also generally available, typically established by statute, and tends to run from the date of judgment until payment of the award.

4.9 What are the standard rules regarding costs? Are there any potential costs advantages in making an offer to settle prior to trial?

In the U.S., each party is responsible for its attorneys' fees and costs of litigation. Certain "fee shifting" rules create exceptions to this general rule.

Furthermore, several state statutes permit policyholders to recover attorneys' fees in certain circumstances. In some cases, reasonable attorneys' fees are awarded to insureds who prevail in coverage actions. Other states permit recovery of attorneys' fees only upon a judicial determination that the insurer acted in bad faith, or in other limited circumstances.

Procedural rules create a potential advantage to pre-trial settlement. For example, under Federal Rule of Civil Procedure 68, if a defending party offers to settle more than fourteen days before trial, the plaintiff rejects the offer, and the final judgment is ultimately equal to or less than the settlement offer, the plaintiff must pay the defendant's costs incurred after making the offer. Analogous state procedural rules employ similar fee-shifting mechanisms. Courts interpreting these "offer of judgment" rules have differed in defining what litigation "costs" are recoverable. Most states take a limited view of what constitutes recoverable costs, while others interpret "costs" broadly and include attorneys' fees.

4.10 Can the courts compel the parties to mediate disputes? If so, do they exercise such powers?

Courts often encourage mediation. Mediation requires parties to participate in good faith, but parties are not required to settle the claim(s). Many courts have discretionary authority to compel mediation and/or require mandatory mediation programmes in certain cases, depending on the legal issue or amount in controversy. However, courts cannot require resolution through the mediation process.

4.11 If a party refuses to a request to mediate, what consequences may follow?

Where a party voluntarily requests mediation, other parties have no obligation to submit to mediation. However, refusal to materially comply with court-mandated mediation procedures may lead to court-imposed noncompliance sanctions. Sanctions may take the form of mediation costs and/or attorney's fees. In jurisdictions with more severe rules, courts may dismiss an entire action or enter adverse judgment against the non-compliant party. While courts may sanction parties who fail to participate in good faith in mediation, courts cannot sanction parties for failing to resolve disputes through mediation.

5 Arbitration

5.1 What approach do the courts take in relation to arbitration and how far is the principle of party autonomy adopted by the courts? Are the courts able to intervene in the conduct of an arbitration? If so, on what grounds and does this happen in many cases?

Under the Federal Arbitration Act ("FAA") and similar state arbitration acts, there is a strong preference to enforce parties' arbitration agreements. Generally, any doubts about whether a dispute falls within the scope of an arbitration agreement will be resolved by courts in favour of arbitration.

Court intervention in ongoing arbitration proceedings is rare. Instead, courts generally become involved only at the initiation or conclusion of an arbitration. For example, parties may initially ask courts to compel another party to arbitrate if that party is refusing to recognise or abide by an arbitration clause. Courts may also become involved at the outset of a dispute when a party attempts to consolidate multiple arbitrations. However, courts will generally decline to hear any pre-arbitration award challenges regarding the suitability of arbitrators, except to consider whether an arbitrator meets the qualification requirements under the arbitration agreement.

After an award has been issued, courts will, at the request of a party, either confirm or vacate an award as permitted under the FAA, and/or state arbitration acts.

5.2 Is it necessary for a form of words to be put into a contract of (re)insurance to ensure that an arbitration clause will be enforceable? If so, what form of words is required?

Parties must clearly express their intent to arbitrate disputes in their agreements. While no specific wording is necessary, there is common language frequently used by parties when drafting arbitration agreements.

5.3 Notwithstanding the inclusion of an express arbitration clause, is there any possibility that the courts will refuse to enforce such a clause?

Generally, it is rare for courts to refuse to enforce an express arbitration clause, especially where both parties are sophisticated. The FAA expressly states that a written agreement to arbitrate "shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract". However, roughly half of the states have statutes that prohibit or limit the validity and enforceability of mandatory arbitration clauses in insurance policies. For example, Missouri's arbitration act does not recognise arbitration clauses in insurance contracts (excluding reinsurance contracts) as valid and enforceable. Other states prohibit the use of mandatory arbitration clauses in certain types of policies, like life and health policies. Courts reviewing state anti-arbitration statutes have reached different conclusions as to whether or not these statutes are pre-empted by the FAA (for domestic agreements) or by the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (for international commercial agreements).

5.4 What interim forms of relief can be obtained in support of arbitration from the courts? Please give examples.

As noted above in question 5.1, courts rarely intervene in ongoing arbitration proceedings. In fact, the FAA does not address interim grants of protection in arbitration (except to appoint the arbitrators or compel the parties to arbitrate). However, there are certain instances where interim relief may be granted, including: (1) preliminary injunctive relief to preserve the status quo until the arbitral panel rules on application for interim relief; (2) enjoining a party from disposing of or encumbering assets to satisfy any judgment or arbitration award; (3) compelling specific performance pursuant to terms of contract so as to maintain the *status quo* pending arbitration; and (4) granting a temporary restraining order to enjoin further state court proceedings pending the federal court's decision regarding arbitrability of dispute. Granting orders of interim relief typically require a party to demonstrate that it: (1) will likely succeed on the merits; (2) will suffer irreparable harm if preliminary injunction is denied; and (3) has no other adequate remedies.

5.5 Is the arbitral tribunal legally bound to give detailed reasons for its award? If not, can the parties agree (in the arbitration clause or subsequently) that a reasoned award is required?

Arbitrators are not obligated to provide detailed reasons in support of their award unless required by the arbitration agreement. During the arbitration, however, parties can ask the arbitrators to provide a rationale for their decision. If only one party makes such a request, then the arbitrators have the discretion to grant or deny it.

5.6 Is there any right of appeal to the courts from the decision of an arbitral tribunal? If so, in what circumstances does the right arise?

Arbitrators' procedural and substantive decisions are given substantial deference by courts and are not readily subject to court reversal. Indeed, the FAA and state arbitration acts narrowly limit the courts' authority to overturn arbitration awards to instances where: (1) the award was procured by corruption, fraud, or undue means; (2) there was evident partiality or corruption in the arbitrators; (3) the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown or in refusing to hear evidence pertinent and material to the controversy, or of any other misbehaviour by which the rights of any party have been prejudiced; or (4) where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made. Courts do not often vacate arbitration awards.

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Her reinsurance experience includes: rescission/misrepresentation; allocation; aggregation; ECO/XPL; recovery of declaratory judgment expenses; late notice; follow the fortunes/follow the settlements; and duty of utmost good faith.

In addition to her arbitration and litigation experience, Christa has conducted investigations into captive and finite reinsurance transactions for one of the world's largest insurance companies.

Christa began her career on the direct insurance side, where she acted as coverage counsel to Lloyd's Syndicates.

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