

Reinsurance Working Party - Meeting

Cartagena, Columbia, 26 May 2000, 3:00pm

Minutes

Present:

Colin Croly, UK (Chairman)

Michael Mendelowitz, UK (Acting Secretary)

Maria Alejandra Paez, Colombia

Jorge Eduardo Narvaez, Colombia

Sergio Ruy Barosso de Mello, Brazil

J Vivas Diez, Colombia

Merle Cristina Isaza Posse, Colombia

Carolina Araniegas, Colombia

Erika Paola Pelaez Chaez, Mexico

Gerardo Trigueros, Mexico

Mikael Rosenmejer, Denmark

Fernando Rodas, Colombia

Laura Lopez, Colombia

Bernardo Botero M, Colombia

Ernesto Tzirulnik, Brazil

Paulo Luiz de Toledo Piza, Brazil

Nancy A Vila, Argentina

Cristina Sakura Iwata, Brazil

Cesar A Numez Villalba, Colombia

Franciso Javier Becerril Brito, Mexico

Pedro Zournadjian, Argentina

Apologies:

Mikael Hagiopian

Pal Ljostad

1. **Publication of Reports 2 and 3**
Colin Croly produced copies of the Working Party's Reports Nos 2 (Proper Law of Reinsurance Contracts) and 3 (Follow the Settlements) which had recently been published by LLP. He explained that a series of similar volumes was in production, with a view to building up an international comparative encyclopaedia of legal issues in reinsurance.
2. **Questionnaire No 4 (Meaning of Event)**
To date, responses to this questionnaire have been received from Denmark, France, Germany, Greece, Switzerland, the UK and the USA. Michael Mendelowitz would be leading a discussion on this questionnaire later in the meeting.
3. **Questionnaire No 5 (Custom and Practice)**
The reporter on this questionnaire is Katherine Posner of Condon & Forsyth in New York. Her report is in the course of preparation, but further responses to the questionnaire may still be submitted to her. The deadline for receipt of such responses was April 2000. To date responses have been received from USA, UK, France, Denmark, Brazil and Argentina.
4. **Questionnaire No 6 (Cut Through and Transfer and Reconstruction Issues)**
The reporter for this questionnaire is Michael Gill of Phillips Fox in Sydney, Australia. The deadline for submission of responses to Michael was June 2000. To date responses have been received from the UK, Denmark, Brazil and Argentina.
5. **Questionnaire No 7 (Intermediaries)**
This questionnaire has recently been circulated. The reporter is Prof Robert Merkin of the UK. The deadline for responses is September 2000. Nancy Vila of the Argentine Chapter informed the meeting that Argentina has already responded to this questionnaire.
6. **Suggestion for publication of a country-by-country guide to reinsurance**
Mr Croly informed the meeting that LLP, which publishes the Reinsurance Working Party reports, had recently mentioned a proposal for the publication of a country-by-country guide to reinsurance law. Mr Croly's response had been that the AIDA Reinsurance Working Party was already part of the way towards the production of such a guide, so that

LLP might effectively be competing with itself if it were to produce the other publication proposed.

7. **AIDA Mail**

AIDA Mail is now being published regularly. It is obtainable direct from LLP if National Sections simply provide their membership lists to the AIDA General Secretariat. The Reinsurance Working Party questionnaires and minutes appear in AIDA Mail and on the AIDA website (www.aida.org.uk).

8. **Discussion on questionnaire No 4**

The discussion was led by Michael Mendelowitz, who explained some of the legal disputes which had led to the formulation of this questionnaire. He had produced some model answers written from the point of view of an English lawyer. He would be circulating these answers to other members of the Working Party and to all National Sections in the hope that this would elicit further responses to the questionnaire.

9. **Reinsurance issues in Latin America**

Brief presentations were made by the following:

(1) Professor Jorge Narvaez and Professor Samuel Botero of Colombia - they commented that reinsurance arbitrations are not yet common in Colombia, although arbitration clauses appear in both proportional and excess of loss treaties. They predicted that Colombia was likely to see more conflicts arising in this regard. The issue would require careful analysis, because otherwise Colombian insurance and reinsurance companies might find that their disputes were subject to foreign law.

(2) Nancy Vila of Argentina - she pointed out that in conflicts between insurers and reinsurers, the feeling was sometimes expressed that reinsureds are at the mercy of reinsurers. One should get away from this attitude and recognise that both parties to a reinsurance relationship are in that relationship with a view to mutual profit. Some of the conflicts were getting in the way of a clear understanding of this relationship

(3) Sergio Ruy Barroso De Mello, Brazil - the situation in Brazil is very fluid at the moment. A law which was passed last year handed over authority for the regulation of reinsurance to an independent body, whereas previously the IRB had had a monopoly on reinsurance business in Brazil. Much has happened in the last three months in connection with the privatisation and sale of IRB. The auction has however had to be postponed because of a number of mistakes in the calculation of the price. (See Sergio Ruy Barroso De Mello's two recent articles in the International Journal of Insurance Law (which is published by LLP in

association with AIDA) - [2000] IJIL 164 and [2000] IJIL 249).

(4) Gerardo Trigueros Gaisman, Mexico - the North American Free Trade Agreement (NAFTA) has meant an increased participation by foreign investors in the Mexican market. Of the 65 companies operating in Mexico, only three are not backed to some extent by foreign capital. Reinsurance disputes - both between insurers and reinsurers and with intermediaries - are on the increase. From the Mexican point of view, commercial relationships with other Latin American countries do not appear very important at the moment, but the significance of the Latin American market is likely to increase. Mexico is still, for the time being, looking to London (and other European centres) and the USA as the principal markets in which to buy and sell reinsurance. Mexican companies are still suffering from the effects of writing reinsurance in the 1970's without having sufficient experience of long tail casualty business, for which they did not establish sufficient reserves.

10. Next meeting

It was agreed to hold the next meeting of the AIDA Reinsurance Working Party in Budapest on 23 November, in conjunction with the VI Budapest Insurance Colloquium, and the AIDA 40th Anniversary celebrations.