



## **Reinsurance Working Party - Meeting**

**Rio de Janeiro, Brazil, 2 May 2003, 11am**

### **Minutes**

#### **1. Attendance**

**In addition to the following members of the Working Party:-**

**Colin Croly (Chairman) (UK)**

**Michael Gill (Australia)**

**Anthony Kay (Acting as Secretary) (UK)**

**Sergio de Mello (Brazil)**

**Guillermo Lascana Quintana (Argentina)**

**Domingo Lopez Saavedra (Argentina)**

**Peggy Sharon (Israel)**

**Mikael Rosenmejer (Denmark)**

**Nancy A Vila (Argentina)**

**the meeting was attended by a number of participants at the CILA Conference, making a total of approximately 40 people.**

#### **2. Introduction**

**Colin Croly opened the meeting, referring to this being the latest of the worldwide meetings of the working party, 80 people having attended the last one at the World Congress in New York to hear a mock arbitration based on World Trade Centre related issues. The objective of the Working Party is to compile a comparative study of reinsurance law and so far three reports on What is Reinsurance, Follow the Settlements/Fortunes and the Proper Law of the Reinsurance Contract have been published.**

#### **3. Progress of Questionnaires**

**Three further reports are now ready for publication, being no. 4 on Event, no. 5 on Custom and Practice and no. 6 on Cut Through and Transfer Reconstruction issues. On the latter, Colin Croly suggested to Michael Gill that some further enquiry might be appropriate to cover the use and effect of a sudden death clause, as information on this had been volunteered by some countries which may apply to other countries as well.**

On no. 7, Intermediaries, Professor Merkin was proposing to delay publication of the final report in view of major imminent changes in the UK.

On no. 8, Limitation Periods, Peggy Sharon reported that so far six reports had been received but none so far from common law countries and it was agreed that all countries would be asked to respond by the end of October.

There was a lengthy discussion on whether, given the time since publication and changes that had taken place since then that the first report on "What is Reinsurance", an update was required before producing any further reports. In the end it was agreed that the development of financial reinsurance was such that Professor Merkin should be asked to look at this again to consider the extent to which the earlier report may need revision and what new questions would be appropriate to cover the new forms of reinsurance and the whole question of transfer of risk. In this connection, reference was made to the paper of Professor Diaz Bravo (of Mexico).

There was also a discussion of other topics and it was agreed that the subject of insolvency should be looked at. As this is a very wide topic, there was some discussion as to whether it was possible to limit it in some ways which the meeting in the end thought unlikely, as for instance an insolvent company was often involved as both an insurer and reinsurer so that the question of set-off often arose. The Argentinian section volunteered to draft the initial questionnaire for consideration at the next meeting.(Questionnaire no. 9)

#### 4. Publication of Future Reports

Colin Croly reported that, whilst the first reports had been published by LLP, for the future printing had been arranged in-house by Barlow Lyde & Gilbert but that as it was important to recover the costs members were asked to encourage others to buy copies of the reports. It was suggested that members might find it useful to send copies of the reports to clients and in this respect it might be helpful if all the reports published so far could be consolidated together. It was agreed that this should be looked at subject to checking that there were no IP problems arising out of the publication of the first reports.

#### 5. Changes to the Reinsurance Laws in Brazil

Dr Sergio de Mello gave an introduction on his two papers on the Application of the Law and Jurisdiction in Brazil and the Limit and Scope of the Claims Control Clause. He particularly referred to the fact that as reinsurance contracts typically had few clauses which were often implicit, that in considering reinsurance contracts in Brazil general principles would often be applied. On jurisdiction and the law, applicable foreign law is not to be applied if contrary to Brazilian public policy or the constitution. While custom and practice can be looked at, this needs to be done carefully to determine whether it is a real custom as language discrepancies can lead to misconstruction. On claims control clauses Dr Mello

said that the general principle behind these was that the reinsured must verify the facts behind the claim and handle this in a businesslike manner in the same way as if it were unreinsured.

#### **6. Report on Mock Arbitration in New York**

Colin Croly reported on the mock arbitration held in New York there had been two panels, a US panel considering the definition of occurrence in a property treaty and an international panel looking at the PA treaty. Both panels decided that the facts constituted one event, although there was a difference on the question of recovery of declaratory judgment costs where this was not specifically covered by the wording which referred only to adjustment costs. The US panel thought these could be recovered and the international not.

#### **7. Any Other Business**

Michael Gill referred to the collapse of HIH in Australia and the findings of the Royal Commission which questioned the use of financial reinsurance. He also mentioned that, in view of the finding that officers had known of the financial difficulties for many years, reinsurers have reserved their position.

#### **8. Next Meeting**

Colin Croly announced that the next meeting in Brussels during the first week of December would be held in conjunction with a Belgian Colloquium and a meeting of the Presidential Council.