

New Protocol For Reinsurance Coverage Disputes

by F. Peter Phillips

In April 2005, a group of several prominent insurers met in London in attempt to identify those areas of inter-company disputes most ripe for reform and cooperation. It did not take long for the group to name the often disproportionate lawyer fees associated with reinsurance coverage disputes as a prime target.

Seldom do these coverage disputes ever go to trial, but still, the attorney fees and accompanying delays were incurred through the attenuated process of exchanging information necessary to understand the claim and intelligently begin to negotiate a settlement.

In response, the “International Reinsurance Industry Dispute Resolution Protocol,” was born. With a recent endorsement from Lloyd’s and by leveraging the experience of the International Institute for Conflict Prevention and Resolution (known to most U.S. insurers as the CPR Institute), the protocol was designed to provide a method for companies to mitigate fees and shorten the time between when a company learns of a dispute and when it is able to begin serious negotiations to settle.

For ceding companies and reinsurers, the protocol offers:

- Early notice of a disputed claim, accompanied by a set of documents and information specifically set forth in the protocol
- Response to the notice within 30 days, along with the necessary documents and information
- Negotiation to occur within 14 days of response
- Mediation to occur if no agreement is reached within the first 14 days of negotiation

As another critical component, the protocol contemplates that

there would be no waiver of legal rights in the course of using its terms—meaning two companies can agree to follow the protocol while retaining all rights to arbitrate, litigate, seek extraordinary preliminary relief, move to compel arbitration or seek any other legal remedy.

It has no effect on the rights and obligations of the parties to the contract of reinsurance, but rather is “layered over” the contract as a supplemental, not inconsistent, additional tool for the management of disputes arising from it.

CPR and the framing companies contemplate at least four possible uses for the protocol:

- It can be incorporated by reference into a contract or treaty, requiring disputes to be handled consistent with the protocol’s provisions
- It can be adopted by companies in individual disputes, in instances where both companies sense that availing themselves of the protocol would be useful
- It can be promulgated unilaterally by a ceding or reinsuring company, as a rational and commercially sensible dispute management technique, and advanced by that company in every instance
- It can be used as a statement of “best practices” and discussed, modified and improved within trade organizations and legal circles

However used, it is the hope of its framers that the CPR Reinsurance Industry Dispute Resolution Protocol will enhance the managerial control that all companies will be able to assert over these notoriously expensive conflicts. ■

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