



**2016 CLM Annual Conference**  
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## **What Is It That You Do?!?**

### **I. Introduction**

Did you know that the reinsurer capital for domestic reinsurers in 2014 was in excess of \$675 Billion? Do you know the difference between Treaty Reinsurance and Facultative Reinsurance? Do you know what “Reinsurance” does or what it even is? Whether your answers to these questions are all “yes”, all “no”, or somewhere in between, rest assured that you are in the right place for getting the answer to the biggest questions out there – what is “reinsurance” and what is it that we do in connection with “reinsurance”?

### **II. The Role of a Reinsurance Claims Examiner**

The day-to-day roll of a Reinsurance claim examiner is one with many hats. The examiner must have knowledge in multiple lines of business and experience in handling different kinds of claims. Claims people must have knowledge of establishing appropriate reserves, they must familiarize themselves with the business covered and assess each claim for payment. Reviewing and understanding the reinsurance contracts with our clients is of utmost importance to determining appropriate ceded claim information.

Claim audits/client visits are a key aspect to the role of a claims handler. Claims examiners must be able to offer advisory services to our business partners. The audit process provides claims operational reviews resulting in observations and recommendations on client’s claims department organization, staffing, processes and technology. Claims examiners must be able to complete this portion of the job effectively. If there are lines of business that the staff is not experienced in, they must be able to determine if a third party can handle the audit.

Reinsurance claims examiners often interact with Underwriting and Accounting departments as they would do in a primary insurance company. Examiners discuss trends in claim reporting on specific accounts as well as lines of business. With large industry losses that affect multiple insurers, we look to advise our internal customers of the potential impact the company will have. We regularly work with accounting and actuaries to develop loss trends and appropriate reserves.

Additionally, expertise communicated through speaking engagements at industry organizations help market the company. Building relationships with other industry professionals builds expertise.

### **III. The Role of Outside Counsel**

One of the key components of being outside counsel for reinsurers is the ability to appreciate and handle cedent audits. As such, outside counsel must not only be familiar with the type(s) of reinsurance, but must also have a strong working knowledge of the underlying reinsurance contract(s) themselves, as many such contracts contain key terms, conditions precedent and/or exclusions which may impact the audit itself. In addition, outside counsel must be knowledgeable in the underlying line(s) of coverage being offered by the cedent, and which is/are subject to the audit.

Upon reaching the audit itself, it is recommended that counsel meet with the head of the claims group/department, so as to get a better sense of that group/department's philosophies, including reserving philosophies which can include both the implementation of "signal" reserves, as well as the timeframes used to set and revisit such reserves. In addition, this initial meeting assists counsel with getting a better perspective on the types of claims presented, the manner in which the claims are handled, and a better understanding of trends in the industry and within the cedent's company itself. Once the audit has completed (or nears completion), it is also recommended that counsel have a secondary meeting with the group/department head to discuss any issues detected during the audit and/or to inquire about any specific files that were audited.

As counsel conducts the audit, they should be cognizant of various key factors in helping determine whether the current reserves are adequate, and, in the event they are not, what Actual Cash Reserves ("ACRs") should be recommended to the reinsurer. Among these factors are – (1) the type of claim/suit; (2) the status of the claim/suit (i.e. – if in suit, has the matter passed the motion to dismiss stage); (3) underlying counsel's liability and exposure analysis (and related damages and settlement value analysis); and (4) whether there are any coverage issues that could impact the matter.

In the event that counsel audits a file that does not need additional reserves at that time, but may need a reserve adjustment in the near future (based on various factors), then it is recommended that outside counsel provide the reinsurer with a separate list of "Watch List" items, so that the reinsurer can monitor those matters going forward, so as to avoid any reserving "surprises" at some later point in time.

Many reinsurers greatly benefit by engaging outside counsel to conduct these reinsurance audits, as outside counsel should be able to provide the reinsurer with an independent perspective on the industry itself, that/those particular line(s) of business that are subject to the audit, counsel's own experience in dealing with particular cedents, insureds, underlying coverage issues, and related underwriting concerns. If outside counsel can add this type of "value" to the audit, then all parties to the audit (from reinsurer to cedent) should benefit.

Some examples of outside counsel adding value to an audit are as follows:

- Advising the reinsurer about a cedent's troubling reserving philosophy, thereby allowing the reinsurer to negotiate better terms to the renewal reinsurance contract, and ultimately, resulting in the cedent making drastic changes to said philosophy;
- Determining that a particular audited file was severely under-reserved, which, subsequent to making an ACR recommendation, resulted in a \$5 Million policy limit settlement;
- After determining and reporting to the reinsurer that, notwithstanding various underlying coverage issues and policy placement concerns, a particular cedent had made significant voluntary payments to its insured, being able to secure a commitment from the cedent to fully reimburse the reinsurer for all amounts paid back to the cedent pursuant to the terms of the controlling reinsurance contract.

#### **IV. Complex Claims Management and How to Handle Disputed Claims**

One of the most important roles of the reinsurance claims professional is to provide expertise to evaluate, manage and resolve reinsurance claims, including complex ceded and assumed accounts.

The reinsurance claims professional handling complex claims matters is usually adept at spotting issues where the majority of disputes usually arise. Those issues typically involve one or more of the following:

- Access to Records
- Notice of Loss – Late Notice?
- Is the claim covered by the reinsurance contract?
- Allocation issues
- Trigger of coverage issues
- Number of occurrences
- Aggregation issues

When a disagreement does arise between a ceding company and a reinsured, reinsurance contracts typically contain an arbitration clause that provides for a selection of neutral panel of arbitrators. The arbitration process usually provides for confidentiality, and the ultimate awards issued by the arbitration panel are typically final and binding on the parties.

Some of the principles that are part of industry custom and practice are considered by arbitration panels when ruling on a disputed matter between a ceding company and reinsurer include the following:

- Utmost Good Faith and Fair Dealing Both parties have a heightened duty of care based on reliance and dependence from contract formation, renewal, and claims handling.
- Affirmative Duty to Disclose all information potentially materially to the insured risk
- Cedent is obliged to act in the same manner as it would if it had no reinsurance.
- Follow the Fortunes! Reinsured cannot dispute the good faith determination that a risk was covered under the policy, or a good faith interpretation of the policy terms.
- Reinsurer must indemnify the reinsured for any payments made for claims covered by underlying policy, by settlement or adverse judgment, so long as not fraudulent, collusive or made in bad faith.