

AIDA WORLD CONGRESS ROME 2014

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## ARBITRATION AND INSURANCE

### I. PROS AND CONS

M. Fontaine

September 30, 2014

# I. ARBITRATION IN INSURANCE : PROS AND CONS

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- ◆ A. The Belgian Experience
- ◆ B. Advantages of Arbitration
- ◆ C. Disadvantages

# A. The Belgian Experience

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- ◆ Wide use of arbitration in insurance litigation
- ◆ Impact of the Law of June 25, 1992
  - Arbitration in principle excluded for mass risks
  - Arbitration still prospering for large risks
- ◆ Contrast with some other countries

## B. Advantages of Arbitration in Insurance

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- ◆ Selection of judges with the necessary expertise
- ◆ Confidentiality of the procedure
- ◆ Relative rapidity

## C. Disadvantages

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- ◆ Costs
  - Special concern for mass risks
- ◆ Alleged bias of some arbitrators
  - Largely unjustified accusation

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### II. Involvement of non-signatory insurers

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## II. Involvement of non-signatory insurers

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- ◆ A. Basic Principles
- ◆ B. Cases of Possible Involvement

# A. Basic Principles

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- ◆ Arbitration based on a contractual agreement
- ◆ Privity of contract
  - A non-signatory may in principle not be involved in an arbitral procedure



## B. Cases of Possible Involvement of Non-Signatories

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- ◆ 1. Voluntary or requested intervention
  - Conditions required by the applicable law
  - Implementation

## B. Cases of Possible Involvement of Non-Signatories

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- ◆ 2. Consolidation of related arbitral procedures
  - Example : CEPANI Rules, art. 13

## B. Cases of Possible Involvement of Non-Signatories

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- ◆ 3. Insurer's control of the procedure initiated in the name of the insured
  - « *Direction du procès* »
  - Consequences on the « *opposabilité* » of the award

## B. Cases of Possible Involvement of Non-Signatories

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- ◆ 4. Subrogation of the Insurer in Indemnitary Insurance
  - Insurer → Party to the Arbitration Agreement

# B. Cases of Possible Involvement of Non-Signatories

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- ◆ 5. « *Extension* » of Arbitral Agreements to Non-Signatories
  - Various possible grounds, including
    - Implied consent
    - Involvement in negotiation or performance of the contract
    - Group of contracts
    - Group of companies
  - Possible applications to insurers and/or reinsurers