

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

**BEFORE THE COURT-APPOINTED REFEREE
IN RE THE LIQUIDATION OF THE HOME INSURANCE COMPANY**

DISPUTED CLAIMS DOCKET

**In Re Liquidator Number: 2008-HICIL-42
Proof of Claim Number: RAHM700612-32
Claimant Name: KX Reinsurance Company Limited**

**KX REINSURANCE COMPANY LIMITED'S MEMORANDUM
CONCERNING ENGLISH LAW EXPERT**

Pursuant to the Referee's Order of November 17, 2009, Claimant KX Reinsurance Company Limited ("KX") submits this Memorandum summarizing its position with respect to an English law expert. KX has abided by the Court's Order, and has attempted in good faith to agree on a proposed English law expert.

1. On June 15, 2009 the Referee entered an Order ("Order") that, among other things, required that the "parties will confer regarding their recommendation for an expert on English law to be appointed to consult with the Referee." 6/15/09 Order.

2. In compliance with the Order, KX put the names of three proposed experts to counsel for Century Indemnity Corporation ("CIC") on September 3, 2009. All of KX's proposed candidates – Ian Hunter QC, Stephen Ruttle QC, and Sir Brian Neill – are eminently qualified. The CVs of each candidate are attached hereto as Exhibits A through C.

3. CIC, however, refused even to consider, or even comment on, KX's proposed candidates. CIC instead presented the selection of its candidate, Colin Edelman QC, as a fait accompli. Counsel to CIC wrote: "our position is that Mr. Edelman – as the agreed choice of

Century and the Liquidator under the Protocol and as the English law expert in a previous dispute under English law (2006 HICIL 18 and 21) – is the best candidate. For this reason, we object to your candidates.” See Exhibit D hereto.

4. The Protocol, however, does not give CIC the right to pre-ordain an English law expert. The Protocol makes clear that that the selection of an expert is in the hands of the referee: “The Disputed Claim proceedings shall be conducted by the Referee, who may appoint an expert to assist the Referee.... The Referee shall choose the expert.” Protocol, § 2.15. Indeed, allowing one side of a disputed claim (CIC) to pick the expert would be anathema to judicial process.

5. Moreover, CIC’s position that Mr. Edelman is the most qualified simply because he has served as an expert in prior HICIL proceedings is without merit. The role of an expert is simply to provide opinion concerning discrete issues of English law unique to each proceeding. There is nothing about familiarity with the procedure of the claims proceeding that would make Mr. Edelman more qualified than all others.

WHEREFORE, KX respectfully requests that in making its selection of an English law expert to assist it in this matter, the Referee consider the three candidates proposed by Unionamerica.

KX Reinsurance Company Limited
By its attorneys,



Joshua Gardner (N.H. Bar No. 16170)
Edwards Angell Palmer & Dodge LLP
111 Huntington Avenue
Boston, MA 02199
jgardner@eapdlaw.com

Of Counsel:

Mark Everiss
Edwards Angell Palmer & Dodge UK LLP
One Fetter Lane
London, EC4A 1JB
United Kingdom

Certificate of Service

I, Joshua W. Gardner, hereby certify that the above document was served on all counsel of record on this 4th day of December 2009.

A handwritten signature in black ink, appearing to read 'JW Gardner', is written over a horizontal line.

Joshua W. Gardner

EXHIBIT A



IAN HUNTER QC

Born 1944

Essex Court Chambers
24 Lincoln's Inn Fields
London WC2A 3EG United Kingdom

Tel: +44 (0) 20 7813 8000
Fax: +44 (0) 20 7813 8080
Email: ihunter@essexcourt.net

Seven Wentworth Chambers
7th Floor, 180 Phillip Street
Sydney NSW 2000 Australia

Tel: +61 2 8224 3000
Fax: +61 2 9233 1849

J.A. Cremades et Associés
51, avenue Georges Mandel
Paris 75016

Tel: +33(0)1 45 53 55 50

Practice

- Arbitration
- Aviation
- Banking, Securities, Derivatives
- Commercial Litigation
- Commercial Fraud & Asset Recovery
- Conflict of Laws
- Construction
- European Law
- Financial Services
- Insurance & Reinsurance
- International Commercial Franchises
- Mediation
- Professional Negligence
- Shipping

Ian Hunter has a broad-based commercial practice in line with Chambers' profile. A major part of his practice is concerned with arbitration both as advocate and as arbitrator. As a junior Barrister he was involved in a large number of shipping and construction arbitrations. Since taking silk he has been instructed in many arbitrations, both of a general commercial nature (including ICC and ad hoc arbitrations) and more specialised arbitrations, particularly in the insurance and reinsurance fields. In the last 5 - 10 years he has spent approximately equal amounts of time acting as an advocate in arbitration and as an arbitrator (both ad hoc and ICC). Insurance and reinsurance arbitrations are a particular speciality with an increasing amount of construction work. He is sitting as arbitrator in a number of construction cases involving the Middle East. In the last 2 years he has had two construction cases in which Egyptian law has been relevant, one involving the Cairo Centre for International Commercial Arbitration. Arbitration takes up substantially more than 50% of his professional time. He has acted as Mediator in a number of matters involving a wide variety of subjects. He accepts either ad hoc or appointments made through mediation bodies such as CEDR and CPR Resources.

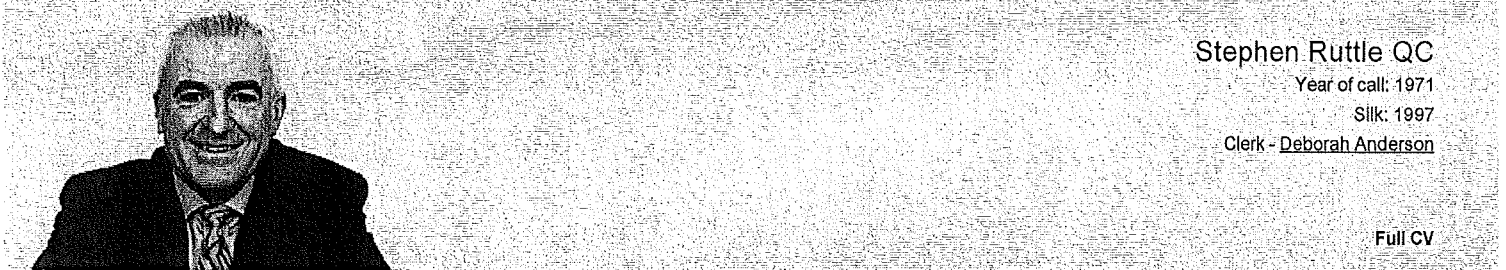
Career

1995	Avocat à la Cour de Paris
1994	Senior Counsel, New South Wales
1993	Deputy High Court Judge
1986—2000	Recorder
1980	Silk
1967	Call: Inner Temple (Bencher)

Accredited Arbitrator ARIAS-US
Accredited Mediator CEDR

Education	1968	LLM, Harvard Law School
	1967	LLB, Pembroke College, University of Cambridge
	1966	MA (Law; Double First), Pembroke College, University of Cambridge
Awards		Open Scholar Squire University Law Scholar Trevelyan Scholar Kennedy Memorial Scholar at Harvard Duke of Edinburgh Entrance Scholar Major Scholar (the last two at the Inner Temple)
Languages		French (fluent), Spanish (working knowledge)
Member		ARIAS-US Anglo-Australasian Lawyers Society (Chairman, English Section) British Insurance Law Association Canadian Bar Association (Hon) Clauses Sub-Committee IUA Commercial Bar Association (COMBAR) CPR Resources (Panel of Distinguished International Mediators) Electricity Arbitration Association (Panel) Franco-British Lawyers Society (Past Vice-President) Gibraltar Bar Insurance and Reinsurance Arbitration Society (ARIAS-UK) (Vice-President) London Common Law and Commercial Bar Association Union Internationale des Avocats (Past President)
Publications		Joint Editor <i>Lloyds Insurance and Reinsurance Law Reports</i> Speaker at numerous insurance, reinsurance and arbitration seminars both in the UK and abroad, particularly the United States. If you require further information please contact clerksroom@essexcourt.net

EXHIBIT B



Stephen Ruttle QC

Year of call: 1971

Silk: 1997

Clerk - [Deborah Anderson](#)

[Full CV](#)

[Barristers](#) > [Stephen Ruttle QC](#) >

Stephen Ruttle QC's Full CV

Qualifications

B.A.Honours Degree in English/Law - Queen's College Cambridge

Areas of Practice

- Mediation as Mediator
- Arbitration as Arbitrator

Practice Profile

Bencher Gray's Inn 2004

Accredited and Registered by CEDR as a Mediator 1998

Member of ARIAS US 1998

Member of the Civil Justice Council ADR Committee 2000

Member of the Bar Council ADR Committee 2000 - 2007

Board Member of Mediation UK 2001- 2005

Founder Director of Wandsworth Mediation Service 2002

Independent Mediator Board Member of the Civil Mediation Council 2003-2005

Vice-Chairman of Mediation UK 2004 - 2005

Member: Panel of Independent Mediators (PIM) 2005

Accredited Mediator at Hong Kong International Arbitration Centre 2006

Fellow of the International Academy of Mediators 2007

Lieutenant-Bailiff Guernsey 2008

Stephen Ruttle is a full time Commercial Mediator and Arbitrator. He is an enthusiastic believer in mediation and has successfully mediated many hundreds of intractable commercial disputes with sums involved, in individual cases, of up to £2bn.

He has for many years been regarded as among the top 10 commercial mediators practising in the UK.

He acts in addition as a Commercial Arbitrator of insurance, reinsurance and general commercial disputes.

Mediation

Stephen began to mediate commercial disputes in 1999. Most of these cases came from fields in which he had expertise as a commercial Queen's Council, principally insurance, reinsurance and shipping. He has consistently, for each of the last 10 years, mediated a large number of such disputes. He has very extensive experience of mediating shipping disputes of all types and these probably make up about 25% of his entire annual mediation workload.

From the very beginning of his mediation career, however, Stephen has successfully mediated disputes of other types. He mediated cases relating to environmental (river) pollution, minority shareholder petitions, professional negligence from a number of different fields (such as pensions, solicitors, engineers and insurance brokers), construction and property investment in his first two years mediating. His mediation practice grew rapidly. He now mediates, all types of commercial and business dispute. His practice ranges from typical commercial disputes in the insurance, reinsurance, banking and shipping fields, to common law disputes such as construction, professional negligence, technology and sale of goods/supply of services to Chancery problems such as intellectual property, insolvency, Companies Act petitions, trusts, wills and taxation. He mediates a significant number of employment disputes. He has mediated some clinical negligence cases and marine personal injury and death claims. He does not currently mediate family law disputes (although he hopes to qualify as a Family Law mediator soon) and non-marine personal injury claims.

By about 2003 Stephen's workload from mediation was so considerable that he began to stop acting as an advocate in Court. For the last five or six years he has effectively worked full time as a Commercial Mediator and Arbitrator.

Stephen is a member of a number of national and international mediation organisations and specialist mediation panel.

He is heavily involved in the community mediation movement in the voluntary sector. For a number of years he was on the board of Mediation UK, then the national community mediation organisation. He is a founder Director of a community mediation charity called Wandsworth Mediation Service and is currently involved in developing local dispute resolution/community mediation initiatives in Wandsworth. As Chairman of Wandsworth Mediation Service he has developed an innovative small legal claims mediation service.

He regularly mediates clerical and other church based disputes on a voluntary basis and is keen to develop mediation initiatives between faith groups.

He is an enthusiastic advocate of mediation and regularly writes, lectures and speaks about mediation, its development and its advantages. By way of example in March 2006 he took part in a 3 day mediation training session for the judiciary in Hong Kong. He will be involved later in 2009 in delivering mediation training to professionals in Hong Kong. He has spoken about mediation to a gathering of marine professionals in Athens.

By April 2009 Stephen has mediated over 650 commercial disputes in addition to a significant number of pro bono, non-commercial disputes typically of a community or clerical nature. At present he would usually spend three days a week mediating the remaining time being spent recovering and preparing for the next!

He has consistently featured in the top rankings of the various legal directories such as Chambers & Partners under the heading "Mediation". For the last six years he has featured as one of the top 10 UK Commercial Mediators.

Sample mediations

Because the disputes that Stephen mediates come from all areas of practice comprising all types of legal problems, it is not possible to give a sample or, other than in general terms set out above, to identify a particular mediation expertise. In reality his expertise is as a Mediator rather than as a mediator of a particular sort of case. The sums of money at stake have ranged from as little as £25,000 to as much as £2 billion. Typically the disputes will involve \$1 million or more. Much of the work he mediates is international in nature and many disputes involve parties who are not based in the UK. Most of his mediations take place in London, but he regularly mediates elsewhere in the United Kingdom and has mediated a number of cases in Athens, New York, Hong Kong and elsewhere. Along with many other Commercial mediators he has noticed a trend in the last few years for an increasing proportion of those disputes that do settle (about 80% in his experience) to settle after the Mediation Day. This frequently involves extensive on-going contact between himself, the parties and their legal advisers.

Arbitration

The balance of his practice (about 20%) is taken up with Commercial Arbitration. He arbitrates extensively in the reinsurance and insurance field usually sitting as Sole Arbitrator or as the Chairman of the Panel. He writes maybe 5 Awards a year and at any one time will probably have been 20 on-going appointments. This part of his practice is currently increasing with recent appointments from the construction industry and other fields.

He has Arbitrated a number of ICC and LCIA disputes and in 2006 co-Authored a chapter "Better Dispute Resolution - The Development and Practice of Mediation in the United Kingdom between 1995 and 2005" in the ICC publication "ADR in Business".

General Practice

Stephen's practice at the Bar was primarily reinsurance, marine and non-marine insurance and general commercial and shipping law. He was involved in many leading reported cases.

Legal Directory Comments

"combines the kudos and acumen of a top commercial silk with strong people skills," "a good listener" with "great empathy" and "immense reserves of patience" Legal 500 (2008)

"for big important disputes I always go to Ruttle, Wonderful presence, brilliant at narrowing down the issues quickly" Chambers & Partners (2007/8)

"the person for shipping and insurance" "an absolute natural mediator, it is clear he really does know his stuff" "immediately impresses, makes any party feel comfortable" "he always does a good job" Chambers & Partners (2007)

"His reputation for commercial mediation continues to rise. His "light touch", "robust charm" and sense of humour has found appeal outside his acknowledged specialist areas of insurance, reinsurance and marine work. Clients warm to his "facilitative negotiating style", "clear distillation of the issues" and ability to sustain dialogue against the odds. He "doesn't spend hours dancing around the daffodils" and instead "cuts to the chase", "baring his teeth where necessary". Legal 500 (2006)

"Excellent ... commands respect as a "top notch" Mediator". Chambers & Partners (2005/6)

"Famed for his skills as a Mediator". Legal 500 (2005)

"A mediator with "charisma and bags of positive energy". Chambers & Partners (2004/5)

"An outstanding mediator" Legal 500 (2004)

A mediator with an "authoritative style" but one who is also "facilitative and easy to work with". Chambers & Partners (2003/4)

"Talented and charismatic mediator", "so well regarded it's untrue". Chambers & Partners (2002/3)

An immensely capable and effective mediator "who combines a first class Forensic ability" with a facility for "capturing the confidence of parties. Chambers & Partners (2001/2)

He was one of seven leading Silks in the top tier of the Insurance and Reinsurance section of the Legal 500 2006 and 2007 where comments

include:

"Newly recommended this year for his Arbitration work".

"Accompanied in the top tier by recommended "arbitrator and mediator" Stephen Ruttle Q.C.".

Publications

Lecturer at numerous Insurance, Reinsurance and Mediation Seminars.

Co-Author of "Insurance Brokers" section in Professional Negligence and Liability, LLP 2000.

Contributor to Butterworths, "Mediators on Mediation, Leading Mediator Perspectives on the Practice of Commercial Mediation" 2005.

Co-Author of Chapter 9 in the ICC publication ADR in Business 2006 ("Better Dispute Resolution - The Development and Practice of Mediation in the United Kingdom between 1995 and 2005").

EXHIBIT C

Lord Justice of Appeal, 1985-96

SIR BRIAN NEILL

Sir Brian Neill was called to the Bar by the Inner Temple in 1949. A CEDR accredited mediator he is the current chairman of the newly-established Civil mediation council. For nineteen years he was in practice at the Bar specializing in media law and in drafting banking and other documents for financial institutions before being appointed Queen's Counsel in 1968.

In 1976 he sat as sole arbitrator (with an engineer assessor) in the Plover Cove Reservoir arbitration between the Hong Kong Government and the French construction company.

He was appointed a High Court judge in 1978 and until the end of 1984 sat regularly in the Queen's Bench Division and in the Commercial and Admiralty Court, as well as a judge of the Employment Appeal Tribunal. He was appointed a Lord Justice of Appeal in 1985 and sat in the Court of Appeal until 1996. Following his retirement he sat from time to time in the Court of Appeal as a retired Lord Justice and also at as a member of the Judicial Committee of the Privy Council. From 1998 to 2003 he sat on a part-time basis as the President of the Court of Appeal for Gibraltar.

Since 1997 Sir Brian Neill has sat as sole arbitrator or as a member of a panel (usually as chairman) in a substantial number of international arbitrations, and some domestic arbitrations, including arbitrations involving shipping, insurance and re-insurance, commercial agency, construction and partnership disputes. He has also acted as mediator or conciliator in a number of matters including ship construction, book publishing, re-insurance and the maintenance of aircraft.

In 1983 Sir Brian Neill succeeded Lord Scarman as the President of the Society for Computers and Law and continued in that post until 1993. He has retained his links with the Society as a Vice-President. From 1985 to 1995 he was the first chairman of the Information Technology and the Courts Committee established by the Lord Chancellor to assist in the development of the use of IT in the courts system. Sir Brian is also a liveryman of the Worshipful Company of Information Technologists.

He is the chairman of the Trustees of the Lord Slynn of Hadley European Law Foundation and has spoken in Eastern Europe on various aspects of EU law.

He is co-author of a leading textbook on the law of defamation.

Arbitrations concluded or current

Shipping dispute re supply of Iraqi oil

Numerous major reinsurance disputes involving foreign insurance and reinsurance companies

Shipping collision in Mediterranean

Dispute re satellite communications in Asia

Dispute involving local authority re waste disposal site

Dispute re shipping agency in India

Dispute re engineering services in Saudi Arabia

Dispute re shipbuilding contract

Dispute re supply of electronic devices by foreign contractor

ADR concluded or current

Government Department and two contractors - shipbuilding dispute

University and member of academic staff - employment dispute

Government Department and foreign contractor - dispute re software (This was an Early Neutral Evaluation)

Dispute re development value of land.

EXHIBIT D

Gardner, Joshua

From: Schaaf, Kathleen E [KSchaaf@mofo.com]
Sent: Thursday, November 12, 2009 10:38 AM
To: Gardner, Joshua; Everiss, Mark
Cc: Luke Hacker
Subject: RE: HICIL 40 & 42 / English Law

Josh and Mark,

Luke and I have conferred, and our position is that Mr. Edelman -- as the agreed choice of Century and the Liquidator under the Protocol and as the English law expert in a previous dispute under English law (2006 HICIL 18 and 21) -- is the best qualified candidate. For this reason, we object to your candidates. If you are willing to discuss your objections to Mr. Edelman, we will be happy to have a conference call at 11. If, however, you are looking for a further or different basis for our objections to your candidates before you are willing to discuss your position on Mr. Edelman, a call will likely not be productive. Please advise how you wish to proceed.

Regards.

Kathleen

Kathleen E. Schaaf

Senior Of Counsel
Morrison & Foerster LLP
1290 Avenue of the Americas
New York, NY 10104
kschaaf@mofo.com
T. 212.336.4065

From: Gardner, Joshua [mailto:JGardner@eapdlaw.com]
Sent: Thursday, November 12, 2009 9:18 AM
To: Schaaf, Kathleen E
Cc: Everiss, Mark
Subject: RE: HICIL 40 & 42 / English Law

Kathleen: Here are the call in numbers for our 10:00 EST call. They are the same as for the last call. Use the 913 number for calling from outside the U.S. Please pass it on to any other participants on your end. Thanks.

800.326.6981 or 913.312.4198

Participant: 547130

From: Schaaf, Kathleen E [mailto:KSchaaf@mofo.com]
Sent: Monday, November 09, 2009 5:21 PM
To: Gardner, Joshua

12/3/2009

Cc: Everiss, Mark
Subject: Re: HICIL 40 & 42 / English Law

I had been trying to get English counsel involved, but have not heard back. Perhaps we can kick this over a day or two.

Sent using BlackBerry

From: Gardner, Joshua
To: Gardner, Joshua ; Schaaf, Kathleen E
Cc: Everiss, Mark
Sent: Mon Nov 09 17:12:48 2009
Subject: RE: HICIL 40 & 42 / English Law

Kathleen: Is there another time that would work for you to talk about the issue?
-Josh

From: Gardner, Joshua
Sent: Monday, November 09, 2009 1:28 PM
To: 'kschaaf@mofo.com'
Cc: Everiss, Mark
Subject: HICIL 40 & 42 / English Law

Kathleen:

I hope you are well and still enjoying the post-World Series excitement. Mark and I were hopeful that you might be available for a short call with us to discuss the English law expert issue ahead of the conference later this week with the referee.

Would tomorrow morning work for you? Mark and I are both available tomorrow morning any time before 10:00 a.m. EST.

Here's call in info we could use:

800.326.6981 or 913.312.4198

Participant: 547130

Best regards,

Joshua W. Gardner
Edwards Angell Palmer & Dodge LLP
111 Huntington Avenue
Boston, MA 02199

Direct Phone: 617.951.2259
Direct Fax: 888.325.9417
General Phone: 617.239.0100
General Fax: 617.227.4420
Mobile Phone: 857.225.2743

Boston MA, Ft. Lauderdale FL, Hartford CT, Madison NJ, New York NY, Newport Beach CA,

12/3/2009

Providence RI, Stamford CT, Washington DC, West Palm Beach FL, Wilmington DE, London UK, Hong Kong (associated office)

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