**2013 AILA Conference & AIDA World Meeting in Sydney (17-20/09/2013)**

**Minutes of the Consumer Protection and Dispute Resolution Working Party Session on Resolving Insurance Disputes without Resort to Litigation**

Dr. Kyriaki Noussia (Secretary to the Working Party)

The meeting was held on Wednesday September 18th 2013 between 9:00 and 11:30 hrs at the Daltone House, Darling Island, Sydney, NSW Australia.

The topic of the session was titled: “Resolving Insurance Disputes Without Resort to Litigation”.

There were 17 attendants, as follows:

KYRIAKI NOUSSIA (GREECE),

SAMIM UNAN (TURKEY) ,

MICHAEL GILL (AUSTRALIA),

IOANNIS ROKAS (GREECE),

GREG PYNT, (AUSTRALIA),

JUNE SMITH (AUSTRALIA),

BIRGIT KUSCHKE (SOUTH AFRICA),

TAISTO HUJALA (FINLAND),

LINDA HAMILTON (AUSTRALIA),

CAMPBELL ANDERSON (AUSTRALIA),

CHRIS RODD (AUSTRALIA),

DALLAS BOOTH (AUSTRALIA),

FIONA CAMERON (AUSTRALIA),

LINDSEY CHAPMAN, (AUSTRALIA),

ASHLEY TSAKALOS, (AUSTRALIA),

CHRISTINA GIBSON (NEW ZEALAND),

SUSAN VIDLER (AUSTRALIA).

**Introduction:**

Professor Samim Unan (Chairman of the Working Party) opened the Session by introducing the topic of Dispute Resolution and enumerating the speakers of the session and their topics.

Michael Gill then made his introduction on the topic as well as remarks on the sessions of the Working Party’s meetings so far as well as on the importance and meaning of the existence of Working Parties, i.e. the fact that they are the lifeblood of AIDA and that everyone is entitled to contribute to Working Party sessions. He then went on to make some introductory remarks on the evolution of ADR in insurance.

**Dr Ashley TSAKALOS : The Financial Ombudsman Service (FOS) in Australia**

The main points of Dr Tsakalos’s talk are summarized below: Dr Tsakalos talked about FOS being an independent DR body, established in 2008. He went on to analyse the scope of its operation i.e. to resolve disputes with financial services providers. Following, he talked about the Jurisdiction of FOS, as well as about the DR processes and the arrays of the existing mechanisms (e.g. conciliation, mediation). He went on to analyse some recent case law and administrative law concepts and pointed out the view from the Australian perspective (*Mickovski v FOS Ltd* (2011)VSCA 257, *Bilaczenko v FOS Ltd* (2013) FCCA 420).

After that, some comments emerged from the case law study, such as the fact that cases can be challenged from a contractual aspect - e.g. reviewed and / or challenged on basis of breach of contract, or the fact that mostly so far decisions come from applicants and not from the financial services providers, but it was hoped that this would change in the near future.

A discussion followed.

**Prof. Samim  Unan: German and English Ombudsman systems and the special arbitration system in Turkey**

The main points of Prof. Unan’s talk are summarized below: Prof. Unan initially talked about ADR in general. Then he went on to analyse the position of ADR in insurance and the aims of the ADR process . Then he spoke of the Principles  entailed in the in the EU Directive of Consumer ADR (2013/11/EU), the access to ADR entities and ADR procedures and the entailed principles of expertise, independence, impartiality. Special requirements should exist **so** as to achieve the above principles, i.e. transparency, effectiveness, fairness, liberty, legality and the effect on limitation and prescription periods. He then went on to talk about the Insurance Ombudsman System in the UK and in Germany and on their similarities and differences.

A discussion followed.

**Prof. J. Kullman: Mediation in France**

The main points of Prof. Kullman’s talk are summarized below: Prof. Kullman talked about the long tradition of mediation in insurance, and the fact that mediation in insurance is 20 years now in operation. He cited and analysed the prerequisites for mediation, i.e. the independence principle, the fact that the mediator examines the case and gives his opinion under 2 aspects i.e. the legal aspect and that of equity. He then stated that a conflict appears in the practice re those two principles. Following he discussed that there is no provision for mitigation for the insurer in France and the fact that circa 20% of the claims go to the Ombudsman from the side of pensioners, just because they are not happy, and not really not because there is a claim, and the fact that his constitutes a burden for the mediator. He stated further on that the mediator cannot do anything if there is not a dispute, and just only dealing with a clause not conforming with the law and that as a result the mediator does not deal with those cases / issues. Following, he elaborated on the development of mediation for professional risk re big ins. companies and stated that mediation in those cases is very original and well suited. He then commented that with mediation - as its not compulsory - nobody loses its face so it’s a mechanism that helps companies, hence also for this reason is the principle so successful

A discussion followed.

**General:**

Afterwards a discussion followed with a short presentation of the position re insurance mediation in all jurisdictions represented in the session ( FINLAND, SOUTH AFRICA, FRANCE,  TURKEY, GREECE, NEW ZEALAND)

**Conclusion:**

Following, closing comments were made by M. Gill and the meetings of the WP in Athens (May 2014) and in Rome (Sept.-Oct. 2014) were announced.

The WP Secretary

Kyriaki Noussia

Athens 24/09/2013