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# VOLDGIFT I REASSURANCETVISTER

VOLDGIFTENS DAG



Niels Schiersing, FCI Arb

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# Emner

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1. Hvad er reinsurance?
2. Formålet med reinsurance
3. Retsgrundlag og fortolkning
4. Særlige voldgiftsinstitutter/regelsæt?
5. Særlige regler om voldgiftsdommernes kvalifikationer?
6. Særlige regler om voldgiftsprocessen og retsanvendelse/fortolkning?
7. Typiske problemstillinger?
8. Uberrima Fides: Et eksempel

Hvad er reinsurance?

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**Delver v Barnes (1807):**

*... a new assurance effected by a policy on the same risk which was before insured in order to indemnify the underwriters from their previous subscriptions; and both policies are to be in existence at the same time.*

Hvad er reassurance?

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**North River v Ace American (2004):**

*Simply put, reinsurance is a contract by which one insurer insures the risks of another insurer*

## Formålet med reinsurance

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### **Unigard v. North River (1993):**

*...The purpose of reinsurance is to (1) diversify the risk of loss... and to (2) reduce required capital reserves. ...*

*(1)*

*Spreading the risk prevents a catastrophic loss from falling up on one insurer.*

*(2)*

*By reducing the legal reserve requirements, the ceding insurer then possesses more capital to invest or to use to insure more risks.*

## Formålet med reinsurance

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- Risikospredning (proportional reinsurance)
- Tabsbegrænsning (excess of loss reinsurance)
- Omkostningsstruktur (faste/variable omkostn.)
- Forretningsomfang
- Solvenskrav
- Ekspertise – geografisk/sekter
- Claims handling
- Præmieberegning ved "large risks"

## 2 hovedsondringer

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1: "Aftalepligt eller aftalefrihed?"

"Fakultativ" eller "obligatorisk" reinsurance

2: "Deling af risiko eller deling af tab?"

"Proportional" eller "Excess of Loss" reinsurance

# Reassurandører

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## REINSURER

Munich Re (D)	\$37,251
Swiss Re (CH)	\$31,723
Hannover Re (D)	\$18,208
Lloyd's of London (UK)	\$15,785
Berkshire Hathaway / General Re (USA)	\$15,059
SCOR (F)	\$12,576
Reinsurance Group of America (USA)	\$8,233
China Reinsurance Group (PRC)	\$6,708
Korean Reinsurance Company (KOR)	\$5,113
PartnerRe (BER)	\$4,712
Everest Re (BER)	\$4,311
Transatlantic Re (USA)	\$3,577
London Reinsurance Group (UK)	\$3,319

## 2012 Bruttopræmieindtægter (USD millioner)

} ca. 50 %  
af de 13



# Aktøerne

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## **Forsikring**

Forsikringstager  
Forsikringselskab

## **Reassurance**

Cedent  
Reassurandør

## **Retrocession**

Retrocedent  
Retrocedør  
(retrocessionaire)

## Relationer

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### **Travellers v Scor (1995):**

*The mechanics of reinsurance can be simply described. One insurer (a “ceding insurer”) “cedes” all or part of the risk relating to a policy, or a group of policies, to a reinsurer. A portion of risk not “ceded” is “retained.”*

*The reinsurer indemnifies the ceding insurer for any liability incurred that is covered by the reinsurance. The relationship created is strictly one of indemnification.*

*The reinsurer has no privity with, and is generally not liable to, the original purchaser of the underlying policy.*

## Kontraktskvalitet

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### **Home v Victoria Montreal (1907):**

...this instrument, so awkwardly patched and so carelessly put together.

## Kontraktskvalitet

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### **Vesta v Butcher (1989):**

In deciding this appeal I decline to follow counsel down the trail of insurance jargon in a reinsurance policy which is littered with language which is ungrammatical and contradictory.

## Kontraktskvalitet

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### **Commercial Union v Swiss Re (2005):**

A good deal about this case, in addition to the illworded policies and certificates themselves, remains obscure

# Retsgrundlaget

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## Forsikringsaftaleloven:

**§ 1.** Denne lov finder anvendelse på forsikringsaftaler, der indgås med forsikringsaktieselskaber, gensidige forsikringssselskaber eller andre selskaber og institutioner, der driver forsikringsvirksomhed.

*Stk. 2.* Loven gælder ikke for:

- 1) Genforsikring
- 2) ...

# Retsgrundlaget

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## **Betænkning 1925:**

*Aftalen (om genforsikring) sluttes jo mellem to Forsikringssselskaber, og de Grunde, der har ført til Opstillingen af tvingende Regler, gør sig derfor ikke gældende her, medens paa den anden Side de for Genforsikring gældende særlige Regler kun daarligt passer indenfor en Forsikringsaftalelovs Rammer.*

## Retsgrundlaget

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### **Prop 2003/04:150:**

*Förhållandena vid återförsäkring är helt speciella, bl.a. med hänsyn till att avtalet sluts mellan två försäkringsbolag och till att de internationella aspekterna har en helt avgörande betydelse. En tvingande lagstiftning skulle vara klart olämplig, och de dispositiva bestämmelserna för andra försäkringsformer är inte anpassade till de förhållanden som råder på detta område. Återförsäkringen bör därför hållas utanför också den nya lagen.*



# Fortolkning

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## **Bentzon (1952):**

*De i loven givne regler må i et vist omfang kunne anvendes analogisk på genforsikring, nemlig for så vidt genforsikringsforholdets særlige natur ikke udelukker en sådan anvendelse...*

## Fortolkning

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### Ussing (1946):

*Da begge Parter er Forsikringssselskaber, er der ikke Trang til ufravigelige Regler, og man har heller ikke anset det for hensigtsmæssigt at lade de almindelige Regler i FAL gælde for Genforsikring.*

*Men de af lovens Regler, der maa anses som Præciseringer af almindelige Retsgrundsætninger om Forsikring eller Skadeforsikring, maa anvendes analogt på Genforsikring, medmindre andet følger af Genforsikringens Særegenheder eller af den enkelte Aftale eller af Sædvane. ...*

*Afvigende Sædvaner vil imidlertid lettere dannes og holde sig ved Genforsikring, fordi denne i meget vidt Omfang drives som en international Virksomhed.*

## Voldgiftsloven (2005)

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### § 28:

...

*Stk. 4.* Voldgiftsretten afgør i alle tilfælde sagen i overensstemmelse med kontraktens bestemmelser og tager hensyn til sædvaner i den branche, som retsforholdet er underlagt.

## Voldgiftsinstituttets Regler (2013)

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### § 17:

...

*Stk. 5.* Voldgiftsretten afgør i alle tilfælde voldgiftssagen i overensstemmelse med kontraktens bestemmelser og tager hensyn til sædvaner i den branche, som retsforholdet er underlagt.

## Fortolkning

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### Norsk Hydro v Industriforsikring (Norge):

*Polisen er utviklet av meglere med tilknytning til forsikringsmarkedet i London og med sikte på dekning i London. Selvom loss adjusters ikke er meglere eller har spesielle juridiske kvalifikasjoner, er det for retten liten grunn til å tvile på at de i tidligere praksis og her har lagt til grunn den forståelse og praksis som råder i London.*

*Selv om policen i dette tilfellet er underlagt norsk rett og praksis, kan retten ikke se at norsk rett skulle gi andre løsninger.*

*Norsk praksis må dessuten antas å være i overensstemmelse med engelsk praksis på dette felt.*

# Voldgift

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- ICC
- LCIA
- SCC
- Voldgiftsinstituttet
  
- ARIAS US
- ARIAS UK
- ARIAS Europe

## LCIA

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Year	% cases involv. Insurance contr.
2011	6.1
2012	3.5
2013	4

## ICC

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Cases in “finance and insurance” sector: 62 cases (7.8% of all cases) in 2011 and 58 cases (7.6% of all cases) in 2012.

Cases on the basis of an insurance contract: 5 cases (0.5% of all cases) in 2011 and 3 cases (0.3% of all cases) in 2012.



# SCC

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- > 55 forsikringsager siden 2002

## Voldgiftsklausul (1)

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All disputes and differences arising under or in connection with this contract shall be referred to arbitration under ARIAS Arbitration Rules.

The Arbitration Tribunal shall consist of three arbitrators, one to be appointed by the Claimant, one to be appointed by the Respondent and the third to be appointed by the two appointed arbitrators.

The third member of the Tribunal shall be appointed as soon as practicable (and no later than 28 days) after the appointment of the two party-appointed arbitrators. The Tribunal shall be constituted upon the appointment of the third arbitrator.

***The Arbitrators shall be persons (including those who have retired) with not less than ten years' experience of insurance or reinsurance within the industry or as lawyers or other professional advisers serving the industry.***

## Voldgiftsklausul (1) forts.

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Where a party fails to appoint an arbitrator within 14 days of being called upon to do so or where the two party-appointed arbitrators fail to appoint a third within 28 days of their appointment, then upon application ARIAS (UK) will appoint an arbitrator to fill the vacancy. At any time prior to the appointment by ARIAS (UK) the party or arbitrators in default may make such appointment.

The Tribunal may in its sole discretion make such orders and directions as it considers to be necessary for the final determination of the matters in dispute. The Tribunal shall have the widest discretion permitted under the law governing the arbitral procedure when making such orders or directions.

The seat of arbitration shall be .....

The proper law of this contract shall be the law of .....

## Voldgiftsklausul (2)

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(1) Any difference arising out of this Reinsurance Agreement involving contractual claims based on what has been agreed or the Agreement's legal validity shall be submitted to the decision of a panel of arbitration, to the exclusion of ordinary jurisdiction, regardless of whether the Agreement is terminated or not. The panel of arbitration's jurisdiction shall extend to decisions on all significant preliminary issues for the arbitration award and to disclosure claims of any kind, even if these are asserted by one of the parties before initiation of proceedings in the main case ("pre-trial discovery").

(2) The panel of arbitration shall consist of three members, unless the parties agree to appoint only one arbitrator, such agreement to be reached within four weeks of one of the parties receiving a written request to this effect from the other. Unless otherwise agreed by the parties, the members of the panel of arbitration must be knowledgeable and experienced in insurance and/or reinsurance matters, holding or having held managerial positions in the industry.

## Voldgiftsklausul (2) forts.

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(3) Each party may nominate one arbitrator. In the event of one party failing to appoint an arbitrator within four weeks after being required in writing by the other party to do so, the second arbitrator shall be appointed by the President of the Chamber of Commerce at the seat of the party not in default. Before entering upon the arbitration, the two arbitrators shall appoint a third arbitrator who shall be responsible for conducting the business of the panel of arbitration. If the two arbitrators fail to agree upon a third within four weeks of their appointment, the third arbitrator shall be appointed by the President of the Chamber of Commerce at the seat of the defendant party. If one of the arbitrators is unable to participate for any reason, his successor shall be appointed in accordance with the procedure described above.

(4) An arbitrator may only be objected to if there are legitimate doubts about his professional and personal suitability. A party may only object to the arbitrator it has appointed itself if the grounds for the objection were not known to it before his appointment. Objection to an arbitrator, with details of the grounds for it, shall be submitted to the panel of arbitration within two weeks of the party gaining knowledge of the circumstances that lead to the objection. If the arbitrator in question does not withdraw from the panel or the other party does not agree to his removal, the decision on the objection shall be made by the other two members of the panel, without the arbitrator in question.

## Voldgiftsklausul (2) forts.

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(5) The panel of arbitration shall meet at the seat of the defendant party. The negotiations shall be conducted in German or English unless the arbitrators agree on another language.

(6) The panel of arbitration shall have the power to fix all procedural rules and shall not be bound by formal rules of legal procedure. It shall decide by simple majority vote; if no majority can be reached, the verdict of the third arbitrator shall prevail. The panel of arbitration shall make its award in writing at the latest within six months following the appointment of the third arbitrator.

(7) The panel of arbitration is required to decide primarily in accordance with the provisions of this Agreement and, secondarily to this, in accordance with customary international reinsurance practice, and otherwise in accordance with the substantive law applicable at the arbitration venue unless the parties to this Agreement choose the law of another country. The application of this country's provisions of private international law is excluded. If and insofar as the provisions of this Agreement deviate from customary international reinsurance practice either fully or in part, the provisions of this Agreement shall take precedence.

## Voldgiftsklausul (2) forts.

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(8) The costs of the arbitration shall be awarded to one or both parties in the manner the panel of arbitration considers to be fair.

(9) Each party undertakes to comply with the award of the panel of arbitration without delay and, where it is permitted to do so, waives its right to take any further legal action to contest the award. With regard to the enforcement of the award, each party may apply to a court of competent jurisdiction in any territory in which the party in default is domiciled or has assets or conducts business.

(10) This arbitration clause shall be deemed a separate agreement between the parties and shall maintain its validity even if the arbitration panel declares the reinsurance contract null and void either fully or in part."

# Kvalifikationer

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## **Eksempel 1:**

“The arbitrators shall be persons with not less than ten years’ experience of insurance or reinsurance within the industry or as lawyers or other professional advisers serving the industry.”

## **Eksempel 2:**

“The arbitrators shall be active or retired officers of insurance or reinsurance companies or Lloyd’s London Underwriters...”



## Kvalifikationer

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### **Eksempel 3:**

“Unless otherwise agreed by the parties, the members of the panel of arbitration must be knowledgeable and experienced in insurance and/or reinsurance matters, holding or having held managerial positions in the industry.”

## Kvalifikationer

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### **Voldgiftsloven (2005)**

#### **§ 12:**

...

#### **Stk. 2:**

Der kan kun gøres indsigelse mod en voldgiftsdommer, hvis der foreligger forhold, som giver anledning til berettiget tvivl om voldgiftsdommerens upartiskhed eller uafhængighed, eller hvis voldgiftsdommeren ikke har de kvalifikationer, som parterne har aftalt.

## Kvalifikationer

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### Voldgiftsinstituttets Regler (2013)

#### § 13, stk. 1:

En part kan kun gøre indsigelse mod en voldgiftsdommer, hvis parten finder, at der foreligger forhold, som giver anledning til berettiget tvivl om voldgiftsdommerens upartiskhed eller uafhængighed, eller hvis parten finder, at voldgiftsdommeren ikke har de kvalifikationer, som parterne har aftalt. Indsigelsen skal indgives skriftligt til sekretariatet inden 15 kalenderdage efter, at parten blev bekendt med udpegningen af voldgiftsdommeren og de forhold, som indsigelsen bygger på.

### **Honourable Engagement Clause (1):**

The arbitrators shall interpret this Contract as an honorable engagement and not as merely a legal obligation; they are relieved of all judicial formalities and may abstain from following the strict rules of law.

### **Honourable Engagement Clause (2):**

*The Arbitrators shall interpret this Reinsurance as an honourable engagement and they shall make their award with a view to effecting the general purpose of this Reinsurance in a reasonable manner, rather than in accordance with a literal interpretation of the language."*

## Retsanvendelse og fortolkning

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**U1993.67H:**

**Deutsche Rückversicherung mod Forenede  
Assurandører**

*Voldgiftsmændene og opmanden skal fortolke nærværende aftale som en æresforpligtelse snarere end udelukkende en juridisk forpligtelse, og skal afgive deres kendelse med henblik på en rimelig håndhævelse af aftalens generelle formål.*

## Retsanvendelse og fortolkning

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7) The panel of arbitration is required to decide primarily in accordance with the provisions of this Agreement and, secondarily to this, in accordance with customary international reinsurance practice, and otherwise in accordance with the substantive law applicable at the arbitration venue unless the parties to this Agreement choose the law of another country. ... If and insofar as the provisions of this Agreement deviate from customary international reinsurance practice either fully or in part, the provisions of this Agreement shall take precedence.

# Honourable Engagement Clause

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## **America Continental v. InSco (1997):**

*"Honourable engagement" (clauses) ... are, of course, well known in the field of reinsurance and are found in different forms. The present clause specifically directed to give priority to the general purpose of the agreement over the literal construction of the wording.*

*Such a clause may perform a valuable service insofar as it makes plain that the parties intend the document to be constructed in a way which gives effect to the business realities rather than to the literal meaning of the words used where these conflict, but even in the absence of a clause of this kind, I should need little persuading to adopt that course which reflects the modern approach to construction of commercial documents of all kinds..."*



## Honourable Engagement Clause

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### **Voldgiftsloven (2005):**

§ 28

...

*Stk. 3.* Voldgiftsretten afgør kun tvisten efter billighed, hvis parterne udtrykkeligt har bemyndiget voldgiftsretten hertil.

## Honourable Engagement Clause

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### **Voldgiftinstituttets regler (2013)**

§ 17:

...

*Stk. 3.* Voldgiftsretten afgør kun tvisten efter billighed, hvis parterne udtrykkeligt har bemyndiget voldgiftsretten hertil.

## Hvilke Tvister?

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- Follow the Settlements/Follow the Fortunes
- Indkorporering af bestemmelse fra den direkte forsikringsaftale ("As Original")
- Lovvalg
- Værneting/voldgift
- Exclusions from coverage
- Errors & Omissions Clause
- Claims Notification (tidsfrister)
- Claims Co-Operation & Claims Control

## Retsanvendelse – et eksempel

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### **UBERRIMA FIDES/UTMOST GOOD FAITH:**

Gælder det for reinsurance i Danmark, Sverige og Norge ?

## Uberrima Fides/Utmost Good Faith

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### **Marine Insurance Act 1906, Sec 17:**

*"A contract of insurance is a contract based on the utmost good faith, and, if the utmost good faith be not observed by either party, the contract may be avoided by the other party".*

## Uberrima Fides/Utmost Good Faith

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### **Marine Insurance Act 1906, Sec 18 (1):**

*... The assured must disclose to the insurer, before the contract is concluded, every material circumstance which is known to the assured, and the assured is deemed to know every circumstances which, in the ordinary course of business, ought to be known to him. If the assured fails to make such disclosure, the insurer may avoid the contract.*

## Uberrima Fides/Utmost Good Faith

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### **Marine Insurance Act 1906, Sec 18(2):**

*Every circumstance is material which would influence the judgment of a prudent insurer in fixing the premium, or determining whether he will take the risk..."*

## Uberrima Fides/Utmost Good Faith

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### **Pan Atlantic v Pine Top (1994):**

("disclose and not misrepresent") oplysninger, der er ("material"), men ikke nødvendigvis afgørende ("decisive") for en

("prudent") reassurandør, og som

("induce") – altså kausalitet – til tegning af reassicurancen



## Uberrima Fides/Utmost Good Faith

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### **Unigard v North River (1993):**

*... (U)tmmost good faith may be viewed as a legal rule but also as a tradition honored by ceding insurers and reinsurers in their ongoing commercial relationships. Historically, the reinsurance market has relied on a practice of the exercise of utmost good faith to decrease monitoring costs and ex ante contracting costs ...*

### **Lyngsø: Dansk Forsikringsret (7. udg., 1994) s. 104:**

Reglerne om forsikringstagerens oplysningspligt har tidligere været meget strenge. Under påvirkning af den gamle forestilling, at forsikring er et retsforhold *uberimae fidei*, har man været tilbøjelig til at hævde, at en forsikringstager, uden hensyn til om forsikringstageren er i god tro, er ugyldig, hvis der på noget tidspunkt er givet urigtige oplysninger, eller hvis der ikke er givet oplysninger om et forhold, der kan have interesse for selskabet.

## Lyngsø forts.:

"I nutiden erkendes det imidlertid, at sådanne regler vil være *for hårde mod forsikringstageren* og ikke yde ham den tryghed og beskyttelse, som det er den moderne forsikringsaftales væsentligste formål at give ham. FAL §§ 4 – 10 har derfor forsøgt at begrænse virkningerne af urigtige forsikringsoplysninger så meget som muligt."

## UBERRIMA FIDES – (Case 1)

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*It was submitted on behalf of Reinsurers that the relevant provisions of the Swedish Insurance Contracts Act were founded upon the obligation of the utmost good faith which applied equally in the case of reinsurance.*

*The Estate acknowledged that there was at least an obligation of good faith, although did not necessarily accept the addition of the epithet "utmost" (to the extent to which it adds anything in practice).*

*We agree with Reinsurers' submission. The reason why, in Swedish Law and in all other systems of law with which we are familiar, an obligation of utmost good faith, with the consequent duty of disclosure of material facts and circumstances, arises in the context of insurance is that the nature of the relationship between the parties is such that in general the would-be insured has a virtual monopoly of facts and circumstances relevant to the risk. Full relevant disclosure to the potential insurer is necessary in order to create a "level playing field" upon which a fair bargain can be negotiated and agreed. ...*

## UBERRIMA FIDES – (Case 1)

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...

*In our view, the same reasoning applies in the case of reinsurance; indeed, we consider that there is even greater justification for applying the principle in reinsurance, where the reinsured is a "professional" rather than a "consumer".*

*Further we should add that, in the case of Treaty reinsurance, particularly where the Treaty is obligatory so far as reinsurers are concerned in the sense that they agree in advance to accept their proportionate share of any business of the relevant kind written and ceded by their cedant, there must be a duty on the cedant to inform reinsurers of facts and circumstances which would be material to reinsurers in deciding whether or not to enter into or continue such relationship. ...*

## UBERRIMA FIDES (Case 2)

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*Slutligen vill skiljenämnden något utveckla sin syn på den upplysningarespektive undersökningspligt som parterna har haft. ..*

*I andre rättssystem kan man återfinna principer som påminner om de som behandlats ovan. internationella sammanhang talar man ibland om "uberrima fides" och i den engelskspråkiga världen om "utmost good faith". Slutligen vill skiljenämnden något utveckla sin syn på den upplysningarespektive undersökningspligt som parterna har haft. När det gäller avtal i allmänhet föreligger det en upplysnings- och undersökningsplikt för de avtalsslutande parterna. Dette gäller i än högre grad vid försäkringavtal. I fråga om direktförsäkringar kan här erinras om de regler om upplysningsplikt som finns i försäkringsavtalslagen, t.ex. vad avser fareökning. ...*

## UBERRIMA FIDES (Case 2)

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...

*Enligt skiljenämndens uppfattning skall de principer som försäkringsavtalslagen bygger på även tillämpas beträffande återförsäkringar.*

*Vid ett återförsäkringsavtal – som i hög grad bygger på ett ömsesidigt förtroende mellan parterna – har cedenten en skyldighet att upplysa återförsäkraren om förhållanden som är av betydelse för försäkringen. I jämförelse med direktförsäkringsavtal får upplysningsplikten vid återförsäkringsavtal anses vara mycket större. Återförsäkraren har å sin sida en undersökningsplikt om han får vedskap om omständigheter som kan påverka hans riskåtagande.*

...

## UBERRIMA FIDES (Case 2)

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...

*Dessa skyldigheter väger emellertid inte lika tungt då cedentens upplysningsskyldighet får anses väga tyngre än återförsäkrarent undersökningsplikt.*

*Vid retrocession får det anses föreligga en ändå större övervikt för retrocedentens upplysningsplikt i förhållande till retrocessionärens undersökningsplikt. I andre rättssystem kan man återfinna principer som påminner om de som behandlats ovan. I internationella sammanhang talar man ibland om "uberrima fides" och i den engelskspråkiga världen om "utmost good faith".*



## UBERRIMA FIDES (Case 3)

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[Reassurandøren] has argued that [cedenten] had a duty in law to disclose all relevant information under the principle of utmost good faith and a fair and full disclosure in reinsurance (the principle of "uberrima fides"). [Cedenten] has disputed that *uberrima fides* is part of Danish contract law, but even if it would be, [cedenten] has argued that it has fulfilled its duty to disclose all relevant information.

The Tribunal notes that, although the principle of *uberrima fides* is not explicitly part of existing Danish law, a reinsured is obliged to act in good faith and make a fair disclosure towards the underwriter ... These duties are manifested by the application to some extent of the general rules in CA by analogy in respect of reinsurance ... as well as by the application of, *inter alia*, CA section 30. Good faith and fairness are also cornerstones in reinsurance in the laws of many other countries

...

## UBERRIMA FIDES (Case 3)

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...

Consequently, the Tribunal finds that there are standards of good faith and a fair disclosure in Danish reinsurance law. The Tribunal will therefore apply such standards when evaluating [reassurandørens] allegations regarding misrepresentations and non-disclosures below.

# FAL

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**§ 4.** Har forsikringstageren ved forsikringens tegning svigagtig givet urigtig oplysning om eller fortiet en omstændighed, som må antages at være af betydning for selskabet, er aftalen ikke bindende for dette. Det samme gælder, hvis hans forhold i øvrigt har været af en sådan art, at det ville stride mod almindelig hæderlighed at gøre aftalen gældende.

**§ 5.** Må det antages, at forsikringstageren ved forsikringens tegning hverken vidste eller burde vide, at en af ham givet oplysning var urigtig, hæfter selskabet, som om urigtig oplysning ikke forelå.

*Stk. 2.* Ved skadesforsikring kan selskabet dog opsiges forsikringen med en uges - hvis forsikringstageren har bopæl i Grønland, en måneds - varsel.

**§ 6.** Har forsikringstageren, uden at forholdet omfattes af §§ 4 eller 5, givet urigtig oplysning, er selskabet fri for ansvar, hvis det kan antages ikke at ville have overtaget forsikringen, om det rette forhold havde været oplyst.

*Stk. 2.* Må det antages, at selskabet ville have overtaget forsikringen, men på andre vilkår, hæfter det i det omfang, i hvilket det mod den aftalte præmie ville have forpligtet sig. Ville selskabet ved genforsikring i videre omfang have begrænset sit ansvar for egen regning, nedsættes erstatningen i samme forhold.

*Stk. 3.* Ved forbrugerforsikring samt ved livs-, ulykkes- eller sygeforsikring eller anden personforsikring kan det uanset stk. 1 og 2 bestemmes, at selskabet hæfter helt eller delvis, hvis særlige omstændigheder taler herfor. Ved afgørelsen heraf skal der navnlig lægges vægt på, om det forhold, hvorom der er givet urigtig oplysning, må antages at have haft indflydelse på forsikringsbegivenhedens indtræden eller skadens størrelse, på den af forsikringstageren udviste uagtsomhed og på den tid, der er forløbet fra afgivelsen af urigtig oplysning til forsikringsbegivenhedens indtræden.

*Stk. 4.* Ved søforsikring og anden transportforsikring samt garantiforsikring gælder i stedet for den i 2det stykke nævnte regel, at selskabet kun hæfter i det omfang, i hvilket det godtgøres, at det forhold, hvorom urigtig oplysning er givet, har været uden indflydelse på forsikringsbegivenhedens indtræden eller skadens størrelse.

## FAL forts.

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**§ 7.** Forsikringstagerens undladelse af at give oplysning har ingen indflydelse på selskabets ansvar, medmindre han burde være klar over, at den ikke oplyste omstændighed var af betydning for selskabet, og hans forhold kan tilregnes ham som grov uagtsomhed. I så fald anses han, som om han havde givet urigtig oplysning, jfr. § 6.

**§ 8.** Vil selskabet påberåbe sig, at et af de i §§ 5-7 nævnte forhold foreligger, skal det efter at have fået kundskab om oplysningens urigtighed uden unødigt ophold meddele forsikringstageren, i hvilket omfang det vil påberåbe sig nogen af de rettigheder, disse paragraffer hjemler.

**§ 9.** Selskabet kan ikke gøre gældende, at urigtig oplysning er givet, såfremt det ved forsikringens tegning var eller burde være vidende om det rette forhold, eller den omstændighed, hvorom selskabet er forblevet uvidende, var uden betydning for det eller senere har ophørt at have sådan betydning.

**§ 10.** Aftale, som strider mod bestemmelserne i §§ 5, 6, stk. 3, og 7-9, kan ikke påberåbes af selskabet.

*Stk. 2.* Har selskabet forbeholdt sig at være fri for ansvar, hvis en oplysning, som gives af en anden end forsikringstageren, viser sig at være urigtig, kan dette ikke medføre strengere virkninger, end hvis oplysningen var givet af forsikringstageren. Selskabet kan ikke forbeholde sig at være fri for ansvar, hvis helbredsoplysninger, der er givet af læger eller andre sagkyndige i forbindelse med tegning af en forsikring, som omfattes af § 120 a, viser sig at være urigtige eller ufuldstændige.

*Stk. 3.* Det samme gælder, hvis selskabet i policen har beskrevet et faktisk forhold uden at have indhentet oplysninger desangående fra forsikringstageren eller andre og har forbeholdt sig at være helt eller delvis fri for ansvar, hvis det måtte vise sig, at beskrivelsen var urigtig.

## Profil / Niels Schiersing

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Niels Schiersing (f. 1960) er specialiseret i international procedure og voldgift samt international handelsret, international privatret, internationale kontrakter, folkeret samt international skat og generationsskifte. Han bistår fortrinsvis danske og udenlandske virksomheder, organisationer, offentligt ejede enheder og i et vist omfang tillige udenlandske stater med løsning af internationalt orienterede opgaver, herunder ved etablering af udenlandske virksomheder i Danmark. Niels Schiersing har særligt fokus på international voldgift og voldgift i Danmark og er formentlig den førende danske autoritet inden for UNCITRAL Arbitration Rules og UNCITRAL Model Law on Arbitration. Derudover fører Niels Schiersing løbende retssager for danske domstole.

Partner, Horten, 2011  
Member Chartered Institute of Arbitrators, London, 2010  
Certificeret voldgiftsdommer, 2007  
Certificeret mediator, 2005  
Møderet for Højesteret, 1995  
Møderet for landsret, 1990  
Advokatbeskikkelse, 1988  
Cand.jur. fra Københavns Universitet, 1985



**Niels Schiersing**

Partner

International procedure og voldgift  
Kommercielle kontrakter  
Skatter og afgifter

Tlf. 3334 4334  
Mob. 5234 4334  
[nsc@horten.dk](mailto:nsc@horten.dk)

Niels Schiersing er omtalt i  
> Legal 500



**Philip Heymans Allé 7  
2900 Hellerup**

Tlf. 3334 4000  
Fax 3334 4001  
E-mail: [info@horten.dk](mailto:info@horten.dk)

[www.horten.dk](http://www.horten.dk)

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