

## **FEATURED PANELS: INSURANCE PANEL, INSURER-POLICY HOLDER COVERAGE AND “WELLINGTON” PANELS**

CPR's Insurance Panel and Insurer-Policy Holder Coverage Panel are comprised of distinguished neutrals with unparalleled qualifications to handle complex insurance, reinsurance and coverage issues among insurers, reinsurers, and corporate policy holders. As a part of this unique panel, CPR has also joined the Agreement Concerning Asbestos-Related Claims (Wellington Agreement). The panel includes several highly experienced retired judges available to act as mediator or arbitrator for these types of disputes.

One such retired judge, Abraham D. Sofaer is the first George P. Shultz Senior Fellow at the Hoover Institution, Stanford University. He will teach Arbitration in America at Stanford Law School in the spring of 2014. As a hearing officer, Sofaer heard one of the first major environmental cases, regarding the discharge by General Electric, Co. of polychlorinated biphenyls (PCBs) into the Hudson River. He then served six years as a federal trial judge in the



*Abraham D. Sofaer*

Southern District of New York, hearing civil, criminal, and high profile matters. He also served as Legal Adviser to the U.S. State Department for five years, and as agent for the United States in numerous international arbitrations in The Hague and elsewhere.

Of his experience in handling insurance disputes, Sofaer says that his involvement started with his service as a judge, during

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which he handled cases involving many types of insurance, including maritime, cargo, airline, fire, building collapses, and environmental, as well as pharma-related claims. Cases in which he published a significant decision include *American Home Prods. Corp. v Liberty Mut. Ins. Co.*, 565 F. Supp. 1485 (S.D.N.Y. 1983), later cited and relied upon as New York law by the New York Court of Appeals in *Continental Casualty Co. v. Rapid-American Corp.*, 80 N.Y.2d 640, 650-51 (1993), adopting the injury-in-fact standard for long-term exposure to dangerous products.

Since leaving the Department of State, Sofaer has served as a sole arbitrator in CPR's Wellington program, as well as in other CPR cases. He has handled insurance claims, both as a party-appointed arbitrator and as chairman, in cases covering the full range of insurance disputes: pharma-related claims, environmental damage, mine explosions, alleged negligent automobile design or manufacture, business failure, and construction. He is familiar with conventional and Bermuda form policies, as well as corporate D&O insurance.

"Insurance cases are a particular favorite of mine, as they often involve large sums of money, which usually means dealing with competent and experienced attorneys," Sofaer says. "The issues are complex and technical, moreover, making the work especially interesting and challenging."



Patrick Coughlan

Another distinguished panelist, Patrick Coughlan, President of Conflict Solutions, a national mediation firm with offices in Maine and Florida, has extensive experience in multiple practice areas, including insurance coverage, business disputes, products liability, personal injury, and all aspects of construction. With over forty years of legal experience, Coughlan is one of the most experienced mediators in North America and resolves more than 95% of the cases he mediates. He has settled over \$1 billion in cases. Coughlan's distinctions include such honors as inclusion in *The Best Lawyers in America* in Arbitration and Mediation, and a *Best Lawyers, Best Law Firms* "excellent" ranking for Conflict Solutions.

Pat Coughlan describes his expertise with insurance ADR as "one of the most challenging areas of my practice. Until one learns where the money will come from, there can be no settlement. I have developed an understanding of how the parties to insurance litigation think and what they need to settle a dispute."

Panel member Jerry Grissom has mediated and arbitrated commercial disputes for over sixteen years. His ADR practice with JAMS is based in Dallas, Texas, and he has also been selected to hear cases in twenty states. Before beginning his full-time dispute resolution practice in 1997, he was a trial partner for twenty years

with Thompson & Knight, in Dallas, where his practice included counseling and representing both policyholders and insurance companies, and chairing the insurance section. A member of CPR's Insurance Panel, he is also a Fellow of the College of Commercial Arbitrators.

Grissom writes, "My practice as a trial lawyer and as mediator and arbitrator has encompassed both a wide variety of insurance policy issues, including coverage, claims, and valuation, as well as disputes on the business side of insurance involving the relationships among carriers, MGAs, brokers, agents, and third party administrators. The perspective and understanding that I have developed from my extensive background experience can enhance, streamline, and make a positive difference in complex mediation and arbitration proceedings."

Gary McGowan, of Houston, Texas, has served in national and international disputes for the last twenty-three years. McGowan has extensive experience in the arbitration of complex business matters regarding insurance coverage, energy, oil, gas, and construction. He has arbitrated more than ninety matters, with forty cases proceeding to a final award, and has mediated countless others. Before practicing as a neutral, he was a founding partner in a boutique business litigation firm.

Of his insurance experience, McGowan notes, "My exposure to insurance issues has been broad and deep. Since I'm based in Texas, I see many coverage disputes arising from onshore and offshore drilling activities, refinery operations, the healthcare business, and hurricanes. They run the gamut—liability, property loss, and business interruption. They have involved difficult questions of policy interpretation, the application of multiple liability policies to many years of exposure for toxic tort liability (pro rata allocation versus all sums), missing policies, policy rescission for alleged fraud, prompt pay claims, and alleged bad faith. And the insurers have been both in the US and in the London market."

A participant in one of McGowan's insurance mediations wrote: "I was impressed with your preparation and grasp of all the issues, a complex web of coverage yet no coverage."

For more information about these or other CPR Panels of Distinguished Neutrals, please contact CPR Special Counsel Mara Weinstein at [mweinstein@cpradr.org](mailto:mweinstein@cpradr.org).

—Libbie Richards, CPR Institute Legal Intern

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Jerry Grissom



Gary McGowan