

## All About Report Cards

Report cards are everywhere in life. Report cards let us know how we are doing in the eyes of our overseers and peers, whether they be our bosses, co-workers, teachers, coaches, administrators, regulators or even sports analysts and fans. Report cards are an acceptable way for society to hold a group or individuals

complaints;

- Number of complaints as a percentage of number of claims.

So let's take a look at the report card, which can be accessed at [www.NYinsure.ny.gov](http://www.NYinsure.ny.gov), and see what it tells us about the performance of the 24 companies included in the report.

not distinguish by type of business, whether homeowner or commercial, or the nature and complexity of the claim, leading some companies to add notes such as "These estimates encompass a wide array of claims and vary based on the complexity of the loss and damage severity."

There is also a link on the website to an Excel spreadsheet that places the listed data into tabular form, which I hoped would provide a better means of comparison and analysis. While the spreadsheet makes it easier to compare the data among the 24 companies, it still does not include any guidelines for determining performance, and does not overcome the problem of comparing apples to oranges inherent in the listed categories.

One of the first things I noticed about the spreadsheet was that it does not include any totals. However, because it is in spreadsheet format, I was able to calculate the following totals on the 24 companies included in the report card as of December 20, 2012:

Total number of claims.....	372,785
Total number of complaints.....	1492
Complaints as a % of claims.....	0.40%
Claims closed with payment.....	187,235
Claims closed with payment as a % of total.....	50.2%
Claims closed without payment.....	56,887
Claims closed without payment as a % of total.....	15.3%
Average time in days, claims report to payment.....	19
Total number of adjusters working on Sandy losses.....	5,417

accountable for their activities based on some pre-determined criteria, goals or rules.

Politicians particularly love report cards. Not for themselves—with the possible exception of Ed "How am I Doing" Koch—but as a way of demonstrating to their constituents that they are doing the public's bidding by holding others accountable. Hence it should have been no surprise when Governor Cuomo announced a month after Sandy that he had ordered the Department of Financial Services to establish an online report card of insurance companies responses to claims. The November 29, 2012 press release states that the report card ". . . will hold insurance companies accountable to consumers and allow New Yorkers to see the performance of their insurance company compared to other companies." The press release identifies 24 companies that write most of the business in the affected areas and the following categories on which those companies are to be graded:

- Number of claims and dollar amount of claims;
- Average time for an adjuster to inspect;
- Number of claims closed with and without payment so far;
- Total number of consumer

The most interesting thing about the report card is that there are no guiding benchmarks or grades! The 24 companies

are listed alphabetically with the data relating to each category (while the data includes the number of claims, it does not include the promised dollar amount of claims or the amount of payments – an interesting omission). The data was as of December 20, 2012, the last update as of this writing. There are some interesting notes to a number of the listings. For instance, the first three items are number of claims, claims closed with payment and claims closed without payment. Notes were added to the data for several companies indicating the total number of claims on which payments were made whether closed or not. The data categories also do

Only two companies had a claim ratio in excess of 1%. One was a company with few claims and the other—with the highest ratio of 1.93%—is the New York Property Insurance Underwriting Association, New York's statutory insurer of last resort. I have recently seen a GEICO commercial in which the Gecko touts the company's 97% customer approval rating. Does that mean that if "only" 3% of your customers are dissatisfied that is a good thing? If that is an acceptable yardstick, then the 24 companies should be receiving very high marks for their performance post-Sandy

*continued on page 8*



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Peter H. Bickford

continued from page 6

(including GEICO at one of the lowest complaint to claims ratios at 0.14%).

Without benchmarks, however, the company summaries and the spreadsheet, although interesting, do not tell whether or not a company is doing a good, poor or indifferent job, even when compared to one another. But what does the DFS conclude? Is it satisfied with the companies' response to Sandy or not? If not, why not?

For a report card to be meaningful, it needs two things: (1) a set of goals or standards; and (2) clear consequences for failure to meet the goals or standards. The DFS report card has neither. Although Governor Cuomo's press release cites "hold[ing] insurance companies accountable to consumers" as a principal purpose of the report card, it does not indicate how this is to be done. It does not indicate what it considers to be acceptable, and it does not state what, if anything, will be done if a company does not meet acceptable standards. Collecting and analyzing data on claims processing in an historic event like Sandy can be a very useful exercise for the companies and the regulators to determine how responses can be improved for future events. But if accountability is the goal, then the DFS report card is not very useful.

One hopes that the purpose of the report card was not simply to create a public perception that without it the insurance companies would not have performed nearly as well. Historically the insurance industry has performed quite well in past crises. From what I have seen, and as confirmed by the data in the DFS report card to date, Sandy seems to be further evidence of this excellent record. It would be nice to know whether the Governor and the DFS agree, and if they do, whether they would say so publicly. [A]

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## Vyskocil and Rubin Chosen as ARIAS•U.S. Chairman and President for 2013

**N**ew York, N.Y.—**Mary Kay Vyskocil**, a Litigation Partner at Simpson Thacher & Bartlett LLP, was elected Chairman of ARIAS•U.S., the AIDA Reinsurance and Insurance Arbitration Society, at its 2012 Annual Conference in New York City. She succeeds Elaine Caprio Brady, Vice President at Liberty Mutual Group, who has retired from the Board. **Jeffrey M. Rubin**, Senior Vice President, Director Global Claims of Odyssey Reinsurance Company, was elected President succeeding Ms. Vyskocil.

Also at the conference, **Eric Kobrick**, Deputy General Counsel and Chief Reinsurance Legal Officer at American International Group, Inc., was elected Vice President and designated as President Elect. **Elizabeth A. Mullins**, Managing Director and head of Global Dispute Resolution & Litigation of Swiss Re America Holding Corporation, was elected Vice President.

In addition, ARIAS•U.S. members elected three new Board members. They were **Michael A. Frantz**, Senior Vice President and Claim Department Manager of Munich Reinsurance America, Inc., **Mark T. Megaw**, Director of Reinsurance Litigation for ACE Group Holdings, and **James I. Rubin**, head of the reinsurance litigation and arbitration practice at Butler Rubin Saltarelli & Boyd LLP. They replaced **Elaine Caprio Brady**, **Susan A. Stone**, and **Damon N. Vocke**, who retired from the Board.

As a Litigation Partner at Simpson Thacher & Bartlett LLP, Mary Kay Vyskocil handles general commercial litigation. Her practice is concentrated in insurance and reinsurance coverage litigation and cases involving the financial services industry.

Ms. Vyskocil has represented major domestic and foreign insurers in complex coverage litigations (including numerous jury trials and appellate arguments) throughout



MARY KAY VYSKOCIL



JEFFREY M. RUBIN

the U.S. in a wide variety of contexts, including environmental, asbestos, breast implants and other mass tort claims. She is also active in reinsurance litigations and arbitrations in the U.S., Great Britain and Bermuda. At ARIAS•U.S., she has chaired the Education and International Committees.

Outside the insurance area, Ms. Vyskocil currently represents UBS in connection with major litigations involving residential mortgage backed securities and former officers of Washington Mutual Bank in litigation with the FDIC. She has also served as outside counsel to the Archdiocese of New York.

Ms. Vyskocil is co-author of the leading treatise, *Modern Reinsurance Law & Practice*, 2d ed. (Glasser Legal-Works 2000) and is a frequent lecturer and author on insurance and reinsurance coverage issues and on litigation and trial skills.

As Senior Vice President, Director Global Claims of Odyssey Reinsurance Company, Jeffrey Rubin is responsible for oversight of group-wide claims. At ARIAS•U.S., he is Co-Chair of the Finance Committee.

Prior to working on the business side of the reinsurance industry, Mr. Rubin practiced law in Chicago for 16 years where he was a partner at Phelan, Pope & John, Ltd. He is a graduate of Cornell University Law School and State University of New York, Oneonta College. [A]

ARIAS•U.S. is a not-for-profit corporation that seeks to improve the insurance and reinsurance arbitration process by providing training and education in the skills necessary to serve effectively on an insurance/reinsurance panel. It has nearly 1000 members, including professional arbitrators and representatives of insurance and reinsurance companies and law firms with substantial interest and involvement in the arbitration process.