

ESSEX COURT CHAMBERS
BARRISTERS

***ARBITRATING INSURANCE AND
REINSURANCE DISPUTES:
“TRANSPARENT AND IMPARTIAL?”***

JEFFREY GRUDER QC

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- Formal Position:

Section 24 of Arbitration Act 1996:

- *A party to arbitral proceedings may (upon notice to the other parties, to the arbitrator concerned and to any other arbitrator) apply to the court to remove an arbitrator on any of the following grounds—*
 - *...that circumstances exist that give rise to justifiable doubts as to his impartiality;*
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- Cp Institutional Rules e.g. LCIA Arbitration Rules 2014 Article 5.

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- Particular Problems Arising from imbalance of knowledge between insureds and insurers in Bermuda Form Cases.
 - Repeat appointments from same party.
 - **Aldcroft v International Cotton Assoc.**
[2017] EWHC 62 Comm 30 March 2017.
 - *“It is clear that the risk of a perception of lack of impartiality resulting from repeat appointments is a legitimate concern in the international arbitration community.”*

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- An extreme example of repeat appointments.
 - **Cofely v Bingham** [2016] EWHC 240 (Comm)
 - A missed opportunity? **H v L** [2017] EWHC137
 - Cp **GUIDANT LLC V SWISS RE INTERNATIONAL SE** [2016] EWHC 1201 (COMM)

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- Jockeying About Selection of Chairman.
 - OIL
 - XL v Toyota.
 - H v L.
 - **IBA Guidelines as to Conflicts of Interest in International Arbitration.**
 - **Red (Waivable/Non waivable), Orange, Green.**