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FRAGMENTED JUSTICE: CONSOLIDATION AND CONSENT IN MULTI-PARTY INSURANCE ARBITRATION

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Abstract:
Large commercial insurance disputes are created from a single incident but typically involve many different insurers and numerous contracts. In this way, each individual contract will have its own separate arbitration clause. The result of this type of structure is that instead of one formal consolidated arbitration proceeding, there will be several arbitrations occurring simultaneously. This fragmentation will result in an increase in both; (1) costs, (2) delays, and (3) the potential for inconsistent results across each arbitration. Models currently established for resolving disputes will encounter challenges when attempting to effectively manage this type of situation. Court cases have jurisdiction limitations and a lack of adequate jurisdictional enforcement outside of domestic borders. ad hoc arbitration requires both parties to give express consent at the time of entering into the contract, thus it will not provide for any form of coordination of the arbitrations as there are no built-in mechanisms for coordinating multiple arbitrations under an ad hoc format. Therefore, the question becomes, can an Institutional arbitration effectively address the need for coordination. The author addresses this question using both a doctrinal and comparative approach. This article will focus on how institutional rules provide for the consolidation and joinder of arbitrations. Additionally, this article will evaluate the consolidation and joinder mechanisms based on the fundamental tenets of arbitration law; consent, jurisdiction, procedural fairness, and enforceability pursuant to the New York Convention and UNCITRAL Model law. Through the analysis of institutional rules, it is clear to the author that institutional rules provide for and clearly define Consent prior to the commencement of the Arbitration by the development of an established procedural framework. This procedure permits for coordinated adjudication while still permitting parties to maintain their Independence. Additionally, the use of a procedural framework to consolidate renders the Enforcement of the Awards less problematic due to the alignment of the process to the procedural due process principles that will be applied by the Courts at the Seat and Enforcement of these Awards.
The paper discusses how fragmented procedures affect how resources are allocated. There are multiple arbitration processes happening at the same time increasing costs and adding

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complexity. This pressure is put most heavily on the weaker party both by structure and financially especially to the lower and female dominated insured organisations.
As institutional consolidation begins to remove any redundancy and give easier access to the arbitration system, coordination between institutions should create a more efficient way to provide access and ultimately resolve their disputes while adhering to arbitration law. This paper asserts that with multi-party insurance disputes, the method for achieving coordinated enforcement decisions through the arbitration process is through institutional arbitration being an option for that stability under arbitration law.
Keywords: Insurance Disputes; Institutional arbitration; Consolidation; Multi-Contract Arbitration

I. Introduction

Several large-scale commercial insurance programmes use complex multi-contractor and multi-insurer arrangements to manage the risks associated with high-value and internationally transacted risks. Such programmes typically include layered insurance programmes (the primary layer, an excess layer, etc.), co-insurance programmes and reinsurance “chains” of contracts between various insurers and reinsurers, many of whom operate in other countries. While the economic activities related to such programmes may be interconnected, each individual contract represents a separate and autonomous agreement, including the dispute resolution clauses contained therein. As such, when a dispute arises from a single loss event, the contractual architecture of the program will likely result in the commencement of multiple, potentially conflicting, parallel proceedings rather than a single unified adjudicatory process. The fragmentation of such procedures has been recognized in arbitration scholarship for decades as being among the core challenges facing arbitration as a method of resolving disputes. Kazutake identified the inherent difficulties of using arbitration in multi-party and class-wide proceedings as being based on the fact that conventional arbitration models were developed for bilateral disputes and therefore lack the specialized procedural tools (such as consolidation and joinder) necessary to efficiently handle multi-party or multi-contract cases (Kazutake, 2003). Similarly, Hackman noted that multi-contract disputes “may give rise to a series of concurrent arbitrations and court actions all in relation to the same or similar issues arising out of one underlying transaction,” and the attendant risks of conflicting decisions and duplicate costs (Hackman, n.d.).
The origin of this fragmentation can be found in the historical premises of the contract law, namely the principles of privity and the independence of the arbitration agreements. Over the years, it has been a settled by the courts to believe that an insurer and reinsurer are only obligated by the contractual terms to which they have given express assent irrespective of whether there are multiple contracts in a risk transfer transaction. In the case of Vesta v Butcher [1989] AC 852, the House of Lords pointed out that where the contracts do not indicate otherwise excess insurers are not bound by determinations made as to the primary insurance layer. On the same note, the court in Charter Reinsurance Co Ltd v Fagan [1997] AC 313 affirmed the independence of reinsurance contracts, although they are interdependent in terms of underlying policies. Such rulings can be interpreted as an insistence by the judiciary on the autonomy of contracting entities that makes it difficult to have a coordinated resolution of disputes in multi-contract situations.

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Reinsurance disputes increase the complexity of achieving coordinated dispute resolution. Although reinsurers bear the economic burden of loss, they remain legally insulated from insureds unless explicitly bound by contract. Judicial authority recognizes that disputes regarding the interpretation of coverage, aggregation and settlement decisions at the insurance level regularly give rise to reinsurance disputes, and must be resolved separately unless contractual mechanisms allow for some degree of coordination (Hill v Mercantile & General Reinsurance [1996] 1 WLR 1239; Wasa International Insurance Co Ltd v Lexington Insurance Co [2009] UKHL 40). Practically speaking, this leads to an explosion of proceedings relating to the same factual matrix, with the attendant risk of conflicting findings on overlapping legal issues. Court litigation, limited by territorial jurisdiction, typically results in the initiation of parallel proceedings in different courts and potentially conflicting outcomes, especially in cross-border cases in which there is no global regime for the recognition and enforcement of foreign judgments. Ad hoc arbitration, while generally favored for its confidentiality and neutrality, "was originally designed to accommodate two parties per arbitration." Therefore, it lacks a default mechanism for consolidation or joinder unless the parties agree to do so in each contract (Corby & Gray, 2015). As such, the consensual nature of arbitration, which provides the basis for its legitimacy, restricts its ability to coordinate disputes involving multiple contracts and parties. In recent years, scholars have increasingly acknowledged the procedural constraints of arbitration. An author recently proposed breaking down consent into components such as consent to the dispute, the tribunal, the procedure and "consent to the opposite / other arbitrating parties" (Jhanwar, 2023). This is because multi-contract arbitrations reveal the inadequacies of traditional consent paradigms in complex commercial situations (Jhanwar, 2023). Thus, there is a growing realization in the academic community that the challenges of multi-party and multi-contract arbitration are not simply the product of circumstance, but are fundamentally structural.

Therefore, this paper seeks to identify the issue i.e., the inability of existing bilateral dispute resolution models to coordinate adjudication among contractually autonomous, but economically interdependent relationships. In order to address this issue of coordination, we shall have to consider the law of arbitration, especially the possibilities of institutional arbitration rules to adjust consent by creating structured processes of consolidation, joinder, and coherence of procedures. In this regard, the paper maintains that institutional arbitration offers a legally robust remedy of coordinating conflicts among several parties and several contracts in the insurance industry. Institutional arbitration allows controversies based on a shared factual grid to be heard under a single system and at the same time maintain due process protection. The discussion will be on how the institutional arbitration rules can deal with the institutional failures of coordination that can not be dealt structurally by litigation and ad hoc arbitration. It will consider the implications of such coordination for jurisdiction, consent, and enforcement under the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958.

The authors use a comparative methodology that evaluates both the doctrinal and comparative legal approaches. This academic study investigates how each of the three aspects of consent, jurisdiction, and due process influences a multiplicity of parties involved in a complex number of binding insurance litigation cases, as well as discussing the impact of institutional arbitration

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on creating a more coherent and integrated adjudicatory process for the resolution of these disputes.

To achieve this, the analysis will draw on arbitration legislation, institutional rules, judgments, and comparative assessments of court litigation, ad hoc arbitration, and institutional arbitration. For purposes of evaluating the relative capacity of each method to address coordination failures, institutional arbitration rules will be treated as legal instruments. Additionally, reference is made to the UNCITRAL Model Law on International Commercial Arbitration (specifically Articles 7, 16, and 18) as a baseline for assessing jurisdictional competence and due process. The scope of this paper is narrowly defined, and therefore does not include substantive insurance law issues including detailed coverage interpretation, aggregation methodologies, or claims-handling standards, nor does it address regulatory considerations except as they illustrate procedural challenges outside the scope of the core analysis. Similarly, any gendered perspective will be confined to the procedural impact of dispute resolution design (i.e., the way in which fragmented arbitration imposes greater burden upon weaker participating parties in terms of structure, e.g. women-led insured entities, without affecting our primary concern regarding arbitration doctrine).

II. The Coordination Issue in Multi-Party Insurance Disputes

Historically, commercial arbitration was used primarily as a means of settling disputes between contracting parties who had agreed to resolve disputes through arbitration prior to entering into their contract. It has been acknowledged for some time, that the traditional model of arbitration is not well-suited to deal with disputes involving multiple parties and/or contracts because of the nature of bilateral consent and the procedural autonomy that it affords to each party. As Hackman has noted, when a dispute arises between multiple parties/contracts, which arise from the same transaction, "a series of arbitrations will arise, all of which relate to the same dispute" (Hackman, n.d.). Thus, it creates an opportunity for different tribunals to reach inconsistent determinations based upon the lack of mechanisms available within the traditional arbitration framework to allow for the consolidation of those disputes.

This is a fear that is supported by other studies on joinder and consolidation. The scholars of arbitration claim that the multi-party contractual construction, which is being influenced by the increased complexity of commercial transactions, requires mechanisms (i.e., joinder and consolidation) to avoid issuing conflicting awards and to allow the arbitration procedure to be fair (Joinder and consolidation in international arbitration, 2024). Moreover, these scholars remark that arbitration does not resemble litigation because judges can join or consolidate cases without the consent of each contracting party, but in arbitration, it is necessary to have the consent of the contracting parties to join or consolidate other parties and other proceedings (Joinder and consolidation in international arbitration, 2024). Two major issues pose difficulties to the implementation of the arbitration doctrine to multi-party dispute cases in insurance and reinsurance agreements. To start with, arbitration agreements are independent and they must have the express agreement of the contracting parties in order to submit their disputes to arbitration (Wang, 2024). Therefore, in multi-party insurance and reinsurance cases, each contract usually contains its own arbitration clause(s), which leads to procedural fragmentation as each of the contracts can result in a separate reference to arbitration without a mechanism to consolidate the references (Wang, 2024). Second, whereas conventional arbitration

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arrangements rarely consider the prospect of joining or consolidating absent express stipulation in the arbitration provision, arbitral institutions started to establish such mechanisms at the inception of the 21st Century (Wang, 2024).

These procedural restrictions exist not only in theory but also in practise. Individual tribunals can be set up to hear arbitration disputes based upon the same set of facts/issues but with different procedures and schedules, and they may find the facts and make different legal determinations. The possibility of inconsistent fact-findings and varying legal inferences creates confusion with regard to how the different tribunals will issue the law to the same factual scenario. Inconsistent application of the law to the same set of facts results in a loss of the predictability and coherence of international commercial arbitration.

The early literature on multi-party arbitration emphasized the difficulties faced by the legal community in balancing the requirement of arbitration to provide a consensual forum for the resolution of disputes with the need to develop efficient processes for the resolution of multi-party disputes, especially where failure to consolidate threatened procedural fairness and efficiency (Strong, 1998). Institutional arbitral rules have sought to respond to these concerns by providing for multi-party arbitration mechanisms tailored to specific needs (Strong, 1998). Many of the leading arbitral institutions have provided for express provisions permitting the joining of parties, the intervening of third parties, and the consolidation of arbitrations (Wang, 2024). When considering whether to permit joinder or consolidation, arbitral institutions typically consider factors including the contractual relationship(s) existing between the disputes, the compatibility of the arbitration agreements and the commonality of the factual/legal matrix underlying the claims. These advances indicate that arbitration practitioners and scholars have increasingly understood that the formulation of successful arbitration procedures in dealing with complex commercial disputes require the establishment of procedural mechanisms that bypass the limitations of bilateral consent (Wang, 2024).

Also, in the insurance context, it is the presence of the above-named coordination problems that are extended by the multi-layered contracting structure that is related to primary insurance contracts and reinsurance contracts. Although reinsurers tend to be under ultimate financial risk with reference to a specific claim, reinsurers are usually contractually indemnified against insureds by privity of contract and hence their arbitral duty must be expressly defined in the contract. The absence of multi-party arbitration clauses that are worded in terms of reinsurance contracts may worsen the challenge of coordinating multi-party arbitration of claims brought under such contracts, which results in creating several proceedings based on the same underlying factual and legal issues of coverage, aggregation and liability. This disintegration of the dispute resolution processes poses some dire doctrinal consequences as far as the absence of a solid procedural framework to regulate the resolution of disputes in this region would most definitely lead to a high occurrence of conflicting awards and poor utilisation of time and resources in a region where timely and consistent settlement of disputes is of paramount importance.

III. The Complexity of Multi-Party Insurance Dispute Cases

In absence of understanding of how exactly traditional courts work or how proceedings are organised ad hoc arbitration will not be able to resolve the coordination issues caused by multiple-party insurance disputes. Although both processes are formally available to the parties,

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they do not provide sufficient flexibility in their respective procedures to allow for the interdependent nature of the claims arising out of the various, independent insurance arrangements where the respective parties are either directly or indirectly financially linked (e.g., under insurance and reinsurance contracts). Scholarly literature consistently demonstrates that the failure of these mechanisms is not contingent or case-specific, but rather systemic, stemming from their underlying jurisdictional and procedural architecture.

A. Structural Limits of Court Litigation

While court litigation can be used to resolve disputes among many parties due to joinder, consolidation, and third-party impleader. However, when cross-border insurance disputes occur, the benefits of those procedures are severely diminished due to fragmented jurisdiction. Typically, insurance and reinsurance contracts provide that they will be governed by and litigated in the law of and in the courts of multiple countries. Many times, both insurers and reinsurers are headquartered in various jurisdictions. Therefore, one loss can give rise to litigation in separate national courts, with each claiming jurisdiction over portions of the same claim. The fact that there is no overarching international system for the recognition and enforcement of foreign court judgments has exacerbated the issue of judicial fragmentation. Court judgments cannot be enforced in all jurisdictions like arbitration awards are because they are subject to each jurisdiction's own rules regarding the recognition and enforcement of foreign judgments. This lack of harmonisation was observed by Born as causing litigation to be an unreliable method for resolving cross-border commercial disputes, especially where litigation may involve the recovery of monies from entities in other jurisdictions (Born, 2021). For insurance companies, litigation do little to assist in coordinating claims across international borders because litigation provides little certainty regarding the ability to collect from reinsurers located in other jurisdictions.

Finally, court litigation lacks the procedural neutrality typically desired by parties involved in international insurance transactions. As national courts operate in accordance with their respective country's laws and regulations, their decision-making processes are often influenced by the interests of the local government and/or the public, as opposed to the interests of the contracting parties. It has been argued that the fact that national courts will apply different substantive and procedural law principles than by an international tribunal or another national court (forum non conveniens) creates a strategic incentive for parties to engage in forum shopping. Thus, it contributes to the fragmentation of cross-border insurance dispute resolution, instead of facilitating the resolution of cross-border insurance disputes in a unified manner (Gaillard, 2010). Thus, although courts have the formal authority to adjudicate disputes among multiple parties, their inability to enforce their decisions outside of their territorial jurisdictions limits the ability of courts to effectively facilitate the coordination of cross-border insurance disputes.

B. Inherent Limitations of Ad hoc Arbitration

Ad hoc arbitration is often selected in insurance contracts in order to maintain confidentiality, party autonomy, and neutrality. But its bilateralism design limits severely its ability to organise multi-party and multi-contract disputes. The validity of arbitration is based on consent and the tribunals cannot enter into the process of arbitration or merge the connected proceedings

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without the explicit assent. Hackman describes ad hoc arbitration as having not been structured to support multiple parties or multiple contracts that occur out of the same transaction, leading to the multiplicity of parallel arbitrations that reflect the fragmentation of litigation (Hackman, n.d.). This administrative limitation is vitiated by the lack of administrative control within ad hoc proceedings. Ad hoc arbitrations are prone to procedural stalemate where there is no institutional body to oversee the tribunal constitution, timelines of procedure, or consolidation demands. Parties may disagree on arbitrator appointments, procedural rules, or the scope of jurisdiction, requiring recourse to national courts for assistance. The court's intervention can cause a delay to the arbitration process and reduce the benefits of arbitration, namely - getting things done quickly and without interference. Experts have said that this delay and reduction occur more frequently in complex issues related to technical details - such as disputes regarding insurance contracts and the organisation of the arbitration process (Redfern & Hunter, 2015). The courts have a long-standing pattern of upholding this type of restriction through the decisions they have made regarding arbitration laws. Courts have historically interpreted consent in arbitration quite strictly and will not expand the jurisdiction of an arbitrator over individuals who did not sign the arbitration agreement unless that expansion is specifically proven to be permitted through some means. The UK Supreme Court reinforced this strict standard regarding consent in Dallah Real Estate and Tourism Holding Co v The Ministry of Religious Affairs, Government of Pakistan; [2010] UKSC 46 when it stated that commercial practicality or economic integration alone will not give rise to an implication that an arbitrator has the authority to make a ruling against a person or entity that is not a signatory to an arbitration agreement. While this strictness by courts protects the autonomy of the parties, it leads to difficulties with coordination when there are multiple contracts and lack of agreement regarding the dispute among those contracts in the case of ad hoc arbitration concerning insurance disputes with multiple parties.

C. Fragmentation of Procedures leading to systemic failure

The combination of Fragmentation of Jurisdiction and Consent Rigidity form a systemic failure in that both mechanisms assume that disputes are bilateral and self-contained, which is becoming more and more irrelevant to modern-day practice in the Insurance Industry. This Assumption has been proven by Strong (2013), Born (2021) and others to result in duplication of the processes in which they take place, high costs, and inconsistent adjudications. This compromises the predictability and coherence on which Dispute Resolution Procedures were meant to create. Also, such failures cannot be fixed through gradual change within the current structures. Consolidation of Arbitration ordered by courts remains controversial and jurisdiction dependent. This brings issues such as judicial overreach and meddlement of party autonomy. Consequently, in trying to go beyond the consensual design of Ad hoc Arbitration, there is also the danger of grounding its operation on a design that is less consensual. Well, in line with this, Gaillard (2010) has contended that effective coordination of Multi-Party Disputes is one that requires institutional design, rather than Ad hoc judicial or contractual improvisation. Therefore, the grounds of identifying an institutional arbitration as an independent and distinct model of procedure is to be traced. Institutional arbitration offers a structured response to the coordination Problem of Multi-Party Disputes that cannot be sufficiently dealt with by litigation and Ad hoc arbitration through the integration of the mechanism of consolidation, joinder, and

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appointed tribunal of agreed rules. In line with this, the following Section will be a discussion of the doctrinal support of the institutional arbitration or the application of its mechanisms that redistribute consent without depriving due process and enforceability.

IV. Institutional arbitration and the Law of Consolidation

The inefficiencies of litigation and ad hoc arbitration in organising cases of multi-party insurance claims have seen the emergence of consolidation and joinder systems in institutional arbitration procedures. Such mechanisms do not supersede the consensualism of arbitration, on the contrary, they are a rule-based re-calibration of consent. It has been structured to support the nature of the complicated business dealings. The modern practise of arbitration research acknowledges the fact that the doctrine of consolidation is not a variation of consent, but a development of it, based on a structural design (Strong, 1998; Wang, 2024).

A. Consent Revisited: Arbitration Agreements and Institutional Rules

The parties' consent is what has always been the basis for arbitrators' jurisdiction in both international commercial arbitration and in national laws that regulate arbitration. The Model Law states "the arbitration agreement shall be valid in relation to a person if it is valid under the arbitration law determined by the parties" in Article 7. Additionally, under Article II of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (The "New York Convention"), an arbitration agreement must be in writing before an award made pursuant thereto will be recognized as enforceable. Institutional arbitration operates within this framework by treating consent not merely as agreement to arbitrate, but as agreement to arbitrate under a defined procedural architecture. Therefore, once parties include institutional rules into their arbitration agreements, parties are agreeing ex ante to the terms of those rules, including all aspects of joinder/consolidation of claims. Strong (1998), therefore, posits that the legitimacy of joinder and consolidation does not depend upon the unanimous consent of the parties subsequent to the dispute arising, rather is dependent upon whether the parties had previously consented to utilize procedures that could permit coordination of multiple disputes. Thus, the doctrine-based distinction between institutional consolidation and externally-imposed consolidation provides the parties with a method of avoiding the violation of Article V(1)(a) of the New York Convention, which prohibits enforcement of awards that exceed the scope of the parties' consent.

Further, the Model Law also assists in providing the framework for institutional consolidation/joinder. Particularly in Article 16, the Model Law recognizes the principle of *kompetenz - kompetenz*, which permits arbitral tribunals (and/or institutions, as applicable) to decide on the validity of the jurisdictional objection to the consolidation/joinder of claims. It, thereby, provides a mechanism for the consent of the parties to be utilized as the basis for the operation of the institutional rules, without requiring the parties to renegotiate the same at the time of dispute.

B. Consolidation under Institutional arbitration Rules

Most of the leading arbitral institutions have implemented consolidated procedures that take into account developments in international arbitration practice. For instance, Article 10 of the ICC Arbitration Rules 2021 allows for the consolidation of arbitrations when claims arise from

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the same arbitration agreement, or where the claims arise under different arbitration agreements but the disputes relate to the same legal relationship. Similarly, the LCIA Arbitration Rules 2020 permit tribunals to consolidate arbitrations under Article 22.1(viii) provided there exists compatibility and fairness, the SIAC Arbitration Rules also permit the consolidation of arbitrations in accordance with Rule 8, where the disputes raise common questions of law or fact.

Institutional consolidations therefore require arbitral tribunals to apply a number of connectivity tests which is contractual, factual and legal. According to Wang (2024), these tests aim to balance the need for efficiency with the need to respect the parties' consent to be joined in the dispute resolution process, by ensuring that the consolidation decision is based on objective relations between disputes and not merely as a matter of procedural convenience. Furthermore, consolidation decisions are usually taken before the formation of the tribunal, or very soon after. This means that they contribute to the preservation of procedural predictability and reduce the risks associated with violations of due process.

In terms of doctrine, the authority for institutional consolidation comes from the arbitration clause and the institutional arbitration rules. Recent scholarly works state that the consolidation of proceedings under institutional rules does not constitute a violation of the principles of due process because it results from the parties' voluntary contractual choice regarding their procedural framework (Joinder and consolidation in international arbitration, 2024). The distinction identified above is essential to determine whether the award of consolidated arbitrations will be recognized and enforced by national courts.

C. Joinder and Third-Party Participation

The Joinder Mechanisms deal with the inclusion of other necessary parties in order to complete procedural processes. Prior to confirming the arbitral tribunal, the parties may join other parties, vide Article 7 under the ICC Arbitration Rules, when it appears there will be a prima facie determination of jurisdiction. Under Article 22.1(x) of the LCIA Rules, parties can be joined. Likewise, the SIAC Rules provide for joinder pursuant to Rule 6, but only if compatible and provided that sufficient notice has been given. In early arbitration jurisprudence, the courts were wary of joinder and viewed the involvement of third-party participants as potentially detrimental to the parties' original consent (Strong, 1998). In contrast, current practices of institutions treating joinder as merely an expansion of procedural consent. There, the arbitration agreement and the institutional rules provide for such consent, the primary doctrinal safeguards against excessive joinder include the notice requirement and the right to be heard. Both of them support the concept of equality of treatment and full opportunity to be heard in accordance with Article 18 of the Model Law.

Joinder is particularly significant in the insurance context, as in this context, the reinsurers, co-insurers, and/or fronting insurers can be deprived of several arbitration agreements, which can be interrelated due to the obligations that each side has to fulfil. Institutional joinder mechanisms therefore enable tribunals to settle various disputes simultaneously without compelling the non-consenting parties to undergo arbitration thereby safeguarding the original promise and minimising fragmentation.

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D. Due Process Constraints and Procedural Fairness

The consolidation and joining of various claims can create a number of due process issues related to the equal treatment of parties and the ability to present their cases independently. The United Nations Commission on International Trade Law (UNCITRAL) Model Law, Article 18, and the United Kingdom (UK) Arbitration Act 1996, Section 33, require an equal opportunity for all parties to submit evidence and present their respective positions.

Institutions have also included provisions in their rules conditionally placing the application of consolidation on procedural compatibility and fair application thereof.

The author emphasises in "Joinder and Consolidation in International Arbitration" (published 2024) that institutional arbitration enhances due process by eliminating the duplication of procedures and increasing costs, therefore providing benefits through consolidation. The consolidation of several disputes will reduce the number of times that a party must present their case before several different tribunals and will further minimize the multiple dispute resolution processes and costs associated with multiple tribunals. Additionally, in cases of an insurance dispute, where the disparity of resources is common between the parties, coordinated proceedings provide an opportunity for greater procedural equality than through the individual processes of each party.

E. Institutional arbitration as a Doctrinal Response to Coordination Failure

The legal framework of institutional arbitration creates an organized method for addressing coordination problems related to multi-party insurance claims by establishing a protocol to combine and add parties to a case, as mutually agreed upon by the parties. Thus, it combines consent with efficiency and fairness, while allowing for compliance with the enforcement requirements of the New York Convention.

Unlike litigation, institutional arbitration provides both international enforceability and procedural neutrality. Unlike ad hoc arbitration, institutional arbitration provides pre-defined mechanisms to achieve coordination between parties without requiring judicial intervention. The importance of institutional procedural design for effective arbitration in complex cases is now widely recognized by contemporary arbitration scholars (Wang, 2024). Therefore, institutional arbitration becomes the a reliable means of resolving multi-party insurance disputes where there can be an appropriate balance between consent, coordination and due process, providing a solid theoretical base for the subsequent analysis of enforceability.

V. Enforcement and Judicial Review of Consolidated Arbitrated Awards

The doctrinal viability of consolidation and joinder in institutional arbitration turns on enforcement. Even when institutional rules allow coordinated proceedings, a consolidated award must survive review at the seat and at the enforcement stage. Rule based consolidation under institutional arbitration aligns with the enforcement structure of the New York Convention when consent and procedural fairness exist. Ad hoc or court imposed consolidation creates higher enforcement risk because consent lacks a clear rule based foundation.

A. The New York Convention Framework: Consent and Due Process

The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 establishes a pro enforcement regime with narrow exceptions. To this end, two provisions

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matter most for consolidated awards. Firstly, Article V(1)(a) allows refusal of enforcement where the arbitration agreement lacks validity or where a party lacked capacity. Secondly, Article V(1)(b) allows refusal where a party did not receive proper notice or lacked a real opportunity to present its case. These provisions protect consent and procedural fairness at the core of arbitration.

Also, consolidation raises enforcement objections mainly under Article V(1)(a). Parties resisting enforcement often argue absence of consent to joint proceedings or to a consolidated process (Strong, 1998; Wang, 2024). When arbitration agreements incorporate institutional rules with express consolidation and joinder provisions, consent exists in advance to the procedural structure created by those rules. Arbitration scholarship treats this form of consent as distinct from coercion after a dispute begins (Strong, 1998; Wang, 2024). The Convention recognizes arbitration agreements in writing, including agreements that incorporate institutional rules by reference. Additionally, courts often respect this form of consent.

B. Model Law Standards and Judicial Deference

The UNCITRAL Model Law has encouraged an enforcement-orientated view. Articles 7 and 16 of the UNCITRAL Model Law reinforce the principle that arbitration agreements are a source of consent, with respect to which tribunals should be free to determine their own jurisdiction and provide a basis for resolving any disputes as to whether a tribunal has jurisdiction over consolidated claims (Article 16(2)), and also support the argument that tribunals may use their discretion to consolidate claims without prior leave of court. Article 18 sets out the principles of equality, fair hearing, and due process that apply to all parties to arbitration. It also provides a reference point against which the level of procedural fairness afforded by the coordination of multiple arbitrations can be assessed.

There are evidences to suggest that judicial practice in jurisdictions governed by the UNCITRAL Model Law regime has shown increased deference to the decisions of arbitral institutions regarding the issue of consolidation. The Courts have emphasized that when reviewing procedural decisions of Tribunals, they only need to confirm that the basic principles of fairness have been followed. The goal of this arbitration is to limit Court intervention under the UNCITRAL Model Law and protect the autonomy of Arbitrators.

C. Case Law: Consent, Jurisdiction and Enforcement

Judicial rulings are an excellent source for understanding the extent of consolidated arbitration's limitations and success. A prominent example of this is the UK Supreme Court's ruling in Dallah Real Estate and Tourism Holding Co v Pakistan [2010] UKSC 46, which took a strict view on the issue of consent by holding that there was no basis for enforcing the arbitration clause against an entity because it was not a signatory and there was no agreement to arbitrate amongst parties. This ruling has been relied upon by many as a "word of warning." However, the situation in Dallah was unique in that there was no attempt to force any party to accept any terms of reference for participation in the arbitral process. Consent must always exist and it must exist either through direct expressions of consent or by means of tacit acceptance of arbitration provisions through corresponding agreements.

On the other hand, there is a greater willingness by courts to show deference where parties have submitted to the jurisdiction of an institution and have submitted disputes through the rules of

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those institutions. In Fiona Trust & Holding Corp v Privalov [2007] UKHL 40, the House of Lords, as the highest court in the UK, endorsed a generous interpretation of arbitration agreements and emphasised that commercial parties are intending to submit disputes to a centralised source for resolution. Although the House of Lords did not endorse a consolidation agreement in this instance, the underlying reasoning used in Fiona Trust is clearly compatible with an approach that views parties' consent with respect to consolidation through the lens of institutional collaboration to achieve the best resolution.

The recent trend in jurisprudence indicates that the law will likely favour the enforcement of awards. Case law such as Halliburton Company v Chubb Bermuda Insurance Ltd [2020] UKSC 48, established by the UK Supreme Court, confirms that there must be a showing of actual prejudice in the challenge of an award under the rules of arbitration (as opposed to an inquiry into whether the award was made 'in accordance with principles of fair play'). The Court emphasises the need for both transparency and the obligation of the parties to disclose information but limits the interference by the Courts so as not to interfere with the existing arbitral systems in place.

Similarly, in India, the judgement in Vijay Karia v Prysmian Cavi E Sistemi SRL (2020) has further established that the courts have a very narrow ability to refuse enforcement of an award under the New York Convention and thus will only grant such a refusal in very rare situations. The Court explicitly warned against converting enforcement proceedings into merits review, a principle that supports the enforceability of consolidated awards where procedural safeguards are met (Vijay Karia v Prysmian, 2020).

D. Institutional Consolidation and Enforceability

The combination of treaty provisions, Model Law Standards and Case Law suggests that Consolidation is not inherently hostile to enforcement. Instead, as long as it is based on agreed upon Institutional Rules, it can enhance enforceability by eliminating the problem of inconsistent Awards, procedural duplication and other such problems associated with multiple jurisdictions. It is the method of Consolidation that will ultimately be determinative of success or failure, and not the act of Consolidating per se, provided that the method of Consolidation does not exceed the limits of Consensus and Procedure articulated in Article V (1) (a) & (b) of the New York Convention.

Institutional arbitration is also distinguishable from court orders or Ad hoc Consolidations. When consolidation is ordered or imposed without a rule-based foundation, there are significant increases in the risks associated with enforcement. Institutional arbitration is able to mitigate such risks, by providing a pre-agreed upon procedural framework for the purposes of coordinating disputes among multiple Parties. Thus, it ensures that coordination is achieved through consent and due process. Consequently, the investigation into regulatory actions reinforces the primary argument of this study: Institutional arbitration is an acceptable mechanism for resolving insurance disputes among many parties under international laws and through judicial restraint.

VI. Procedural Fragmentation, Access and Differential Burdens

Procedural rules in arbitration appear neutral. Their effects differ across parties. In multi-party insurance disputes, fragmented proceedings create cumulative burdens. Parties face repeated costs, filings, hearings, and strategic pressure. Research on arbitration costs and access to justice

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shows that duplication drives expense and delay, even when rules treat parties equally (OECD, 2018; Born, 2021). The claim advanced here stays narrow. Also, procedural fragmentation produces indirect gendered effects by increasing participation barriers for structurally weaker actors, including women-led insured entities, through cost and complexity rather than formal exclusion.

Additionally, fragmentation operates as a cost multiplier. Parallel arbitrations require separate tribunals, separate counsel teams and repeated factual presentations. Accordingly, insurance disputes often travel across primary, excess, and reinsurance layers. Each layer triggers a fresh proceeding. Policy and empirical studies identify duplication as a core source of arbitration cost escalation (OECD, 2018). In such settings, procedure shapes outcomes by filtering which can sustain long-running disputes.

These burdens function as access constraints. Smaller commercial insureds face higher pressure to settle or exit when parallel proceedings stretch resources. For instance, global enterprise data shows women-led businesses concentrate in small and medium enterprises and in sectors with tighter margins. These enterprises absorb procedural costs less easily and remain more sensitive to delay when insurance recovery supports business continuity (World Bank, 2020). The effect arises from structure, not intent. The focus on gender issues identified above is indirect and structured. Gender does not categorize the parties in this area. The design of legal procedures divides the parties based on divergent resources and abilities to negotiate, thereby imposing unequal burdens on the parties involved with arbitration. Authors who write about access to justice in the context of formal equality (explanation of the structure of how justice is accessed) highlight the fact that procedural equality does not mean that all persons are affected equally by the outcome of proceedings. As a result, in the context of fragmentation in arbitration proceedings, the idea of multiple proceedings creates more opportunities for parties to be adversely affected by the process of arbitration than by the written rules. Insurance disputes illustrate this dynamic clearly. Women-led insured entities often lack leverage during contract drafting. Standard form arbitration clauses rarely include consolidation language. When disputes arise, fragmented proceedings increase exposure to delay, cost, and strategic pressure from better-resourced counterparties. These effects arise through the procedure. They do not rely on identity-based claims. The analysis, therefore, remains within the arbitration doctrine. Institutional arbitration reduces these access barriers through consolidation and joinder. As shown earlier, institutional rules permit coordinated proceedings subject to consent and procedural compatibility. Consolidation lowers aggregate cost by removing duplication. Parties present evidence once, whereby fact-finding remains consistent and Strategic fragmentation becomes harder to deploy (Joinder and consolidation in international arbitration, 2024).

Recent arbitration scholarship recognizes consolidation as an access-enhancing feature of procedure. Wang (2024) explains that connectivity tests support coordination without undermining consent. Where disputes share facts or legal relationships, joint adjudication reduces asymmetry between parties. Weaker parties benefit from scale in representation and from coherent findings. Procedure then supports fairness through structure rather than discretion. This access perspective carries doctrinal weight. Consolidation reduces the risk of procedural imbalance while remaining consistent with due process obligations under Article 18 of the UNCITRAL Model Law. Fewer parallel proceedings reduce exposure to notice failures, scheduling conflicts, and inconsistent tribunal control. The Coordinated System of Enforcement

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accomplishes this purpose through a reduction of risk under Article V(1)(b) of the New York Convention, thereby facilitating enforcement. This article has identified the importance of adopting a gender perspective in developing arbitration, but it does not change or reconstruct arbitration as a mechanism for achieving genuine substantive gender justice. The claim stays procedural. Coordination improves access by limiting duplication and cost. Institutional arbitration delivers this effect without departing from consent-based foundations. The benefit remains secondary yet relevant. Procedural coordination therefore serves two linked functions, i.e., it improves efficiency and supports access. In multi-party insurance disputes, these functions overlap. Fragmentation harms weaker participants more severely. Institutional consolidation reduces this harm through rule-based design.

This analysis reinforces the broader doctrinal argument of the paper i.e., procedural coordination addresses structural failure. Institutional arbitration achieves coordination through consent, fairness, and enforceability. Reduced fragmentation also narrows indirect burdens borne by women-led insured entities and similar actors. Procedural design shapes access even when rules appear neutral.

Conclusion:

The purpose of this paper was to investigate a specific legal issue i.e., the inability of current methods of dispute resolution (litigation and arbitration) to effectively deal with the problems of coordinating litigation of multi-party and multi-contract insurance claims. As the current form of insurance allows for a distribution of risk to many different layers of insurance policies, to reinsurers and to co-insurers, all of whom are economically related but legally separate. However, when there is one loss event resulting in multiple disputes between the insured, insurers and reinsurers, procedural fragmentation occurs (i.e., multiple cases proceeding in separate courts). Procedural fragmentation results in potential inconsistencies in the outcomes of the cases, involving duplicate costs and strategic behaviour from the parties.

The paper argues that these problems are not simply coincidental, but they are structural in nature. The structural problems stem from the fact that both litigation and ad hoc arbitration are based upon the assumption that every party will agree to the terms of the agreement prior to commencement of the action. Therefore, neither institution has been designed to accommodate multi-party and multi-contract issues.

The paper begins by demonstrating that traditional litigation and ad hoc arbitration do not provide a solution to this coordination problem. The paper shows that litigation is unable to adequately deal with multi-party and multi-contract claims because it is limited by jurisdictional fragmentation and the lack of an internationally recognized regime governing the recognition and enforcement of foreign judgments. Similarly, the paper demonstrates that ad hoc arbitration cannot provide a solution to this problem because the arbitration procedure requires the consent of each and every party involved, and there is no default mechanism for the consolidation of claims or the joinder of additional parties.

Both forms of dispute resolution are hampered by their own internal institutional design and not by poor case management. Based upon this background, the paper makes the central argument of the paper i.e., institutional arbitration is a legally acceptable method for coordinating multi-party insurance disputes. The paper examines the principles of institutional arbitration concerning consolidation and joinder and demonstrates how institutional

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arbitration's procedural rules can provide a framework for obtaining consent from the parties involved in advancement of commencing arbitration. The paper explains how institutional arbitration can use early-stage determinations, notice-based safeguards and connectivity tests to ensure that the consent of all parties is obtained and that the rights of all parties are protected during the arbitration process.

Accordingly, the paper concludes that institutional arbitration is consistent with the consensual nature of arbitration set out in the UNCITRAL Model Law and the New York Convention, and that institutional arbitration preserves the fair procedural rights of the parties as set out in Article 18 of the UNCITRAL Model Law.

The study further considered the possibility of enforcing consolidated arbitration awards made pursuant to institutional arbitration rules. Assuming a party's consent to the arbitration provisions and their preservation of due process rights, consolidated arbitration awards should be enforceable by the pro-enforcement provisions of the New York Convention, particularly Articles V(1)(a) and V(1)(b). However, external (or ad hoc) consolidations would face greater enforcement challenges.

This indicates that institutional arbitration has been supported at not only the jurisdictional level, but also the enforcement level. The study used an access to procedural rights limited-access access view to explore the distributive impact of procedural fragmentation. While arbitration law is treated equally regardless of the manner of dispute resolution, the option of certain procedural designs may indirectly impact structurally disadvantaged parties by increasing costs and procedural barriers to access.

In the insurance industry, the authors argue that these added barriers may affect smaller insured companies more, especially companies owned by women, who may not be able to afford to participate in multiple proceedings. Though there is no explicit state of substantive gender bias by the authors, they illustrate how procedural coordination can protect access. Through the use of institutional arbitration, litigation is removed from being duplicated while being consolidated in one place, allowing for increased legitimacy of coordinated litigation, and upholding due process values equally amongst all parties involved.

Institutional arbitration is not just the preferred forum for resolving complex insurance disputes, it is a procedurally acceptable method for dealing with a structural coordination failure. Institutional arbitration combines consent, efficiency and fairness in a coherent rule-based system that reconciles the contractual basis of arbitration with the practicalities of modern insurance practice.

Finally, there are two avenues for future research based upon this foundation. First, empirical studies of consolidated insurance arbitrations may assess whether the efficiencies and access benefits predicted by doctrine actually result from procedural coordination. Second, further analysis may explore the interaction between consolidation and contract drafting practices in insurance and reinsurance markets. However, for present purposes, the authors conclude that institutional arbitration is a procedurally coherent and enforceable means of coordinated adjudication of disputes arising from interdependent insurance contracts.

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