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AIRROC matters

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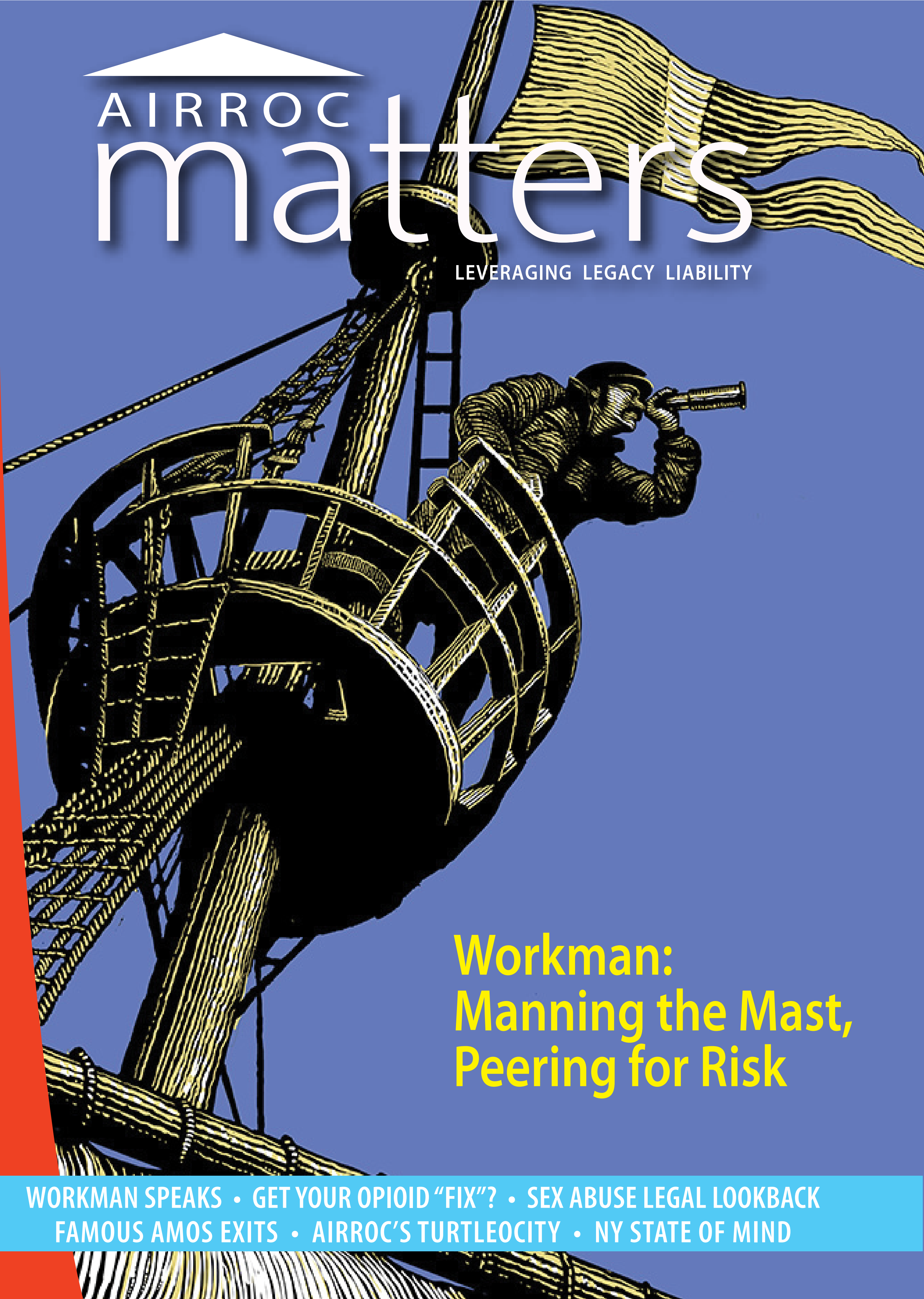

Workman: Manning the Mast, Peering for Risk

WORKMAN SPEAKS • GET YOUR OPIOID "FIX"? • SEX ABUSE LEGAL LOOKBACK
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Porter Wright is proud to announce that Chicago-based Butler Rubin Saltarelli & Boyd LLP has merged into Porter Wright Morris & Arthur LLP, expanding our firm's reach to eight locations across the country.
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We Hear You…

Peter A. Scarpato

For over a decade, I have ended this column with the phrase "Let us hear from you." And while Carolyn, the board, the Publication Committee and I have received positive feedback from readers occasionally over the years, it was not at the level or scope expected. Until now. When we saw freshly printed issues of the magazine untouched at events, and members staring into their smart phones and tablets, we realized that it was time to rethink how AIRROC delivers content – substantive articles, topical interviews and business news – to our constituents. The media world was changing, and we needed to jump on the train. As Carolyn will address in more detail, our transformation in content management and production will pay huge dividends for all concerned and keep AIRROC timely, relevant and agile.

So let's turn to this issue. We begin with a coup, Fran Semaya and Fred Pomerantz›s interview, *Tom Workman and the FSOC*. Appointed by President Trump as the Independent Member with insurance expertise on the FSOC, Tom works with the heads of all major Federal financial agencies to identify risks to financial stability from interconnected banks, promoting market discipline by eliminating the 2008 "too big to fail" scenario, and responding to threats to the U.S. financial system. The interview covers everything from cybersecurity risk, to the Fed's potential involvement with adoption of the NAIC Model Act, and much more. He offers valuable insights into our government's perception of market and financial risk as one who certainly knows.

Next, Amy Kallal and Tyler Flynn wrestle with an all-too-familiar issue in, *America has an Opioid Problem: Who's Going to Pay to Fix It?* Broad in scope, they define the problem, outline local, state and Federal responses, and discuss litigation and coverage issues spawned in its wake. Keeping with the legal theme, Mark Chopko and Michael O'Mara offer up, *New Legislation will Alter the Sexual Abuse Liability Landscape*, a quick report on the impact of "legal look back" legislation on educational, nonprofit and religious institutions.

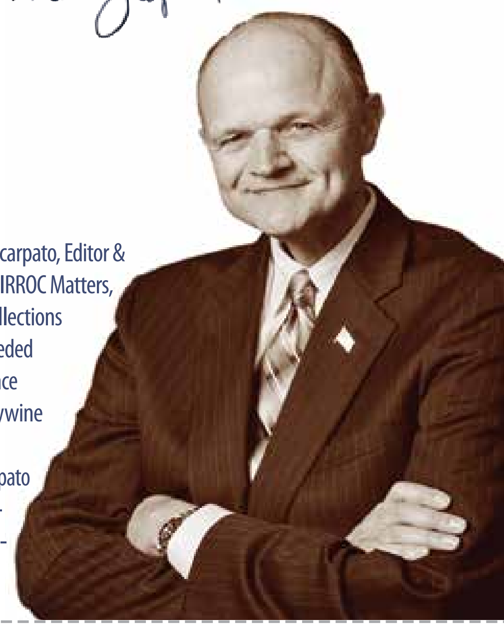
We are still a people business. In, Karen Amos, *AIRROC's 'Outgoing' Board Member,* Bina Dagar – and Karen in her own words – look back at 14 years of active and effective service. Thanks, Karen for helping make us a respected voice in the legacy space. Grabbing the Baton introduces us to three incoming board members, Bill Bouvier, Eleni Iacovides and Arvind Krishnamurthy. Welcome aboard!

As noted above, Carolyn spells out our new communication strategy in A*IRROC Sticks its Neck Out*. The turtle analogy is an apt one, Carolyn explains, given our persistence, determination, endurance and longevity. Communication was certainly the key at our March 5-6 meetings, meticulously outlined in, *New York Education Summaries*. Finally, where would we be without Present Value, the perennial Bickford/Semaya sheet on everything newsworthy in our runoff space.

I'd like to end on a personal note. As our content publication strategy evolves, embracing whatever changes become necessary to keep AIRROC in step, I want to thank everyone who worked on or in support of our Publication Committee and this magazine. That includes all the past Chairs, Vice Chairs and members, our dedicated design and production team of Nicole Myers and Gina Pirozzi, and current committee members, including Vice Chair Maryann Taylor and Assistant Editor Connie O'Mara. Of course, we would be nowhere without the tireless work of Carolyn Fahey, our Executive Director, who continues to play a major role for this committee, and in the evolution of AIRROC's content distribution to the market.

And to you, our readers,

Thanks for letting us know.



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AIRROC matters

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AIRROC

Independent Industry Voice

Thomas Workman and the FSOC

Tom Workman being sworn in by Treasury Secretary Steven Mnuchin

Fran Semaya and Fred Pomerantz, members of the AIRROC Publication Committee, had the pleasure of interviewing Thomas E. Workman for an AIRROC Matters exclusive. Tom, with over four decades of insurance background, was appointed as the Independent Member of the Financial Stability Oversight Council (FSOC), for a term of six years on March 29, 2018 after nomination by President Donald J. Trump and confirmation by the United States Senate.

Francine Semaya: *Tom, it's our pleasure to welcome you this morning on behalf of AIRROC. Before we discuss FSOC and your current role with FSOC, it would be helpful for our readers to know your background in the insurance industry.*

Tom Workman: As both of you know, I practiced law in Columbus, Ohio for 26 years. A significant part of my representation was on behalf of the life insurance industry in Ohio. One day, the phone rang and a gentleman asked me if I would be interested in a position in New York. I replied: "There is no way in the world that I would ever move to New York. Columbus is our home and I am happy practicing law here at Bricker & Eckler."

Semaya: *You didn't want to come to our city?*

Workman: I gave him three or four names and phone numbers and said, "I highly recommend that you call these people. They are great." I turned it down three or four times over a period of several weeks, and then he called again and said, "but I haven't had a chance to talk to you." I said, "I know, but I think I understand what you are looking for and I know about the organization." Not long after that I came to New York and then served as the CEO of the Life Insurance Council of New York (LICONY) for almost 17 years. Hard to believe. Not long after I concluded my work at LICONY, I received another unsolicited call and a gentleman said, "Roy Woodall is finishing his tour of duty on the Financial Stability Oversight Council ("FSOC") as the "Independent Member with Insurance Expertise." "Would you be interested?" I said, "Absolutely!" So, that process began. I was interviewed in June 2017 and then returned a month later and was interviewed by two of President Trump's most senior people in the West Wing. There was a lot of vetting. We have many other things to talk about, but I do want to tell one story. My wife and I live here in Midtown. One day there was a knock at the door, something unusual in our building. Usually, someone will call from the desk downstairs to announce a caller. So, I went to the door. It was the next-door neighbor, a very nice lady. She and her husband have been our neighbors for all the years we've lived here. She stood there with a very serious look on her face, and held up this card and said, "Two FBI agents came to see me today." She continued, "They wanted to know what kind of a person you are." And I said, "Okay, what did you tell them?" She said, "I said you are a very nice person. We've been neighbors for a long time." After hearing her response I said, "That was the right answer!" Then I went through the full vetting process. One of the forms is 105 pages long. I went through the written process and then was nominated by President Trump in November, 2017. Because it was near year end, I had to be renominated in January 2018. I testified before the Senate Banking Committee on the 23rd of January. On February 8th, the Committee voted unanimously to recommend my confirmation, which I was most grateful for, and then in March 2018, the Senate voted by unanimous consent to confirm. So, that's the background.

I've been in the position now since the end of March, 2018 and it's been quite interesting. The position is a product of the Dodd-Frank Act that became effective in 2011. All the other voting members lead the major federal agencies. I do not. So, I'm able to concentrate on the work of FSOC and the issues that are before the FSOC. My predecessor, Roy Woodall, had one of the seasoned professionals working with him establish an insurance working group. It was an informal working group, and when appropriate, that group has a conference call session where we have an expert speak on an insurance issue. An example of that is a discussion with Peter Gallanis, the President of the National Organization of Life and Health Insurance Guaranty Associations and Roger Schmelzer, President & CEO of the National Conference of Insurance Guaranty Funds. I was told they made a very fine presentation to our group. The group does not get together regularly but it is an interesting way to provide insurance knowledge to Federal officials, primarily staff personnel, who do not have a great deal of exposure to insurance issues.

Semaya: *In this group, is there any representative of the NAIC who participates in the conference calls?*

Workman: Yes. We involve representatives of the NAIC, — whomever the NAIC would like to have on the call because we embrace the NAIC and its interests.

Semaya: *Am I correct that currently the President of the NAIC is a nonvoting Member of the FSOC?*

Workman: That's correct, and previously it was Peter Hartt when he was Director of Insurance in the State of New Jersey. The NAIC has appointed Eric Cioppa, the current NAIC President of the NAIC and the Maine Insurance Superintendent. Both terrific, seasoned professionals. Peter chaired the Macro Prudential Initiative, and then he came to the end of his term and Eric replaced him. Eric is just a wonderful person. He has, I am told, a lifetime of experience in financial regulation at the Maine Insurance Department. He's a delight to know and work with. Actually, when we have a meeting of the Council, we invite the state insurance regulator on the Council and his staff person to join us for lunch beforehand.

FSOC is a product of the Dodd-Frank Act; the Congressional response to the financial meltdown of '08.

Semaya: *Why don't you explain what FSOC is and what functions it has? Who are the members? How does it operate?*

Workman: FSOC is a product of the Dodd-Frank Act; the Congressional response to the financial meltdown of '08. FSOC has 15 members: ten are voting members, five are nonvoting. Each voting member is the head of a major Federal financial agency, which includes the Secretary of the Treasury, who is the Chairman of the Council, the Chairman of the Federal Reserve, the Chairman of the FDIC, the Chairman of the SEC, the Director of the CFPB, which is the Consumer Financial Protection Bureau, the Chairman of the Commodity Futures Trading Commission, the Director of the Federal Housing Finance Agency and the National Credit Union Administration Chairman. I think it's important to identify them, so that people understand this really is the center of Federal financial regulation in America. Each of those folks has their agency leadership responsibilities. They each have a deputy assigned to support their work on the Council. The deputies meet as a committee, or as a group, every other week. The Council, by law, is required to meet every quarter, but the Secretary of the Treasury can schedule meetings more frequently, if needed. I attend the deputies' meetings. I am not a member, but I go to observe because there is considerable policy discussion.

I have had many people ask, "How do you like it?" and, "What's good and not so good?" The best part about the FSOC is the quality of the people on the Council, and the very fine staff. There is a separate staff that supports FSOC.

I think it's important to focus on the statutory functions of the Council; there are three: The first: to identify risks to the financial stability of the United States that could arise from material distress or failure, or ongoing activities of large interconnected bank holding companies, or nonbank financial companies, or that could arise outside the financial services marketplace. That last phrase is particularly interesting. Not many people have noticed or paid attention to that language. The second is to promote market discipline by eliminating expectations of shareholders, creditors, and counterparties of such companies that the U.S. will shield from losses, if they fail; in other words, if it's "too big to fail". It's hard to make such a call. The third one is to respond to emerging threats to the stability of the U.S. financial system. So, those are the three, and it's from those three primary responsibilities that flows everything else that the FSOC does.

Fred Pomerantz: Either through FSOC action or effectively through court challenges, the designation of AIG, GE Capital, Prudential Financial and MetLife as "systemically important financial institutions" ("SIFIs") have all been removed. Therefore, do you believe that the SIFI designation had a positive effect, or no effect at all, on U.S. financial stability?

Workman and the FSOC (continued)

Workman: The longer I am in this role, the more confident I will be of my answer to that question, but I would say that — I'm not sure. I guess the next thing is that I have developed an extraordinary respect for the Fed, and for their very fine, talented people, and so I can't help but think that when they were in the role of an additional financial overseer of those insurance groups, that they likely were helpful in identifying additional things that the companies ought to think about when they are analyzing their financial strength. I think in that sense, it probably was positive for everybody, but whether or not it really made a difference, I'm not sure.

Semaya: I*n July 2013, the Financial Stability Board, ("FSB"), the international equivalent to FSOC, identified an initial list of nine multinational insurance groups it considered to be, and I'm quoting, "globally systemically important insurers," ("GSIIs") including three U.S. based companies, American International Group, MetLife and Prudential. These three insurance groups still remain on the GSII list, although they all have been removed from FSOC's SIFI list.*

Workman: Correct.

Semaya: *How do you reconcile, based on your experience, now that you are on the FSOC, or in your prior days as LICONY's CEO — FSOC's actions and the court's determination in removing these same insurance groups from designations as SIFIs, yet they still remain on the international watch list?*

Workman: It's actually pretty easy to respond to that because we have our laws. We have our regulatory system. We have FSOC in its role. We have the Fed in its role. We don't operate subject to financial regulators who are not elected or appointed by the U.S. government. It's interesting to have the international viewpoints, but we have the responsibility to function under the laws and regulations of the United States.

Semaya: *Do the U.S. companies look to FSOC to help them get off the FSB watch list?*

Workman: I doubt that they do. Getting off the FSB list may be somewhat similar to an FSOC designated company seeking de-designation. They have to make their case, and there are the standards you look at that were applied when the company was designated under the FSOC law. The first one is the one that was utilized by the Council to designate, and that one is whether material distress could pose a threat to the financial stability of the U.S. economy. There's a second one, and that one is more granular: you look at the nature, scope, size, scale, concentration, interconnectedness, or mix of activities of a nonbank. Roy Woodall strongly recommended that this second standard be utilized.

> *It's interesting to have the international viewpoints, but we have the responsibility to function under the laws and regulations of the United States.*

This standard wasn't used and, in fact, it's kind of an interesting little story. Roy asked that it be expressly stated in one or two of the designation decision documents that the Council was aware of the second standard and chose not to apply it. Roy wanted it on the record that there was a second standard, but it wasn't used. The first one is more generic, it's more general. It's not as specific. Roy wanted to, as he said to me once, open up the hood and look inside, instead of just applying the general standard.

Semaya: *From my perspective as an outsider, I suspect that if Woodall's choice had been used, the results may have been very different.*

Pomerantz: *Nearly eight years after its enactment, the FSOC's SIFI designation faces new scrutiny in the recommendations in the Treasury Department's Report to the President on Financial Stability Oversight Council Designations that was issued on November 17th, 2017, assessing FSOC's SIFI designation process. Treasury does not suggest structural changes in order to implement its recommendations. Instead, Treasury recommends a three-step process that involves 1) identifying financial products or activities that pose risks to financial stability, 2) coordination with State regulators to identify risks industry-wide, and 3) only if certain entities pose risk to financial stability after such consultation, should FSOC then consider individual SIFI designations. Has the FSOC implemented this so-called "Activities-Based Approach", and if so, what evidence is there that this approach would be effective in today's national financial environment?*

Workman: That is quite a topic for discussion and consideration. First of all, I used to think that when someone referred to the ABA, it was the American Bar Association, or maybe the American Bankers Association, but in my new world, it's "Activities-Based Approach". Then there's EBA, which is the "Entity-Based Approach", so its activities, and its entities, and so, as you say, Fred, the Treasury's Designations Report turns the focus more toward looking at activities, and, what is that? It is supposed to be across an industry looking at the products, looking at the operations, looking for weaknesses that may be out there, and then focusing on those weaknesses, and then going to the primary regulators and saying, "We've done this analysis, this broad industry-wide analysis. We think you need to take a look at this," and if they do, and if they resolve it, or do enough to be comforting, then FSOC leaves it alone, but if there's still a problem, the ultimate tool is still available, which is designation as a SIFI. Therefore, many are saying now "They've done away with designations. There's never going to be another designation." Well, if you really look at what the Treasury has recommended, it is not the FSOC's language but that of the Treasury, and the Secretary of the Treasury, who is FSOC's Chair. So there is a fair amount of influence there, but what it does, it does in black and white, right there in the Report stating: "If all else fails, designation is still an option, it's on the table."

There's actually a lot more about this, and I don't want to get too carried away. I think it is useful to say that the FSOC staff has been working on a revision of the Interpretive Guidance that FSOC uses to apply the Federal law, and that

Workman and the FSOC (continued)

Interpretive Guidance is currently in the development process. In the latest draft, it does put the emphasis on the "Activities Based Approach", but much like the Treasury Report, it does recognize that if a problem arises after major efforts have been made with, and by, the primary regulators, then the EBA, the "Entity-Based Approach", would still apply. We would still look at the individual company that could be causing this problem before making a final decision.

There are a lot of commentators talking and writing about ABA and EBA. If you went on Google and searched "activities-based" and "entity-based"—just to give you an example, you would be surprised on how much comes up, but I read for the third time yesterday an 18- page paper stating that the best approach to financial stability oversight is to look at the relevant industries on a macro prudential basis, macro, not micro, and what these authors say is that the Financial Stability Board and the International Monetary Fund, are wrapping their arms around this very forward-looking macro prudential activities-based approach, but in reality, they are still looking at the financial numbers of individual entities, and these authors believe that's not right. They think the better view is the more broadly, across industry, viewpoint. There's a debate, but I just give you that as an example. In fact, the only way that I could fully appreciate it was to lift key sentences out of it, and put them in a separate list of key points for review. My staff and I are looking carefully at that paper to understand it; but I would conclude that I don't think there is yet a complete understanding of what it takes to actually apply an activities-based approach analysis. I don't think it's been settled.

Semaya: *That leads us into our next question. With the strong period of growth we have in the U.S. right now, and when you have such a long and strong period of growth, it is inevitable that what goes up must come down. Some financial experts are predicting that in the next year or so, we're going to have a recession, maybe not, hopefully, as bad as 2008. If they're still working out the kinks, for a better choice of words, on this ABA, or even the EBA approach, how will the FSOC be ready and how will it respond?*

Workman: Well, that's a very good question. There is a lot of thinking being done by the FSOC staff, thinking by the deputies, including in my shop and the other shops, and internally. I went to an International Association of the Insurance Supervisors (IAIS) meeting and talked to the gentleman who's in charge of the working group that is focused on the activities-based, versus entity-based, approach. When we spoke at that time, and then I heard him on a call a couple of weeks ago, I understood him to say that the working group had determined they are going to stop using the ABA/EBA terminology, and just look at the issues that they think are relevant, Some of them will be macro, some of them will be micro, and that will be interesting. I have not heard that before, so we'll see.

...the FSOC has a security working group that the Treasury Secretary appointed several months ago, and they are hard at work analyzing the problem and developing recommended solutions.

Pomerantz: *The Annual Report of the FSOC comments on cybersecurity. And as noted from Section 6.1 of that Report there are numerous channels through which a cybersecurity event could threaten the broader stability of the broader financial system. Are you satisfied that the NAIC's recently adopted Insurance Data Security Model Law, when developed and implemented in one form or another in all U.S. jurisdictions, will be adequate to protect the integrity of data that is critical to the stable functioning of the insurance industry and to protect personal data breaches of the magnitude and type that impacted Anthem and Premera BC in recent years?*

Workman: Cybersecurity is a huge issue for everybody on a personal basis, let alone on a business basis, and I don't think there is ever enough that can be done to prevent cyber intrusions because it is a moving target. The people who are engaged in nasty hacking and similar activities, are finding new ways all the time to get to personal and business data. The New York State Department of Financial Services was the first state to undertake a major effort at regulating, preventing and protecting against cyber risk. It influenced the NAIC draft and more recently the NAIC has come forward with its model law. I have not studied those, but everything that I hear is that it's a very positive step, but is it enough? In fact, when I testified before the Senate Banking Committee, Senator Jack Reed from Rhode Island asked me about it. I just said that I think a lot of good things have been done by the states. I referenced the New York Department's Regulation, but it's just never enough. Is it adequate? No one knows.

Semaya: *Only three states have adopted the NAIC Model Act: South Carolina being the first to adopt it; (the Director of the South Carolina Insurance Department chaired the NAIC Data Security Working Group); then Ohio and very recently, Michigan. Three states have the NAIC model, or a substantially similar version. New York has its very strong Regulation 500, but if all the states do not act, because right now this model law is not part of the NAIC accreditation program, do you think, in your opinion, that we will need a Federal law to preempt the individual states to either force them to adopt the NAIC model, or a Federal law that will preempt state insurance law?*

Workman: Good question. I have two answers to that.

I should have mentioned a moment ago, that the FSOC has a security working group that the Treasury Secretary appointed several months ago, and they are hard at work analyzing the problem and developing recommended solutions. They have not produced their conclusions and recommendations, but the working group is very much engaged, and it is made up largely of folks from the financial agencies who are represented on the FSOC. The second thing I would say is I'm certainly not in a position to tell the states what they need to do and how they should do it, or, for that matter, how Uncle Sam should do it, or if he should.

Pomerantz: *Does the NAIC's President, Eric Cioppa, sit on any of these working committees?*

Workman: No, he sits on the Council. He is a member of the Council, but the NAIC has an excellent staff in Washington, as well as at their home office, and they are very much engaged, but I don't know specifically what they are doing on cybersecurity now that the Model Law has been adopted.

Pomerantz: *Apart from cybersecurity risks, what do you envision as emerging threats to the stability of the U.S. insurance industry or the financial system as a whole?*

Workman: There are a variety of considerations. For the insurance industry, these are things that are going to be very familiar to you: the historically low interest rates that have been adversely impacting the life industry. That's a challenge. It's improving because interest rates are up, and that's helpful in enabling the companies to meet their guarantees. Second of all, long term care. It continues to be quite a challenge and very difficult to predict. I think the actuaries did not anticipate the persistency that has come about and so that's a big issue, let alone issues of cost and longevity.

Looking at all these factors, it's hard, and on top of that, you have people who are making regulatory decisions about long term care premium rates and nobody wants them to go up.

Semaya: *So, it's a problem?*

Workman: Yes, it is. And we are seeing examples of disruptive business concepts, and particularly on the P&C side, and it'll be interesting to see how those play out. New ideas have come along in the past, and this huge industry has been able to adjust and, likely, it will be able to adjust to this too. Those who didn't start out in this new technologically advanced concept marketplace are catching on fast, and I think that's a product of the insurance industry, when somebody else has built a better mouse trap, it's not long before everybody has the mouse trap.

Semaya: *And then someone is trying to change it?*

Workman: There's that, and, who knows what impact Brexit could have on domestic insurance business and, of course, there's climate change, and catastrophic events. I know there are many folks who are convinced that it's the end of the world and we've got only 12 years left, but then there are others who say it's not an issue, but it certainly is a debate. There are those who think that it is a dramatic threat. Of course, health insurance is a big issue. On the U.S. economy side the list is long: U.S. public debt, entitlement programs, Social Security, Medicare, Medicaid, how those play out; public pensions, multiple employer pensions, the funding difficulties, cybersecurity that we just talked about, Brexit, and so forth. Those are just some examples.

> *FSOC is not just focused on nonbanks, it has oversight responsibility for banks and nonbanks, including non-regulated entities, so I also need to become well-informed in all those areas.*

Semaya: *We assume a lot of issues that you're probably dealing with are not just life insurance and other insurance issues. Correct?*

Workman: Correct.

Semaya: *With life insurance being your expertise for many years, how has it been in acclimating yourself to other U.S. issues that are totally unrelated to insurance?*

Workman: In our office we read many articles and papers that are published every day. My senior advisers identify and circulate that material regularly. Every now and then I surprise them by finding a couple of informative pieces that they haven't found.

You are exactly right, FSOC is not just focused on nonbanks, it has oversight responsibility for banks and nonbanks, including non-regulated entities, so I also need to become well-informed in all those areas. I have a long way to go on the banking side. When we have a discreet issue, I am able to consult with the experts, and make some logical judgments, but it is not as if I have 40 years of that experience.

Pomerantz: *What are the most rewarding aspects and the most frustrating aspects of your role as FSOC's independent insurance expert?*

Workman: I think the most rewarding aspect is knowing and working with extremely talented people who have many years of experience in these complex areas. As an example, the Chairman of one of the agencies had a long, highly respected career at the pinnacle of the legal profession in New York, and instead of continuing to be a partner at that firm, he is in this agency position. That is a huge opportunity for the public to have someone of his capability. I'm talking about Jay Clayton; he's the head of the SEC. Another wonderful person who was actually on the panel when I appeared before the Senate Banking Committee, who had been nominated by President Trump to be the head of the FDIC, is Jelena McWilliams; she is a bright star. It was quite a privilege to become acquainted with Secretary Mnuchin and to work with him and his staff. It was also great to meet the Federal Reserve Chairman Powell; he introduced himself to me as "Jay." The Commodity Futures Trading Commission Chairman, Chris Giancarlo, is an extraordinary professional in an extremely complex area of finance. I could go on and on. The American people can feel confident that those whom President Trump has appointed to serve on FSOC—all of the current voting members—are extraordinarily capable and working very, very hard to serve in

Workman and the FSOC (continued)

the highest traditions of high-level public service. So, that's the best part, and also the staff people. The most frustrating part is keeping track of seventeen passwords, and not quite being sure exactly how to navigate the different computer systems, the travel restrictions, and the frequent ethics reporting obligations. Becoming familiar with the ways of the bureaucracy and learning how to navigate within it is one of my big challenges.

Semaya: *Before we go on, I just want to go back to the list of concerns. Can we discuss the recent tariff war with China. We don't know where it's going, but would you consider the current tariff war with China, and I fear potentially with other countries, as this administration moves forward, can have a negative impact, or does it already have a negative impact on the U.S. financial system, and would it be something that FSOC would need to look at?*

Workman: I guess I would have two responses to that: The first response is that it's too early to tell. And the second response is from my personal experience. I understand there are many concerns also about the extraordinary trade imbalance that the United States has been living with, and very little has been done to try to solve it until this President stepped up to say, "We need to fix this.

Semaya: *I guess we will have to watch and wait for further developments.*

Pomerantz: *How easy was it for you to adapt to your new responsibilities in your role as the insurance industry expert following your career in private advocacy and trade association representation?*

Workman: Amazingly enough, very easy because I've been on the industry's side all my life and I always wanted to be on the government side. I always felt that what I had learned from the outside could be beneficial to a government position inside, and I think that's true. The other thing is that I like being an advocate for things I believe in, but this is not an advocate's position. I like just looking for the right answer. We do have folks come to meet with us from time to time to give us their views on various issues in the financial services area. On more than one occasion, I've said, "Okay, I hear what you said, and it's interesting and appealing, but what I'd like you to do is take your hat off and put my hat on. Put the public's hat on. Put the FSOC hat on and look at this issue. What do you think about it then? That's what I'd like you to do." That puts a different perspective on things. I've had a couple of folks say "Oh, I haven't done that," but —now, if you're a good advocate, you need to go through that mental exercise to really think through the right thing for the American public, and then build your case. I reread the article I mentioned earlier because I really wanted to understand it. I wanted to grasp it and then see if it could contribute to knowing how the FSOC should proceed forward on ABA and EBA, or macro and micro. Maybe because I've been a lawyer all my life, as an advocate, and I have the client, and I listen to their concerns and their views.

The Commodity Futures Trading Commission Chairman, Chris Giancarlo, is an extraordinary professional in an extremely complex area of finance.

In reality, I've got a client now and the client is the American public, and I am grateful for that.

Semaya: *I find it fascinating that you've always wanted to do public service and we really respect that. I know you have a six-year term, and you're just approaching the end of the first year, but have you given any thought that after this experience, where you will have learned so much about many different industries and what the economy should look like as opposed to what it does look like, and whether it's ABA, or EBA, or some other acronym that will emerge; where would you want to be in your next career?*

Workman: I don't know. I'm just assimilating the current one. It's very hard to think beyond that at this stage.

Semaya: *Is there anything else that you'd like to share with us that you think would be of interest to the readers?*

Workman: Not really. I think we've covered just about everything. Fred mentioned the FSOC Annual Report. I would just observe that that's a great resource for information, not only about the FSOC, but also about the U.S. economy. The Annual Report is quite a fine document, and very interesting. It's a good reference tool, and I think a lot of people don't know about it and I think that it is important for the public to learn about it. I am grateful for this opportunity to serve. I'm grateful for the appointment by President Trump to this position. I am grateful for the fact that there were no dissenting votes in the Senate, and I am grateful for the help of many in that regard on both sides of the aisle.

Pomerantz: *The Senate hearing was a topic that was skipped over; is there any one particular question or a line of questioning that stands out in your mind during the confirmation process?*

Workman: To a fair degree, the hearing was focused on my independence. I have been an industry counsel, lawyer, and executive for a lifetime; how was I going to be independent, and so we had a lot of conversation around that. Then the other was just commenting about designations, and the process, and what I thought about it, and the elements of it. Those were the two primary ones.

Semaya: *Thank you, Tom for joining us today.*

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Frederick J. Pomerantz, Managing Member, Insurance Legal & Regulatory Consulting, PLLC. pomerantzf35@gmail.com

America has an Opioid Problem: Who's Going to Pay to Fix it?

It's talked about on the radio, it's covered in the news, it's referenced in popular TV shows, and now the President of the United States is addressing it: America has an opioid problem. According to the U.S. Department of Health and Human Services, as of September 2018 more than 130 people die every day from opioid related drug overdoses. Of the 72,000 drug overdose deaths that occurred in the U.S. in 2017, nearly 50,000 involved opioids. Since 1999, drug overdose deaths have increased from 12.1 per 100,000 people to 39.6 per 100,000. Within the past year, President Trump has declared the opioid epidemic a "public health emergency," and just this past month he signed into law a bipartisan bill targeting opioid abuse.

So What are Opioids?

Opioids are a broad group of pain-relieving drugs that work by attaching to receptors in a person's brain and spinal cord. When the opioids attach to these receptors, they release signals to the body that muffle one's perception of pain and boost feelings of pleasure. While certain types of opioids are often prescribed to treat patients with chronic or moderate/severe pain, the drugs can be abused when used for minor pain and nonmedical purposes. There are three types of opioids: (1) natural opioids, which are derived from alkaloids in opium poppy plaints (examples: morphine; codeine); (2) semi-synthetic opioids, which are created from altering the chemical make-up in natural opiates (examples: oxycodone; heroin); and (3) fully synthetic opioids, which are manmade and use chemicals not derived from poppy plants (examples: fentanyl; methadone).

How did this all Start?

In the mid-1990s, the consensus in the medical community was that many patients experiencing pain were undertreated. In 2001, the Joint Commission of Medical Accreditation created pain management standards, which resulted in physicians treating pain as a "fifth vital sign." The new standards required healthcare providers to focus on pain management and ask every patient about their pain. At the same time, pharmaceutical companies began assuring the medical community of the safety of prescription opioids as pain relievers. "Big Pharma" began running numerous ad campaigns for opioids, representing that opioids were safe and effective for treating pain. Believing that the threat of addiction was low, more and more physicians began to prescribe opioids to their patients, and as time wore on, they prescribed them at greater rates. This led to widespread diversion and misuse of opioid medications.

Opioid prescriptions dispensed by doctors increased from 112 million in 1992 to 282 million by 2012. By 2016, there were enough prescription opioid pills to fill a bottle for every adult in the U.S.; that same year, an estimated two million people in the United States suffered from disorders related to prescription opioids. This factored into many people abusing other opioids as well. For example, approximately 80% of heroin users admitted to misusing prescription opioids before turning to heroin.

Thet Federal Government's Response to the Opioid Crisis

In February 2018 the U.S. Attorney General announced a new "Prescription Interdiction and Litigation (PIL) task force dedicated to fighting the opioid epidemic." The U.S. Department of Justice announced that "the PIL Task Force will combat the opioid crisis at every level of the distribution system" and will "use criminal and civil remedies available under federal law to hold opioid manufactures accountable for unlawful practices." In August 2018 President Trump publically stated that he wanted the DOJ and the PIL Task Force to bring a lawsuit against large pharmaceutical manufactures on behalf of the federal government. (To date, however, the federal government has not commenced its own legal action.) The PIL Task Force has assisted state and local governments that have brought lawsuits against Big Pharma, including filing a statement of interest in the multidistrict litigation (MDL). More details on the MDL are below.

On October 24, 2018, President Trump signed into law the "Substance Use-Disorder Prevention that Promotes Opioid Recovery Treatment for Patients Act" after it passed with sweeping majorities of 393-9 in the House and 98-1 in the Senate. The bill includes provisions aimed at promoting research to find new drugs for pain management that are not addictive, and also expands Medicaid to provide access to treatment for substance use disorders. Some people, such as Ohio Senator Rob Portman, believe the bill is "a major victory" because it "will strengthen the federal government's response to the opioid crisis." Others are skeptical as to how effective it will be, including Leana Wen, the former Health Commissioner of Baltimore, who stated that the legislation "is simply tinkering around the edges" and that a far more comprehensive response is needed to deal with the crisis.

The State & Local Government Response: Bring them to Court!

State and local governments have brought the fight against the opioid epidemic to the courtroom. More than 40 state attorneys general have formed a coalition and are investigating drug manufacturers and distributors to determine if they engaged in unlawful practices in the marketing and distribution of prescription opioids. Many of these attorneys general have commenced suit against Big Pharma, claiming that the companies' intentional misleading marketing/advertising and negligent distribution practices caused their states to spend millions on drug addiction treatment and health programs. As of May 2018 over 100 states, cities, and Native American tribes have filed lawsuits against opioid manufactures and/or distributors. As of September 2018 there were approximately 500 different state court lawsuits filed against opioid distributors and manufactures across the country. Additionally, there have been over 1,200 lawsuits filed in federal court; however instead of being tried individually, these cases have been consolidated into the MDL. Many of the plaintiffs hope the MDL will prompt a large settlement, similar to the "Big Tobacco" settlement reached in the 1990s.

The PIL Task Force has assisted state and local governments that have brought lawsuits against Big Pharma, including filing a statement of interest in the multidistrict litigation (MDL).

The MDL – Multi-District Litigation

In December 2017 the United States Judicial Panel on Multidistrict Litigation formally ordered the consolidation of the then-pending nearly 200 opioid-related cases into one called "The National Prescription Opiate Litigation." Dan Polster, of the U.S. District Court for the Northern District of Ohio, is the presiding judge. Each case has similar allegations of "improper marketing and inappropriate distribution of various prescription opiate medications." While the original plaintiffs consisted of cities, states, and towns, they now include individuals, consumers, hospitals, third-party payors, and Native American tribes. The defendants mainly consist of large opioid distributors -- including the "Big Three:" AmerisourceBergen, McKesson, and Cardinal Health, which collectively make up over 80% of the opioid distribution market -- and opioid manufacturers, such as Actavis, Endo Health Solutions, Johnson & Johnson, and Purdue Pharma. The MDL expanded significantly in 2018 and currently involves over 1,200 cases.

One issue in the case has been the discovery of information from the U.S. Drug Enforcement Agency's Automated Records and Consolidated Orders System / Diversion Analysis and Detection System ("ACROS") database. ACROS is a drug reporting system that monitors the flow of controlled substances from manufacture through the point of retail sale. Even though the DEA opposed releasing ACROS data, the plaintiffs argued that the data was necessary to identify previously unknown entities involved in the distribution of opioids and that it would provide invaluable information about the patterns of opioid sales. On April 11, 2018 Judge Polster ordered the DEA to produce the ACROS data for six states. A month later, on May 8, 2018, he concluded that the data had been "extremely informative" and ordered the DEA to produce the ACROS data for all 50 states. On July 26, 2018, the judge ordered that no party was allowed to publicly release the ACROS data and further ordered that the data could only be used by certain governmental plaintiffs and attorneys general to assist them in litigating the MDL or for law enforcement purposes. The trial for the first set of cases was originally scheduled for March 2019, but on August 13, 2018, Judge Polster postponed the trial until September 2019. All parties involved are still attempting to resolve the case via settlement, including Judge Polster, who this past year said that his goal was to facilitate a settlement and that "people aren't interested in depositions, discovery, and trials."

Some Insurance Coverage Issues to Consider in the General Liability Context

The large uptick in lawsuits against opioid distributors and manufacturers has raised questions relating to coverage, including whether these companies are entitled to a defense from their CGL insurers.

One question courts have evaluated is whether the "Big Pharma" suits seek

America has an Opioid Problem (continued)

damages that satisfy a CGL policy's "bodily injury" requirement. For example, in *Cincinnati Ins. Co. v. Richie Enterprises LLC,* No. 12-CV-00186, 2014 WL 3513211 at *5 (W.D. Ky. July 16, 2014), the district court held that the insurer had no duty to defend its insured (a pharmaceutical distributor) on the ground that the State of West Virginia was not seeking damages "because of" bodily injury; rather, the state was "solely seeking damages for the money it has been required to spend because of the prescription drug abuse epidemic in West Virginia … The Attorney General's claim that persons suffered physical harm and death due to prescription drugs only explains and supports the claims of the actual harm complained of: the economic loss to the State of West Virginia." In *Travelers Prop. Cas. Co. of America v. Anda, Inc.*, 90 F.Supp.3d 1308 (S.D. Fl. Mar. 9, 2015), aff'd 658 Fed. Appx. 955 (11th Cir. 2016), the district court agreed with the insurers' argument that the State of West Virginia had not asserted claims against their insured (a distributor) "for bodily injury" or "because of bodily injury" – as required under the policies – but, instead, made claims for its own economic losses, which were not covered. On appeal, the Eleventh Circuit declined to reach of the question of whether the state's claims were "for" or "because of" "… bodily injury," holding that the "better conclusion" was that the Travelers/St. Paul policies did not afford coverage because of their products exclusions. In contrast to these cases, *Cincinnati Ins. Co. v. H.D. Smith, LLC,* 829 F.3d 771 (7th Cir. 2016), reached the opposite conclusion and held that the insurer had a duty to defend the distributor in West Virginia's underlying lawsuit. The Seventh Circuit emphasized that the policy language at issue in that case provided coverage for damages "because of bodily injury," which the court held was broader than language providing coverage "for bodily injury."

Another question courts have considered is whether there is an "accident" or "occurrence" under the policies. In *Liberty Mutual Fire Ins. Co. v. J.M. Smith Co*., No. 7-12-CV-2824, 2013 WL 5372768 (D.S.C. Sept. 24, 2013), for example, Liberty Mutual argued that the complaint against a distributor failed to alleged a covered occurrence because it only claimed facts supporting "knowing misconduct" and the distributor knew its actions would result in harm (i.e., the intentional acts were not accidental). The court disagreed on both counts, holding that the complaint contained allegations of negligence (e.g., the distributor acted negligently with others to violate West Virginia's drug laws and "should have been aware" of suspicious or unusually large orders to pharmacies) and that the distribution of prescription drugs based on orders placed by pharmacies was not, in and of itself, illegal, "and the violation of laws cannot be reasonably anticipated – especially as to J.M. Smith, which had been distributing prescription drugs in West Virginia for only a short time and to only three pharmacies." Similarly, in *Travelers Prop. Cas. Co. of America v. Actavis, Inc.,* 16 Cal.App.5th 1026 (Cal.Ct.App. Nov. 6, 2017), a California appellate court affirmed that Travelers had no duty to defend under CGL policies issued to various manufacturers and distributors. In the underlying complaints filed by two California counties and the City of Chicago, the plaintiffs alleged fraud and misrepresentation arising out of a "highly deceptive marketing campaign." The court held that Travelers' denial of coverage was proper because the alleged injuries were caused by "deliberate and intentional conduct" rather than an "accident" that would qualify as an "occurrence." Additionally, the claims fell within the policies' products exclusion.

The large uptick in lawsuits against opioid distributors and manufacturers has raised questions relating to coverage, including whether these companies are entitled to a defense from their CGL insurers.

Conclusion

The opioid epidemic has become a more pressing issue in the United States with each passing year. The federal government has passed legislation and most states and many cities and counties are engaged in legal action to recoup their costs. It remains to be seen whether these actions will result in Big Pharma paying and whether CGL insurers will be contributing (and, if so, how much).

Amy J. Kallal is a Partner, and Tyler Flynn, an Associate at Mound Cotton Wollan & Greengrass, LLP. akallal@moundcotton and tflynn@moundcotton.com.

New Legislation will Alter the Sexual Abuse Liability Landscape

What You Need to Know

In our recent article, *Allegations of Clergy Misconduct* (Winter 2018), we reviewed numerous public policy considerations regarding the proposed revival of previously time-barred sexual misconduct claims. More recently, a number of states have considered or passed revival statutes that will significantly alter the liability landscape for institutions that serve children and other vulnerable people, and their insurers.

The **New Jersey** Assembly recently passed a bill that extends the statute of limitations in civil actions for sexual abuse claims, and creates a two-year window for parties to bring previously time-barred actions based on sexual abuse.

In **New York**, the governor recently signed the Child Victims Act, which opened a one-year window for adult survivors of sex abuse to file claims against alleged perpetrators and those who employed them.

The **Maryland** General Assembly is considering similar legislation that would remove the statute of limitations for all child sex-abuse cases and provide a two-year look-back window to allow those previously precluded by the statute of limitations from filing a claim.

In late 2018, the **Pennsylvania** House also voted overwhelmingly to enact a two-year window for litigation. Although the Pennsylvania Senate did not bring the bill to a vote prior to the end of the legislative session, the measure could be reintroduced in 2019.

In **California**, a bill has been reintroduced to create a new three-year look-back window for victims who could not take advantage of the one-year window in 2003. The former governor vetoed this legislation, but the new governor may be more likely to approve.

Minnesota lawmakers are considering a bill that could eliminate of the statute of limitations for these crimes.

In **Rhode Island**, a proposed bill would significantly expand the statute of limitations from seven to 35 years and retroactively revive expired claims, regardless of when the alleged conduct occurred.

This recent spate of legislation will likely have significant consequences for educational, nonprofit and religious institutions, who may be sued because of the alleged sexual misconduct of an employee, volunteer or leader. By reviving time-barred claims, these institutions and their insurers will likely face increasing numbers of liability claims, relating to historical allegations where witnesses may not be found, memories may be faded and other evidence may be difficult to marshal. Having trusted counsel, experienced in evaluating, defending and resolving historical misconduct claims against institutions, is critical to appropriately address this dynamic liability landscape. ●

Mark E. Chopko and Michael D. O'Mara are Partners at Stradley Ronon in Philadelphia. mchopko@stradley.com and momara@stradley.com.

Karen Amos AIRROC's "Outgoing" Board Member

After serving on AIRROC's board for 14 years, most recently as Chair of the Education Committee, Karen Amos stepped down effective January 1, 2019. Resolute nominated Arvind Krishnamurthy to run for Karen's spot, and the AIRROC membership elected him in the October 2018 election cycle for a three-year term. As Chief Operating Officer of Resolute Management Services Limited based in the U.K., Karen will continue to participate in AIRROC's runoff events. As a founding board member, Karen saw the organization grow in size and importance to the runoff industry.

Karen's parting comments about her tenure:

Being a member of AIRROC gives companies (especially those located outside the U.S. such as Resolute) a one-stop forum during the year to meet and discuss issues with representatives of other companies at one venue. Participating on the Board gives board members the opportunity to go the extra step, meet, and work with others. Consequently, you get to know people in a non-work environment and deepen relationships. Perhaps I am becoming 'old hat' when I say it is those relationships that can assist hugely in facilitating communications between companies. That has certainly been my experience. Resolute has managed to resolve many issues outside the legal environment and to conclude many commutations through our AIRROC involvement.

As a future goal, AIRROC would benefit from staying abreast of new challenges facing the re/insurance marketplace and to finding ways to broaden the membership by attracting newer companies seeking this conduit as well as by attracting youth to join and participate. Finally, I urge AIRROC to continue to grow the vision of buying/selling portfolios. *—Karen Amos*

Karen's distinguished years of service cannot be understated as evidenced by remarks from her colleagues who will miss her presence and her guiding hand on the Board.

Karen Amos is a consummate insurance and reinsurance professional who brings her A-game to everything with which she is involved. I was privileged to get to know her over this last decade through my involvement with AIRROC's Board of Directors. She was one of the wonderful role models from whom I learned to be a strong contributing member of the Board. Karen's positive energy, expertise in educational programing, and classy presence is sorely missed by all; but, our mutual love of shoes and occasional shopping sprees are what I will miss most!

Leah Spivey, Head of Businesss Run-Off Operations, Munich Reinsurance America

Immediate Past Chair of the AIRROC Board of Directors from 2015-2018

Given that AIRROC not only serves a diverse group of members, but members' employees at all levels, it is a thankless task to create an educational curriculum to please all. However, in the years that Karen Amos has served on the Education Committee, she has worked to do just that. Karen has consistently provided the committee with ideas for education panels that are interesting and informative to the widest audience possible. She has always kept our members, and their employees, front and center as we put together education days that people will find worth the commitment to travel and taking a day out of the office. Her vast industry experience and network has been an asset to the committee. In the instances where we have been a little slow to bring an event together, Karen is the first to jump into the fray to make it happen. She also has had an ability to balance the wants and needs of our sponsors and members alike. To the extent that our members and their employees have learned, or been challenged by, any of the content presented during an AIRROC Education Day, they have Karen to thank. It is with the sincere gratitude that the Education Committee recognizes Karen's commitment to AIRROC and the committee for her years of service.

Marcus Doran, Chief Operating Officer, Armour Risk Management, Inc.

Served as Education Committee Co-Chair with Karen

Karen was among the founding board members of AIRROC and her tenure continued for 14 years. She was one of the early driving forces that brought the organization to its current height. For a very long time, she was co-chair of the education committee. Karen was instrumental in helping to provide the quality and diverse education programs that have become a hallmark of AIRROC. Her wit and enthusiasm for the organization was unrivaled. I was fortunate enough to participate on several panel discussions with Karen. It was always a pleasure to work alongside her. She brought out the best in everyone she was around. Her resignation from both the board and education committee after so many years at the helm, leaves a gaping hole to be filled. She will be sorely missed!

Marianne Petillo, President, ROM Re

Founding Board member of AIRROC. Currently serves as Treasurer. AIRROC Board Co-Vice Chair from 2011-2012 and Co-Chair from 2013-2015

Karen has dedicated countless hours to the AIRROC Education Committee. She was always determined to find the most relevant topics and energetic speakers. Her contributions always included refining the topic for presentation, organizing varied perspectives and bringing a fresh, global view to issues impacting Runoff. AIRROC acknowledges Karen's contributions to its successful education program work as well as her work as a board member.

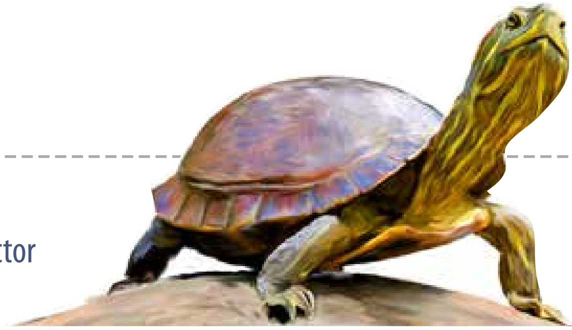
Katherine Barker, Principal KB Consulting LLC

AIRROC Board Co-Vice Chair from 2011-2012 and Co-Chair from 2013-2015 ●

Bina T. Dagar, bdagar@ameyaconsulting.com

AIRROC Sticks its Neck Out

Message from the Executive Director



Carolyn Fahey

AIRROC is embarking on a new phase of communication strategy. Since our humble beginnings nearly 15 years ago, we have produced AIRROC Matters magazine, our primary source of articles, commentary and news. While it has provided a solid foundation for us, we are embarking on a new approach to getting relevant content to our members in a more timely manner, and in tune with the digital times. Most of us now consume our information from screens such as phones, tablets, or laptops. With the assistance of a content strategy consultant we are looking to set a new course, and must say bon voyage to our cherished magazine.

Thanks to all of you who have made AIRROC Matters fantastic! (see inset)

These changes and thoughts led me to choose a turtle as the subject animal for this article as we move steadily into a new phase and look back at our successes over the years. Some of the characteristics and symbols of the turtle include persistence, determination, endurance, and longevity…

PERSISTENCE: Looking back at where AIRROC has come over our nearly 15 years, persistence has benefited us. From a group of 14 founding companies, we are still growing and stronger than ever. AIRROC is a leader in education with an average of eight events per year, we are seen as "the" place to be to get legacy deals done, and we are a sought after educator on run-off, drawing nearly 1,000 individuals annually to the events. We are here to stay.

DETERMINATION: Becoming a leader in the insurance non-profit space doesn't happen easily. It took the efforts of Trish Getty, our founding Executive Director, and a very active board of directors to make this happen. In less than two decades, we have gone from an initial meeting of interested companies in early 2004 to the robust association that we are today. The determination and vision of many individuals and companies made a big impact when they established AIRROC.

ENDURANCE: Growth doesn't happen instantly. It takes endurance and creativity to stay on top of a rapidly changing industry and remain relevant to its needs. Over the course of AIRROC's existence we have expanded and grown; we have made changes to the member types, the bylaws, the event offerings, and the way that we communicate.

LONGEVITY: At nearly 15 years supporting the industry, we have proven staying power. Our foresight and flexibility have allowed us to remain relevant and strong through many challenges. I look forward to our future and what's in store for many years to come.

Being a turtle means that you stick your neck out, and not be afraid to take on new challenges. We have a new executive committee and several new board members this year, which are going to do just that.

Beginning in January 2020, Bill Teich (The Hartford) becomes AIRROC's new chair. Bill Goldsmith (AIG) and David Presley (Enstar) are the two new co-vice chairs. Bill Bouvier (RiverStone), Eleni Iacovides (DARAG), and Arvind Krishnamurty (Resolute) joined the board for the first time. You can get more info on them in this issue of AIRROC Matters. They, along with the rest of the board (listed on the contents page) met in March for a strategic planning session. The turtle will plod ahead with the new ideas that came from these discussions.

Slow and steady wins the race… and AIRROC is winning. ●

Kudos and many thanks to the individuals who have put their time, energy and creativity into AIRROC Matters:

Peter Scarpato as the Editor-in-Chief and Chair of the Publication Committee and **Maryann Taylor** our Vice Chair have been solid leaders of the effort. **Connie O'Mara** has also served with distinction as Assistant Editor and member of AIRROC's Advisory Council.

An amazing design, editing and illustration team from **Nicole** of **Myers Creative Design** and **Gina** of **G. Pirozzi Consulting,** has driven our efforts.

And, the members of AIRROC's **Publication Committee** always pull together to author or collect relevant news. Current members are listed with the Editor's Notes.

Carolyn Fahey joined AIRROC as Executive Director in May 2012. She brings more than 22 years of re/insurance industry and association experience to the organization.
carolyn@airroc.org

Runoff Deal Market Forum

Save the date for the second annual Runoff Deal Market Forum.

Come hear about the latest deals and deal trends from leading runoff market sellers, buyers and advisors.

More details to come.

Wednesday, June 5, 2019

Mayer Brown LLP
1221 Avenue of the Americas
New York, New York

Contact Carolyn Fahey at carolyn@airroc.org for more information about this event.

MAYER | BROWN

AIRROC

Grabbing The Baton

New AIRROC Board Members 2019

(left to right) Bill Bouvier, Eleni Iacovides, Arvind Krishnamurthy

AIRROC continues to attract talented, experienced and committed members to serve on its board. Please join us in welcoming Eleni Iacovides, Arvind Krishnamurthy, and Bill Bouvier as the newest members. To encourage our readers to get to know each of them better, we include a "conversational gambit" about each.

Bill Bouvier, Vice President, Leader, Assumed Reinsurance Claims, Riverstone, a Fairfax Company, has been involved in using the opportunities presented by AIRROC events from its beginnings in 2004. In his experience, the face-to-face venues are more productive, particularly when deals can include both ceded and assumed negotiations. He hopes education sessions will include topics that impact the run-off industry as these claims exposures evolve, including talc claims, molestation claims, workers' comp and opiate addiction issues. He also feels that as senior staff from companies retire, AIRROC could support inter-company efforts to maintain institutional knowledge and expertise.

Bill recently tore his right bicep tendon while playing lacrosse and underwent surgery to repair it. Please consider using your left hand to shake hands with him when you congratulate him.

Eleni Iacovides, Group Chief Client Officer, DARAG Group Ltd., brings her international connections and IRLA membership to strengthen AIRROC's global reach in support of legacy business. She believes there are useful synergies between IRLA and AIRROC that will benefit training and mentoring initiatives. She is committed to supporting AIRROC's educational efforts and to fostering and retaining talent in the legacy sector. In addition, her experience in European markets will be useful support in the discussion of IBT legislative initiatives in the U.S.

Eleni is proud to say that legacy is her passion and that her introduction to insurance was the Department of Trade and Industry report on the Weavers Pool collapse, "about 150 years ago." She has often been "warned" about using the word "sexy" next to legacy but anyone who has read her articles in AIRROC Matters will know that it is unlikely that she will ever see the legacy space as anything other than attractive and sexy.

Arvind Krishnamurthy, AVP Berkshire Hathaway Reinsurance Group, has been active in using AIRROC for deal making for more than 10 years. He finds that the prospect of an AIRROC event serves as a useful mutual timeline for preparing to meet counterparties on neutral ground. Those meetings not only start, facilitate, or close deals, they end disputes, commute lines of business or simply broaden discussions for future deals. After many years of distinguished service, his colleague, Karen Amos, decided to step down from the Board; Arvind hopes to continue her success in making AIRROC the venue of choice for educational enrichment and networking as well as a focal point on the calendar of its members.

While the prospect of a week-long canoe trip with intermittent bits of portage does *not* fill his heart with joy, Arvind has taken up this hobby to accompany his wife who loves canoeing. ●

Connie D. O'Mara, connie@cdomaraconsulting.com

NEW YORK

EDUCATIONAL SUMMARIES

New York
March 5-6, 2019

Photos / Jean-Marc Grambert

It was a record breaking attendance at the AIRROC Spring Membership Meeting on March 5 & 6. Hosted at the offices of Norton Rose Fulbright in New York City, members held meetings and also heard from great education panels. Read on for highlights.

Exploring the Evolving Role of FinTech and InsureTech on Runoff Issues

Richard J. Fabian (SVP, General Counsel and Chief Strategy Officer of Riverstone) and Huhnsik Chung (Partner at Stroock) presented on InsurTech in the Runoff Space. They provided insightful commentary and examples of how current and future deployment of technology is both innovating and disrupting the business of insurance, which will have a direct impact on the runoff space.

Richard and Huhnsik began the presentation by addressing how the current deployment of technology is occurring in two ways: First, internally to address pressure points for processes such as operational costs, claims, and underwriting, which directly impact financial returns; and second, in the form of startups focusing on external customer pressure points across the value chain through product innovations on pricing, ease of access, engagement, user experience, and focusing on unserved/underserved markets and the new market demographics of Gen Z/Millennials.

They went through examples of different technologies, which generally focus on creating efficiency, real-time transparency, accuracy, trust, customer acquisition, and better user experiences. They focused on the deployment of AI, Machine Learning, Big Data, Analytics, IOT, Digital Currencies, Cloud Computing, Telematics, P2P, and Blockchain, offering real-life examples in the Insurtech space. Richard then provided a company perspective on how he is deploying technology in his runoff operations in order to create efficiencies in claims handling and business value analysis, which would impact the pricing of business to acquired and would maximize shareholder returns.

One example that Richard provided focused on AI and Machine Learning in the analysis of Big Data in order to more effectively and efficiently handle claims. He addressed how duplicate claim payments by multiple insurers to the same claimant in the asbestos context can been routed out through deployment of this technology. Huhnsik then addressed how technology is being deployed in the underwriting, reinsurance, and capital markets in order to create more effective pricing and efficient access to capital. Richard and Huhnsik also addressed certain regulatory concerns related to the use of technology such as GDPR, use of private information, disclosure requirements, technology that may have a disparate impact on a class of customers, and the potential of a service provider being found engaging in the business of insurance.

In closing, Richard and Huhnsik addressed the use of blockchain in the insurance space by providing an overview of blockchain technology, which is in short a distributed ledger, and then providing actual examples of blockchain in insurance. They focused on the most important characteristics of blockchain that make it useful in the insurance sector, including: (1) prevention of fraud as each transaction is time stamped, immutable, and distributed to all participants; (2) tracking of property by verifying authenticity and condition through a recorded chain of title, along with other relevant information such as claims history; (3) creation of efficiencies and cost reduction as everyone has the same immutable and agreed upon distributed ledger through a consensus mechanism; (4) reliability and accuracy of the information in a secure, encrypted

blockchain that cannot be breached, and; (5) maintaining privacy and improving user experience through secure data sharing, such as medical records. The last sample before the Q&A portion was a discussion of blockchain in the cannabis sector and its use in insuring this sector.

Huhnsik Chung, Partner, Stroock & Stroock & Lavan LLP. hchung@stroock.com

On-Demand, Usage-Based, and Micro Insurance

Karen Borg and Randi Ellias of Porter Wright Morris & Arthur LLP moderated a panel discussion including Adam Hoover of Jetty Insurance and Adam Troyer of Aon Reinsurance Solutions that focused on developments in the on-demand, usage-based, and micro insurance markets.

Mr. Troyer led off the discussion by describing the differences between the three types of products. On-demand products are pay-as-you-go products that may permit the consumer to toggle coverage on and off. Usage-based products set premium based on time-on-the-risk and data regarding behavior during time-on-the-risk. Micro insurance products cover consumers during, and set premium based on, the time that is actually spent on risk. Auto insurance is perhaps the most widely known example of usage-based insurance, but these types of coverages have expanded to encompass a wide variety of personal and commercial lines, including homeowners' insurance, health insurance, commercial auto insurance, and workers' compensation, among others.

Mr. Hoover pointed out that one of the biggest barriers to entering the market is the difficulty that companies have in marshaling the available data. The sheer volume and velocity of data collection raises practical issues concerning how to parse the data to extract relevant underwriting information. Mr. Troyer noted that companies also had to carefully evaluate the accuracy and validity of the data being used to underwrite these products. Finally, insurers must be careful to protect the privacy of customer information.

Offering on-demand, usage-based, and micro insurance products permits an insurer to make more pricing options available to the customer. The underwriting process is frequently quicker and easier, and customers have the benefit of tailoring coverage to the period for which the coverage is needed. Insurers and customers also reap benefits from a claims perspective, as the data available can provide objective truth concerning the circumstances of a loss, reducing the potential for fraud and leading to quicker claim payments. Both Mr. Hoover and Mr. Troyer acknowledged that the question of who owns the data relating to a loss – the insurer or the customer – was unsettled, with Mr. Troyer pointing out that at least one insurer offering a usage-based product did not require the customer to sign over rights to the data as a condition of the coverage, but only sought access following a loss. The panel noted that, to date, no legislation or caselaw has addressed the issue, nor has the industry developed its own standards. Accordingly, access to data for the purpose of resolving subrogation claims remains an unsettled question.

Finally, Mr. Hoover and Mr. Troyer discussed what they saw as the next phase of on-demand, usage-based, and micro insurance. They agreed that the next wave of products would likely be focused on property risk, such as earthquake, fire, and flood, as companies have begun to move toward analyzing parametric data relating to those perils.

Randi Ellias, Partner, Porter Wright Morris & Arthur LLP. rellias@porterwright.com

Emerging Risks and the Legalization of Marijuana

Tyler Scott and Scott Davis, Partners at Husch Blackwell, along with Lisa Simon, Vice President at Swiss Re, gave

NEW YORK EDUCATIONAL SUMMARIES

Educational Summaries (continued)

a lively presentation about the emerging risks generated by the legalization of marijuana. Tyler kicked off the panel by educating the audience on the differences between marijuana, cannabis, and hemp. He noted that, while states are increasingly legalizing marijuana for medical and recreational purposes, it is still illegal on a federal level, though there is increasing momentum for marijuana reform in Congress. Some of the impacts of state legalization include increased revenue, a decrease in marijuana arrests, and the creation of thousands of jobs.

Lisa then addressed the different types of marijuana-related claims that insurers might see. There have already been several product liability claims, alleging failure to warn of the potential for serious side effects or strict liability for injuries caused by contaminated marijuana. Physicians and pharmacists are at risk for claims stemming from their roles in recommending or dispensing marijuana for medical purposes, while attorneys and accountants can face disciplinary actions or civil and criminal penalties for providing services to marijuana-related businesses. Lisa also spoke about whether testing positive for marijuana bars a workers' compensation claim; whether workers' compensation carriers are required to pay for medical marijuana; and whether employers have to accommodate medical marijuana users.

Scott then talked about the thousands of businesses that need coverage, both those that touch the plant and those that provide ancillary services. Despite the tremendous marketplace, insurers have been reluctant to wade in, due to the federal illegality, the complex regulatory environment, the lack of information available to underwriters, and the concerns about long-term health risks. However, several insurers have started to write this business, due in part to prompting from insurance regulators. Scott discussed the gaps in coverage under current policies, and the need for policies tailored to this industry. He talked about the coverage decisions that have been issued and how Oregon regulators are requiring specificity with respect to excluding marijuana-related losses.

Lisa ended the panel by talking about how CBD, a non-psychoactive compound in marijuana, is increasingly being added to products because it is alleged to have health benefits. However, its legality is still unclear, and much of the evidence of benefits is anecdotal. Finally, she talked about the future of marijuana – how AI and technology are leading to customized marijuana and more efficient growing, and how researchers are creating marijuana compounds in labs.

Tyler Scott, Partner, Husch Blackwell LLP. tyler.scott@huschblackwell.com

Oil & Gas Transport Environmental Risks for Pipelines, Motor, Railways, Port Operations, & Marine

Texas petrochemical engineer Phil Watters of Rimkus and Swiss Re's Claims Vice President Mike Diggin discussed the environmental risks of transporting oil & gas via pipelines, storage facilities, railways, motor, port operations, and marine.

Watters's astute oilman observations and tremendous expertise was very well received by the audience. He colourfully explained, in layman's terms using shaken up Coke cans, the extreme volatility of some fracked crude oil that significantly increased the rail transport risk. He also noted that the 1940s-50s era pipeline utilized welded steel, which contributes to the risks of aging infrastructure. Furthermore, Phil outlined Cushing, Oklahoma's 90 million barrels of crude

oil storage capacity and the catastrophic risk presented to the U.S. economy if a massive, hydrofracked, wastewater disposal-induced earthquake were to occur at the "oil crossroads of America."

Watters shared his extraordinary insights on the many different types of environmental claims on which he has worked on behalf of insurers, including testifying on many of those addressed in the PowerPoint presentation.

Diggin discussed specific claim examples, including the San Bruno and Santa Barbara pipeline explosions, Aliso Canyon gas storage leak, Lac Mégantic train accident, and Tianjin port explosion. Diggin noted that a lesson learned for the Aliso Canyon gas storage leak was the hundreds of millions of dollars spent on relocation costs.

In addition to outlining specific claim examples, Diggin:

- Reviewed the various types of policies that respond to transport losses;
- Parsed policy wording (e.g., pollution exclusion with named peril and time element exception);
- Noted coverage issues (e.g., where many different entities are involved, whose policy(ies) respond and who is the "insured"?);
- Explained the contractual relationships between the oil & gas well owner/operator and transport firms, as well as the distinction between historical pre-existing contamination and new contamination;
- Detailed how are facilities 'locked down' in advance of a NatCat and appropriate cleanup standards; and
- Shared Lessons Learned (e.g., accumulation risk and risk management).

Diggin further noted that insurers increasingly utilize technology, such as Rimkus' drone fleet to expedite inspections of some losses in locations with limited access. He closed by observing that (re)insurers should be very diligent in their environmental underwriting, utilize careful standards, assess their portfolio and severity/accumulation exposure, and continually update their price and risk models.

Providing tremendous synergy to this in-depth discussion, Swiss Re Underwriter Mike Meadows then contributed to Swiss Re's formidable industry thought leadership with additional sage observations to further the lively discussion and knowledge exchange. Diggin simultaneously wove ten timely and topical Swiss Re reports into the presentation.

Watters and Diggin were among 45 expert speakers on 17 Insurance Risk panels at the 34th annual Environmental and Emerging Claims Managers Association conference in Orlando on May 1-3.

Michael Diggin, Esq., CPCU, Property & Casualty Business Management, Swiss Re. Michael_Diggin@swissre.com. Phil Watters, Senior Vice President, Rimkus Consulting Group, PRW@rimkus.com

Do the Right Thing

Doing the right thing is easy . . . isn't it? Not always. When it comes to environmental contamination cases of Himalayan proportions, practitioners can find themselves longing for an "ethics sherpa" to help them reach the summit and return to base camp with extremities intact.

During our final session, Bassi Edlin Huie & Blum Partners Earl L. Hagström and Erin K. Poppler traversed this tricky terrain.

Hagström started with the big picture — ethics, morals, and the law — by examining the differences between them. Morals apply to personal behavior. Ethics apply to professional interaction. Laws apply to relationships between

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Educational Summaries (continued)

individuals and society. With all three, there are separate and equal or conflicting obligations. The tough part comes when conflicts of interest arise. Environmental contamination cases can be particularly complex in this regard.

Hagström handed off to Poppler, who began with a pointed question: If confidentiality is the hallmark of the attorney-client relationship, what happens when it conflicts with a duty to disclose information? Professionals must report releases of hazardous substances due to environmental statutes. Under the rules of professional conduct, attorneys are required to disclose information to courts, and sometimes, to regulatory agencies. This gives rise to ethical quandaries, and bar rules and regulatory reporting requirements vary by state. From a regulatory agency's perspective, an attorney's duty as an officer of the court applies to public agency proceedings if they are adjudicative or the agency is considered a tribunal. Notably, if it is the client's obligation to disclose information, disclosure by the attorney is a more relevant issue.

Poppler pressed on, discussing situations when attorneys must keep confidentiality intact and when ethics require them to break it, for example, when a substantial threat of harm or a duty to protect public health is at issue. Confidentiality becomes increasingly complicated when the client is a complex organization of people, systems, and information that could all one day become evidence that clients must preserve. Using a hypothetical lawsuit (a gold mine operator using the mercury recovery process) and a transaction scenario (a seller of property once used as a chemical plant), Poppler demonstrated how these issues might play out in real life.

Hagström took over again to cover corporate disclosures, including SEC requirements, materiality determinations, personal accountability, the importance of transparency, and environmental impacts. He considered the important role the insurance industry plays in driving high ethical standards, then broke down the legal, ethical, and moral aspects of potential events. Ultimately, laws are guidelines that set minimum standards of acceptable behavior in society. Ethics go beyond minimum standards to promote optimal behavior. When faced with environmental contamination matters, practitioners must first understand if they are dealing with a moral, a legal, or an ethical decision. In the end, Hagström emphasized that doing the ethical thing is always good business. And though a lofty topic, no one had to summit Mt. Everest to earn this ethics CLE credit. ●

Erin K. Poppler and Earl L. Hagström are Partners at Bassi Edlin Huie & Blum. They may be contacted at: epoppler@behblaw.com; ehagstrom@behblaw.com

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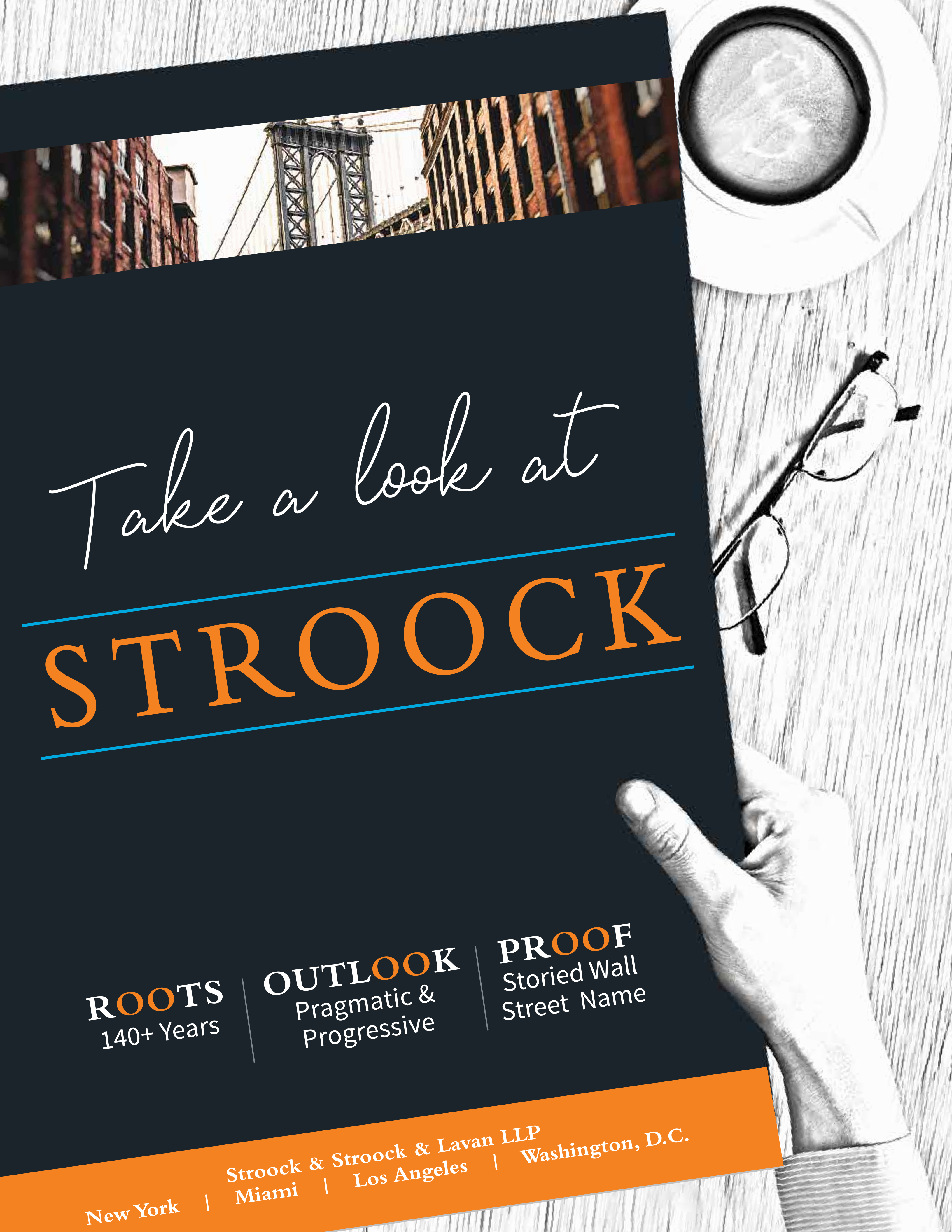

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News & Events

Francine L. Semaya & Peter H. Bickford

Regulatory News

National Association of Insurance Commissioners ("NAIC")

Recent Change in NAIC Leadership: The NAIC has elected **David Altmaier** as Vice President. Altmaier has been the insurance commissioner in Florida since 2016.

Market Share Report: In March, the NAIC released the Property/Casualty Market Share Report, which contains cumulative market share data for personal auto, commercial auto, workers' compensation, medical professional liability, homeowners, and other liability (excluding auto liability) insurance.

A few highlights from the report include:

- "With 96.55 percent of property/casualty insurance companies reporting to date, direct premiums written for all lines of business are $670,262,757,463;
- The top 10 property/casualty companies reporting to date have a cumulative market share of 47.79 percent;
- Total private passenger auto insurance has the largest amount of direct premiums written reported as of March 4, 2019 at $244,455,312,825."

The full *2018 Market Share Reports for Life/Fraternal Groups and Companies* and the full *2018 Market Share Reports for Property/Casualty Groups and Companies* will be available this summer and will contain more in-depth information.

NAIC Supports International Insurance Standards Act (IISA): The NAIC leadership submitted a statement to Congress supporting the passage of the International Insurance Standards Act (H.R. 4537). The IISA clarifies the respective roles of the U.S. insurance state regulators and "requires federal negotiators to seek the expertise of insurance regulators which will not only establish a sensible process for international negotiations but, more importantly, better outcomes for U.S. stakeholders. Likewise, stronger congressional oversight and charges to federal representatives will strengthen the ability of American negotiators to defend the United States insurance regulatory system that has successfully protected insurance consumers and sustained the most robust market in the world."

Financial Stability Oversight Council ("FSOC")

In March, the FSOC voted unanimously to issue guidance to implement an "activities-based approach" to identify and address potential risks to U.S. financial stability and enhance "the analytical rigor and transparency" of the FSOC's process for designating nonbank financial companies. According to Treasury Secretary Steven Mnuchin, "[The] proposal would make significant improvements to how the Council identifies, assesses and responds to potential risks to U.S. financial stability."

Under the proposed guidance, the FSOC is to prioritize its efforts to identify, assess and address potential risks to U.S. financial stability through an activities-based approach, while consulting relevant financial regulatory agencies. If a potential risk was identified, the FSOC would depend on the expertise of existing regulators to address the risk. In addition, the proposal provides that the FSOC would perform a "cost-benefit analysis" before designating any nonbank financial company and then "would only designate a nonbank financial company if the expected benefits justify the expected costs of the designation."

Upon the release of the FSOC proposal, NAIC President and FSOC non-voting Member Eric Cioppa, issued a statement in support of the FSOC proposal.

Terrorism Risk Insurance Act (TRIA)

Although the **Terrorism Risk Insurance Act** (TRIA) does not expire until December 2020, insurers are concerned that Congress will wait until the last minute to reauthorize the federal terrorism risk program and leave a gaping hole. TRIA was signed into law following the devastating events on September 11, 2001. For years, insurers, regulators and commercial businesses have beseeched Congress to not only renew the federal "backstop" program, but to make it permanent so that every few years the pressure for Congress to reauthorize does not come down to the wire. With each prior renewal period, there has been pressure for private industry to pick up a larger portion of the risk, and alternatives are already being considered if Congress fails to timely renew TRIA, as it did in 2014.

Industry News

According to Deloitte's 2019 Insurance M&A Outlook, the signs are positive for continued strong M&A activity in the insurance sector: "Sustained U.S. economic growth, rising interest rates, and higher investment income are among the positive factors bolstering insurance companies' results in 2018 and positioning them for enhanced top- and bottom-line growth in the new year." This view of sustained M&A activity is consistent with other consulting groups, but no one seems to have told the dealmakers – at least not yet. As of Mid-March 2019, there have been no insurance deals of note.

There almost was a blockbuster on the broker side, however, when **AON PLC**

Present Value (continued)

announced it was considering making a formal offer to acquire **Willis Towers Watson PLC**. You had to be quick to see that, however, because a day later **AON** backed away, citing as the principal reason the requirement imposed by its Irish regulators that it release news of its intentions before it had completely formulated an offer. If the acquisition had gone ahead, it would have combined the world's second and third largest brokerages, creating the largest insurance brokerage in the world. The combined entity would have eclipsed rival **Marsh & McLennan Cos.** Inc., which, as previously noted in the AIRROC Matters Winter 2019 column, is in the process of buying **Jardine Lloyd Thompson Group PLC,** another top ten brokerage.

New Members

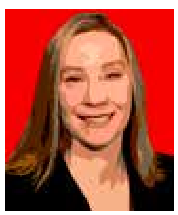
AIRROC was pleased to welcome two new company members in the first quarter 2019: **Fleming Reinsurance** and **Willis Towers Watson PLC.**

Fleming Re is a Bermuda-based reinsurance carrier specializing in legacy liabilities and runoff. "As a specialist reinsurer, we provide liquidity and risk transfer solutions to the middle market insurance sector. Our core business is acquiring closed blocks of property & casualty risks, but we are uniquely positioned to provide customized risk transfer solutions associated with unusual risks."

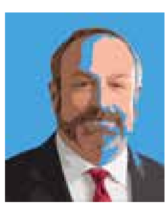
Willis Towers Watson LLC is a leading global advisory, broking, and solutions company that helps clients around the world turn risk into a path for growth. With roots dating to 1828, Willis Towers Watson has 45,000 employees serving more than 140 countries and markets. "We design and deliver solutions that manage risk, optimize benefits, cultivate talent, and expand the power of capital to protect and strengthen institutions and individuals. Our unique perspective allows us to see the critical intersections between talent, assets and ideas — the dynamic formula that drives business performance."

People News

Sadly, another recognized insurance law firm has been merged out of existence. On February 1, 2019, AIRROC corporate member **Butler Rubin Saltarelli & Boyd LLP** merged with nationally recognized law firm, **Porter Wright Morris & Arthur LLP.** On the bright side, however, **Porter Wright** has agreed to continue as an AIRROC corporate member!



The firm will operate under **Porter Wright's** name and **Butler Rubin's** Chicago office will become Porter Wright's eighth location. **Porter Wright** provides strategic legal counsel to a worldwide base of clients. The merger will bolster **Porter Wright's** nationally recognized litigation practice, adding reinsurance to the firm's more than 30 practice areas.



Partners **Ira Belcove** and **Teresa Snider** have been named co-chairs of Porter Wright's Reinsurance Litigation and Arbitration Practice Group, focused on resolving complex disputes for insurance and reinsurance clients. ●

If you are aware of items that may qualify for the next "Present Value," such as upcoming events, comments or developments that have, or could impact our membership, please email Fran Semaya at flsemaya@gmail.com or Peter Bickford at pbickford@pbnylaw.com

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MAY 14
AIRROC Chicago Regional Education Day
Chicago, IL
www.airroc.org

MAY 16-17
RAA Re Basics: Demystifying Reinsurance
New York, NY
www.reinsurance.org

JUNE 6
AIRROC Runoff Deal Market Forum
New York, NY
www.airroc.org

JUNE 10-12
IRLA Annual Congress
Brighton, UK
www.irla-international.com

JUNE 13
RAA Re Underwriting: A Look at the Future of Reinsurance Underwriting
New York, NY
www.reinsurance.org

JUNE 18
AIRROC London Regional Education Day
London, England
www.airroc.org

JULY 16-17
AIRROC Summer Membership Meeting
New York, NY
www.airroc.org

JULY 23-25
RAA Re Contracts: The Art of Designing Reinsurance Contracts and Programs
New York, NY
www.reinsurance.org

AUGUST 4
AIRROC/IAIR Current Issues Forum at the NAIC
New York, NY
www.airroc.org

SEPTEMBER 5-6
RAA Re Finance: ABCs of Financial Analysis and Reporting for P/C Insurers and Reinsurers
New York, NY
www.airroc.org

SEPTEMBER 19
AIRROC Workers' Compensation Symposium
Hot Topics in Runoff
Orange, CA
www.airroc.org

OCTOBER 17-18
RAA ReClaims:
Navigating the World of Reinsurance Protection When Loss Strikes
New York, NY
www.reinsurance.org

OCTOBER 20-23
Commutations & Networking Forum
Jersey City, NJ
www.airroc.org

Whether advising on entering the run-off market, buying and selling portfolios and entities, resolving disputes, managing discontinued operations or achieving exit strategies, our lawyers get the job done.

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