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AIRROC matters

LEVERAGING LEGACY LIABILITY

2018 Commutations & Networking Forum

CRACKS IN THE WINDOW • J&J'S BIG "D" • REALITY BITES • THE KNOWN UNKNOWNS
BOSTON MARATHON • WORDS OF WISDOM • ROCK THE FORUM • PETRELLIS DROP THE MIC

Winter Tweets

Maryann Taylor

One tweet that caught my eye on the topic of winter brought a smile to my face: "How different species deal with Winter: Birds—fly south, Bears—hibernate, Humans—complain." While that may be true for some of us in the colder parts of the country, there is actually a lot to celebrate in the AIRROC community as we embark on the new year. It will bring changes to our communication approach as we expand our media footprint, including an increase in tweets from AIRROC, and débuting a redesigned website. What remains constant, however, is the dedication of the Board and the Publication Committee to present timely, interesting, insightful and relevant content to engage our membership. Many thanks to all of you who have contributed articles and ideas, as well as those who have participated on panels. We could not have done it without your aid and support.

We begin this issue with our featured Think Tank piece, *Allegations of Clergy Misconduct*, by Mark Chopko and Michael O'Mara of Stradley Ronon. Their article takes a deep dive into the policy considerations of reviving previous time-barred claims as the momentum among states to enact "window" legislation grows. They conclude by making a good case for insurance carriers to be more proactive and play a more active role in discussions concerning alternative solutions.

Next up, H. Lockwood Miller, of Goldberg Segalla LLP provides a second installment on the legal woes that Johnson & Johnson is facing from the alleged carcinogen asbestos in its talc baby powder in *Avoiding the Next Lanzo*. This piece offers some advice on how to mount an aggressive defense with respect to these claims, despite recent headlines regarding the huge verdicts being awarded by juries.

Back to the future, AIRROC and EECMA returned to Philadelphia to co-host a symposium on climate change. A summary of this event is followed by an article by Barbara Murray, Marc Oberholtzer and Vicki Fendley, all with PwC, entitled *Preparing for CECL*. In this timely and informative piece, they explain how the new FSAB accounting standard will affect ceding insurers that file with the U.S. Securities and Exchange Commission.

AIRROC's educational summaries from the Boston Regional include topics such as Hurricane Maria, an examination of the landscape of runoff statutes, and a report on some significant court decisions. Elizabeth Dwyer, the Rhode Island Deputy Director and Superintendent of Banking and Insurance, was the keynote for the Boston event. Our wise and dynamic Executive Director, Carolyn Fahey, chronicles the success of the New Jersey 2018 Commutations & Networking Forum in *AIRROC Update*. Carolyn also recounts some 2018 highlights and offers a glimpse of what is in store for 2019. Our steady supply of news and happenings is delivered by Fran Semaya and Peter Bickford in *Present Value*.

The section on AIRROC's 2018 Commutations & Networking Forum provides a recap to reminisce upon the great times, the friendly faces, the impressive panels, and the wonderful location of the October event. We next pay tribute to Luann Petrellis, the 2018 AIRROC Person of the Year, followed by AIRROC's recognition of Kayla Cecchine, a student at Saint Joseph's University who was the recipient of the Trish Getty Scholarship.

On behalf of all of us on the Publication Committee, we wish you a happy, healthy and peaceful New Year.

Finally, to borrow the words of Peter Scarpato in signing off: "Let us hear from you!" ●

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Errors & Omissions

The Editor & Chair of AIRROC Matters, Peter A. Scarpato, has a new title that we neglected to use in the Fall issue. He is Senior Collections Officer-Ceded Reinsurance Brandywine Group of Insurance and Reinsurance Companies. We regret the error.

AIRROC matters

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Illustrations / R. Edwards
Photos / Jean-Marc Grambert
Adam Krauss
Jason Pietroski

AIRROC

Allegations of Clergy Misconduct

Policy Considerations Addressing the Revival of Time-Barred Claims


Illustration / R. Edwards

In the wake of the recent release of another investigating grand jury report regarding abuse of minors by clerics, Pennsylvania state lawmakers have introduced a proposal to revive previously time-barred civil claims arising out of allegations of childhood sexual abuse. If passed, the new law would open a two-year "window" during which victims could file such claims without regard to the previously applicable statute of limitations. No claim, no matter how old, would be time-barred.

Other states, including Delaware, California, Minnesota, and Hawaii, have passed similar measures. The impact has been substantial – jury awards and settlements measured in the hundreds of millions of dollars and a steady stream of bankruptcy filings. Although the Catholic Church has been the focal point in the mainstream media, the impact has been felt by the insurance industry and a wide array of nonprofits whose missions involve service to children.

The backdrop to this ongoing crisis is the scourge of child abuse. This abhorrent behavior – described in vivid and lurid detail in grand jury reports and the press – evokes strong emotions to both punish any surviving wrongdoers (and those who protected them) and to compensate victims who have been harmed. Rightfully so. What good is a system of criminal and civil justice that cannot accomplish those goals?

Lost in the common narrative, however, is the timing of the harms in need of redress. Based on reporting in the popular press, it would be easy to assume that the most recent grand jury report exposed hundreds of new abusers. But most of the abuse chronicled in the report occurred in the last century; approximately 80 percent of the alleged abusers are now deceased and most of the rest are aged and out of active ministry. Furthermore, on the positive side, the report revealed that, since the Catholic Church in the United States established strict procedures for reporting and handling allegations of abuse in 2003, only two cases involving persons under age 18 – of the thousand reported from the seven dioceses studied – have been reported in the last 10 years. In other words, there is evidence that the reforms in dealing with abuse and abuse allegations are having their intended effect and preventing harms to children, even though it is not reported in the media.

The backdrop to this ongoing crisis is the scourge of child abuse.

Because the narrow focus was on Catholic Church abuse, no one knows precisely what happened in youth clubs or public schools, or whether they report the same progress in preventing claims because they are protecting children.

None of this, of course, diminishes the impact to victims, no matter how long ago the abuse occurred. This is where the desire for justice, powerfully evoked by the sickening stories recounted in grand jury reports, runs headlong into the policy rationale behind statutes of limitation. And the natural desire for punishment collides with the reality that many of those who committed the abuse and any "cover-up" are no longer alive,

The public policy considerations behind civil limitations are well-recognized and have a long history. Some commentators trace limitation periods to biblical times, when debts were deemed released after a set period of years. In English law, limitation periods can be traced back as least as far as the 11th century (placing time limits on claims by adverse possession to real property), and the concept was formalized by Parliament's Limitations Act of 1623. Our Supreme Court noted well over a century ago that statutes of limitations are "found and approved in all systems of enlightened jurisprudence." For good reason. The search for truth is impaired, sometimes mortally so, through the passage of time. Physical evidence is lost, memories fade, and witnesses become unavailable through death or disappearance. What remains are shadows of the participants, fragments of memory, and shards of detail cobbled together in a proceeding that invokes justice, but will be fair to few. It would be a different case entirely if the records and memories demonstrate that the abuse occurred and the institution knew. But the proof thresholds in the "window" laws are not based on actual knowledge. As debate over these bills unfold, the policies that undergird statutes of limitations are so often repeated they begin to sound cliché. Yet, limitation defenses are substantial, not merely technical. Supreme Court Justice William Rehnquist (not yet Chief Justice at the time) stated in plain terms: "Statutes of limitations are not simply technicalities. On the contrary, they have long been respected as fundamental to a well-ordered judicial system."

To complicate matters further, insurance policies secured decades ago by religious organizations and other nonprofits who serve children did not contemplate such expensive and late-filed risks. They were written expecting that these risks would sunset. Moreover, the nature and scope of the societal problem of child abuse was not well identified or understood during that past era. Insurance carriers simply did not underwrite general liability policies and collect premiums expecting exposures of the type or magnitude presented by this crisis. Nor did they educate or audit their insureds on now prevalent policies and procedures designed to help ensure the protection of children (and to mitigate risk) – a reflection of the times, not a failing of the insurance industry. No one anticipated legislative activity half a century later to revive decades-old claims that had long been considered extinguished. Putting aside the challenges of defending against aged allegations of misconduct, even trying to locate insurance policies (some written by carriers no longer in business) can be a daunting task in and of itself. These challenges obviously create acute tension between carriers and their policyholders.

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The revival of time-barred claims (as enacted in other states and proposed in Pennsylvania and elsewhere) seems a highly imperfect solution to a broad and long-standing societal problem. As detractors from such legislative efforts rightfully point out, "window" legislation benefits only a portion of the victims in the absence of tandem amendments that repeal governmental immunity. (Although private Catholic institutions draw the most headlines, recognized studies and press reports alike have documented the serious problem of childhood sexual abuse in our public institutions.) Similarly, without damage caps that reflect historic policy limits and awards, juries are left to assess damages caused by the negligent and reckless conduct of those who supervised abusers based on today's inflated dollar and valuations, as opposed to those in place at the time of the misconduct.

Yet, concluding that no remedy can be fashioned to these horrific wrongs simply because of the passage of time seems equally unpalatable (even if proven to be correct from a constitutional perspective). Where does all of this leave those in the business of assessing, managing, and transferring risk? Proposed "window" legislation in Pennsylvania and elsewhere must be monitored closely and taken seriously. The stakes are high. Passively hoping that such measures do not pass may prove to be a successful strategy. However, proactively engaging in discussions around creative solutions to heal those who have suffered this trauma may carry a far higher chance of success. As momentum towards a compensation fund for victims – in lieu of reviving time-barred claims – begins to build in some quarters, it is worth considering whether insurance carriers should play an active role in such discussions. The notion of participating at any level in something akin to a voluntary payment may be the bridge too far for some, yet the alternative may prove far costlier. ●

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Avoiding the Next Lanzo:

Some thoughts

Most readers are familiar, at least to some extent, with the jury's verdict earlier this year in Lanzo v. Johnson & Johnson. ***In that case, a New Jersey state court jury awarded $117 million in compensatory and punitive damages against J&J and Imerys after concluding that asbestos-contaminated talc, supplied by Imerys and used to make Johnson's Baby Powder, caused Mr. Lanzo's mesothelioma.***

The *Lanzo* verdict is one of several plaintiff verdicts over the past few years across the country in cases involving consumer use of a cosmetic talc powder product allegedly contaminated with asbestos. There have also been several defense verdicts during that time period as well.

The mix of plaintiff and defense verdicts indicates that this litigation is not yet a "mature tort" in the way that more "traditional" asbestos cases and claims might be viewed from a liability and/or valuation perspective. This is not to say, of course, that more "traditional" asbestos cases cannot be defended successfully. While many plaintiff's counsel will be tempted to champion *Lanzo* as the harbinger of a growing series of large verdicts and increasing settlements in such cases, defendants, as well as their insurers, should strive to isolate *Lanzo* (assuming the verdict survives the appellate process) as an aberrant high-water mark for plaintiffs that is not mirrored by repeat results.

At the outset, it is important to remember that in many traditional asbestos claims involving products that were intentionally designed and manufactured to contain asbestos, the state-of-the-art defense may not be available, and the defendant's knowledge — or lack thereof — may be inadmissible. Moreover, because a traditional asbestos product was designed to contain asbestos, the uniformity of asbestos content means that exposure to the product means (assuming friability) exposure to the asbestos in the product. Product uniformity also allows a plaintiff's expert to opine more readily about dose – *i.e.*, that the amount of asbestos to which a particular plaintiff was exposed can reliably be said to have been a substantial or significant contributing cause of his or her asbestos-related disease.

In contrast, cosmetic talc powder products were not designed or formulated to contain asbestos; plaintiffs' claim is that the talc used to make the products was contaminated with asbestos. Thus, an individual plaintiff must prove that there actually was asbestos in the particular product containers that she or he actually used or was exposed to and that the amount of asbestos to which he or she was exposed was sufficient to raise the risk of causing his or her asbestos-related disease.

Absent a rare situation, it is unlikely that a plaintiff alleging that she or he developed an asbestos-related disease from use of or exposure to asbestos-contaminated talc powder will still have an actual container or containers years later. Accordingly, most plaintiffs will not be able to present direct evidence of exposure to an asbestos-contaminated talc powder product because they will be unable to provide any actual containers they used or were exposed to for expert testing and analysis.

Instead, the challenge for plaintiffs is to establish, through circumstantial evidence, that a particular plaintiff used any talcum powder product that actually contained asbestos in an amount sufficient to raise the risk of causing the asbestos-related disease (most often mesothelioma in these cases thus far) at issue. Plaintiffs have generally sought to do so using evidence from several sources, including historical literature regarding the alleged presence of asbestos in source mines, historical product testing results, and expert testing of sample products or talc ores. Such proofs are heavily expert-dependent and, as a result, the defense of such claims must also rely heavily on expert testimony and analysis.

When challenging plaintiffs' historical evidence, including mine source literature discussing the alleged presence of asbestos found decades ago in various source mines as well as reported product testing results from the 1970s, questions for the defense to address include the lack of uniformity of results among the mines surveyed or products tested and the fact that the testing methods used — as well as the written reported results — did not reliably identify the asbestiform version of the underlying mineral (*i.e.*, a finding or reference to tremolite does not necessarily mean tremolite asbestos). Another important aspect is the dearth of epidemiology demonstrating any increased risk of asbestos-related disease among talc miner and millers. Similarly, with respect to plaintiffs' expert testing of sample products and/or talc ores, defendants should examine what methods the expert used, including whether the expert followed an appropriate methodology to identify the presence of asbestos in talc and whether that method was available at the time of the alleged exposure (which could be decades ago). This is important in assessing whether the expert's results are accurate and in showing the jury whether knowledge of any alleged risk was known or knowable by the defendant during the relevant time period of exposure.

Because these claims are based on alleged product contamination, the focus should not be on whether asbestos is dangerous or whether asbestos causes mesothelioma…

Because these claims are based on alleged product contamination, the focus should not be on whether asbestos is dangerous or whether asbestos causes mesothelioma (or any other asbestos-related disease). Nor should the focus be on current medical knowledge and exposure levels or whether the plaintiff can present some evidence that some cosmetic talc products may have contained some unquantified amount of asbestos at some point in time. Rather, the focus should be on whether an individual plaintiff can show that he or she actually was exposed to a cosmetic talc powder product that actually contained a sufficient amount of asbestos to raise his or her risk of developing the asbestos-related disease at issue. This requires proof that it is more likely than not that a particular product container used by the plaintiff actually contained asbestos, and that the asbestos presented a sufficient dosage to cause the plaintiff's disease. Focus should also be on the state of medical and scientific knowledge at the time of the alleged exposure. This may include whether the testing methods then available were capable of identifying the alleged presence of asbestos and whether whatever contamination level the plaintiff's expert claims to have identified now would have been considered high enough to require a warning back then.

Ultimately, it is possible to defend these cases successfully. To do so, defendants and their insurers should understand how these cases may differ from more traditional asbestos claims and should be prepared to mount an aggressive defense targeting the key challenges that plaintiffs in these cases must overcome. ●

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AIRROC / EECMA Climate Change Symposium

Trade Associations Pair up to Face Reality

Photos / Adam Krauss

On September 6, 2018, AIRROC and EECMA (Environmental and Emerging Claim Manager Association) presented their 2018 feature co-hosted program, which took a comprehensive look at climate change. The one-day symposium presented material too voluminous to summarize adequately in a single article. However, here are a few things you missed if you did not attend the symposium.

• Courts are inclined to accept that climate change exists.

In the context of dismissing the public nuisance case, *Oakland vs. BP*, the court nevertheless stated: "This order fully accepts the vast scientific consensus that the combustion of fossil fuels has materially increased atmospheric carbon dioxide levels, which in turn has increased the median temperature of the planet and accelerated sea level rise." The Court just didn't believe it had the power to address the issues presented by the case.

• Litigation to seek redress for damages due to climate change continues with many unresolved questions:

Who has standing to sue?

Who is damaged?

What level of scientific evidence is necessary to prove causation?

Are damages attributable to a given defendant and if so how to allocate among responsible defendants?

• Meanwhile, *Juliana, et al vs. US*, is set to go to trial in October 2018. This case was brought by a group of youth plaintiffs alleging that the United States government's affirmative actions that cause climate change have violated the youngest generation's constitutional rights to life, liberty, and property, as well

as failed to protect essential public trust resources.

- The banking and insurance industries need to take a hard look at how they calculate the impact of climate change on risk. Prior reliance on FEMA maps will result in failure to understand the increased risk of flooding due to climate change. Also, flood insurance premiums, while slated to increase, have not increased enough to prevent the National Flood Insurance Program from falling further into debt. If premiums rise enough due to financial constraints, there will be a significant impact on housing values in flood prone areas.

- Insurance coverage implications are a "new frontier" with the usual issues we have seen and litigated with regard to other long-term risks like asbestos and environmental issues under liability, D&O, and first-party policies. ●

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Preparing for CECL

A Ceded Reinsurance Perspective

In June 2016, the Financial Accounting Standards Board (FASB) approved a new accounting standard, the Current Expected Credit Loss (CECL) model, to replace the former incurred loss model for measuring credit risk on financial instruments. This change will accelerate the financial reporting of credit losses on loans and other financial instruments, including reinsurance recoverables. Much of the CECL model's focus is on banks and other lenders, but it also will affect ceding insurers required to file with the U.S. Securities and Exchange Commission (US SEC).

The new guidance goes into effect for fiscal years beginning December 15, 2019 (including interim periods), but early adoption is permitted up to one year prior. In preparation for the new standard, affected companies should gain an understanding of the new approach and considerations relevant to the requisite changes in current models and possible implications for reinsurance contract language.

Insurance companies use multiple approaches to evaluate and estimate credit risk. Perhaps the most common approach is the incurred loss model, which recognizes an allowance against its reinsurance recoverable assets for uncollectible reinsurance related to probable and estimable credit losses that are known against its reinsurance recoverable assets as of the financial statement date. Under this approach, the insurer establishes a liability for uncollectible reinsurance related only to known disputes and/or insolvencies. To estimate a provision for uncollectible reinsurance, some insurers consider not only known events but also incorporate a provision for expected amounts that may become uncollectible in the future. This expected loss approach is particularly useful for complex reinsurance situations (e.g., related to asbestos claims) in which the expected allowance can be significant due to a greater risk of dispute resulting from the significant judgment used to determine ceded amounts.

Future uncertain events impact a reinsurer's ability to fulfill its obligations under a reinsurance contract.

Future uncertain events impact a reinsurer's ability to fulfill its obligations under a reinsurance contract. As such, uncollectible amounts may not be known until some point in the future. The applicability of the new CECL standard to all reinsurance recoverables will require ceding companies to recognize expected reinsurance recoverable amounts whether or not there is awareness of a current collection issue. The expected loss approach will provide for earlier recognition of uncollectible amounts over the lifetime of a reinsurance agreement.

Estimating uncollectible reinsurance under CECL

Under CECL, the first step to estimating the liability is to separate the known uncollectible risks from the unknown. Insurers should have an existing approach for estimating known uncollectible liabilities; this is typically an incurred loss approach, but there may not be an existing expected loss approach to measure uncollectible reinsurance. Under an expected loss approach, an insurer must make assumptions regarding the likelihood that reinsurance liabilities ultimately will become uncollectible. To establish these assumptions, an insurer may assess reinsurer quality by considering historical reinsurance collection success, as well as current and reasonable future forecasts of economic and market conditions that may impact future collection rates. A ceding insurer's approach also may consider the nature of the collectible amounts, which can impact dispute risk.

The ceding insurer can develop a scoring assessment utilizing this information and apply judgment to determine appropriate assumptions regarding the likelihood of circumstances and events that could result in uncollectible reinsurance amounts. Management can estimate each reinsurer's incurred but not reported (IBNR) reserves by applying each reinsurer's participation percentage to the aggregate actuarial IBNR estimates

Currently insurers report known uncollectible reinsurance amounts

Up to one year prior to the effective data of CECL, insurers may begin applying the new approach

CECL becomes effective 12/15/2019, requiring insurers to report estimated uncollectible reinsurance amounts

Reinsurer Quality	Likelihood of claim disputes
• Ratings from rating agencies (e.g., the A.M. Best). • Estimates/analyses of historical uncollectible amounts by rating category. • Historical financial performance (e.g., five years, as determined by an analysis of income, cash flow/liquidity and changes in surplus). • Prospective analysis of specific reinsurers, considering the magnitude of significant legacy cessions.	• A reinsurer's track record of claims disputes. • Ultimate ceding company collection rates. • Prospective analysis of: - Disputes both with the ceding company and with other market ceding companies; - Nature of ceded exposures and anticipated loss trends (e.g., new filings/loss types); - Anticipated changes in the ceded business model and relationship with reinsurers.

for a book of business. Management can then multiply its determination of the respective reinsurer's uncollectible reinsurance probability by the reinsurer's allocated IBNR.

Reinsurance collectability process

Establishing a formal process for assessing reinsurance collectability is critical. The first step in developing a formalized governance process is to determine key stakeholders and the process owner and select a review committee. The ceding company should document the reporting structure and process for tracking assessment results over time and determine the appropriate frequency of review (e.g., annual, semi-annual or quarterly) depending on the riskiness of the reinsurer's business. Consistent application and documentation against defined key criteria will facilitate a reasonable and supportable estimate of expected uncollectible reinsurance.

Ceding companies should involve multiple functions, including underwriting, reinsurance placement, ceded claims/collections, actuarial, legal and finance, in assessing reinsurance collectability, and each entity's organizational structure will determine ultimate ownership. Clear lines of communication and input from each functional area are critical in establishing a robust process.

In addition to the FASB requirement, companies may reap additional benefit from conducting a reinsurance collectability process assessment. For example, a ceding company may want to leverage its CECL assessment process in determining collateral requirements for ceded reinsurance or captive relationships. Consideration of this additional information could facilitate a more consistent assessment process, improved controls and a potentially higher confidence level with required collateral.

CECL will require many organizations to establish new protocols to support a significant shift from current credit risk assessment processes (based on known, incurred losses) to the estimation of expected future unrecoverable amounts. The new guidance likely will increase reported levels of uncollectible reinsurance liabilities from amounts currently reported. Before the CECL standard becomes effective, insurers should assess current processes and revise and test new protocols to understand the impact the changes will have. This will help position them for effective compliance and reduce disruptions from the changing reporting requirements.

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Bringing it in Bean Town

Boston Regional Education Day

AIRROC's Boston Regional this year was co-hosted by Locke Lord and Pro. Held in the Prudential Center, the attendees learned from a diverse faculty and were treated to a keynote from Elizabeth Dwyer, Deputy Director and Superintendent of Banking and Insurance for Rhode Island. We also had an insightful presentation on Hurricane Maria and its effects on Puerto Rico, a report out on some significant court decisions, and an in depth look at the legislative activity surrounding runoff statutes, and a session on social media and ethics. More highlights follow.

Hurricane Maria

Ralph Rexach, Managing Partner at Rexach & Pico, on the effects of Hurricane Maria on the island of Puerto Rico. This devastating storm sliced across the country on September 20, 2017, causing widespread power outages and catastrophic landslides and taking the lives of thousands of residents.

Photos / Jason Pietroski

Rexach & Pico is premier law firm specializing in insurance regulatory matters in Puerto Rico. This firm was founded by Ralph Rexach, the former Insurance Commissioner of Puerto Rico. The firm and its staff survived the 135 mph winds and torrential rains while operating under generators for many days. According to Rexach, the key to survival is being prepared for these once-in-a-hundred year events. Over the past century, Puerto Rico has experienced eight major hurricanes, including Hugo, George, and San Felipe, each causing billions of dollars in losses.

Hurricane Maria was classified as a Total Involvement Event, with the entire island experiencing hurricane winds, 100% power outage, and cell phone/ telecommunication tower disruption. Air and sea ports were in a state of disarray. The National Weather Service reported extreme structural damage from high winds, as well as the destruction of crops and animal farms. The insurance estimates top $30 billion dollars, with total losses more than double that figure.

After Hurricane San Felipe in 1928, the country started adopting and building codes. These codes have continually evolved to meet current standards. The challenge lies with getting everyone to agree on standards and the governments' enforcement. Hurricane Maria will bring about additional calls for reform due to the devastations with condos and resorts.

The history of insurance on the island dates back to 1893 mortgage laws requiring property owners to purchase coverage. It was in 1937 that the FHA required all new property to be constructed with reinforced concrete. Over time, the government has become more involved in regulations and the industry has benefited from changes in codes. Claims resolution has seen a 90-day standard for decisions on claims submitted. There were over 250,000 claims initially filed after Hurricane Maria and approximately 10% are still unresolved.

Rexach discussed mandatory catastrophe reserving for insurers, referencing Chapter 25 of the Insurance Code. The Commission establishes a set percentage (usually between 1% and 5%) as relates to exposure. Insurers are also required to purchase reinsurance to protect exposures not covered by CAT reserving. Rexach later explained the role of adjusters during a catastrophe, as well as the relaxing of licensing requirements and issuance of emergency adjuster permits. The presentation touched upon other developments such as the Triple S announcement and pending legislation in the Senate.





It is interesting to note there were 14 active insurance companies writing hurricane coverage prior to Maria. That number has dropped to twelve and may continue to decline. Most of the insurance coverage is with German companies and not much comes from the United States.

John Capuzzo of The Hartford. john.capuzzo@thehartford.com

Insurance Business Transfer Statutes

Al Botallico (Locke Lord) moderated a discussion of the current landscape for Insurance Business Transfers (IBT) in the United States. The panel included: Frank O'Brien (PCIAA), Matt Gendron (Rhode Island Department of Business Regulation), Albert Miller (PRO), and Keith Kaplan (a PRO consultant). The panel highlighted the challenges facing run-off, the traditional exit mechanisms, and then provided an overview of the latest IBT and Company Division statutes and regulations, before opining on the future.

Keith Kaplan gave a brief overview of the run-off market, highlighting the challenges faced by companies managing long-tail liabilities such as adverse development, capital charges, operational burdens, management distraction from core activities, and increased dispute and credit risk with outwards reinsurance. A second point was that historic exit strategies in the U.S. such as commutation, loss portfolio transfer, and sale of company was not as complete a toolbox of options as exists overseas.

Al Miller explained that IBTs and Company Division statutes provide additional options. Company Division statutes exist in AZ, CT, and PA and such a law was used in PA to divide a company. He emphasized how the RI and OK IBT statutes provide legal, economic, and operational finality and noted that IBTs are not for troubled companies.

Matt Gendron then explained the similarities and differences of the various statutes, providing a survey of the different statutes including VT LIMA, CT and PA Division statutes, and OK and RI IBT statutes. He noted that both the RI and new OK laws are modeled on Part VII transfers and include court approval as part of the process. Gendron focused on RI's most recent changes to its law that make clear that a commutation plan is not required for an IBT and that a protected cell qualifies as a commercial run-off insurer. He also emphasized policyholder protection features. The difference between the RI and OK laws is that the OK law places no limits on what type of business may be included in an IBT, while RI applies to commercial run-off only (*i.e.*, no direct personal lines, life, direct WC, or Long Term Care.)

Frank O'Brien explained what it takes to get a law passed and signed into law, noting that the insurance industry's ideas for legislation compete with other ideas to get attention. By couching LIMA and RI IBT as economic development initiatives, legislators become interested. He also noted that RI IBT passed because it is viewed as a sophisticated transaction between sophisticated parties, and expressed concern that OK's inclusion of personal lines and LTC increases the level of controversy and would likely slow adoption elsewhere.

The panel members were unanimous in their view that there is a good future for IBTs. Keith Kaplan predicted as many as three IBT deals taking shape over the next year within the U.S., sharing that PRO has established ProTucket Insurance Company, which just established its first protected cell with funds obtained from Swiss Reinsurance Company, Ltd., thus marking another milestone in developing the IBT process in the U.S.

Boston Regional Education Day (continued)

Legal Update: A Report on Significant Court Developments

At AIRROC's Boston Regional Education Day, a panel of legal and insurance experts provided commentary and updates on recent court actions involving both direct insurance and reinsurance issues.

Julie Young (Partner at Locke Lord LLP) kicked off the presentation with an overview of the New Restatement of the Law on Liability Insurance that was approved by the ALI in May 2018. The Restatement covers basic liability insurance contract rules, management of potentially insured liability claims, general principles regarding the risks insured, enforceability and remedies. Young shared that the restatement has gained significant regulatory attention. Nine cases have already cited the Restatement and the state of Ohio has completely rejected it, which is unprecedented for the ALI. Young reviewed twelve debated sections of the Restatement such as Damages for Breach, which provides consequence for unreasonable settlement. Comments under this section state that punitive damages could be covered by insureds against policy wording or state regulations. Many states are going on record as not supporting this view.

Donald Frechette (Partner at Locke Lord LLP) was up next to review recent court cases, starting with *Certain Underwriting Members of Lloyds of London v. Florida*, which ultimately helped determine the standard for overturning an arbitral award based on a claim of evident partiality in a case involving party-appointed arbitrators. Frechette took attendees through two other arbitration case examples as well as various cases involving policy-related issues including embezzlement, statute of limitations and punitive damages.

Christopher Bello (Vice President, Senior Counsel, and Secretary at General Re Life) closed out the legal update with additional reinsurance case review. He covered examples with no hard liability caps, when reinsurance contract wording stands and when claim handling authority does not put the reinsurer in the shoes of the insured. The case of *General Re v. Lincoln*, provided clarification of an arbitration award wherein rates were raised and Lincoln elected to recapture them on a paid basis. Ambiguity was found by the panel and General Re had to fight to capture them on an accrued basis. The case went to district court, where the judges were hostile, and then to Second Circuit appeal.

Overall, the legal update was very informative and we thank the panelists for taking the time out of their busy schedules to attend and share their valuable insights. ●

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The Wisdom of AIRROC

Carolyn Fahey

Message from the Executive Director

Our cover for this issue of AIRROC Matters features the owl. By design, the issues that feature special content of our annual October forum have displayed birds. Some images of the past covers decorate the next page.

The owl is associated with wisdom. As AIRROC looks to our 14th year serving the insurance and reinsurance industry, we are in a good spot to look back at our history and accomplishments – but more importantly – to look forward to adapting what we've learned so that we remain relevant in a swiftly moving world.

That brings me to reflect on a favorite quote by Theodore Roosevelt: "Nine-tenths of wisdom is being wise in time." Both the board and the event committee made a wise choice in selecting a new location for the New Jersey Forum in 2018 because it was time for a refresh, and a new location. The graphic on this page reflects the responses when we asked for a word that best described AIRROC NJ. We got great feedback.

We had a larger number of attendees (up 20% from 2017) which included individuals and companies that were brand new to AIRROC. We awarded the Person of the Year to Luann Petrellis of PwC, and the Trish Getty Scholarship to Kayla Cecchine of St. Joseph's University.

Our delegates had very productive meetings. The post-event survey results indicated that 60% of the attendees met with seven or more companies and 58% began working on, completed or progressed a deal or a commutation while they were there. As well, 25% of the delegates were C-level executives, and we had delegates from 6 countries, which included the United States, England, France, Germany, Italy, and Australia.

High percentages such as these show that we provide needed services to our industry. Member companies see the value of the investment in AIRROC and appreciate the positive impact that attendance at meetings can have on our bottom line.

2018 AIRROC highlights

A total of nine events – four in New York, one in Chicago, one in Philadelphia, two in Boston, and one in New Jersey. AIRROC's events are highly regarded with 82% of the attendees surveyed ranking them very good to excellent.

A total of 890 participants attended our events in 2018 – 79% were either members or corporate partners.

We welcomed seven new members: OK Insurance Department; Fleming Re; Premia Re; Requiem; Safety National; Tiger Risk and Willis Towers Watson.

Looking into 2019, the board has made changes to the bylaws to open membership to capital providers as well as to make all members eligible to serve. This new diversity will provide strength and perspective to be agile and seek ways to best serve the industry. We have just completed the board election cycle. Three directors were re-elected for three-year terms: Bill Littel of Allstate; David Presley of Enstar; and Ed Gibney of R&Q. Two more will be joining the board for the first time: Eleni Iacovides of DARAG Group and Arvind Krishnamurthy of Resolute.

It is time for a leadership transition at the board level. I want to recognize the contributions and leadership of Leah Spivey from Munich Re who will step down as board chair after serving the maximum term. Her vision, enthusiasm, creativity and drive made an impact for AIRROC. Under her leadership we executed the first two collaborative events with the Emerging Environmental Claims Managers Association (EECMA), and expanded relationships with the International Association of Insurance Receivers (IAIR) and the Reinsurance Association of America (RAA).

AIRROC's webinar series will launch in early 2019 and we will also see the unveiling of a redesigned website and communication strategy. We are becoming a sought after educator as we see the activity in the states around the …runoff statutes.

Mark your calendar for these 2019 AIRROC events

March 5-6 – Membership Meeting and Education Day, NYC

May 14 – Chicago Regional Education Day, Chicago, IL

June 6 – Runoff Deal Market Forum, NYC

July 16-17 – Membership Meeting and Education Day, NYC

October 20-23 – AIRROC NJ 2019, Jersey City, NJ

Visit our website, www.airroc.org for more information, and to register for these events. We will be announcing additional programs in the near future. As a reminder, most registration fees are included in the annual dues so member companies can register unlimited individuals at our events with no additional fee. That brings me back to Roosevelt's quote on wisdom. AIRROC's wisdom is coming to pass at just the right time. I am proud to be a part of this organization and look forward to continuing to make an impact.

I am only a phone call or an email away, and would love to hear your ideas as we move into another great year. ●

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

News & Events

Francine L. Semaya & Peter H. Bickford

Regulatory News

National Association of Insurance Commissioners ("NAIC")

At its Fall 2018 meeting, the **NAIC** elected the following officers for 2019:

President: **Eric Cioppa**, superintendent of the Maine Bureau of Insurance since 2011 *(pictured here)*;

President Elect: **Raymond G. Farmer**, director of the South Carolina Department of Insurance since 2012;

Vice President: **Gordon Ito**, commissioner of the Hawaii Insurance Division since 2010; and

Secretary-Treasurer: **Dean L. Cameron**, director of the Idaho Department of Insurance since 2015.

In other **NAIC** news, the **NAIC Reinsurance Task Force** approved, and its parent Financial Condition Committee accepted, revisions to the NAIC Credit for Reinsurance Model Act and Regulation, which eliminates reinsurance collateral requirements for non-U.S. reinsurers from qualified jurisdictions. The revisions were required to conform to the "Covered Agreement" entered into between the U.S. and the EU. The NAIC Executive Committee is expected to adopt these revisions on December 19, 2018. The states will then be required to amend their statutes to avoid federal preemption.

Also, in 2019, the Task Force will develop revisions to allow reinsurers domiciled in non-EU NAIC qualified jurisdictions to have the same reinsurance non-collateral requirements as those reinsurers domiciled in EU jurisdictions.

Financial Stability Oversight Council ("FSOC")

In September 2018, prior to his election as President of the NAIC, Maine's Superintendent of Insurance, **Eric Cioppa**, was appointed by the FSOC to a 2-year term as the non-voting state insurance commissioner representative on the Council.

The **FSOC** is responsible for the evaluation of financial companies including insurance companies, and had designated a number of insurance groups as systematically important financial institutions ("SIFI"s) potentially subjecting them to stricter financial oversight. In October 2018, however, the **FSOC** announced that the last of the insurance groups designated as a SIFI, **Prudential Financial Group**, would be removed from that designation. As a result, there are currently no insurance entities designated as a SIFI.

Last April, the House of Representatives adopted legislation (HR4061) that would overhaul the **FSOC**. Although the Bill does not repeal the Council's authority to designate firms as "SIFIs", it provides the affected institutions with a much greater opportunity to be heard and affords them time to restructure or modify its business and operations before a designation is made final. To date there has been no action on this Bill by the Senate.

International Association of Insurance Advisors ("IAIS")

IAIS, the international counterpart to the FSOC, has decided to delay determination of which insurers are "so important to the financial system" requiring such insurers to increase their capital. It will replace their "too big to fail" list of insurers, initially released in 2016, with an approach that looks at insurers "proportionate" application targeted at the activities of insurers that would lead to systemic risk. The requirement to meet "higher loss absorbency" capital increase will not be implemented until 2022.

Industry News

ASPEN

According to a report by **PricewaterhouseCoopers**, the value of mergers and acquisitions in the U.S. insurance sector increased to $8.1 billion in the third quarter, up from $1.9 billion in the third quarter of 2017. This activity was led by two significant acquisitions of insurers: The acquisition by investment firm **Apollo Global Management LLC** of London insurer **Aspen Insurance Holdings Ltd.** for $2.6 billion, representing another expansion of private equity into the insurance sector; and the announced acquisition by **Hartford Financial Services Group Inc.'s** of specialty insurer **Navigator Group Inc.** for $2.17 billion.

Another third quarter acquisition of note was the sale by **Hanover Insurance Group** of its Lloyd's-focused international specialty business, **Chaucer**, to **China Reinsurance Group Corp.** for $950 million; and in October 2018, Bermuda-based **RenaissanceRe Holdings** agreed to acquire the reinsurance platform of **Tokio Marine Holdings**, Inc. that includes **Tokio Millennium Re AG** and **Tokio Millennium Re (UK),** for $1.5 billion.

On the brokerage side, **Marsh & McLennan Companies, Inc. ("Marsh")** has agreed to purchase United Kingdom based **Jardine Lloyd Thompson Group,** PLC for $5.7 billion, strengthening **Marsh's** specialty risk-broking operations and expanding its global reinsurance network.

SCOR

The most significant acquisition effort, however, was one that did not materialize when French insurer **SCOR SE ("SCOR")** turned down a $9.6 billion unsolicited takeover offer from its largest shareholder **Covea Mutual Insurance Group Company ("Covea")**, a French mutual insurer that already has an 8.2% stake in **SCOR**. Despite the rejection, Covea remains hopeful of a friendly deal to acquire SCOR in the future.

On the run-off front, in November 2018 **The Carlyle Group ("Carlyle")** and **American International Group, Inc. ("AIG")** completed Carlyle's acquisition

Dentons' insurance team routinely advises on exit solutions for discontinued and legacy businesses, including portfolio transfers, commutations, mergers and acquisitions, and reinsurance arrangements, amongst other matters. When disputes arise, we are uniquely positioned in the market to successfully resolve such matters, whether litigated, arbitrated or commercially negotiated. Our team combines technical expertise with market knowledge and has close relationships with key regulators which enables us to offer practical, commercially-minded approach to all our cases.

"International Law Firm of the Year",
Legal Awards, 2017

"They... have a very strong commitment to the insurance space",
Chambers USA

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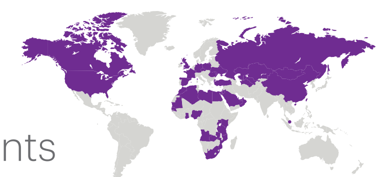

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Present Value (continued)

of a 19.9% stake in **Fortitude Re ("Fortitude")**, formerly **DSA Re,** that had been created by AIG to run-off its own legacy business. With the new investment, **Carlyle** will be able to invest in legacy business across a broad international base through **Fortitude**.

New Members

During the second half of 2018, **AIRROC** was pleased to welcome a number of new members including two company members, an international member, a broker member and a regulatory member as follows:

Premia Holdings Ltd. ("Premia") became a member of AIRROC in the fall of 2018. Premia was formed in 2017 in Bermuda as a property and casualty insurance and reinsurance group focused on providing runoff solutions. With an initial $510 million capital raise, one of the largest capital raises ever focused on the P&C runoff market, **Premia** established itself as a significant market participant.

Safety National Casualty Corporation ("Safety National"), a leading specialty insurance and reinsurance provider, became a member as of January 1, 2019. A member of the Tokio Marine Group, **Safety National** is an A+ A.M.Best rated company with over 75 years of unique expertise and resources.

New International member, **Requiem Limited ("Requiem")**, is part of Davies Insurance Services, a member of the Davies Group of Companies. **Requiem** is a UK Financial Control Authority (FCA) authorized Lloyd's intermediary that has existing relationships with a significant portion of the Lloyd's and London Insurance Market as well as the wider insurance market place.

AIRROC's newest broker member, **TigerRisk Partners ("TigerRisk")**, is a privately held risk, capital, and strategic advisor to the global insurance and reinsurance industries. TigerRisk provides innovative financial solutions to the traditional and legacy reinsurance market, as well as to the capital markets industry.

The **Oklahoma Insurance Department** has become the first state insurance department to become a full member of **AIRROC** under a recent bylaw change. **AIRROC** currently has companies under control of state liquidation departments among the members, which include Pennsylvania and New York, and in the past the California liquidation and conservation office. With the new focus on state activity around runoff finality statutes, **AIRROC** hopes that Oklahoma will be the first of many new state regulatory members.

People News

At the **NAIC** Fall meeting, New York's Superintendent of Financial Services, **Maria T. Vullo**, was awarded the "Excellence in Consumer Advocacy" Award by the **NAIC's** Consumer Advocates.

AIRROC Publication Committee member **Frederick Pomerantz** has been named as the Vice Chair of the **Federation of Regulatory Counsel, Inc. (FORC)**, effective January 1, 2019. **FORC** has been, for 30 years, the only nationwide peer review organization whose members, including outside counsel, in-house attorneys and former state insurance commissioners, to devote substantially all their time on insurance transactional and regulatory matters. ●

WINTER 2019

MARK YOUR CALENDAR

FEBRUARY 13-15
International Association of Insurance Receivers (IAIR)
2019 Insurance Resolution Workshop
New Orleans, LA
www.iair.org

MARCH 5-6
AIRROC
Spring Membership Meeting & Education Day
New York, NY
www.airroc.org

APRIL 6-9
National Association of Insurance Commissioners (NAIC)
2019 Spring National Meeting
Orlando, FL
www.naic.org

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

MAY 22
Insurance Federation of New York (IFNY)
Excess Lines Association of New York (ELANY)
2nd Annual Surplus Lines and Reinsurance Symposium
New York, NY
www.elany.org

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

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.

AIRROC NJ 2018

COMMUTATIONS & NETWORKING FORUM

AIRROC's New York State of Mind...

Our close proximity to NYC for AIRROC NJ 2018 brought new energy, new delegates, new deals and new excitement to the event. Delegates enjoyed the chosen host hotel, the Westin Jersey City Newport, and all that the location had to offer us. The Monday night gala dinner was a special treat at the Maritime Parc with breathtaking views of Manhattan as well as the Statute of Liberty. Business was completed, connections new and old were made, and AIRROC did what it does best in bringing the legacy industry together.

photos/
Jean-Marc Grambert

Let's Make A Deal!

AIRROC presented "The Art of the Runoff Deal" for the featured sessions in Jersey City. We started the day off with a fun parody of the television game show and then moved into a day of panel discussions which highlighted the many facets of what it takes to get a deal done. We looked at the deal environment, structuring deals, the life market, due diligence, transfer and migration, and regulatory considerations. More about what we learned in some of these sessions follows.

Structuring U.S. Runoff Deals

Summary by Randi Ellias

This panel including David Alberts (Partner and co-leader of the Global Insurance Industry Group at Mayer Brown), Bill O'Farrell (CEO of Premia Holdings, Ltd.), and Frank Schmid (Head of Property & Casualty Deals at Fortitude Re), providing insight into structuring U.S. runoff deals. The previous group, chaired by Victor Nelligan of PwC had set the stage by highlighting that with over $2B in gross liabilities transacted – more than the rest of the world combined – North America represented the largest player in the runoff deal market.

The panel first outlined the key drivers for runoff deals, noting that continued consolidation and restructuring, continued downward pressure on premium, low interest rates, and the availability of alternative capital have combined to create favorable conditions for runoff deal activity. The panel also discussed the importance of alignment of interests between the buyer and the seller of the book. Claims administration was highlighted as a key economic factor to be considered in connection with any runoff deal, particularly in light of the fact that assumptions surrounding ultimate net loss were the most important consideration for a runoff transaction. The panel noted that the current trend in the industry was for sellers to retain staff instead of transferring the staff along with the book of business.

Next, the panel discussed the three current options for runoff deal structure: (i) reinsurance; (ii) entity and asset sales; and (iii) the use, in certain jurisdictions, of the emerging insurance business transfer and division statutes or regulations to restructure or exit the business entirely. While the recently-enacted statutory options have not yet resulted in any deal activity, the panel opined that the passage of those statutes in additional jurisdictions might create momentum, particularly in light of the fact that insurance business transfers are standard in other parts of the world.

The panel next elaborated on the economics of adverse development covers, noting that rating agencies typically consider those covers positively because the books of business reinsured are usually non-core – and, therefore, weaker – business. The panel discussed key differences between "in-the-money" and "at-the-money" transactions, including how the crediting rate upon which the parties ultimately agree may impact the amount of premium paid. Differences between funds transferred and funds withheld transactions were also explored. Funds transferred transactions create a higher hurdle for commutation, but provide a higher degree of economic finality, whereas funds withheld transactions allow the reinsurer to use possible commutation as a bargaining chip in future business dealing with the ceding company.

Randi Ellias is a Partner at Butler Rubin. rellias@butlerrubin.com

The Life Deal Market

Summary by Maryann Taylor

The last session of the morning was a presentation by Bernhardt Nadell of Stroock & Stroock & Lavan LLP, Stuart Silverman a Principal and Consulting Actuary with Milliman and Gregg Hirsch of Mound Cotton Wollan & Greengrass LLP who moderated the discussion. The panel provided a broad overview of the runoff life insurance and annuity M&A markets, and highlighted key considerations for market participants. They also covered the current drivers of valuation, the types of buyers, a look at the diligence process, and the types of investment options that are available.

In comparing the Life sector with the P&C sector, the strategic objectives for companies with runoff business in each is the same - with finality at the core of these plans. Despite the similarities in objectives, the differences from an M&A deal perspective include (1) how long the reserves are held, (2) the nature of the insurers' investments, and (3) how claims are paid. From an M&A perspective, the Life market has experienced far less volume than in the P&C space, however, there has been a recent increase in attention being paid to the Life market. There has always been some market appetite for the transfer of closed block life insurance, typically effectuated by a sale or by some form of reinsurance. Buying closed blocks remain a focus and an opportunity for growth.

The valuation of an existing book of Life insurance business versus new business, is what largely drives the price in an M&A situation. Those acquiring an existing book believe that by pooling the underlying assets and managing the legacy claims, they can make the book perform better than those who wrote the business. With respect to a pure new business book, an example was provided of a buyer seeing significant value in the seller's distribution platform. The price you pay for new business is the cost of capital similar in terms to the cost of capital in writing the new business. For the most part, M&A transactions in the Life space are heavily weighted in favor of existing blocks and treated as runoff from a valuation perspective.

Historically, these deals have taken the form of reinsurance transactions. The most common structure is indemnity coinsurance, where reserves and supporting assets are transferred by the seller to the reinsurer, in order to transfer the "economics" of the business being sold. Other (less common) arrangements include modified coinsurance and funds withheld approaches, where some or all, of the reserves and supporting assets remain with the selling insurer, resulting in less control for the buyer over investment strategy going forward. Hybrid structures and collateral driven structures are also available.

On the legislative front, states are beginning to enact laws that are favorable to Life transfers. Most recently, Oklahoma and Connecticut enacted statutes that apply to Life business and avoided certain limitations previously imposed by other states. Although there is clearly positive momentum, expect to see a fair amount of disparity between the states in the overall regulatory landscape which could affect the approvability of Life transfers until/unless increased uniformity and comity is established.

Maryann Taylor is a Partner at D'Amato & Lynch and Vice Chair of the AIRROC Publication Committee. mtaylor@damato-lynch.com.


Practical Knowledge.
Global Insight.

The Regulatory Requirements: How to Drive Your Next Deal Home…Without a Google Map

Summary by Maryann Taylor

The last session of the day was capped off with a presentation by Al Bottalico of Locke Lord LLP, Douglas Hartz the Deputy Director of the Washington State Office of the Insurance Commissioner, Robert Kasinow of Locke Lord LLP, Jim Wrynn a Senior Managing Director of FTI Consulting, Inc. and Jonathan Bank of Locke Lord LLP who moderated the discussion. The panel provided a broad overview of some of the key considerations that regulators focus on during the approval process of entity sales and other transfer mechanisms such as loss portfolio transfers ("LPT"), commutations, or novations. They also highlighted some of the concerns from a regulatory perspective in analyzing deals and upholding a core mission of protecting policyholders. The protection of policyholders contributes to maintaining public confidence and stability in the insurance industry. If the trust placed in the insurance industry is violated, the whole industry suffers.

Regulators strive to be uniform across the states and indeed one of the main objectives of the NAIC is the harmonization of state laws. There is a great deal of communication and collaboration among regulators through the NAIC process to establish and maintain a common framework for the supervision and analysis of these deals. State regulators understand and recognize that the potential for variation across states makes strategic planning for companies more uncertain and thus potentially more expensive. In fact, many of the critical considerations for market participants in evaluating any deal is the same thing that regulators look at: the deal objective, the likely outcome and a thorough risk assessment.

Examining trends and understanding the rationale for the deal is vitally important to regulators. They want to understand the purpose of the transaction so that they can fully vet and evaluate the risk on both sides of the transaction, as well as the implications to policyholders. Regulators will also look very closely at who is on the acquiring side of the transaction. The provisions of the Insurance Holding Company System Regulatory Act (See, https://www.naic.org/store/free/MDL-440.pdf) provides a model for state enactments to regulate insurance company affiliations and essentially guides the approval process of who can acquire "control" over an insurer in an acquisition or merger transaction. These enactments are a required element of the NAIC Accreditation Program and something substantially similar has been adopted by all accredited U.S. jurisdictions thereby assuring that all states have similar regulations. The transaction must be both financially reasonable to the transferring entity and also provide adequate financial protection for the acquiring entity to address concerns regarding adverse claim development. If the use of an alternative transfer mechanism is the chosen solution, finding a financially strong, admitted and rated carrier or reinsurer with experience executing similar solutions is important in streamlining the process and making the transaction efficient and successful. ●

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Luann Petrellis

AIRROC Person of the Year 2018

(left to right): Leah Spivey, Luann Petrellis, Carolyn Fahey.

Luann Petrellis may be relatively new to the AIRROC network, but her experience in managing run-off portfolios and her most recent work on legislative reform efforts to support restructuring have fueled her rapid ascension into the AIRROC panoply of stars: The AIRROC Person of the Year Award of 2018. She joins past winners: Stephen Johnson (2017); William Flaherty (2016); The Reliance Team (2015); Anna Petropolous (2014); Karl Wall (2013); Robert Sherwood (2012); Gary Lee and Andrew Rothseid (2011); Mindy Kipness (2010), Barbara Murray (2009), Dan Schwartzmann (2008), Brian Snover (2007), Oliver Horbelt (2006), and Paul Dassenko (2005).

In presenting the award, Carolyn Fahey, the Executive Director of AIRROC, acknowledged Luann's credentials and significant experience. "The award was created so that AIRROC can give recognition to someone who has had an impact in the legacy sector of the insurance industry." Luann received five nominations! One of her nominator's said about her – "No one is more deserving of this award for all she has done, in a very modest manner, in promoting restructuring legislation in the U.S." Another supporter noted she used great "courage, conviction and persistence" to push this agenda forward. And another noted: "For over two decades, Luann served as a chief operating officer for global insurance carriers managing the run-off operations of P&C and workers' compensation portfolios as well as ceded and assumed reinsurance business. She established and implemented successful run-off plans to achieve operational, regulatory and capital efficiencies, leading groups of professionals on a number of projects focusing on the orderly run-off of large blocks of insurance and reinsurance business."

If the wind will not serve, take to the oars.

Latin Proverb

Luann Petrellis believed that, to compete globally, the U.S. insurance industry could benefit from restructuring tools similar to what exist in the UK and most other modern jurisdictions. To that end, she worked to change the status quo to provide effective restructuring options that adequately protect policyholders and provide flexibility to efficiently manage runoff portfolios.

Through collaboration with then-Superintendent of Banking and Insurance for Rhode Island, Joe Torti, Luann worked toward facilitating legislation that would allow companies to transfer blocks of runoff business through a court sanctioned novation process with multiple safeguards for policyholder protection. This legislation, referred to as the Insurance Business Transfer (IBT), was the first restructuring tool of its kind in the U.S. that enables companies to achieve finality for commercial P&C legacy liabilities – a critical goal for any company considering restructuring. Insurance companies are bought and sold in their entirety but there are limited options to transfer embedded blocks of business within the company aside from reinsurance options in various forms. However, reinsurance creates long-term relationships and reporting requirements where many companies would prefer finality on transfer.

More recently, Luann has been working with the Oklahoma Insurance Department to bring to fruition that state's Insurance Business Transfer Act, effective 1 November 2018, which will allow an insurer or reinsurer, through a court supervised process, to transfer a portfolio of business to another insurer domiciled in Oklahoma. The Oklahoma statute is broader than the Rhode Island legislation because it applies to all lines of business. The Oklahoma act also includes both active and discontinued business, so it offers broad opportunities for companies to restructure. Luann has been in the forefront of these recent efforts to create the business regulatory framework necessary for companies to more effectively compete in the global economy.

AIRROC looks forward to continued work with Luann in building the intellectual capital and credibility that is critical to support industry initiatives to develop effective markets and run-off solutions. ●

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

AIRROC Congratulates Kayla Cecchine

Recipient of the 2018 Trish Getty Scholarship

AIRROC is pleased for the 7th year to have presented the Trish Getty Scholarship to a very deserving student. This year's award recipient is Kayla Cecchine, who will graduate in May 2020 from Saint Joseph's University in Philadelphia, PA. She is pursuing a double major in Risk Management Insurance and Business Intelligence and Analytics. In presenting the scholarship, AIRROC Director Ed Gibney highlighted her accomplishments.

Kayla has a 3.9 GPA at St. Joseph's, and is presently the VP of Operations for Gamma Iota Sigma, the fraternity for professional risk management, insurance, and actuarial students. She has already gained real-world experience, having interned at AIG, US Liability Insurance, and AmerisourceBergen. Kayla is on the Dean's List and is the recipient of both the Women of Purpose Award and the Justice Award.

The $5,000 annual scholarship was established by the AIRROC Board of Directors in honor of Trish Getty, the founding Executive Director of AIRROC. It is awarded to a student studying Insurance, Risk Management, or Actuarial Science who is in need of financial aid for tuition. Students submit an essay as part of the application process, and a subcommittee of the AIRROC board makes the selection each year.

In accepting her award, Kayla expressed how honored she was to have been chosen and emphasized that this type of aid is vital in helping to develop the next generation of talent for the insurance industry. In closing, Kayla remarked, "I am so fortunate and honored to work in this industry of integrity and allegiance with work that is pioneering and dynamic. Above all, I am honored and truly humbled to be selected for this award that honors Trish Getty. This

amazing scholarship opportunity truly amplifies Trish Getty's true character and unwavering dedication for supporting the development and dreams of the young professionals entering the industry."

AIRROC wishes Kayla the best as she finishes her schooling and hopes that we see her working for an AIRROC member company in the future!

AIRROC NJ 2018

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AIRROC NJ 2018

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