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AIRROC matters

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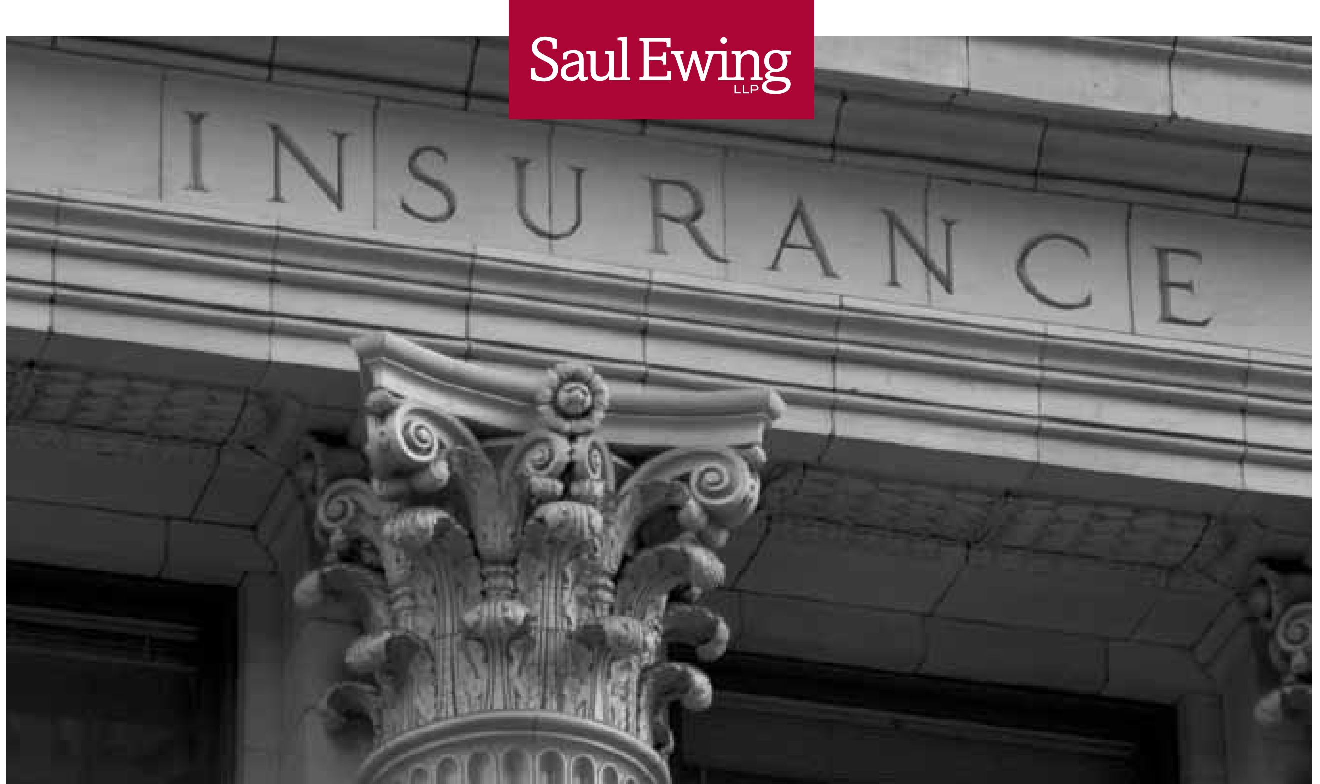

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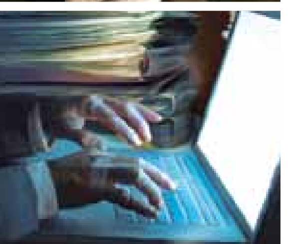

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ANNIVERSARY NOTES

AIRROC is 10…Ten Years After 4
Peter A. Scarpato

…and what a decade it has been! 5
Carolyn Fahey

Anniversary Facts 6

AIRROC MATTERS CLASSIC

Why We Work in "Run-Off" 9
Andrew Maneval with Intro by Keith Kaplan

WHO'S TALKING

IRLA Brighton – Roundtable 2014 12

LEGALESE

E-mining for Evidence 20
Larry P. Schiffer & Alexandra E. Chopin

SPOTLIGHT

Marcus Doran 24
Connie D. O'Mara & Bina Dagar

AIRROC UPDATE

Message from the Executive Director AIRROC — on the MOOOOVE! 26
Carolyn Fahey

Thanks to our Corporate Partners 26

AIRROC's 10th Annual Commutations & Networking Forum 27
Ed Gibney

Advertisers in this Issue 27

CONTINUING ED

AIRROC Educational Session Summaries/Chicago/June 2014 30
Michael H. Goldstein

Networking / Commutation Day & Membership Meeting / July 2014 32
Michael H. Goldstein & William J. Brady

PRESENT VALUE

News & Events / Mark Your Calendar 36
Francine L. Semaya & Peter Bickford

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AIRROC is 10

Ten Years After. . .

Little did I know, sitting at my desk at AIG some ten years ago, that my assignment as corporate board member of the fledgling Association of Insurance and Reinsurance Run-Off Companies would become one of those defining moments in my run-off career. Back then, the "run off" moniker was seen, by some, as a negative classification of a widely misunderstood and unappreciated segment of the industry. The black sheep, if you will, of reinsurance. Run-off companies, it was felt, were "running away" from their contractual obligations, forcing their unfortunate mainstream counterparties through unwarranted hoops to enforce time-honored reinsurance agreements.

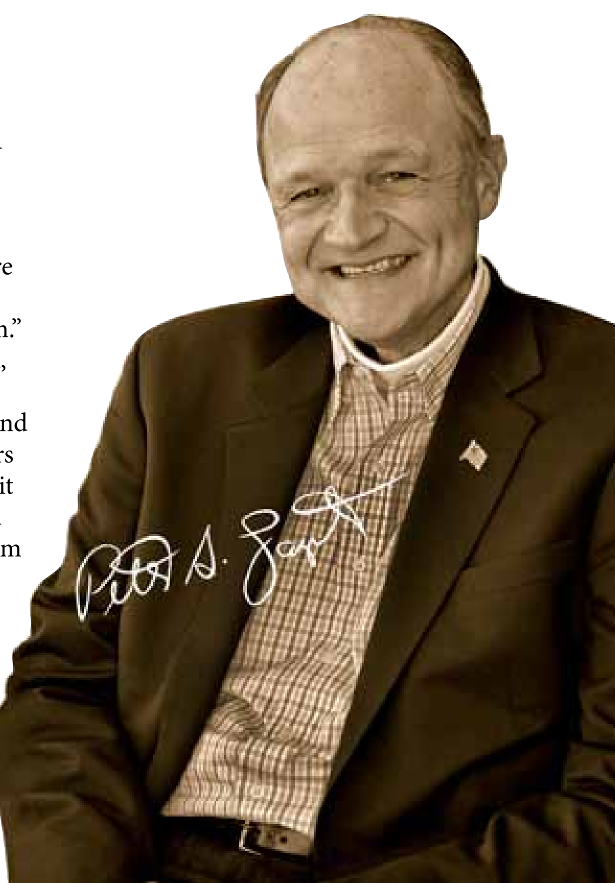
"If diverse parties are given a forum to work together, they can resolve many issues between them." AIRROC gives them that forum.

But for a small group of companies and individuals, the time had come not only to expose these beliefs to the cleansing light of day, but to create an organization whose mission is as relevant now as it was then: *"…to promote and represent the common interests of insurance and reinsurance companies with legacy business…[by] improving professional and managerial standards and practices and enhancing knowledge and communications within and outside of the run-off industry."*

And so "AIRROC" was born. The goals were substantial and the stakes were high. Our first Executive Director, Trish Getty, said it best: "It's no coincidence that AIRROC's logo—a capitalized presentation of our acronym under a broad triangle—evokes the image of the Association's members under one roof. AIRROC has gathered a group of companies involved in or impacted by run-off who will work together to improve communications and serve common business, educational and strategic interests. If diverse parties are given a forum to work together, they can resolve many issues between them." AIRROC gives them that forum. And, as I wrote in an introductory press release, "AIRROC's goals, objectives and committees will address critical factors the industry must accept and actions it must take to understand, manage and ultimately realize maximum value from run-off business."

Has AIRROC lived up to these high aspirations? Look at the record.

- AIRROC's widely successful October Commutations Event draws hundreds of delegates from all over the world to meet, learn, transact business and socialize;
- AIRROC Matters chronicles timely topics and features expansive interviews of key people from within and outside the industry, giving a common voice to all in the business of leveraging legacy liabilities;



- AIRROC's quarterly meetings and educational sessions draw together business, legal, operations and technical experts who impart useful information to all managing this business, in a forum that keeps people interacting on a personal, not electronic, level;
- AIRROC's Board of Directors continues to plot a fresh course for the organization, launching many new, necessary initiatives like the AIRROC Dispute Resolution Procedure;
- AIRROC's current Executive Director, Carolyn Fahey, has continued and exponentially expanded upon the solid foundation and fulsome membership inherited from our founding Executive Director, Trish Getty.

Over the years, the organization, like the magazine, has become the "go to" place…

In many ways, the scope of AIRROC's decade of success— it's increasingly influential impact on broader aspects of the industry and commitment to set the bar ever higher—is reflected in the parallel advancements in tone and content of AIRROC Matters. Over the years, the organization, like the magazine, has become the "go to" place (a) to obtain up-to-date information about the latest and greatest trends in the industry (b) to "meet" and hear directly from the people, firms and agencies most involved in run-off/legacy matters and (c) to share useful strategies, whether operational, strategic or technical, to manage the business efficiently and effectively. Like the blossoming new designs and creative content of the magazine, AIRROC has grown in status and stature, membership and associational outreach.

For the organization, the numbers are in. The tally is taken. And the results are excellent. Happy 10th Anniversary AIRROC! ●

Peter A. Scarpato, Editor & Vice Chair AIRROC Matters,
Vice President – Ceded Reinsurance of ACE Brandywine.
peter.scarpato@brandywineholdings.com

. . . and what a decade it has been!

as we look forward to many more successes for AIRROC…

AIRROC is 10…and what an exciting 10 years it has been! As some of you may know, diamonds are the modern day symbol for a 10th anniversary but did you know they are formed through natural processes involving intense heat, high pressures, and emergence to the surface—much like AIRROC's evolution. Read Peter's assessment on the previous page in this issue of our 10-year legacy and its impact on the industry.

Years ago, I learned of the desire to form a run-off association when I was with the Reinsurance Association of America (RAA). I, Frank Nutter and Debra Hall attended a meeting of a group who were seeking membership to the RAA. Among other things, they wanted a forum so they could meet to get their business accomplished.

Unfortunately, adding these companies as RAA members would have required a bylaw change and the RAA board decided against it. So a new association was formed—AIRROC. I assisted Trish Getty with the creation of the structure to accomplish their goals. To piggy back on what Peter wrote in his article—little did I know what a defining career moment that was for me. Eight years later I find myself at the helm of this very focused organization that is accomplishing exactly what it set out to do by offering a forum to members to meet and get their business accomplished.

I did some research while preparing for the AIRROC diamond anniversary and on the following pages, I offer you lists relating to our growth over the years.

Cheers to all of the individuals and companies that believed, still believe and will always believe in AIRROC and what we do. I look forward to many more successful years! ●

Carolyn W. Fahey

Carolyn Fahey
Executive Director

AIRROC

2004

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Carolyn Fahey, AIRROC Executive Director

23 Initial Founding Companies:

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Allstate
AXA
CNA
Centre Re Solutions
CX Re
Equitas
Everest Re
General Security National Ins. Co./SCOR
Gerling Global
Hartford/Horizon
The Home In Liquidation
IMS Ins. Co. of Puerto Rico/International Solutions
Kemper Insurance Companies
Legion Ins. Co. In Liquidation/Helix UK
Orion Insurance Company in Liquidation/PWC
PMA Re
Reliance Ins. Co. In Liquidation
ROM
Seaton/Cavell BCS
Swiss Re
TIG Insurance Company/Riverstone
Transit in Liquidation/Barbagallo & Assoc.

16 of the Founding Members are Still Members:

AIG
Allstate
AXA
CNA
CX Re
General Security National Ins. Co./SCOR
Gerling Global (Now Global Re)
Hartford
The Home In Liquidation
Legion Ins. Co. In Liquidation
Orion Insurance Company in Liquidation/PWC
PMA (now Excalibur)
Reliance Ins. Co. In Liquidation
ROM
Swiss Re
TIG Insurance Company/Riverstone

at 10!

In celebration of AIRROC's 10th anniversary, here are some interesting facts about AIRROC Matters and the association through the years…..

AIRROC MATTERS STATS:
FIRST ISSUE: FALL 2005
NUMBER OF ISSUES OF AIRROC MATTERS: 31

Past Recipients of AIRROC Person of the Year:

2005 Paul Dassenko
2006 Oliver Horbelt
2007 Brian Snover
2008 Dan Schwarzmann
2009 Barbara Murray
2010 Mindy Kipness
2011 Gary Lee and Andrew Rothseid
2012 Robert Sherwood
2013 Karl Wall

2005

2005 AIRROC Publication Committee:

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Harold S. Horwich, Bingham McCutchen
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5 on the 2005 Publication Committee are still on the committee:

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Andrew Maneval

Why We Work in "Run-Off"

Today, we are introducing AIRROC Matters Classics that will appear occasionally in this publication. These will be reprints of favorite articles with a timeless quality about them. In early 2008, we published this column by Andrew Maneval, then Chairman of AIRROC. At the time, I was in my 7th year of chasing reinsurance recoveries for the Reliance estate and enjoying perhaps the greatest job satisfaction in my career, notwithstanding entreaties from former colleagues on the active side saying "Don't you miss the big time?" Until this article appeared, I was at a loss to articulate in a simple manner why I love what I do. When Andrew wrote, "What we do, every day, is about solving the very toughest problems," and included an apt analogy from Hollywood, it resonated with me ever since. It is the very fact that we are constantly challenged to solve difficult problems that makes run-off a very rewarding profession. Andrew's style is both entertaining and informative. We hope you enjoy it.

Keith Kaplan, Co-Chair, AIRROC Publication Committee

We are sometimes asked, "Do you like your job?" We may happen to get invited to parties and are asked, by new acquaintances, "What do you do for work?" These seem like such easy questions. But we answer them vaguely or softly, change the subject, or even just make something up. Once, I worked as "a repairman for the Hubble Space Telescope." I know — *Calling Dr. Freud!*

First, there is *anyone* who works for an insurance company. Then, there are people whose job it is to "downsize" their companies! If you're in "claims" and you're not Wallace Stevens, keep quiet at the party. Or maybe you're a bill collector. That's well liked. Are your days spent on GAAP and stat accounting? An "actuary"? And, what's *reinsurance*? This is like jumping from ring to ring in Dante's Inferno!

Why do we work in run-off? I know us. I've been one of us for a long time. We really like what we do. So, the better question is, how do we explain to others why we do this work? Can we convince others to move over into the run-off operations from the ongoing insurance business, to accept job offers in our companies, or to join up as workers in our industry?

Do we need to convince anyone else? It's so hard to do. Katrina losses occur and most of society paints a mustache on the evil insurance professional's face. An insurance company becomes insolvent and everyone thinks "Enron".

But that's precisely where the key is for finding the pride and fulfillment in our work. What we do, every day, is about solving the very toughest problems. More often than not, those problems have been so large they wore down our own companies!

So, we deal not with one problem at a time, but with three:

First, the threshold problem of insureds and reinsureds that have sustained terrible losses and need loss payments;

Second, the problem of stakeholders in our companies, trying, through us, to find a means by which to pay valid claims, to make good on the original promise, to fairly and promptly distribute assets that rightly belong to creditors, or to permit the movement of capital into productive, valuable activities; and

Third, the problem of performing these many critical functions when we are generally disliked, mistrusted, challenged, and harassed by customers, parent companies, state insurance departments, politicians, and basically everyone else, probably down to the actual repairmen of the Hubble Space Telescope!

I'm not comparing us to EMTs but, in the corporate world, we live in the absolute vortex of troubles.

This may sound like complaining, but it's not. These features are exactly the most exciting and rewarding aspects of run-off work: we're active where the greatest need exists. I'm not comparing us to EMTs but, in the corporate world, we live in the absolute vortex of troubles. By residing there, we have the broadest opportunities for resolving complex, impenetrable multi-faceted problems of any job I know. For most of us, the field of endeavor is wide open.

There is an old saying that compares the sometimes overlooked qualities of Ginger Rogers with the high visibility panache of Fred Astaire:

Why We Work in "Run-off" (continued)

"Why, she could do everything he could do, except backwards, and in heels!"

That's our part in the risk-management world: *Everything*, except subject to constant suspicion and scrutiny, for customers under maximum stress, relying on the work of worried employees, and frequently with tenuous access to capital, or worse!

Plus, we must accomplish our many difficult objectives, while regulated by strict laws and regulatory oversight, bringing together numerous professional disciplines with considerable technical expertise, and do all of these things with unwavering fealty to the highest principles of trust and integrity.

No wonder we like what we do. Where else can you find such challenges — and opportunities — to be good and do good? Don't apologize at parties anymore. Also, you're not obliged to convince anyone else. ●

Postscript

Seven years on, is this article still relevant? I think so. We've been through a devastating economic recession, "Super" storms and flooding, consolidation in the insurance/reinsurance industry, heightened concerns over climate change, multiple levels of "downsizing," and thousands of daunting trials and tribulations (figuratively and literally!) in our individual companies. Expense burdens and constraints continue to increase. Capital has grown even more mobile.

Yet, someone has to fix the old, broken parts, provide companies with an open road ahead and, most importantly, take responsibility to deal with the industry's toughest exposures and losses. To quote a learned sage, "this ain't tiddlywinks!"

"Run-off" is an organic, positive, necessary part of a healthy (re)insurance industry. Businesses need to test new markets and products; often, the outcome is "run-off." Ultimately, most relationships end. What happens? Run-off. Customer requirements and demands change. Result? Run-off. Specialists and dedicated professionals are needed to deal with the most volatile – and therefore the most important – of the insurance industry's protections against catastrophe. Who is called on? You know. ●

Specialists and dedicated professionals are needed to deal with the most volatile … of the insurance industry's protections against catastrophe.

Andrew Maneval is President of Chesham Consulting and provides services as an insurance and reinsurance Umpire, Arbitrator and Consultant. andrewmaneval@gmail.com

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IRLA Brighton

Participants

Dan Ascher, Reporter, The Insurance Insider

Alan Augustin, Director, PwC

Will Bridger, Managing Director – Acquisitions, Compre Group

Paul Corver, Chairman IRLA and Head of M&A (UK/Europe), R&Q

Charlotte Echarti, General Manager, Run-Off Solutions, Hannover Re

Carolyn Fahey, Executive Director, AIRROC

Jim Freeman, Relationship Director, Insurance, RBS

Arndt Gossmann, Chief Executive Officer, Darag

Phillip Grant, Principal, Clay Chimneys Consulting Ltd.

Steve Hennessey, IRLA Board Member and Head of Commutations, Novae Group plc

Shaun Linton, Business Development Executive, Charles Taylor

Joe McCullough, Partner, Litigation Practice Group and Leader, Insurance/Reinsurance Industry Group, Freeborn & Peters LLP

Our very own Carolyn Fahey, Executive Director of AIRROC, was invited to participate in a roundtable discussion with other key players in the legacy market during the recent annual IRLA Congress held in Brighton. The roundtable was chaired by Dan Ascher of the Insurance Insider and resulted in a spirited and informative discussion on such topics as the outlook and trends for the legacy market as well as views on the "legacy-to-live" moves by some players.

We are excited to present an excerpt of some of the conversation highlights. The full article published by the Insurance Insider can be found at the following link: http://www.airroc.org/irla-brighton-roundtable.

Dan Ascher

Reporter, The Insurance Insider

Thank you very much for joining us today. One of the most prominent topics of conversation at this year's IRLA Congress, seemingly, is the move by some legacy players into the live market. So it's only fitting that we move around the table to get your insight on where the market's going.

Phillip Grant

Principal, Clay Chimneys Consulting Ltd.

What's happening is what perhaps we couldn't foresee a number of years ago, which is that the legacy market has matured. What we're seeing now is, as legacy business becomes recognised in the insurance cycle, it's less obviously visible that a lot of companies and groups are making the decision to manage their legacy in-house as part of the normal cycle of business. So I agree with Shaun and Paul, there's potentially an endless supply of this stuff, but it's not quite as securely earmarked as what we used to see.

Carolyn Fahey

Executive Director, AIRROC

The run-off industry is very far from drying up. It's easy to see that when you attend events hosted by groups like IRLA and AIRROC. We are seeing increased attendance and interest in what we are doing – all signs that point to the legacy sector's continued relevance in the industry. If it was drying up and going away then I don't think we would see this trend of increased membership and activity.

Joe McCullough

Partner, Litigation Practice Group and Leader, Insurance/Reinsurance Industry Group, Freeborn & Peters LLP

My clients are having to dig deeper to persuade companies with books of legacy business to consider for the first time that they have an opportunity to outsource run-off of their business to experts who have the resources and capability to efficiently handle the day-to-day burdens of winding it up. Clients searching for new legacy business targets are having to go farther afield. The low-hanging fruit has already been identified, and those opportunities are now gone. Increasingly intense competition for acquisitions of legacy business make this a challenge.

So I am seeing clients travelling to the US "backwater", which means outside the major East Coast business centres. Most opportunities are in the Midwest, south and west. The opportunities are there, and the challenge is educating companies in those locations that there may be a way for them to get rid of a headache book of legacy business, selling it to a run-off provider of services that can use economies of scale to handle it much more cost-effectively.

Arndt Gossmann

Chief Executive Officer, Darag

Continental Europe is in a completely different position to the UK, as transferring legacy portfolios is quite a new instrument for many insurers. But the size of run-off that they hold in their books is tremendous. Hence, that simple growth offers a broad potential for diversification. And the opportunity to grow is too big to lose sight of it.

Dan Ascher
Jim, as Alan was saying, it's about access to capital. Is capital flowing in?

Jim Freeman

Relationship Director, Insurance, RBS

Yes, as a lender to the insurance sector, we see a number of different things, but what's clear to me is that we fund legacy/run-off transactions and we fund live businesses too. Increasingly now, we're seeing a combination of legacy and live, so that potentially changes the dynamic. It seems to me as an outsider, that there are very different disciplines between a live underwriter and a run-off business and I think the focus is very different.

So as a lender to the sector, I guess we will always try to make sure that people are fully aware of the risks involved. In terms of capital – yes, capital is flowing into the market all the time and we're seeing an increase in debt availability. It's a good time to be a borrower at the moment I would say, so if you're a good client with a track record, debt should be attainable at the moment.

Dan Ascher
The new Prudential Regulation Authority (PRA) guidelines around alternative schemes of arrangement have come out. That's probably good news for you guys as alternative schemes are going to become more frequently used.

Alan Augustin

Director, PwC

It's interesting that people are saying that alternative schemes or arrangements are the future. I think alternative schemes of arrangement are the here and now. The focus in the market has been on policyholder protection for a long time. And actually what's happened has been more of an endorsement and a statement that this is the position of the regulator rather than anything changing.

From an adviser perspective, certainty is good. We're then able to clearly advise our clients in terms of what schemes will and will not work, what the current environment is and so construct the proposal around that.

Schemes have always been living, moving things in any case—there's always been innovation, there's always been evolution. So therefore, what's in front of us is just a different environment. The historic traditional finality schemes, which cut off all liabilities, are probably going to be applicable in a more limited context than we've seen before.

We will see schemes with different features, such as opt-outs and replacement cover, and, if constructed in a fair manner, I can see those getting regulatory consent.

Carolyn Fahey
Bringing it across the pond to the US, we don't have tools such as schemes, so we need to look at it in a different way. We have a couple of states that have thrown their cap in the ring and attempted to make available some kind of scheme of arrangement.

One of these is Vermont. In February, the Legacy Insurance Management Act

Photos/Claudia Gannon

You don’t have to be the biggest to be The Best.

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Joe McCullough, 312-360-6327
jmccullough@freeborn.com

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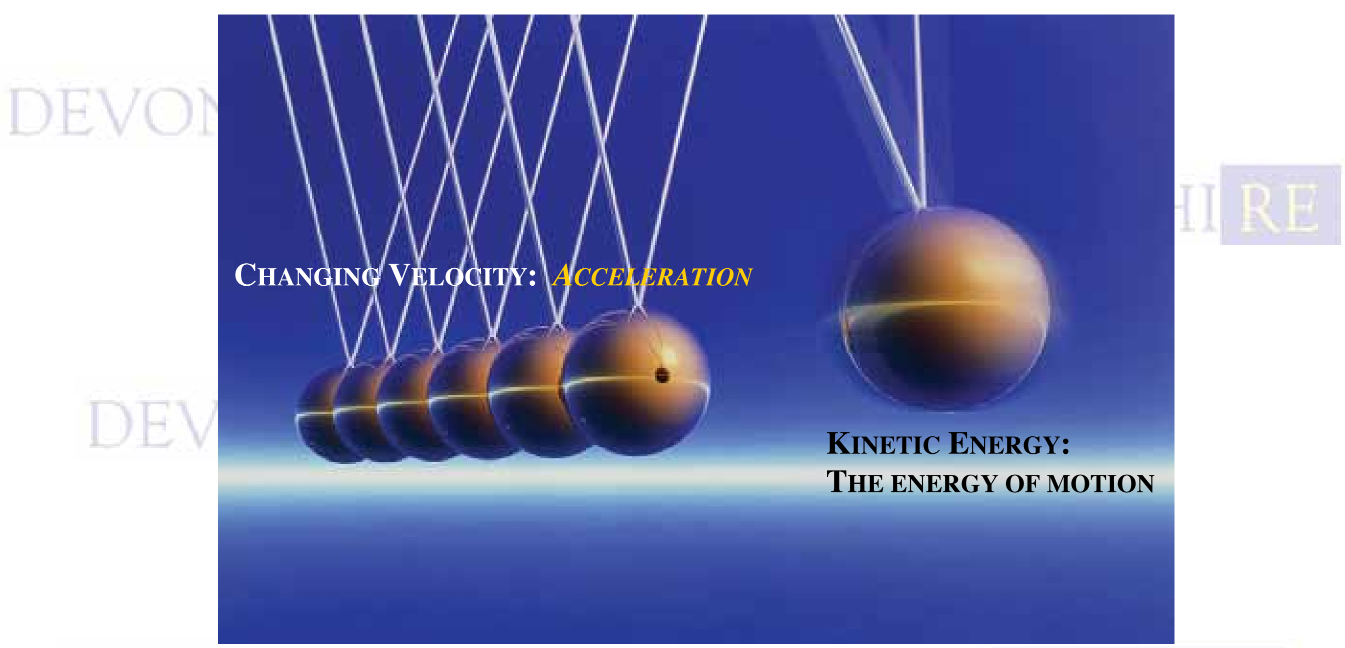

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Devonshire is a (re)insurance management, audit and consulting company with offices in California and New York. The company specializes in reinsurance, including *accelerated* run-off management, audits of ceding companies and coverholders, operational support and consulting.

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(LIMA) was enacted. LIMA is the first US legislation to enable the transfer of closed blocks of commercial insurance and reinsurance. There are a lot of questions about if and how it will really work transactionally, but at least Vermont is being progressive and has made an attempt to bring some of these tools to the market.

Dan Ascher
If there's no such thing as a scheme in the US as we know it, is the UK putting itself at a disadvantage by cutting off that business?

Joe McCullough
The regulation of insurance in the US is handled by the individual states and not the federal government. Policyholders have incredible power in the US as voters. State governors are elected officials, and, in some states, even insurance commissioners are elected—so there's great sensitivity to offending the voting public and powerful lobbies.

The plaintiffs' bar can wield a tremendous amount of influence over state officials, and legislation that could impact the rights of policyholders to pursue individual claims on long-tail business would be met with strong opposition. So the chance of schemes taking off big time in the US is a pipe dream, in my opinion.

Most states are going to resist implementing legislation which would facilitate solvent schemes. And there will also be a lot of pushback on re-domestication of companies to Rhode Island for the purpose of side-stepping particular states' impediments to cut off scheme arrangements. They're hugely unpopular in the US with insurance departments and with other elected officials.

Dan Ascher
What the PRA have said is essentially that they are going to submit their views on some schemes to the court once it's subject to judicial approval. In a more general sense, do you really feel the legacy sector gets a fair hearing, in UK courts to start with?

Paul Corver
Chairman of IRLA and Head of M&A (UK/Europe) at R&Q

I suppose a concern is if you've got to get all the way to a Directions hearing before you understand what the regulator might think about it, and whether they are going to submit something – it's almost "well, could we not know a little bit sooner?" There needs to be good communication in that process.

So back to your question, are legacy companies treated fairly in the courts? Yes, they have been. Are legacy companies treated fairly in the US courts against the large US policyholder? Not always. But that's just general litigation – it's no different for legacy to a live company. We all get unfavourable decisions where policies have been incorrectly interpreted.

Dan Ascher
That's one for you, Joe.

Joe McCullough
In the US there's a distinct difference between how disputes involving policyholders and insurers are typically resolved, and how reinsurance disputes are resolved. Around 90 percent of disputes between cedants and reinsurers are arbitrated and are not submitted to courts for resolution. There are lessons to be learned from the legacy market's history of handling reinsurance disputes with American ceding companies. Legacy reinsurers, particularly those outside the US, need to carefully document their good faith in the handling of claims.

In the past, some run-off reinsurers often made the mistake of waiting too long to challenge claims and then they were unresponsive to correspondence sent by their US ceding companies. Such delay and lack of response to billings by a US insurer creates a record that the US cedant can exploit in an arbitration, accusing the legacy reinsurer of being a "no pay, no way" company, looking for excuses to dodge its liabilities. Legacy reinsurers can overcome these typical accusations by being proactive, auditing earlier, raising legitimate claims and defences, and creating a record of their good faith in claims handling. Provided they demonstrate their good faith, and a neutral umpire is selected, reinsurers can get a fair hearing in the US.

Carolyn Fahey
One of the other things to consider is there are some alternative dispute mechanisms out there. AIRROC, for example, has a streamlined procedure that is a single arbitrator procedure to resolve disputes. It's been out there for a while and it hasn't been used as widely as we'd like to see it used. Part of the challenge is that both parties need to agree to use it.

So, as Joe mentioned, we're aware that the US arbitration system isn't working as effectively as it could be – especially when you're the owner of a run-off block with limited funds for dispute resolution. Looking for ways that you can resolve any disputes you might have expediently is an important step to consider for the business and for the industry.

Dan Ascher
We should mention Solvency II. Are there more opportunities ahead or are we going to see companies keeping the capital that sits behind the legacy books in order to maintain the capital standard?

Will Bridger
Managing Director – Acquisitions, Compre Group

You're going to see more deals from the larger groups that are going to be driven by Solvency II and the capital piece. It's not

because they haven't got enough capital, but it's about the risk-adjusted returns on the capital employed in the business.

But also what we're seeing is a number of mid-sized and small insurers that are actually well capitalised, but they don't have the infrastructure, the skill set or the knowledge to respond to Solvency II.

We're seeing a lot of counterparties asking how they respond to this and whether there is an alternative viable business model post-January 2016. So they are saying: "We still want to carry on business – do we have to carry on with business in an insurance company structure or is there an alternative?"

Charlotte Echarti

General Manager, Run-Off Solutions, Hannover Re

A lot of it is about management awareness. In the past, management didn't need to care about run-off — nobody was taking care of it. Now they have to take a decision. They have to ask actuaries "will that influence our business?" and "do we have lines of business to dispose of?" If you look at the Monte Carlo Rendez-Vous for the last two to three years, run-off is even a topic there, so it has become a greater focus.

Whether Solvency II will be a driver for run-off is very dependent on the book of business of the company. Nevertheless, what you hear very often is "why should I commute with a 'good name'?" Because you can add value to your own company. It has to be mutually rewarding from a profit, risk-management or administrative perspective. If it isn't, you should not commute, simple as that.

Dan Ascher

Looking 10 years ahead, what risks should we be looking for? Steve, you've got some fairly interesting ideas as to what will be the next asbestosis.

Steve Hennessey

IRLA Board Member and Head of Commutations, Novae Group plc

I am not sure that there will ever be another asbestos to be honest. In the short term I do not see too much changing; we will still see long-tail liabilities emanating from med-mal and healthcare out of the US, workers' compensation and EL too – and financial institutions of course.

We have been talking about UK PPOs for the last couple of years, but at the moment the trend still seems to be towards a lump sum in the UK rather than a PPO. Maybe this will change in the short term if private care costs start to rise. This will make the valuation of the lump sum more complex.

Likewise, this may also alter if there is more government intervention, but maybe this will only occur if those awarded lump sums use their pot of cash up and then rely on the NHS for their ongoing and future care. But obviously a great number of such cases would need to occur for the government to intervene.

As for environmental, possibly fracking, but it has been out there since the 1930s and 1940s and yet we still do not seem to know too much about it, maybe something from that, possibly it will be the next big EL/WCA tail.

Alan Augustin

Of the two areas where I can't believe there won't be any claims activity, one is very much cyber in terms of customer data and intellectual property.

It's such a huge risk to every single worldwide business, that I can't believe there won't be threats and claims around that. And the other area is in the financial sector. If we look at PPI, we've looked at these huge provisions that have been put up for mis-selling. There is going to be litigation and there will continue to be litigation. Those will find their way into the insurance markets and there will be some pain to be had.

Shaun Linton

Business Development Executive, Charles Taylor

Regardless of what the next big thing is—and it could be anything, it could be something we haven't even discussed big businesses are actually managed far better than they were 25 years ago. There are tighter controls and regulation. And therefore the impact of the next big thing might not have the same impact that asbestos did, all those years ago.

Charlotte Echarti

There's also another big difference as asbestos was underwritten over a long time, even after people knew of its danger, so challenges were generated over a long period. There might be more claims from sports injuries but I don't think they will be a topic in the legacy business because CTEs are causing "all or nothing" situations to the books, making them non-commutable in most cases.

Fracking reminds me a little bit of financial guarantee business – it's a question of how it is underwritten. It depends on the proper assessment of exposure and adequate wording exclusions. Therefore, I tend to see a lot of legacy business of the future being now created due to the soft market rather than by a specific topic. You see some companies starting underwriting MGA business and the question is, will they manage it properly or will they be the topic in 10 years' time?

Alan Augustin

There's a read-across into the UK employers' liability markets where we have been surprised by the number of claims that have come through, even in the last 12 months. So yes, we are better prepared, we have got better controls in place, but there are still surprises to come, no doubt. ●

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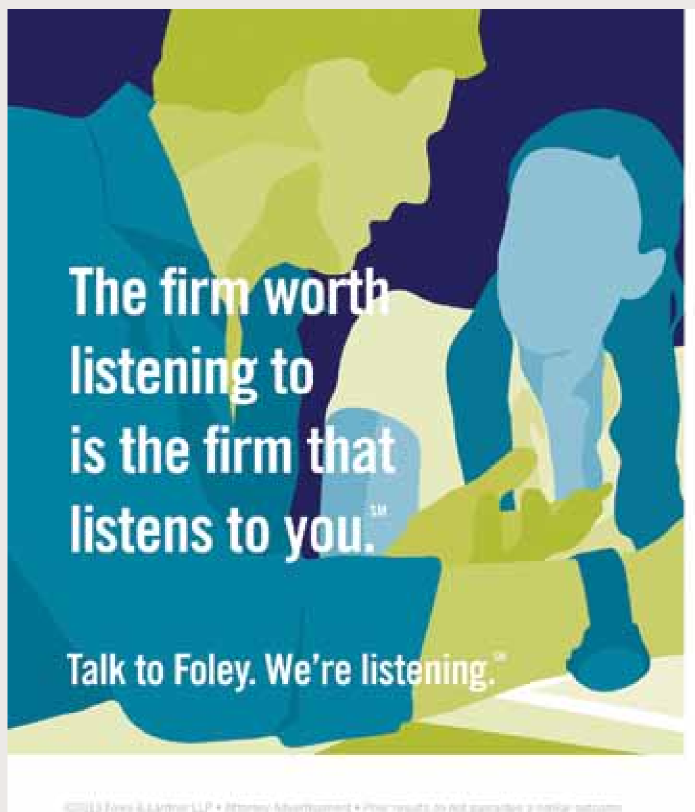

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E-mining for Evidence

Best Practices for Cost Effective and Compliant E-Discovery in Runoff

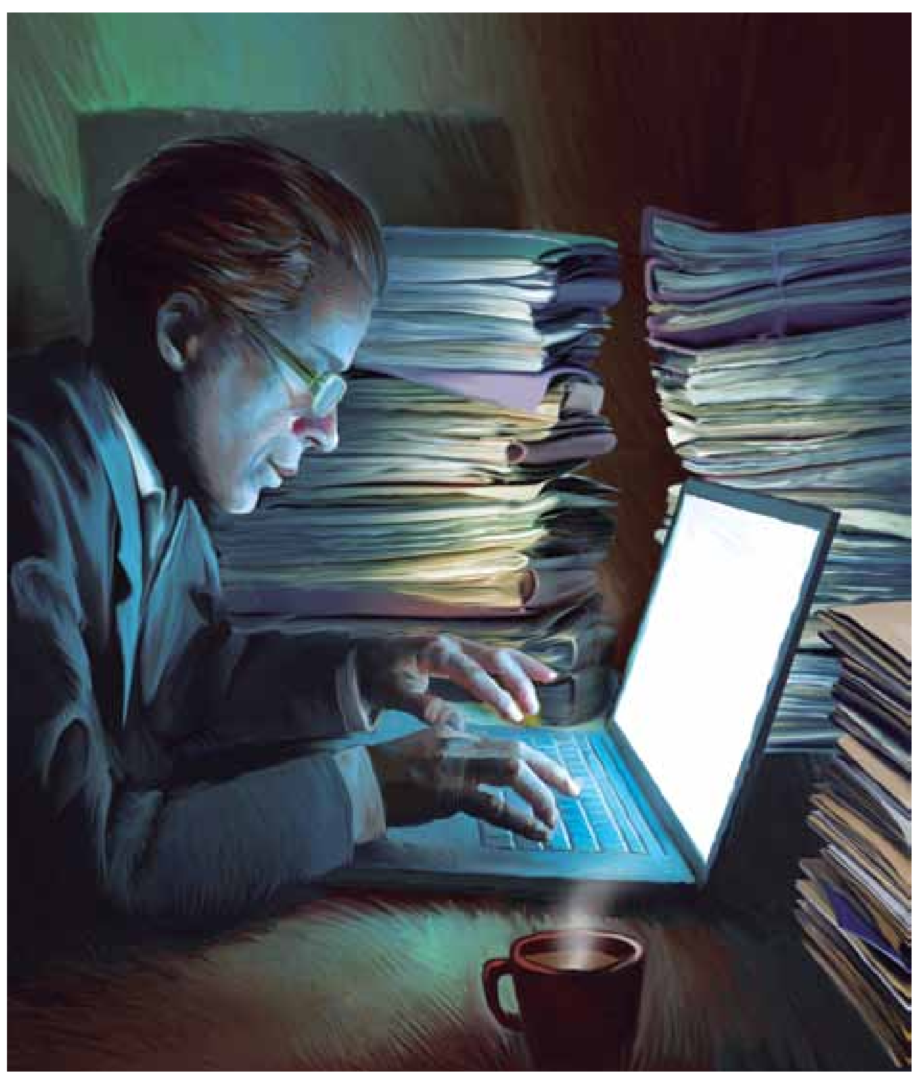
illustration / Rafael Edwards

Electronic discovery, or "e-discovery," refers to the manner in which a company or individual's electronically stored information ("ESI") is collected and produced as part of a discovery obligation. E-discovery has been a major focus in litigation since 2006 when the U.S. Supreme Court and the U.S. Congress first extended the reach of discovery in the federal courts to include electronic information. The state courts generally follow the case law interpreting the e-discovery provisions of the Federal Rules of Civil Procedure ("Federal Rules"). Nearly all fifty states have adopted similar e-discovery rules of their own.

Out of those e-discovery rules has emerged an entire industry devoted to e-discovery. There are countless seminars and books on e-discovery and e-discovery experts. Generally, every bar association, law firm, and court system has committees, rules and procedures addressing the subject. The litigation around and the industry focus on e-discovery is sure to intensify in the coming few years due to extensive amendments to the Federal Rules designed to cut costs, make discovery proportional to the issues in the case, and an increase cooperation among the parties is expected to go into effect in December 2015.

How E-discovery Impacts Companies in the Runoff Space

The federal and state e-discovery rules govern insurance and reinsurance legacy business disputes that are litigated in court the same way any other business dispute is governed. The e-discovery rules may also apply in certain arbitration proceedings if the parties elect to follow a state's procedural law or adopt the Federal Rules for discovery. The insurance and reinsurance industry, including the runoff industry, must be mindful of these e-discovery rules even outside of pending litigation or arbitration. This is because all companies have and continue to expend substantial costs to develop the appropriate data storage infrastructure and privacy and compliance procedures. Without that infrastructure and process, the monetary and business interruption costs to companies once in litigation or arbitration are often enormous.

For example, companies managing legacy insurance and reinsurance business use e-mail, software applications, mobile devices and other technology to access documents and communicate with existing

counterparties. These companies are moving away from storing information in paper files because the cost of storing data electronically is increasingly cheap, and because those companies want to be able to reach their data through the internet from smartphones, tablets, and laptops. As a result, nearly every case now involves ESI.

In addition, disputes arising from decades-old insurance and reinsurance contracts often implicate underwriting, placing, contracting, claims and other records. While discovery requests may seek records from active companies, runoff companies and legacy or discontinued business units of live companies also must preserve relevant or potentially relevant evidence under the federal and state discovery rules. This means that runoff or legacy businesses must timely suspend their often-robust records preservation and destruction policies or face sanctions for spoliation of evidence.

Best Practices for Effective (and Cost Effective) E-discovery

When it comes to discovery obligations, all companies and individuals—not just their lawyers or information technology professionals—have an obligation to understand and oversee the preservation, collection, review and production of their electronic information. Federal and state courts have established guidelines for parties and non-parties in discovery, but none of the courts have agreed upon an exact method or process for meeting e-discovery obligations. As a result, the guidelines are broad enough to leave room for the frequent (monthly, even weekly) advances in search and storage technology, but also means that courts are busy with motion practice from parties seeking to more specifically define their e-discovery obligations.

Arguably, the most important is to act early and often where discoverable electronic information is concerned.

Best practices in e-discovery differ depending on whether a company is in litigation. Before and after litigation (or arbitration), the focus should generally be on trimming the volume and types of data stored by the company, creating a records management process, and implementing good internal document retention and destruction policies and practices. Once litigation is anticipated or the company is in litigation (or arbitration), however, the focus should be on understanding the company's electronic information systems and where the relevant data "lives," establishing an appropriate legal hold for preservation of documents and a forensically sound collection process, and on building a communication network between the company's lawyers and key employees likely to be involved in the litigation (or arbitration).

Certain best practices are essential, however, no matter the stage of a case. Arguably, the most important is to act early and often where discoverable electronic information is concerned. The focus of the federal and state e-discovery rules is on that very principle, all of which place a premium on instituting early preservation safeguards and on alerting other counsel and the courts as soon as an ESI problem arises.

For example, one of the most common complaints among parties is that another party or non-party failed to preserve ESI. Though not a new issue in discovery generally, the immense volume and spread of ESI over different types of devices (in so many different and often-outdated formats) makes it challenging to preserve and collect potentially relevant electronic information for discovery. Court rules and case law require parties with potentially relevant information to institute a "litigation hold" as soon as the company becomes aware of the potential for litigation; this means that runoff and legacy business units of companies must implement a plan to immediately stop the destruction of all ESI potentially relevant to the case and further, to monitor *over the life of the entire case* the company's employees and electronic systems to prevent any destruction or modification of potentially relevant information. Best practices suggest that this scenario applies to arbitration as well.

Complicating this process is the fact that computers are typically set to automatically overwrite or delete information, hard drives may crash, new versions of software applications are issued and data must be migrated. Individuals often save copies of company emails or documents in many different places—on the hard drives of their office or home computers, portable storage drives and handheld devices. As a result, the company must act quickly to educate employees, independent contractors, Boards of Directors, and other service providers (such as outside accountants) about the need to preserve that ESI.

In addition, the company must implement a comprehensive plan to copy, store or otherwise collect that information for safekeeping and eventual use in discovery. Under the best of circumstances, implementing a preservation and collection plan is time consuming and expensive. We recommend forming a "litigation hold" team comprising representatives of at least the IT Department, Human Resources, and the Legal Department, which can oversee the litigation hold process with outside counsel. This is particularly important because parties frequently dispute when and how

E-mining for Evidence (continued)

the litigation hold was implemented and whether there was negligence or misconduct in doing so. This is beginning to happen, albeit with much less intensity, in reinsurance disputes. Courts have extensive discretion to impose monetary and non-monetary sanctions for failure to properly carry out the litigation hold, even despite limited "safe harbor" protection in the federal and state rules. The broad scope of an arbitration panel's authority to manage the proceeding provides arbitrators with similar powers.

We also recommend that companies have a litigation hold plan in place before litigation arises, which will inevitably make the preservation and collection process cheaper and more efficient. For example, a company with no litigation hold plan or internal policies about discovery obligations is more likely to save all of its email and other data out of an abundance of caution (to avoid later claims of spoliation), vastly increasing the costs to store, access and review the data in discovery. Even using the most innovative technology to search for just the "potentially relevant" data, this *commonly* means the difference *between spending hundreds of thousands of dollars in discovery*, and a process that costs a fraction of that amount.

Although the American legal system generally requires the parties to pay their own expenses, courts now recognize that the cost of ESI discovery can be enormous—sometimes unfairly so. Arbitrators also need to be cognizant of the volume and associated costs of collecting, storing, and searching ESI before granting discovery requests. Indeed, the exorbitant cost of electronic discovery is a focus of the 2015 amendments to the Federal Rules. Going forward, the Federal Rules "should be construed, administered, and employed by the court and the parties to secure the just, speedy and *inexpensive* determination of every action and proceeding."[1]

Parties are expected to work together to coordinate searches and production of ESI, a time-consuming and often contentious process.

In the meantime, many jurisdictions now will shift discovery costs to the *requesting party* where the ESI cannot be easily obtained. For example, some ESI is not "reasonably accessible" in a party's computer systems; in the runoff context, relevant financial or claims data may be housed on legacy computer systems that require special software programs or equipment to extract and convert the data. The parties should consider cost-sharing agreements when there is a significant amount of ESI in one party's systems that both parties need to review.

In addition to saving costs, resolving e-discovery issues *early and often* with opposing counsel and the court (or arbitration panel) is the best way to avoid unnecessary delay and motion practice—another key goal of the 2015 amendments to the Federal Rules. Parties are expected to work together to coordinate searches and production of ESI, a time-consuming and often contentious process.

In the state and federal courts, the parties are required to conduct early case conferences among counsel, and to file reports with and appear before the court to discuss the volume, time constraints and cost associated with the ESI portion of discovery. In a reinsurance arbitration, counsel should confer before the organizational meeting or at least at the organizational meeting. Arbitrators should inquire whether e-discovery issues are anticipated and encourage the parties to meet and resolve those issues. At a minimum, the best time and place to resolve questions concerning production of ESI is at the arbitration organizational meeting and not after document requests are served.

In the best scenario, parties to a legacy reinsurance dispute will have no difficulty exchanging e-mails, relevant claim, underwriting or contract files, and other ESI relevant to the case. Most runoff companies and discontinued business operations should have long since moved data and files to accessible systems. Although, claims and other issues may still arise from contracts not previously identified. As runoff companies become more educated about the rules and procedures involved, we expect that courts and arbitrators will need to become involved in e-discovery in only the most complex cases. ●

Endnotes

[1] Fed. R. Civ. P. 1 (proposed amendment) (emphasis added).

Larry P. Schiffer is a Partner in the New York office of Squire Patton Boggs (US) LLP, where he concentrates his practice on commercial litigation, including insurance and reinsurance disputes, mediation, and arbitration.
larry.schiffer@squirepb.com

Alexandra E. Chopin is a Partner in the Washington, D.C. office of Squire Patton Boggs (US) LLP, and is co-Chair of the Firm's eDiscovery and Data Management Team.
alexandra.chopin@squirepb.com

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Marcus Doran

Marcus opens up about the biz, life, likes and dislikes, and AIRROC

"Whatever is worth doing at all is worth doing well." — Philip Stanhope

Our Spotlight member's favorite quote says a lot about him. On a recent vacation in Kennebunkport, Maine, he unplugged completely at a rustic cottage, kayaking, and reading. In his professional life, he is no less thorough. He earned six designations through Continued Education courses. As a young claims adjuster, he remembers the satisfaction of handing insureds their check promptly and relieving their distress due to natural catastrophes. Also, to Marcus, intellectual curiosity is crucial to doing things well, because you are stretching and challenging yourself to learn, query, and probe.

What lessons have you learned from working in the re/insurance industry?

I started my insurance career as a personal lines claims trainee. I moved up through the ranks to supervise casualty adjusters before moving into reinsurance finance. That's where I was exposed to commutations, schemes, and liquidations. I came to The Hartford over 13 years ago to focus on that area of the re/insurance business. In respect to the run-off market, I've learned that it is a relationship business. The issues are complex, and there is a great deal of history between trading partners. Therefore, it is imperative to establish relationships based on respect, trust, and integrity.

If you could have a second career, what would it be?

I would love to do something creative, but I have no artistic or musical ability. Screenwriting would be interesting. Real life provides so many funny, entertaining, and inspiring stories.

What do you like best/worst about your current position?

I work in a group of 8 people with a combined total of over 200 years of experience. We all come from different backgrounds, such as claims, accounting, underwriting, etc. I learn a great deal from the different angles and perspectives my colleagues bring to resolving challenging problems. My least favorite thing is the minutiae of accounting.

What industry publications do you read on a regular basis?

I read the daily feeds from various industry websites; Insurance Journal, Advisen, and SNL news. I also read Business Insurance and AIRROC Matters (shameless plug), legal updates from Mealey's, and various firms.

What educational sessions or conferences do you attend and why?

I attend as many AIRROC sessions as possible, and I was recently at ARIAS. In the interest of full disclosure, I am on the AIRROC Education Committee. We have very knowledgeable speakers, and the member cost is a real bargain. As always, we welcome input on subjects from our members, and we can get great experts to make a presentation.

What is your favorite book?

My favorite genre of books is historical fiction. So, just about any book by David McCullough or Doris Kearns Goodwin.

What might (someone) be surprised to know about you?

Upon graduating from high school, I worked as a mechanic for several years before going college. I would have never envisioned doing what I am doing now.

In addition, the "J" in my name, "J. Marcus Doran," stands for Jonathan, my father's name. But, my mother always called me Marcus and that stuck.

What sorts of trends do you see?

In run-off, I see continued consolidation and pressure from the low interest rate environment. In the ongoing world, there is intense competition; especially in reinsurance where huge amount of capital is chasing a finite amount of business. As in prior cycles, something will happen to cause displacements and a hardening of rates. Staying disciplined is hard but it will pay off in the future.

Tell us how you first got involved with AIRROC.

The Hartford, and its run-off entities, has been involved with AIRROC since its inception. It's been a privilege to work for the people at The Hartford. They

have been instrumental in creating and promoting the AIRROC agenda from the start and have been kind enough to bring me along.

What was your first impression of AIRROC?

I didn’t know if it would work given the differing viewpoints of the members and the numerous disputes that existed at the time. Over the years, AIRROC has provided its members a real opportunity to build better relationships, understand their counter-parties, and do business in a more efficient and effective manner.

If you could change one thing about AIRROC, what would it be?

I would encourage more members to get involved. We have some very bright and talented people on the Board and various committees, but input from our members is invaluable towards creating an AIRROC agenda that suits everyone’s needs in terms of meetings, dispute resolution mechanisms and education.

The interest in AIRROC seems to be growing. Why do you think that is?

Value. For a very reasonable cost, you can be in the room with the people you need to work with to get things done. The education days are a bonus due to timely topics and insightful speakers.

What would you like to see in the Magazine?

Legal updates, industry trends (run-off and on-going), regulatory updates (domestic and foreign), and articles on timely subjects including; technology, emerging exposures, etc. ●

Connie D. O’Mara, connie@cdomaraconsulting.com and Bina Dagar, bdagar@ameyaconsulting.com

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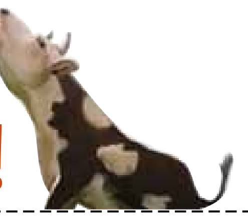

Carolyn Fahey

My "moooooves" on behalf of AIRROC business in the past few months have involved attending a number of industry events to let people know who we are and what we have been doing. I need more than one hand to count the places that I have been in the past few months: New York City (twice), the UK (London and Brighton), Chicago, and Burlington, Vermont. You will find information on many of these activities highlighted in this issue.

In early May, I had the honor of attending IRLA's Annual Congress in Brighton and while I was there was invited to participate in the *Insurance Insider's* Roundtable. Parts of that compelling discussion are featured in this issue.

Our June Chicago Regional drew a large crowd and the July membership meeting marked another success – both for the education content as well as the volume of companies that were able to conduct business.

We are looking ahead to a new type of workshop this fall. On September 23 in Philadelphia we are presenting "A Comparative Workshop: AIRROC DRP or 'Traditional' Arbitration – What Fits Your Dispute Better?" This day-long workshop will look at two methods that the industry can choose to settle disputes: AIRROC's Dispute Resolution Procedure (DRP) and the "traditional" arbitration process. Using "actors" in a live format as well as with recorded video footage, a hypothetical dispute will be presented, examined, and resolved.

The 10th Annual AIRROC Commutations and Networking Forum will be held at the Heldrich Hotel and Conference Center in New Brunswick, New Jersey from October 19-22. We already have over 130 registrants so please register today so you can set up your meetings, connect with colleagues and enjoy numerous socializing events.

Remember to visit www.airroc.org for current information and to register for AIRROC programs. See you soon… ●

Carolyn Fahey joined AIRROC as Executive Director in May 2012. She brings more than 20 years of re/insurance industry and association experience to the organization. carolyn@airroc.org

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AIRROC® Publication Committee

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Keith Kaplan
Keith.Kaplan@reliancenational.com

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lspivey@munichreamerica.com

Editor & Vice Chair

Peter A. Scarpato
peter.scarpato@brandywineholdings.com

Assistant Editors

Maryann Taylor
mtaylor@bswb.com

Michael Goldstein
mgoldstein@moundcotton.com

Committee Outreach

Connie D. O'Mara
connie@cdomaraconsulting.com

Marc L. Abrams
mabrams@nldhlaw.com

Jonathan Bank
jbank@lockelord.com

Peter Bickford
pbickford@pbnylaw.com

Bina T. Dagar
bdagar@ameyaconsulting.com

Dale Diamond
dalediamond@comcast.net

Randi Ellias
rellias@butlerrubin.com

Carolyn Fahey
carolyn@airroc.org

Jeffrey Grossman
jgrossman@stradley.com

Joseph Monahan
jmonahan@saul.com

Frederick J. Pomerantz
fpomerantz@goldbergsegalla.com

Francine L. Semaya
flsemaya@gmail.com

Cindy Trotier
cindy.r.trotier@us.pwc.com

Vivien Tyrell
vivien.tyrell@rpc.co.uk

Greg Wyles
gwyles@moundcotton.com

Jonathan Yorke
jyorke@edwardswildman.com

Marketing Consultant

Gina Pirozzi
gina@gpirozzi.com

Design & Illustration

Myers Creative Services
nicole@myerscreative.net

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AIRROC's 10th Annual

Commutations & Networking Forum

Ed Gibney

The Heldrich Hotel and Conference Center, New Brunswick NJ
October 19-22, 2014

2014 REGISTRATION RATES

- AIRROC Members get one free registration per company; additional delegates from member companies pay only $595 (after September 15, $695)
- AIRROC Corporate Partners can register at the member rate of only $595
- Non-member rate is $895 (after September 15, $995)
- Monday Education Sessions only $500 for members and non-members
- Wine Tasting/Dinner only $250 for members and non-members
- Meeting table reservation fee is $500 for members and non-members

Mark your calendars: AIRROC's biggest event of the year will be held from Sunday, October 19 to Wednesday, October 22, 2014.

The AIRROC Board of Directors looks forward to seeing you at the upcoming networking forum at The Heldrich Hotel and Conference Center in New Brunswick, New Jersey.

The Heldrich is less than 40 minutes by train from New York City, and boasts a large number of restaurants and shops within walking distance, as well as the full service amenities expected from a fine hotel. "We chose The Heldrich as our host this year to respond to the many requests that we received from AIRROC's members and delegates. Not only does it offer beautiful facilities and rooms, but it is an easy commute from Manhattan as well as the major airports," said AIRROC's Executive Director, Carolyn Fahey.

The event offers many features that continue to make it an industry "must -attend". Delegates benefit from two full days of reserved networking tables from noon on Monday, October 20 through noon on Wednesday, October 22. "We already have more than 60 companies represented among the delegates registered," said Fahey.

Monday's schedule is a busy one with a full day of education and a diverse set of faculty and topics of interest to AIRROC's members. Sessions include a focus on the dynamics of managing a pool, a discussion on the evolution of the NAIC's reporting requirements and the effect on companies, some interesting insights on loss portfolio transfers and their gaining prevalence. In addition, we are featuring the latest developments on follow the fortunes, asbestosis exclusions, and supply chain disruptions. Monday evening our guests are in for a special treat as we are hosting a wine tasting/ dinner. Learn who AIRROC has chosen as the 2014 Person of the Year as well as meet the recipient of AIRROC's 2014 Trish Getty Scholarship.

Notable features on Tuesday include the opportunity for delegates to schedule one-on-one workshops with SNL Financial to learn more about their robust data tools. A special session on Vermont's Legacy Insurance Management Act is also offered. We will adjourn at noon on Wednesday October 22.

Go to www.airroc.org and register now!!!!!

Edward Gibney, Event Committee Co-Chair and Vice Chair of AIRROC. gibneyed@gmail.com

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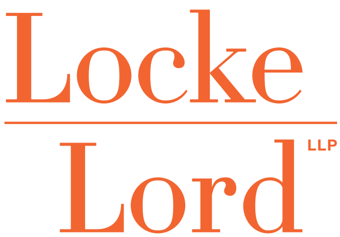

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AIRROC Educational Session Summaries / Chicago / June 2014

Locke Lord LLP and Allstate hosted a full day of AIRROC educational programming in Chicago on June 12, 2014. Attendees were treated to the following speakers, panel presentations, and even a team interactive workshop.

What's the Latest on Late Notice?

Marty Cillick (Senior Attorney, Allstate) and Ernesto Palomo (Partner, Locke Lord) kicked off the panel portion of the morning by providing an overview of recent legal developments as to late notice and statutes of limitations and accrual issues. For example, the panel discussed the recent decision from the U.S. District Court for the Northern District of Illinois in Republic Ins. Co. v. Banco de Seguros del Estado, 2013 WL 3874027 (N.D. Ill. Jul. 26, 2013), in which the court held, inter alia, that (1) "claims do not accrue upon denial when, as here, the contract sets a date when payment is due," and (2) the open account theory "does not apply to accounts for which there is a periodic settlement as provided in the LMX Contract." The panel summarized several other relevant holdings related to late notice (including, which jurisdictions require a showing of prejudice and when allegations of bad faith may come into play); as well as, statutes of limitations issues (and the policy reasons these legal principles exist).

Will the Real Cedent Please Stand Up?

Dee Dee Derrig of Allstate moderated this next panel on reinsurance issues related to the permissibility of assignments, Loss Portfolio Transfers (LPTs), and which party may ultimately be held responsible for liabilities. Panelists Jennifer Devery (Partner, Crowell & Moring), John LaBarbera (Member, Carroll McNulty & Kull), Barbara Murray (Director, PwC), Jim Sporleder (an ARIAS Certified Arbitrator), and Donald Wustrow, (President, Pro IS, Inc.), participated in the roundtable and discussed matters such as: (1) whether reinsurers may assign or delegate their obligations under a contract (often depending on what jurisdiction may be in play and/or the relevant contract language), (2) facultative versus treaty reinsurance retentions, and (3) other significant cedent considerations and/or communications.

Emerging Issues: Smoke of a Distant Fire

Molly McGinnis Stine (Partner, Locke Lord LLP) and Thomas Cunningham (Partner, Sidley Austin LLP), participated in this panel in which they discussed current indicators, trends, and recent cases which may be useful to anticipate significant future issues which may impact the insurance and reinsurance industries. The panel provided the following list of traits as supporting emerging claims: (1) a large enough population of claimants, (2) potentially significant damages, (3) arguable science to support it, (4) an arguable basis in law, (5) resources to try to "win one" to gain traction, and (6) sufficiently strong profile or forces to combine the elements. The panel then went on to discuss the following possible emerging claim areas (the "next asbestos"): public nuisance (e.g., tobacco, lead paint, addictive pharmaceuticals, climate change), cyber risks, and "Biosimilars" (i.e., genetically similar versions of biologic drugs).

Summarized by Michael H. Goldstein

This discussion flowed into fascinating insurance and reinsurance coverage issues relating to these emerging risks.

Keynote: CATs Out of the Bag for Insurance Linked Securities

In light of the fact that insurers are increasingly turning to the insurance-linked securities market to assist in placing their CAT reinsurance programs, Paul Schultz (CEO, Aon Benfield Securities) and Dave Cameron (Executive Managing Director, Aon Benfield), discussed this trend, the structure of a catastrophe bond transaction, and the various reinsurance coverage—and investment—options provided by the catastrophe bond market during their in-depth keynote address.

Legal Update: Courts Stirring the Liability Pot Again

Jonathan Bank, Of Counsel, from Locke Lord LLP, moderated this panel which provided additional insights into emerging legal issues facing the insurance and reinsurance industry. More specifically, panelist Jenna Buda (Senior Attorney, Allstate), provided her perspectives on the latest legal developments regarding the "new wave" of asbestos liabilities — smokers allegedly exposed to asbestos fibers who eventually developed lung cancer. Mark Deptula (Senior Counsel, Locke Lord LLP), provided an overview of recent issues related to the discoverability of communications from coverage counsel or reinsurers and reserve or settlement information. John Noone (Counsel, Allstate), provided an update on lead paint litigations such as the County of Santa Clara case alleging public nuisance causes of action currently on appeal in California. Peter Venetis (Manager, PwC), provided an update on construction defect coverage litigation and what courts have said recently about whether faulty workmanship may constitute an occurrence.

Team Workshop: Who's Responsible for Frank "the Tank" Ricard's Death

After having set the stage during the morning session by providing the facts relevant to the Team Interactive Workshop regarding the death of a pro football player, Barbara Murray (Director, PwC), directed the teams (made up of Robin Dusek, Partner, Freeborn & Peters LLP; Randi Ellias, Partner, Butler Rubin Saltarelli & Boyd LLP; Julie Rodriguez Aldort, Partner, Butler Rubin Saltarelli & Boyd LLP; Sheila Chapman, Vice President Reinsurance, CNA; Thomas Cunningham, Partner, Sidley Austin LLP; Nick DiGiovanni, Partner, Locke Lord LLP; Edward Diffin, Partner, Freeborn & Peters LLP; and Paul Ryske, Corporate Counsel, Allstate) in an interactive workshop in which they negotiated and settled the claim(s) related to a decedent who had sustained multiple concussions during his football career and was found to suffer from Chronic Traumatic Encephalopathy (CTE) and had a demonstrated dependence on pain medication. Issues involving late notice, number of occurrences, assignment, and others all played a part in this fascinating workshop which concluded the day's formal programming. ●

Michael H. Goldstein is a Partner at Mound Cotton Wollan & Greengrass, mgoldstein@moundcotton.com

Photos/Jason Gerber

Networking /Commutation Day & Membership Meeting / July 2014

Chadbourne & Parke LLP hosted a two day Networking/ Commutation Day and Membership Meeting in New York City on July 15-16, 2014. The two day event concluded with AIRROC educational programming where guests attended the following panel presentations.

Liquidators Chat About Their Estates

"Liquidations: The Working Challenges" included David Brietling of Reliance Insurance, Scott Pearce of the California Liquidation Office, Dick White of Integrity Insurance, and Eric Smith of Rackemann Sawyer & Brewster. Jonathan Bank of Locke Lord served as moderator.

The Panel took questions from the moderator and audience on a number of topics impacting liquidations, including the characteristics of running an efficient estate, the role of guaranty funds associations, and an estate's interactions with the federal government and federal superpriority claims.

The discussion was insightful and lively as the panel shared anecdotes and drew upon professional experiences where appropriate. Panelists also shared their aspirations on what they would like to see from U.S. courts in order to timely close estates. Suggestions included a streamlined appellate process or judges dedicated to complex insurance matters and liquidations. The discussion shifted to guaranty associations, including distinctions between life and health from property/casualty guaranty associations, and the benefits and drawbacks of involving guaranty associations in a company's administrative supervision period prior to liquidation. The Panel concluded with a presentation on federal superpriority claims. In addition to highlighting the origin of federal claims and relevant case law, there was also a discussion on the potential for personal liability of insurance commissioners under federal law regarding superpriority claims.

Whither Goest Part VII?

"The Effectiveness of Transfers – Part VII and Part VII in Reverse." included Paul Corver of Randall & Quilter Investment Holdings, Bill Popalisky of Crowell & Moring, and Stephen Schwab of DLA Piper.

Mr. Corver began with an introduction and background of Part VII Transfers, or a court-sanctioned process which enables insurance companies or portfolios to be transferred between two or more European Economic Area insurers, where one is UK regulated. Mr. Cover set-out the economic justifications and advantages of Title VII Transfers while detailing each step of the process from inception through court approval. Mr. Cover's presentation emphasized critical areas including the role of the Independent Expert, as well as, Policyholder notification.

With an understanding of the Part VII Transfer background and processes, the presentation shifted to Part VII Transfers' reception within U.S. courts. Mr. Popalisky discussed the role of U.S. Bankruptcy Courts and how individual U.S. courts have addressed Part VII Transfers. Mr. Popalisky highlighted a number of cases discussing Part VII Transfers and the difficulty these transfers have faced to be recognized/ sanctioned in U.S. courts. Although short on time, Mr. Schwab quickly touched upon how U.S. rehabilitations and UK Schemes can be effective in transferring liability from US retrocessionaires to UK reinsurers, a reverse Part VII Transfer.

Summarized by Michael H. Goldstein & William J. Brady

The presentation successfully delivered on providing American reinsurance practitioners with an understanding of Part VII Transfers and their reception within U.S. Courts, to date.

Nuts and Bolts of Vermont's Legacy Insurance Management Act

Michael Goldstein of Mound Cotton Wollan & Greengrass moderated this panel of regulators and industry professionals who provided an insightful view of the innovative legislation recently passed in Vermont – its Legacy Insurance Management Act ("LIMA" or the "Act"). Anna Petropoulos (President, Apetrop USA), who was instrumental in getting LIMA passed into law, provided an overview of the Act and described what types of companies and categories of insurance can take advantage of this legislation. She also described how a transfer plan would work under LIMA and concluded with her insights into the benefits of the Act. The Commissioner of Vermont's Department of Financial Regulation, Susan Donegan, proceeded to walk the audience through a flowchart providing a detailed overview of the process in which an applicant's plan may progress through Vermont's regulatory system in light of LIMA. Ms. Donegan was also intimately involved in the legislative effort to pass LIMA into law.

Daniel Maher (Executive Director, Excess Line Association of New York), then provided his view of LIMA from an excess and specialty lines perspective and indicated that the Act brings some additional protections to E&S transfers, currently a $30 billion a year business in the U.S. Mr. Maher added that the reinsurance side of things would be more complex and have additional potential barriers. Steve McElhiney (CEO, EWI Re) concluded the panel with his thoughts on the commercial opportunities created by LIMA, particularly in the realms of run-off related businesses and capital markets firms, as well as, the opportunities created by the Act for the State of Vermont and the synergies associated with this being Vermont legislation.

Assignments in Debt Purchases: Problem or Panacea?

Moderator Roben Seltzer kicked off the day's last panel examining the opportunities related to debt purchase and the assignment process by providing some fundamental questions related to debt in an insurance company context and when assignments may make financial sense and constitute a "good" assignment. Kathleen Schaaf (Partner, Morrison & Forester) then picked up the baton and provided further guidance on the benefits of the assignment of insurance claims for both the buyer and seller. She then discussed opportunities in the insurance/reinsurance claims market, the due diligence process related thereto, and the steps required for an acceptable assignment of the claim, as well as an overview of the status of the current U.S. insolvencies. The former CFO of The Equitable and XL Capital Ltd., Jerry M. de St. Paer (currently Senior Advisory Partner, Grail Partners, LLC), proceeded to explain the role of assignments in debt purchases from a CFO-specific perspective. Finally, Ricardo Cantillo (President, Quest Consulting in NY) concluded the panel by explaining ways to make money through debt purchase, as well as, some of the pitfalls associated with the practice and possible solutions when such problems arise. ●

Michael H. Goldstein is a Partner at Mound Cotton Wollan & Greengrass. mgoldstein@moundcotton.com

William J. Brady is an Associate at Stradley Ronon. wbrady@stradley.com

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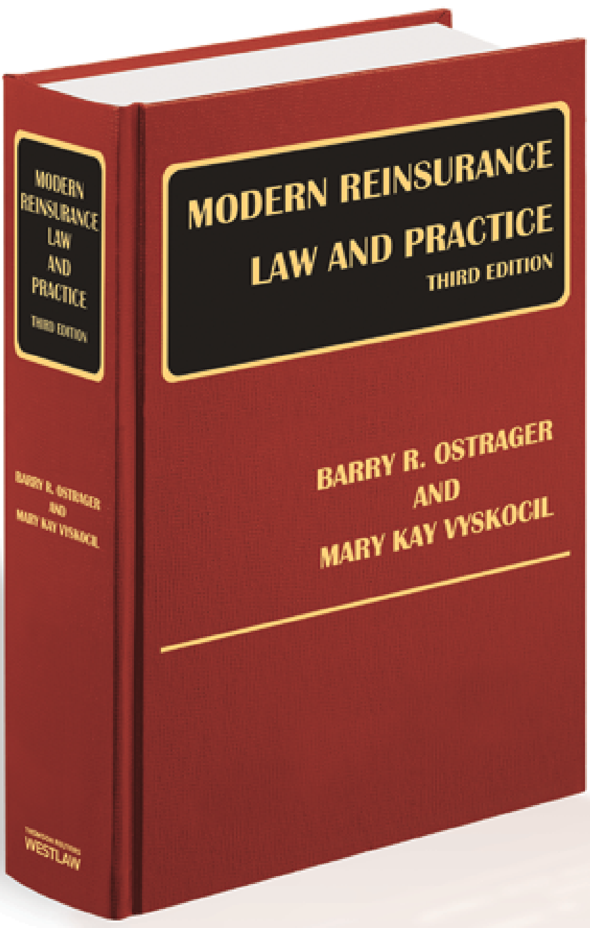

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News & Events

Regulatory News

Federal Advisory Committee on Insurance

The Federal Advisory Committee on Insurance (FACI), which provides advice and recommendations to the FIO to assist in carrying out its statutory responsibilities, recently expanded its membership from 15 to 21 members to "better represent the diversity of the insurance industry." Six of the original members were reappointed, including the New York Superintendent of Insurance, the Virginia and Pennsylvania Insurance Commissioners, The Center for Economic Justice Director Birnbaum and Lloyd's General Counsel. The new appointees include: the insurance commissioners from New Mexico, Iowa, Nevada, Tennessee and Wisconsin, along with former NCOIL President and North Dakota State Representative George Keiser. In addition, executives from AIG and Prudential, both of which have been designated as SIFIs, have been added to the Committee. The current President and CEO of Marsh, as did his predecessor, will Chair the 2014 FACI. The industry is hopeful that this diverse group will focus on a few key issues and not try to provide advice on issues that are not germane to the functions of the FIO.

National Association of Insurance Commissioners

The National Association of Insurance Commissioners (NAIC) has instituted a new educational program: "Protecting the Future." The main purpose of this initiative is to educate the public about the benefits of state-based insurance regulation and to assure that the current state-based regulatory scheme will protect the future. The program is broad based and being showcased in the U.S. and internationally. According to Senator Ben Nelson, NAIC Chief Executive Officer, the NAIC has defined the major purpose into 3 areas:

1. State-based insurance regulation can best adapt to meet future economic and financial challenges.

2. Insurance market regulation is very complex, and what works in one state may not work in another.

3. State insurance regulators protect consumers and promote competitive markets, ensuring a wide choice of secure insurance products and services to help consumers prepare for the unplanned and unexpected.

For further information, check out the official website: www.naic.org/protectingthefuture.htm

Industry News

M&A activity in the insurance sector increased in the second quarter of 2014, although the biggest news was from a transaction that did not occur. In July, Bermuda-based provider of property/casualty insurance, **Endurance Specialty Holdings Ltd.**, formally withdrew its $3.2 billion bid to acquire another Bermuda insurer, **Aspen Insurance Holdings Ltd.**, after Aspen's shareholders showed little enthusiasm for the takeover proposal.

Other second quarter M&A activity included:

In June 2014, **AXA Liability Managers** completed the acquisition of the international subsidiaries of German run-off company, **Global Re,** first announced last September. The acquisition was completed upon approval of regulators in the jurisdiction of the subsidiaries: Australia, Canada, Switzerland and New York.

New Jersey- based E&S insurer, **Western World Insurance Group Inc.**, is being acquired by Bermuda-based reinsurer, **Validus Holdings Ltd.** for an all cash sum of $690 million, subject to regulatory approval. Validus stated that Western World will continue to operate as a separate entity following the completion of the transaction, which is expected to occur during the 3rd quarter.

Helvetia Holding A.G. (Helvetia), Switzerland's third largest insurer by gross premium, is acquiring another Swiss insurer, **Swiss Nationale**, through a tender offer to shareholders valued at $1.57 billion. According to the Helvetia website, the transaction, which has been recommended by the Swiss Nationale board of directors and is expected to be completed in the 2nd half of 2014, ". . . will mark the creation of a strong Swiss insurance group that will have a leading position in the domestic market, attractive positions in selected European markets and international growth potential with the Specialty Lines division."

ACE Limited (ACE) has reached agreement to purchase the property/casualty business of Brazilian insurer **Itau Seguros, S.A**. from Unibanco S.A. for approximately $686 million. This acquisition, upon completion, would make ACE the largest commercial property/casualty insurer in Brazil. "Brazil is a large and important market to ACE's strategy in Latin America. The addition of Itaú Seguros's large corporate P&C insurance business will complement and deepen our longstanding presence in Brazil in a significant way," said Evan G. Greenberg, ACE's Chairman and Chief Executive Officer.

Banco BTG Pactual S.A. (BTG Pactual) has agreed to purchase Bermuda-based property/casualty reinsurance company, **Ariel Re**, from **Global Atlantic Financial Group Limited** (Global Atlantic) for an undisclosed sum. The transaction includes all of the operating entities, assets and obligations of Ariel Re, and is subject to customary regulatory approvals. According to the joint press release of the parties, Ariel Re, which has offices in Bermuda and London, will continue to operate its Lloyd's of London syndicate and retain access to Lloyds security ratings, while Global Atlantic will concentrate its strategic focus on growing its life and annuity business.

New AIRROC Member

Welcome to AIRROC's newest corporate member, **Penn Treaty Network America Insurance Company** ("Penn Treaty"). Penn Treaty and its subsidiary, American Network Insurance Company ("ANIC") have primarily written individual, defined benefit accident and health policies covering long-term care services since 1972. Penn Treaty and ANIC ceased writing new business in 2008 and, in early 2009 the Commonwealth Court of Pennsylvania ordered them into rehabilitation. While the court process continues, the companies continue to operate in a run-off mode. Jane M. Bagley, Penn Treaty's Senior Vice President and Corporate Counsel, reports that: "In light of Penn Treaty's background, we were eager to join AIRROC whose membership includes companies in similar positions. The opportunity to network with other companies, industry groups and regulators who have common interests and experience with various legacy business issues was a primary factor in Penn Treaty's desire to join AIRROC. We look forward to taking advantage of the many benefits that an AIRROC membership affords."

People on the Move

Diane Myers, formerly with Reliance Insurance Company (in Liquidation), has joined Munich Re America as a Vice President where she will serve as an Account Executive in Munich Re America's Business Runoff unit. Diane can be reached at dmyers@munichreamerica.com.

Frederick J. Pomerantz, long-time member of the AIRROC Publication Committee and contributor to AIRROC Matters, has joined the law firm of Goldberg Segalla as a Partner in the firm's Global Insurance Services Practice Group, where he will be working closely with immediate-past New York Superintendent of Insurance James Wrynn. Fred brings more than 30 years of transactional and regulatory experience to the firm's insurance regulatory practice. Fred can be reached at fpomerantz@goldbergsegalla.com.

Bill Popalisky has joined Crowell & Moring's Insurance and Reinsurance practice as Counsel specializing in reinsurance dispute resolution, working out of the firm's New York office. Bill can be reached at wpopalisky@crowell.com.

Robert Tomilson has joined Clark Hill's Philadelphia office as a Member in the firm's Insurance & Reinsurance Practice Group. Robert, who represents insurers and reinsurers in their transactions, disputes and regulatory investigations, can be reached at rtomilson@clarkhill.com. ●

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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