

AIRROC matters

LEVERAGING LEGACY LIABILITY



COMMUTATION & NETWORKING EVENT 2012

EDUCATIONAL SESSION SUMMARIES • NJ REGULATOR PETER HARTT ON SOLVENCY REQUIREMENTS • AIRROC RUN-OFF PERSON OF THE YEAR • REMEMBER SUPERFUND?



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AIRROC Matters More...

Leah Spivey

Now that AIRROC Matters has a new look and feel and AIRROC has the new broader perspective of leveraging legacy liabilities, this publication is more relevant than ever. It continues to bring news and topics of interest to AIRROC's membership and other interested parties. It also allows contributors full publication exposure on the internet given our new format and distribution system.

As has become the norm throughout the insurance and reinsurance industry, change is constant and 2012 has not only brought change to our publication but also to the AIRROC organization. Following the new and improved AIRROC Matters publication, there was the retirement of our founding Executive Director, Trish Getty and the selection of our new Executive Director, Carolyn Fahey. AIRROC's Board of Directors has also approved a Memorandum of Understanding with IAIR (International Association of Insurance Regulators) that will allow for a closer relationship with this important industry group, including the sharing of ideas, reducing the rate for each other's conferences and (most importantly from my selfish perspective) the exchange of articles for reprint. In addition, we moved our AIRROC Commutation Event location this year and are currently polling attendees about the change of venue.

Along with these positive changes, AIRROC has become philanthropic, awarding the first Trish Getty Scholarship to a deserving St. John's University School of Risk Management student, Gregory Tucker. Please look for photos and additional copy on this historic event in this edition of AIRROC Matters.

As always, AIRROC Matters is honored to support AIRROC's educational initiatives by advertising upcoming quarterly and regional educational events and publishing articles that summarize their learning content. This year we had two very successful regional events, one in Chicago, IL and one in Newport Beach, CA, which we were proud to bolster. AIRROC Matters has also taken a more prominent role in Marketing, as most of the printed copies are used to augment our distributed marketing materials. Both the Educational and Marketing committees have contributed real substance to the magazine over the past year for which the Publications Committee is very appreciative.

AIRROC Matters has expanded its leadership by naming Maryann Taylor and James Veach as Assistant Editors to our Editor-In-Chief, Peter Scarpato and Connie O'Mara as Committee Outreach representative. Carolyn Fahey has become an active member of the committee in her role as Executive Director of AIRROC. When the new Board of Directors is installed in

January 2013, we will name a new Co-Chair of the Publications Committee, due to Colm Holmes resignation from the Board of Directors. Look for the announcement of this appointment in our next edition in the Spring of 2013.

It has been an exciting year for everyone involved with AIRROC Matters. We owe a debt of gratitude to our professional team of creative, planning, proofing, and printing individuals, firms, and companies. We are always looking for more authors and creative thinkers to join the Publications Committee or contribute to the publication in any way that works. Please do not hesitate to provide suggestions to Peter, Carolyn, any member of the Publications Committee or me as our goal is to continually enhance our product and make it more relevant and useful to our membership and readership.

AIRROC Matters and the Publications Committee look forward to assisting you as you Leverage Legacy Liability by continually providing you with more... ●



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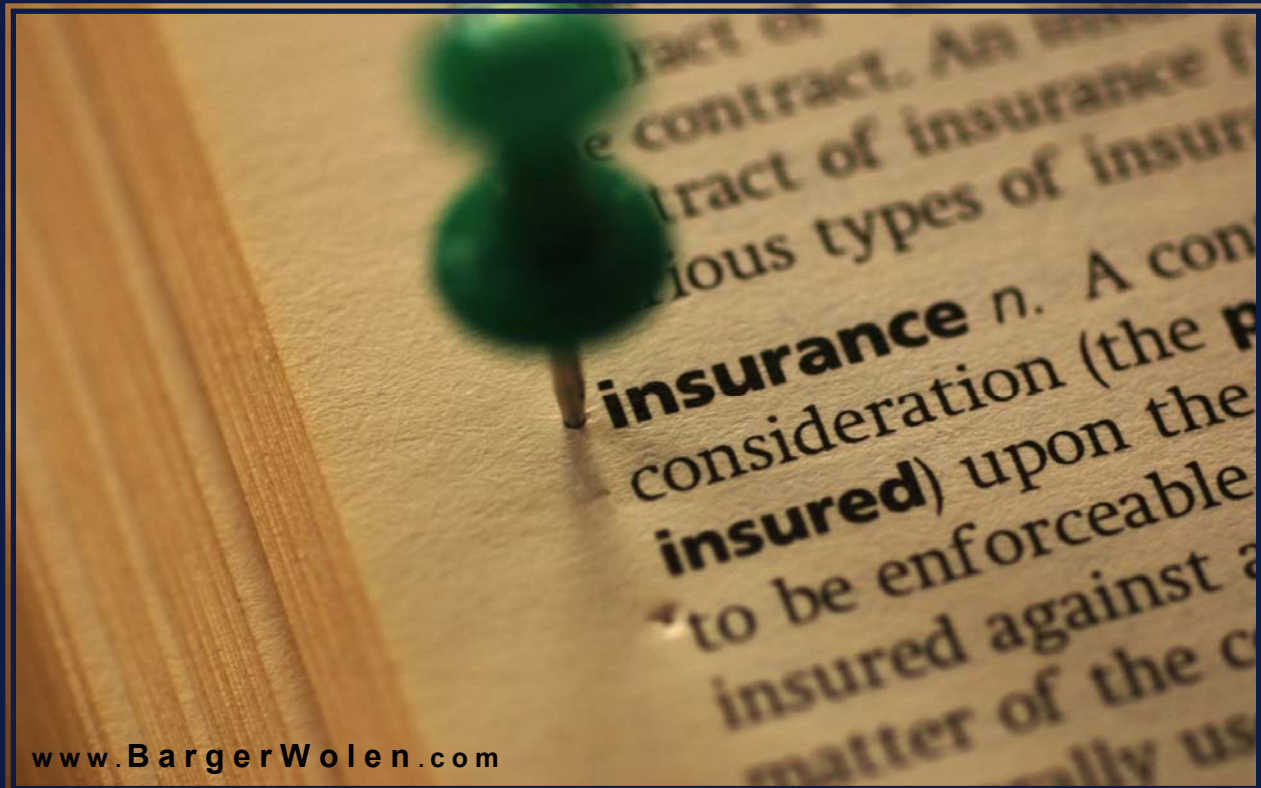
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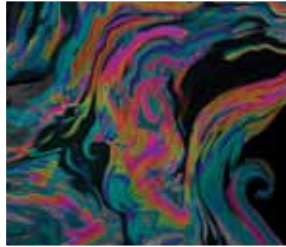
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Remember Superfund?

Who's got the check?

In response to public concern as to how dumping chemical waste might affect public health and the environment, the federal effort to clean up the most dangerous hazardous waste sites in the U.S. began in 1980, triggered by the discovery of 22,000 tons of toxic waste dumped in the Love Canal neighborhood of Niagara Falls, New York.

The media images of toxic waste bubbling up from the ground shocked people across the country, spurring Congress to enact the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), more commonly known as Superfund.

This federal legislation empowered the Environmental Protection Agency ("EPA") to force polluters to clean up toxic sites they had created. The law enabled the government to levy taxes on oil and chemical companies as well as a special tax on corporate profits to be used to clean up the nation's worst waste sites – known as the National Priorities List ("NPL"). The Center for Public Integrity reports that nearly half of the U.S. population lives within 10 miles of one of the sites on the National Priorities List, and according to the EPA one in four Americans lives within three miles of a contaminated site posing serious risks to human health and the environment. According to the EPA as of September 2011, 1,652 sites have been listed on the NPL. Of these sites, 350 sites have been cleaned up — relatively few — leaving 1,302 sites currently on the NPL.

...according to the EPA one in four Americans lives within three miles of a contaminated site posing serious risks to human health and the environment.

The progress and ultimate success of Superfund are tied directly to the Superfund tax. Since the inception of the Superfund program, the EPA has catalogued and assessed almost 46,000 potentially contaminated sites (as of 2008). At the same time, according to a report prepared by the Center for Public Integrity, in 2010, the EPA estimated the cost of cleanup was increasing beyond the current funding for Superfund

sites, and that in the past decade the EPA allocated \$243 million per year for Superfund cleanup. It estimates \$335 million to \$681 million per year will be needed for future cleanup.

The report indicates that according to former and current EPA officials the backlog of sites needing cleanup is growing while the money allocated to do the work is dwindling.

In addition, the Center for Public Integrity reports that, in a 2001 book on the Superfund written for Congress by the Washington, D.C.-based environmental think tank, Resources for the Future, the think tank suggests that future cleanup progress boils down to declining funding and indicates that “EPA managers have been cautious about listing larger, more expensive toxic waste sites to avoid ‘breaking the bank. Sites that need cleanup are not being addressed because of funding concerns.”

Further, in a 1995 publication titled “Footing the Bill for Superfund Cleanups – Who Pays and How?”, the authors write that if Superfund is allowed to expire, the EPA will have to take steps to shut down the program, which the authors point out happened when Superfund expired in 1985, “...leading to major program disruption until Congress reauthorized the program in late 1986.”

The Superfund tax was allowed to expire in December 1995, and has not been renewed. By October 2003 the \$3.8 billion that was in the fund was gone. Despite various initiatives to introduce legislation to reinstate the tax, the tax has not been renewed, primarily because policymakers, businesses and insurers insist that any attempt to reinstate the tax must be accompanied by significant liability reform. On the other hand, the EPA has fought vigorously against efforts to rescind retroactive liability, arguing that Superfund is proof that the “polluter pays” principle works.

Superfund’s broad liability scheme is perhaps its most controversial element.

Liability is strict, joint and several, and retroactive. No proof of negligence, fault, or wrongdoing is required. The generators of the hazardous waste, the transporters who selected the sites where the waste would be stored, and the owners and operators (both past and present) of the facility or the property where the waste was released or stored are all made liable.

Proponents of reinstating the taxes, including the EPA, contend that the cleanup of hazardous waste sites should be paid for by those who created the hazardous substances, the polluter pays principle, not the taxpayers.

Proponents of reinstating the taxes, including the EPA, contend that the cleanup of hazardous waste sites should be paid for by those who created the hazardous substances, the polluter pays principle, not the taxpayers. Taxpayers are currently funding the cleanup of “orphan” sites; those polluted areas for which no potentially responsible party can be found or which were created by a company that no longer exists.

Mathy Stanislaus of the EPA’s Office of Solid Waste and Emergency Response, which oversees the Superfund program, wrote in a June 21, 2010 letter to Congress “This is really about who should pay for the cleanup. Should it be the taxpayer, who has no responsibility for contaminating the sites, or should it be those individuals who create hazardous substances that contaminate the site?”

Opponents of reinstating the tax, including the American Chemistry Council, argue that reinstating the tax would hurt U.S. businesses and push jobs overseas. Others say that the tax is

overreaching and amounts to an unfair penalty. Charles Drevna, president of the National Petrochemical and Refiners Association argues that “Policymakers — Congress and the administration — have simply got to stop using the domestic refining and petrochemical industry as an ATM machine.”

During his 2008 presidential campaign, Barack Obama promised to restore Superfund to its previous strength by resurrecting the tax. Environmental groups have been pushing for a renewal of the tax, and there is a school of thought that believes the BP Gulf of Mexico oil spill has lent new momentum to their effort.

Several members of Congress introduced legislation in 2010 and in 2011 to reinstate the tax in some form, including Senator Bill Nelson (D-FL), Senator Frank Lautenberg (D-NJ), and Representative Earl Blumenauer (D-OR). None of these measures gained enough support to become law.

This lack of support indicates that any new tax bill surviving a vote in the Republican controlled House of Representatives, where many members oppose tax increases for any reason, together with the current economic climate, make the promise of reform just that, a promise. Reform to Superfund, restoration of the tax in particular, appears unlikely in the foreseeable future. ●



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AIRROC Educational Summaries / West Coast Regional

AIRROC chose sunny southern California for its first West Coast regional education session. The gorgeous, Newport Beach Balboa Bay Club was the perfect venue for AIRROC's members to network and learn about the featured content summarized below.

Back to Basics

A Primer on Reinsurance & Reinsurance Arbitrations

Summary by Michael K. Robles

The day kicked off by getting “Back to Basics.” Mike Robles of Crowell & Moring moderated a panel discussion: “Back to Basics: A Primer on Reinsurance & Reinsurance Arbitrations.” The panel, comprised of Mike, Mark Haapala of Devonshire and Gary Ibello of Allianz/Fireman's Fund, provided an overview of the nuts and bolts of reinsurance, reinsurance claims, reinsurance arbitrations and auditing from three different perspectives: outside counsel (Mike), in-house claims officer/arbitrator (Gary), and auditor/runoff manager/expert witness (Mark). All told, the panelists brought collectively more than 80 years of experience to the discussion.

Mike kicked off the discussion by walking attendees through the purpose, types and benefits of reinsurance, explaining key contract provisions and reinsurance concepts, and identifying “what to expect when you're expecting (a reinsurance dispute),” from arbitration demand to final award, and potential pitfalls for the unwary. Gary then talked at length about some of the common disputes seen in reinsurance arbitrations, specifically with respect to asbestos and environmental claims, including aggregation of claims and acceleration issues, and identified the factors every company should consider before it arbitrates. Mark wrapped-up the discussion by outlining reinsurance claims management, the audit process including access to data and analysis of findings, audit goals such as reserving, contract obligations, resolution of issues, and possible commutation, and the implementation of audit results.

In short, conference attendees were treated to a soup to nuts primer on reinsurance and reinsurance arbitrations. ●

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Everything You Need to Know about Commutations

Putting it All Together Summary by Garry Nelson



Devonshire's Garry Nelson moderated a panel discussion that reviewed (a) the commutation process, (b) issues to be prepared for as a commutation strategy is being formulated and (c) the important role the claims department has to play. The Panel included Bill Gage, Allianz Global Corporate and Specialty; Brian O'Sullivan, Crowell & Moring; and Mike Fitzgerald, Devonshire.

Mr. Nelson introduced the concept of commuting reinsurance treaties to those in the audience who were not familiar with the concept: An agreement between the ceding insurer and its reinsurer that provides for the valuation, payment and complete discharge of the obligations of the parties under a reinsurance contract.

Mr. Gage detailed reasons why a company ceding risks might want to pursue a commutation. It may be concerned about its reinsurer's ability or willingness to pay ceded claims, the continuing administration cost or its need for the certainty of an immediate collection. Commutations can be a mechanism to compromise and resolve disputes and the expense of protracted arbitration.

The Panel also considered why a reinsurer may find commutations attractive. A reinsurer may face the uncertainty of estimating future losses for volatile classes of business, especially if it is in runoff. Actuaries can more accurately predict future loss development and reserve requirements if these treaties are commuted. Concerns over claims handling and the frictional costs for many years to come may be a concern.

Mr. Fitzgerald suggested that a company's claims department can place data being analyzed for a commutation in proper context. They can ensure that all known losses are reported and

Facing page (from upper left): Michael Robles, Crowell; Garry Nelson, Devonshire; Mark Haapala, Devonshire; Gary Ibello, Fireman's Fund, Michael Robles; Group work on "Threatening Skies" cloud hypothetical exercise. **This page:** Leslie Davis, Crowell, Andrew Costa, Devonshire, Ellen Farrell, Crowell, Mark Plevin, Crowell; Michael Fitzgerald, Devonshire; Bill Gage, Allianz; Cliff Hender, Crowell; Gary Ibello; Michael Fitzgerald, Garry Nelson, Carolyn Fahey, Michael Robles, Brian O'Sullivan, Crowell.
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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 run-off management, audits of ceding companies and coverholders, operational support and consulting.



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Summaries / West Coast Regional (continued)

have appropriate reserve and payment documentation so that accurate financials are being considered. They can review case reserves for potential development and set ACRs, if appropriate, to assist the company's actuaries to provide better estimates.

Consider each side's motivation to commute, and be prepared and understand all the issues that could influence the value of a commutation.

The Panel then discussed the importance of developing and reconciling the list of contracts being considered for commutation; reviewing each agreement's financial and claims history; and reconciling financial information (including outstanding payments, case reserves and remaining limits available).

The parties should anticipate points to be made during settlement negotiations

as contract, claims and financial research is conducted. Consider each side's motivation to commute, and be prepared and understand all the issues that could influence the value of a commutation. The pricing of a commutation is usually not a straightforward formulary exercise. Important elements include a sound understanding of the claims reported, the claim payment history, case reserves and trends, ACRs, IBNR and unearned or uncollected premium.

Mr. O'Sullivan discussed the provisions that are typically included in a commutation agreement. There is usually a preamble that identifies parties, defines the intention of the agreement and outlines the agreement. The agreement will also contain a provision setting forth the consideration for the agreement and, more specifically, the amount, timing and method of payment from one party to the other.

The commutation agreement also contains a provision defining precisely the

scope of the parties' mutual releases. This can include an exhibit identifying precisely what contracts are being commuted or, more generally, a clause describing the commuted contracts as being those that are "known and unknown" if the intent of the agreement is to include any and all contracts between the two parties. Be sure the agreement contains a confidentiality clause and specifies jurisdiction if a dispute arises in the future.

Those attending the conference reported having a clearer understanding of what a commutation is and what goes into the pricing and negotiation of a commutation agreement. There is an increasing focus on commutations as liabilities in runoff continue to grow and companies look to be more creative in improving bottom line. Insurance and reinsurance company claims department personnel have a lot to contribute and should be actively involved in this process. ●

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Cyber Risk & Insurance Coverage Summary by Michael K. Robles

Crowell & Moring's Mark Plevin moderated a panel discussion on Cyber Risk and Insurance Coverage: "Coverage (or Lack Thereof) for Cyber Risks." The Panel included Ellen Farrell and Leslie Davis of Crowell & Moring and Andy Costa of Devonshire.

The panelists walked the conference attendees through the in's and out's of Cyber Risk, including the types of cyber risk (both internal and external), the industries at risk, and the information (business and personal) and devices at risk. The panel also described the regulatory framework, including federal and state laws, and the potential damages associated with a data breach from

notification costs to enforcement penalties and business losses to litigation costs.

The panelists then discussed issues relating to insurance coverage for cyber risk losses under both traditional liability and property policies and the newer cyber risk policies, including the key provisions in such policies and the various endorsements and exclusions recently issued by the ISO to address cyber risk related issues.

One of the highlights of the conference was the afternoon interactive session: "Threatening Skies: Unauthorized Access to the Cloud." In advance of the conference, participants were provided a hypothetical fact pattern involving a

cyber attack on the "cloud" of a data storage company that resulted in inter alia the denial of access to data and the potential for public dissemination of private information. The data storage company maintained both a traditional CGL policy and a cyber risk policy. The participants were assigned to one of three groups (Policyholder, CGL Insurer or Cyber Risk Insurer), and asked to consider a variety of different issues, in particular, what insurance coverage applied for the losses sustained as a result of the cyber attack. A lively discussion moderated by Crowell & Moring's Mike Robles ensued. ●

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Success in Partnerships

Carolyn Fahey

The Fahey Forecast



As I sit and contemplate my first five months as the Executive Director of AIRROC, I am honored to be at the helm of such a terrific organization and proud of the accomplishments in this time frame – two stellar Regional Meetings (June in Chicago, September in Orange County, CA) and our 8th October Commutation event, which again drew a big crowd from across the globe.

In my travels from New York to New Jersey to Philadelphia and west to Orange County, I have been blessed with the chance to renew existing relationships and establish new ones. I have connected with our members as well as the firms that support our efforts. I will continue to reach out to all involved with AIRROC to ensure the interests of all of our stakeholders are served.

I am a phone call away and a key goal for me is to be accessible. I want to hear your thoughts and ideas! I look forward to working with all of you to ensure the continued success of AIRROC.

2013 – What’s Ahead for AIRROC

- *AIRROC’s First Membership Database and Association Management System.* This tool will open up new avenues for communication both inside and outside of our membership. Committees will have the structure to set up their own “intranets” to exchange ideas and documents and social media-like capabilities for all AIRROC members and supporters will be added.
- *Mark your Calendars for Education and Meetings.* February 7 will mark our

first DRP Mock Arbitration in Chicago. Our first 2013 New York Membership Meeting will be on March 5-6. On May 9 we will host a Chicago Regional, followed by our summer New York Membership Meeting on July 9 and 10. The October Commutations and Networking event will be October 13-16 (location to be determined). There will be more to come – look for dates for two or three more regional meetings and one more mock DRP session.

- *Membership and Certification.* Look for the addition of some new membership types and the development of a designation for run-off professionals.

Great things await this fine organization. I will continue to partner with the AIRROC Board, members and our industry supporters to maintain AIRROC’s position as the industry’s premiere legacy/run-off association. ●



Carolyn Fahey, AIRROC’s Executive Director, has been a familiar face for over 20 years at associations representing the insurance and reinsurance industry. carolyn@airroc.org

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Departing Reflections

Exiting Directors Explain Directly

The directorships of three distinguished AIRROC Board members end at the close of 2012. Given the length and scope of their service and accomplishments, we asked Mike Zeller, Jonathan Rosen and Mike Palmer to reflect on three questions of interest to our members.

1 *What are the key qualities and skills the Board should seek in replacement candidates?*

Mike Palmer

Being on the Board of AIRROC is a fun and worthwhile experience. It brings you into contact with other senior market players and allows for a healthy exchange of views and ideas. Key qualities and skills center on: being able to attend all the meetings and calls, enthusiasm for the job, wanting to improve the organization for all the members and trying to work with all parties to “get the job done.”

Jonathan Rosen

AIRROC is made-up of a broad based member constituency, well represented on the Board in its diversity. The Board is the engine of our organization. Founded on the credo of “for the members, by the members,” AIRROC’s model, as a trade organization demands active Board member participation and engagement in all aspects of the organization’s business. A commitment of time, effort and energy in fostering AIRROC’s initiatives and in sustaining and growing AIRROC are thus, to me,

the most important dedications required of any qualified Board candidate. We all bring something different to the table, so I don’t think that there are key qualities and skills required of any particular candidate per se, recognizing that those seeking election to the Board represent a member company not already represented on the Board and their experience within that company is presumably what qualifies their candidacy.

Michael Zeller

Energy. Creativity. In other words, both the ability and willingness to think out of the box. The creation of the AIRROC Dispute Resolution Procedure is a case in point. The challenge of how to efficiently be able to pursue the collection of smaller-sized reinsurance balances has been well known for some time, yet little or nothing was being done in the industry to address the problem until AIRROC entered the field. I was fortunate to have served on the committee that developed the Procedure. Some of its features, such as the established pool of arbitrators willing to serve at a \$150 hourly rate, are novel and positioned to serve the



industry well in the years ahead. There have been positive experiences of parties which have used the Procedure, but it is up to the membership to make greater use of the tool that AIRROC has created for them.

2 *How focused was the Board on strategic long-range plans and how well did the Board execute such plans during your tenure?*

Mike Palmer

Being an entirely voluntary role it is tough to find time to ensure that “today’s” business is done let alone planning for the future. That said, the existing Board (and I should say other members in a supporting role) have done an exceptional job in trying to keep the momentum of the organisation going and focused. Future planning has been achieved by a number of off site meetings and brain storming sessions. Executing those plans is always



3 What are the three most important goals for the future of AIRROC?

Mike Palmer

In my view the most important goals for AIRROC are moving with the market and evolving into the pre-eminent “legacy” association, and capturing issues and market situations which affect and impact more than just traditional run off. Secondly, keeping up the high quality of educational programs and ensuring that as many members are involved in these as possible. Finally, staying solvent in a financial environment when the membership base is struggling! Finding solutions to balance the association budget so that AIRROC has the funding to carry out its objectives and serve the membership is extremely important.

Jonathan Rosen

Stay relevant.

Stay relevant.

Stay relevant.

Michael Zeller

1. The KISS principle
2. Stay true to your roots
3. The need to constantly engage membership ●

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a little tougher! The last few years the organization has been in transition with Trish Getty’s move to part time and then retirement coupled with contracting for a short period with the former association management company – this clearly put back some of our aims and targeted plans. However, our new Executive Director appears to be getting us back into shape quickly!

Jonathan Rosen

I have had the privilege of serving on the Board for the past 8 years, 3 of which (2008 – 2010) as Chairman. From inception of the organization long range strategic planning has been a centerpiece of the Board’s focus, appreciating that remaining vital is the biggest challenge confronting the organization. This has required periodic reexamination of our core value proposition and mission statement and the introduction of numerous initiatives to meet our constituent needs. AIRROC today

is a lot different from the fledgling organization that emerged 8 years ago. It is a sophisticated, well run organization, offering its members meaningful education, publication and networking services. The benefits of membership are well recognized in the industry, with the initiatives introduced testimony, I believe, to the effective execution by the Board of both the organization’s short and long term objectives.

Michael Zeller

On the one hand, as a relatively new organization, AIRROC continues to evolve, and both the active and run-off sectors are evolving. Hence, the Board’s planning has needed to be dynamic and focused on both short and long term goals. On the other hand, AIRROC has succeeded by trying to keep things simple and focusing on what we do best, principally, commutation/networking events, educational events, and publication.

Welcome Aboard

Maryann Taylor

At the Annual Meeting of Members during the October Commutation and Networking Event held in Parsippany, New Jersey, the results of the AIRROC Board of Directors election were announced. Karen Amos of Resolute Management Services, Ltd. and Art Coleman of Citadel Risk Management, Inc. were re-elected in a “no surprise” outcome given their steadfast commitment and leadership. In replacing departing board members whose term are expiring, AIRROC added three new board members: Frank Demento of XL Reinsurance America Inc. (left), Klaus Endres of AXA Liabilities Managers Group (right) and Mindy Kipness of Chartis, Inc. (sitting).

If there is one thing we have learned in building this organization, it is the need for a strong dedicated board. AIRROC has been truly lucky in this respect. We are grateful to past and present board members for their role in ensuring that this organization is as robust as it can be.

AIRROC Matters is delighted to introduce the three newest board members and joins the membership in welcoming them “aboard”.

Frank Demento, XL Reinsurance America, Inc.

As Vice President, Claims Counsel and Unit Manager of the run-off unit at

XL Reinsurance America, Inc. (“XL”), Frank is responsible for all aspects of XL’s legacy business, including all assumed and retro ceded reinsurance claims and commutations. In his role as house counsel for XL, Frank is also responsible for all run-off litigation. He has over 15 years of experience in litigation and dispute resolution. Prior to joining XL, Frank was a partner at Mendes & Mount in their reinsurance arbitration and litigation department.

His particular focus for the future of AIRROC is on promoting its dispute resolution procedures, as well as the benefits of membership including the educational and commutation events.





AIRROC Board of Directors & Officers 2013

Back row left to right: Klaus Endres, AXA, Edward Gibney, CNA, Leah Spivey, Munich Re, Frank Kehrwald, Swiss Re, Glenn Frankel, The Hartford, John Parker, TRG, Keith Kaplan, Reliance, Michael Fitzgerald, Devonshire, Frank Demento, XL Re, Karen Amos, Rolute UK. *Front row left to right:* Marianne Petillo (co-chair), Rom Re, Art Coleman (chair), Citadel Risk, Kathy Barker (co-chair), Armour Risk, Mindy Kipness, Chartis, Carolyn Fahey, AIRROC Executive Director, Bill Littel (secretary), Allstate, Peter Hirs, Zurich

Educating the run-off community on the cost benefit of dispute resolution alternatives, fostering communication between cedents and reinsurers and finding solutions to common run-off concerns are some of the primary areas that Frank is dedicated to improving.

Klaus Endres, AXA Liabilities Managers Group

Klaus is an Executive Vice President and Global Head of Business Development and Acquisitions at AXA Liabilities Managers Group headquartered in Paris. He is also the President and CEO of the U.S. run-off manager AXA Liabilities Managers, Inc. and two U.S. insurance companies in run-off, Coliseum Reinsurance Co. and Mosaic Insurance Co. He has a global financial and strategic planning background with 10 plus years' experience in reinsurance and a Ph.D. in insurance economics. Klaus is a prolific author

of industry related articles and books and a familiar face on the insurance and run-off related conference circuit. Klaus has identified three future focus areas of AIRROC which he would like to support in particular: (1) continuing to promote and represent the common interests of companies with legacy business and encouraging greater state insurance department involvement with the organization given their importance to the legacy sector; (2) retaining and intensifying the involvement of current AIRROC members; and (3) expanding the membership by targeting large active groups with run-off/legacy books.

Mindy Kipness, Chartis, Inc.

Mindy is a Senior Vice President and Head of the Global Reinsurance Division Finance Group at Chartis, Inc. She was also the 2010 AIRROC Run-Off Person of the Year. Her background is in reinsurance accounting and she describes her primary responsibility as

oversight and direction of the Global Reinsurance Finance team.

Mindy has negotiated or participated in close to \$3 billion of successful commutations during her AIG/Chartis career. She represents AIG/Chartis on four insolvent creditor committees and currently is serving as the Vice Chair of the ROM Board of Directors.

Mindy is interested in enhancing the value of AIRROC to its members by working on emerging regulatory issues and continuing to deliver and build upon the strong educational programs sponsored by AIRROC. Mindy would also like to seek growth opportunities for AIRROC, not only through new conventional members, but non-conventional members such as Captives or other insurance related entities which require exit solutions. ●

Maryann Taylor is a Partner at Boundas Skarzynski Walsh & Black, LLC. mtaylor@bswb.com

News & Events

Nigel Curtis



Enstar on acquisition trail

Enstar Group Limited has announced plans to acquire Household Life Insurance Company of Delaware and HSBC Insurance Company of Delaware from an affiliate of HSBC Holdings plc for \$181 million.

In a separate undertaking, Enstar Group has entered into a definitive merger agreement to acquire SeaBright Insurance Company, which operates as a specialty underwriter of multi-jurisdictional workers' compensation insurance. Under the terms of the merger, a newly formed wholly-owned subsidiary of Enstar will merge with and into SeaBright, with SeaBright surviving as a wholly-owned subsidiary of Enstar. The \$252 million agreement is expected to close in the first quarter of 2013, subject to the approval of SeaBright's stockholders and regulators.

Enstar expects to finance both deals through a combination of cash on hand and its revolving credit facility.

Catalina buys KX Re from Tawa

Catalina Holdings (Bermuda) has signed a definitive purchase agreement with Tawa plc to acquire KX Reinsurance Company Limited as well as KX Re's wholly owned subsidiary OX Reinsurance Company Limited.

KX Re was put into run-off in 1992 and sold by CNA Financial Corporation to Tawa in 2007. It is a mature run-off with a wide variety of exposures, predominantly in the US, the majority

of risks relate to 1985 and prior, including exposure to US asbestos liabilities. OX Re, formerly Oslo Reinsurance Company (UK) Limited, was acquired by Tawa in March 2011.

As of 31 March 2012, the consolidated total assets of KX Re were \$114 million with undiscounted gross liabilities of \$69 million. The total consideration for the acquisition is \$28 million in cash and could reach \$30 million, depending on financial performance of KX Re between now and completion. Completion is conditional on UK regulatory approval, which is expected by the end of 2012. The acquisition will be met from Catalina's cash in hand and a senior debt facility.



OneBeacon exits run-off business

OneBeacon Insurance Group is to transfer to Armour Group affiliates certain legal entities that contain the assets, liabilities (including gross and ceded loss reserves), and capital supporting One Beacon's run-off business, as well as certain elements of the run-off business infrastructure including staff and office space.

The sale marks the complete separation of OneBeacon from its legacy liabilities, allowing it to become a pure specialty company. For Armour Group, it brings US staff and infrastructure and represents a significant milestone in the development of their servicing business.

Both OneBeacon and Armour Group are headquartered in Bermuda. As of September 30, 2012, the gross reserves associated with the run-off business were in excess of US\$2.2 billion. The transaction requires regulatory approvals and is expected to close in 2013.

MS Frontier Re reorganization

Mitsui Sumitomo Reinsurance Limited (MSRe), based in Dublin, Ireland will cease writing new business from January 1, 2013, and go into orderly run-off. Going forward, MS Frontier Reinsurance Limited, the parent company based in Hamilton, Bermuda, will directly write the business currently written by MSRe – primarily short-tailed



MARK YOUR CALENDAR

2 0 1 3



February 7

Dispute Resolution Procedure
Mock Arbitration, Chicago

www.airroc.org

March 5-6

Commutation Day and
Education Session, NYC

www.airroc.org

April 21-23

IRU 2013 Spring Conference
The Fairmont Southampton, Bermuda

www.irua.com

April 24-25

IRLA Discontinued Business
Seminar & Networking Congress

The Grand, Brighton, England

www.irla-international.com

May 9

Regional Education Day, Chicago

www.airroc.org



treaty business in Europe, Africa, Middle East, Asia and Oceania. MS Frontier Re will also continue to write existing classes such as property catastrophe excess of loss treaty on a worldwide basis and property risk excess of loss treaty in North America. The reorganization, designed to consolidate business under the unified brand of MS Frontier Re, is subject to regulatory approval.

New NY Headquarters for Chadbourne

AIRROC legal counsel and international law firm Chadbourne & Parke will be moving its headquarters in Midtown Manhattan in 2014. With a twenty-year lease, the firm will have 200,000 square feet at 1301 Sixth Avenue, the former headquarters of Dewey & LeBoeuf. With offices in Washington D.C., Los Angeles



and nine other cities around the World, Chadbourne's practice areas include bankruptcy and financial restructuring, commercial and products liability litigation, project finance, and of course, insurance and reinsurance.

PEOPLE

John R. Dacey, Head Group Strategy & Strategic Investments at Swiss Re, has been appointed Chairman of Admin Re, the division responsible for acquiring closed blocks of life insurance business. He replaces David Blumer, who left the company after four years as Chief Investment Officer, Head of Asset Management and member of Swiss Re's Executive Committee. Mr. Dacey has also been named as a new member of the Group Executive Committee. ●

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 Nigel of the Publications Committee at ncurtis@fastmail.us

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AIRROC/R&Q Commutation & Networking Event 2012

Birds of a feather gathered once again for the 8th AIRROC/R&Q Rendez-vous. Sporting a new location and celebrating the work of past and promise of new board members, AIRROC's annual get together exceeded all expectations for communication, education and commutation. Enjoy the following highlights of the programs and participants from the best Rendez-vous yet!



The State of the Nations

A View of the Run-off Market from Both Sides of the Pond

Summary by Mike S. Walker

Mike Walker, Head of Insurance Restructuring for KPMG, chaired the panel on “The State of the Nations,” convened to look at a current view of the run-off market from UK, US and Bermudian perspectives. The panel consisted of Paul Corver of R&Q, Mark Allitt of KPMG Bermuda and John Bator of Riverstone.

Mike began by putting the UK Market into context following the release of the 10th KPMG UK Non-Life Run-Off Survey, mentioning how drastically the market had changed since the survey’s first launch. In 2001, a number of London market insolvencies, coupled with large corporate run-off announcements heralded run-off as an industry in its own right. 10 years later, the wave of insolvencies is clearly spent and there have been no major insolvencies in the UK since. The only major new entrant to the market has been the Monoline insurers in 2008. In the UK there has been a seismic shift in the market, characterised by significant consolidation. Mike also observed that, in the period since the first survey, the size of the live market had more than doubled.

Paul tackled the UK and European landscape, highlighting the detailed findings of this year’s KPMG UK survey, observing that liabilities stood at £25.7 billion (US\$41 billion) and trapped capital of £3.9 billion (US\$6.2 billion). Paul stated that ultimate liabilities were undoubtedly greater than this as some portfolios in run-off were not easily identifiable. Across Europe, run off has been estimated by PwC at Euro 220 billion, with the vast majority at around



Euro 100 billion based in Germany and Switzerland.

Recent developments included the creation of the Employers’ Liability Tracing Office (“ELTO”), following which all companies that write or wrote EL business are required to commit policies

to an online searchable register. Run-off companies have to provide details for any policies under which a claim is made post April 2011. The obligation is likely to be far greater as FSA issued a consultation paper with regard to historic policy tracing. This could prove very

onerous for companies whose records are in archives or microfiche cabinets. In July a Ministerial Statement detailed a proposal for the creation of a fund that will pay mesothelioma claims arising from workplace exposure where neither the employer nor insurer could be traced. Alongside this will be compulsory membership of ELTO and presumably tougher procedures on tracing to reduce the numbers of untraced claims falling on the fund.

Paul also stated that, whilst the issues and impact around Solvency II had been often debated, the amount of Regulatory time and attention it was diverting was causing some issues for businesses in day to day dealings with Regulators.

Mark then discussed Bermuda, citing the lack of accurate estimates of the size of the run-off market. It is generally accepted, however, that the majority of legacy reserves are imbedded within the major Cat reinsurers.

He also noted the material amount of run-off within the captive industry, but most of this business is “related party risk”. Because of the generally fronted nature of the business it can be difficult for stakeholders to gain sufficient comfort with selling the liabilities to specialist run-off players.

Mark believes that Bermuda will play an important role for the run-off market as the regulatory environment and the development of Bermuda’s market place, both in relation to Solvency II equivalence and the development of ILS structures, which provides a platform for innovation in the way run-off is acquired and managed.

John Bator, in covering the US and M&A generally, mentioned that, with Solvency II approaching, even in the US the expectation remains that more run-off opportunities will emerge as companies look to better deploy capital.

He stated that, even so, the primary motivations of sellers to dispose of their run-off have not significantly changed: either the business has produced



undesirable results, the potential for continued losses, changes in strategic directions resulting in portfolios or classes of business not aligned with the current business, or just a desire to rid themselves of a costly administrative burden.

John has observed significant activity in run-off M&A across various markets, involving substantial levels of liabilities and related (re)insurance assets. By some conservative estimates, over \$1 billion has changed hands in connection with run-off transactions this year though the actual amounts are likely to be significantly more. ●

Mike S. Walker is Head of Insurance Restructuring for KPMG. mike.s.walker@kpmg.co.uk

Reducing Storage

Ways Run-off Companies Can Reduce the Burden of ESI

Summary by Joseph T. McCullough, IV

Joe McCullough (Freeborn & Peters) moderated a lively panel that discussed ways run-off companies can reduce the burden and expense of dealing with Electronically Stored Information (“ESI”) and he illustrated some of the

tough choices companies must confront in doing so. Rod Perry (Head of U.S. Global Operations, AXA Liability Managers) played the role of a Run-off Company manager who had to decide what to do with various ESI his run-off company received when it purchased a portfolio of business in run-off. Lloyd Gura (Partner, Mound Cotton Wollan & Greengrass) played the role of outside counsel advising Mr. Perry on his obligations and options with respect to the ESI, and Mike O’Brien (Director of Litigation Technology at Freeborn & Peters) advised Mr. Perry of the costs of the various options. After a discussion of the alternatives for dealing with the ESI, John O’Brien (Partner, Freeborn & Peters) played the role of the reinsurer’s counsel and Mr. Gura played the role of counsel to the cedent in a subsequent arbitration raising issues of the run-off company’s obligations to locate and restore ESI, where the reinsurer sought to compel production of the ESI. Jonathan Rosen (Arbitrator) played the role of sole arbitrator who decided to what extent

Facing page: Jonathan Bank, Locke Lord and Kathy Barker, Armour Risk (conference co-chairs), Mike Walker, KPMG, Paul Corver, R&Q, Mark Allitt, KPMG, John Bator, Riverstone Holdings; Paul Ginnett and Gary Ibbello, Fireman’s. **This page:** Michael O’Brien, Freeborn & Peters, Rod Perry, AXA LM.



Educational Panels (continued)

the run-off company must produce the ESI. Through this role playing exercise, the panel demonstrated the different approaches an insurer can take toward ESI, and the attendant benefits, risks and costs of the various approaches should a dispute later arise. The audience participated in the exercise by voting on the various business decisions Rod Perry had to make, and the arbitration issues Jonathan Rosen had to decide, before Mr. Perry and Mr. Rosen announced their decisions.

There was lively interaction among panel members and the audience, with a general consensus that early attention to ESI can save a run-off company time and money in a later arbitration. The audience vote on Run-off Company's ESI preservation and production duties mirrored the view of Arbitrator Rosen:

absent an expectation of litigation/arbitration for which the ESI would be relevant, a run-off company is free to cull or discard unnecessary ESI. Should a run-off company not do so and later learn of a dispute for which the ESI would be relevant, it may not discard the ESI, and could be forced to review and produce such ESI at considerable expense. Once a dispute commences, the fact that a company could have lawfully discarded ESI prior to arbitration does not protect against production of such ESI during discovery in the arbitration. In a hypothetical scenario where a run-off company destroys ESI once a dispute has commenced, both a large majority of the audience and Arbitrator Rosen voted for sanctions against the company. The panel also discussed the potential benefits to a run-off company of maintaining ESI in order to potentially counter later allegations from a reinsurer, and weighed

the potential benefits against the costs of maintaining ESI that is not necessary for conducting business with the risk that the preserved ESI could contain information that undercuts the run-off company's position in a legal dispute. Bottom line: ESI discovery is a complicated and risky morass for run-off companies, but early attention to ESI, assisted by technical experts and legal counsel, can avoid or at least reduce headaches down the road. ●

Joseph T. McCullough, IV, is a Partner at Freeborn & Peters. jmccullough@freebornpeters.com

This page top: Karen Amos, Resolute UK, Jonathan Bank, Locke Lord, Leigh Fanner, PRO IS; Steve Goodlud, KPMG. **Below:** Joseph McCullough, Freeborn, John O'Bryan, Freeborn, Jonathan Rosen, Lloyd Gura, Mound Cotton, Michael O'Brien, Freeborn, Rod Perry, AXA LM. **Facing Page:** Vince Vitkovsky, Edwards Wildman Palmer LLP, Max Perkins, Beasley plc, Cynthia Koehler, Liberty Mutual Insurance Company, Mark McLaughlin, IBM.



“...concern for data security is not unique to large corporations.”

Understanding the Risks of the Cyber World

Can You Better Estimate Risk?

Summary by Vince Vitkowsky

This panel was moderated by Vince Vitkowsky of Edwards Wildman Palmer LLP. He noted that the internet and computer technology have become central to all aspects of contemporary life, including personal communications, commercial relationships, and social relationships. This gives rise to the significant threats such as cybertheft, cyberespionage, and vulnerabilities to critical infrastructure, making cybersecurity one of the most significant business and national security challenges.

The first panelist, Cynthia Koehler, is assistant general counsel of Liberty Mutual Insurance Company. Ms. Koehler manages all aspects of Liberty's asbestos, environmental and other complex tort claims in the U.S. She discussed her system for electronic billing of reinsurance claims. In her view, when dealing with legacy business, brokers add delay and little value, particularly because so many reinsurers and run-off entities are no longer geographically centralized. Therefore, she does not use brokers for legacy billings, but rather submits direct electronic billings to reinsurers via email. Electronic billings reduce delay, and provide a permanent and clear record of claims submissions and claims-related communications. This permits prompt payment, or if necessary, creates a useful record for subsequent arbitrations or other collection proceedings.

The second panelist, Max Perkins, is an underwriter of Technology, Media and Business Services at Beazley plc. Mr. Perkins described some of the categories

of standalone cyber insurance available in the market. The first category relates to Information, Security and Privacy, and insures against financial loss arising from theft, loss or unauthorized disclosure of personally-identifiable non-public or third-party corporate information, failure to prevent a security breach, failure to timely disclose a breach, or failure to comply with a privacy policy. The second category insures against regulatory defense costs and penalties (where insurable by law). The third category he described insures against website

the Solvency II/Basel II regime. He also noted the inexorable movement toward storage of data in the cloud, which brings the danger of security failures and should give rise to an increased emphasis on customer data security.

Mr. McLaughlin identified the following areas of security focus as being crucial to governance, risk management and compliance:

1. People and Identity – mitigate the risks associated with user access to corporate resources;



content liability arising from claims such as defamation, libel, slander and infringement of copyright, domain name, trademark, trade name and trade dress.

The third panelist was Mark McLaughlin, Director of Insurance Strategy at IBM. Mr. McLaughlin discussed several specific standards and regulations that have an impact on cyber risks. These include those promulgated by or under the Sarbanes-Oxley Act, the Payment Card Industry (PCI), the National Institute of Standards and Technology (NIST), the International Organization for Standardization (ISO), the U.S. Department of Health and Human Services (including HIPAA and HiTrust), the Gramm-Leach-Bliley Act and Federal Financial Institutions Examination Council, and

2. Data and Information – understand, deploy, and properly test controls for access to and usage of sensitive data;
3. Application and Process – keep applications secure, protected from malicious or fraudulent use, and hardened against failure;
4. Network, Server and End Point – optimize service availability by mitigating risks to network components;
5. Physical Infrastructure – provide actionable intelligence on the desired state of physical infrastructure security, and make necessary improvements.

Both Mr. Perkins and Mr. McLaughlin stressed that concern for data security is not unique to large corporations. At a minimum, every run-off enterprise

Educational Panels (continued)

has personal information about its own employees that needs to be protected. And when assuming a run-off portfolio, additional personal information about insureds is likely to be transferred, particularly if workers' compensation business is involved. Companies should determine what personal information they possess, make conscious decisions about who should have access to it, take care to be sure it is secure, and have a breach response plan in place before a breach occurs. ●

Vincent J. Vitkowsky is a Partner at Edwards Wildman Palmer LLP. vvitkowsky@edwardswildman.com

Workers Compensation Ratios...

Down but Definitely Not Out

Summary by William C. Barbagallo

Bill Barbagallo moderated a panel to discuss current Workers Compensation issues in the runoff environment. The panel consisted of Sandy Santomenno, ACAS, MAAA with Towers Watson, Joseph Monteleone, Vice President of Workers Compensation Claims with QBE, and Susan Aldridge with Chadbourne & Parke. The topics were divided amongst the panelists with Sandy presenting industry statistics and her thoughts surrounding the primary cost drivers impacting this line of business; Joseph provided his views regarding the challenges that companies face when managing a worker's compensation runoff; and Susan providing a discussion of Medicare and Medicare Set-asides. The discussion was followed by a question and answer session.

Sandy began the presentation by providing statistical information concerning the trends in workers compensation, noting the dip in

combined ratios the industry enjoyed in 2004 and 2005 when it hovered in the mid 80's and 90% in 2006 due to price strengthening underwriting discipline and many reforms that occurred in multiple jurisdictions. Unfortunately these favourable results were short lived as there has been a steady increase in combined ratios each year since 2006 until the peak at or near 118% in 2010. At present Sandy is optimistic this trend will continue

to be ever present, the continued pharmaceutical abuse by injured workers as well as the over-prescription of opioids, increased Medicare set-aside values, etc.

So the question naturally arises, how can a run off organization manage this volatile line effectively? Joseph Monteleone took the podium and walked the audience through his strategies for a successful run off. Before a strategy can be developed



only through 2012 and then begin to improve for the next several accident years. She opined that the biggest factor impacting this positive future trend may be the significant rate increases that are expected to be implemented as well as overall improved case management resulting in a better than expected loss cost (severity) trend. The result is the opinion that case reserves appear to be adequate for accident years 2003-2011, but continue to remain inadequate for accident years prior to 2002. However, before we breathe a sigh of relief, Sandy cautioned that there are still a myriad of concerns, not the least of which include: older years have a long track record of developing upward, medical inflation for the elder and end of life care continues

management needs to understand the book of business. This knowledge includes an understanding of the jurisdictions and the legal issues impacting the losses. Even in the most challenging of jurisdictions such as California and Texas, clear and defined goals need to be established to stabilize reserves, reduce and eliminate leakage, and ultimately return IBNR to the Company. Given the age and complexity of the losses in the runoff environment, to address potentially serious adverse loss development in these challenging environments Joseph stressed the need for creativity, innovation, and aggression.

Probably one of the most difficult issues that have adversely affected the

“...limitation on insureds recovering punitive damages absent an independent tort claim for bad faith.”

workers compensation system is the impact of the Medicare, Medicaid and SCHIP Extension Act of 2007. In the last presentation by this panel, Susan Aldridge provided a comprehensive review of the Medicare Secondary Payer Statute passed by Congress in 1980 as well as the changes to the statute as outlined in the Extension Act which extended the government’s ability to enforce the Medicare Secondary Payer statute. The mandatory reporting

Clearly the issues surrounding the management of workers compensation has become a concern over the years and will continue to demand careful attention. Costs can escalate quickly and without constant aggressive medical management, carriers can find themselves accepting responsibility for medical care that is not industrial, increasing the carrier’s financial obligation. ●

William C. Barbagallo is Managing Partner at PricewaterhouseCoopers LLP. william.c.bargallo@us.pwc.com

and moderator, Marcus Doran (The Hartford).

Steven Anderson provided an update on the development of consequential damages arising from an insurer’s breach of contract. In 2008, the New York State Court of Appeals ruled that insureds can recover consequential damages arising out of an insurer’s breach of the covenant of good faith. In reviewing *Bi-Economy Market Inc. v. Harleysville Insurance Co.* and *Panasia Estates Inc. v. Hudson Insurance Co.* the court found that, while consequential loss was excluded from the policies, the insurers could be held liable for consequential damages as a result of their failure to settle and pay claims in a timely manner. In both of these cases there was a time element involved whereby the court found that the insured purchased the coverage not only to receive payment “but to receive it promptly” and any delay on the part of the insurer created consequential damages to the insured. The insured’s claim for consequential damages was determined to be a derivative claim stemming from the original loss as opposed to a separate action for bad faith. This distinction creates an end-run around New York’s limitation on insureds recovering punitive damages absent an independent tort claim for bad faith. Anderson noted the significant amount of concern these cases generated; however, the flood of consequential damages claims has not materialized in the four years since *Bi-Economy*. To date, the courts have limited the circumstances where consequential damages apply and there has been no known application of the *Bi-Economy* decision in other venues applying New York law.

Next, Michael Goldstein discussed the increased tension between follow the settlements and access to records clauses. Reinsurance contracts often have broad access to records provisions as well as fairly specific loss reporting requirements. Often, however, the cedant provides minimal information about the underlying settlement and reinsurance



requirements in the Extension Act have substantially increased the administrative burden carriers must bare to comply. Medicare Set-aside arrangements (“MSAs”) have created additional complexity for the settlement process, including additional time and expense to obtain an MSA evaluation. If an MSA is not established or is insufficient, a primary payer’s exposure may be increased, and its reinsurance recoveries may be jeopardized.

Emerging Issues in Insurance and Reinsurance

Ensigns on the Horizon

Summary by Marcus Doran

The afternoon educational session closed with a discussion of emerging issues concerning the insurance and reinsurance industry. The panel included Steven Anderson (Barger & Wolen LLP), Michael Goldstein (Mound Cotton Wollan & Greengrass LLP), Molly McGinnis Stine (Locke Lord LLP), and Marcus Doran (The Hartford).

Facing page: Bill Barbagallo, Pricewaterhouse, Susan Aldridge, Chadbourne, Joseph Monteleone, QBE, Sandy Santomenno, Towers Watson.
This page: Marcus Doran, The Hartford, Molly McGuinness Stein, Locke Lord, Michael Goldstein, Mound Cotton Wollan & Greengrass, Steven Anderson, Barger & Wolen.

Educational Panels (continued)

allocation with its billing to the reinsurer for a variety of reasons. Given the significant sums being billed to the reinsurance cover, the reinsurer often seeks to understand the nature of the loss, the rationale behind the settlement, and the allocation and cession to the reinsurance contract.

Such requests may relate directly to issues of reinsurance coverage not subject to the doctrine of follow the settlements. Where the cedant has failed to provide the necessary detailed direct claim or reinsurance allocation information, the reinsurer will invoke the access to records clause. Some reinsurers have sought to severely limit the quantity and quality of information that they will provide on the grounds that follow the settlements precludes a reinsurer from challenging the cedant's settlement and

therefore most direct claim information is irrelevant. Many cedants will also invoke attorney/client privilege over many documents reinsurers seek to obtain. Goldstein, however, asserted that follow the settlements should not supersede the access to records clause "if the reinsurer's requests are reasonable and relevant to the disputed claim or underwriting/accounting issue." Goldstein cited *Hartford Acc. & Indem. Co. v. Argonaut Ins. Co.* and *Travelers Cas. & Surety Co. v. Century Indem. Co.* as recent cases where these competing concerns were litigated. In one of these cases the court rejected the idea that information relevant to the reinsurance billing decision is not subject to discovery. On the other hand, privileged communications may not be discoverable, except in certain specific circumstances or within the scope of access to records clauses. In conclusion, Goldstein proffered that cooperation

with reasonable record requests will mitigate the time and expense of disputes and limit exposure to potentially broader discovery imposed by an arbitration panel.

Finally, Molly McGinnis Stine provided a status on the potential for cell phone and wireless transmitter claims. With 332 million US subscribers as of December 2011, many with multiple devices and 31.6% of US households now wireless-only, there are a significant number of people being exposed to radio frequency (RF) emissions from cell phones. There have been "hundreds of studies"; one in particular by the WHO classified cell phone RF emissions as a "carcinogenic hazard." Many conclude that more research is needed. For a number of reasons, cell phone litigation has been largely unsuccessful to date. Unlike the strong causal link between asbestos exposure and mesothelioma, cell phones have not been linked with a specific disease or injury. The use of multiple devices and the frequent purchase or replacement of cell phone may create difficulty in apportioning liability to a specific device or manufacturer. It should also be noted that individuals are exposed to RF emissions from scores of household appliances from microwave ovens to electric blankets, which further complicate causation and apportionment determinations. Lastly, since the FCC regulates all matters dealing with the safety of cell phones, many cases are dismissed on pre-emption grounds. As a result, difficult coverage issues may arise including the coverage definition of bodily injury, timely notice, exclusions, number of occurrences, coverage trigger and allocation methodology. Stine was careful to point out that, while coverage and liability issues remain undetermined, insurers may continue to have a duty to defend. Given the popularity and proliferation of cell phone usage, this issue will continue to develop. ●

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Silos v. Windows and Walls: Keynote Speaker Peter Hartt

EU v. U.S. Holding Company Solvency Requirements



By James Veach

Peter Hartt, New Jersey's Acting Director of the Insurance Division of the Department of Banking and Insurance, spoke at AIRROC's Welcome Luncheon. Mr. Hartt, a veteran state regulator, concentrated his remarks on regulatory initiatives undertaken by the European Union, the Federal Government, and state regulators in the United States (U.S.) concerning solvency requirements for international insurance holding companies.

Mr. Hartt observed that both EU and U.S. insurance regulators share the same goals – protecting policyholders

and increasing the financial stability of insurers and reinsurers. In order to promote these goals, New Jersey and other U.S. states have recently adopted principles-based accounting standards that allow for less rigid “right sizing” of reserves. In addition, both EU and U.S. regulators are moving forward with their Own Risk Solvency Assessments (ORSA) that will provide a “uniquely forward looking measure of solvency.” For more on the U.S. ORSA effort, see R. Kasinow's (N.J. DOBI) memorandum, *Comment Submissions on U.S. Own Risk and Solvency Assessment Proposal*, National Association of Insurance Commissioners (NAIC), February 11, 2011.

EU solvency measures are similar in many respects to measures in place or being adopted in the U.S. Nevertheless, insurance/financial regulators in the countries that comprise the EU and, to a degree, the Federal government as a result of the Dodd-Frank Act, have taken a different approach with respect to how regulators oversee insurers/reinsurers that operate within holding company groups. Director Hartt observed that with respect to efforts to identify insurers that fall within the definition of a Systemically Important Financial Institution, the Federal government and its Financial Stability Oversight Council essentially take a “top-down and bank-centric approach” to solvency monitoring.

Similarly, “under the (EU) Solvency II regime, insurance group supervision means supervision of the insurance group viewed as an economic entity in and of itself (in contrast to the sum of the supervision of the individual entities within the group),” which Director Hartt pointed out has been the U.S. state regulatory model. For a recent comparison of the EU and U.S. state regulatory approaches to insurance oversight, see *Comparing Certain Aspects of the Insurance Supervisory and Regulatory Regimes in the European Union and the United States: Request for EU-U.S. Dialogue Project Comments*, a copy of which may be found at: http://www.naic.org/documents/committees_g_us_eu_dialogueproject_draft_1209.pdf (Joint Dialogue Report).

State insurance regulators in the U.S. look first at an individual insurer's capital and surplus using a “windows and walls” approach. In other words, state regulators have “windows” [through which] to identify relevant group business activity [and its effect on an insurer's solvency] ... and ‘walls’

to protect an insurer's capital and assets through prior approval of intra-group transactions." Joint Dialogue Report at pp. 31/129. Although the NAIC is a founding member of the International Association of Insurance Supervisors (IAIS), Director Hartt noted that recent IAIS gatherings have prompted state regulators to address these issues, particularly with respect to the power of an EU holding company group supervisor to oversee group solvency from the top down. See E. Festa, *ComFrame has 'drifted apart' as Consensus on Ambitious Framework Remains Elusive*, PropertyCasualty360.com, October 11, 2012.

As Director Hartt put it, for U.S. state regulators addressing group solvency issues, while "all politics may be local, the supervision of large group holding companies that operate outside the U.S. has become not only local, but increasingly Federal and global as well." As a result, Director Hartt asked whether we may eventually see a decline in merger and acquisition activity between international holding companies due to their operating in the EU and the U.S. subject to different types of holding company oversight.

In the meantime, Director Hartt will continue to peer through windows and inspect walls in order to monitor the solvency of (re)insurers located or doing business in NJ. We invite him to return to a future AIRROC Rendez-vous to report on how the international insurance regulatory oversight of international holding companies is evolving. ●

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Facing page: Peter Hartt, New Jersey Acting Director of the Insurance Division of the Department of Banking and Insurance and James Veach, Mound Cotton Wollan & Greengrass. **This page:** Kathy Barker presents the AIRROC Run-off Person of the Year award.



AIRROC Honors Bob Sherwood Run-off Person of the Year 2012

By Connie D. O'Mara

As testament to AIRROC's commitment to support managerial excellence and communication among members of the runoff marketplace, Bob Sherwood, Director – Reinsurance Division for the New York Liquidation Bureau, was named Run-off Person of the Year for 2012. Kathy Barker, presenting the award at the October 15 Rendez-vous Opening Dinner, cited Bob's 35 years of experience in the industry, his ongoing active participation in AIRROC forums and events and his accomplishments at the NYLB.

Bob was nominated by his most recent Special Deputy Superintendent, Jonathan Bing, based on the stellar success he has spearheaded in collecting receivables over the last five years. Furthermore, these results were achieved with higher efficiency, through greater reliance on in-house staff, reducing fees paid to outside consultants. Bob credits his staff with this success, including his Assistant Director, Diane Banks, and managers Sherri Siegel and Barbara Pluciennik.

Prior to joining the Bureau in 2007, Bob was Vice President of Accounting for 11

years at Commercial Risk Re-Insurance, a subsidiary of Scor Re, and prior to that a Reinsurance Accounting Manager at Reliance Insurance Company. What he enjoys most about his current job is working on commutation deals. As he stated: "this work allows me to interact with the reinsurers and consultants that are hired by the reinsurers, to reach agreement on balances due the estates at a price that is reasonable and beneficial to both parties."

On behalf of the NYLB, Bob has been an active participant of AIRROC since 2008, including the commutation and networking day of the Rendez-vous, sometimes called, "speed dating for reinsurance." The NYLB handles 35 liquidated insurance companies and 3 companies in rehabilitation and they conduct reinsurance collections with only 20 employees in the Reinsurance Division. Thus, taking advantage of the networking and commutation opportunities afforded by AIRROC is critical to their success. ●

The AIRROC Run-off Person of the Year Award is sponsored by Sidley Austin, LLP.

Connie D. O'Mara of O'Mara Consulting, LLC, connie@cdomaraconsulting.com

Women's Networking Luncheon: Professionals Converge and Connect

Valuable insights from Martha Lees, NY DFS Deputy Superintendent

By Jeanne M. Kohler

The Women's Networking Luncheon, which was sponsored by Edwards Wildman Palmer LLP, was held on Tuesday of the October 2012 Commutations and Network Event. As with previous Women's Networking lunches, men were also welcome to attend, and in fact, the luncheon drew a large crowd of both men and women.

After a delicious lunch, Leah Spivey of Munich Reinsurance America, Inc. and currently a member of AIRROC's Board of Directors, welcomed the keynote speaker, Martha Lees, Deputy Superintendent and General Counsel for Insurance, New York State Department of Financial Services ("DFS").

Ms. Lees was previously with the New York State Insurance Department in the positions of Deputy General Counsel from 2007 to 2010 and General Counsel from 2010 to 2011. Then, in October 2011, following the consolidation of the New York State Insurance and Banking Departments into the DFS, she continued to serve in the role as chief legal officer for Insurance Law matters.

In her address, Ms. Lees gave the audience some insight into the DFS. First, she explained that the DFS has 5 divisions: Insurance, Banking, Financial Fraud and Consumer Protection, Markets, and Real Estate Finance. The core functions of the DFS are to examine banks and insurance companies to make sure that they are sound and healthy and ensure that consumers and "high road" companies are protected from actors that are not so "high road". In addition to these core functions, she noted some areas of recent focus at DFS, such as force-placed insurance and foreclosure issues, health insurance issues and a health exchange (which she said would be established in New York), fighting no-fault fraud, regulation of emerging digital payment systems, and medical malpractice reform. Ms. Lees noted that the purpose of the DFS is to regulate



“The core functions of the DFS are to examine banks and insurance companies to make sure that they are sound and healthy and ensure that consumers and ‘high road’ companies are protected from actors that are not so ‘high road.’”



both effectively and efficiently. To promote efficiency and help make New York even more attractive to businesses, the DFS has worked at streamlining its insurance filing review procedures, and by coordinating the resources of the former Insurance and Banking Departments the DFS has an even greater ability to help solve consumer problems effectively.

Ms. Lees also discussed what she considers to be three “hot topics” in reinsurance. The first is the Dodd-Frank Act’s Nonadmitted and Reinsurance Reform Act (NRRA), and the issue of whether a particular entity meets the definition of a “reinsurer” under the NRRA. The other two hot topics she mentioned are revisions to New York Insurance Regulation 20, which reduces collateral requirements from unauthorized reinsurers, and New York Insurance Regulation 52, which, in conjunction with New York Insurance Law Article 15, regulates the acquisition of control of insurance companies and transactions between insurance companies and affiliated entities, which are currently being considered.

As this was a Women’s Networking Luncheon, in addition to her insight into the DFS, Ms. Lees also commented on some of the challenges professional women face, generally, and in particular, some of the challenges she has faced as a professional woman.

After Ms. Lees’ address, the attendees had the opportunity to ask her questions regarding her views. The discussion was enlightening for all who attended. ●

Jeanne M. Kohler is a Partner at Edwards Wildman Palmer LLP. jkohler@edwardswildman.com

Facing page top left: Martha Lees at podium, New York State Dept of Financial Services.

Bottom left: The organizers of The Women’s Luncheon (left to right) Leah Spivey, Munich Re America, Martha Lees, Carolyn Fahey, AIRROC Executive Director, Marianne Petillo, ROM Reinsurance Company, Jeanne M. Kohler, Edwards Wildman Palmer LLP.

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First Recipient of the Trish Getty Scholarship



Gregory Tucker, a senior in Actuarial Science at St. John's University, became the first recipient of AIRROC's Trish Getty Scholarship. Accompanied by his proud parents, Mr. Tucker graciously accepted the \$5,000 scholarship at the October 15, 2012 Annual Dinner. Executive Director Carolyn Fahey, who presented the award, noted that his achievements, poise and commitment to the business were a fitting honor to her predecessor, Trish Getty. Indeed, just after receiving the award, Mr. Tucker commented to Ms. Fahey that he "ha[s] more fun at a gathering of industry

executives than attending parties with his friends. Being here has reassured me even more that I am going into the right business."

Mr. Tucker is on the Dean's List, with a 3.95 GPA. Characterized by Carolyn Fahey as "very personable and enthusiastic about joining the insurance business world," he has successfully completed two, qualifying actuarial exams and internships at Chubb, Starr Technical Partners and Hanover Stone Partners. He is actively seeking employment opportunities to follow his 2013 graduation. ●

AIRROC/R&Q Golf Day

The AIRROC/R&Q Commutation and Networking Event got started this year with many attendees teeing it up at Fiddlers Elbow Country Club in Bedminster, NJ, only about 15 miles or so from the Sheraton Parsippany, on Sunday, 14 October. The weather cooperated once again. For this year's AIRROC/R&Q Golf Day it was a spectacular fall afternoon and the course was in excellent condition, a true test of golfing skill. The team of Alan Augustin, Alex Keville, Andrew Roth and Neil Sutton took the

top prize with a very impressive score of 5-under 67. Here is a complete list of prize winners:

Team Scramble

1st Place – 67 – Alan Augustin, Alex Keville, Andrew Roth, Neil Sutton

2nd Place – 69 – Gregg Frederick, Andy Gregory, Tanguy Le Gouellec de Schwarz, Steve Paton

3rd Place – 72 – Rick Grant, John Madden, Betsy Mitchell, Don Wustrow

Closest to the Pin – Andrew Roth

Longest Drive – Betsy Mitchell (GIRL POWER!!!!!!)

Everyone enjoyed "Pasta Night" and Open Bar after golf.

Many thanks to Citadel Risk for sponsoring this event. ●



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