ASSOCIATION OF INSURANCE AND REINSURANCE RUN-OFF COMPANIES

# AIRROC® MATTERS

A NEWSLETTER ABOUT RUN-OFF COMPANIES AND THEIR ISSUES

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### *Message from CEO and Executive Director*

## Winds of Change


Trish Getty

As our branding reflects, the legacy runoff books involve constant changes. We have seen people come and go as runoffs wind down. We have seen member companies go away because they have been acquired by another member. What an interesting and ever-changing business we work in. One thing that will not go away is AIRROC, a valuable and thriving part of our industry, because our education sessions give you both the tools and venue to communicate and exchange ideas.

On January 13, the AIRROC Board of Directors elected their new Chairman, Art Coleman of Citadel Re and Co-Vice Chairs Kathy Barker of Armour Risk and Marianne Petillo of ROM. All bring to the table substantial experience in the legacy runoff business. Please join me in welcoming them to their new positions.

As we implement our new strategy plan, one of our new board's first orders of business is to outsource many of our administrative duties. In early February, we entered into an agreement with CINN who will perform these duties under the direction of their President, Steve Acunto and Executive Vice President, Carole Acunto. Many will meet Steve and Carole during our upcoming membership

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### *Chairman's Message*

## Passing the Gavel

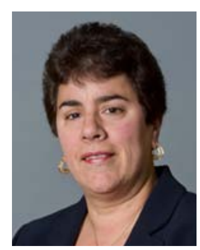

Jonathan Rosen

With great pride and pleasure I pass the AIRROC Chairmanship gavel into the capable hands of Art Coleman. It has been a privilege serving with Art on the Board since AIRROC's inception and the many strengths that he brings to the table augur well for AIRROC's continued prosperity. With equal gusto, we welcome Kathy Barker and Marianne Petillo as the organization's newly elected Vice Chairs, confident in their abilities to advance AIRROC's footing as we confront the challenges ahead. They too have served on the Board with distinction for many years and are well deserving of the accolade.

Art's commitment to AIRROC is most visible in his accomplishments as Chair of the October Event Committee, which has steered the growth of the event into one of the largest gatherings on the insurance/reinsurance industry calendar and a staple for industry participants. His conception


Art Coleman


Kathy Barker


Marianne Petillo

and execution of Regional Education Events, done in conjunction with local law firms, has expanded AIRROC's reach into our member constituents and, through the specially tailored seminars offered, has significantly enhanced the value of AIRROC membership.

Kathy and Marianne are equally lustrous. As Co-Chair of the Education Committee, Kathy has delivered education topics and content at membership and regional meetings of the highest quality and interest, with Education Day at the October Event a crowning glory. For her part, Marianne has dedicated her skills infra-structurally, adeptly serving as Chair of the Finance and Website Committees from their inception, with her efforts guiding the establishment of AIRROC's website into a powerful tool, in addition to her astute business acumen keeping our finances in check.

We are lucky to have at the helm experienced industry executives, whose enthusiasm and commitment to AIRROC arej4 unbridled. The initiatives

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*Notes from Editor and Vice Chair*

# Ever Forward, Ever New

Peter A. Scarpato

AIRROC and AIRROC Matters advance side-by-side, changing to meet the needs of our run-off, legacy members. As Trish outlines in *Winds of Change*, AIRROC advances with newly elected board members, a new strategic plan and an agreement with CINN. Jonathan Rosen, our adept, outgoing Chairman, offers *Passing the Gavel*, detailing the experience of our new Chairman Art Coleman, and Co-Vice Chairs Kathy Barker and Marianne Petillo.

The centerpiece of this edition is our *Roundtable on M&A Activity of Legacy Business*, for which past Publications Committee Chair Ali Rifai and I elicited an enlightened view of the developing M&A landscape from Oliver Horbelt, Neal Wasserman and Brian Snover. Next, John West provides a timely assessment of the potential impact on our run-off sector from the new Federal Insurance Office, in *Blending Free Market Economy with a Sense of Reality: The Federal Insurance Office.*

Two articles on asbestos and other long-tail health hazards grace this edition: In our Legalese section, Michelle George and Rebecca Huggins present *English Court of Appeal Muddies the Waters in EL Trigger Litigation*, reminding us that run-off companies continue to grapple with complex legal issues arising from asbestos claims. And in *IntAP Meeting: IntAP's Technical Meeting on the 8th and 9th of December 2010 in Cologne, Germany*, Maria Keifer Lagerwall reports on presentations during the meeting, including those from Andrew Rothseid on the GTE Re Commutation Plan and our own Jonathan Rosen on AIRROC's Dispute Resolution Procedure.

We proudly introduce *Statutory and Regulatory Developments*, a recurring column on run-off related regulatory developments, for which Publications Committee members Fred Pomerantz and Jim Veach seek entries from our readership. Our maiden section includes Fred's article on *Recent Developments in Rhode Island Commutation Plan Filed by GTE Re*, and *The UK Regulatory Reforms: The Birth of Three New Regulators*, by Jonathan Davies and Imogen Hurst.

Add in Nigel Curtis' *Present Value* and KPMG *Policyholder Support Update* and you're there.

Let us hear from you.

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*Chairman's Message*

## Passing the Gavel

*continued from page 1*

that they take forward in continuing to shape the organization are in safe hands and through their energized leadership it is beyond question that AIRROC will continue to thrive as a vibrant meaningful organization which, in keeping with its value proposition, constantly delivers membership benefits.

I thus pass the gavel with a toast to my colleagues, brazenly confident in AIRROC's future success. ■

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## AIRROC® Board of Directors and Officers



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*Think Tank*

# Roundtable on M&A Activity of Legacy Business

***Moderated by Ali Rifai and Peter A. Scarpato with participants Oliver J. Horbelt, Neal Wasserman and Brian Snover***

Ali Rifai

Peter A. Scarpato

Oliver J. Horbelt

Neal Wasserman

*"...over the last five years there certainly has continued to be a growing sophisticated refinement of the tools available to folks to deal with discontinued books of business and legacy liabilities."*
*— Brian Snover*

**Peter Scarpato:** *Ali Rifai and I are very fortunate to have with us Oliver Horbelt, Neal Wasserman, and Brian Snover. Our Roundtable discussion today seeks your insight into factors that impact the M&A activity of legacy blocks of runoff business. Ali and I will be conducting the interview and we hope to have a very spirited discussion. Let's start off with a general question: what trends have you seen in the market compared to five years ago? Oliver, why don't you start?*

**Oliver Horbelt:** Sure. I guess I would want to highlight three observations as to what in our view has changed over the previous period. First, we've seen a higher number of deals being transacted during the past five years compared to the five-year period before that. Transaction count during the past five years was generally in the double digits while, in the period before, less deals were concluded with lumpy activity between the years. So if we look at the market correctly over the past ten years, average deal count was anywhere between six to ten transactions compared to double-digit deal counts in more recent years.

The second observation would be that buyers who need to support a more steady production pipeline have started to look for deals that are more at the periphery of a formerly rather centric market. Examples of this are captives runoffs or certain specific servicing or brokerage activities that only in the widest interpretation support the core business of insurance runoff.

The third observation, although a little specific, is that before the financial crisis certain buyers could leverage their purchases by accessing fairly cheap bank loans. We know of examples where acquirers could leverage the purchases with ten-year loans that were priced at 200 to 250 basis points over the corresponding LIBOR. And obviously such terms have not been available more recently; as a result of this we've seen a number of buyers trying to leverage acquisitions by means of retroactive reinsurance rather than external financing.

**Peter Scarpato:** *Other comments?*

**Brian Snover**: Yes. From our perspective, it's been relatively quiet as compared to the period a few years ago. I wouldn't use the five-year cutoff per se for the comment I just made.

But it was relatively quiet. I suspect very low interest rates and the economic distractions have had something to do with that from our perspective. But it is certainly the case — and I think Oliver's answer suggested this as well —

*continued on next page*

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## 2011 Board of Directors and Officers

*Standing (from left)*: Jeff Mace (*General Counsel*, Dewey & LeBoeuf), Michael Palmer, Art Coleman (*Chairman,* Citadel Re), Glenn Frankel (The Hartford), Jonathan Rosen (*2010 Chairman*, The Home), Leah Spivey (Munich Re), John Parker (RiverStone/TIG), Trish Getty (*AIRROC Executive Director*), Keith Kaplan (Reliance), Kathy Barker (*Co-Vice Chair*, Excalibur), Ed Gibney (CNA), Karen Amos (Resolute Mgmt.), Michael Zeller (AIG), Frank Kehrwald (Swiss Re). *Not pictured:* Bill Littel (*Secretary*, Allstate), Colm Holmes (Zurich), Joe DeVito (*Treasurer,* DeVito Consulting), Marianne Petillo (*Co-Vice Chair,* ROM), Michael Fitzgerald (Scan Re).

## Roundtable on M&A Activity of Legacy Business *continued from page 5*

that over the last five years there certainly has continued to be a growing sophisticated refinement of the tools available to folks to deal with discontinued books of business and legacy liabilities.

There are many more brokers involved in this now. You get much slicker presentations. It's become a much more standardized and well-accepted business than it was five years ago. So that's continued to evolve.

But in terms of the opportunities we saw on the M&A side, the drivers for these transactions, what really causes people to seek them out, don't seem to have changed too much.

**Neal Wasserman:** I would agree as well. I think we've certainly seen an increase in transactions being completed over that five-year period. A lot of that is to some extent as Brian indicated, due to there being more buyers in the market now.

I think there were plenty of opportunities in the past, although often sellers weren't necessarily aware of the market. It's now a well-established market and the proliferation of buyers is bringing prices to a point where many more of these transactions are getting completed.

More recently I think it has cooled off a bit in part due to interest rates and in part due to the loss of some of the peripheral capital providers – referring mostly to some private equity and hedge funds that were helping to push prices up to some of the levels we saw.

Some of those markets after the financial crisis have pursued other options. They have seen other, distressed asset opportunities outside of the runoff market and have left the market and that's helped pricing a bit.

**Peter Scarpato:** *Would it be fair to say that the current economic environment has impacted pricing negatively or not?*

**Neal Wasserman**: I think it depends on whether you're a buyer or a seller. It's my view that it has pushed pricing back down to some extent but not to a great degree. It is still much higher than what we would have seen five to ten years ago – but a bit more modest than what we were seeing a couple of years ago.

**Brian Snover:** Peter I don't know if I could attribute what has gone on in pricing to the economic environment except the interest rate issue because the discount rates and everything else that we use to assess the ultimate liabilities have been impacted by the interest rate.

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*Think Tank*

# Blending Free Market Economy with a Sense of Reality: The Federal Insurance Office

John West

*By John West*

## Profile of Relative Size of Insurance Industry in the U.S.

It has been reported that the Insurance Industry in the United States accounted for about 8% of the United States Gross Domestic Product (GDP) in 2009. The World Bank reported the U.S. as having the largest GDP in the world at around $14 trillion. The Insurance Industry in the U.S. wrote $1.1 trillion dollars of net written premium in 2009. Approximately 60% of that was written by Life and Health companies and the remainder by Property and Casualty Companies. In 2000, the GDP was $9.95 trillion and U.S. Insurance companies wrote $602 Billion. The change in relative percentages from 2000 to 2009 shows a growth of 1.74% in the amount of written premium against the GDP (6.05% in 2000 compared to 7.79% in 2009). Given the expectation of an ever increasing demand in insurance going forward, the reality is that the Insurance Industry will, to some degree, continue to increase its relative share of the nation's economic growth. Therefore, it will become a lightning rod of conflict and discussion for analysts, politicians, economists and, indeed, everyone else in the world.

## Need For Oversight

Given the massive economic debacle over the last few years and the collapse and near-collapse of major international companies, it is no wonder that the U.S. government (as well as all other major governments in the world) took a long hard look at how they are monitoring the financial health of their populations. In an Opinion written for the Wall Street Journal on January 18, 2011, U.S. President Barack Obama stated the following, "For two centuries, America's free market has not only been the source of dazzling ideas and path-breaking products, it has also been the greatest force for prosperity the world has ever known. That vibrant entrepreneurialism is the key to our continued global leadership and the success of our people. But throughout our history, one of the reasons the free market has worked is that we have sought the proper balance. We have preserved freedom of commerce while applying those rules and regulations necessary to protect the public against threats to our health and safety and to safeguard people and businesses from abuse." He goes on to talk about the need, or obligation of the government to allow markets to operate as free from regulation as possible while still "meeting our fundamental responsibilities to one another." His goal is to write rules with more input from experts, businesses and ordinary citizens. Through doing more of their work online, the government can meet another goal which is transparency and consumer education.

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*Given the expectation of an ever increasing demand in insurance going forward, the reality is that the Insurance Industry will, to some degree, continue to increase its relative share of the nation's economic growth.*

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 begins a sweeping reform of the U.S. financial system. It requires new and existing regulatory agencies to undertake more than 50 studies of the financial system and more than 250 instances of rule-making. Title V of the Act mandates the creation of the Federal Insurance Office (FIO) as well as the Financial Stability Oversight Council (FSOC). These will exist within the U.S. Department of Treasury. The FIO and FSOC will serve to "monitor systemic risk within the industry and will provide for certain state reforms to state practices concerning non-admitted insurance and reinsurance." The FSOC has a "statutory mandate that creates for the first time collective accountability for identifying risks and responding to emerging threats to financial stability. It is a collaborative body chaired by the Secretary of the Treasury that brings together the expertise of the federal financial regulators, an insurance

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**Blending Free Market Economy with a Sense of Reality** *continued from page 7*

expert appointed by the President, and state regulators. In September of 2010, Missouri Insurance Director John Huff was chosen to represent state insurance regulators on the council as a non-voting member. The first director of the Federal Insurance Office, created under Dodd-Frank, will be the other non-voting member when he or she is appointed.

The FSOC has important new authorities to constrain excessive risk in the financial system. For instance, the FSOC has authority to designate a nonbank financial firm for tough new supervision and therefore avoid the regulatory gaps that existed before the recent crisis. Closing these gaps in supervision will help minimize the risk of a nonbank financial firm threatening the stability of the financial system. Additionally, to help with the identification of emerging risks to financial stability, the FSOC can provide direction to, and request data and analyses from the newly created Office of Financial Research (OFR) housed within Treasury.

## The Insurance Industry's Position

As one reads through the discourse last year between the National Association of Insurance Commissioners (NAIC) and the various U.S. government committees formed to deal with Financial Reform legislation, it becomes obvious that the NAIC has been extremely instrumental in managing the expectations of those committees at the same time educating them on how the market really works. By doing so, the NAIC did a remarkable job of demonstrating the effective self-regulation of the insurance industry which has been in place since the first insurance regulator was established in New Hampshire in 1851. Other key dates have been 1945 when Congress endorsed state oversight of insurance with the McCarran-Ferguson Act and specifically recognized and reaffirmed the benefits of the state system in 1999 when it modernized federal financial supervision laws in the Gramm-Leach-Bliley Act (GLBA).

> *The NAIC was created by State insurance regulators in 1871 to address the need to coordinate regulation of multistate insurers.*

The NAIC was created by State insurance regulators in 1871 to address the need to coordinate regulation of multistate insurers. The first major step in that process was the development of uniform financial reporting by insurance companies. Their mission is "to assist state insurance regulators, individually and collectively, in serving the public interest and achieving the following fundamental insurance regulatory goals in a responsive, efficient and cost effective manner, consistent with the wishes of its members:

Protect the public interest;

Promote competitive markets;

Facilitate the fair and equitable treatment of insurance consumers;

Promote the reliability, solvency and financial solidity of insurance institutions; and

Support and improve state regulation of insurance."

To highlight one example of exactly how effective the NAIC and Insurance companies have been in self-regulation, Eric Dinallo, the then New York Insurance Superintendent testified before Congress on October 7, 2008 with regard to "the causes and effects of the AIG bailout." He made the strong point of stating that, "It's important for everyone, and especially policyholders in AIG insurance companies, to understand that the insurance companies, which are regulated by New York and other states, are solvent and have the funds to pay any policyholder claims, AIG's problems came from its parent company and from its non-insurance operations, which are not regulated by New York or any other state." Dinallo clarified that AIG owns 71 U.S.-based insurance companies and 176 other financial services companies, including non-U.S. insurers. Only AIG's U.S. insurance subsidiaries are regulated by state insurance regulators.

"Insurance regulators from every state – and especially those regulators in New York and Pennsylvania, who oversee a large number of AIG insurance subsidiaries – have been involved in every step of resolving AIG's holding company problems," said NAIC President and Kansas Insurance Commissioner Sandy Praeger. "Our primary principle throughout the effort to assist AIG has been to protect insurance company policyholders and to stabilize the insurance marketplace."

"Some insurance lobbyists hope to politicize and mislead policymakers by suggesting AIG's problems are a result of state insurance supervision, and could have been averted by federal oversight," Praeger said. "On the contrary, conservative state regulation ensured that while the federally regulated holding company was failing,

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# English Court of Appeal Muddies the Water in EL Trigger Litigation

Michelle George

Rebecca Huggins

*By Michelle George and Rebecca Huggins*

The latest development in the ongoing saga of the so-called Employers' Liability (EL) Trigger Litigation took place in October last year when the Court of Appeal finally handed down its long-awaited judgment in the six lead cases concerning cover for mesothelioma sufferers.

Following the first instance judgment which was seen as a victory for claimants, the Court of Appeal was under pressure to resolve the issue swiftly and to provide a definitive answer for claimants, employers and insurers. Disappointingly, it took the Court of Appeal eleven months to reach its decision, and even then, the three judges disagreed. The Court of Appeal ruling was regarded as a partial victory for insurers, but the story doesn't end there.

As permission to appeal to the Supreme Court (until last year known as the House of Lords) was given, there will be at least one more chapter. However, the wheels of justice turn slowly in England. The hearing will not take place until December 2011 and we will have to wait until 2012 before the final outcome is known.

Before looking at the Court of Appeal judgment, here is a brief reminder of the background to the current litigation.

## Mesothelioma – The UK Statistics

In 1968, 153 people in the UK died from mesothelioma[1]. Fast forward several decades and, by 2007, 2156 people in the UK died from mesothelioma. This figure is expected to peak around the year 2016, with male deaths alone predicted to reach 2038 at that point. By 2050, it is anticipated that 91,000 people in the UK will have died from mesothelioma. Many readers may be surprised to hear that the UK has the highest death rate from mesothelioma in the world[2].

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Mesothelioma-related claims account for over 90% of the estimated total UK asbestos-related claims cost for the UK insurance market. In 2009 alone, the UK insurance industry paid out over £100 million to mesothelioma victims[3]. The UK Asbestos Working Party estimates that the cost of UK mesothelioma-related claims between 2009 and 2050 could be around £10 billion[4]. This number may be seen as modest from a US market perspective but it needs to be remembered that the average value of a mesothelioma claim in the UK is about US$200,000.

## Bolton v MMI

The EL Trigger Litigation was itself triggered – at least in part – as a response to a 2006 Court of Appeal judgment in *Bolton v MMI*[5], a PL insurance case which involved a mesothelioma victim.

The PL policy in *Bolton* provided cover for "*accidental bodily injury or illness…when such injury illness loss or damage occurs during the currency of the Policy*". The question that the English Court of Appeal had to decide was when did the "*injury*" occur? Was it when the asbestos fibres entered the body, as argued by MMI? Or when the tumour develops? Or when the sufferer first experiences symptoms? Because of the way that mesothelioma develops in the body, this was not a straightforward question to resolve, and required expert medical evidence.

*"Nine policy wordings were considered, which referred to injury sustained and/or disease contracted during the period of cover."*

The Court of Appeal decided that the earliest point at which the injury occurred was when the tumour developed, and accepted the agreed expert medical evidence that this was approximately 10 years prior to the mesothelioma being capable of diagnosis. It was the insurer on risk at that point that had to pay.

The *Bolton* judgment itself did not come as a surprise. Its real significance was to the EL market, given that it is under EL policies that most mesothelioma claims are made in the UK[6]. Whilst the majority of EL insurance policies provide cover for injuries *caused* during the policy period, about 10% of policies in the London market provide cover on a different basis, namely for injuries *sustained* or for disease *contracted* during the policy period. Historically the London market settled claims under these policies on a causation basis, irrespective of the wording. Following the Court of Appeal's decision in *Bolton*, several EL insurers decided to seek clarification of the meaning of these wordings in the Courts.

## The "EL Trigger Litigation"

The EL Trigger Litigation is made up of six lead actions brought by four UK insurers which are now in run-off or provisional liquidation: Excess, BAI, Municipal Mutual Insurance and Independent. Zurich is also a defendant in the litigation.

Mr Justice Burton gave the first instance judgment. Nine policy wordings were considered, which referred to *injury sustained* and/or *disease contracted* during the period of cover. The Judge characterised the opposing positions as "*date of inhalation*" v "*date of tumour*".

The medical evidence heard by the Court was more extensive than in the earlier *Bolton* case. Mr Justice Burton was able to make a more precise finding on when the injury occurred. He found this to be at the point of *angiogenesis*, namely when the cells which have mutated because of the presence of asbestos fibres become independent and obtain their own blood supply. This point occurred five years (previously 10 years) prior to symptoms and the diagnosability of the mesothelioma.

Mr Justice Burton found in favour of "*date of inhalation*" and, accordingly, that EL insurers were on risk. He took the view that both *sustained* and *contracted* had the same meaning as *caused* and accordingly EL insurers should continue to settle claims according to when the employee had been exposed to asbestos.

The wording of the policies presented a particular problem in relation to ex-employees. If the cover for injuries *sustained* during the policy period is equivalent to cover for injuries *occurring* during the policy period, then the claimant would have to be employed at the time the mesothelioma reached the point of angiogenesis. Plainly with the long latency period for mesothelioma, this is extremely unlikely to be the case. Mr Justice Burton found that this made no commercial sense and concluded that the policies "*cover the employer in respect of injury, resulting from exposure during the policy to an employee while he is an employee*". He found that there was a universal practice in insurance to treat exposure as the trigger for liability. Further, he commented that although long-tail disease claims did not come through until the 1960s, there was no alteration in the policy wordings to reflect their emergence and no change of approach on the part of the London market. He inferred from this that it was always intended for cover to be on a causation basis.

Mr Justice Burton did not consider himself bound by *Bolton*, drawing a distinction between EL and PL insurance. He referred to the different factual matrix for EL insurance, perhaps to explain why he found that the phrase "*injury sustained*" does not mean the same as "*injury occurring*", the wording used in *Bolton*.

## The Court of Appeal Judgment

After the first instance decision, multiple appeals were pursued. Following the hearing, it took three Court of Appeal judges eleven months and over 160 pages to reach their different decisions. In short, there was a majority ruling that the trigger for injury sustained was when mesothelioma develops, whereas a disease was contracted on inhalation.

> *"[Lord Justice Rix] drew a distinction between the meanings of "injury sustained" and "disease contracted", finding that injury is sustained at the same point in time when it occurs because "it is concerned with the onset of the disease, not with its origins".."*

The lead judgment was given by Lord Justice Rix. He said that whilst the Courts would give effect to the commercial purpose of a contract, he was reluctant to interpret clear contractual language in the light of post-contractual conduct. He drew a distinction between the meanings of "*injury sustained*" and "*disease contracted*", finding that injury is *sustained* at the same point in time when it *occurs* because "*it is concerned with the onset of the disease, not with its origins*". With such a wording an insurer would only be liable for injury or disease occurring during the policy period. So a loss arising from a

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## English Court of Appeal Muddies the Water in EL Trigger Litigation continued from page 11

disease such as mesothelioma which is likely to occur many years after the employee has left the employment where he was exposed to the asbestos, is irrecoverable.

Lord Justice Rix grudgingly accepted that he was bound by the *Bolton* case, namely that the injury occurred (or in the policies before him in these cases, was sustained) at the point at which the tumour developed. It is only at this point that the victim has a cause of action. He would clearly have preferred to have ignored *Bolton*, and expressed himself to be in favour of "*a new tort of negligently increasing the risk of injury*".

Lord Justice Rix did not however consider himself bound by *Bolton* in relation to the words *disease contracted*, finding that a disease is *contracted* at the date of exposure, because the phrase "*refers to the time of the disease's causal origins*". So for policies which provide cover on the basis of *disease contracted* only during the policy period (this is the case with a large number of policies issued by MMI and Excess), there is no claim under a policy issued during the period of exposure.

He also commented that policies which state that they are deemed to cover liabilities arising out of the Employers Liability (Compulsory Insurance) Act 1969 (the ELCIA) should be treated as providing cover on a *causation* basis, regardless of the wording, because in his view the statute requires employers to insure on that basis, so this must have been their intention.

> *"The trigger litigation remains a political 'hot potato' and possibility of legislation being passed by Parliament so that no mesothelioma victim is left uncompensated cannot be discounted."*

Lord Justice Burnton agreed with Lord Justice Rix on some points, but not all. Unlike Lord Justice Rix (or indeed Lady Justice Smith), he did not consider that there was a "*moral imperative*" to find the insurers liable, and pointed out that it was the negligence of the employers which caused the victims to be exposed to asbestos in the first place. He was of the view that the commercial purpose of an EL policy is simply to provide the cover as defined in the policy. In his view, the policy wordings were sufficiently clear so as to be interpreted without reference to surrounding circumstances.

He agreed with Lord Justice Rix that injury was *sustained* at the same point at which it occurred, and that a disease is *contracted* on exposure. However, he did not share the same view on the ELCIA and did not think it required cover to be on a causation basis because it refers to "bodily injury or disease *sustained*". He did, however, think that ex-employees who developed an illness during the policy period would be covered by a policy deemed to meet the requirements of the ELCIA even if the exposure that caused the illness had taken place previously.

Lady Justice Smith took the more simplistic approach, essentially agreeing with Mr Justice Burton on all counts.

## Where now?

Claims involving *injury sustained* or *disease contracted* wordings remain on hold for those insurers disputing liability, pending the Supreme Court's decision. Their ruling may well have ramifications in the PL market given that the Supreme Court will not be bound by the *Bolton* decision. The trigger litigation remains a political 'hot potato' and possibility of legislation being passed by Parliament so that no mesothelioma victim is left uncompensated cannot be discounted. ■

## Notes

1 http://www.hse.gov.uk/statistics/causdis/mesothelioma/

2 Occupational, domestic and environmental mesothelioma risks in Britain – a case-control study prepared by the Institute of Cancer Research and the London School of Hygiene and Tropical Medicine for the Health and Safety Executive 2009

3 Association of British Insurers press release, 8 October 2010

4 UK Asbestos Working Party Update 2009

5 *Bolton MBC v Municipal Mutual Insurance Ltd* [2006] 1WLR 1492

6 In his judgment at paragraph 87, Mr Justice Burton points out that of the mesothelioma claims notified to the Department of Work & Pensions' Compensation Recovery Unit between 2002 and 2008, 97% are employers' liability claims and 2% public liability claims.

*Feature Article*

# IntAP meeting

## *IntAP's Technical Meeting on the 8th and 9th of December 2010 in Cologne, Germany*

*By Maria Keifer Lagerwall*

IntAP (The International Alliance of Asbestos and Pollution Reinsurers) was founded on 17th December 1991 and will celebrate its 20th anniversary next year. Its main mission is to assist its members by providing them with first hand information in respect of asbestos, pollution and other health hazards of extreme latency. IntAP arranges twice a year Technical Meetings for its members, in June in Norwich, UK and in December in Cologne, Germany. To the Technical Meetings, a panel of speakers is invited who share their views and insights on current topics and other issues of interest to IntAP's members.

To the Technical Meeting in Cologne this year, the Steering Committee of IntAP invited speakers addressing such various topics as "Hi-technology and latent damage potential: nanotechnology, genetically modified food-stuff – how likely is this?" and " Attacking static claims; London's plan to combat non-moving claims – 1997 and post v prior." The members were also presented with a UK Scheme Update, a review of selected recent cases from English courtrooms and a UK Asbestos Update.

> *There are limited options available to solvent insurers and reinsurers to accelerate run-off. An increasing number of solvent insurance and reinsurance companies in the UK are, therefore, looking towards solvent schemes of arrangement as a means of achieving finality.*

From the US perspective, Andrew N. Rothseid from RunOff Re.Solve gave a presentation that focused upon GTE Re's Commutation plan – the US equivalent of a UK Scheme.

The total value of the run off market is unknown but US reserves in run off have been estimated to be between $150 and $200 billion according to Mr. Rothseid. The size of this market is gaining increasing attention and focus from regulators also in the US.

*Maria Keifer Lagerwall is a Legal Counsel at the Stockholm head office of White Mountains Re Sirius. She can be reached at maria.keifer-lagerwall@siriusgroup.com.*

Mock Court session team – *From left*: Nick Bradley (Lawrence Graham, London), Tim Searle (Steptoe & Johnson, London), Eleni Iacovides (Riker Danzig, London), Michael Mendelowitz (Norton Rose, London) and Ulrich Jaeger (IntAP Steering Committee).

There are limited options available to solvent insurers and reinsurers to accelerate run off. An increasing number of solvent insurance and reinsurance companies in the UK are, therefore, looking towards solvent schemes of arrangement as a means of achieving finality. The UK scheme of arrangement is a compromise or arrangement under English law (Part 26 of the UK Companies Act 2006) between a company and its creditors or any class of them, which becomes legally binding on all creditors or any class of them, if the necessary majority of creditors vote in favour of the scheme and the English High Court approves it.

The equivalent in the US to a UK scheme of arrangement is the Rhode Island Commutation Plan, but the commutation plan is narrower than the scheme under UK law. Rhode Island is so far the only state to allow a commutation plan similar to a UK solvent scheme. Mr. Rothseid presented an overview of the Rhode Island Statute and background to the proposed commutation plan for GTE Reinsurance Company.

Jonathan Rosen, Chairman of the Association of Insurance and Reinsurance Run-Off Companies ("AIRROC"), the US run off Association, acquainted the members of IntAP with its activities and in particular

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# Statutory and Regulatory Developments

*Your Publications Committee introduces a new column for regulatory developments as they relate to run-off. We intend to cover legislation and regulation in the U.S., Bermuda, the U.K. the E.U. and points farther east. The Committee welcomes entries from the entire readership and will attribute our contributors. For the next few issues, please send suggestions or contributions to Fred Pomerantz (fred.pomerantz@wilsonelser.com), James Veach (jveach@moundcotton.com), or any member of the Publications Committee (all of whose email addresses are included in each issue).*

## Recent Developments in Rhode Island Commutation Plan Filed By GTE Re

*By Fred Pomerantz,* Wilson Elser Moskowitz Edelman & Dicker LLP

As has been reported in the insurance trade press, the first Rhode Island solvent commutation plan to be sanctioned under Chapter 14.5 of the Rhode Island Insurance Law entitled "Voluntary Restructuring of Solvent Insurers," which was first enacted by the Rhode Island State Legislature in 2002, is going forward, although not without resistance. The statute sets forth the procedure by which a solvent Rhode Island domestic commercial lines insurer or reinsurer attempts to withdraw from the market while extinguishing its past and future outstanding liabilities, similar to the process known as a "solvent scheme of arrangement" in the U.K. and Bermuda.

On July 21, 2010, at a hearing of interested parties before the Superior Court for the County of Providence, which under the statute has jurisdiction and is the venue for all proceedings under Chapter 14.5, the Court granted permission for a meeting of creditors of GTE Re to be held on November 30, 2010 to determine whether sufficient support existed for the Plan to be implemented. At that meeting, 87% of the creditors, constituting 97% of the value of GTE Re's liabilities, voted in favor of the Plan, as originally presented, and a further court hearing was scheduled for December 15, 2010.

At the late year court hearing, a creditor interposed an objection to the legitimacy of the statute, contending that the voluntary commutation process deprives it of the right to enforce GTE Re's contractual obligations under the Contracts Clause, Article One, Section 10 of the United States Constitution, (providing in part that "No State shall… make any…Law impairing the Obligation of Contracts….") and does not provide that creditor with its contractual rights as would evolve over time. On January 11, 2011, a second creditor objected alleging that the reserving methodology employed in the Plan may not address their potential exposures sufficiently. A further Court hearing, on a Motion to Implement, is presently scheduled for March 16, 2011.

Andrew Rothseid, Principal of RunOff Re.Solve LLC, an attorney and the architect of the Plan, is working closely with counsel for GTE Re and with Joseph R. Torti, the Director of the Rhode Island Department of Business Regulation, to shepherd the Plan through to final approval and implementation.

We will report on future developments in this column, including the result of the creditors' challenges.■

## The UK Regulatory Reforms: The Birth of Three New Regulators

*By Jonathan Davies,* Partner and *Imogen Hurst,* Trainee, London Law Firm, Reynolds Porter Chamberlain

On 16 June 2010, the UK Chancellor of the Exchequer, George Osborne, announced the creation of *"a new system of regulation that learns the lessons of the greatest banking crisis in our lifetime."* The Chancellor unveiled the Government's


Jonathan Davies


Imogen Hurst

plans to abolish the Financial Services Authority (FSA) as we know it, replacing the authority with three new regulatory bodies. The first being a new prudential regulator, the Prudential Regulation Authority (PRA), which will sit as a subsidiary of the Bank of England and undertake the prudential regulation of banks, financial institutions, building societies and insurance companies. The second, the Consumer Protection and Markets Authority (CPMA), which will regulate the conduct of every single authorised financial institution providing services to consumers. The third, the Financial Policy Committee (FPC) based in the Bank of England, which will carry out a macro-prudential role, identify any threats to economic stability and take effective action in response.

Since then, a timeframe for the implementation of the new regulatory structure has emerged. The Government has announced that the new regime will be fully in place by December 2012 and at the moment we await the publication of a second consultation paper[1] on the regulatory reforms which is expected this month, February 2011. The Treasury Select Committee[2] has published written evidence[3] which was submitted in its financial regulation inquiry identifying the concern of many industry practitioners, as well as of the FSA itself, at the regulators' reforms. Further details of the proposals have emerged over the last few months in a number of Ministerial statements.

*It is envisaged that the PRA will take over responsibility for the prudential supervision of insurers, Lloyd's of London and its managing agents.*

The concerns voiced in the evidence to the Treasury Committee include:

1. Concerns at the potential duplication of the roles of the PRA and the CPMA, and the practicalities of how these bodies will interact. There are concerns, for example, that insurance companies will be prudentially regulated by the PRA and the CPMA (see further below);
2. Questions have been asked as to whether the PRA and the CPMA should have equal status or should the PRA be the senior regulator;
3. The proposal that the PRA will not be subject to statutory processes, including wider consultation, when making rules;
4. Questions have been raised as to how exactly the new regime and the European supervisory authorities (ESAs) will interact given that the responsibilities of the new UK regulators vary considerably compared with those of the ESAs.

The FSA's evidence[4] gives their views of the risks and opportunities posed by the new structure, including by the transitional arrangements. The FSA intends to move to a "shadow split" early this year, reflecting the proposed mandates of the PRA and the CPMA. Martin Wheatley, the current Chief Executive Officer of the Securities and Futures Commission in Hong Kong, has just been appointed as Chief Executive of the CPMA and will begin working at the FSA as the Managing Director of the Consumer and Markets business unit on 1 September this year to aid in preparations for the transition from the FSA to the CPMA. To ensure a successful transition the following principal challenges to successful execution must be overcome:

- People retention risk; the FSA has already struggled to cope with staff departures.
- De-merger process: i.e. matching approximately 4,000 staff to new roles.
- Personnel stretch.
- Continuity of the regulatory interface with firms; the need for double authorisation for the PRA and the CPMA could make the process of establishing a financial services firm even more cumbersome.
- Requirement for new supervisory processes.

In a speech on 13 December 2010 the Chief Executive Officer of the FSA, Hector Sants, stated that it is envisaged that the PRA will take over responsibility for the prudential supervision of insurers, Lloyd's of London and its managing agents. The PRA will, therefore, be in charge of the authorisation, regulation and day-to-day supervision of them. The responsibility for conduct regulation of insurers, Lloyd's of London and its managing agents will, however, fall to the CPMA thus splitting supervision of the insurance sector between two agencies. The CPMA will be responsible for the conduct of business regulation of all firms, irrespective of whether they are also regulated by the PRA.

The prospect of such a new supervisory structure has led to fears of inefficient regulation which were voiced by Sean McGovern, Lloyd's director and general counsel, who

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## The UK Regulatory Reforms... *continued from page 17*

stated in his evidence to the Treasury Select Committee[5] that, "understanding Lloyd's as a cohesive whole will lead to a more efficient regulation of Lloyd's". McGovern reasoned further:

"Around 90% of regulation of Lloyd's is prudential… we hope we end up with a situation where the FSA team which looks after Lloyd's currently is housed within the PRA."[6]

*One suggestion made by Lloyd's was that the FPC, responsible for monitoring the financial system as a whole, should have at least one member with expertise in insurance to provide a more balanced and informed view on the regulations of this financial sector.*

The evidence given by Lloyd's in response to HM Treasury's consultation on the proposed regulatory reforms highlighted particular concerns over the approach in the consultation which seemingly addresses insurer supervision as an afterthought. Lloyd's stated the fact that insurance has a fundamentally different business model from banking must be acknowledged and accordingly provided for in the new structure[7]. One suggestion made by Lloyd's was that the FPC, responsible for monitoring the financial system as a whole, should have at least one member with expertise in insurance to provide a more balanced and informed view on the regulations of this financial sector[8]. Whether the suggestions made by Lloyd's will be adopted remains to be seen.

Moreover, the Lloyd's Market Association (LMA)[9] asserted that the PRA and the CPMA have seemingly overlapping roles. The danger that would inevitably ensue is that managing and members' agents within Lloyd's face triple regulation by these two new agencies and Lloyd's itself. David Gittings, the LMA's chief executive explained;

"The duplication between the PRA, the CPMA and Lloyd's itself runs the risk of creating inefficiencies and confusion with overlapping powers and rule books."[10].

More detailed proposals concerning the remit of the PRA and the CPMA are anticipated in February 2011 and it will be interesting to see whether any of the above mentioned fears are addressed in these. ■

## Notes

1 Consultation papers are used by the UK Government to set out the issues involved in a policy or impending piece of legislation. Questions are posed in the paper and responses are invited from those in the industries or sectors affected by the policy or legislative change.

2 A committee of the UK House of Commons whose remit is to examine the expenditure, administration and policy of HM Treasury.

3 Written evidence is submitted to the Treasury Select Committee so that the views of its author, the FSA for example, are voiced and taken into account when policy or legislative decisions are taken. The written evidence referred to above can be found at: http://www.publications.parliament.uk/pa/cm201011/cmselect/cmtreasy/memo/financialreg/financialregulation.pdf

4 The FSA's written evidence can be found at:http://www.publications.parliament.uk/pa/cm201011/cmselect/cmtreasy/memo/financialreg/m27.htm

5 The evidence was given by Sean McGovern to the Treasury Select Committee on 11 November 2010; quotation as cited in "Lloyd's calls for FSA team to join PRA", Insurance Day, 11 November 2010.

6 *Ibid*

7 "Lloyd's responds to consultation on UK regulatory reform", Lloyd's press release dated 28 October 2010.

8 *Ibid*

9 The LMA provides technical and professional support to the Lloyd's underwriting community.

10 As cited in "LMA warns of over-regulation of Lloyd's", the POSTonline, 7 October 2010.

## Roundtable on M&A Activity of Legacy Business *continued from page 6*

But I don't know if it's the economic environment as much as it is the proliferation of different options for people that might be bringing the pricing (down), making it more attractive for people disposing of liabilities. I do think generally that's probably been the trend.

**Oliver Horbelt:** Pricing or valuation in general has always been opaque in this market except maybe in those circumstances where entities have certain reporting requirements given their status as listed companies.

For large transactions–particularly in the London market–buy-side competition is still rather intense, in particular for middle-of-the road, not too large, not too complex deals with the effect that in this segment, we are probably still dealing with a seller's market where pricing is still rather competitive.

Obviously, given the current interest rate environment, there's just less room to maneuver with time value of money being no longer being available to offset certain other pricing implications.

**Ali Rifai:** *Brian, you said there is a proliferation of different options. Are you talking options for the buyers and what are they? What other options are available that impact the price?*

**Brian Snover:** No I really mean for the seller. What I was speaking to was the options that people have in the UK in particular. There seems to be a push in the US for this as well, where people can attempt to achieve finality through different options and not just sales of books of business or even through reinsurance of books of business which is the structure we use most predominately in our runoff operation.

I think because people have these different options, insolvent schemes in particular. You see renewed interest or chat about the Rhode Island statutory scheme and I do think something's being done there as well. There's at least one book that I think is going through that process.

That tends to have an effect down on the premium people are willing to pay in terms of selling to third parties as well.

**Ali Rifai:** *In the deals that have closed, what created the opportunity? Or in the deals that didn't close, what created the problem that caused the deal not to close? Can anyone talk to us about what's going on in getting deals to a closing?*

**Neal Wasserman:** In our experience as we look back probably in the window more than four or five years ago, you would see that most of the deals may not close.

There were a lot of buyers who would test the market but deals would generally not close from a price standpoint. Now, at least over the last couple of years, most deals that come to market end up closing.

This goes back to the number of buyers that are out there and there's a willingness to pay prices that weren't really viable a few years ago. More and more of these transactions are getting done and far fewer are coming back to the market, sometimes multiple times over a number of years.

**Ali Rifai:** *So you think the pricing is more realistic both from the buyer perspective and the seller perspective? Is that what's causing this?*

**Neal Wasserman:** Certainly from a seller perspective, the pricing has now moved to a point where it's more acceptable. Obviously to certain buyers, it's still reasonable. I tend to believe that we're still in a market where pricing is higher than it should be.

**Brian Snover:** Yes I think runoff transactions are products that are very much bought not sold. I mean the person seeking to shed itself of liabilities, it's their decision.

The buyer of a run-off transaction knows better the costs of goods being sold than the seller. That's just the way it works. They have always had some view on their plain point in terms of what they're willing to pay or what assets they are willing to give up to get rid of the liabilities.

I think Neal is right. Because it's a more sophisticated market, the hit rate of deals closing is probably higher because there's generally a greater understanding of how these things work. When you raised the question why don't deals close, it used to be that there were bigger regulatory hurdles on some of these transaction

The New York Insurance Department, for example, ten years ago, had a policy that they wouldn't approve the sales of companies in runoff. Their policy was they have a liquidation bureau to run off companies and they didn't like companies being traded for that purpose.

That's no longer their policy. So these days I think whether or not a deal closes, it's really, like anything else, a matter of price.

**Peter Scarpato:** *You know, they often say that the devil, or the angel depending on your perspective, is in the details. Would anyone, without disclosing anything confidential or proprietary, be able to give us an example of the specifics of a certain deal and analyze for us the particular issues*

*continued on next page*

## Roundtable on M&A Activity of Legacy Business *continued from page 20*

*and/or opportunities that made it a good or a bad type of a transaction? Something that might be recognizable to the market generally or that might just give us a more concrete explanation of this discussion we've had so far in practice.*

**Oliver Horbelt:** While I would have to disappoint you by not wanting to talk about the specific deal, just picking up on something that Brian said before, which is information asymmetry that you have both in reinsurance-driven deals but also in M&A. This is one reoccurring issue and one that we have been observing on top of certain unrealistic expectations, mostly pricing.

But most importantly, if the buyer or the reinsurer cannot close the information asymmetry gap (and sometimes it is a perceived information asymmetry), those factors would have to be priced in. That's often the basis of a deal falling apart given that you have this situation of an information gap.

In my experience, therefore, deals fall apart then mostly because of pricing differences based on information asymmetry that cannot be overcome.

**Brian Snover:** I don't think the details are even enough of a description that would signify what transaction is being discussed. It's something that – it looks like I'm not the only one — is beyond my willingness to disclose.

Except to say that obviously, in all these situations the buyer comes to the market with a view on what are the ultimate liabilities, or in most cases they do, that they're trying to get rid of. It's just human nature that the buyer taking on that risk has a view of what the ultimate is.

If there's not a meeting of the minds on what that ultimate is and what the cost is to run them off — and in many cases it gets more complicated when you try to price the reinsurance asset that may be coming with it – then the likelihood is there is no deal. But, that's what everyone has said essentially, that pricing the exposure is the devil and the angel in the detail.

You will never have a perfect symmetry of information on both sides. There are plenty of claims that are public and people know what's going on, but that never tells the whole story and the buyer always has an advantage of information.

**Ali Rifai:** *Thank you. Do you see opportunities being different or the environment different in different countries? And, which countries and why?*

**Neal Wasserman:** Speaking primarily about the US which is not our exclusive market but it's certainly where we've done far more transactions, regulatory concerns take on a greater importance to some extent than you may have in other jurisdictions. Not that you don't have regulators overseeing these transactions elsewhere. But in the US, you're dealing with a 50-state environment and oftentimes dealing with multiple jurisdictions that are going to want to look at transactions.

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# Present Value

By Nigel Curtis

$$PV = \frac{C}{i}\cdot\left[1-\frac{1}{(1+i)^n}\right]$$

## Run-Off News

### Hannover Re sells Clarendon

Bermuda-based Enstar Group has purchased Clarendon Insurance Group's operational companies from Hannover Re for US$ 200 million. Hannover Re bought the U.S. specialty insurer in 1998 and placed it into runoff in 2005. Now it is selling Clarendon to provide balance sheet relief and cash while reducing its reinsurance recoverables. The Enstar Group, which specializes in re/insurance runoff, plans to runoff the portfolio profitably through economies of scale.

### Tawa acquires Oslo Re (UK)

Tawa has acquired the UK operation of Oslo Reinsurance Company from its Norwegian parent. Oslo Reinsurance Company (UK) Limited went into run-off in 1994 and has since closed most of its business via schemes of arrangement – it was part of the WFUM Pools scheme, managed by PRO. The £4 million deal is subject to regulatory approval by the UK's Financial Services Authority.

### Ecclesiastical London goes into runoff

Ecclesiastical Insurance has ceased underwriting London market business and placed the portfolio of its subsidiary Ecclesiastical Underwriting Management Limited (EUML) in run off. Established in 1989 to write worldwide property risks, EUML stopped writing new business and renewals on September 30, 2010 following the retirement of its manager and underwriter Kevin Cannon. Ecclesiastical Group intends to focus on its core business as a specialist insurer in the areas of care, charity, faith, education and heritage.


### R&Q acquires Reinsurance Solutions

Randall & Quilter Investment Holdings has acquired Reinsurance Solutions (RSL) from Guy Carpenter and Marsh for $10 million in cash. The deal includes the UK and US operations of RSL as well as Excess & Treaty Management Corporation (ETMC).

RSL businesses, employing 40 people in the US and 35 in the UK, provide administration and consulting services to both live and run-off insurance and reinsurance markets, including state liquidation departments and regulators. In addition, the UK operation provides broker replacement services for UK insurers. ETMC manages the run-off of the Excess Casualty Reinsurance Association (ECRA) pool. The deal is subject to regulatory approval.

### Global Re Consultants launches broking service

Global Reinsurance Consultants has established a new broking services arm, Global Re Broking Solutions (GRBS). Approved by the UK Financial Services Authority and Lloyd's, GRBS has offices in the UK, Continental Europe, Middle East and Asia, offering quick and efficient broking services for its clients' legacy business.

Global Re has re-branded as Global Re Group, comprising Global Reinsurance Consultants Ltd, Global Re Finality Solutions Ltd (a dedicated acquisition vehicle) and now Global Re Broking Solutions Ltd.

### Tawa/PRO in partnership with Lincoln General

Tawa plc's subsidiary PRO IS, Inc. ('PRO') and Lincoln General Insurance Company ('Lincoln General') have announced a strategic relationship that brings together the resources and experience of both organizations. The two businesses will work together in pursuing consulting and restructuring opportunities in the US market using Lincoln General's proven operating platform in conjunction with the runoff expertise of the PRO team.

### Catalina acquires Glacier Re

Catalina Holdings (Bermuda) Ltd. has acquired Glacier Re, the Swiss-based reinsurance company in run-off. The purchase is subject to Swiss regulatory approval, which is expected in the first quarter of 2011.

Glacier Re was established in 2004 and wrote a diversified book of predominantly short tail

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## Present Value *continued from page 22*

reinsurance until it was placed into self-managed run-off in August 2010, and Endurance acquired the renewal rights. As of September 2010, Glacier Re had total assets of $1.2 billion, gross technical reserves of $466 million, and net assets of $374 million

## People

**Mark G. Peters** has joined the law firm of Edwards Angell Palmer & Dodge LLP as a partner in the Regulatory & Transactional Services practice group, one of three practice groups in the firm's Insurance & Reinsurance Department. Mr. Peters will be based in the firm's New York office. He was formerly special deputy superintendent in charge of the New York Liquidation Bureau.

**Patrick J. Gennardo** has joined Edwards Angell Palmer & Dodge LLP as a partner in the firm's New York office. He will spearhead the new "Dispute Resolution – Insurance and Reinsurance Industry" practice group, which will represent insurance and reinsurance companies in complex commercial, corporate and regulatory disputes. Mr. Gennardo has over 15 years of experience in handling complex, multi-jurisdictional litigation, in addition to compliance, regulatory and other insurance matters.

**Gavin Souter** has been named editor at Chicago-based Business Insurance. He joined the enterprise in its London office in 1991 and has also worked from the company's New York office. Before joining Crain Communications, he worked for three different magazines based in London: Reinsurance, Post and The Stock Broker & City Investor. Business Insurance has also named **Susan Stilwill** as the new advertising sales director and **Michelle O'Malley** takes over as audience marketing director. Susan joins Business Insurance from New Compass Media, a consulting firm she founded in 2009, and Michelle was previously manager of direct response acquisition and retention marketing for the Chicago Tribune Media Group.

**If you are aware of any items that may qualify for inclusion in the next "Present Value"; upcoming events, comments or developments that have, or could impact our membership; please email potential items of interest to Nigel Curtis of the Publications Committee at n.curtis@fastmail.us.■**

### *Message from CEO and Executive Director*

## Winds of Change *continued from page 1*

meetings. We hope that you take the time to review the AIRROC Strategy Plan, which is accessible through the homepage of our website www.airroc.org.

In addition, the Board of Directors created numerous working committees comprised of board members to meet and achieve several of the organization's short and long term goals.

These are exciting times at AIRROC so once again ask our members to remain active or become active in this great association. AIRROC matters! ■

*Ms. Getty has been active in the insurance/reinsurance industry for over forty years, her keen experience in reinsurance claims, both inwards and outwards, harking back to 1972 when she began her experience in that sector of the industry with Berkshire Hathaway/National Indemnity Re. Trish has been employed in most fashions of the reinsurance industry, the majority as reinsurance claims manager, which led her to AIRROC and understanding its members' histories and today's needs. Trish readily recognizes the great value that AIRROC brings to its members at such a crucial time in the worldwide run-off industry. She can be reached at trishgetty@bellsouth.net.*

# Hey, Who's That Guy with Trish Getty?

Bob Saget and Trish Getty

Trish had the pleasure again this year to attend the Scleroderma Research Foundation's NY annual dinner at Caroline's Comedy Club. While tremendous funds were raised through this effort, it was also a great night of comedy hosted by Bob Saget and featuring Brian Williams *(NBC Nightly News)*, Jerry Seinfeld, Seth Meyers, Brian Regan and Jeffrey Ross. It was actually Bob Saget who took Trish's camera to snap this picture. Thank you, Jeff Mace of Dewey & LeBoeuf, for being a fabulous host of this affair and educating others about Scleroderma.

For those wishing to learn more about Scleroderma please feel free to contact Jeff Mace at email JMace@deweyleboeuf.com or the SRF at website www.sclerodermaresearch.org. ■

## Roundtable on M&A Activity of Legacy Business *continued from page 21*

If you are talking about a portfolio that may be insurance liabilities as opposed to reinsurance liabilities, regulators are going to take an even greater interest given their focus on policyholder protection.

So I think in the US that creates a different environment than you may have in some cases and, although Brian mentioned that potentially new options are becoming available, you still don't really have yet in the US the full array of options that you may have in the UK.

Other than in Rhode Island you don't have the ability to do solvent schemes. You're starting to see now a recent change in NAIC accounting rules for statutory accounting in the US. There is now SSAP 62R which is going to, in some circumstances, allow companies to treat reinsurance of blocks of business as prospective reinsurance as opposed to retroactive.

That may help but that's still going to be a relatively limited market. So it's a challenging market in the US in that respect.

**Oliver Horbelt:** Yes. I think other than the regulatory options available in different jurisdictions, I'd say it's probably less a country-specific issue rather than one of sophistication and in this respect, I would agree that the deal environment is probably comparable between the US and Europe.

It's interesting looking a little bit further abroad where we've seen a number of opportunities in Asia for example, where one major difference is probably in the decision-making process which is somewhat different from the more mature markets. This leads to specific issues but sometimes also creates opportunities.

**Brian Snover:** Yes, from our perspective we've tried to deal with the different regulatory environments in the countries as best we can.

I haven't seen a huge difference for us in terms of getting it done. It just so happens that because the US has been the proud parent of so much long-term liability misery in the industry, it's US liabilities whether they are residing on balance sheets in the US, or the UK, or Switzerland, it's US liabilities for the most part we've been dealing with.

**Ali Rifai:** *So mostly what you see is really the regulatory environment and the sophistication of the players. But no major regulatory hurdles just the normal regulatory issues you have to deal with in each country.*

*But nothing that would make you say for example there is a better environment in Germany to buy runoffs or vice versa: in Germany, you cannot buy runoffs because they stop you.*

*So there are no major problems or opportunities in any particular jurisdiction. It just depends on the particular company or transaction? Is that a fair statement?*

**Brian Snover:** Yes, I think that it's a fair statement. As I said, in my view, these transactions are very much driven by the buyer or the person looking to get rid of the liabilities.

The truth is they will find a way to deal with the regulatory hurdles or something else in order to achieve the objective in most cases before they have too many discussions with the counterparty. So we don't see those kinds of issues.

**Peter Scarpato:** *Getting back to the general issue about the deals getting done or not getting done and the environment for getting them done, is reserving methodology a factor? For instance, is it easier to do a deal in a particular country where discounting the reserves is allowed?*

**Oliver Horbelt:** I don't think reserving methodology so far has been a major factor. But in our view this could change going forward. In particular Principle-Based Reserving and fair-value reserving will add a new level of transparency while introducing a lot of challenges.

I'm not even talking about IFRS and possible implications on local GAAP. Those concepts will probably add a higher comparability of financial information and one would think this is a net positive for our market even though so much of our market dynamics, at least historically, have been based on uncertainty and arbitrage of systems and methodologies. So it will be interesting to see what those changes will bring and Solvency II at least in some aspects is an interesting test case.

**Brian Snover:** Oliver, I'm curious to hear your view on that because I, myself, can't figure...I've heard a lot of opinions. I don't have one of my own. But people have very different views on what Solvency II will do to generate runoff opportunities in the market.

**Oliver Horbelt:** Well I think one would have to dissect the question in a market for finality, the M&A market and the markets for retroactive reinsurance. And the way Solvency II is currently calibrated under QIS 5, we can see that Solvency II will create opportunities for well-capitalized, well-rated reinsurers where retroactive reinsurance can add considerable capital relief in the form of loss portfolio transfers and adverse development covers under the

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## Roundtable on M&A Activity of Legacy Business *continued from page 24*

standard formula, especially for cedents that are not well diversified and that are not particularly exposed to nat CAT and that have a certain tail and volatility in the run-off of their liabilities.

So in those circumstances, we see that Solvency II will provide interesting opportunities that are probably more capital efficiency driven rather than probably with a view to achieve finality.

**Peter Scarpato:** *I want to shift gears a little bit and ask if anyone of you or all of you are seeing more opportunities in the life markets, if so, why?*

**Neal Wasserman:** We see them on occasion but don't really consider ourselves a market for life opportunities. We stick with what we know and that's the property casualty runoff business.

**Brian Snover:** We've done a couple of large reinsurance transactions on closed blocks of business in the life world. We've done them more recently because, as I say, the counterparty wanted to get it done. But I have seen more activity and I don't know why. Maybe it's just the growing awareness on the life side of the house in terms of people dealing with runoff liabilities in closed blocks.

It's more capital relief for the person dealing with the closed block than it is the emergence of huge surprises like asbestos or pollution liabilities or getting the liabilities wrong. Because of course on the life side, except for risks of pandemic or things like that, we haven't had that kind of volatility on a massive basis.

**Oliver Horbelt:** Same probably for us and, given that life companies were shaken more by the impacts of the financial crisis than the average P&C entity, we have also seen an increase in solvency-related transactions. Not so much by means of M&A and closed block activity but mostly by means of sophisticated reinsurance arrangements.

**Ali Rifai:** *Our next question has to deal with whether there is a difference in dealing with a distressed company versus a live company that has a closed block that they want to sell or a subsidiary, do you see the opportunities being different or is it again just price driven?*

**Neal Wasserman:** I think to be honest both ends of the spectrum can be challenging to some extent and maybe the ideal seller is really somewhere in between those extremes.

With a distressed company price is obviously going to be an issue and you have no lack of motivation. But often there are reserving issues. You can have a company that's probably in a difficult financial situation. It doesn't necessarily have the assets to fund a transaction.

On the other hand, the other end of the spectrum, major carriers I think tend to be more opportunistic sellers. They may have non-core runoff books of business that are a distraction to management.

These may be less than ideal uses of capital. But a number of those companies certainly have the in-house expertise to manage those liabilities and they don't necessarily have the same level of motivation to sell. But they certainly are willing to sell at the right price.

But again, I think those are more opportunistic transactions for the sellers.

**Ali Rifai:** *They're not motivated sellers in other words. They want to see how much they can squeeze out of it?*

**Neal Wasserman**: Well, no I mean they are to a point. It's an economic decision. It's very much price driven. But they understand their books and more often than not, have

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**Roundtable on M&A Activity of Legacy Business** *continued from page 26*

the resource to continue to handle them so there is not necessarily that great a need to be able to dispose of a book of business if the price isn't right.

Those are situations where over the last several years, we've seen a number of transactions that have come to market and been quoted by a number of companies and then ultimately been pulled – and in some cases come back multiple times in subsequent years.

Some of those deals will eventually get done as liabilities mature and there's less volatility – it becomes easier for buyers and sellers to come together on price. But those have still tended to be the ones that more often than not have not been completed.

**Brian Snover:** I think that's absolutely right. The difference, a strategic seller versus a seller that's run out of strategies and I think there are probably challenges at both ends of that spectrum.

**Peter Scarpato:** *Have we, understanding that you have own experiences but also just sort of in general, seen what's going on in the market and what the trends have been over the last few years?*

*Can you give any sort of recommendations for buyers and sellers in terms of what hasn't been done enough of before which should be done more in the future with these transactions. Or any sort of ideas for maximizing the potential for having the activity continue or grow and having deals close?*

*I guess I'm asking all the tough questions.*

**Brian Snover:** The only thing I can think of that would have changed some of the situations I've personally been involved in is from a buyer's perspective, the degree to which the data is transparent and the systems are particularly accessible. There you're dealing with somebody who's actually taken the time to review themselves, the exposures they've got on a granular level of detail. And this all sounds as though it's instinctive. But I can't tell you the number of situations where that hasn't taken place.

But that certainly makes it the greatest challenge we've had is with trying to dig through the data and develop some comfort that we, ourselves, even from the perspective of a buyer who's never going to know everything, have a handle on how best to assess where the bodies are buried and what we're looking at.

**Oliver Horbelt:** I would mirror Brian's comments.

**Neal Wasserman:** I would agree. I don't think I have anything to add to Brian's comments.

**Ali Rifai:** *Now just to follow-up Brian, on your comment. Do you think that that's much different than in a regular M&A transaction where you're buying an insurance company? That management may not know the liabilities as well as maybe they should?*

**Brian Snover:** I don't think it's very different. I do think that if it's — to use the examples in the agenda — to use a runoff that is part of a larger currently writing carrier. I suspect the emphasis in many cases on keeping the data current and dealing with it is very different than one that's been a runoff for a very long time.

When you actually want to get ready to sell the thing, I've been involved in too many situations where the buyer is surprised by issues that come up that seem instinctive to me or readily apparent. But again, it's not a criticism.

It's just that when something goes into runoff for five or ten years, the emphasis changes and the priorities change and the investment and systems and interest in doing so changes or in talent. There's a reason that the entity is in runoff and somebody wants to shed itself of it and that usually gets reflected in the quality of the data that can be extracted easily from the systems or from the people that are still around.

**Ali Rifai:** *Okay. I think that's a very good point. I think that's a fruitful thought for anybody who's trying to sell a block of business. That before they go to market, they should spend the time to do the best they can to understand the liabilities.*

*And if they can get to the bottom of it, at least understand why there are gaps that they can't fill. This way they can present a full picture to the buyer. Because like you said, you're not going to have perfect information at any time.*

*But the closer you are to that Holy Grail, so to speak, the easier the transaction will be done.*

**Brian Snover:** I know everyone on the line would agree with me that I've been involved in many situations where it becomes clear about half way through that the objective of the counterparty was not so much to get a deal done with us but to see where we thought the gaps were so.

**Oliver Horbelt:** And in this respect, Brian, I think that a number of brokers and other consultants have actually added to the credibility of those processes.

**Brian Snover:** Yes.

**Oliver Horbelt:** And some better than others.

**Brian Snover:** Yes.

**Ali Rifai:** *Now Oliver going back to the solvency issue, do you*

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**Roundtable on M&A Activity of Legacy Business** *continued from page 27*

*think Solvency II and some of the new IFRS would help with that the quality of information? Would force companies to do a better job in figuring out that information gap?*

**Oliver Horbelt:** Well I think Solvency II is probably easier to answer at this point given that we've gone through a number of specification and calibration rounds. Capital management, though, will become much more important and integrated. And it will become transparent how well a company does that. For our market, I do believe that it will lead to an increased use of reinsurance capacity and the solvency specifications will allow for a number of carriers to provide superior solutions in that respect. Will it lead to an increase of legacy M&A? I really don't know at this point.

**Neal Wasserman:** I wanted to ask Oliver one more question related to Solvency II because there certainly seems to be a consensus that it will lead to more demand for these types of M&A transactions.

But the other side of the equation that I think sometimes gets ignored is what that does to the buyer side or the pricing side. And to the extent that required capital goes up for the seller, there's going to be a similar effect from a buyer's standpoint. Maybe there are some arbitrage opportunities but you're going to see prices go down, I would think. So if there's not right now the economic or pricing agreement to reach a transaction, I'm not sure you're going to have it after Solvency II comes into play because the demand is going to go up but the pricing requirement from the buyer is also going to change.

**Oliver Horbelt:** Well I think that that's partly true. What it will lead to is a heightened level of transparency about the real cost of capital of an insurance enterprise under a certain calibration logic. Redistribution of risk, for example by means of retroactive reinsurance, to a better diversified and a highly rated reinsurer can create significant capital relief that is not entirely erased by the capital requirements of the assuming entity. Therefore, and given the effects of diversification, if you look at the large reinsurance groups in the world those transactions are still worthwhile from an economic and solvency perspective. And that's reflected in the way the Solvency II standard model has been created.

So we believe that the motivation for doing these transactions from those perspectives will increase, especially for companies that have limited access to capital markets, that cannot increase their own funds and correct the solvency position in the timeframe that's needed.

**Ali Rifai:** *Okay this is great, thank you. One other question that we have is, can you tell us if you have seen any change in who the current buyers are in the market? Are there more money funds coming in? Are there more runoff specialists, brokers that have management companies?*

*Who are you seeing in the market and is that a shift from where it used to be?*

**Neal Wasserman:** Over the last few years, I don't think there's been a real significant change. Looking back over a ten-year period, certainly there are more far more runoff specialists.

But over the last few years, I think you've had a relatively stable group of buyers with the exception, as I stated at the outset, of some peripheral capital that was in the market and has left in the wake of the financial crisis.

But you now have a population of buyers that are really comprised either of the larger insurer and reinsurers like we have around the table here or the runoff specialists like the Enstars and Tawas and R&Qs.

**Brian Snover:** Yes I agree with Neal. I can't add much to what he said. That seems to be the population we're seeing. And in terms of again, the drivers on the buy side of this stuff, I get the sense that there are a couple of private equity firms that perhaps dabbled in this for a while and didn't like, for example, how long the capital can really get trapped.

And I'm not so sure it works well with their models and their drivers for the most part. I agree with Neal in terms of the players that are out there today.

**Oliver Horbelt:** Yes I think that the group that can seriously transact this business has stayed fairly consistent over the years with few new competitors in the marketplace. Probably 80% of all transactions (and that's both reinsurance and legacy M&A) are conducted by the top five to seven providers. Some of the sponsors might have changed with certain implications on hedge-fund driven capacity. But I don't think that the net-net impact is very observable.

**Peter Scarpato:** *And one other follow-up related question to that. What are the buyers that are out there looking for? I mean has it changed? Are they looking for blocks of business? Or are they looking to acquire legal entities?*

*For example, one of the things that I heard years ago was, a big driver and why active companies wanted to shed some of their legacy runoff business was because it was sort of a drain on resources. It was a drain on capital. It was a drain on focus.*

*Are companies now, some of these larger companies staffing up or more comfortable with acquiring a runoff business that's part of a larger transaction and handling it in-house? Or is it the reverse effect?*

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## IntAP meeting *continued from page15*

its Dispute Resolution Procedure. This was established by AIRROC to be used inter alia in cases with less complicated issues and/or where it would not be cost efficient to submit to ordinary arbitration resolution. Mr Rosen explained the benefits of this tool for resolving disputes in the insurance and reinsurance business. The Dispute Resolution mechanism introduced by AIRROC comes well timed, as amongst the UK and the US lawyers present in Cologne there was a high degree of consensus that arbitration today no longer seems to serve its purpose. The availability of the AIRROC mechanism to members and non-members alike, the relatively modest cost involved and the speedy availability of an award should prove attractive.

A very interesting and highly appreciated feature of the Technical Meeting was a Mock Court Session that focused on the decision of the High Court in London, earlier this year, in the case *Cx Re v IRB Brasil Re*. The issues of the case on trial were a restricted "follow the settlements" clause, allocation of losses across policy years, aggregation and meaning of "event." The mock court participants, Nick Bradley of Lawrence Graham and Michael Mendelowitz of Norton Rose, were well acquainted with the case and gave a good performance.

The event concluded with a US Legal Update by Helen Franzese of Riker Danzig, on some current cases covering "Follow the Fortunes" clauses, Bankruptcy Injunction/Direct Action and allocation.■

## Roundtable on M&A Activity of Legacy Business *continued from page 29*

**Neal Wasserman:** I think whether buyers are looking for blocks of business or actual legal entities depends a lot on who the buyer is. From our perspective, we tend to look at both types of transactions, but would generally favor stand alone legal entities. That just fits our business model a bit better.

I suspect Brian and Oliver may have a different take on that. And I guess I'd be curious both from Brian and Oliver's perspective about whether or not the passage of 62R in the US creates opportunities for you to write loss portfolio transfers on blocks that might not have been available in the past?

**Oliver Horbelt:** Well I think the sophisticated buyers have the setup to acquire both discrete books as well as legal entities. And in the past both have been equally available.

In my view, blocks are usually more flexible to handle once you've managed to strip them out of the former parent. There are obviously the regulatory hurdles to do so and the options available to transfer blocks are vastly different in Europe, particularly the UK as we discussed compared to the US.

SSAP 62R does provide certain incentives for cedents to retroactively reinsure their legacy liabilities as in the benefit of applying prospective reinsurance accounting is a plus. I don't think it has been a market changing event as I think cedents are familiarizing themselves with the possibilities of let's say a more intuitive regulatory and accounting environment.

But we have seen an interest in retroactive reinsurance transactions that are driven by the change in the accounting treatment.

**Ali Rifai:** *I just have a follow-up question taking into consideration things that all of you have mentioned today, you've been in this space, and especially in the US, you've managed to figure out how to buy blocks of business or companies in runoff.*

*Do you think if there was an opportunity or a law that would allow solvent schemes like in the UK, it would open the floodgates for run-off acquisition opportunities?*

*Or you have a template already of how to do it that it would only help on some transactions? But it wouldn't be this boom either for buyers or sellers?*

**Brian Snover:** I just think the US regulatory legal environment makes it very difficult, I suspect, for a solvent-scheme type opportunity to really get a lot of traction.

With the level of litigiousness over here and the idea over here, under the 50 different regulators that Neal referenced earlier, that long tail liability creditors are going to be crammed down in terms of what they're going to take. And yet, equity will walk away with something, I think that's a very tough sell in the US.

I think that most of the greatest challenges to the success of specific solvent schemes in the UK have been from US creditors.

**Neal Wasserman:** I agree with Brian. You have in Rhode Island anyway, and Brian alluded to this earlier, you have solvent scheme legislation there that I think when it was passed a number of years ago, many people thought might lead to a number of these transactions being done.

None that I know of have occurred to date. There's one pending which I suspect will go through. But that's one that is somewhat unique in a lot of ways.

**Brian Snover:** (Yes).

**Neal Wasserman:** And I don't think that one deal is necessarily going to create the flood of further transactions. It's just the legal environment that Brian alluded to that I believe will prevent those kind of things from happening on a large scale in the US.

**Oliver Horbelt:** And as we know the New York statute allows for a plan of recapitalization for a reinsurance entity. And this statute has been in place for many years. Yet only a handful of companies have actually made use of it. So in those circumstances where you have the option space, it's not been used often.

**Brian Snover:** And even in the New York example that is very much a mechanism by which the entity is supposed to be reserving to pay its debts for a certain class of creditors. But its design never really was intended to be one by which the equities stakeholders could get their capital out sooner.

**Oliver Horbelt:** No, that's absolutely correct.

**Ali Rifai:** *That's great. I don't have any further questions. I don't know Peter, if you have any?*

**Peter Scarpato:** No I do not. My only other question would be if any of the gentlemen had any final comments or thoughts that we didn't touch on that might be important to the topic?

**Ali Rifai:** *Or even questions that they may have of each other. We open it up for discussion.*

**Brian Snover:** I'm grateful to be asked to do these things because I don't get the opportunity to hear from Oliver and Neal and people like that very often. So I learn a lot more than offer so thanks and sorry for that.

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## Blending Free Market Economy with a Sense of Reality *continued from page 9*

the insurance businesses were appropriately capitalized and the interests of policyholders were placed ahead of shareholders." This statement was a reflection of what the NAIC refers to as a "walling off" of insurance subsidiaries from the rest of a holding company which is, or may become, impaired.

## Systemic Risk

Reading through the need for the development of the FSOC and the FIO, the phrase "systemic risk" is mentioned throughout. What exactly is it? Does it relate to the insurance industry or is the link only by association to the finance industry? According to the Property Casualty Insurers Association of America, there are two key assessments for measuring systemic risk, the "too big to fail" (TBTF) and the "too interconnected to fail" (TICTF) tests. The G20 Summit in 2009 established a Financial Stability Board which uses three criteria to assess the systemic risk presented by an institution; size, interconnectedness and substitutability.

> *The insurance business model has specific features that make it a source of stability in the financial system, and those few insurers who experienced serious difficulties were brought down not by their insurance business, but by their quasi-banking activities.*

The Geneva Association (GA) is a leading international "think tank" for strategically important insurance and risk management issues. The membership comprises a statutory maximum of 80 CEO's from the world's top (re) insurance companies. Following the 2009 meeting of the G20, the GA evaluated the concept of strategic risk with regard to the implications in the insurance industry. In their report dated March, 2010, their findings concluded, among other things that Banks and Insurers played markedly different roles in the financial crisis. The insurance business model has specific features that make it a source of stability in the financial system, and those few insurers who experienced serious difficulties were brought down not by their insurance business, but by their quasi-banking activities. Insurance provides an inherent buffer to risk. It absorbs and diffuses it. Only in monoline insurance and coverage which relates specifically to financial instruments is the industry exposed. The GA recommended several measures: strengthen liquidity risk management, enhance regulation of financial guarantee insurance, establish macro-prudential monitoring with appropriate insurance representation and strengthen risk management practices.

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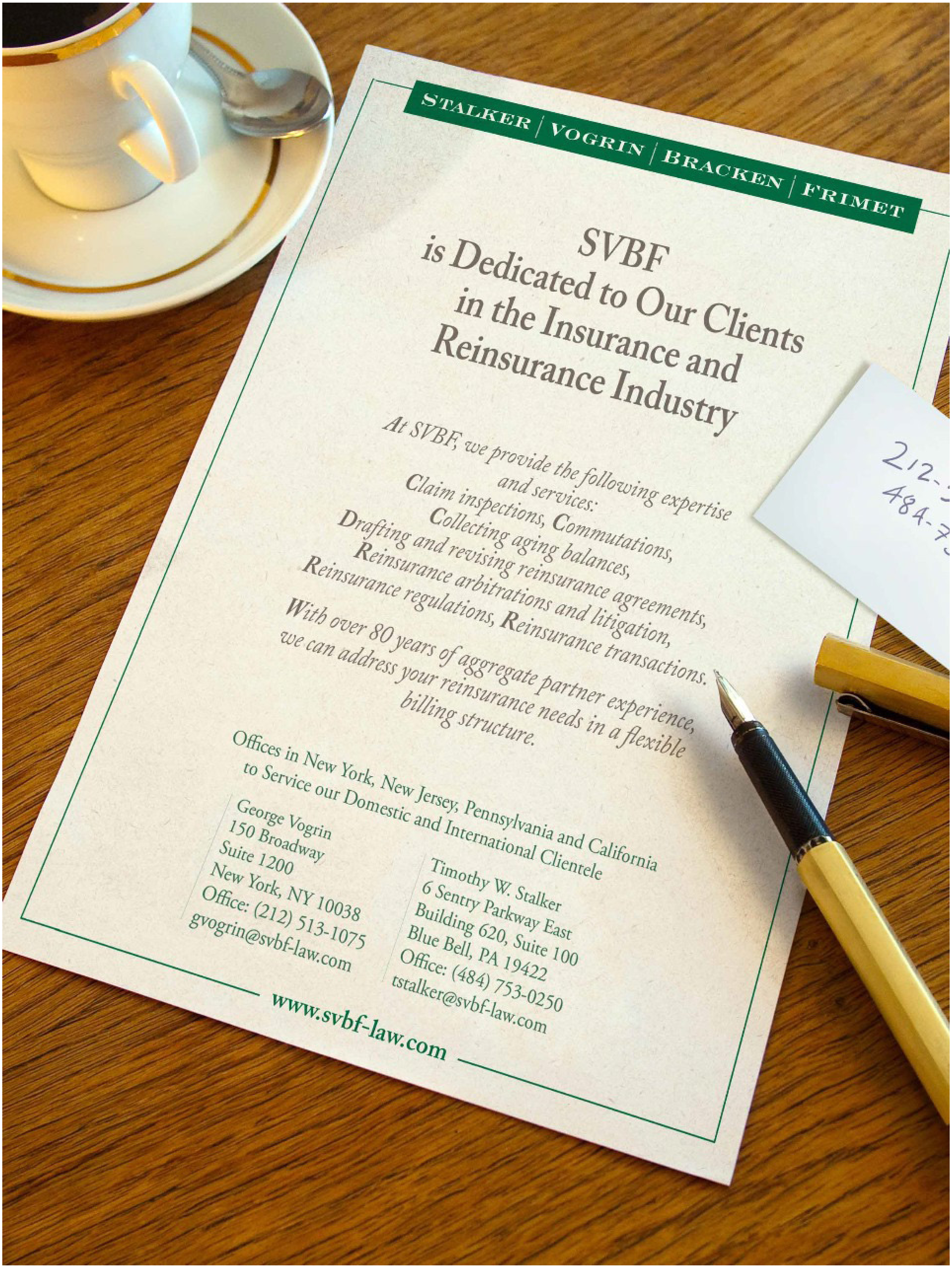
It has become remarkably evident that the insurance industry has done an incredible job of self-regulation and has made a completely solid argument for an avoidance of federal supervision to any degree greater than being a watchdog. By establishing the FIO, the Federal Government has met their obligation to their populace while still allowing a thriving industry to continue to protect the policyholders in this country and throughout the world without additional cost or bureaucracy.

What matters to AIRROC is how this development will affect the run-off aspect of the industry. The issue at hand is contagion and systemic risk. Those are elements related more to recent and active lines of business, if and as they relate to the insurance industry. As run-off is composed primarily of long tail exposures to known and understood lines of business, the only possible exposure to systemic risk would be a collapse of multiple companies at once and their future inability to pay claims as primary insurers or reinsurers. As there are already state-instituted provisions in place to mitigate that type of collapse, indeed supported financially by all 3,900 active U.S. domiciled insurers, it would be unforeseeable that the FIO would get involved with monitoring activity with relation to run-off. However, the Act has left the issue wide open for possible future expansion of the Office. The Office also coordinates and develops Federal policy on aspects of international insurance matters, including representing the United States in the International Association of Insurance Supervisors. The Office assists the Secretary in negotiating (with the United States Trade Representative) certain international agreements. As we have all seen become more evident in the recent past, our industry is, and always has been, an international platform. The NAIC has developed the International Accounting Standards Board. The European Union has developed similar programs, as has the UK. There is an accelerated, focused process around the world to develop a uniform set of rules and regulations and solvency requirements to accommodate the demands of such a multi-nation platform.■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Alert No. 35

# KPMG Policyholder Support Update

*KPMG's Restructuring Insurance Solutions practice has been providing Policyholder Support Alerts to the insurance industry regarding Schemes of Arrangement for a number of years. These alerts act as a reminder of forthcoming bar dates and Scheme creditor meetings. To subscribe to these alerts or access KPMG's online database of solvent and insolvent Schemes of Arrangement, please visit their website at www.kpmg.co.uk/insurancesolutions.*

## Solvent Schemes – Upcoming Key Dates

### ENGLISH & AMERICAN UNDERWRITING AGENCY ('EAUA') POOLS

Schemes for the 16 companies which participated in the EAUA Pools were approved at Meetings of Creditors on 30 April 2010. The Schemes became effective on 12th October 2010 and the bar date was set as 11 April 2011. Further information is available on www.englishandamericanpools.com.

### ALLIANZ GLOBAL CORPORATE & SPECIALTY (FRANCE); AGF MARINE AVIATION TRANSPORT AND COMPAGNIE D'ASSURANCES MARITIMES AERIENNES ET TERRESTRES ("CAMAT") ; ALLIANZ IARD; DELVAG LUFTFARHT VERSICHERUNGS AG; NÜRNBERGER ALLGEMEINE VERSICHERUNGS AG (IN RESPECT OF THE CAMOMILE UNDERWRITING AGENCIES LIMITED BUSINESS)

Schemes for the above companies were approved at Meetings of Creditors on 10 June 2010. The Schemes became effective on 26 July 2010 and the bar date was set as 21 February 2011. Further information is available on www.CUAL-scheme.co.uk.

## Other Recent Developments

### TOKIO MARINE EUROPE INSURANCE LIMITED ("TOKIO MARINE")

A Practice Statement Letter was sent to all known brokers and policyholders on 28 August 2009 indicating the above company's intention to propose a Scheme of Arrangement. No specific date for the application to the High Court of Justice of England and Wales for permission to convene Meetings of Creditors has been announced. Further information is available on www.TMEISCHEME.com.

### MINSTER INSURANCE COMPANY LIMITED, MALVERN INSURANCE COMPANY LIMITED, THE CONTINGENCY INSURANCE COMPANY LIMITED, PROGRESS INSURANCE COMPANY LIMITED, GAN ASSURANCES (FORMERLY GAN ASSURANCES IARD), QBE INSURANCE (EUROPE) LIMITED AND THE RELIANCE FIRE AND ACCIDENT INSURANCE CORPORATION LIMITED

The bar date for the above companies' Scheme of Arrangement passed on 21 September 2010.

## Insolvent Estates

### ENGLISH & AMERICAN UNDERWRITING AGENCY ('EAUA') POOLS (ENGLISH & AMERICAN INSURANCE COMPANY LIMITED, THE INSURANCE CORPORATION OF SINGAPORE (UK) LIMITED AND THE HOME INSURANCE COMPANY (IN LIQUIDATION) - INSOLVENT PARTICIPANTS)

See Solvent Schemes above. ■

*Please contact Mike Walker, Head of KPMG's Restructuring Insurance Solutions practice in the U.K. at mike.s.walker@kpmg.co.uk should you require any further information or guidance in relation to insurance company schemes and insolvencies.*

## Roundtable on M&A Activity of Legacy Business *continued from page 31*

**Neal Wasserman:** Likewise. And thanks to Peter and Ali and to Brian and Oliver. It's been an educational experience for me as well.

**Oliver Horbelt:** Yes, same here. I hope people get something out of this.

**Ali Rifai:** *I think they will. I think from my perspective, this was very informative, very useful. And, I think we all learn and a lot of people are going to learn from the three of you who are really in the middle of this space and know it more than anybody else.*

*So we thank you very much for participating. I think this was very helpful. And I think it will be an excellent article that will be well received.*

**Peter Scarpato:** *Well thank you very much; we appreciate it.* ■