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# “Cyberishous”

Peter A. Scarpato

Not long ago, a computer was the smart guy in math class, phones stayed at home where they should and sky-gazing was for reading clouds. Today, we carry computers open to the world in our pockets, wear phones on our wrists and scan the skies for winged intruders. And every day, people worldwide develop new ways to stretch their devious tentacles through cyberspace into our wallets, secrets and minds. If that's not enough, that sound you hear is not the buzz of bees, but the whir of drones, touching down everywhere from the farmhouse to the White House, in search of who knows what.

This issue features the world of cyber risk. We start with *Cyber Risks and Insurance Every Line, Everywhere*, Laurie Kamaiko and Ted Augustinos' exploration of the ubiquitous impact of cyber threats to insurers and reinsurers, both active and in run off. Next, Carol Kreiling and Anthony Mormino offer a tutorial about *Drones-Ready for Take Off*, discussing everything from what they are and how they can help, to their legality, regulation and challenge for underwriters. Also, our New York Summer *Educational Summaries* feature cyber-related articles on underwriting and drones, as well as work force and case law updates.

This is still a people business. And in our Spotlight feature *The White Knight, Dick White — Proud and Principled*, we see our colleague, known to and respected by all, as he truly is.

The insurance and reinsurance market is an elastic, evolving place where competi-

tion, market forces and regulation usually (but not always) co-exist. Once in a while, a new process emerges that promises to revolutionize our work. Such is the Insurance Business Transfer, or IBT. Luann Petrellis introduces us to *Rhode Island's Answer to Part VII*, which expands options for run off management and allows U.S. managers to achieve finality to legacy liabilities.

As flexible as we are, we constantly need an influx of young talent, invigorating and bringing fresh perspectives to an old business. In *A Call to Action – Recruiting the Next Generation of Insurance Talent*, Margaret Resce Milkint brings us face-to-face with the reality that we must rebrand and transform insurance into a sector of choice to attract the best and brightest Millennials. Young people seek careers that perform some public good and don't perceive us as fitting the bill. We must refocus and re-educate the new work force on the variety of careers and competitive benefits and perks available. If not, their current negative impression will continue.

One of AIRROC's core objectives is education. And this year, we participated in two events worthy of the pledge. First, *Runoff Goes Global* describes AIRROC's first international-based London education event in which our own Carolyn Fahey participated with Clyde & Co. to address the outlook for the international run-off market. And not to be outdone, we followed that with "It's A Deal — A Workshop to Sharpen Your Negotiation Strategy and Technique." *Another Win-Win* contains

glowing feedback on this program, a joint effort among AIRROC, Munich Re, and Butler Rubin, presented at the Manhattan campus of St. John's University.

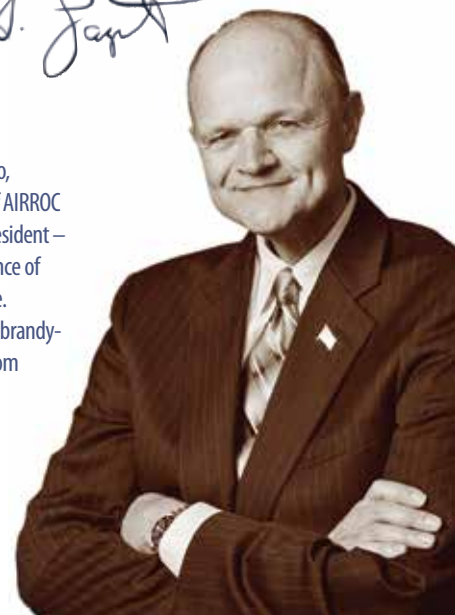
We also introduce AIRROC's newest designation – Certified Legacy Insurance Professional or "CLIP" – and the requirements to earn it.

Almost last, Event Committee Co-Chair Ed Gibney gives us a preview of the upcoming 11th Annual AIRROC Commutations & Networking Forum to be held October 18-21.

Close it up with our ED's piece, *AIRROC Grows Even Taller*, and the ever-Present Value and it's done.

Let us hear from you.

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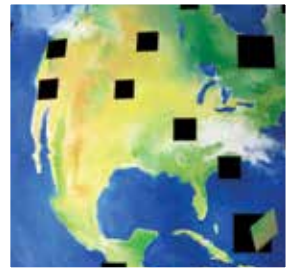
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# Cyber Risks and Insurance Every Line, Everywhere



*Cyber risk is one of those rare exposures that affects every company and potentially impacts every insurer. The insurance industry is affected by this ubiquitous risk both as entities with their own cyber risk exposures, and as insurers and reinsurers of the exposures of others.*

Accompanying rapid and pervasive developments in technology has been a concomitant increase in exposure to a growing range of risks and liabilities. Insurance, using the developing array of products focused on cyber risks, can be part of the solution, but insurers in all lines need to be aware of the range of exposures that cyber risks present. Insurers in all lines are increasingly faced with requests for coverage under policies, some intended and some not intended, to address these risks.

Every company, regardless of size or industry, is now dependent upon the collection and usage of information in electronic form. Similarly, the rapid proliferation of products and business functions that are operated or interconnected through the Internet, from smart cards to smart cars, and from vendor operated air-conditioning to entire operating systems, is nearly unavoidable for any business. The increasing dependency of businesses and their products and services upon connections to the Internet often seems to be as much a vulnerability, permitting unauthorized access to information and operations, as it is an opportunity for business efficiency and innovation. The resulting risks range from: the proliferation of hacking attacks directed at theft of personal information of individuals or confidential business information for financial gain that are often aided by disgruntled employees; to accidental loss of information by employees who seem to regularly lose laptops and other mobile devices on which company information is stored or accessible; to denial of service attacks or disruption of operations from government-sponsored entities or competitors; to the costs of mitigating risks and implementing compliance measures to address the expanding array of legal requirements for privacy, data security, and breach response worldwide. Businesses subjected to this continually changing and evolving threat landscape include: global financial institutions, local retailers, regional utilities, airlines, telecommunication companies,

professional advisors, small vendors, healthcare providers, major manufacturers, government agencies, educational institutions, insurers and their agents -- any business of any size, from small local enterprises to those whose operations are part of the critical infrastructure of countries.

The growth in cyber risks and liabilities also arises from the developing body of government regulation that establishes parameters around the permissible collection, usage, storage, and transmission of information about individuals both in the U. S. and globally and often also impose cyber security obligations on regulated businesses. New cyber exposures continue to develop as regulation expands to business practices involving the collection and usage of information in electronic form and the disclosure of such business practices, and as regulators at both federal and state levels become increasingly concerned about the cyber security of the vast array of companies considered to be part of critical infrastructure. Companies are now often faced with regulation of their cyber security, incident response, and business practices of collection and usage of consumer information by state and federal agencies with regulatory oversight of their industry, and an expanding network of state and federal legislation, with U.S. national uniform legislation continuing to be proposed in various forms, but not yet adopted. Regulators and litigators are increasingly examining not only what a company does with regard to cyber security and response to cyber attacks, but also what it says that it does, with recent litigation often focusing on issues of alleged misrepresentations by companies as to their business practices in collecting and sharing information about customers and in their cyber security. Moreover, the increasingly multi-national operations and customer bases of even relatively small revenue companies often raises issues of compliance with

other countries' regulatory requirements for security, notice, and cross-border transmission of personal information.

The challenges for the insurance industry presented by these expanding exposures have been manifold. One has been hard-pressed to identify these growing exposures and their scope. While initially much of the focus of attention had been upon data breaches involving loss or theft of personal information of individuals and the cost to businesses of investigating such incidents and complying with statutory breach notice requirements, in recent years there has been increasing attention on the other costs to businesses

*New cyber exposures continue to develop as regulation expands to business practices involving the collection and usage of information in electronic form...*

presented by cyber attacks, including business interruption and reputational harm. There is also a growing array of contractual indemnity obligations that can be faced by a company that is involved in a security breach involving its customers or service providers.

Another challenge for insurers has been to recognize the opportunities that cyber risks can present to develop new insurance products to address new risks, while quantifying and pricing the evolving exposures. Yet another challenge has been to address and mitigate the dangers of unintended coverages — or at least demands for coverage — under insurance products that were never contemplated to apply to such risks at the time they were drafted but are subject to requests for coverage by insureds faced with costs and claims arising from a cyber incident.

The nature of some cyber attacks may further compound the challenges to insurers presented by these risks. While some cyber attacks may be quickly discovered and reported, others involve malware that is installed long before it is fully activated and discovered. Thus, apart from the issue of whether a policy's scope of coverage encompasses the risk, cyber attacks can raise the issue of what policy year applies, whether a retroactive date in a claims-made policy bars coverage, and if first-party response costs and business interruption losses and third-party claims all fall within the same policy year. While products designed to address cyber risks have developed over recent years and have tried to address these issues, there is still no standardization in wording or established body of law interpreting and applying existing wording. The body of law that has developed interpreting policy language in other lines of insurance, in more traditional claims settings, is not always easily applied to claims involving data breaches and other types of cyber risks.

There are few lines of insurance that do not face potential exposures from cyber risks of some kind. While specialty cyber risk products have been developed in recent years (with an ongoing debate as to their proper name and scope), other lines of insurance face demands for coverage under traditional wordings, and their underwriters are often subject to requests for expansions of wordings or additions to coverage through endorsements. Coverage for data breaches has been claimed under general liability and personal and advertising injury policies; directors and officers policies have been implicated for alleged failures to undertake or accurately report on data security or breach response; and professional liability insurance and other errors and omissions insurance carriers have faced claims by insureds' clients alleging that such service providers breached ethical, contractual, or other requirements to



**Cyber Risks (Continued)**

maintain the privacy and security of customer or client data. Claims for coverage of data breach-related costs have been made under crime and fiduciary policies and even homeowners policies have faced cyber related claims. Auto line insurers are likely to soon face them as well.

Insurers in all lines of insurance need to be aware of the exposures presented by cyber risks and be prepared to address them. While new wordings are

continually being developed to either cover these risks or to exclude them, those wordings are still not yet fully vetted by court decisions, and cyber related claims are often still brought under traditional lines of coverage with resulting coverage litigation. As all lines of insurance are potentially subject to cyber claims, and today's active business is tomorrow's run-off book, these issues and the developing interpretation of policy wordings must be considered by both active insurers and run-off companies. ●



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**Read more on Cyber Risks, pg 18**

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# Drones — Ready for Take Off

*The commercialization of drone technology has exploded over the past few years and the global use of drones is expected to have enormous implications. Insurance coverage for drone operation is an essential aspect of this technological evolution.*

## What is a drone?

Drones come in a variety of sizes and types, from model aircraft for personal use to large, fixed winged aircraft used by the military. The International Civil Aviation Organization (ICAO) has set a new definition referring to drones as RPAs (remote piloted aircraft systems). Model aircraft are distinctly different from RPAs as they are used purely for recreational purposes.

First used in military conflicts, RPAs became much more sophisticated after 9/11. At least 50 other countries use RPAs, while there is evidence that some terrorist organizations may operate RPAs as well.

Commercially, Amazon made headlines when it petitioned the Federal Aviation Administration (FAA) to use RPAs to deliver packages, but it is not alone. Annual spending on aerial RPAs, including civilian and military applications, is projected to reach \$11.6 billion in 2023 (up from \$5 billion in annual spending now). Over the next ten years, the Teal Group, which provides analysis of the Aerospace and Defense industry marketplace, forecasts that nearly \$89 billion will be spent on RPAs globally.

## Advantages for the insurance industry

Insurance is just one industry that could benefit from the use of RPAs. For example, after a natural catastrophe, an RPA could reach a remote scene much faster than a claims adjuster. Details of a risk could be validated without travel costs or in-person inspections. Instead of climbing a ladder, a claims adjuster could dispatch an RPA to investigate an icy patch of a damaged roof — drastically saving costs associated with claims adjusters' workers' compensation claims.

## Special exceptions

Since 2005, Predator RPAs have provided border surveillance in the U.S.. RPAs have been used for aerial reconnaissance, aerial policing and crowd monitoring. In 2014, the FAA approved the first large-scale commercial RPA operation in the U.S., along Alaska's northern shore. The RPAs collaborate with researchers in gathering real-time data from one of North America's largest oil fields. These same RPAs could be used to map the path of future oil spills. In Australia and Japan, RPAs are used in agriculture to study crop yields, survey property, and to tailor the use of herbicides, pesticides, and fertilizers. In Canada, RPAs are flown over potato fields to collect information that may help farmers reduce spraying and increase yields. The use of RPAs for science and research is virtually limitless.

*Insurance is just one industry that could benefit from the use of RPAs. For example, after a natural catastrophe, an RPA could reach a remote scene much faster than a claims adjuster.*

Real-estate photographers use RPAs to shoot aerial shots of residential properties (despite the federal ban in the U.S. on such commercial use unless there is an exemption). These lightweight, radio-controlled helicopters shoot photos and videos that show homes in context to neighbors, golf courses and other landmarks. In Canada, realtors have used RPAs dramatically; after flying around a large exterior space, the RPA flies through the front door into the home for sale.

RPAs have also been hailed in some quarters as the future of journalism for safely reporting on riots or fires. In 2014, the FAA approved exemptions for the use of RPAs in the film and television industry. Disaster management, search and rescue missions, and humanitarian efforts are additional uses for RPAs.

## New regulations proposed

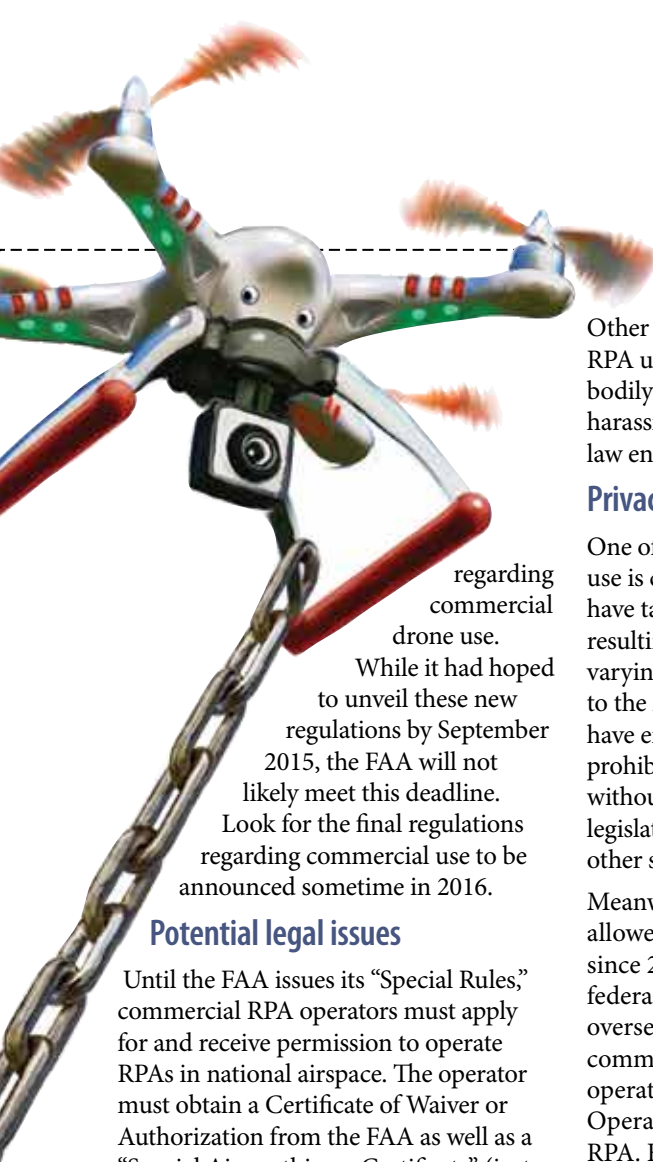
The Federal Aviation Administration has been working for several months to implement "Special Rules for Certain Unmanned Aircraft Systems," intended to regulate commercial operations in low-risk, controlled environments. Last February, the FAA announced its proposed regulations. The proposed regulations disappointed many in the drone industry who felt they were too restrictive; however, the FAA's primary concern is that of the safety of national airspace. Accordingly, the FAA's proposed regulations would allow commercial drone use provided the drone weigh no more than 55 pounds and fly within sight of its pilots and only during daylight hours. The drones may not fly above 500 feet, may not fly faster than 100 mph, and may not carry cargo. The FAA's proposed regulations also ban the operation of drones near airports, over private property or over people not involved in the flight.

The FAA stopped short of requiring a drone operator to obtain a pilot's license. Instead, under the proposed regulations, drone operators must be at least 17 years old, pass an aeronautics knowledge test every two years, and be vetted by the Transportation Security Administration.

Following the regulations' proposal, the FAA received over 4,000 comments from the public during a 60-day public commentary period. The FAA has said it will consider these public comments prior to publishing its final regulations







regarding commercial drone use.

While it had hoped to unveil these new regulations by September 2015, the FAA will not likely meet this deadline.

Look for the final regulations regarding commercial use to be announced sometime in 2016.

### Potential legal issues

Until the FAA issues its “Special Rules,” commercial RPA operators must apply for and receive permission to operate RPAs in national airspace. The operator must obtain a Certificate of Waiver or Authorization from the FAA as well as a “Special Airworthiness Certificate” (just like any other aircraft).

In one well-publicized case, the FAA issued a cease-and-desist order and a civil penalty on a commercial operator. This case arose after the University of Virginia paid an advertising firm that hired Raphael Pirker, a photographer, to fly a model airplane equipped with a camera to take video and photos of its campus. The FAA levied a \$10,000 fine against Mr. Pirker for flying his “aircraft” too close to people and buildings, asserting that Mr. Pirker violated an FAA regulation which prohibits the careless or reckless operation of an aircraft. Mr. Pirker ultimately appealed the order to the full panel of the NTSB. The NTSB ruled that the FAA had the authority to regulate the unsafe operation of his RPA and upheld the fine. The NTSB did not, however, rule on the legality of the FAA’s decision to prohibit commercial RPA operation without an exemption. The FAA’s new rules — once implemented — should rectify this latter issue.

Other potential legal issues raised by RPA use include physical damage and bodily injury, trespass, nuisance, stalking, harassment, wiretap laws, and abuse by law enforcement.

### Privacy concerns

One of the principal concerns with RPA use is citizens’ privacy. In the U.S., states have taken the lead to regulate this issue, resulting in a patchwork of legislation varying from state to state. According to the ACLU, as of June 2014, 13 states have enacted some form of legislation prohibiting RPA use over private property without the consent of the owner. Similar legislation has been introduced in 36 other states.

Meanwhile, Canada has quietly allowed use of commercial RPAs since 2007. Transport Canada, the federal government entity that oversees the operation of RPAs for commercial purposes, requires RPA operators to obtain a Special Flight Operation Certificate before flying an RPA. Furthermore, RPAs are subject to Canada’s Personal Information Protection Electronic Documents Act, which requires permission of a person to take his or her photograph or video.

### Underwriting challenges

Present policy wordings may not address the issues arising from commercial use of RPAs. Carriers may wish to limit their existing policies or draft new policies tailored to a particular insured’s needs. Some of the general types of coverage that may be needed for the commercial use of RPAs include:

- Property insurance including machinery breakdown and business interruption
- Commercial general liability for non-airborne liability exposures
- Personal injury (including invasion of privacy coverage or not)
- Aviation liability
- Non-owned aviation liability
- Professional liability
- Workers’ compensation (in the U.S.)

- D&O liability
- Umbrella liability

The Insurance Services Office (ISO’s) commercial general liability policy includes several provisions that expressly address coverage of aircraft. For example, the aircraft exclusion in Coverage A excludes bodily injury or property damage arising out of the ownership, maintenance, use or entrustment to others of an insured’s aircraft.

In response, the ISO has developed several optional endorsements addressing liability exposure of RPAs for commercial purposes. These endorsements became effective June 1, 2015 and will modify coverage under the ISO’s commercial general liability and umbrella and excess policies.

Intended to provide underwriters with flexibility to tailor coverage as needed, the endorsements range from excluding all unmanned aircraft to excluding coverage under either Coverage A only or Coverage B only of the CGL policy. Additional endorsements specifically limit coverage for designated unmanned aircraft as listed in a scheduled endorsement.

Although technology is advancing at break-neck speed — RPAs as small as mosquitoes have now been developed — the law has failed to evolve as quickly with the FAA clipping the wings of drone usage. Only when we do get meaningful regulation will we really see this exciting industry start to take off. ●



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Read more on Drones, pg 20



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# A Call to Action

## Recruiting the Next Generation of Insurance Talent

Illustration / Rafael Edwards

*The insurance industry stands at the cusp of a growing talent crisis. With an increasingly “greying” workforce, an impending wave of retirements and a startling lack of incumbent talent, the need for an industry solution is real and immediate. Unfortunately, many insurers are unprepared to face a fiercely competitive recruitment climate. To ensure the continued success of organizations within the insurance industry, this call to action must be addressed.*

### Understanding the Reality of the Insurance Labor Market

According to the U.S. Bureau of Labor Statistics (BLS), nearly 50 percent of the insurance industry workforce is aged 45 and older. In addition, the past ten years have seen the number of insurance employees aged 55 and older increase by 74 percent.<sup>1</sup> As a result, the current total of insurance professionals aged 55 and older is nearly 30 percent higher than the rest of the economy. With the general economy expected to see more than one million employee retirements within the next ten years, it is evident that this mass exodus of tenured and skilled professionals will be felt acutely within the insurance industry. In fact, current predictions show that nearly half of all insurance professionals will be retired or on the verge of retirement within 15 years.

Perhaps even more shocking than the rapidly aging insurance workforce is the dramatic shortage of less-tenured talent. Currently, only 27 percent of insurance employees fall under the age of 35. Faced with an impending

exodus of institutional knowledge and skills, companies are finding that their current bench of employees is unable to fill the growing gap. This realization is highlighting an acute industry need for a major influx of talented young professionals to help offset the skills gap and fill the roles of near-term retirees.

Fortunately, the Millennial generation is poised to help fill the void. Already 77 million strong and accounting for 25 percent of the U.S. workforce, Millennials are redefining the workplace of the future.<sup>2</sup> According to PwC, “the Millennial generation [...] will shape the world of work for years to come. Their career aspirations, attitudes about work, and knowledge of new technologies will define the culture of the 21st century workplace.” This emerging talent pool is the logical source for qualified, bright professionals to fill the growing insurance industry demand.

However, a career in insurance is not one that most young people actively seek. According to a survey by The Griffith Insurance Education Foundation and The Institutes, less than one in ten young professionals are interested in working in the insurance industry. They feel that insurance is “boring” and “uninteresting,” and they do not want a career selling insurance. Insurers are now faced with the challenging mandate of engaging and recruiting young professionals and recent graduates who have a negative perception of the industry or are unaware of insurance as a career option. What can the insurance industry do to successfully compete for emerging talent?

### Rebranding Insurance as a Force for Good

The Millennial generation is driven by a desire to be socially relevant, empowered and impactful. They want to know that their work is helping to make a difference in the world and in the lives of others. Having a positive image is a key factor in their career decisions. In fact, nearly 60 percent of Millennials would avoid working in a particular sector or industry if they feel that it has a negative reputation.

This is problematic for the insurance industry. In terms of positive public image, insurance is tied for second to last with the defense industry. As a result of its negative standing, 12 percent of participants in a recent PwC survey responded that they would avoid working within the insurance sector.<sup>3</sup> With more than two-thirds of young professionals polled by Insurity/Microsoft indicating that “the insurance industry has a poor public image,” it becomes evident that negative industry perception and reputation may be one of the main obstacles in recruiting young talent to work in insurance.<sup>4</sup>

Fortunately for insurance organizations, the industry has a “goodness factor” that can be shared and promoted in order to attract these socially-conscious professionals and combat their negative perceptions. Historically, insurance is a noble profession that serves as an anchor toward economic growth. It is an industry that does good and attracts high caliber individuals who strive to add value to the industry, the policyholders and their communities.

A number of industry organizations are heavily involved in charitable and volunteer programs throughout their communities. Organizations looking to increase their outreach to the Millennial

Read more on Recruitment, pg 20



generation should consider following suit and implementing a corporate citizenship program. This will not only help to create a sense of purpose and provide meaning to their work but will help to combat the negative stereotypes of the industry.

## Increasing Industry Awareness and Education

Education is key to increasing Millennial awareness of the wide range of job opportunities available in the insurance industry. Recent graduates and young professionals are unsure of the ways in which their current educational backgrounds and job experiences can be applied to positions in an insurance organization. They are not well-informed of the wide-range of opportunities that the industry offers—that their degrees in computer science, marketing or mathematics are transferable to exciting roles industrywide.

Many Millennials mistakenly view an insurance career as limited to working as an agent or in claims, as they have not been exposed to the wealth of other jobs. Just two percent of students surveyed in a study conducted by The Griffith Insurance Education Foundation and The Institutes say they are familiar with the insurance industry.<sup>5</sup> More than 60 percent of Millennials report that they personally would like a job that includes analyzing risk and recommending solutions—a main component of many industry roles. However, the majority are not interested in working in insurance.

Insurance offers great opportunities to work in corporate communications, marketing, finance, data analytics, information technology and more. If the industry truly wishes to attract this young generation of talent, there must be an increased focus on educating young professionals, recent graduates and prospective students on the many opportunities a career in the insurance industry offers.

## Offering Competitive Perks and Benefits

Today's young professionals are tech savvy, curious, intelligent and want to make an impact on the society around them. They want guidance, mentoring and a quick climb up the company ladder.

To attract these young professionals, the industry must focus on creating a culture that fulfills these workplace wish lists. Or, more importantly, offers great jobs.

Fortunately, catering to these desired benefits does not require sweeping cultural changes. In fact, organizations may be surprised to learn that professionals across all generations seek many of the same benefits and perks. With flexible work options, up-to-date technology and competitive compensation packages listed as “must haves” among the Millennial workforce, insurers need to highlight and celebrate the perks they offer. Organizations must focus on emphasizing the benefits they currently offer and how they align with what young professionals are searching for.

*If the industry truly wishes to attract this young generation of talent, there must be an increased focus on educating young professionals, recent graduates and prospective students...*

The younger generation also seeks advancement opportunities, the ability to grow into new roles and the assignment of special projects or task force posts. They want to be recognized for their accomplishments and successes. Organizations should consider highlighting top performers and providing stretch assignments and responsibilities to both challenge and empower them. These enhancement opportunities will not only help prepare A-players for advancement opportunities and succession roles in the future, but also demonstrate a commitment to helping employees grow their own success. If young professionals are unchallenged in their roles, they are more likely to begin looking for alternative opportunities to develop and expand their skill sets. Training and career development programs are great ways for Millennials to expand their knowledge and experience. For organizations unable to invest in outside training, ‘lunch and learns’ and job shadowing are great options to provide access to new skills.

Companies should also focus on embracing and promoting their involvement with hot button trends and industry initiatives—including analytics and big data, cyber risk, globalization and diversity. Involvement with these key initiatives helps build a reputation for being cutting-edge, tech-savvy and innovative.

Social media is another great way for organizations to build their brands and to display a positive image. Younger generations leverage social media as a standard part of the job search. It is a red flag to potential candidates if a company is not present and engaged on popular social networking sites including LinkedIn, Twitter and Facebook. By embracing these megatrends, insurance companies are positioning themselves as forward-thinking and progressive—something that is sure to be noticed by the younger generations.

The stakes are high for the insurance industry to engage recent graduates and young professionals and to close the growing skills gap. The growing Millennial generation is the key to finding success. This bold, brilliant and high-impact generation will only fuel the innovation and ongoing growth of the insurance industry and must be embraced and woven into the DNA of your organization. ●

## Endnotes

- 1 Building a Talent Magnet: How the Property and Casualty Industry Can Solve Its People Needs (2010). McKinsey and Company. <http://tiny.cc/qjui1x>
- 2 Millennials at work: Reshaping the workplace (2011). <http://tiny.cc/6kui1x>
- 3 *Ibid.*
- 4 Report on Existing Millennial Research (2011). The Griffith Insurance Education Foundation. <http://tiny.cc/e4ui1x>
- 5 Millennial Generation Attitudes About Work and The Insurance Industry (2012). <http://tiny.cc/14ui1x>



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# Educational Summaries

## New York City • July 2015

*The Summer membership meeting was held on July 22-23, 2015 at the offices of AIRROC's Counsel, Chadbourne & Parke in New York. More than 130 members had two full days of education, networking and business meetings. Following are some highlights.*

### Cyberattacks: Underwriters "Weigh in"

Summarized by Bina T. Dagar

John Finnegan, Partner at Chadbourne & Parke, moderated a panel on "Cyberattacks: Underwriters 'Weigh In.'" Here are a few takeaways from that panel discussion on July 22. Speakers were: Oliver Brew, Senior Vice President LIU Specialty E&O at Liberty International; Eric Cernak, Vice President-Strategic Products at Hartford Steam Boiler; and David Hallstrom, Practice Leader-Information Risk at CNA.

Did you know that cyber risk is a broad, all-encompassing phrase that is entirely dependent on computer networks? Insurance coverages can include electronic data, business interruption, system restoration, administrative error/system failure, etc., that may trigger property policies, CGL policies, and other lines such as D&O for fiduciary duty from a single incident. How does one underwrite to that? In the last ten years, this area has evolved tremendously. Now,

we have a convergence of privacy issues with security issues.

Did you know that, in this "plugged-in" environment, accumulations can be worldwide? Interconnected devices are valued at \$75 billion. Seemingly unconnected operations may have common infrastructures that accumulate. Aggregation from insuring various companies could extend coverage to all service providers.

Historically, cyber coverage has been available to commercial lines. Homeowners' and smart cars' increased exposure from hacking and cyber bullying will change that. Economic motivations of a hacker will increase exposures to a homeowner with a "smart grid," such as electricity and water meters that are now systems-dependent and to connected vehicles from remote manipulation.

Did you know that, with increasing demand for cyber coverage, ISO has developed specific coverage language on Business Owner's Policies (BOP) and CGL policies, which are being limited for cyber exposure? Exclusions and sublimits depend on the types of business being underwritten. This is a hotly debated topic. Insurers want to submit cyber coverage and brokers want to offer broad coverage. Since CGL policies are a targeted class, express exclusions are now being developed for electronic data and statutory violations.

Core coverages are Personal Injury and Advertising Injury from publication of a person's hacked private information; first-party exposure such as stolen confidential electronic data and resulting breach response cost; security attacks; public rela-

tions coverage; extortion coverage; business interruption/contingent BI; third-party coverage such as propagating a virus to a third party; and media liability coverage.

Standard exclusions are failure of infrastructure, intentional acts of employees, loss of unencrypted devices, bodily injury/property damage including emotional distress, and BETA versions of software. Professional liability (PL) coverages have cyber endorsements, but there is interplay between cyber and PL when service providers and product developers are involved. This has challenged the re/insurance industry from unintended coverage, i.e., to pay a loss for which no premium was collected.

Indeed, the definition of information has evolved rapidly. Personal Identity information (PII) may consist of email addresses or IP addresses, physical addresses, and phone numbers. This amount of PII allows someone to be identified by a hacker. Thus, coverages are morphing towards privacy versus cyber.

Did you know that the number one cause of loss is the loss of data on laptops? Misplacing a laptop with confidential information is difficult to underwrite. Insurers are working on modeling rates to include human error or negligence. The challenge is to identify the insured's vendors. The modeling firm AIR is evaluating this exposure. Most reinsurers lean either towards being cautious or towards being aggressive and mostly rely on cedants for evolving information. Either way, there is a concerted effort afoot to gather accumulation information.

Did you know that remedial cost/response cost is tied to an incident and



may be endorsed? Remedial costs such as dealing with regulators and liability suits are not covered. FTC could demand onerous imposition on entities and industries that are vulnerable to cyber attacks. Health insurers have been in the news lately for the hacking of personal identification of patients.

As these comments illustrate, the emerging world of cyber risk and scope of potential exposures and liabilities appear boundless. ●

## Handling Cyber Claims

Summarized by Bina T. Dagar

Bruce Margolies, Partner at Traub Lieberman, moderated a panel on “Handling Cyber Claims.” Here are a few takeaways from that panel discussion on July 22. Speakers were: Frank Kehrwald, Senior Vice President at Swiss Re; Suhey Nevarez, Director of Privacy & Network Security Claims at ACE; and Caryn Silverman, Senior Vice President & Claims Counsel at Endurance.

Is a stolen laptop covered under a cyber policy? The panel unanimously stated that it depends on the policy language. The lack of standardization in the definition of Personal Identification Information (PII) leaves the coverage under the policy open to interpretation. A cyber policy usually contains protocols to follow in case of a claim; in some circumstances, the designated breach counsel calls a toll-free number or informs the insurer who responds rapidly to preclude or mitigate damage.

An insured would rely on an incidence response plan to help recover information. For that, different departments participate to put the plan into action such as a breach counsel, crisis management firms, forensics, etc. Thus, this first party cover would engage all areas to respond. For its part, the insurer must respond quickly to recover stolen information or to an insured who unwittingly clicked a ransomware link.

To get cyber coverage, the insured has to undergo a robust application process to demonstrate that they follow minimum required practices or to ensure no misrepresentation of facts. For example, does the insured install a program on a laptop which erases information should the laptop get stolen? Does insured exercise a reasonable standard of care on their laptop if it is unencrypted?

A GL policy would respond to third-party exposures, such as defamation act or wrongful act through information gained from a laptop or flash drive. When assessing a claim, the claims handler would review whether the bodily injury/property damage claim is from an accident and whether the claim was intended to be covered. Defamation claims resulting from publication of PII are potentially covered under a CGL policy (personal injury and advertising injury). On the other hand, all CGL policies typically have some form of cyber exclusion. But is the insured put on notice of this exclusion? ISO is attempting to exclude cyber coverage on standard policies, whereas manuscript policies would provide such coverage.

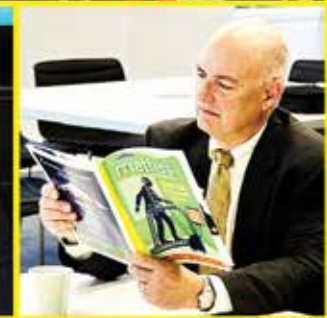
If the insured has several policies with the same insurer, the policy language would guide the inuring coverage. A claims handler has to evaluate the priority of coverage for defamation claims.

Is data stored on magnetic tapes covered? Again, that depends on the contents of the tape and whether the loss was from acts of the insured’s vendor. Such queries are raised to establish what fits into the definition of the policy. A lot turns on the policy language. If the result is that no harm was suffered from the policy coverage perspective, then there is no claim. But, if a punitive damages claim is filed for imminent threat of harm (if not actual harm), then the insurer has to consider exposure from a coverage defense perspective. If the insured’s vendor was the actor, coverage depends on whether the policy covers such exposure from a cyber perspective. From a CGL perspective, an insured may claim for the fact that the information is out there even though there is no claim due to misuse of data. If forensic investigation costs are incurred to assess the extent of damage, this would be covered under Property Damage. Finally, a claim could be denied if IT data is not covered under the policy.

Cyber policies are claims made coverages. Investigation and mitigation costs are first party coverages. Much depends on the wording of the policy, provision of crisis management services, and the loss date (reported/discovered). Ultimately, claims departments rely on forensics to determine coverage. ●

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## Insurance and Drones: A Rising Risk

Summarized by Karen M. Borg

Here are some key takeaways from the presentation on “Insurance and Drones: A Rising Risk” by Frank Kehrwald, Senior Vice President at Swiss Re:

- FAA regulation governing the use of drones is in flux. Current FAA regulation prohibits commercial use of drones and limits recreational use to 55 pounds or less with minimal restrictions. Non-recreational use is limited to government or research use. Non-recreational government or research-related use of drones requires a Certificate of Waiver or Authorization (COA) and non-recreational commercial use of drones requires a Special Airworthiness Certificate (SAC). COAs and SACs both require the operator to have a pilot’s license. Operators generally do not comply with these regulations but the rules are expected to change by 2016-2017.
- The FAA proposed draft rules on February 16, 2015, allowing commercial drone flights. If implemented, these new rules may lead to increased use of unmanned aircraft systems (UAS). The final rules could be published as soon as 2016 or 2017. The FAA draft rules do not yet deal with privacy concerns and do not require private insurance for drone users.
- Potential legal issues raised by the use of drones include: violating FAA or Transport Canada Rules; physical damage and bodily injury; trespass; nuisance; invasion of privacy; and stalking and harassment.
- Although many ISO forms provide coverage for “personal and advertising injury” or “personal injury,” potential personal injury offenses that may be covered from the use of a drone are limited to the insured’s capacity as a landlord.
- ISO drone endorsements CG 21 09 and CU 21 71, effective June 1, 2015, exclude all Unmanned Aircraft without exception.
- ISO drone endorsement CG 24 50, effective June 1, 2015, provides limited coverage for designated Unmanned Aircraft, but only with respect to operations or projects designated in the Schedule of the endorsement. CU 21 24 provides an exclusion for non-owned aircraft. ISO does not require compliance with FAA regulations.
- None of the drone liability policies have provided coverage for invasion of privacy/trespass, nuisance, wiretap laws, or fines by the FAA.
- The definition of “FAA guideline” remains open with respect to the wording of certain specimen policies covering drone liability.
- Drone claims may be excluded, pursuant to the exclusion for liability arising out of an aircraft that is found in many policies, depending upon the relevant policy’s definition of “aircraft.”
- Potential future uses of drones include search and rescue, monitoring, disaster management, crop management, inspection, use in the oil and gas industry, entertainment, and package delivery. ●

## Trends Influencing the Landscape of the Insurance Labor Market

Summarized by Karen M. Borg

Here are some key takeaways from the presentation on “Trends Influencing the Landscape of the Insurance Labor Market” by Margaret Resce Milkint and Bill Barbagallo:

- Due to the aging of the workforce and changing landscape of the insurance industry, the industry needs to focus on succession planning and attracting new talent.
- There will be 400,000 positions to be staffed by 2020. There is a growing focus on big data and analytics. Big data and analytics jobs are forecast to increase 92% by 2017.
- The millennials will soon be the largest aspect of the workforce. The millennials were shaped by 9/11, are often misunderstood, and are more casual than previous generations. Millennials multitask and they are interested in flexibility and time off to volunteer. Generation Z (born after 1995) individuals were shaped by the recession and are more fiscally conservative, service-minded, and looking to “do good.”
- Current challenges facing the insurance industry due to the aging workforce include: document management in order to capture information; adapting to the younger generation’s increased use and knowledge of technology; transfer of technical knowledge retained by older workers; and the cost of “knowledge transfer.”





- Today's professionals have a different mindset than the Boomers, who maintained a "worker bee" culture. This generation approaches work differently in that work is not the "end all," and today's young workers seek the resources to get the job done faster so that they can spend time away from the office. As a result, the insurance industry needs to invest in the infrastructure to implement systems to provide these resources.
- As Generation Z is ready to join the working world, we are losing verbal communication. Generation Z prefers to text and email rather than to have in-person conversations, craves immediate and constant feedback, and is looking for "harmony."
- As the war for fresh talent grows, employers need to focus on rewards, recognition, retention bonuses, the opportunity for rewarding work, flexibility, and the implementation of official programs to manage the change. ●

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## Updates on Recent Case Law

Provided by Amy J. Kallal, Esq., Mound Cotton Wollan & Greengrass LLP and Lewis E. Hassett, Esq. Morris, Manning & Martin, LLP

By Bina Dagar

### Coverage for a Ceding Company's Defenses Costs

*Utica Mutual Insurance Co. v. Munich Reinsurance America, Inc.*: (2nd Cir. December 4, 2014) held that the

certificate liability limit unambiguously included expenses and therefore refused to consider extrinsic evidence (Bellefonte Progeny).

### Coverage for a Cedent's Defenses Costs

*Utica Mutual Insurance Co. v. Re&Q Reinsurance Co.*: (N.D.N.Y. June 4, 2015) held that the language regarding expenses was ambiguous, and extrinsic evidence was required to resolve the ambiguity over defense costs.

### Cyber Risks Recall Total Information

*Management, Inc. v. Federal Ins. Co.*: (Conn. May 26, 2015) held that loss of computer tapes under the circumstances did not constitute "personal injury."

*Travelers Property Casualty. Co. of America v. Federal Recovery Services, Inc.*: (D. Utah May 11, 2015) held that insurer has no duty to defend, as the insured knowingly withheld information.

### Duty to inform – Marijuana

*Nationwide Mutual Fire Ins. Co. v. McDermott*: (6th Cir. February 24, 2015) held that the insured was not entitled to coverage, as it had not provided change of use of premises or change in material fact to the insurer.

### Lost Insurance Policies

*Cardigan Mountain School v. New Hampshire Ins. Co.*: (1st Cir. May 27, 2015) held that the school's factual allegations and reasonable inferences established plausibility that insurance cover existed.

### Pollution

*Smith v. Georgia Farm Bureau Mutual Ins. Co.*: (Ga. Ct. App. March 30, 2015) held in favor of the insured that lead was not a pollution under the CGL policy.

*Wilson Mutual. Ins. Co. v. Falk*: (Wis.2d 67 December 30, 2014) held that cow manure counts as a pollutant when contained in a well.

### Utmost Good Faith in a Retrocessional Relationship

*Munich Reinsurance America, Inc. v. American Nat. Ins. Co.*: (3d Cir. February 3, 2015) held that, although retrocedant had withheld information from the retrocessionaire, said information was not material to the coverage.

### Common Interest Doctrine in the Reinsurance Context

*Progressive Casualty Ins. Co. v. F.D.I.C.*: (N.D. Iowa 2014) held that the insurer's communications with its reinsurers/reinsurance brokers were not protected from discovery under the work-product doctrine.

### Late Notice/Prejudice (Reinsurance)

*Utica Mutual Ins. Co. v. Fireman's Fund Ins. Co.*: (N.D.N.Y. February 9, 2015) denied the cedent's motion for partial summary judgment to dismiss the reinsurer's late notice defense.

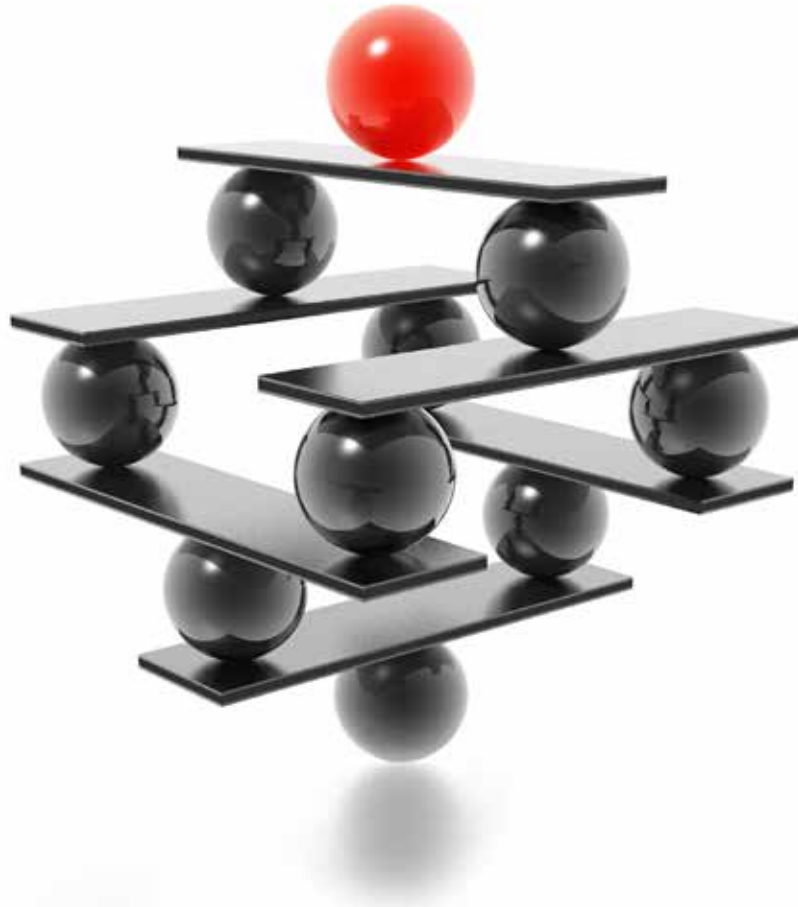
### Reverse Bad Faith (Reinsurance Context)

*Utica Mutual Ins. Co. v. Century Indemnity Co.*: (N.D.N.Y. May 11, 2015) held that reinsurer could proceed with its counterclaim for breach of the duty of utmost good faith.

### Arbitrability under the FSIA

*Pine Top Receivables of Illinois, LLC v. Banco de Seguros del Estado*: (7th Cir. 2014) held that arbitrations were not transferrable from a solvent insurer to an insolvent entity. ●

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# Insurance Business Transfer

## Rhode Island's Answer to Part VII



*Something new and important is coming to the \$200 billion plus run-off market in the U.S. Proposed amendments to Insurance Regulation 68 are pending in the State of Rhode Island (RI) and are expected to be approved later this year. These amendments have the potential to invigorate and transform the market, similar to what has occurred in the UK run-off market over the last several decades resulting from the introduction of new run-off legislation. The RI regulations will provide expanded options for management of run-off liabilities and for the first time bring finality to legacy liabilities.*

There are major challenges facing companies with P&C run-off business. These challenges include access to exit mechanisms, maintaining reputation, capital constraints, operational costs, adverse loss development, adverse impact to a company's rating, and lack of skilled resource. The larger insurance groups are rethinking organizational structures with a view to maximizing the efficiency of capital deployed. Whether the entity is a small P&C company or an international insurance group, there has been a continual need for effective restructuring tools to optimize capital deployment as well as to manage run-off liabilities. Clearly the market is ready to consider new tools and approaches to address the challenges of run-off business.

Pursuant to its authority under Rhode Island Gen. Laws Section 27-14.5, the RI Department of Business Regulation has published Proposed Amendments to Insurance Regulation 68, providing for "Insurance Business Transfers" ("IBT"), which are defined as the "transfer of liabilities and assets in accordance with the procedures delineated in this Regulation." The amendments provide a

carefully monitored, transparent process for the transfer of some or all of a company's commercial run-off liabilities to a newly formed or re-domesticated RI company through a department approved and court sanctioned novation process bringing finality to the legacy exposures of the transferring company. The IBT also provides an effective restructuring tool for insurers or reinsurers. IBTs can be used to 1) combine similar business from two or more subsidiaries, putting all into a single pot; 2) transfer business between third parties; or 3) separate out different books of business, putting them into separate companies.

As a public policy matter, the proposed amendments fill a huge void in the current regulatory environment for run-off business and are beneficial to all parties involved in the IBT transaction. The transferring and assuming companies receive value relative to their long-term interests and finality through the statutory novation effected by the Court Order. The policyholders and/or reinsureds in the transferring business benefit from the focused

management of the Assuming Company and the oversight of the RI insurance department.

Currently the assumption and novation regulations in the U.S. are restrictive and significantly limit the options available to owners of run-off companies to pay their obligations to policyholders and terminate their exposure to future liability. As a consequence, capital is trapped and unable to be deployed for more beneficial purposes. The importance of the IBT transaction is the ability to provide a fair solution that balances the needs of all the company's stakeholders. The RI Proposed Amendments allow companies with run-off business to distance themselves transparently from these liabilities, while also providing security to policyholders through a closely monitored and judicially approved transfer process.

Consistent with the strong policyholder protection that currently exists in U.S. law, the proposed amendments include provisions that address policyholder concerns. To protect policyholders the statute has specific notice requirements that provide for notice to policyholders and various other specified parties. Also, the IBT approval process requires 1) extensive disclosure of financial information of the Assuming Company; 2) an expert report that will evaluate the impact to transferring policyholders and non-transferring policyholders; and 3) an independent evaluation by the Insurance Department. Most importantly, there is complete judicial review of the IBT Plan and, before the transaction will be approved, the Assuming Company must satisfy the Court that the transfer does not materially, adversely affect policyholders. Any party who feels adversely affected by the transfer can make a representation to the Court for consideration. Once approved, the Assuming Company is subject to the continuing authority of the RI Insurance Department.

A similar process has been available in the United Kingdom for many years and has resulted in hundreds of successful transfers of business. Building upon the UK process and, in some ways, superior to it, the RI proposed amendments will permit more efficient management of transferred

books of business, and allow dedicated capital and focused solutions to be applied to run-off liabilities. While providing a reasonable framework for transfers of insurance business, the proposed amendments also provide sufficient safeguards for policyholder protection resulting in a fair outcome for all parties involved.

*As a public policy matter, the proposed amendments fill a huge void in the current regulatory environment for run-off business...*

The IBT process is initiated by the Assuming Company submitting an Insurance Business Transfer Plan (Plan) to the RI DOI for approval. The regulations set forth the requirements of the Plan, which include an expert report that opines on the potential impact to various groups of policyholders and an approval of the transfer by the domiciliary state of the Transferring Company. Once the DOI has approved the Plan, the Assuming Company may file a Petition with the Rhode Island Superior Court for approval of the transfer. The Assuming Company must comply with the broad notice requirements set forth in the statute, which include a requirement that notice be given to all policyholders at their last known address. Once approved by the court, the IBT results in a DOI approved and court sanctioned novation of the transferred policies, releasing the Transferring Company from liability under the transferred policies. While loss portfolio transfers and reinsurance provide some economic finality, the IBT will provide economic and legal finality to the Transferring Company.

Good planning and project management of an IBT are essential. There are certain challenges to be tackled in pursuing an IBT and early contemplation of potential obstacles makes all the difference. For companies promoting the transfer, their objective is to minimize risk of objection

and to achieve regulatory and court approval of the transaction. Therefore, companies are well-advised to spend time up-front identifying where the risks of challenge may come from. Once the potential challenges have been identified, including identifying the parties which may bring them, a strategy is required to address potential objections such as:

- A communication strategy designed to define clearly the business being transferred, the purpose of the transfer and the impact on potential objectors. The communication process must also flesh out as early as possible the concerns of potential objectors, which can then be followed up, if necessary, on a one-to-one basis.
- A strategy for addressing concerns of potential objectors to secure their support, which may include amendments to operational plans or capitalization.
- A contingency plan for dealing with key objectors who will not support the transfer, which may include commutation, novation or exclusion from the transfer.

As the UK experience has proven, the IBT provides an effective restructuring tool for all insurers. While for some insurers the upfront costs of professional actuarial and legal advice may be a turn-off from proceeding with restructuring, these costs start to become more acceptable when set against the long-term benefits arising from an IBT. In addition, for the first time in the US an insurer can achieve finality with respect to its run-off business through an IBT to a third party RI Commercial Run-off Insurer. ●



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# Runoff Goes Global

## Talk of AIRROC London Event

AIRROC held its first international-based education event in London on May 12, 2015. The event, presented in conjunction with Clyde & Co., examined the outlook for the international run-off market.

Martin Mankabady, a Partner in the Corporate Insurance team at Clyde & Co., said: “The run-off market is undergoing a period of transformation. Expansion has reached an unprecedented level in Europe with 2015 expected to mark the sixth consecutive year of growth as companies continue to reconsider their business models ahead of the imminent capital and regulatory burdens of Solvency II.”

Mankabady continued, “We are seeing a geographic shift with the expansion of activity from the mature legacy market in London, not just into mainland Europe, but to the U.S. and further afield. The recent announcement by Chinese investment giant Fosun International that it is to invest in run-off portfolios as it seeks to expand its insurance asset portfolio is further evidence that this is an increasingly global market place.”

And finally, Mankabady said, “In addition we are also seeing a strategic change — run-off can no longer be considered purely a specialty area. In the past couple of years, a number of legacy acquisition companies have deliberately acquired or built underwriting businesses. This has enabled them to create hybrid operations that are able to smooth the more irregular earnings from run-off by diversifying into live underwriting so as to provide an alternative investment flow for shareholders.”

The event included presentations on a range of run-off issues around finance, compliance, and claims, including a panel discussion that will consider the exit routes for companies looking to wrap up legacy business in the U.K. and the U.S.

Carolyn Fahey, AIRROC’s Executive Director, said: “The U.S. run-off market is expanding in terms of the number of acquisitions being carried out. The tightening of the U.K. Prudential Regulation Authority’s (PRA) rules around schemes of arrangement and capital extraction is likely to further dampen run-off activity in London, increasing the attraction of doing deals in the U.S. In addition, the Legacy Insurance Management Act introduced last year in Vermont to attract run-off business to the state mirrors many of the aspects of Part VII transfer rules used in the U.K. and will further fuel market appetite for U.S. run-off acquisitions. With the bigger books, bigger returns, and more insurers available in a younger market, the U.S. is going to be the center of run-off attention for some time to come.” ●



Photos/Claudia Gannon



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# Another WIN-WIN!

## AIRROC Negotiation Workshop

AIRROC, Munich Re, and Butler Rubin presented “It’s A Deal — A Workshop to Sharpen Your Negotiation Strategy and Technique” at the Manhattan campus of St. John’s University on June 2nd.

Here are some photo highlights and comments from our co-sponsors and participants...

“Butler Rubin was proud to host the AIRROC Negotiation Workshop. Given that AIRROC members engage in some form of negotiation nearly every day, we designed the program to not only provide thoughtful tips and insights but to also give members the opportunity to try out different negotiation styles during realistic mock negotiations.”  
*Andrew Shapiro, a Partner at Butler Rubin*

“Munich Re America was pleased to partner with AIRROC and St. John’s in this worthwhile collaborative learning event.”  
*Leah Spivey, Munich Re*

“As an international graduate student at the school of risk management at St. John’s, I wanted to thank you so much for giving me the opportunity to attend this excellent and useful workshop. It was my first time to experience a mock-negotiation dealing with complex claims and it came at the right time for me because I am still young in the insurance industry. In 2012, I started my insurance career by joining the Saudi Arabian monetary agency (the insurance regulator) due to great needs for insurance professionals in my country. They granted me a scholarship to study at St. John’s. Thank you so much again for your great effort in organizing this high-quality workshop.” *Nasser Alabdulkareem, St. John’s Student*

“I thought the event was extremely well organized — the AIRROC staff did a great job and Michael McMonagle (Munich Re) was an excellent speaker. He was very engaging and covered some really interesting topics. I learned some very useful skills pertaining to negotiations that I will be able to apply not only to my current position but also to everyday life. I was also very impressed by the speakers/facilitators from Butler Rubin. Aside from being very friendly, knowledgeable and experienced they were extremely helpful during the mock negotiations and prep. Thank you for a great experience!” *Alicia Archdeacon, AIG*

Some key takeaways as offered by our audience...

- Every one of the five styles of negotiation has a place. The key is knowing where that place is.
- Remember to ask for explanations of your “partner’s” position during negotiations.
- Collaborate where you can and partner with those you are negotiating with.
- There is always a reasonable deal to be reached.
- Being mindful of picking up on opportunities to gain additional information from your “partner” which may be helpful to your negotiation.
- Being aware of the types of negotiation styles can help in working towards cooperation. ●



Photos/Jean-Marc Grambert

Illustration / Rafael Edwards





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# The White Knight

## Dick White — Proud and Principled

*If you know Dick White from industry meetings or dealings with Integrity Insurance Company in Liquidation, you probably did not picture him wearing a biker jacket and cruising down Route 1 to Florida.*

Of course his jacket patch, rather than depicting an outlaw insignia, would probably include a reference to his favorite leadership book, the Bible. He says “Bible” is an acronym for “Basic Instruction Before Leaving Earth”. But if he could have a second career, he would continue the job he had in college as a lifeguard, at a northern area beach in the summer and a Florida one in the winter, traveling back and forth biannually by motorcycle with his best friend Debbie Polise-White riding on the back.

The Integrity liquidation is almost completed. The final checks are in the mail. When Dick took the job of running the liquidation in May 1995, he really had no expectation it would take until 2015 to finish. In fact, in AIRROC’s 2011 Insolvency Special Edition, he predicted it would close by the summer of 2012, having originally estimated the year 2000 for the N.J. Insurance Department (so don’t ask him to estimate anything). The best part of his job, however, was paying creditors from marshaled assets; the worst part was the glacial pace of the litigation. When we asked him about lessons learned he said: “I play golf. I find that when hitting your tee shot, results are better if all you ‘see’ in front of you is fairway and likewise when hitting your approach shot to the green, all you ‘see’ is the green. While the bunkers (traps) are there, not ‘seeing’ them promotes good results. So too in business (or life)—focus on the goal, not what can go wrong.” As for current trends in the marketplace, he notes the large amount of available capital has



given new energy to the run-off industry thus making it a lot different than it was in the ‘70s and ‘80s and even into the ‘90s. He also believes the state DOIs are now better-staffed and are cognizant of monitoring the industry more closely for potential financial stress.

*When Dick took the job of running the liquidation in May 1995, he really had no expectation it would take until 2015 to finish.*

We asked him for his favorite quote to which he unabashedly replied with his own: “Don’t tell me how much you’ve done; tell me when it’s complete and work until you drop.”

His favorite book is *The Vicar of Christ* by the late Walter F. Murphy, a professor of constitutional interpretation at Princeton. It is a fictional account of a

young lawyer, first serving as a Marine officer in Korea, ultimately ascending to the U.S. Supreme Court. After suffering terrible personal tragedy, he was later selected by the College of Cardinals to be the next Pope despite not being an ordained priest.

When we asked him his opinion on AIRROC and when he first became involved, he said that Trish Getty contacted him in the beginning and he was a whole-hearted supporter. To this day, he feels AIRROC was “a good idea that became great” even though it was a tad too late in dealing with the issues that Integrity faced.

While Dick claims to be good at “doing nothing”, he will continue his career as an arbitrator and he has promised to do an article for us on the Integrity insolvency. ●

Connie D. O’Mara, [connie@cdomaraconsulting.com](mailto:connie@cdomaraconsulting.com) and Bina T. Dagar, [bdagar@ameyaconsulting.com](mailto:bdagar@ameyaconsulting.com)



## Message from the Executive Director

# AIRROC Grows Even Taller...

Carolyn Fahey

AIRROC has reached a new height — we now have our own designation! As of this month, we are accepting applications for AIRROC “CLIP” or Certified Legacy Insurance Professional. Read more about how YOU can be one of the first CLIPs in the box below...

It has been a busy couple of months for AIRROC. We held events in May (London), June (NYC at St. John’s University) and July (NYC for the Summer Membership Meeting). More information on all of these programs can be found in this issue.

The European market greeted us warmly for our first non-U.S. based event in more than five years, held at the offices of Clyde & Co. in London. We brought a balance of U.S. and EU perspectives to

each of the panel discussions, with the morning focusing on compliance and finance (transfer mechanisms, sanctions, reinsurance assets) and the afternoon focusing on claims (asbestos, emerging issues, head injuries in sports).

Our second workshop of 2015 — “It’s A Deal: A Workshop Designed to Strengthen Your Negotiation Skills,” held in June on the campus of St. John’s University — was a big success for all who attended. Co-hosted by Butler Rubin Saltarelli & Boyd and Munich Re, the participants left with concrete takeaways that they can apply to their daily routines.

In July, we again had a packed room at Chadbourne & Parke for our Summer Membership Meeting. On the first day, the room was “humming” with the sounds of business discussions and catching up with colleagues. For the education day, we featured a session on

cyber risk — both from an underwriting perspective and a claims perspective — as well as the latest legal developments regarding drones and employment trends in the industry.

The dates for the AIRROC NJ 2015 Commutations and Networking Forum are October 18-20, 2015. We return to New Brunswick, New Jersey to the Heldrich Hotel. Sign up today — it’s not too early to start scheduling your business meetings! ●



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

### THE REQUIREMENTS TO EARN AIRROC’S CLIP DESIGNATION



- Recommendation from an AIRROC member
  - 5 or more years experience in insurance legacy sector jobs (at time of completion)
  - Attendance at 3 AIRROC events
  - Attendance at one AIRROC ADR session
  - Complete and pass test for 2 of the following courses offered by The Institutes:
    - Insurance Operations (CPCU 520)
    - Insurance Regulation (IR 201)
    - Statutory Accounting for Property & Liability Insurance (AIAF 111)
  - Reinsurance Principles and Practices (ARe 144)
  - Current Readings in Reinsurance (ARe 145)
  - One course may be waived for those possessing an MBA, CPA, JD or other CLIP committee approved business or law related advanced degree
  - Complete 5 modules in AIRROC Matters CLIP Content (read 5 articles and complete assessment test on each article)
- Learn more: <http://www.airroc.org/clip-home>

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# AIRROC's 11th Annual

## NJ Commutations & Networking Forum

Ed Gibney

The Heldrich Hotel and Conference Center, New Brunswick, NJ  
October 18-21, 2015

AIRROC's biggest event of the year will be held from Sunday, October 18 to Wednesday, October 21, 2015.

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

The Heldrich is less than 40 minutes by train from New York City, and boasts a large number of restaurants and shops within walking distance, as well as the full service amenities expected from a fine hotel. "We chose the Heldrich as our host again this year due to the feedback from our delegates from last year. The proximity to New York City, as well as the access to many New Brunswick restaurants and shops made it an ideal location for us. We look forward to returning again this year," said AIRROC's Executive Director, Carolyn Fahey.

The event offers many features that continue to make it an industry "must-attend". Delegates benefit from two full days of reserved networking tables on Monday, October 19 and Tuesday, October 20. "We already have more than 60 companies represented among the delegates registered," said Fahey.

Monday's schedule is a busy one with a full day of education and a diverse set of faculty and topics of interest to AIRROC's members. Sessions include a panel discussion on measures to identify fraud in run-off exposures, updates on environmental remediation as well as various legal/regulatory topics. Also scheduled is a discussion of the new Rhode Island runoff statute. On Monday evening, AIRROC is once again hosting a wine tasting/dinner at the historic George Street Playhouse in New Brunswick. Learn who AIRROC has chosen as the 2015 Person of the Year

as well as meet the recipient of AIRROC's 2015 Trish Getty Scholarship.

Tuesday again provides for the opportunity to schedule meetings all day with other event attendees in order to progress matters between companies. The day ends with a networking reception and more time to mingle with industry colleagues. On Wednesday, meeting tables will be open until noon.

Go to [www.airroc.org](http://www.airroc.org) and register now!!!!

Sponsorship opportunities are available. Please contact Carolyn Fahey at [carolyn@airroc.org](mailto:carolyn@airroc.org) for more information.

We look forward to seeing you at AIRROC NJ 2015!

Edward Gibney, Event Committee Co-Chair and Vice Chair of AIRROC. [ed.gibney@rqih.com](mailto:ed.gibney@rqih.com)



### 2015 REGISTRATION RATES

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

*Sponsorship opportunities are available. Please contact Carolyn Fahey at [carolyn@airroc.org](mailto:carolyn@airroc.org) for more information.*



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# News & Events

## Regulatory News

### NAIC

The NAIC held its Summer meeting in Chicago. Some of the highlights of the meeting included the following:



- Reinsurance (E) Task Force announced that as of August 16th, 32 states have adopted The Credit for Reinsurance Model Act.
- NAIC revisions to the Insurance Holding Company System Regulatory Act (#440) and the Insurance Holding Company System Model Regulation (#450) primarily related to supervisory colleges and the Form F (Enterprise Risk Report) filing are required to be enacted no later than Jan. 1, 2016.
- NAIC Panel appointed Vermont Commissioner, Susan Donegan, to the IAIS President, Monica Lindeen, stated, "Given the importance of Bermuda's reinsurance community to U.S. companies, we are very excited to sign this cooperative agreement with Bermuda."
- The preeminent issue at the Summer Meeting was Cybersecurity. At the

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

Cybersecurity Task Force meeting, an update was provided on pending federal cybersecurity legislation: SB 754 entitled Cybersecurity Information Sharing Act of 2015 and SB 117 — Data Security & Breach Notification Act of 2015.

- NAIC Terrorism Insurance Implementation C Working Group - On Aug. 12 Federal Insurance Office (FIO) held a stakeholder meeting related to terrorism data, to comply with statutory reporting to Congress. Interested parties shared concerns with Michael McRaith, the Director of the FIO, regarding the collection of certain data elements. Beginning in 2016, the FIO is planning to begin collecting data referenced in the Terrorism Risk Insurance Program Reauthorization Act of 2015. Director McRaith welcomes input from state insurance regulators, with a goal of avoiding a duplication of data-collection efforts.

- The ComFrame Development and Analysis (G) Working Group released a discussion draft on Approaches to a Group Capital Calculation in July, 2015. During the course of the NAIC Summer Meeting, regulators discussed the draft focusing on how a group capital calculation would be useful as an assessment tool for regulators. This is just the beginning and the crowd was reassured that the NAIC would be "open and transparent" with the NAIC process.

## Industry News

The PartnerRe/Axis/Exor drama, first discussed two issues ago, seems to have finally reached a resolution if not a conclusion. **Exor SpA**, the investment company of Italy's Agnelli family, won the competition with **Axis Capital Holdings Ltd.** ("Axis Capital") to acquire **PartnerRe Ltd.** ("**PartnerRe**"). The purchase price of \$6.9 billion — up from its original offer of \$6.4 billion — includes a \$140.50 per share cash payment plus a special pre-closing dividend of \$3 a share. Axis walks away with a \$315 million termination fee, \$225 million of which Exor will reimburse to PartnerRe.



But the PartnerRe drama was not the most interesting event of the past quarter, and not even close to the largest. That title (in the p/c world, at least) must go to the blockbuster announcement in July that **ACE Limited** ("**ACE**") has agreed to acquire **The Chubb Corp.** ("**Chubb**") for \$28.3 billion, about a 30% premium over Chubb's June 30, 2015 closing stock price. Interestingly, the combined company will use the Chubb name, and will remain a Swiss company headquartered in Zurich. ACE's CEO Evan Greenberg will head the merged entity as chairman and CEO. John D. Finnegan, chairman, president and CEO of Chubb, previously announced he would be retiring at the end of 2016.

In another p/c transaction that probably would have gotten a lot more attention in any other quarter, **Tokio Marine Holdings, Inc.** ("**Tokio Marine**") announced in June an agreement to buy US specialty insurer **HCC Insurance Holdings Inc.** ("**HCC**") for \$7.5 billion. This purchase was announced as Tokio Marine's biggest ever acquisition.



At the other end of the size spectrum, Bermuda's **Randall & Quilter Investment Holding Ltd.** ("**R&Q**") agreed to acquire **IC Insurance Ltd.** ("**IC**") for \$26.3 million. IC was formed in 1926 as a captive for Imperial

Chemical Industries and stopped underwriting in 1996. The interesting aspect of the purchase was the reason for the sale as expressed by R&Q's chair Ken Randall: "This is one of a number of current transactions we are assessing where a corporate parent is looking to dispose of their legacy captive prior to the implementation of Solvency II."

Because of space and sheer volume of mergers, acquisitions and other transactions we usually only cover those involving insurers. However, note should be made of the announced merger of global insurance and reinsurance broker, **Willis Group Holdings** and professional services and analytics firm **Towers Watson** in a transaction valued at \$18 billion. The combined company will be named Willis Towers Watson and will be domiciled in Ireland. Will the Sears/Willis Tower now be the Towers Tower?

## People on the Move



Adams and Reese announced the addition of **Susan E. Mack** to the firm's Jacksonville office as Special Counsel. For more than 30 years, Mack has served as a

senior executive and general counsel of insurance and reinsurance entities in both the life/health and property/casualty sectors, including leadership positions with Aetna and Transamerica Reinsurance (predecessor to SCOR Global Life). [susan.mack@arlaw.com](mailto:susan.mack@arlaw.com).

**Carlton Fields Jordan Burt** announced that **Barry Leigh Weissman** has joined the firm's Los Angeles office as a shareholder in the Financial Services Regulatory group. Prior to joining Carlton Fields Jordan Burt, Weissman was a Partner at Edwards Wildman Palmer, LLP (now Locke Lord Edwards, LLP) and has served as outside general counsel to several insurance companies. [bweissman@cfjblaw.com](mailto:bweissman@cfjblaw.com).

**Matthew Gabin** has joined **Mayer Brown's** Insurance Industry Group and Banking & Finance practice as Counsel in the firm's New York office, where he will advise companies on insurance transactions. Mr. Gabin joins the firm from Allianz Risk Transfer, Inc., where he served as North American Counsel. [mgabin@mayerbrown.com](mailto:mgabin@mayerbrown.com).



**Daniel A. Cotter** has joined Chicago based **Butler Rubin Saltarelli & Boyd LLP** as a Partner providing insurance regulatory services. Cotter has more than 25 years of

experience in both private practice and in-house capacities, and is the Immediate Past President of the Chicago Bar Association. [dcotter@butlerrubin.com](mailto:dcotter@butlerrubin.com).

**Wesley R. McClelland**, who served as senior policy advisor to Majority Leader Kevin McCarthy of the U.S. House of Representatives, has joined the **American Insurance Association (AIA)** as Vice President for federal affairs as of September 8, 2015. In announcing the appointment, Leigh Ann Pusey, AIA's president and CEO, said that McClelland "possesses the political and policy savvy that will help AIA achieve our legislative goals before Congress."



**Timothy W. Stalker**, a founding partner of insurance and reinsurance boutique firm Stalker, Vogrin, Bracken & Frimet LLP, has joined **Weber Gallagher** as a Partner

in the firm's renamed Insurance/Reinsurance Practice Group. He will be based in the Philadelphia office. With the addition of Stalker, Weber Gallagher is expanding its insurance practice to include a reinsurance aspect. This new area of practice addresses complex insurance and reinsurance coverage issues, risk assessment and coverage disputes. [tstalker@wglaw.com](mailto:tstalker@wglaw.com). ●

# FALL 2015 MARK YOUR CALENDAR

**September 24**

Chicago Regional Education Day  
Chicago, IL  
[www.airroc.org](http://www.airroc.org)

**October 1**

IRLA Academy Training Event  
Mock Joint Settlement Meeting:  
Real Case Study  
London  
[www.irla-international.com](http://www.irla-international.com)

**October 18–21**

AIRROC NJ 2015 11th Annual  
Commutations and Networking Forum  
The Heldrich Hotel  
New Brunswick, NJ  
[www.airroc.org](http://www.airroc.org)

**November 19–22**

National Association of Insurance  
Commissioners (NAIC)  
Fall National Meeting  
National Harbor, MD  
[www.naic.org](http://www.naic.org)

**November 20**

AIRROC/FORC Fall "Hot Topics" Seminar  
Held in conjunction with the  
Fall NAIC meeting  
National Harbor, MD  
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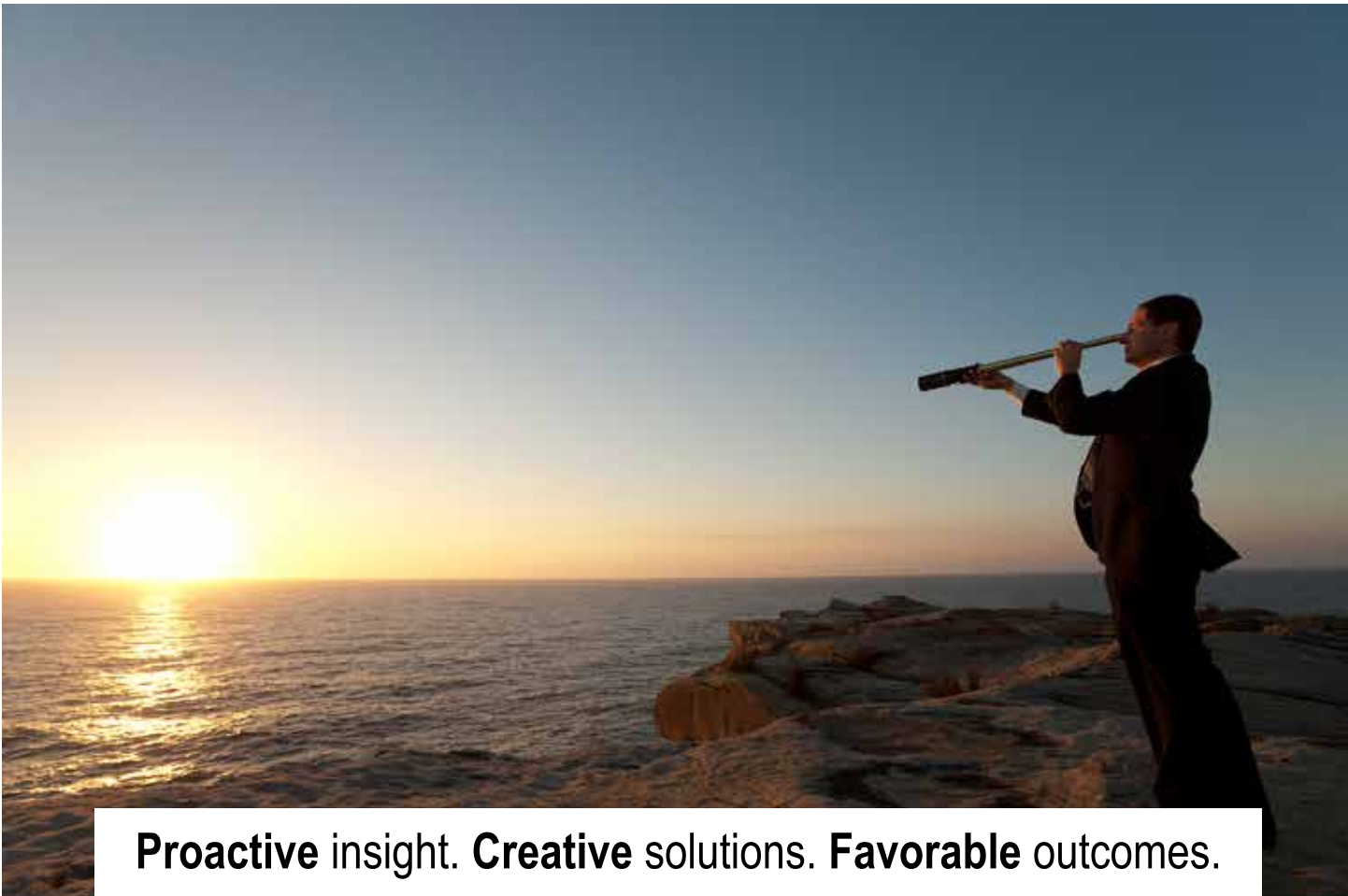
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