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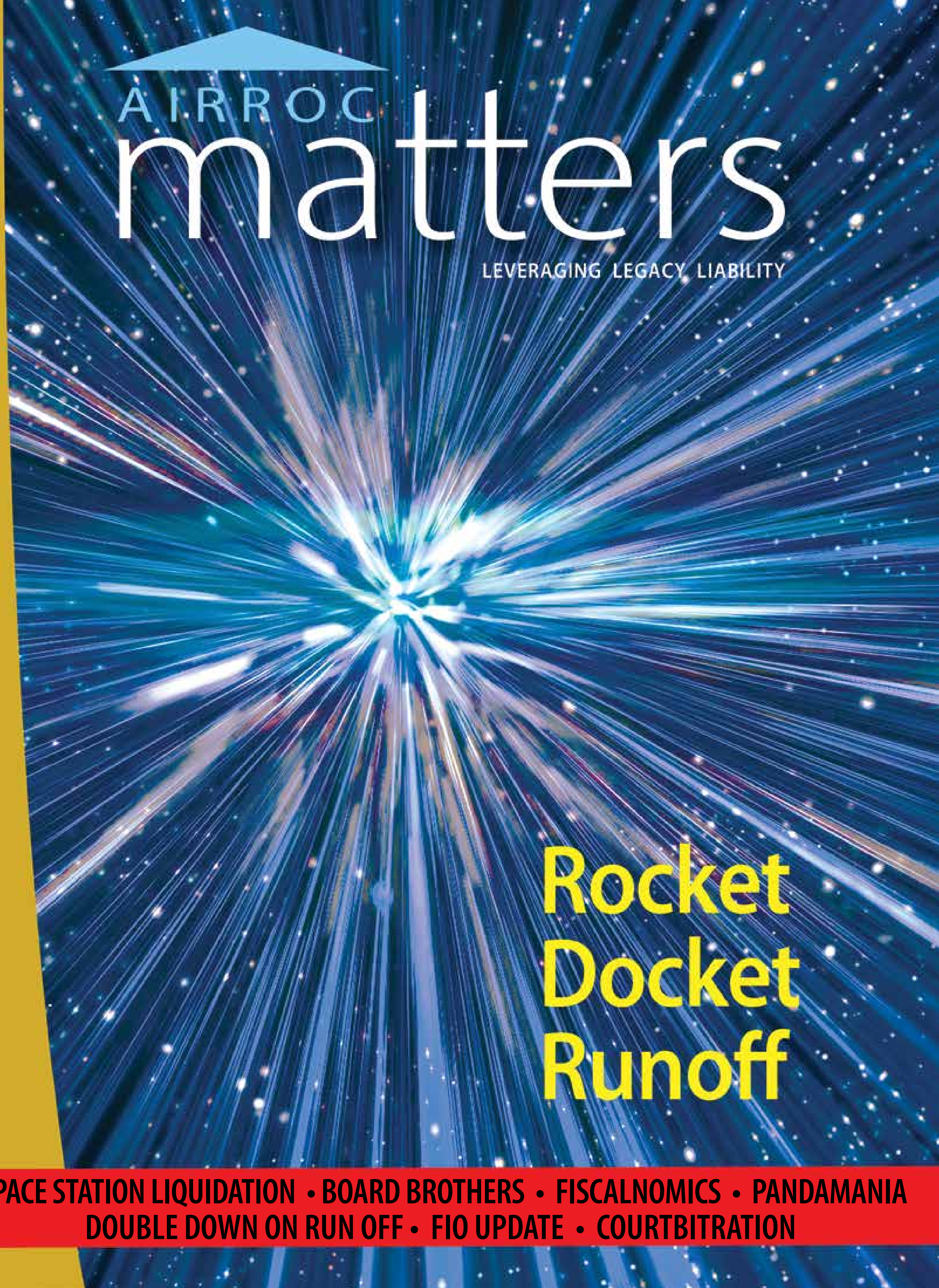


AIRROC matters

LEVERAGING LEGACY LIABILITY

Rocket Docket Runoff

SPACE STATION LIQUIDATION • BOARD BROTHERS • FISCALNOMICS • PANDAMANIA
DOUBLE DOWN ON RUN OFF • FIO UPDATE • COURTBITRATION

"The Need for Speed"

Peter A. Scarpato

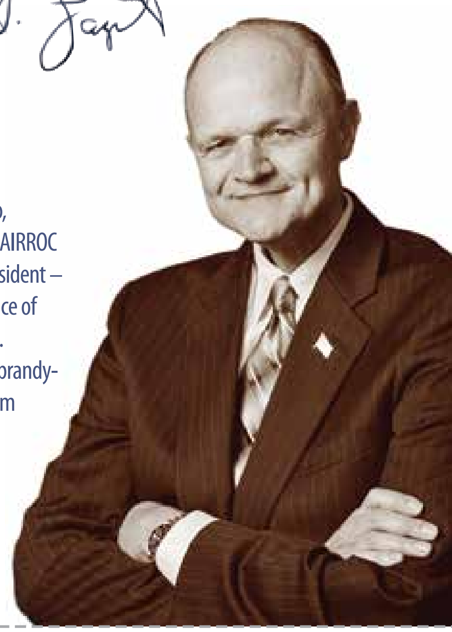
Not long ago, if you asked anyone in this business to describe the typical speed of a liquidation, they would use words like "glacial" or "laggard." Tick off the well-known names: Union Indemnity, Mission, Integrity, Transit Casualty, and their lifespan is measured in decades, not years. The transition from bright sun to white dwarf takes time, especially since liquidators were required to gather reinsurance assets first and make claim distributions later. But this is changing. Technology, effective employee retention strategies and crisp management, among other steps, have accelerated and shortened the lifespan of these business behemoths considerably, drawing the attention of otherwise low lying rein–surers and longing policyholders alike.

In our featured article, *Light Speed Liquidation: A Roadmap of Reliance's Steps to Rapid Closure of the Estate,* Emy Poulad and Keith Kaplan take us through the leaps and bounds of bringing one of the largest P&C liquidations to a close in less than 20 years. Sounds like a long time, but its greyhound fast in the liquidation world. Next comes *How to Win Friends and Influence Run-off Companies,* where Marcus Doran and I respond to questions about our joint service as Co-Vice Chairs of AIRROC and the reasons for our longstanding commitment to this organization. Among the many reasons for AIRROC's success is the accounting prowess of Joe DeVito and Rob Hendel, fully disclosed in *Keeping AIRROC in the Black: DeVito and Hendel Give Dagar the Secret to AIRROC's Financial Success.* For all who wonder how we manage to manage our money so well, this one is for you.

Carolyn Fahey continues to highlight her love of animals in her *Message from the Editor: New Year, New Leadership, New Strategies…New Panda.* With Panda cub Bei Bei as her backdrop, Carolyn fills us in on our progress, plans and purpose. As they say, we are (somewhat) "in it for the money," whether collecting, making or paying. And in *Legacy Attracts New Investors*, Barbara Hadley extols the benefits that await investors keen on tapping into expanding opportunities as companies sell off non-core or bad performing business. Describing it as a "booming market," Barbara explains how the industry is well-positioned with more sellers, supportive regulations and new capital looking for a home.

To look forward you must understand the past. And this edition's AIRROC Classic, *Blending Free Market Economy with a Sense of Reality: The Federal Insurance Office,* features John West revisiting his 2011 article on the FIO. Noting passages from FIO's Annual Report for the Treasury Department in 2014, John plots the organization's transition from watchful bystander to pro-active regulator. Our system of laws and not men (and women) marches on, with Michael Goldstein and Daniel Endick's Legalese contribution, *When Courts Peek Under the Arbitral Veil: The Role of Courts in Managing Your Reinsurance Arbitration.* Previously the place where no judge dared go, recent courts are intervening mid-arbitration where arbiters die or resign, and parties seek to disqualify their adversary's arbiter or their own lawyer. Michael and Daniel plot an educational course through recent court rulings and party maneuvers, potentially leading to modified arbitration clauses addressing the problem.

The ever present Present Value brings us home. As always, the journey takes us far and wide, through the risks, rewards and returns of run off. And in my new role on the Executive Committee, I am more open than ever to your ideas. If ever there was a time to say it, it is now. Let us (me) hear from you.



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

AIRROC matters

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Illustrations / R. Edwards

AIRROC

TOOLBOX

Light Speed Liquidation

A Roadmap of Reliance's Steps to Rapid Closure of the Estate

On October 3, 2001, Reliance Insurance Company was placed into liquidation by Order of the Commonwealth Court of Pennsylvania. In her Petition to the Commonwealth Court seeking an Order to place Reliance into liquidation, Commissioner of Insurance Diane M. Koken indicated that Reliance had a negative surplus of over one billion dollars. Reliance, at the time, was considered to be one of the largest failures, if not the largest failure, of a property and casualty insurer. Yet 13 years after being placed into liquidation, in July 2014, the Statutory Liquidator filed an Application in the Commonwealth Court seeking the issuance of a Bar Date Order as the first step in the effort to bring closure to Reliance's liquidation proceedings. By Order dated December 22, 2015, the Court established March 31, 2016 as the Bar Date. As a result, it is anticipated that Reliance may be brought to a close within two to four years. How is it that one of the largest liquidations of a P&C company in U.S. history could be brought to closure in less than 20 years?

The Claim Process

As of December 31, 2015, Reliance received over 163,296 Proofs of Claims. More than fourteen years into liquidation, Reliance has issued 159,125 Notices of Determination, thereby addressing 98% of the Proofs of Claims. Several factors have facilitated the speedy resolution of the claims.

The priority of claims in the Reliance liquidation is governed by section 221.44 of Article V of the Pennsylvania Insurance Department Act (the "Act"). This section sets forth the order by which a claim receives a distribution from the Reliance estate. It further provides that each class has to be paid in full before the next class receives any payment. There are nine classes in total. Early in the Reliance liquidation, it became apparent that it was unlikely that the estate would make any distributions to creditors beyond class (b).[1] Therefore, wherever possible, the claims of creditors with a priority lower than class (b) have not been evaluated. This has economized the time of everyone involved – whether it is the creditor that needs to submit documentation to support its claim or the evaluator who needs to review the documents to determine if a valid claim exists and, if so, reach a value for the claim. Instead, over 67,000 Notices of Determinations were issued with a class only determination. As such, whether it was a claim under a reinsurance contract, *i.e.*, class (e), or claims for subrogation, class (g), Notices of Determination would be issued with class only and no value. Additionally, the Claims Information Orders that the Commonwealth Court issued in 2007 assisted significantly in compelling creditors to provide timely documentation to support their claims.

Early in the Reliance liquidation, it became apparent that it was unlikely that the estate would make any distributions to creditors beyond class (b).

Reinsurance

In all cases in respect of the Reliance liquidation proceedings, the Commonwealth and Pennsylvania Supreme Courts have unanimously upheld that claims under a reinsurance contract are claims of a general creditor and are entitled to a lower priority than claims by policyholders and claimants under policies of insurance. The reasoning is to protect direct consumers of insurance over sophisticated creditors such as reinsurers so that claims under a reinsurance contract are assigned class (e) priority as claims of a general

[1] Class (a) is for the costs and expenses of the orderly administration of the estate and class (b) is for claims under policies for losses.

S. Emy Poulad & Keith E. Kaplan

creditor. *See, e.g., Alabama Ins. Guar. Assoc. v. Reliance Ins. Co. in Liquidation*, 100 A.3d 702 (Pa. Commw. 2014), *aff'd per curiam*, 121 A.3d 954 (Pa. 2015); *CSAC Excess Ins. Auth. v. Reliance Ins. Co.*, No. 1 REL 2007 (Pa. Commw. Nov. 8, 2012), *aff'd*, 78 A.3d 1058 (Pa. 2013); *Consedine v. Reliance Ins. Co., 35 A.3d 1232, 1240 (Pa. Commw. 2011); Koken v. Reliance Ins. Co.*, No. 269 N.D. 2001, Slip Op. at 4-5 (Pa. Commw. Dec. 8, 2005). Whether the challenge to class (e) priority was brought by an insurance company, a captive, or a pool of entities seeking to underwrite risks, the courts have consistently upheld claims under reinsurance agreements as priority (e).

Subrogation

In 2009, Reliance won a major victory when the Pennsylvania Supreme Court ruled in *Ario v. Reliance Ins. Co.*, 602 Pa 490, 980 A.2d 588 (2009), that claims for subrogation, even though presented under a policy for loss, were class (g) and not (b). While §221.44 provides that claims under policies for losses are a class (b) priority, it specifically carves out:

That portion of any loss, indemnification for which is provided by other benefits or advantages recovered by the claimant, shall not be included in this class.

The claims that fall within the carve-out are assigned class (g) priority.

The *Ario* case arose from a motor vehicle accident. On January 9, 1998, a horse named Pocket Rocket escaped from its paddock and entered a freeway where it caused an accident that resulted in injuries to Sheila Follen-Davis, an insured of Farm Bureau Insurance. Farm Bureau paid Ms. Follen-Davis for her injuries under Ms. Follen-Davis's policy for no-fault automobile insurance with Farm Bureau. Farm Bureau sought reimbursement for the amounts it paid to Ms. Follen-Davis in a subrogation lawsuit brought against multiple defendants, including Pocket Rocket's owner, who was insured by Reliance.

By March 2006, it appeared that Reliance had received over 82,000 potential class (b) claims that were unsubstantiated.

While the Proof of Claim was filed by Farm Bureau, Reliance argued that the claimant in this case is Ms. Follen-Davis and not Farm Bureau. Farm Bureau stepped into her shoes as the subrogee and could have no greater rights than Ms. Follen-Davis whose claim had already been paid. Therefore, the claim was a class (g) claim because it fell within the exception found in class (b) "that portion of any loss, indemnification for which is provided by other benefits." Since Ms. Follen-Davis had recovered her loss from Farm Bureau, their claim was properly assigned priority level (g).

Claim Information Order

A claimant filing a Proof of Claim must provide support to substantiate its claim. By March 2006, it appeared that Reliance had received over 82,000 potential class (b) claims that were unsubstantiated. However, there were substantial difficulties in obtaining information from claimants to support their claims. A meager number of responses were received to multiple communications sent to claimants seeking information supporting their claims. The lack of information on a large number of claims hindered Reliance, not only in its ability to issue Notices of Determination on the claims, but also in its ability to evaluate them in order to determine Reliance's ultimate liability. This also limited Reliance's ability to conduct an actuarial analysis in an effort to issue an interim distribution to class (b) claimants. Accordingly, Reliance sought a way to compel claimants to substantiate their claims.

Therefore, in June 2006, Reliance filed a petition with the Commonwealth Court seeking an order from the Court requiring claimants to provide complete information within prescribed periods of time. If the claimants did not, their claims would be subordinated to class (g). The court issued two orders to that effect dated May 1, 2007 and November 27, 2007. For example, for claims that were not resolved, a claimant had to provide the status of the claim within 180 days and thereafter on an annual basis. Where claims were resolved, the claimant had to provide complete information within 90 days. *See May 1, 2007 Liquidator's Petition to Supplement this Court's Order of September 9, 2002 Order.* And in some circumstances, if a claimant failed to provide any response to Reliance's demands for information, its claim could be subordinated to class (g). As a result of these Orders, Reliance was able to induce the vast majority of claimants to respond and provide the information necessary to substantiate their claims, as well as issue Notices of Determination at class (g) priority to approximately 25,000 claimants who did not respond.

Offset Rules and Cases

Reliance was one of the largest buyers of reinsurance during the 1990s, spending over $2 billion a year by the end of the decade. However, Reliance also assumed a significant amount of reinsurance on an international basis, including being a reinsurer of a number of Lloyds syndicates and other key insurers and reinsurers; thus creating the potential for a wide ranging morass of offset dispute activity that would be contentious, expensive, and lead to lengthy delays in recovering the number one asset of the estate.

To avoid this problem, Reliance developed and issued Reinsurance Offset Guidelines, which were generally accepted by the reinsurance community. Pursuant to these guidelines, over $300 million of offsets were validated and agreed to by Reliance while many other offsets were denied. However, the goal of limiting the number of disputes was accomplished because Reliance faced only three challenges to the guidelines over the course of the receivership.

The first involved mutuality of the parties wherein New Mexico Mutual (NMM) argued that it was permissible to offset amounts due from Reliance to NMM's wholly-owned subsidiary, Southwest Casualty (SWCC), against amounts that NMM owed to Reliance citing its pooling agreement and the common management, administration, business interests, shared offices, and shared personnel of the two companies as evidence that they were effectively one company. The Pennsylvania Commonwealth Court rejected these arguments pointing out that "[b]lack letter law dictates that to constitute a mutual debt, the debt must be solely between the same parties and the contracts under which the debt arise must be between the same parties" and that in this case, "there are separate agreements that involve separate legal entities. Set-off is not available as there are not mutual demands." *Koken v. Reliance Ins. Co. (In re New Mexico Mutual),* 846 A.2d 778, 782 (Pa. Cmmw. 2004).

The second dispute involved a confidential arbitration wherein the dispute concerned whether contract language that limited the offset rights of the parties to amounts due to the other within the same contract would be enforced or would be disregarded in favor of the statutory language permitting offsets. In a summary proceeding, the arbitration panel upheld the contract language and denied the offset.

The third dispute involved this very same issue wherein Republic Western argued that the statutory language "mutual debts and mutual credits . . . shall be setoff" (40 PS §221.32) operated to confer greater rights of offset than had been agreed to with Reliance in their contracts prior to liquidation, i.e. Republic Western argued that the statute trumped contract language limiting offset rights. In an unpublished opinion, the Pennsylvania Commonwealth Court rejected Republic Western's arguments and denied the offset. The court found, and the Pennsylvania Supreme Court agreed, that the intent of the statutory language was to preserve existing offset rights, whatever they may be, and not to confer broader offset rights than the parties had agreed to prior to liquidation, citing the statutory language that "rights and liabilities… shall become fixed as of the date of filing of the petition for liquidation" (40 PS §221.20(d)). *Republic Western Ins. Co. v. Reliance Ins. Co.*, No. 12 REL 2009, Slip Op. (Pa. Cmmw. December 3, 2012), *aff'd per curiam*, 78 A.3d 1058 (Pa. 2013).

In an unpublished opinion, the Pennsylvania Commonwealth Court rejected Republic Western's arguments and denied the offset.

Other

While space does not permit a proper review of all the reasons Reliance has been able to accelerate the liquidation process, three other processes that helped this acceleration include: (1) Cut-Through Order, (2) annual approval of guaranty association expenses, and (3) periodic approval of guaranty association claim payments.

Large corporate insureds attempting to cut through their policies to receive direct payment from Reliance's reinsurers was another issue that Reliance knew it would face given that it fronted a significant amount of business, including for single parent captive reinsurers. To avoid litigation and arbitration over the proceeds of such reinsurance, the Commonwealth Court issued an administrative Order for the Reliance estate on April 26, 2002 that set-forth specific guidelines and requirements (including an application and court approval process) in order for corporate insureds to seek direct access to reinsurance. This process has worked well for the insureds that qualified under the Order. Meanwhile, Legion Insurance (in Liquidation) was embroiled in litigation over the cut-through rights of its corporate insureds. In a surprise decision that was upheld by a divided Pennsylvania Supreme Court, the judge presiding over the Legion estate essentially created a "facts and circumstances test," allowing Legion's corporate insureds to establish rights for direct payment of reinsurance if they could prove that they were the intended beneficiaries of the reinsurance. *Koken v. Legion Ins. Co.*, 831 A.2d 1196 (Pa. Cmmw. 2003), *aff'd sub nom. Koken v. Villanova Ins. Co.*, 583 Pa. 400, 878 A.2d 51 (2005). For Reliance, this meant that insureds seeking a cut-through now had a choice of pursuing a cut-through via the administrative order or by comparing their specific facts and circumstances with those of the Legion insureds that won a cut-through in their litigation. Ultimately, this led to a Reliance case that adopted that Legion test. *Ario v. Reliance Ins. Co.*, 981 A.2d 950 (Pa. Cmmw. 2009).

With respect to guaranty associations, the periodic court approvals of GA claim payments on closed claims allowed Reliance and its GA partners to address and resolve any claim priority

…the key court decisions, administrative orders, and practices outlined in this article have enabled Reliance to be an oft-cited exception to many of the usual criticisms.

or coverage differences along the way rather than seeking a one-time approval at estate closure and then facing an accumulation of time-consuming issues for the first time. Similarly, in vetting guaranty association expenses in an on-going manner, Reliance and the guaranty associations resolved any differences concerning expenses along the way rather than having to address it all at the end of the estate. Having addressed most of these issues throughout the pendency of the liquidation, Reliance anticipates a shorter and smoother estate closure process than otherwise would occur.

In conclusion, we all know examples of estates taking 25 – 30 years or more to wrap up as well as others of similar age that are ongoing. As the largest and most complex U.S. insurance insolvency in history, the liquidation of Reliance Insurance Company could have easily surpassed these durations, yet the establishment of an absolute bar date of March 31, 2016 suggests closure will occur sooner than many would have anticipated. To get to this point, the key court decisions, administrative orders, and practices outlined in this article have enabled Reliance to be an oft-cited exception to many of the usual criticisms of the administration of large, complex national multi-line P&C receiverships in the U.S. ●

Note that the views expressed in this article do not necessarily reflect those of Reliance, its liquidator, or the Pennsylvania Department of Insurance.

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- Attendance at 3 AIRROC events
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How to Win Friends and Influence Run-off Companies

J. Marcus Doran & Peter A. Scarpato

Peter Scarpato and Marcus Doran have been named new Vice-Chairs as a result of their work and commitment to the organization.

We asked them to tell us why they have put so much energy and time into their work for the organization or, in other words, what was in it for them?

Since you have dedicated a lot of time to AIRROC over the last 10+ years, tell me what you get out of it, both personally and professionally?

Peter: I spent a good chunk of my career handling run-off, either running off books of business for companies or as an arbitrator/mediator handling disputes involving run-off company claims. My connection with people through AIRROC, developing the AIRROC Matters magazine by working with its contributors and working with the organizers of AIRROC has made me more effective in whatever I do. The relationships I have acquired serve as a basis for developing trust and that is critical to resolving disputes and getting work done whether you are doing it as a company employee or as a mediator/arbitrator.

Marcus: I have met a number of people through AIRROC so, when an issue arises with another company, I can say, "I know a few people over there. Let me make a call". That communication brings about greater understanding of each other's perspective, which allows for the negotiation of win/win solutions. I remember going to the first October event with Andrew Maneval, my former boss and the first AIRROC chairman. There was a lot of potential for friction, but the process of being isolated for days in a hotel that was inside a highway cloverleaf near the Meadowlands (I don't think you could escape on foot) kept everyone talking and changed the tone of how people dealt with issues. We might not agree, but we all wanted to get things done and that set the framework for the future.

Marcus Doran and Peter Scarpato

Can you tell me about a time where you had an assignment related to AIRROC that served as a basis for further opportunity and growth?

Peter: Being the editor of AIRROC Matters was a stretch for the first few years. As I was developing management skills and responsibilities at AIG, I was also developing those skills as editor of the magazine—I had to manage a team effort, keeping the contributors on track while respecting their expertise, but still be ready to pitch in and do what needed to be done. The additional management experience accelerated my development of management skills.

> *The relationships I have acquired serve as a basis for developing trust and that is critical to resolving disputes and getting work done whether you are doing it as a company employee or as a mediator/arbitrator.*
>
> *—Peter Scarpato*

Marcus: My work on the Education Committee has been a great resource for my company and a bit self-serving for me as well. First, like many of our members, I am curious about our business and the evolving issues that impact what we do. As a co-chair on the Education Committee, I can propose education sessions to get timely information about pressing issues from great lawyers and company professionals. I enjoy working with the incredibly bright people that partner with AIRROC on our educational presentations. Second, I encourage people at my company to take part in the education sessions as an opportunity to learn and, just as importantly, to network with their peers from other companies. It's beneficial to them and the company. My involvement in AIRROC also gives me greater visibility at my company—people know to come to me for issues that AIRROC may be able to help solve.

What do you hope to get out of AIRROC participation in the future?

Peter: Once I returned to the corporate world, I was able to get on the Board. That gives me a feeling of personal responsibility to help run the business of


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SPOTLIGHT

How to Win Friends… (Continued)

AIRROC and make it not just sustainable but help it grow as well.

Marcus: When I first started in run-off, I was told that it was my goal to work myself out of a job. I guess I am lucky that I haven't achieved that goal yet! In fact, I feel like there is a future in run-off because of constant changes in the active market: market changes, business changes, risk appetite changes that result in turnover, and displacements in the market. AIRROC promotes the idea that there is never a last deal with another company in this environment, and it is important to maintain professionalism and protect your reputation (both personally and at the company level).

> *My involvement in AIRROC also gives me greater visibility at my company — people know to come to me for issues that AIRROC may be able to help solve.*
>
> *—J. Marcus Doran*

You get in the elevator with a senior executive at your company. What do you tell him or her about the benefits of AIRROC?

Peter: If you are in the run-off business and you want to maximize the results of that business, you need to work with the right people in that business community. AIRROC is focused and draws the key players from the industry so it is the best possible place to meet the right people.

Marcus: AIRROC promotes professionalism and best-practices in the run-off industry and it is the optimal way to manage reputational risk and disputes. It's the place to be if you want to get things done in the run-off market. ●

In the next issue, we will profile our new Chair, Leah Spivey.

Connie D. O'Mara, connie@cdomaraconsulting.com and Bina T. Dagar, bdagar@ameyaconsulting.com

AIRROC Mobile App Guide

What is the AIRROC Mobile App?
It's an easy and convenient way to navigate AIRROC's Membership Meetings on your Apple (iOS) and Android smartphones and tablets. It contains all of the event information that you'll need to make the most out of your experience.

1. **Download the native apps** from iTunes and Google Play stores. **Search "AIRROC"** in your app store or scan a QR code below. For an HTML5 web version (to use on a laptop), direct your browser to https://confpal.com/m/airroc

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3. **Key Features**
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   - View **Attendees** and **Speakers**
   - To **connect** with another attendee and exchange contact information, click on to send your business card electronically – make sure your profile is completed. (Update your profile at 'Settings' in the top right corner of the home screen).
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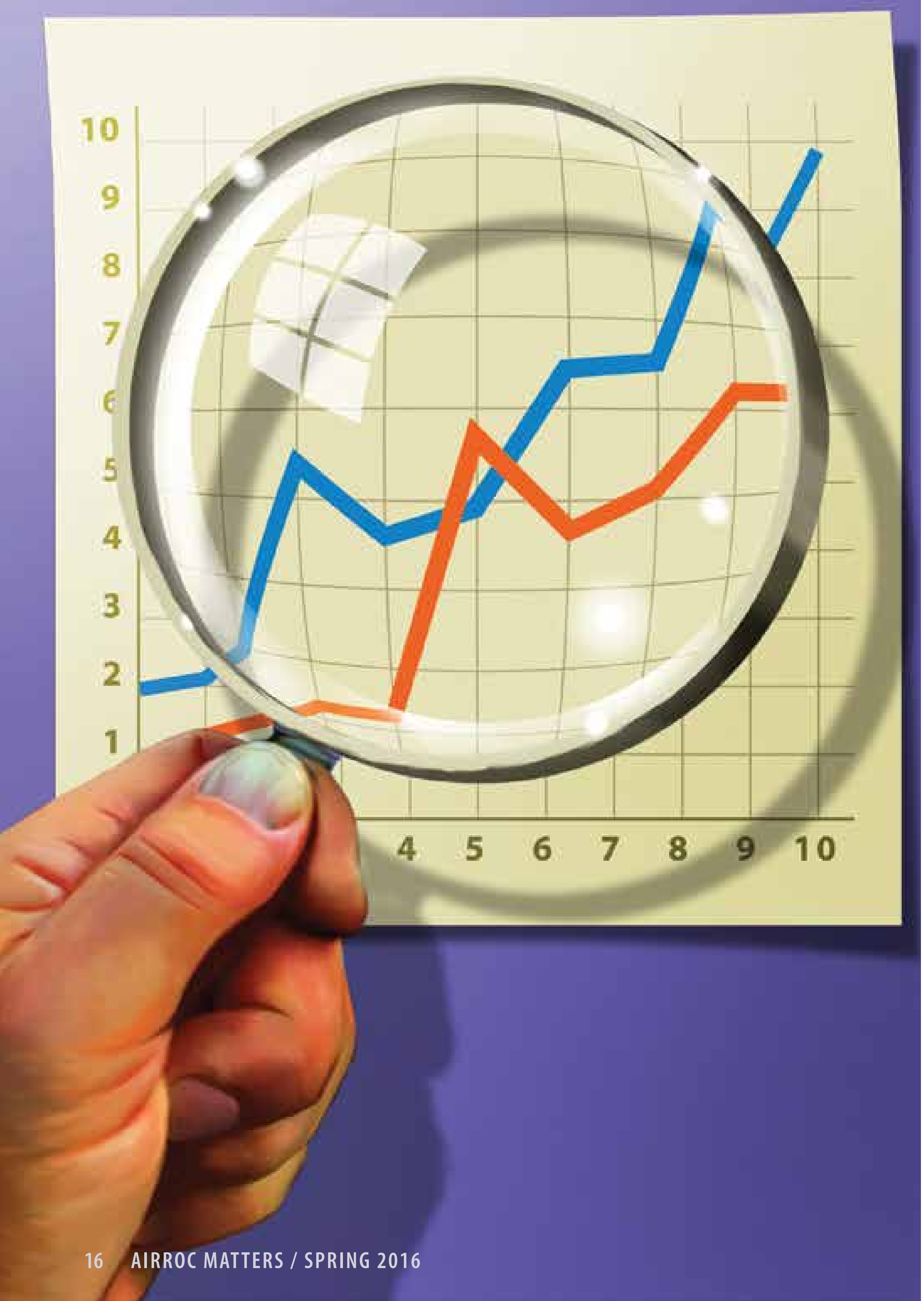
Keeping AIRROC in the Black

DeVito and Hendel Give Dagar the Secret to AIRROC's Financial Success



Joe DeVito, the first Treasurer of AIRROC, recently retired from his position and passed the baton to Maryann Petillo, with the accounting to be continued by Robert Hendel. Bina Dagar sat down with Joe and Rob to discuss the past, present, and future of accounting and finance and how the Association has changed over the years.

Bina Dagar: *How did you get involved with AIRROC?*

Joe DeVito: I had the pleasure to work closely with Trish Getty through my long-time membership and support of the International Association of Insurance Receivers (IAIR) and from working in the insurance industry throughout my 48-year professional career. When Trish, along with her colleagues, began generating interest in forming a new industry association designed to specifically address the need for run-off of insurance business, I immediately recognized the industry need and was on board with AIRROC from its inception.

Robert Hendel: I became involved with AIRROC in 2007 after working with Joe on numerous projects. I immediately told him I was very interested to become involved based on AIRROC's reputation within the industry and began performing all the day-to-day accounting operations including reporting, budgeting, payments, and collections.

Bina: *What are the financing and accounting functions you manage for AIRROC?*

Joe: I initially offered accounting and reporting services to AIRROC and became Treasurer. When Rob joined my consulting staff, I transitioned the accounting and reporting activities to him but retained my position as Treasurer. In this regard, I work closely with Rob in an oversight capacity and report directly to the Board of AIRROC. We also coordinate the annual independent accounting reviews and tax filings.

Bina: *What strategies have you employed that led to the revenue growth of AIRROC?*

Joe: The revenue growth of AIRROC has certainly been a team effort and started long ago with membership enrollments, registrations from commutation events and other programs, and corporate sponsorships that were created as a result of the efforts of the Board members, the Executive Director, and other officers of AIRROC. But revenue growth is also dependent on cost containment and, if necessary, cost reductions. We have always been cognizant of the need to control our cost; and we have made strides in accomplishing this goal, which allows for an increase in our revenue base.

Rob: Flexibility has been a key strategy. Due primarily to consolidation in the insurance industry, AIRROC saw a period of revenue decline from membership between 2010 and 2014. The Board and management have remained flexible in approving new revenue categories/sources including partners, broker members, managing members, and international members to maintain and even increase non-event revenues in 2015 to their highest levels since AIRROC's inception.

Bina: *What strategies have you used to contain costs?*

Joe: The Board has been instrumental in encouraging us to organize the Association's finances to channel costs in the areas that needed them the most. The Board has designated separate committees made up of certain board members and other volunteers to monitor and report on the different functions within AIRROC. Each committee has a budget and reports to the Board. Controls are in place to ensure that the objectives of the Association are met.

Rob: Starting from 2012, each committee had more accountability to report on its costs. The Board analyzed every activity and saved costs associated with operations, events, and publication.

Due to industry consolidations resulting in reduced membership revenues since 2010, AIRROC has also become more cognizant of controlling costs related to all the events as well as other operational costs Each year, a detailed budget is executed where every expense line item is scrutinized by many levels within AIRROC including the Executive Director, Treasurer, Finance Committee, and Board to ensure that all expenses are appropriately managed and approved and any deviations adequately explained. This allowed AIRROC to reduce the operating budget by $28,000 between 2010 and 2014, while at the same time continuing to provide even more services to our members.

> *The positive cash flow from these cost containment measures is utilized to fund additional benefits through free regional events, educational events, magazine publications, etc.*
>
> *— Rob Hendel*

In addition, through focus on the October event-related expenses, the Association reduced the event costs while maintaining the high quality services and education provided by the event. These cost reductions included condensing the annual conference from three to two days, maintaining consistency in the location of the venue, and keeping most of the educational day preparation in-house instead of outsourcing it. The positive cash flow from these cost containment measures is utilized to fund additional benefits through free regional events, educational events, magazine publications, etc.

Moreover, AIRROC's investment in technology has led to a reduction of costs associated with printing event brochures and mailing event notices. Further, the use of the AIRROC App on smart phones and the new Member Clicks website has helped to better organize and reduce paper work related to marketing to members and to the industry.

Joe: The budget is now more comprehensive and accurate controls are in place.

Bina: *How is the growth plan similar or different from other such industry groups with which you have been associated? And to what would you attribute the success of AIRROC's growth?*

Joe: I don't necessarily think that the growth plan is different from other industry groups, but I do believe that the greater purpose of the Association and its importance to the current insurance environment makes it attractive to insurance executives who are managing a run-off operation and to those companies dealing with run-off operations. In fact, the individuals who conceptualized the Association and who were and are instrumental in its operations are clearly the "Who's Who" of insurance executives responsible for major run-offs. Through networking alone, AIRROC has achieved immense growth over the past years, both in terms of membership and reputation.

Rob: To add onto Joe's point and to reiterate my previous comment, Board interaction, oversight, and knowledge of the overall finances of the organization are immense positives in the overall success of AIRROC's finances.
This oversight encompasses each committee's quarterly and annual budget requirements, which are reviewed at board meetings. Other strong positives in the success of AIRROC are specifically associated with the Board's devotion, the continuity of service on the Board,

Keeping AIRROC in the Black (Continued)

Joe DeVito

Rob Hendel

...the individuals who conceptualized the Association and who were and are instrumental in its operations are clearly the "Who's Who" of insurance executives responsible for major run-offs.

— Joe DeVito

dedicated strategy sessions to improve AIRROC's offerings to its membership, and a strong voluntary member base such as the Publications Committee.

Bina: *What budget challenges did you face at the start-up of AIRROC?*

Joe: I would say that we had more concerns than challenges. Most obvious was developing the membership to a level that would support our management, operational, and advertising costs and also allow us to develop an informative publication, educational programs, and a website that improved communications, common business needs, and strategic interests of the membership. There were some growing pains when we were establishing on-line registrations but technology back then wasn't what it is now. Through our collective efforts and support of our membership, however, I believe that we successfully worked out the kinks and continue to respond to industry needs in a proactive manner. I would like to point out that many of the AIRROC leadership donate their time and energies for the benefit of the Association.

Bina: *What challenges does AIRROC face now in its middling years?*

Joe: AIRROC strives to develop new programs that create an interest among the members, to respond to current industry needs, and perhaps even to offer business solutions to run-off companies. AIRROC also continues to review its fee structure for possible alternatives to attract new types of members and retain existing memberships.

Rob: The main thing is to foster flexibility by adapting the Association to meet the membership needs. We should also preserve a balanced organization with regard to revenue base to ensure that the main objectives and goals continue to be the focus of the organization.

Joe: As the membership continues to ask for quarterly meetings and educational programs, the Association successfully meets these needs and will continue to do so.

Bina: *Joe, give us your perspective having been involved through the years since the inception of AIRROC.*

Joe: AIRROC is truly one of the most successful industry associations with which I've had the pleasure to be involved. The concept of AIRROC was developed slightly ahead of or just at the right time that run-off operations became a critical market in the insurance industry. Again, I credit this to the pool of "Who's Who" that conceived of the Association and brought it to fruition and who continue to direct its objectives in a professional and creative manner. It opened an international networking forum to address such issues as commutations, discontinued operations, etc. In addition, the training and educational seminars have been well-received by the industry throughout AIRROC's existence.

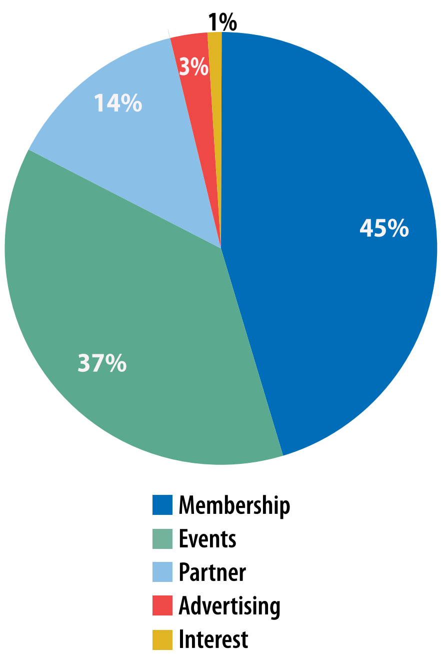
Bina: *Loosely, how does the AIRROC budget break down into percentages to effectively serve its members; i.e., operations, events, publications, other member services?*

Rob: Operational expenses include compensation and some of the soft costs associated with the other two major expense categories of events and publications. The pie chart (next page) illustrates AIRROC's budgeted revenue and expense and is fairly self-explanatory.

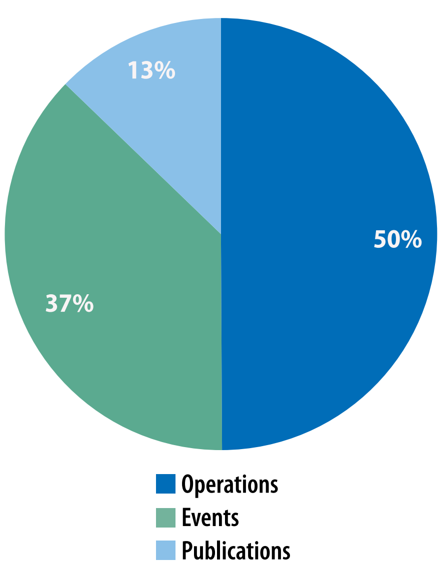
Bina: *What is your investment strategy for AIRROC?*

Joe: In general, the investment strategy has been conservative and focused on available cash required to manage the on-going operations of the Association and to generate the highest yield on the cash balance without exposure to risk. So the bulk of our monies is invested in instruments such as Certificates of Deposit (CD's).

AIRROC 2016 Budgeted Operations Revenues



AIRROC 2016 Budgeted Expenses



Rob: With the Board's oversight, we always heed the Association's cash flow needs and evaluate liquid cash requirements and lock up the rest in CD's with the best interest rate available that are FDIC insured. This will continue to be our strategy going forward.

***Bina:** Joe, what is your parting advice to AIRROC as you turn over the Treasurer role to Maryann Petillo and the accounting reins to Rob?*

Joe: First, I am only stepping down from the Treasurer position, but I continue to serve on the Finance Committee and support the operations of AIRROC. I applaud AIRROC's dedication to the insurance industry and run-off operations. Maryann Petillo certainly doesn't need my advice as she assumes the responsibilities of Treasurer; but, my door is always open. I consider the Board members, committee members, and the membership at-large to be my friends as well as my colleagues.

***Bina:** Any "war stories" that you wish to share?*

Joe: The Association was forced to take a hard look at itself in 2012. Although membership revenue had peaked in 2010, it began to decrease significantly due to loss of members through consolidations. Suddenly in 2012, AIRROC found itself with reduced membership and commutation event revenues. This all occurred in a rather quick time period, and AIRROC found itself with a 20% loss in its surplus in 2012. The Board was quick to react and immediately took steps to right the ship by implementing a more aggressive marketing plan to obtain new members and maintain its existing member base; new member categories were created for broker and managing members, and new partner relationships. These changes allowed AIRROC to increase non-event revenue between 2012 and 2015. Even though the decline in event revenue continued through 2014,

AIRROC is truly one of the most successful industry associations with which I've had the pleasure to be involved.

— Joe DeVito

costs associated with events were decreased significantly to maintain a positive cash flow for events. In 2015, AIRROC saw its first increase in October event revenues since 2008. AIRROC continues to show its viability as a successful Association and appears poised to continue to do so into the future.

***Bina:** Rob, how do you plan to continue the financial running of AIRROC?*

Rob: In general, we plan to continue to run AIRROC in the same manner as in past years. The key is to stay flexible and anticipate any needs within the industry, so that we can properly respond when necessary to ensure that maximum benefits are returned to our member and partner base.

***Bina:** Joe, you have the last word. What else would you like to see happen within AIRROC?*

Joe: I have one hope for the Association that has gone unmet - to form a Barbershop Quartet with Peter Scarpato and others that would perform at the AIRROC conferences! I consider that a missed opportunity, but I am confident that it can be realized someday in the near future… ●

Bina T. Dagar provides re/insurance clients industry best practice solutions and dispute resolution; and also conducts underwriting and claims audits. bdagar@ameyaconsulting.com

Where in the World is AIRROC?

From New Jersey and New York to Chicago and London — AIRROC offered a robust education program to our members in 2015 with a total of 8 programs. This remains one of the biggest benefits of AIRROC membership. Mark your calendar to join us for one or more sessions in 2016. The full schedule is below!

March 15-16, 2016
AIRROC Spring Membership Meeting – Networking & Education
New York, NY

April 21, 2016
AIRROC Regional Education Day
New York, NY

May 3, 2016
AIRROC Regional Education Day
Boston, MA

May 25, 2016
AIRROC Regional Education Day
Chicago, IL

July 19-20, 2016
Summer Membership Meeting
New York, NY

September 20, 2016
A Comparative Workshop: AIRROC DRP or Traditional Arbitration
New York, NY

October 4, 2016
AIRROC Regional Education Day
Munich, Germany

October 16-19, 2016
AIRROC NJ 2016
New Brunswick, NJ

For more information:
www.airroc.org


Douglas
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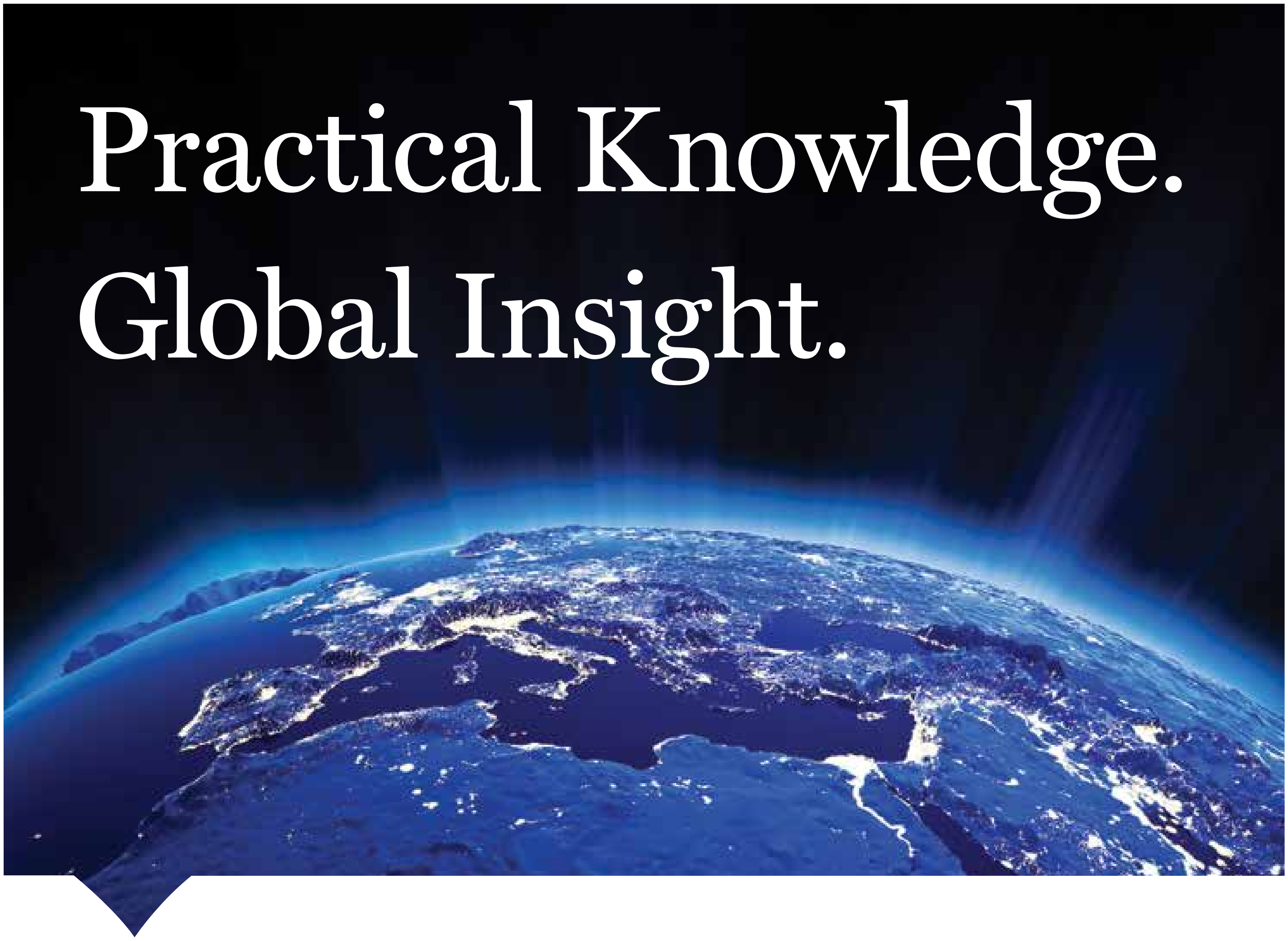

Whether advising on entering the run-off market, buying and selling portfolios and entities, resolving disputes, managing discontinued operations or achieving exit strategies, our lawyers get the job done.

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Message from the Executive Director

Carolyn Fahey

New Year, New Leadership, New Strategies... New Panda

A Panda, you say? Just what does that have to do with AIRROC? Many of you know that I live just outside of Washington, DC. One of the exciting developments at the National Zoo in the past few months was the birth of a new giant panda cub. Bei Bei was born in late August, and made his first public appearance in mid-January. It has been fun to watch the reports as the baby has grown and begun to experience the world around him.

Just about the time that Bei Bei was "meeting" the public for the first time, the new AIRROC board leadership (Leah Spivey, Munich Re, AIRROC Chair; Peter Scarpato, Brandywine, and Marcus Doran, The Hartford, Co-Vice Chairs) and I met to begin to review our initiatives and goals and to brainstorm about what is next for AIRROC. Having a new set of experienced leaders at the helm with their ideas and perspectives will be an asset to the organization.

One of the first steps that we want to take this year is to look at and update AIRROC's strategic plan. The week of the March Membership meeting, the Board participated in an intensive strategic planning session with the help of an outside facilitator. Great things came out of these discussions so stay tuned!

Our first event of the year, the Spring Membership Meeting, drew a large crowd to further transactions as well as to learn more about audits. We featured three panels that took our attendees on a "deep dive" to look at the many complexities of audits.

Also new and noteworthy for AIRROC:

- We underwent a recent bylaw change to create a new membership category for international companies, broadening the reach for AIRROC to benefit from the participation of more companies.
- AIRROC is working in conjunction with E&Y on an industry survey designed to capture information on the size of the U.S. legacy market.
- AIRROC's Certified Legacy Insurance Professional "CLIP" Designation is picking up momentum – learn how you can become a "CLIP" today on the AIRROC website.
- The AIRROC App is our newest tool to make your planning for AIRROC meetings even easier. Event agendas, attendee lists, connect with attendees, presentation materials, AIRROC Matters magazines, and more are right on your own personal device at the touch of your finger. Download today on your App store by searching for "AIRROC".

AIRROC will continue our commitment to providing top-notch education and networking opportunities with a great schedule in place for the year.

Make note of the upcoming airroc events listed in the Mark Your Calendar section on page 39.

Returning to our giant panda, while it is listed as an endangered species, pandas have proven their ability to sustain and renew to carry on the population. AIRROC continues to do the same – and with new ideas and input coming our way, we will adapt and grow so that we continue to remain relevant for our members and the industry as a whole.

See you soon! ●

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

Thanks to Our Corporate Partners

I am pleased to announce AIRROC's 2016 Corporate Partners – Alvarez & Marsal, Butler Rubin Saltarelli & Boyd LLP, Carroll McNulty & Kull LLC, Ernst & Young, Foley & Lardner LLP, Freeborn & Peters LLP, Locke Lord LLP, Mayer Brown LLP, Morris Manning & Martin LLP, Mound Cotton Wollan & Greengrass LLP, Stroock & Stroock & Lavan LLP, and White and Williams LLP. AIRROC Partners have committed their support to the organization and our initiatives. Watch for their speakers and attendees at our events all year!

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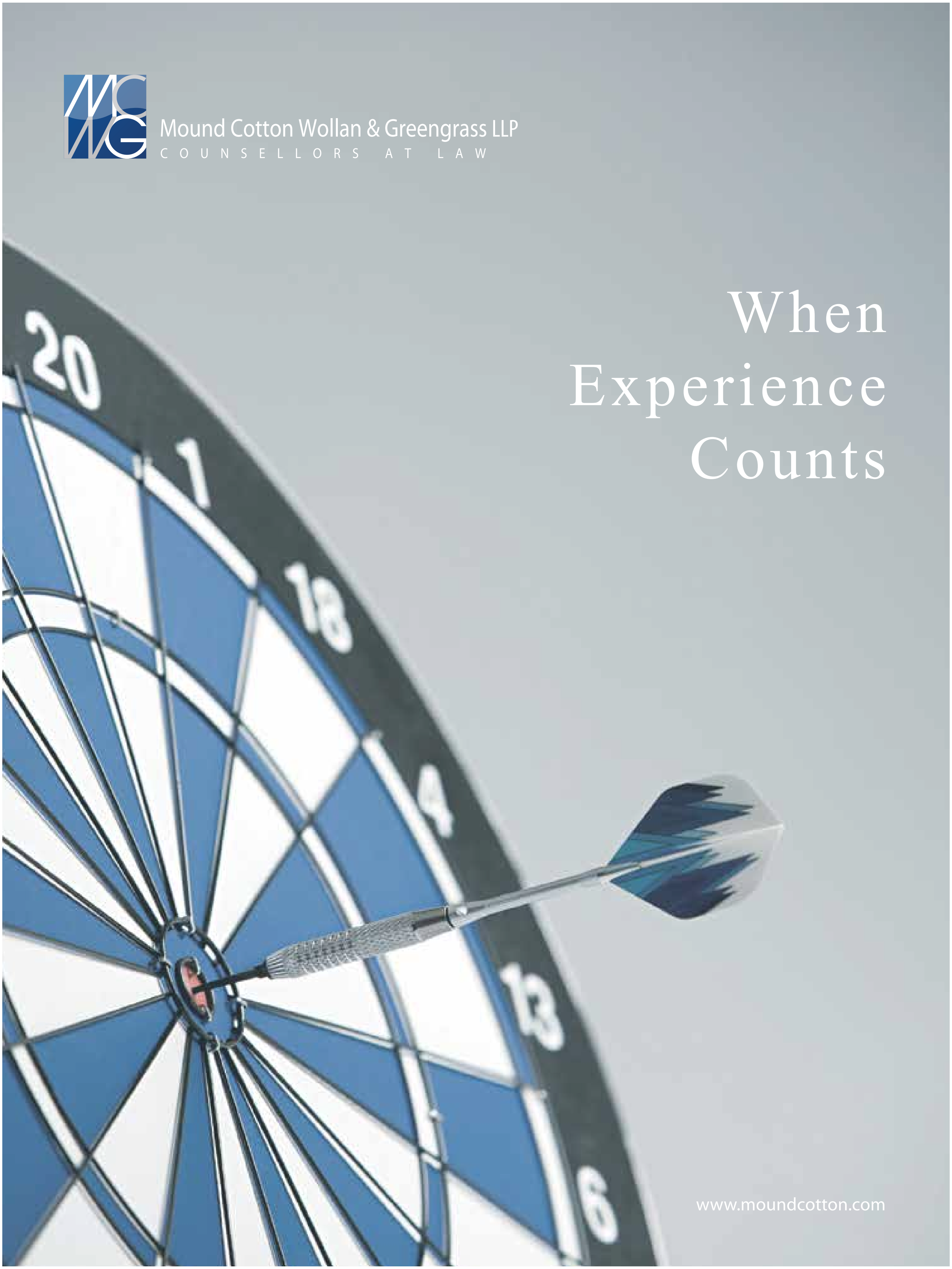

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Legacy Attracts New Investors

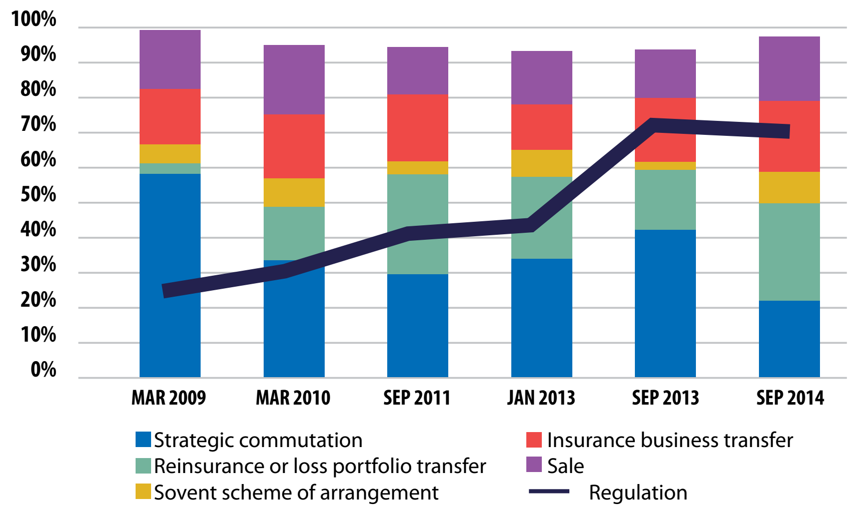
Hadley Explains How "Run off" Equals "Pay off" for Investors

The legacy sector offers expanding investment opportunities as more companies prepare to sell off non-core or non-performing portfolios while investors look for new outlets. Barbara Hadley reports.

This could well herald a boom time for the legacy market; an increase in sellers, favourable regulatory climate and capital looking for somewhere to go. According to a Swiss Re Sigma report in 2015, acquisitions of property and casualty business placed in run-off have increased steadily since the financial crisis, especially between 2011 and 2013. In particular, the Sigma report points to the UK being a core market for legacy acquisitions 'given its favourable legal and regulatory climate', for example schemes of arrangement and Part VII transfer mechanisms, but with the UK non-life run-off sector reaching maturity, 'legacy acquirers are reportedly looking to expand in the US and Continental Europe, where the size of run-off portfolios are significant.'

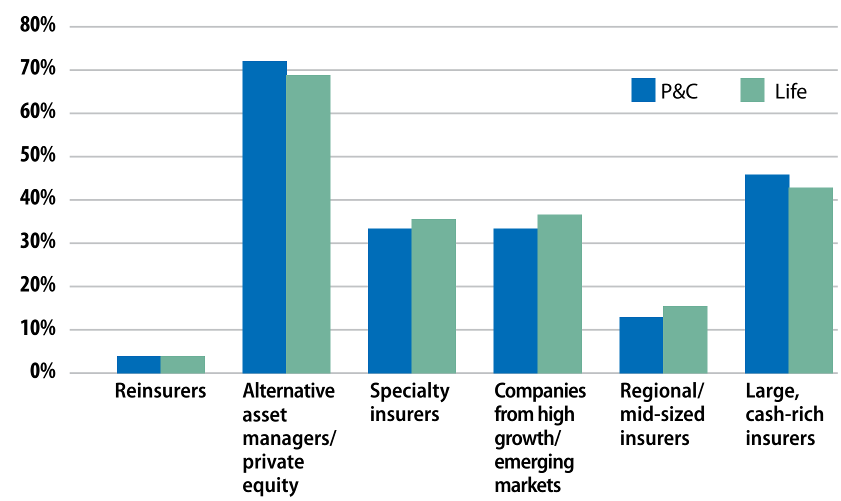
The report suggests that the majority of the traditional run-off market acquirers 'have a foothold in one or both of these markets.' It adds that 'surveys persistently suggest that more efficient capital management remains the most influential driver of run-off restructuring activities.' A recent PricewaterhouseCoopers' survey meanwhile stresses that regulation is also a key driver (see Figure 1).

For Steve Gowland, CEO of specialist legacy acquirer Ashbrooke, the attraction and growth of the legacy market for acquirers going forward comes down to three sources: '(1) the increased flow of transactions that the dislocation provided by Solvency II is delivering; (2) the continuing low interest rate/ inflation environment, specifically in Europe; and (3) our expectation that future transactions will be increasingly driven by corporate finance/restructuring solutions rather than insurance/ claims management driven solutions.'



Note: The black line reflects percent of respondents citing regulation as a key driver of anticipated restructuring activities. Bars represent survey responses to questions about the most likely exit mechanisms for dealing with run-off business. Source: PwC survey of discontinued business in Europe, various annual editions

Figure 1 – Surveys on the impact of regulation on insurers' future restructuring activities and expected methods to deal with run-off business, percent of respondents



Note: Responses to the question "What type of bidder companies do you expect to drive M&A activity in the life and P&C sectors?" Source: Global Insurance M&A Outlook, Mayer and Brown, 2014

Figure 2 – Survey of industry views on source of prospective bidders in insurance sector M&A transactions, percent of respondents

Whilst traditionally share purchases are more straightforward, 'Solvency II is going to throw up some significant new capital requirement hurdles for acquirers in order to gain regulatory approval. This will have a significant impact on existing market participants' operating and financial return models,' says Gowland. 'As a consequence we expect a large number of transactions to be portfolio transfers from live underwriting businesses or existing run-off companies to facilitate capital efficiency or a solvent liquidation exercise.'

In addition, he adds, 'we expect a number of smaller scale, secondary buy-out opportunities from historic and existing run-off acquirers. This will represent investments that have been managed down in scale since the original purchase and now are below the size and return profile of the parent group. These transactions may come as portfolio transfers as a cleaning-up or solvent liquidation event for the run-off entity.'

He notes that, although Solvency II presents many operational challenges, 'the transaction opportunities it is creating, in conjunction with its application across the EU, will actually level the playing field and make the regulatory and compliance issues that face acquirers more consistent and less complex.'

So with the legacy acquisition market on an upward trend it is now clearly on a wide range of investors' radar. As PricewaterhouseCoopers points out (see p5, this issue): 'We are currently experiencing a real boom in the type and number of investors who are interested in run-off books,' citing private equity firms and pension funds in particular. Good examples are private equity firms CBPE Capital LLP, who acquired a majority stake in run-off specialist Compre last year, and Keyhaven Capital who bought into DARAG in 2014.

The Sigma report also draws attention to how the range of potential acquirers and investors is expanding in the insurance M&A sector as a whole (see Figure 2), which could be reflected in future legacy market investment.

Whilst traditionally share purchases are more straightforward, 'Solvency II is going to throw up some significant new capital requirement hurdles for acquirers in order to gain regulatory approval.

Gowland firmly believes that any future competition in the legacy market will be driven by new capital: 'We expect this additional competition, both sustained and for specific, one-off situations, to come from: (1) existing re/insurance market participants undertaking a "live to legacy" play as a consequence of the need for capital efficiency and risk diversification in a Solvency II world; and (2) cash rich investors (eg. sovereign wealth funds, hedge funds etc.) driven out of bond holdings due to interest rate increases, specifically holders of US dollar denominated debt, chasing attractive investment opportunities.

'The challenge for this new capital, however, will be finding the right management team with the appropriate experience and a business plan that offers something different. Otherwise increased competition, driven by capital only, will push up prices.'

In the medium to longer term, insurance linked securities (ILS) are a potential source of financing instrument in the legacy sector. The ILS market itself is growing rapidly; a study by the Institute of Insurance Economics at the University of St Gallen in June 2015 indicated that the ILS market could double within the next five years, from its current estimate of $44.7 billion to $87.3 billion by 2019.

'The reason lies within the expansion of the investor base: pension funds and hedge funds alike appreciate the uncorrelated returns and relatively high yields … the average ILS portfolio amounts to $1.7 billion … respondents plan to increase their portfolios by over 9.5 per cent in the near future to an average of almost $1.9 billion,' says the study. It notes that, although so far run-off business has not been considered for securitisation, this could be about to change.

Arndt Gossmann, CEO of DARAG, agrees: 'We see an emerging potential in the securitisation even of special risks like run-off. Especially long tail run-off offers reduced volatility in a long term, non-correlated investment. So far, there are only a few experts among the sponsors who are familiar with the possibilities of all securitisation structures like microsecuritisation. Nonetheless, the demand on the investors' side is increasing.'

Since the UK Government is anxious to make the UK a centre for ILS business, to the extent of tabling an amendment to the Bank of England and Financial Services Bill giving the Treasury the power to facilitate and regulate ILS business, this could well turn out to be a key source of capital for the legacy market.

Meanwhile Gowland warns against any move towards attracting inappropriate capital: 'The relative ease or difficulty in raising capital is in understanding that an individual (or a class of) institutions' pricing and risk appetite changes over time. Therefore, a significant competitive advantage for Ashbrooke is in understanding capital markets and factoring this into our transaction structures and pricing up-front, and not trying to raise money at historic prices from inappropriate sources.' ●

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Barbara Hadley is a publisher and journalist and a director of Iskaboo Publishing Ltd which produces in-depth reports on topical issues. barbara.hadley@blueyonder.co.uk.

Blending Free Market Economy with a Sense of Reality

The Federal Insurance Office

Update

Since the time when I penned this article that appeared in the Spring 2011 issue of AIRROC Matters, a lot has changed.

At the end of 2014, the U.S. still topped the world market with a GDP of $17.3 Trillion, up $4.4 Trillion from year end 2009. China was second, with a GDP of $10.4 Trillion.

The Federal Insurance Office published its Annual Report for the U.S. Treasury Department for the Year End 2014. In it, the FIO states that the Life and Health and Property Casualty sectors both reported increases in NWP from the prior year end. L&H NWP was at $648 Billion and P/C was at $503 Billion. This is a *combined* NWP of $1.15 Trillion, which was approximately the same as it was at the end of 2009. The ratio of business written by each sector against overall NWP is as follows: the L&H sector went from approximately 60% of overall NWP at end of 2009 down to 56% for 2014 and the P/C sector went from 40% in 2009 up to 46% at year-end 2014. In 2000, the combined NWP for both sectors was only at $602 Billion.

As a percentage of the GDP, Insurance accounted for 6.65% of the overall GDP of $17.3 Trillion at the end of 2014. In 2000, Insurance accounted for 6.05% and then, in 2009, it was at 7.79% of GDP.

Since 2010, when the FIO was set up as part of Dodd-Frank, watching its evolution has been very interesting – almost predictable. The FIO has become a more active member of the International Association of Insurance Supervisors (IAIS) and has also published papers such as "How To Modernize And Improve The System Of Insurance Regulation In The United States" as well as the "Annual Report on the Insurance Industry".

The FIO has seemingly moved from watching companies and risks that are systemically important to pro-actively increasing the federal government's involvement in the insurance and reinsurance industry.

In its annual report, the FIO states that "[a] significant achievement in late 2014 was the adoption by the IAIS of an approach to a Basic Capital Requirement (BCR), the first global group capital standard for the insurance sector. The IAIS has also been working on a higher loss absorbency (HLA) requirement, which is scheduled to be finalized in late 2015. The BCR and HLA form a combined capital requirement that will apply to global systemically important insurers (G-SIIs)."[1] In October 2014, the Project's Steering Committee, comprised of leaders from FIO, state insurance regulators, the European Commission, and the European Insurance and Occupational Pensions Authority (EIOPA) held its second public forum in Amsterdam, entitled "Evolution in Group Supervision." Topics included the practical applications of recent enhancements to group supervisory systems, as well as future challenges, and the potential for using common elements in Own Risk and Solvency Assessment (ORSA) frameworks for insurance groups operating on a transatlantic basis. As you may know, EIOPA was originally CEIOPS and is the engine behind Solvency II.

As these requirements filter down to the NAIC, the industry will see a more efficient, streamlined, and, according to the FIO, more effective administration of the market. Right now, there are differences in the way in which each state or territory of the U.S. administers the insolvent estates as well as the Guarantee Funds. The FIO feels that there needs to be uniformity within the supervisory framework, which they feel does not currently exist to the degree it could. ●

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

[1] https://www.treasury.gov/initiatives/fio/reports-and-notices/Documents/2015%20FIO%20Annual%20Report_Final.pdf

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.

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

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 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

Blending Free Market Economy with a Sense of Reality (Continued)

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, 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 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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Reprinted from Spring 2011 AIRROC Matters.

When Courts Peek Under the Arbitral Veil

The Role of the Courts in Managing Your Reinsurance Arbitration

Arbitration in general is intended as an alternative to litigation in the courts. For good reasons, courts rarely intervene in pending arbitrations and instead require the parties, under most circumstances, to wait for a final award before seeking redress for perceived grievances in the arbitration process. Indeed, the Federal Arbitration Act, 9 U.S.C. § 1, et seq. ("FAA"), which governs arbitrations implicating to interstate commerce, provides that agreements to arbitrate "shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract," and provides only limited grounds on which an arbitration award can be disturbed.

Nevertheless, several recent court decisions suggest that mid-arbitration court intervention is becoming slightly more common. This development might be attributable to the tendency of arbitrations to be more contentious than in the past. Most of these disputes have arisen around the construction of tri-partite arbitration panels commonly found in U.S. reinsurance contracts. And in one unusual case, one arbitrator resigned and counsel for one party was disqualified by a federal district court.

Three factual scenarios have led to court intervention in pending arbitrations:

1. An arbitrator dies or resigns;

2. One party seeks to disqualify the other party's arbitrator; and

3. One party seeks to disqualify the other party's counsel.

This article will deal with the first scenario.

The death or resignation of an arbitrator has resulted in several recent interesting decisions that have resulted in competing views on whether an arbitration panel should be entirely reconstituted or simply continue with a replacement for the departed arbitrator.

Death Be Not Proud: The "General Rule" or "Special Circumstances"?

Some jurisdictions have adopted and followed what is known as the "general rule": if an arbitrator dies during the arbitration proceedings, and the arbitration agreement does not state a method for replacing the deceased arbitrator, the court has discretion to instruct the parties to appoint an entirely new arbitration panel. *See Cia De Navegacion Omsil, S. A. v. Hugo Neu Corp.*, 359 F. Supp. 898, 899 (S.D.N.Y. 1973); *Marine Products Exp. Corp. v. M.T. Globe Galaxy*, 977 F.2d 66, 68 (2d Cir. 1992). An early application of the "general rule," although it was not given that title until sometime later, was articulated in *Cia De Navegacion Omsil, S.A. v. Hugo Neu Corp.,* 359 F. Supp. at 899. The Southern District of New York ordered the parties to select a new arbitration panel and commence a new arbitration proceeding when an arbitrator died before a final award. *Id.* at 899. The plaintiff petitioned the court to allow for one new arbitrator to be appointed, arguing that no substantive issues had been decided and all evidence and testimony could be provided to the replacement arbitrator in order for him to become familiar with the proceedings. *Id.* The court, however, was concerned with the potential for undue influence from the remaining two arbitrators and ordered the parties to select an entirely new panel. *Id.* While the court recognized that a new panel would create "inefficiency," allowing replacement of a single arbitrator appointment would impose a disadvantage for the defendant. *Id*. Thus, the court concluded that it was not "fair or fitting to impose the risk" of undue influence by "judicial command," and ordered the parties to commence an entirely new arbitration proceeding in accordance with the arbitration agreement. *Cia*, 359 F. Supp. at 899.

The case that is often cited for the proposition that an entirely new panel must be convened when one arbitrator dies is *Marine Products*, a Second Circuit Court of Appeals decision. *Marine Products*, 977 F.2d at 68. In *Marine Products*, an arbitration panel had commenced arbitration hearings and issued discovery guidelines. *Id*. at 67. One party-arbitrator, however, died before the panel could issue an award, and the party that had nominated the deceased arbitrator petitioned the district court to replace the remaining panel members and re-commence the proceeding. *Id*. The district court granted the motion and instructed the parties to make new arbitrator appointments pursuant to the "general rule." *Id*. After the new panel issued an award in favor of the moving party, the other party filed a motion to vacate the award, and argued that the court's recent decision in *Trade & Transport, Inc. v. Natural Petroleum Charterers Inc.*, rendered the "general rule" inapplicable, and that the court had exceeded its authority when it ordered the parties to reselect an arbitration panel. *Marine Products*, 977 F.2d at 68. The district court rejected the motion to vacate, and the movant appealed to the Second Circuit.

The Second Circuit found that the agreement to arbitrate did not address a vacancy caused by the death of an arbitrator. *Id*. Without contractual guidance on how to proceed, the court held that "absent any special circumstances . . . the general rule should apply." *Id*. Finding that there were no "circumstances indicating that there should be a deviation from the general rule," and the vacancy "occurred *in medias res* without any agreement by the parties" on how to fill that the vacancy, the Second Circuit upheld the district court's ruling ordering the parties to appoint new arbitrators. *Id*. at 67-68. Although the court did not expound on *why* appointing a new panel of arbitrators should be the general rule, the court did distinguish *Trade & Transport* by stating that, in contrast to the current case, *Trade & Transport* involved "special circumstances." *Id*.

In *Trade & Transport, Inc. v. Natural Petroleum Charterers Inc.*, the court was asked to review procedural questions in an arbitration that was commenced with respect to a petroleum transport agreement. *Trade & Transp., Inc. v. Natural Petroleum Charterers Inc.*, 931 F.2d 191, 192 (2d Cir. 1991). The arbitration panel had issued a partial final award on the issue of liability immediately after the panel was selected. *Id*. at 195. After the issuance of the award, Natural Petroleum moved for reconsideration, arguing that Trade had presented false evidence. *Id*. at 193. The panel unanimously denied the motion for reconsideration on both substantive and procedural grounds. The panel rejected the contention that the award was non-final and therefore could be reconsidered. *Id*.

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Before further proceedings in the arbitration, Natural Petroleum's arbitrator died and Natural Petroleum nominated a replacement. *Id*. at 194. Natural Petroleum petitioned the District Court to compel Trade to nominate a new arbitrator, arguing that an entirely new panel should be convened and the arbitration should start over. *Trade & Transp*., 931 F.2d at 195-96. The District Court denied Natural Petroleum's motion, finding that the panel was properly assembled with the appointment of Natural Petroleum's newly-appointed arbitrator. *Id*. at 194. The court directed the parties to continue the arbitration proceedings, and determine whether the partial final award that was rendered limited further proceedings to the issue of damages. *Id*. The panel found that the award on liability was correct and awarded damages to Trade. *Id*. The District Court subsequently affirmed the damage award and Natural Petroleum sought to vacate, arguing that the panel erred in refusing to reconsider the award on liability and that the panel should have been entirely reconstituted upon the death of the original arbitrator. *Id*.

The Second Circuit determined that the District Court was within its authority under Section 5 of the FAA when it confirmed the appointment of the new party-arbitrator instead of requiring the appointment of an entirely new panel. *Trade & Transp*., 931 F.2d at 195-96. The court also rejected Natural Petroleum's argument that the arbitration should recommence with a new panel, because the panel had rendered its liability award *before* the arbitrator's death. *Id*. at 193, 196.

Trade & Transport seems to indicate that "special circumstances" means an award has been rendered before the untimely death of a panel member. In this respect, *Marine Products* and *Trade & Transport* considered together stand for a straightforward rule: when an arbitrator dies before a final decision award, a new arbitration panel must be formed and the arbitration should start anew. Some litigants have attempted to expand this rule to other scenarios and have petitioned courts for an order to replace an entire arbitration panel, but this effort has been universally rejected.

"Death" By Resignation?

One such scenario is the resignation of an arbitrator in the midst of an arbitration proceeding. Although litigants attempt to analogize this situation to the death of an arbitrator, most courts have rejected this argument because of the enormous

When Courts Peek Under the Arbitral Veil (Continued)

potential for manipulating the arbitration process. Courts reason that if a party senses it will get an unfavorable interim award in arbitration, it can simply ask (or force) the appointed arbitrator to resign and demand that the entire process start fresh. Courts are concerned that this type of manipulation would allow a party to consistently delay arbitration proceedings and to derail an entire arbitration if there was an unfavorable interim result. *See AIG v. Odyssey*, Motion Transcripts, Index No. 159373/14, February 10, 2015.

In *Insurance Co. of North America v. Public Service Mutual Insurance Co.,* the Second Circuit held that "in dealing with vacancies resulting from resignations, the *Marine Products* rule does not apply." *Ins. Co. of N. Am. v. Pub. Serv. Mut. Ins. Co.,* 609 F.3d 122, 130 (2d Cir. 2010). In *Insurance Co. of North America,* an arbitrator resigned when he was diagnosed with cancer after an award of partial summary judgment and while the panel was considering a pending motion for reconsideration of that award. *Id.* at 124. After a dispute on how to proceed, the parties filed a petition in the Southern District of New York, seeking a determination on whether to start the arbitration over with an entirely new panel or to simply appoint a new arbitrator. *Id.* at 125.

At first, the District Court applied the "general" *Marine Products* rule and ordered that a new panel be formed, finding that there was no difference between a resignation from a life-threatening illness and the death of an arbitrator. *Id.* Before an appeal was decided, however, the District Court reversed its ruling when evidence was presented that the arbitrator who had resigned had since recovered and was available to serve. *Ins. Co. of N. Am.*, 609 F.3d at 125-26. In light of the new evidence, the district court found that "general" Marine Products did not apply, citing "special circumstances" that justified departure from the rule. *Id.* at 126. The court concluded that it had the power to reappoint the recovered former arbitrator and directed that a replacement arbitrator be appointed in the event the former arbitrator was unwilling to rejoin the panel. *Id.* An appeal was taken, in which it was argued that the arbitration should restart with an entirely new panel.

After examining the history and the rationale behind the Marine Products rule, the Second Circuit turned to the equities. Noting that "case law has tended to restrict, rather than to extend," the reach of Marine Products, the court looked at the consequences that could result by expanding the reach of the rule to resignations. *Id.* at 128. The court recognized there was a "risk of manipulation" and an "inevitable waste in duplicating proceedings" if it required an entirely new panel to be formed whenever there was a resignation in a pending arbitration. *Id.* at 126. With this high risk of manipulation, the court held that *Marine Products* did not apply and "district courts should use their power pursuant to Section 5 of the FAA in deciding how to proceed." *Id.* at 130. In so holding, the Second Circuit affirmed the district court's decision to amend its initial decision to require that a single replacement be appointed instead of an entirely new panel. *Ins. Co. of N. Am.*, 609 F.3d at 131-32.

> *Courts are concerned that this type of manipulation would allow a party to consistently delay arbitration proceedings and to derail an entire arbitration…*

Although the Second Circuit did not directly address the "special circumstances" justification of the district court, its decision to restrict the *Marine Products* rule indicates that it was not expanding the exception of *Trade & Transport*. Instead of determining whether or not "special circumstances" existed, the Second Circuit's decision created a bright-line rule that *Marine Products* should not apply in cases dealing with the resignation of an arbitrator.

This restriction of the *Marine Products* "general" rule seems uniform across jurisdictions. In fact, some jurisdictions have gone a step further and expressly rejected the *Marine Products* analysis completely, finding that it overstepped the court's authority in Section 5 of the FAA. *See WellPoint, Inc. v. John Hancock Life Ins. Co.*, 576 F.3d 643, 647 (7th Cir. 2009). The Seventh Circuit in *WellPoint, Inc. v. John Hancock Life Insurance, Co.,* for instance, found that the "short opinion" in *Marine Products* failed completely to consider 9 U.S.C. §5. In *WellPoint*, the court felt that it was required "to decide how deeply into the arbitral process a court should insert itself, once the proceeding is underway." *Id.* at 644. After a demand for arbitration was filed in October 2002, party-arbitrators were selected. *Id.* During a two-year period leading up to the arbitration, the selected panel resolved numerous disputes and the parties conducted extensive discovery. *Id.* at 644-45. In July 2005, Hancock sent WellPoint a letter increasing its demand for damages by over $400 million. *Id.* at 644. Soon thereafter, WellPoint obtained new counsel and, for unspecified reasons, requested the resignation of its own party-arbitrator; the arbitrator's resignation was subsequently accepted by the panel. *WellPoint*, 576 F.3d at 645.

In an attempt to have the arbitration proceed, Hancock's party-arbitrator suggested that the remaining panel members propose replacement arbitrators from whom WellPoint could choose. Although initially rejecting the idea, WellPoint agreed to the method and selected a new party-arbitrator from the proposed candidates. *Id.* With the new panel in place, the arbitration proceeded as scheduled. *Id.* In April 2007, the panel issued an award directing WellPoint to pay Hancock $26 million in damages, over $400 million less than the $464 million that was sought. *Id.* The district court affirmed the award, finding that the panel was properly constituted. *Id.* at 646. Hancock subsequently appealed the District Court's decision.

On appeal, Hancock argued that the panel exceeded its authority when it accepted the resignation of WellPoint's arbitrator, filled the position itself, and then rendered an award. *WellPoint*, 576 F.3d at 645. Instead, Hancock argued, *Marine Products* was controlling, and the arbitration should have re-commenced with an entirely new panel. *Id.* at 646-47. The Seventh Circuit rejected this argument, reasoning that such a rule would create a "heads I win, tails you lose system." *Id.* at 648. The appellate court stated that a court should exercise its discretion pursuant to Section 5 of the FAA and first determine if the parties' contract set forth a method of filling the arbitrator vacancy. *Id.* at 649. The Seventh Circuit determined that Section 5 of the FAA would have no room to operate if *Marine Products* always inflexibly applied and every vacancy resulted in a new arbitration proceeding. *Id.* at 648.

The Eighth Circuit has taken a similar approach, stating that "forc[ing] the parties to name an entirely new panel would vitiate Section 5." *Nat'l Am. Ins. Co. v. Transamerica Occidental Life Ins. Co.*, 328 F.3d 462, 465-66 (8th Cir. 2003). In *National American Insurance Co. v. Transamerica Occidental Life Insurance Co.,* one member of a three-member panel resigned for health reasons after a year of hearing discovery-related issues. *Id.* at 463. Transamerica then sought the replacement of the entire panel. *Id.* National American petitioned the district court, pursuant to Section 5 of the FAA, for an order naming a single arbitrator to fill the vacancy left by the resignation. *Id.* The district court found that forming "an entirely new panel would cause inappropriate delay and waste resources." *Id.* at 464. The court found that any disadvantage that was caused by appointment of a single arbitrator could be handled by the two existing arbitrators, and such disadvantage does not require an entirely new panel. *Nat'l Am. Ins. Co.,* 328 F.3d at 464.

On appeal, the Eighth Circuit agreed and found that because the arbitration clause was silent as to filling a vacancy during an arbitration, the district court had discretion under Section 5 of the FAA to determine how to proceed. *Id.* In addition to rejecting application of the "general rule" on its face, the court also went further and distinguished the procedural posture of *Marine Products* because it dealt with a motion to vacate an arbitration award while the instant case dealt specifically with a Section 5 action to replace an arbitrator while the arbitration was still pending. *Id.* at 466. Consequently, the court upheld the district court's ruling that appointment of a replacement arbitrator was appropriate under the circumstances.

Conclusions

Thus, while the "general rule" once appeared to have well-established precedent, courts have consistently sought to minimize its reach. Although it may seem that courts are attempting to distance themselves from intervening in the arbitration process, courts are actually creating specific situations and judge-made rules that might invite more litigation. For example, the Eighth Circuit's decision in *National American* may decrease the efficiency of arbitrations, as it expressly points out that the court's authority should be dependent on *how* and *when* one party seeks relief in court. Instead of requiring contractual guidelines that would address the death or resignation of arbitrators, the courts entertain motions to intervene on a case-by-case basis. Essentially, the courts are giving litigants the opportunity to intervene instead of relying solely on the four corners of the contracts.

In light of developments in case law, it is uncertain if and how the "general" rule still applies. Given the consensus that it does not apply to mid-arbitration resignations and the fact that some circuits have rejected the "general" rule, the "general" rule could become irrelevant. The rule's relevancy could be further diminished if sophisticated parties begin to modify arbitration clauses to address vacancies caused by death or resignation of an arbitrator in an effort to limit the courts' role strictly to contract enforcement. If contract clauses that expressly provide for the replacement of resigning or deceased arbitrators become common, the discretion of district courts under Section 5 of the FAA to convene entirely new panels would be nullified. ●

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News & Events

Regulatory News

NAIC

In February, the National Association of Insurance Commissioners (NAIC) elected Wisconsin Insurance Commissioner **Ted Nickel** to fill the President-Elect position that had become vacant when **Sharon P. Clark** resigned as Kentucky Insurance Commissioner in January.

Also, Tennessee Insurance Commissioner **Julie Mix McPeak** was elected Vice President, the position previously held by Nickel, and Maine Insurance Superintendent **Eric A. Cioppa** was elected to the position of Secretary-Treasurer, previously held by McPeak. Missouri Insurance Director **John M. Huff** currently serves as the NAIC's President.

The NAIC also recently named NAIC Chief Operating Officer and Chief Legal Officer **Andy Beal** as Acting CEO. The former CEO, Senator Ben Nelson, left office at the end of January.

IAIS

In January, the NAIC hosted a meeting of the Executive Committee of the International Association of Insurance Supervisors (IAIS). The IAIS agenda included the continued development of an international capital standard for insurance and prioritization of IAIS activities. In addition, there were discussions on topics including stakeholder engagement, cybersecurity, reinsurance, the impact of low interest rates on insurer investments, and the long-term care insurance market.

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

Credit for Reinsurance Model Act

In mid-January, the NAIC passed final changes to the NAIC Credit for Reinsurance Model Act. The most recent changes to the Model Act expand insurance commissioners' authority to "allocate insurers' credit on balance sheets for risk transferred to certain life captive reinsurers" and easing collateral requirements for non-U.S. reinsurers. The recent changes impact captive insurance arrangements for term-life, universal life with secondary guarantees, long-term care, and variable annuities. The changes will impact reinsurance arrangements that are entered into either directly or indirectly with certain captives: life/health insurer-affiliated captives, special purpose vehicles or other captives that do not meet the same solvency requirements as U.S.-based life and health insurers. It is noted that one state voted against the revisions to the Model Act – Delaware. States have three (3) years to adopt these latest changes to the Model law.

The changes to the Model Law also amend the way collateral requirements for non-U.S. reinsurers will be handled. Up until recent changes to collateral requirements were introduced in several states, collateral was required to be equal to the amount ceded to non-U.S. reinsurers, but with the new amendments, collateral will be required on a sliding scale based on the financial strength of each reinsurer, similar to those standards found in regulations adopted by a number of states prior to the NAIC adoption of the current NAIC Credit for Reinsurance Model Act. This step has meaningful implications in strengthening the likelihood that the U.S. will meet the equivalency requirements required by the Solvency II rules now in effect in the European Union (EU).

NARAB II

In early 2015, a modified version of the national licensing proposal, the National Association of Registered Agents and Brokers Reform Act of 2015 (or **NARAB II**), was signed into law. **NARAB II** is intended to streamline the non-resident producer licensing process and preserve the states' ability to protect consumers and regulate producer conduct. **NARAB II** does not create a federal regulator but establishes an independent non-profit corporation, known as **NARAB**, controlled by its Board of Directors.

Top: Raymond Farmer, Mike Rothman, Tom McLeary, Heather Steinmiller.

NARAB is to be governed by a 13-member governing board comprised of eight current or former state insurance commissioners and five insurance industry representatives (subject to Presidential appointment and Senate confirmation). Although the law required the board to be constituted within 90 days of enactment, it took a full year for the first four nominations to be made.
In January, President Obama nominated two regulator nominees: **Raymond Farmer**, South Carolina Department of Insurance Director, and **Mike Rothman**, Minnesota Department of Commerce Commissioner; and two brokerage

company nominees: **Tom McLeary**, President of Endow, Inc., and **Heather A. Steinmiller**, Senior Vice President and General Counsel for Conner Strong & Buckelew Companies, Inc.

At this time, there is no telling how long it may take for the board to be fully constituted and for NARAB to be fully operational.

Industry News

According to a study by Willis Towers Perrin released in January entitled "Defying Gravity: Insurance M&A on the Rise," the value of global insurance merger and acquisition activity hit a record high last year, with about $143.5 billion worth of transactions, about three times the value of deals in 2014. As busy as 2015 was for industry mergers and acquisitions, however, the slow activity in the fourth quarter has carried over to 2016 – so far.

Aside from the ongoing drama of whether Carl Icahn will succeed in his quest to break up AIG, the most significant development so far this year has been the closing of the **ACE Limited ("ACE")** $29.7 billion acquisition of **The Chubb Corp ("Chubb")** and the beginning of the integration of the two entities. The newly combined company will use the Chubb name and be the world's largest publicly traded property/casualty insurer (as of December 31, 2014, on an aggregate basis, the combined company had a total shareholders' equity of nearly $46 billion and cash, investments, and other assets of $150 billion).

Also completed in January was the $8.9 billion merger of **Towers Watson & Co.** with **Willis Group Holdings PLC**, overcoming opposition from Towers Watson proxy advisers. The company, which will do business as **Willis Towers Watson**, describes itself as a global advisory, broking, and solutions company with 39,000 employees in more than 120 countries.

People on the Move

Governor Andrew Cuomo has nominated **Maria Vullo** to head the New York State Department of Financial Services. Vullo, who is currently Of Counsel at international corporate law firm Paul, Weiss, Rifkind, Wharton & Garrison, would replace the current acting superintendent, Shirin Emami, filling the spot left vacant when Ben Lawsky stepped down in June 2015. Vullo, whose appointment is subject to confirmation by the New York Senate, previously served as Executive Deputy Attorney General for Economic Justice under then-Attorney General Cuomo in 2010.

In December, Lloyd's of London announced that its Director of Performance Management, **Tom Bolt**, would be leaving Lloyd's in mid-2016. Bolt was appointed in 2009 and is responsible for the commercial oversight of the Lloyd's market, working with individual syndicates to improve the market's overall performance.

Joseph Torti III, who stepped down as Rhode Island Superintendent of Banking and Insurance at the end of 2015, has joined Fairfax Financial Group Holdings as Vice President of Regulatory Affairs. Torti served for more than 25 years with the Rhode Island Insurance Division, beginning his career as a senior examiner. He was appointed Associate Director and Superintendent of Insurance in 2002 and became the state's Deputy Director and Superintendent of Banking and Insurance in 2008. While at the Rhode Island Insurance Division, Torti served on numerous NAIC committees and working groups. ●

Navigating the new world of runoff.
New regulations in Rhode Island provide for Insurance Business Transfers, an effective restructuring tool that allows US insurers and reinsurers to achieve finality with respect to their commercial runoff businesses. EY's Insurance team can help you navigate the transfer process as well as the challenges related to the optimal use of deployed capital, so together we can establish a foundation for your success.
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