ASSOCIATION OF INSURANCE AND REINSURANCE RUN-OFF COMPANIES

AIRROC® MATTERS

A NEWSLETTER ABOUT RUN-OFF COMPANIES AND THEIR ISSUES

Vol. 5 No. 1 www.airroc.org Spring 2009

Message from CEO and Executive Director

No Grass Growing Under This Rock

Trish Getty

By Trish Getty

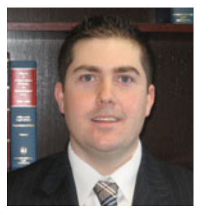
Nearly five years after we planned its formation, the evolution of AIRROC has been quite interesting to observe. One of our initial goals was to create a venue where peers in the run-off industry meet on a regular basis. Our members have created relationships and developed friendships that allow them to address issues more easily and efficiently. This is one of the greatest values of AIRROC membership.

With respect to AIRROC membership, we ask for your assistance in recruiting new members. You conduct business with many companies, some of which would greatly benefit by membership. Please reach out to your contacts at these companies and relate your stories about AIRROC. If you find interest, please put me in contact with them (trishgetty@bellsouth.net). We all win when our membership is full and even more productive.

Our rock continues to roll as we propose initiatives that help run-off books of business to be concluded in a more cost-effective and efficient manner. One initiative, the AIRROC Dispute Resolution Procedure: An Alternative Designed for Small Claims, was rolled out by

continued on page 22

Reinsurance Relief from an Unlikely Source



William J. Brady

By William J. Brady

I. When it Rains it Pours

The higher costs associated with securing credit may soon be mitigated by the impending ratification of the National Association of Insurance Commissioners' ("NAIC") modernization regulations. For an industry that thrives on offsets, the NAIC's Modernization Plan regarding the loosening of collateral requirements for foreign insurance companies may help the reinsurance industry and its run-off sector in both the short and long term. A welcomed relief where everyday brings more doom and gloom from the financial sectors.

> *…the NAIC's Modernization Plan regarding the loosening of collateral requirements for foreign insurance companies may help the reinsurance industry and its run-off sector in both the short and long term.*

The past eighteen months have been anything but boring in terms of the reinsurance industry. It took some time, but the sub-prime mortgage disaster in the United States and subsequent global credit crunch are rippling throughout the industry. The result has been that companies, regardless of size or stature, must readjust the way they do business from top to bottom. Banks are tightening their purse strings and charging higher costs for credit in both the insurance and reinsurance sectors. According to Aon Benfield, reinsurance capital was down anywhere between 15-20% in 2008. Given the start to 2009, reinsurance capital will likely take a further beating during the first quarter. Institutional lenders, now finding themselves in the crosshairs of Congress, must demonstrate that they are lending to well-documented and responsible borrowers. Of course, this article presupposes that banks are in fact lending again at pre-crisis levels. As a result of tightening credit, increased financial scrutiny is also making its way down from boards to management as employees at all levels must justify their existence in the current financial climate.

continued on page 7

Notes from Editor and Vice Chair

Whole Lotta Shakin' Going On…!


Peter Scarpato

By Peter A. Scarpato

When he wrote these lyrics in 1957, Jerry Lee Lewis never imagined that they would so aptly describe the current state of affairs over 50 years later. The global credit crisis, Somali pirates, Swine Flu and Bernie Madoff have rocked even the strongest among us, *But shakin' ain't always bad!* Witness AIRROC's meteoric rise from a startup organization, to a platform for commutations, to the provider of an expedited, inexpensive small claims arbitration procedure. In my article, *Roll Out of AIRROC's Dispute Resolution Procedure for Small Claims,* I summarize the key points of this much needed, efficient and effective procedure. Time will tell if our members and others agree that its time has come.

Moving on, in his article *Reinsurance Relief from an Unlikely Source,* **William Brady** of Bazil McNulty explains that the NAIC's proposed Reinsurance Regulatory Modernization Framework Proposal, which requires foreign reinsurers to post collateral commensurate with a newly assigned credit rating, may provide welcome relief from the current 100% collateral requirement for active foreign reinsurers. Of particular note, companies can use the NAIC's new ratings to evaluate claims and determine the best approach with "problem" run-off reinsurers.

Next, our own **James Veach** of Mound Cotton Wollan & Greengrass submits *The New "Three Rs": Regulators, Run-Off and "Restructuring Mechanisms,"* which outlines the work of an NAIC sub-group recently formed to evaluate restructuring mechanisms as alternatives to traditional court-supervised insolvency proceedings and includes comments from the subgroup's chairperson, Kathy Belfi, the Connecticut Insurance Department's Chief Examiner, Financial Analysis and Compliance and Mark Peters, Special Deputy Superintendent in Charge of the New York Liquidation Bureau.

Acknowledging our business neighbors to the North, we include *Important Canadian Regulatory Changes Affecting Branches In Run-Off* by **Frank Palmay,** Partner & Chair of Corporate and Insurance Practice at Lang Michener, LLP. Since most insurers and all branches are federally regulated in Canada, Frank reviews the most recent 2007 clarifications and amendments to Part XII of the Federal Insurance Companies Act of particular interest to branches in run-off.

For our comrades in the A&H world, we offer **Barry Biller's** *A&H Run-Off: The Long and the Short of it - Short Tail Health Business…Or is it?* which challenges the myth that Specialty Reinsurance is "short-tail" business, given the proliferation and longevity of 9/11 liabilities, Long -Term Care (LTC), Workers' Compensation Carve-Out, Disability Income, and old mid-1990's ABICO/MBICO (Aviation/Marine Bodily Injury Carve-Out), Catastrophe Excess of Loss (XOL) and Quota Share Personal Accident business.

Think run off is just a money pit, not a money maker? Consider *Marketing Strategies to Monetize Your Run-off Blocks,* in which **Ron Clarke** and **Dustin Manocha** of Affinion Group, Inc. share fundamental best practices to maximize: 1) insured retention, 2) premium generated, and 3) overall net income – suggestions applicable to both active and run-off blocks of life and health individual policy holders or group policy certificate holders.

continued on page 8

AIRROC® Matters– In this Issue

Vol. 5 No. 1 • Spring 2009

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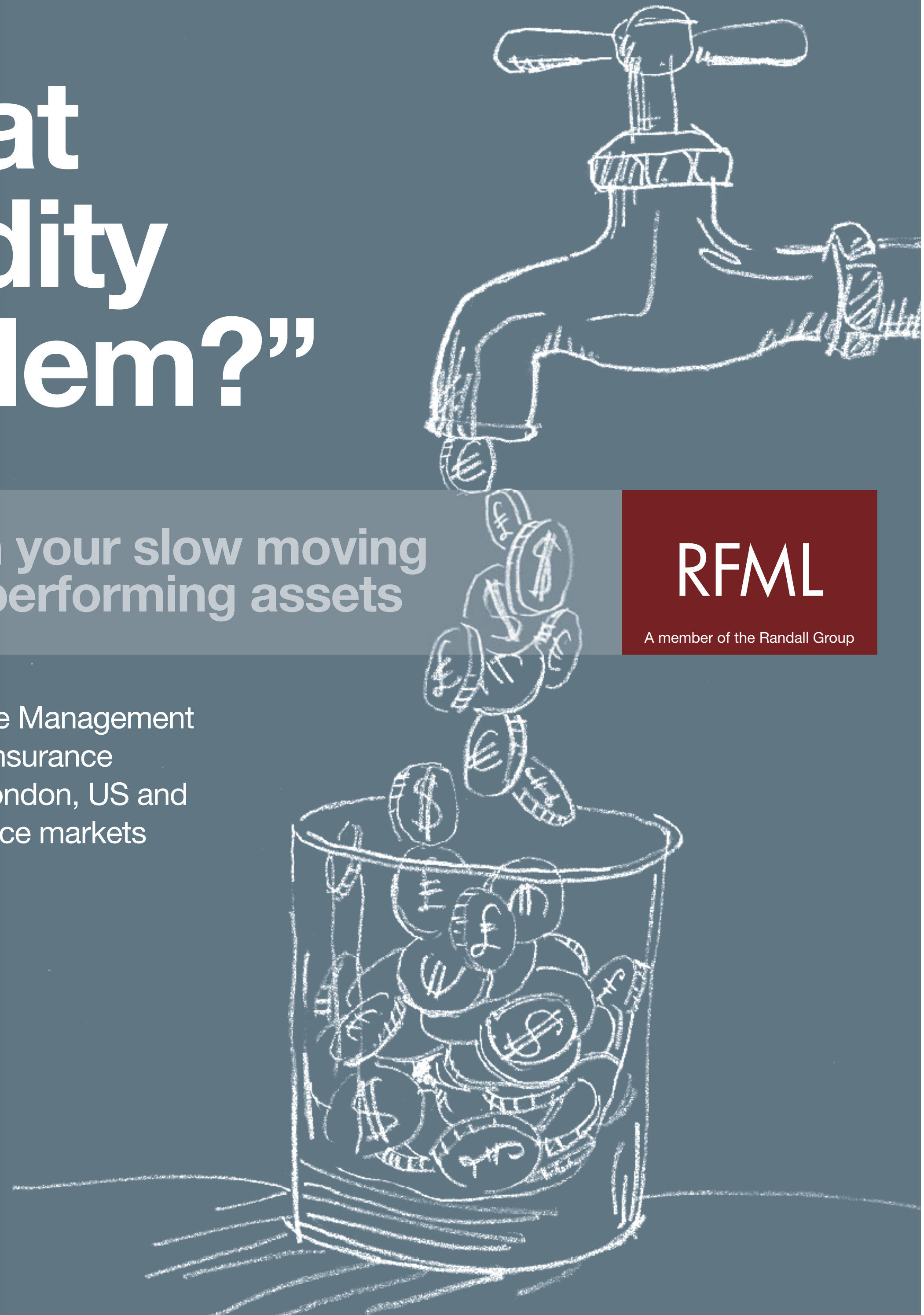

Reinsurance Relief from an Unlikely Source *continued from Page 1*

Adding insult to injury, 2008 was also the second costliest year on record for catastrophe claims. Hurricanes Ike and Gustav helped contribute to $50 billion in man-made and industry catastrophe losses. In response, State Farm Property and Casualty, with losses of around $20 million a month, is pursuing its exit strategy from the Sunshine (Hurricane) State by 2011. This decision is a direct result of the Florida state government's refusal to allow a 47% increase in homeowner rates necessary to meet current and future losses. As far as man-made and catastrophe losses for 2009, Australian wildfires and two U.S. plane crashes mean that first quarter 2009 losses are unfortunately picking up where 2008 left off. Given the above, companies have every reason to bury their heads in the sand and hope for the best. However, the NAIC's recent regulations may be coming at an opportune time for the industry.

II. NAIC Modernization Framework

Just as increased government scrutiny is finding its way into the credit market, the NAIC is in the final stages of adopting its Reinsurance Regulatory Modernization Framework Proposal. In order to be finalized, Congress will have to adopt enabling act legislation. However, this step should be a mere formality and not a major hurdle towards ratification. It has taken a number of years and countless cries from abroad, but under the new plans, foreign reinsurance companies would be required to post collateral in the form of cash, bond or letter of credit commensurate with their newly assigned credit rating. This new development would be a welcomed relief from the 100% collateral requirement currently in place for foreign reinsurers, regardless of their stature or credit rating.

Under the new regulation, reinsurers would be classified either as domestic or foreign reinsurers. Foreign reinsurers, also referred to as "Port of Entry" reinsurers ("POEs"), are defined as a reinsurer organized in a non-U.S. Jurisdiction. In conjunction with the new classifications, the NAIC would also create the "Reinsurance Supervision Review Department" ("RSRD"). The RSRD would be responsible for certifying the POE before it can begin placing business within the U.S. In addition to certifying POEs, the RSRD would also be responsible for reviewing the POE's financials and, if necessary, adjust its rating/collateral requirement accordingly. While increased scrutiny in the lending market may increase costs for borrowers, increased RSRD scrutiny and cooperation with foreign reinsurers may have the opposite effect. Upon certification, companies would then have complete access to the entire U.S. market while remaining subject to the requirements of its port of entry state. Finally, in order to qualify as a POE, companies must also maintain a minimum capital and surplus requirement of $250 million. Otherwise the 100% collateral requirement remains in effect. As indicated in the International Association of Insurance Supervisor's 2007 Paper on the "Mutual Recognition of Reinsurance Supervision," some of the benefits of mutual recognition should include increased market capacity, reduced compliance costs, increased allocation of capital and greater levels of transparency. These benefits are a welcome sign given the uncertainty of the current economic climate.

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Companies who do not qualify under the sliding scale system must maintain the current 100% collateral requirement on assumed business. The RSRD will assign credit ratings as follows: POE Companies with the highest grades from rating agencies are deemed Secure-1 and need not post collateral. On the other end of the scale, POE companies rated Vulnerable-5 must adhere to the 100% collateral requirement. Companies rated Secure 2, 3, 4, would respectively post collateral at rates anywhere between 10% to 75% respectively.

Under the current requirements, high barriers of entry allow a finite number of reinsurers to dictate the market and set rates. However, the new system will almost certainly lead to an increase in the number of foreign reinsurers that otherwise would not be doing business in the U.S. given the current 100% collateral requirement. As the numbers of foreign reinsurers entering the U.S. through their port of entry state, cedants should find greater reinsurance options and more competitive pricing. As a corollary, risk managers can choose between companies deemed Secure-1 or choose companies with lower credit ratings. As risk managers select reinsurers with lower ratings, cedents will have to make difficult choices when choosing between lower premiums and security.

continued on page 8

Reinsurance Relief from an Unlikely Source *continued from Page 7*

However, these most recent developments do not come without potential drawbacks. Selecting reinsurers based upon their new RSRD rating are decisions previously unnecessary under the 100% collateral requirement system and would be a strain on already over-worked risk managers. Nevertheless, these choices are not completely unfamiliar and are often contemplated on a daily basis regardless of the new plan.

III. An Unlikely Offset?

Given the above framework, Reinsurers should not have as much capital tied up by the current U.S. collateral requirements. Naturally, this money can be earmarked for writing more policies or paying down the increased costs for credit. Since lenders will have to charge higher costs of capital, companies will welcome any area where these costs can be mitigated.

IV. New Regulations Impact on the Run-Off Sector

As discussed above, the new NAIC modern framework should bring lasting benefits to the live reinsurance industry. However, questions remain as to what happens when reinsurers enter run-off or what the net impact will be on companies currently operating within the run-off sector. To date, not much is known about run-off's new role under the Modernization Framework. Under the new framework, reinsurers operating under solvent schemes of arrangement or similar procedures involving U.S. Cedents will receive Vulnerable -5 ratings and be required to post 100% collateral (a completely familiar scenario for foreign reinsurers operating under the current system). The RSRD should begin making its first recommendations in approximately three years. Therefore, issues unique to the run-off sector should be forthcoming.

…within the run-off sector, companies can use the new ratings to evaluate claims and determine whether it may be most effective to deal with difficult reinsurers internally or to hire third-party service providers.

Where run-off could immediately benefit under the new modernization plan is the credit rating system assigned to reinsurers by the RSRD. According to the new NAIC plan, a company's ratings will be partially based on how slow they pay claims. Given the limited number of resources available to companies within the run-off sector, companies can use the new ratings to evaluate claims and determine whether it may be most effective to deal with difficult reinsurers internally or to hire third-party service providers. These difficult reinsurers will also be easier to spot based upon newly assigned RSRD ratings and not by reputation only. Difficult companies may also be keen to improve on their RSRD rating and possibly accelerate future payments.

V. Conclusion

While it is difficult to predict the future even in the stablest of financial times, the NAIC modernization framework is cause for optimism for the future of the U.S. reinsurance industry. Given the current climate, the possibility of good news in the immediate future should be cause for celebration. ■

William J. Brady is an Associate in the Pennsylvania office of Bazil McNulty and can be reached at wbrady@bazilmcnulty.com.

Notes from the Editor and Vice Chair *continued from Page 3*

And because we enjoy a "government of laws and not of men" (and since it's neat to do something new), we introduce in this edition **"Legalese,"** a new section that features articles discussing recent cases, statutes or other legal developments that relate to or impact run off. Our first installment comes from a return author, **Philip J. Loree Jr.** of Loree & Loree, entitled *KX Reinsurance Co. v. General Reinsurance Corp.: Can Arbitrators Retain Jurisdiction After Resolving All Submitted Issues?*

Sprinkled with our favorite toppings, **Trish Getty's** *No Grass Growing Under This Rock,* and **Nigel Curtis'** *Present Value* and *KPMG Policyholder Support Update,* your run off dessert is ready!

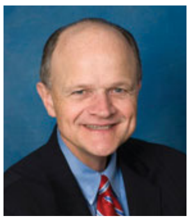
With all this shakin' going on, AIRROC Matters covers your world…

Let us hear from you. ■

Mr. Scarpato is an arbitrator, mediator, run-off specialist, attorney-at-law and President of Conflict Resolved, LLC, based in Yardley, PA. He can be reached at peter@conflictresolved.com.

Feature Article

Roll Out of AIRROC's Dispute Resolution Procedure for Small Claims



Peter A. Scarpato

By Peter A. Scarpato

At the recent AIRROC quarterly meeting, board member Michael Zeller presented "The AIRROC Dispute Resolution Procedure: *An Alternative Designed for Small Claims*." One year ago, in response to ever-broadening industry concerns about the efficacy of arbitration as a swift, cost-effective alternative dispute mechanism, the Board authorized our Legislative/Amicus Committee to develop an expedited arbitration procedure designed for small claims. In May 2008, the committee enlisted volunteers from AIRROC's members, participants in other AIRROC committees, outside counsel and ADR professionals to serve on a Small Claims Task Force ("Task Force"). Mike's presentation outlined the results of their work.

Distilled to its essence, the Dispute Resolution Procedure ("Procedure") has the following elements:

- Single arbitrator
- Pre-arranged discounted fee structure (hourly rate of $150, with $2,000 retainer per party, one-half of which is non-refundable)
- No discovery or live testimony at hearing absent parties' consent
- Designed for small disputes involving less complicated matters (*e.g.*, legal questions, relatively simple factual disputes)
- Party willingness to work together in a cost-effective procedure

For the Procedure to fulfill its goals, parties are expected to reach agreement on the arbitration's scope, the extent of discovery, and the need for hearing testimony.

Peter A. Scarpato is President of Conflict Resolved, LLC and can be reached at peter@conflictresolved.com.

The last element is critical. For the Procedure to fulfill its goals, parties are expected to reach agreement on the arbitration's scope, the extent of discovery, and the need for hearing testimony.

To work well, the Procedure requires the services of competent, experienced arbitrators. In its discussions, the Task Force strove to develop objective eligibility criteria for inclusion on the list. In that regard, candidates for arbitrator must complete a one-page application and return it to AIRROC, along with a current resume. Criteria to serve include:

- 10 or more years' employment by an insurance or reinsurance company(ies) *or* ARIAS certification (shown with an asterisk next to the arbitrator's name on the AIRROC list)
- Willingness to serve at a pre-arranged discounted rate

The Task Force designed the Procedure's arbitrator selection process…to minimize time and maximize success.

Parties will commence proceedings by jointly completing an *Initiation of Proceedings Form*. The form is necessary to establish the subject matter of the arbitration, which determines the arbitrator's authority and is binding on the parties. It includes a brief description of the arbitration's scope (e.g., claims, counterclaims) and issues in dispute, confirms the parties' agreement to use the Procedure, and provides prospective arbitrators with information to identify potential conflicts.

The Task Force designed the Procedure's arbitrator selection process, often a point of contention causing unnecessary delay in traditional cases, to minimize time and maximize success.

For members, the AIRROC arbitrator list will be available on our website. If they embrace the spirit of this Procedure and can agree on a suitable arbitrator, the parties may self-administer the process. If, however, they cannot jointly pre-select the arbitrator, AIRROC will take the following steps:

continued on page 17

Think Tank

The New "Three Rs": Regulators, Run-Off, and "Restructuring Mechanisms"


James Veach


Kathy Belfi


Mark Peters

By James Veach

Your author takes a quick look at an NAIC sub-group recently formed to look at restructuring mechanisms as alternatives to traditional court-supervised insolvency proceedings. Mr. Veach spoke to the sub-group's chairperson and the Special Deputy Superintendent in charge of the New York Insurance Department's Liquidation Bureau for their take on restructuring in general and the sub-group in particular.

In 2007, the National Association of Insurance Commissioners ("NAIC") formed a Restructuring Mechanisms for Troubled Companies sub-group to study restructuring mechanisms for troubled companies, including restructuring devices used outside the United States. The sub-group consists of regulators from at least nine states, including New York, California, Rhode Island, and Connecticut. The NAIC also charged the sub-group with the task of preparing a white paper on their efforts.

The sub-group met during NAIC quarterly meetings in Orlando (Spring 2008), San Francisco (Summer 2008), the District of Columbia (Fall 2008), and Grapevine, Texas (Winter 2008). During the Winter Meeting, the sub-group discussed New York's Regulation 141 and related legislation, listened to a presentation on draft legislation prepared by the Association of Insurance and Reinsurance

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Kathy Belfi is Chief Examiner, Financial Analysis and Compliance, for the Connecticut Insurance Department.

Mark Peters is Special Deputy Superintendent in Charge of the New York Liquidation Bureau.

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Run-off Companies ("AIRROC") (a draft that has yet to be AIRROC-approved), and commented on a draft of the sub-group's white paper (that has yet to be exposed).

Earlier meetings and conference calls covered Part VII transfers and schemes of arrangement. The sub-group and the sub-group's chairperson, Kathy Belfi, invited comments from Interested Parties on the sub-group's work thus far. Your author – a very interested party – and others were looking forward to making more progress on the white paper at the NAIC's Spring Meeting this March in San Diego, but the NAIC cancelled the sub-group's San Diego meeting due to the insurance regulatory fallout from the global recession. This financial/regulatory turmoil led to a restructuring of the Spring Meeting agenda, and the reordering and cancellation of several sessions.

The sub-group will resume its work in the near future, but the mere formation of an NAIC-sanctioned group of regulators considering restructuring mechanisms, as well as the sub-group's interest in AIRROC's draft run-off legislation, underscore how much attention troubled companies and the run-off market are getting from state insurance regulators. Given the context of the current economic conditions, what are the implications of a study of alternatives to traditional rehabilitation/liquidation proceedings?

Background

While the amount of business in run-off grows, regulators continue to close failed companies that were liquidated decades earlier, but that remain in "regulatory run-off." For example, Union Indemnity Insurance Company, a New York insurer, was placed in liquidation in 1985. In December 2007, Union Indemnity's liquidator

continued on next page

The New "Three R's": Regulators, etc. *continued from previous page*

moved in Supreme Court, New York County, for approval of a final report as a step towards closing the estate. After a reassignment of the motion to another Supreme Court Justice (the first having been elevated to the Appellate Division) and after reargument of the motion, the court issued an order in February that approved much of the final report, asked for "a more detailed report concerning calculation [of the state's] administrative expenses . . . " and declined to close the estate. *See In Re Union Indemnity Insurance Company of New York*, Index No. 41292/85

> *Many insolvent insurers that failed during the 1980s or 1990s remain open and continue to incur the expenses that inevitably accompany formal receivership proceedings.*

(Supreme Court, New York County February 6, 2009). Thus, the Union Indemnity estate remains open almost a quarter century after the company failed.

Union Indemnity, of course, is not unique. Many insolvent insurers that failed during the 1980s or 1990s remain open and continue to incur the expenses that inevitably accompany formal receivership proceedings. *See* NAIC's Global Receivership Information Data Base, https://i-site.naic.org/grid/gridPA.jsp. What about closing solvent companies through some of the devices that the restructuring mechanisms sub-group is studying now?

Most of our readers are aware of legislation enacted by one state – Rhode Island– to bring a variant of U.K./Bermuda solvent schemes of arrangement into the United States. R.I.G.L. 27-14.5, Voluntary Restructuring of Solvent Insurers; Insurance Regulation 68. Although at least two companies have redomiciled to Rhode Island to take advantage of this legislation, neither company has implemented a solvent-scheme of arrangement under Rhode Island law. With these circumstances in the background, the NAIC launched its restructuring mechanisms project.

NAIC Restructuring Mechanisms sub-group

In December 2007, the NAIC's Financial Condition (E) Committee adopted as one of its charges the creation of a Restructuring Mechanisms for Troubled Companies sub-group that would:

> Undertake a study of solvent schemes of arrangement (solvent run-offs) and Part VII portfolio transfers and any other similar restructuring mechanisms to gain an understanding of:
>
> (i) how these mechanics may be utilized and implemented;
>
> (ii) the potential effect on claims of domestic companies, including the consideration of preferential treatment within current laws;
>
> (iii) how alien insurers (including off-shore reinsurers) who have utilized these mechanisms might affect the solvency of domestic companies; and
>
> (iv) best practices for state insurance departments to consider if utilizing similar mechanisms in the United States and/or interacting with aliens who have implemented these mechanisms.

NAIC 2008 Charges: Restructuring Mechanisms for Troubled Companies sub-group (Financial Conditions (E) Committee (Restructuring sub-group)), www.NAIC.org/committees_e_restructuring.htm.

The sub-group first gathered at the NAIC's Spring Meeting in Orlando, Florida and immediately addressed comments and letters from guaranty associations, the Reinsurance Association of America ("RAA"), a run-off management group, and other interested parties. The comments before and during the Spring Meeting generated considerable heat, with most of the attention going to solvent schemes of arrangement and Part VII transfers.

The RAA, for example, sprinkled its comment letter with references to "good bank/bad bank," estimation, and "cram downs" and attacked any restructuring device that would allow "*solvent* insurers [to] avoid or rework their

> *One guaranty association …asked if a "regulator [can] fulfill his statutory duty to protect consumers from improper claims practices while he is also charged with the negotiation and settlement of policy claims on behalf of a troubled insurer?"*

contractual obligations." Letter from T. Laws and M. Wulf dated March 24, 2008. One guaranty association raised questions about the benefits of restructuring, as opposed to a liquidation/rehabilitation, and asked if a "regulator [can] fulfill his statutory duty to protect consumers from improper claims practices while he is also charged with the negotiation and settlement of policy claims on behalf of a

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troubled insurer?" Letter from R. Schneider (President and CEO of the National Conference of Insurance Guaranty Funds), dated March 24, 2008. Several Fortune 500 companies concentrated their fire power on solvent schemes of arrangement in the U.K. Covington & Burling letter dated March 24, 2008.

During the sub-group's session at the Summer Meeting in San Francisco, those commenting continued to focus on solvent schemes and their effect on policyholders. The regulators that comprise the sub-group, however, assured attendees that regulators were cognizant of the need to protect policy-holding consumers. The regulators also advised that their paper was not intended as an advocacy tool, but rather as: (1) a study of alternative methods of addressing troubled companies; and (2) a search for "best practices" to follow with respect to plans and arrangements already underway in many states.

Ms. Belfi, Chief Examiner, Financial Analysis and Compliance, for the Connecticut Insurance Department now chairs the sub-group, having succeeded Michael Vild, Delaware's former Deputy Commissioner. While a draft of the white paper has not been exposed, you can find an outline for the paper on the NAIC web-site at NAIC.org. Of course, in one sense, the sub-group's timing couldn't be better. Regulatory attention to run-off and alternatives to restructuring fits the times (and the Wall Street Journal). *See*, *e.g.*, M. P. McQueen, *The Next Big Bailout Decision: Life Insurers*, Wall Street Journal, A-1, 2 (March 12, 2009) and *Worry Grows Over Insurers as Ratings Slip,* Wall Street Journal, D1 (March 17, 2009), the latter article appearing as attendees headed to the airport for the NAIC Spring Meeting.

In this environment, we asked Ms. Belfi and Mark Peters, Special Deputy Superintendent in Charge of the New York Liquidation Bureau, to comment on restructuring mechanisms and the work of the sub-group.

Where Matters Stand Now

First, Ms. Belfi assured those who are following the sub-group's work that nothing can be read into the decision not to convene the sub-group in San Diego. As Ms. Belfi pointed out, the regulators who make up the sub-group are senior financial solvency and receivership regulators and their attention has been necessarily focused on the unique challenges posed by the global financial meltdown. As chair of the sub-group, Ms. Belfi observed that the sub-group's meetings and studies have already increased the knowledge base of many state regulators and has contributed to a better understanding of alternatives to receivership.

Given a "much more global economy," U.S. regulators can no longer confine themselves to activities within a single state, but rather have to think nationally and globally about not only solving, but also how to address the consequences of insolvency.

For Mr. Peters — who is not a member of the sub-group, but has followed its work from afar — the financial/economic meltdown is but one of many circumstances that warrant the sub-group's looking at alternative restructuring devices. Given a "much more global economy," U.S. regulators can no longer confine themselves to activities within a single state, but rather have to think nationally and globally about not only solving, but also how to address the consequences of insolvency. According to Mr. Peters, the New York Liquidation Bureau's efforts to sell the Midland Insurance Company, in liquidation, *see NY Liquidation Bureau seeking Private Buyer for Billion Dollar Midland Insurance Company*, http://www.nylb.org/Documents/Midland-Private-Equity-RFP_3-4-09.pdf, includes features borrowed from the U.K. system. How the London run-off market operates influenced the Bureau's thinking in designing the Midland request for proposals. As Mr. Peters puts it: the increasingly global and increasingly interlocking nature of insurance and reinsurance provides as much urgency as the meltdown itself with respect to the need for new restructuring devices for troubled insurers.

Ms. Belfi, a veteran of many NAIC gatherings, noted that the NAIC has steadily increased the attention paid to solvency modernization initiatives, e.g., evaluating capital requirements, international accounting, holding group supervision, valuation issues, "and, of course . . . reinsurance." Ms. Belfi reminds us that 40% of all direct written premium in the United States is written by insurers that belong to "upstream international holding companies with over 10% of direct or indirect control." Accordingly, she hopes that the sub-group's efforts may eventually "attract a few international participants."

But do regulators need additional statutory authority to address failed or about-to-fail insurers? Mr. Peters, using his attempt to close the estate through a sale of Midland as an example, points out that while he obviously believes that he has the authority to sell Midland — "because we're doing it" — "it has taken a lot of time and effort to make [the] Midland [request for proposal] work within the rules

continued on page 17

Feature Article

Important Canadian Regulatory Changes Affecting Branches In Run-Off

Frank Palmay

By Frank Palmay

1. Introduction

Although in Canada, both provincial and federal authorities can incorporate insurance companies, most insurers and ***all branches*** are federally regulated. The federal legislation is overhauled every five years. The last such overhaul in 2007 both clarified and amended the regulations for branches in a fundamental manner. The legislative provisions respecting foreign companies (branches) are contained in Part XII of the *Insurance Companies Act.*

This paper discusses the clarifications and amendments that should be of particular interest to branches including those in run-off. It also highlights some decisions that branches in run-off should at least consider.

2. Clarifications of Part XIII

The test as to whether a foreign insurer needs to be authorized by the federal regulator to conduct business through a branch in Canada is whether that foreign company is or is not ***insuring a risk in Canada.***

The federal regulator had inconsistent internal interpretations of what these words meant. Was it the location of the activities involved in insuring that was the deciding factor or was it the location of the risk? However, once a branch was registered in Canada, the federal regulator required that all Canadian risks be reflected in the branch.

The regulator has now clarified that the test is no longer where the risk is located but rather where the insurance activities are being carried out.[1] Because this is a clarification as opposed to an amendment, these changes are considered by the Office of the Superintendent of Financial Institutions ("OSFI") to be effective immediately. This has several important effects for your Canadian branch.

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The first significant effect of this clarification is that all foreign companies having branches in Canada are required to submit quarterly progress reports for 2009 to 2010 identifying the risks located outside Canada that were insured in Canada. The first report is due May 31, 2009. OSFI has issued instructions and guidance[2] wherein it indicates that the progress review reports must describe the project structure, governance, timelines and key personnel involved, including accountabilities and an assessment of whether resources are sufficient to meet the project deliverables. In addition, the reports must describe the internal controls that the foreign insurer will have in place to identify policies that have been issued in Canada prior to January 1, 2010 and set out a description of any significant impact that may result in the branch's vested asset accounts as a result. Foreign insurers are expected to communicate with their auditors and actuaries with respect to this implementation review as well as involve a senior officer from the home office. If the implementation will have a significant impact on the assets required to be vested in trust in Canada, OSFI expects the board of directors of the foreign company or committee of that board to be involved.

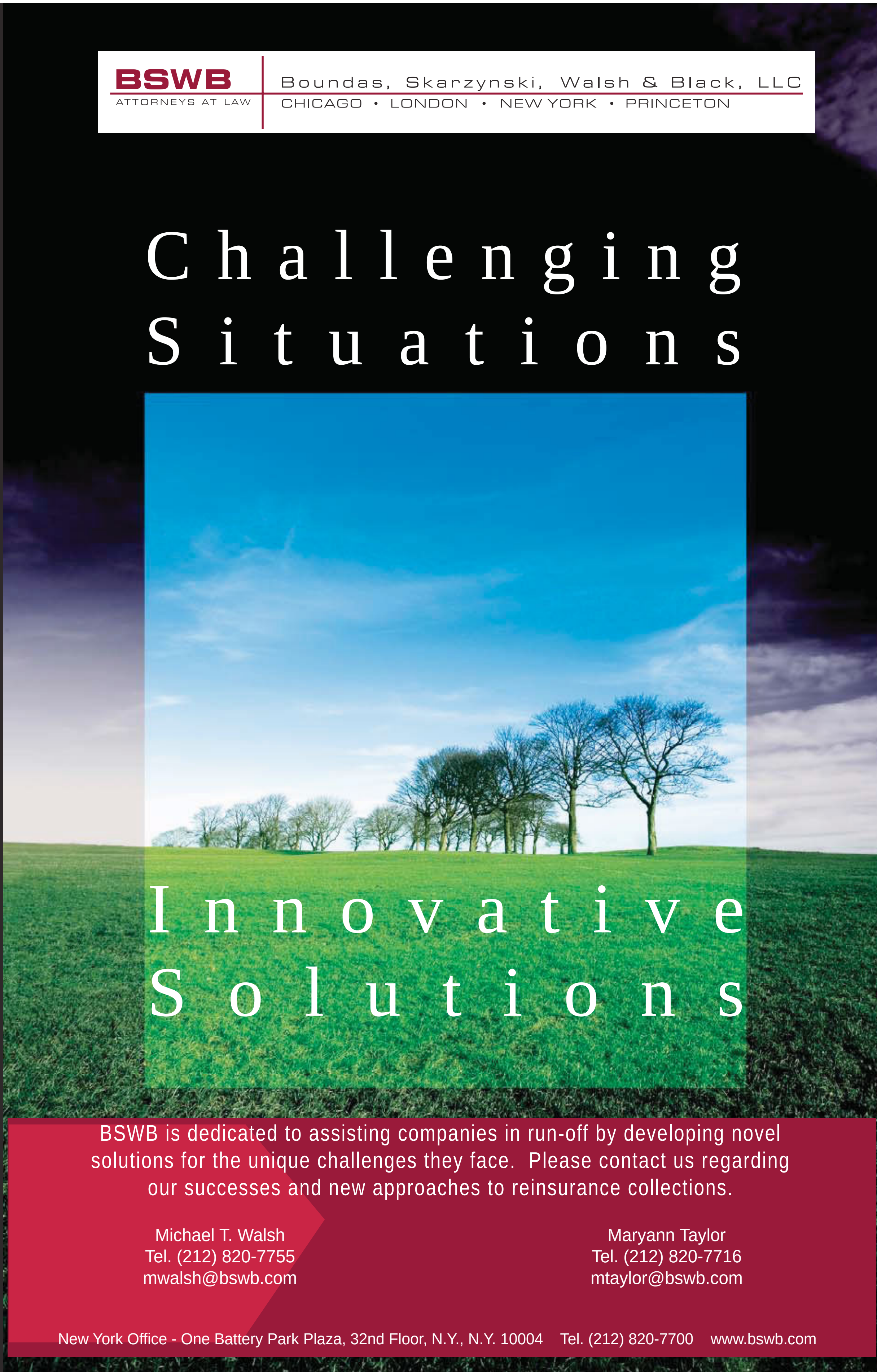
The regulator has now clarified that the test is no longer where the risk is located but rather where the insurance activities are being carried out.

It is important to note that this requires head office to examine all past practices as they may impact on whether non-Canadian located risks were really insured in Canada and must now be reflected in the branch.

As the regulator sees how various companies address these matters, the companies can expect the regulatory scrutiny and the level of effort required to be devoted to increase over time.

A second effect of this clarification is that Canadian risks presently reflected in the branch that were insured outside Canada may, with the regulator's consent, be removed from the branch. The guidance from OSFI indicates the steps that a branch must take if it wishes to remove this business from its Canadian book.

continued on page 16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BSWB is dedicated to assisting companies in run-off by developing novel solutions for the unique challenges they face. Please contact us regarding our successes and new approaches to reinsurance collections.
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Important Canadian Regulatory Changes Affecting Branches In Run-Off *continued from Page 14*

The final effect of this clarification is that foreign companies, even those having Canadian branches, can now conduct insurance activities involving Canadian risks outside Canada without having that business reflected in the books of the Canadian branch.

…foreign companies, even those having Canadian branches, can now conduct insurance activities involving Canadian risks outside Canada without having that business reflected in the books of the Canadian branch.

3. Amendments to Part XIII

The amendments to the portions of the *Insurance Companies Act* that effect foreign companies (i.e., branches) were so fundamental that the regulator required considerable time to implement the regulations as well the details required to make the amendments work. As such, the amendments do not come into effect until January 1, 2010.

For property and casualty branches, the amendments fall into two general categories.

3.1 Marine Insurance

Until the 2007 amendments come into effect, marine insurance remains unregulated.

Starting in January 2010, foreign companies writing marine insurance or those that have marine insurance on their books, ***whether or not they are in run-off,*** will now have to have their federal order amended to include marine as a class of insurance.

Interestingly, Canadian insurance companies only have to be registered for marine insurance as a class if they are exclusively a marine company.

3.2 Portfolio Transfers

The 2007 amendments reduced considerably the approvals required for portfolio transfers of branch businesses.

Prior to the amendments coming into effect, only indemnity reinsurance in the ordinary course of the branch's business was exempt from regulatory requirements. All other transfers, including indemnity insurance not in the ordinary course of business, assumption reinsurance and novation require Ministerial approval. This can be expected to add about a month to the approval process and longer if an election intervenes

From and after January 1, 2010, neither indemnity reinsurance of any kind nor novation requires any regulatory approval. Assumption reinsurance of some, all or substantially all of the branch's book of business will require Superintendent approval. Additionally, a transfer of all or substantially all of the policies by means other than assumption reinsurance requires notice to the Superintendent who can then require notice to be given to the policy holders.

From and after January 1, 2010, neither indemnity reinsurance of any kind nor novation requires any regulatory approval.

It should be pointed out that assumption reinsurance in Canada is somewhat different from that in the United States. The assumption reinsurance in Canada does not automatically morph into novation. There is no individual opting out by policyholders although the Superintendent will require companies to address valid objections to the transfer made by policyholders before regulatory approval is given. While advertising in a newspaper and the Canada Gazette is normally required, for most assumption reinsurance transfers, the only notification to policyholders that is required to be made is the sending of an assumption certificate after the assumption reinsurance is completed. Once regulatory approval is given, the applicable reserves can move. Finally, while the provinces have exclusive constitutional jurisdiction over property and civil rights, none of the provinces has any regulatory approval requirements respecting the transfer from a branch to a federal insurer or another branch.

4. Conclusions

The clarifications and the proposed changes are significant for branches and provide both opportunities, flexibility and additional burdens.

Some thoughts and suggestions in this regard are:

1. Branches that are in run-off may find that 2009 is a good time to consider transferring the branch's business to a Canadian entity and closing down the branch. In this regard:
    - while the approval mechanism in 2009 will

continued on page 30

Roll Out of AIRROC's Dispute Resolution Procedure for Small Claims *continued from Page 9*

- Randomly generate 15 names from its list, including, at the parties' request, only ARIAS-certified arbitrators.
- Send emails to those selected, asking them to complete and return a short form within one week stating if they are available to serve and disclosing potential conflicts.
- Ask each party to select just more than half of the available, eligible candidates, forcing at least one match between their selections.

If there is one match, the matched selection becomes the arbitrator. If there is more than one match, the arbitrator is chosen by lot from among the matched selections.

To accomplish the dual goals of efficiency and efficacy, and distinguish itself from the usual process, the Procedure incorporates the following elements:

- Telephonic Organizational Meeting within 21 days after the arbitrator's appointment.
- Absent the parties' agreement to the contrary (i) no discovery, motions or other applications for discovery and (ii) submission of the dispute to the arbitrator on briefs and documentary evidence only (*i.e.*, no live witness testimony).
- In appropriate cases, the arbitrator has discretion to require oral argument. However, neither the argument nor any scheduled hearing shall exceed one day (unless the parties otherwise agree).
- The arbitrator must issue its award within 30 days after the latter of the submission of briefs or conclusion of oral argument/hearing (if any) — unless the parties agree, there shall be no reasoned awards.

Like traditional cases, the parties must execute a hold Harmless/Indemnification Agreement covering both the arbitrator and AIRROC. Also, the proceedings will be confidential, have no preclusive effect and, for member companies. AIRROC's selection of an arbitrator will cost nothing. If, however, an AIRROC member and non-member have a dispute, and both agree to use the Procedure and have AIRROC select an arbitrator, AIRROC will charge the non-member a $1,000 service fee. If neither company is an AIRROC member but both similarly opt for the Procedure and for AIRROC to select an arbitrator, AIRROC will charge the parties a $2,000 service fee.

Working with the Board and Legislative/Amicus Committee, the Small Claims Task Force is currently finalizing the Procedure, which should be formally adopted and launched in the near future. Members are encouraged to review the Procedures and submit any comments or suggestions to Michael Zeller at michael.zeller@aig.com. ■

The New "Three Rs": Regulators, Run-Off, and "Restructuring Mechanisms" *continued from Page 13*

that we have now." For Mr. Peters, who is in charge of more than sixty insolvent estates, it is always worthwhile "pursuing additional tools that will let us do this, better, faster, simpler." Mr. Peters believes that Midland's sale, if successful, may inspire other states to consider using Midland as a model for addressing a failed company.

Ms. Belfi, in her role as Chair of the sub-group, does not believe it appropriate to favor any specific legislative proposal, but doubts that any regulator would object to additional authority to increase the number of options available to address a "troubled" or capital-impaired insurer. Of course, some have suggested that liquidators or guaranty funds may push back on proposals to look at restructuring alternatives. In Mr. Peters words, "there won't be any push back from [him]," but receivers must always struggle when an insolvency order should be entered. For Mr. Peters, sometimes pulling the trigger sooner rather than later is better because it gives the receiver more options to deal with a company if it does fail.

Again, as Chair of the sub-group, Ms. Belfi believes that her group's charge remains to study and present the pros and cons for all mechanisms presented. The sub-group's task is "not to achieve some consensus or agreement towards a recommendation among interested parties, but to factually report observations for consideration."

The Future

Whether the sub-group will inspire any state insurance legislation remains to be seen, but as Ms. Belfi has observed, conservations, rehabilitation, and liquidation will surely remain "critical intervention options in many cases for the foreseeable future." The sub-group's study, nevertheless, may add arrows to regulators' quivers and give superintendents and commissioners more options when faced with troubled insurers that might benefit more from a restructuring than a traditional, court-supervised insolvency proceeding. ■

Feature Article

A&H Run-Off: The Long and the Short of it – Short Tail Health Business. . .Or is it?

Barry Biller

By Barry Biller

It goes without saying that in years gone by, Accident & Health (A&H) Reinsurance (affectionately known also as "Special Risk" Reinsurance) was referred to as short-tail health business. It was, and still is, tagged as "Life" business, although it was largely Group business that was written for durations of say 12 months, then renewed at the option of the reinsurer (or not). It was seen as short-term business (one-year contracts) that would not "run-on" forever – there were no long-term guarantees from entering into a 12-month contract. That is, unless there are claims, and unless the contracts had no commutation clauses, or were so loosely worded that even the presence of a commutation clause was not enough to allow a reinsurer to get out of the contract without paying a huge premium.

It goes without saying that in years gone by, Accident & Health (A&H) Reinsurance (affectionately known also as "Special Risk" Reinsurance) was referred to as short-tail health business.

In today's day and age, those of us in the A&H run-off/run-on arena still battle 9/11 liabilities, Long-Term Care (LTC), Workers'Compensation Carve-Out, Disability Income, and even a smattering of old mid-1990's ABICO/MBICO (Aviation/Marine Bodily Injury Carve-Out), Catastrophe Excess of Loss (XOL) and Quota Share Personal Accident business. Aside from extensive arbitration and litigation proceedings, who would have known that this "short-tail" business written in the 1980's and 1990's would still be around, and going strong well into 2010?

Barry Biller is Senior Vice President, Accident & Health Reinsurance at Transamerica Life Insurance Company and can be reached at barry.biller@transamerica.com. Special thanks to my Editor, Karen Boisvert, Senior Vice President, Swiss Re Life & Health America Inc.

Long Term Care

. . .who would have known that this "short-tail" business written in the 1980's and 1990's would still be around, and going strong well into 2010?

Let us focus on one of the major contributors to why we (A&H run-off professionals) are still around today: LTC and hence LTC Reinsurance. The LTC product began like all others – an idea. The idea was to provide for the cost of long-term care in case of illness, such as Alzheimer's and Parkinson's, and generally being unable to perform the basic "activities of daily living" (there is an actual term for this – ADL). ADL includes the basic functions of life that most of us take for granted: eating, dressing, bathing, walking, getting into and out of bed, going to the bathroom, etc. LTC insurance would cover nursing home care, adult daycare, assisted living, home care, hospice, etc. This insurance "fills the gap" not normally covered by traditional health insurance, Medicare or Medicaid.

It's also important to note that LTC is not age dependent – people of all ages can benefit from this insurance.

The Changing Face of Long Term Care

Since the introduction of LTC products in the late 1980's and 1990's, there have been significant changes in the structure of the care, life expectancies of those qualifying for LTC benefits, and the regulatory environment.

Originally, most LTC coverage was only for facility benefits. Over time, coverage has changed to include combinations of non-professional caregivers in a home environment as well as facility coverages. The impact of these changes has extended the benefit coverage period, increasing the likelihood that insureds would reach the maximum benefit limit.

Additionally, the life expectancy of those originally qualifying for LTC benefits was approximately 4–6

continued on page 20

A&H Run-Off: The Long and the Short of it *continued from page 19*

years. Advancements in healthcare have now extended life expectancies to 10 years or more. The impact, again, of this is to extend the probability of reaching the ultimate lifetime limits and to create a gap in the original pricing of these accounts.

The ultimate effect is that insurers and reinsurers are paying more for claims that may start far in the future and run much longer and at higher costs than originally anticipated.

Finally, the regulatory environment is constantly changing and many of those changes put increasing pressure on insurers (and their quota share reinsurers) to liberalize underwriting and/or pricing.

The ultimate effect is that insurers and reinsurers are paying more for claims that may start far in the future and run much longer and at higher costs than originally anticipated.

As direct writers wrote more and more of this business, the need for reinsurance became even more obvious. Reinsurers stepped up, say on a quota share basis, and took a share of the daily benefit for the ADL care. Let's say the reinsurer takes 10% of a maximum $150 daily benefit. Depending on the benefit period, the reinsurer's liability could extend for decades. So much for being a short-tail business!

Other types of reinsurance products include an accelerated death benefit (ADB) rider that covers LTC benefits (as opposed to medical diagnosis) using ADL triggers.

9/11 Claims

Lastly, let's turn to a passing reference that I made to the remaining 9/11 exposure. Life companies reinsured, through their A&H writers, World Trade Center exposure at varying levels. Who would have envisioned that 8 years after the terrorist attacks we (reinsurers) continue to pay claims – not just because of the large number of CAT covers that were hit, but also because of the Workers' Compensation Carve-Out (WCCO) component of Life policies. Many Group Life policies allowed for WCCO benefits (benefits with the indemnity and/or medical component "carved out" from the employers liability exposure). In many circumstances benefits are payable until the surviving spouse either remarries or passes away. Also, individuals injured in the attacks are covered under these policies, in addition to those who just now become sick due to disease from airborne matter. As a result, benefits may remain payable for decades, as in the case of LTC and other "short-tail" health exposures.

Life companies reinsured, through their A&H writers, World Trade Center exposure at varying levels. Who would have envisioned that 8 years after the terrorist attacks we (reinsurers) continue to pay claims…

Needless to say, many of our fellow Life reinsurers participated in WCCO programmes, not just impacted by 9/11, but well before that, with the onset of occupational accident facilities and pools. This is perhaps a topic for another time, but from those of us involved with these programmes, it's safe to say that many of these will continue for decades.

Summary

Perhaps through AIRROC, and through the Life/A&H subcommittee, we can come to some solutions for helping companies manage through these long-tail exposures. We continue to explore ways for the industry to come together in managing these exposures more effectively, and provide an open forum for AIRROC members to get to know one another better. Not to mention, the semi-annual commutation and networking events that AIRROC provides.

We welcome more involvement in the Life/A&H subcommittee. If you are interested in participating, please contact the writer. ■

Feature Article

Marketing Strategies to Monetize Your Run-off Blocks

Organically grow premium and income

Ron Clarke

Dustin Manocha

By Ron Clarke and Dustin Manocha

Introduction

Over the past 35 years, we have seen thousands of financial institutions, both large and small, develop strategies for engaging their customers, increasing the satisfaction of those customers and generating predictable income. The goal of this article is to share with AIRROC members some of the fundamental best practices possible for maximizing: 1) retention of your insureds, 2) premium generated, and 3) overall net income. This applies for active blocks and those in run-off, generally comprised of life and health individual policy holders or group policy certificate holders.

After compiling the results of the tens of thousands of campaigns conducted, we have discovered that by providing supplemental offerings of perceived value to your base of insured customers, you will create an opportunity to generate revenue while simultaneously strengthening your relationship with the insureds. While this is a fairly straightforward and time-tested concept, it nonetheless represents an underutilized opportunity to improve the financial performance of run-off blocks.

The Symbiotic Equation: Cross-Sell Revenue = Customer Loyalty

Irrespective of the size of the insured base or the types of programs in which they participate, there is a very strong and predictable correlation between offering cross-sell products of value to insureds with subsequent increases in those customers' satisfaction and loyalty. The increase in satisfaction and loyalty then readily translates into increases in revenue as well.

…there is a very strong and predictable correlation between offering cross-sell products of value to insureds with subsequent increases in those customers' satisfaction and loyalty.

Said even more simply, any block of insureds – even those in run-off mode – can be monetized through proven, turnkey methods, and any holder of these blocks should examine whether they are maximizing the value of their asset.

The key to this equation, however, is to offer the right cross-sell product, to the right insured customer, and through the channel and method that the insured customer is most likely to respond favorably to.

Striking the right balance across all these elements significantly increases the likelihood of a favorable response to the offer. This is critical because a favorable response to the offer results in incremental revenue and a deeper, stronger relationship with the insured customer. Accordingly, a more thorough examination of each component to this equation is warranted:

What is the right cross-sell product to offer?

In short, this will depend on the profile of your insured base. The preferred recommended method is to use a combination of statistical analytics of the base, to assess their probable interests and needs, and coupling that with test marketing of multiple offerings to determine the best fit. Through their response rate, your insured customers will tell you which products are most relevant to them and of the greatest value.

Who are the right insureds?

Simply put, the right customers are the ones who are more interested in, and therefore most likely to

continued on page 25

Ron Clarke is SVP, Insurance Product Management at Affinion Group, Inc. and can be reached at rclarke@affiniongroup.com.

Dustin Manocha is Vice President and business leader for Affinion's insurance acquisition program and can be reached at dmanocha@affiniongroup.com.

Message from CEO and Executive Director *continued from page 1*

Mike Zeller (board member and Chair of AIRROC's Legislative/Amicus Committee, Small Claims Task Force) on February 12, 2009 during our membership meeting. Please read our Editor-in-Chief Peter Scarpato's article in this edition which explains salient elements of the procedure. On April 25, 2009, Mike will again present this initiative to the general public as part of an AIRROC panel session at the Mealey's Scottsdale Roundtable seminar. In addition to discussing ADR alternatives for run-off as part of the same panel, Peter will write an article covering our presentation to be included in the September 2009 edition of "AIRROC Matters."

AIRROC is quite pleased to announce that we have achieved our goal of four trademark registrations and approval by the Patent Trademark Office of AIRROC's logo, "We Seek Solutions," "Solutions Matter," and our acronym "AIRROC." Our thank you again to Jeff Mace and the team at Dewey & LeBoeuf LLP for their pro bono work to achieve this goal for AIRROC.

AIRROC is quite pleased to announce that we have achieved our goal of four trademark registrations and approval by the Patent Trademark Office…

Announcement: The AIRROC Board of Directors approved our new Education Committee Co-Chairs, Karen Amos of Resolute Management Services and Kathy Barker of Mitsui Sumitomo (represented by PRO Solutions). Our education sessions presented on February 12, 2009 were outstanding, plus the agenda presented for May and planned for July are excellent, quite informative and worthwhile for AIRROC members. We are confident that we are meeting the education session expectations as set forth in our mission statement.

Meanwhile, Art Coleman has planned several regional education programs across the country in 2009. These sessions are targeted at mid level staff and managers. The first, in Chicago at CNA Plaza, is on June 2nd and will be presented by Lovells. The topic of this first session is a Dispute 101 hands-on workshop. Two other sessions have been agreed: one in Boston on September 23rd, at the offices of Choate, Hall and Stewart and co-sponsored by Choate and Pro Insurance Services. Another in New York and sponsored by Chadbourne & Parke will take place later in the year. Topics for those sessions are still being designed.

As always, your suggestions for education session topics (contacts: Kathy_Barker@prois-inc.com or Karen.Amos@resmsl.co.uk) or "AIRROC Matters" articles (peter@conflictresolved.com) are quite welcome since we strive to serve your needs.

Thank you for listening and participating in this great association because "We Seek Solutions®." ■

Ms. Getty has been active in the insurance and reinsurance industry for over forty years, specializing in reinsurance claims. She has significant experience evaluating liability and reserve adequacy and planning and implementing claims and operational audits. In 1996, Trish expanded her focus to include sales and marketing of reinsurance services. In addition to active business, Trish has provided consulting services to regulators for the reinsurance administration of troubled and liquidated companies. She can be reached at trishgetty@bellsouth.net.

Present Value

By Nigel Curtis

Run-Off News

Randall & Quilter acquires Quest Group of Bermuda

Randall & Quilter announced in January 2009 that it had acquired Quest Management Services Limited, Quest (SAC) Limited and Sentry Intermediaries Limited (together the "Quest Group of Companies"). The Quest Group of Companies, based in Bermuda, provide accounting and management services to a diverse client base in the captive non-life insurance sector.

Citadel acquires Gallagher run-off

Citadel Risk Management has bought the reinsurance run-off processes of Arthur J Gallagher & Co, which announced in January 2008 that it was exiting the reinsurance brokerage business. A new entity, Citadel Risk Services, Inc., has been established to service the business out of Bridgewater and Wayne, New Jersey.

Compre acquires Stockholm Re & Wasa

Compre Holdings reached an agreement in January 2009 to buy Stockholm Reinsurance Company Limited and Wasa International Insurance Company Limited, both reinsurance run-off subsidiaries of Länsförsäkringar Abs.

Global Re gets first German scheme sanctioned

On December 10, 2008, Global Reinsurance Company became the first German company to receive approval for a solvent scheme of arrangement under English law. Global Re received authority to commute within a short period a specific part of its business which is in run-off. Over 900 creditors involved in the reinsurance treaties included in the Scheme will now benefit from a six month period during which they can assert their claims. The Global Re Scheme concerns certain reinsurance treaties accepted from 1954 to 2002 and in addition, contracts with cedants or placed via insurance brokers domiciled in the UK.

People

Andrew Maneval, the former Chairman of AIRROC, has retired after 15 years with The Hartford. He was the President of Horizon Management Group, First State Insurance Company, and New England Reinsurance Corp., and was responsible for various run-off activities of The Hartford, including the Excess Insurance Company Ltd. His most recent role was to manage all Reinsurance Collections and Commutations at The Hartford, for both its Ongoing and Run-Off segments. Andrew is now an independent, ARIAS-certified Umpire and Arbitrator (with experience in over 125 arbitrations as an Arbitrator, Umpire, counsel, or party representative), and a reinsurance consultant.

Global Reinsurance Consultants Client Executive, Mark Allitt has left the firm to join KPMG Bermuda's Advisory team to work as a Manager with their insurance restructuring and corporate finance services.

Clifford Schoenberg and Kenneth Pierce have joined Mayer Brown's New York office as co-heads of the firm's insurance & reinsurance practice in the United States. Mr. Schoenberg joins Mayer Brown after more than eight years at Cadwalader and Mr. Pierce joins from Morgan Stanley.

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

Mark Your Calendar

June 8-10, 2009: Cavell Commutations Rendezvous, Norwich, England.

July 23, 2009: AIRROC Membership Meeting, Dewey & LeBoeuf LLP, 1301 Avenue of the Americas (bet. 52nd & 53rd Sts.), New York, NY 10019.

September 4-8, 2009: Monte Carlo Rendez-vous.

October 7-10, 2009: National Association of Professional Surplus Lines Offices (NAPSLO) Annual Convention, Orlando, FL.

October 11-14, 2009: Excess/Surplus Lines Claims Association Annual Conference (ESLCA), Bermuda.

October 19-21, 2009: AIRROC/Cavell Commutation & Networking Event. Details will be provided on our website at www.airroc.org.

(AIRROC Members and Non-members who participate on AIRROC committees, presenters or those invited by special invitation from AIRROC are eligible to register for attendance at the AIRROC membership meetings.)

Marketing Strategies to Monetize Your Run-off Blocks *continued from Page 21*

Consumers are able to transact in the widest variety of media ever – online, telemedia (phone), direct mail, in-branch…

respond to, the cross-sell offer. By modeling the customer base and then testing response rates, the right customers will be apparent. This is particularly critical when considering high-cost media, such as direct mail, where you want to be highly precise in targeting the right insureds to ensure the optimal balance between cost incurred versus profitable revenue generated.

What is the right channel and method for a cross-sell offer?

Look to how and when your insured base prefers to interact with you today. Consumers are able to transact in the widest variety of media ever – online, telemedia (phone), direct mail, in-branch – and your base has probably already revealed to you the method they prefer. Leverage the way they conduct business with you to promote the cross-sell offer. For instance, if you currently receive inbound customer service calls from insureds, there is an opportunity to initiate an offer at the tail end of the call. Alternatively, the premium billing statement could be used to incorporate a direct mail piece presenting the offer. But it is also important to perform additional analysis and testing to determine whether any other channels are worth considering for a cross-sell offer. For instance, even if your insured base currently only uses your website to gather information, it may still be a media they will respond to if an attractive offer is presented.

The Low Risk 400% ROI Solution

There are other ways of dramatically increasing the retention of insureds, and some of these programs can be structured to be low-risk, even self-funding, and are capable of generating substantial returns.

An example of this is the Customer Appreciation Program (CAP), which Affinion created more than 20 years ago. In a typical CAP, retail banking customers are given a base level of AD&D coverage – typically $1,000 – for free by their financial institution as a thank you for their business, with an opportunity to buy supplemental coverage up to $300,000 for a fee. This type of program is usually executed near the renewal period to heighten the consumer's association of the value in their relationship with the financial institution. The revenue that results from those choosing supplemental coverage more than offsets the cost of giving away the free benefit, meaning the net result to the institution is higher and more predictable income and higher renewal rates for the underlying policy.

…some of these programs can be structured to be low-risk, even self-funding, and are capable of generating substantial returns.

An application of this concept to a block of run-off insurance business is to offer a benefit of identity theft protection at no cost as a thank you for the individual insured's business, coupled with an offer for the insured to purchase additional protection for an additional fee. Identity theft remains one of the fastest growing crimes in the world and consumers are increasingly looking to their financial providers for solutions. In addition, its non-insurance status creates more flexibility in how the offer is marketed and produces no-risk fee income. Presenting such an offer creates stronger affinity and loyalty to the institution and providing the consumer with the opportunity to purchase more comprehensive coverage at a special rate generates the necessary income to fund the free offer.

An upcoming policy conversion onto a new carrier's paper shouldn't be seen as an administrative event that exposes you to policy breakage.

Conversion as a Monetizing Event

An upcoming policy conversion onto a new carrier's paper shouldn't be seen as an administrative event that exposes you to policy breakage. Applying the cross-sell principals and a CAP-like program can even result in *increased* premium. In our experience, we have seen an average of 3 to 6% lift in premiums by leveraging the cross-sell principals. In contrast, in conversions without a program, we have seen a reduction in premium of up to 6%. Where the law permits providing a free benefit as a thank you reward during the conversion, this lift differential can add monetary value to a base with which you were otherwise expecting to lose premium.

continued on page 30

KX Reinsurance Co. v. General Reinsurance Corp.:

Can Arbitrators Retain Jurisdiction after Resolving all Submitted Issues?

Philip J. Loree Jr.

By Philip J. Loree Jr.[1]

I. Introduction

Most arbitration clauses in reinsurance contracts expressly or impliedly recognize that an arbitration must have a beginning and an end. Typically, the process begins with a demand for arbitration and the selection of an arbitration panel, and ends with the arbitrators holding a hearing on the merits and issuing a final award. At that point the parties generally expect that the arbitrators will step down, and that any future dispute will be the subject of a new arbitration proceeding, perhaps with a different panel.

But what happens if the arbitrators do not step down and instead declare that they will retain jurisdiction until such time as both parties agree they should disband? That was, in essence, what happened in *KX Reinsurance Co. v. General Reinsurance Corp.,* 08 Civ. 7807 (SAS), 2008 WL 4904882 (S.D.N.Y. 2008) (Scheindlin, J.) (the "*KX Re* decision" or "*KX Re*"). And while courts almost never find that arbitration panels exceed their authority, Judge Shira A. Scheindlin held that the panel exceeded its authority when, after resolving the issues the parties submitted, the panel declared that it would remain constituted subject only to the mutual agreement of the parties.

This article briefly examines the *KX Re* decision and explains why it made sense in light of the parties' arbitration agreements, the submission, and prevailing arbitration law. It argues that the Court was motivated not only by a desire to enforce the parties' arbitration agreements as written, but also by its recognition that allowing the arbitrators to retain jurisdiction would have deprived KX Reinsurance Co., Ltd. ("KX Reinsurance") of its right to make informed selections of party-appointed arbitrators and umpire candidates should any future disputes arise.

> *Judge Shira A. Scheindlin held that the panel exceeded its authority when, after resolving the issues the parties submitted, the panel declared that it would remain constituted subject only to the mutual agreement of the parties.*

Philip J. Loree Jr. is a Partner of Loree & Loree and can be reached at pjl1@loreelawfirm.com.

II. The *KX Re* Decision

A. Background

In *KX Re* the cedents, both members of the same insurance group, each demanded arbitration against KX Reinsurance under two separate excess-of-loss treaty programs in which KX Reinsurance's predecessor in interest had participated as a reinsurer. Each arbitration demand sought a "Final Award" from the arbitrators and a specific sum of allegedly overdue balances, "plus additional balances that may thereafter become due." The parties agreed to consolidate the arbitrations and appointed a three-person panel. After discovery and a hearing, the panel issued its award (the "Award"). The Award provided, among other things, that any relief requested by the parties but not addressed in the award was denied. The Panel also included in the Award a retention of jurisdiction provision, which said that the Panel would remain constituted until both parties agreed that it should step down (the "Retention of Jurisdiction Provision").

KX Reinsurance requested that the Panel disband because all issues submitted by the parties had been resolved, the award was final by its terms, and the parties never agreed that the panel should remain in place once it had rendered the final award. The Panel would not disband, and the cedents refused to agree that it should.

KX Reinsurance then commenced an action in the Federal District Court for the Southern District of New York seeking, among other things, an order pursuant to Chapters 1 and 2 of the Federal Arbitration Act, 9 U.S.C. §§ 1, *et seq.*, and Articles IV and V of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "Convention"), vacating the Retention of

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Jurisdiction Provision and confirming the balance of the Award. The cedents opposed the application, contending that the Award was not final and therefore could not be confirmed, and that, in any event, the Court should not vacate the Retention of Jurisdiction Provision.

The cedents opposed the application, contending that the Award was not final and therefore could not be confirmed, and that, in any event, the Court should not vacate the Retention of Jurisdiction Provision.

B. The Court's Decision

The Court granted KX Reinsurance's application in its entirety, holding that the arbitrators had exceeded their powers under Section 10(a)(4) of the Federal Arbitration Act. The Court first found that the award was final. Noting that the Panel did not denote its ruling "final", the Court ruled that "the context and scope of the Panel's decision underscore[d] its intention to the contrary." The Court cited four reasons:

- The arbitration clauses provided that "in the event of a dispute requiring arbitration, 'the decision of the majority shall be final and binding... '";
- The arbitration demands requested a "Final Award";
- The Award provided that the Panel had "'heard and fully considered' all the evidence and arguments associated with the matters before them"; and
- The Award provided that all other requests put forward by the parties but not addressed in the Award were denied.[2]

On these facts, the Court concluded that "all the issues submitted to the Panel and within its province have been resolved, and the ruling...constitutes a final Award."[3]

The Court then ruled that the Panel exceeded its powers by retaining jurisdiction. The Court concluded that "[a]ll of the submitted issues were adjudicated by the Panel, either expressly or by their statement that such issue[s] not mentioned in the decision [were] denied." As the Court succinctly put it, "[t]he specific issues submitted to the Panel define and delineate its powers; by definition it has no jurisdiction over future disputes."[4]

The Court rejected the argument that the "plus additional balances that may thereafter become due" language in the arbitration demands effectively demanded arbitration in advance on all future claims that might arise during the run-off of the treaties. The Court concluded that "such an open-ended submission would effectively allow the Panel unlimited authority and the power to exist indefinitely", and "would... deprive KX of its implicit right under the Treaties to choose the arbitrators and umpires it deems most suitable to resolve the specific issues in contention."[5]

III. Analysis

The *KX Re* decision illustrates how the arbitration agreement, submission, and the doctrine of finality delineate not only the scope of the issues to be decided, but also the scope of the proceeding itself, marking its beginning and end. Arbitrators undoubtedly have broad powers over both substantive and procedural matters, but ultimately those powers are delegated to them by the parties, and the scope of the delegation defines the scope of their authority.

One might be tempted to criticize the distinction the Court drew between the arbitrators having jurisdiction over the claims that gave rise to the arbitration proceeding, but not over future claims that might arise as the Treaties were run-off. Excess-of-loss reinsurance treaties reinsuring long-tail casualty business written prior to the mid or late 1970s are frequently subject to an ongoing stream of asbestos and environmental claims that may not be run-off for many years. If the parties have gone to the trouble of appointing an arbitration panel to help them resolve certain claims, then why not allow that same panel to resolve all future claims that might arise under the same contracts?

The KX Re *decision illustrates how the arbitration agreement, submission, and the doctrine of finality delineate not only the scope of the issues to be decided, but also the scope of the proceeding itself, marking its beginning and end.*

The answer lies in the preeminent purpose of the Federal Arbitration Act, which is to enforce arbitration agreements "according to their terms,"[6] not according to substitute terms that a court or arbitration panel deems more efficient or economical.[7] But more importantly, in *KX Re*, the parties agreed to a dispute resolution model

continued on page 28

KX Reinsurance Co. V. General Reinsurance Corp. continued from Page 27

that provided the parties considerable and valuable input into the selection of the party-appointed arbitrators and the neutral umpire. That model provided that the parties would appoint an arbitration panel each time a "dispute" arose and would delegate to that panel the authority to resolve that dispute, and no others.

A. The Arbitration Agreements Required the Parties to Submit a "Dispute" to a Panel and Delegate to the Panel Only the Authority Necessary to Resolve that Dispute.

The arbitration agreements in *KX Re* did not come into play until a "dispute" arose "with respect to the interpretation of this Agreement or the rights of the parties in connection with any transaction hereunder.. .." In that event, the parties promised to "refer" "such dispute" to "two arbitrators, one to be chosen by each party and to an umpire chosen by [those party-appointed] ... arbitrators before they enter upon the arbitration." This reference or submission, "serve[d] not only to define, but to circumscribe the authority of the arbitrators."[8] The arbitration clause, therefore, ensured that, unless otherwise agreed, the panel selected by the parties would be authorized to resolve only the submitted dispute. If a future dispute arose, then the arbitration clause would be triggered again and the dispute referred to a newly-selected panel.

B. The Arbitration Agreements Required a Final Award

The parties also limited the panel's authority to the dispute submitted by requiring the arbitrators to issue a "final" award, and that is exactly what the cedents requested. When parties agree that the arbitrators are to issue a "final" decision or award, "the arbitrators have the authority and responsibility to do so."[9] By definition, a "final" award "*must resolve all the issues submitted* to arbitration, and. . . it must resolve them definitively enough so that the rights and obligations of the two parties, *with respect to the issues submitted,* do not stand in need of further adjudication."[10] Once a final award has been rendered, the arbitrators have, by definition, ruled on all the issues within the scope of the parties' submission and their authority is exhausted.[11]

C. If the Arbitration Agreements had not been Enforced as Written, KX Reinsurance would have been Deprived of its Right to Make Informed Choices of Arbitrators and Umpire Candidates

By providing that a "dispute" would trigger the selection of panel that would issue a "final" award, the parties agreed that their choice of party-appointed arbitrators and umpire candidates would be informed by knowledge of the dispute to be arbitrated. One of the principal advantages of arbitration has over court litigation is party autonomy in arbitrator selection. As Judge Posner once said, "Selection of the decision maker by or with the consent of the parties is the cornerstone of the arbitral process."[12] Federal Arbitration Act § 5 provides that, "[i]f in the agreement provision be made for a method of naming or appointing an arbitrator or arbitrators or an umpire, such method shall be followed..."[13] Article V(1)(d) of the Convention provides a defense to recognition and enforcement where "[t]he composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties."[14] Courts will not hesitate to vacate domestic or non-domestic awards if arbitrator selection procedures were not followed.[15]

Informed choice of arbitrators and umpire candidates is a valuable right. Party-appointed arbitrator A may be best suited for dispute X, but not for disputes Y or Z. The same is true of umpire candidates. Clauses like those in *KX Re* generally allow each party to name three candidates from which the other party strikes two, leaving two candidates. The party-appointed arbitrators attempt to agree on one of the two remaining candidates, and, barring that, make the choice by a tie-breaking procedure such as a lot drawing, coin toss, Dow Jones pick or like procedure. With advance notice of the dispute over which the umpire will preside, the parties are able to tailor their umpire candidate selections accordingly.

D. Not Enforcing the Arbitration Agreements Would Have Spoiled the Parties' Attempt to Allocate Fairly and Equally the Risks Associated with Umpire Selection

In tripartite arbitration agreements like those in *KX Re*, there is a risk that the two party-appointed arbitrators will be unable to agree on a suitable umpire and that the party-appointed arbitrators will make the selection by the tie-breaking procedure. All other things being equal, each party attempts to select umpire candidates that are likely to be sympathetic to their respective positions yet qualified to serve as neutrals. The party winning the coin toss usually ends up selecting an umpire whose views on issues pertinent to the controversy are likely to be more in line with the winning party's position, which, in turn, usually means that two of the three panel members are more likely to support an award favorable to that party. A neutral's

continued on next page

institutional predispositions – *i.e.*, his or her opinions on industry-related issues that may be relevant to the dispute — generally do not spoil an award; they are part of the risk each party assumes when it agrees to tripartite arbitration featuring industry experts and informed choice of decision makers.[16]

But arbitration law is, in essence, contract law, and one of the fundamental purposes of contract law is to allow parties to allocate risk as they best see fit.[17]

But arbitration law is, in essence, contract law, and one of the fundamental purposes of contract law is to allow parties to allocate risk as they best see fit.[17] In *KX Re* the parties sought to share the risk inherent in the umpire selection procedure by agreeing that a selected panel's authority would be limited to the submitted dispute that triggered the selection process. Had the parties agreed that the panel appointed to hear dispute X would likewise hear all subsequent disputes, then based solely on the toss of a coin, one party would likely secure an advantage not only in arbitration X, but in all subsequent ones. The arbitration agreements evened the playing field by providing that the loser of the toss in arbitration X gets another chance to win if disputes Y and Z subsequently arise. All other things being equal, allowing for the coin toss every time a dispute arises tends to allocate risk more equally among the parties, providing each party with a 50% chance of winning an advantage each time a dispute arises.

All other things being equal, allowing for the coin toss every time a dispute arises tends to allocate risk more equally among the parties, providing each party with a 50% chance of winning an advantage each time a dispute arises.

IV. Conclusion

Had the Court not vacated the Retention of Jurisdiction provision, then it would have permitted the panel to disregard the plain terms of the parties' arbitration agreement and submission. The terms of the Award and the parties' submission left no doubt that the Panel had resolved all issues submitted to it. The Retention of Jurisdiction provision, if not vacated, would have allowed the Panel to decide disputes under the Treaties that might or might not arise in the future, but which were not part of (or required to be part of) the submission. That would have deprived KX Reinsurance of its freely-bargained-for rights under the arbitration agreements, including, as the *KX Re* Court expressly recognized, "its implicit right under the Treaties to choose the arbitrators and umpires it deems most suitable to resolve the specific issues in contention."[18] ■

Endnotes

1 Philip J. Loree Jr. is a partner in the firm of Loree & Loree (www.LoreeLawFirm.com), where he focuses his practice on reinsurance litigation and arbitration and commercial and industry arbitration. Mr. Loree was formerly a partner in the Litigation Department of Cadwalader, Wickersham & Taft LLP, and a shareholder in the Litigation Department of Stevens & Lee, P.C.

Mr. Loree represented KX Re in the *KX Reinsurance Co. v. General Reinsurance Corp.* case discussed in this article. He can be contacted at PJL1@LoreeLawFirm.com.

This views expressed in this article are solely those of the author and do not necessarily reflect the views of Loree & Loree or any of its current or former clients. This Article is not intended to provide legal advice and should not be construed as providing such advice.

2 2008 WL 4904882, at *4.

3 2008 WL 4904882, at *4.

4 2008 WL 4904882, at *5.

5 2008 WL 4904882, at *5.

6 *Volt Information Sciences, Inc. v. Board of Trustees of Leland Stanford Junior Univ.*, 489 U.S. 468, 478 (1990).

7 *See Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 219-20 & 221 (1985).

8 *Ottley v. Schwartzberg*, 819 F.2d 373, 376 (2d Cir. 1987); *see also Rocket Jewelry Box, Inc. v. Noble Gift Packaging, Inc.*, 157 F.3d 174, 177 (2d Cir. 1998); *Trade & Transport, Inc. v. Natural Petroleum Charterers Inc.*, 931 F.2d 191, 195 (2d Cir. 1991).

9 *Trade & Transport*, 931 F.2d at 195.

10 *Rocket Jewelry Box*, 157 F.3d at 176 (emphasis in original).

11 *See U.S. v. American Soc'y of Composers, Authors and Publishers*, 32 F.3d 727, 732-33 (2d Cir. 1994); *Ottley*, 819 F.2d at 376.

12 *See Lefkovitz v. Wagner*, 395 F.3d 773, 780 (7th Cir.), *cert. denied*, 546 U.S. 812 (2005).

13 9 U.S.C. § 5.

14 Convention, Art. V(1)(d).

15 *See, e.g., Encyclopaedia Universalis S.A. v. Encyclopaedia Brittanica, Inc.*, 403 F.3d 85, 91-92 (2d Cir. 2005); *Cargill Rice, Inc. v. Empresa Nicaraguense Dealimentos Basicos*, 25 F.3d 223, 226 (4th Cir. 1994); *Avis Rent A Car Sys., Inc.* v. *Garage Employees Union*, 791 F.2d 22, 25 (2d Cir. 1986).

16 *See, e.g., Merit Ins. Co. v. Leatherby Ins. Co.*, 714 F.2d 673, 679 (7th Cir.), *cert. denied*, 464 U.S. 1009 (1983); *Morelite Constr. Corp. v. New York City Dist. Council, Carpenters Benefit Funds*, 748 F.2d 79, 84 (2d Cir. 1984).

17 *See, generally, Kel Kim Corp. v. Central Markets, Inc.*, 70 N.Y.2d 900, 902 (1987).

18 2008 WL 4904882, at *5.

Marketing Strategies to Monetize Your Run-off Blocks

continued from Page 25

Operational Considerations

To optimize the success of any cross-sell program, there are certain aspects of the structure and readiness of your operations to consider:

- ***Payment vehicle.*** When payment is required by the insured, have an existing payment vehicle on file, such as a credit/debit card or ACH payment process. This is important as it simplifies the process for enrollments and increases insureds' response rates on the cross-sell. A higher response rate translates into greater income for the firm.
- ***Third Party Administrator / Marketing Partner.*** Maximizing the returns in cross-sell campaigns requires expertise in a variety of fields, including test ing, building and servicing the programs offered, and any marketing to the insureds. While some carriers are able to perform some of these functions in-house, even large insurers elect to leverage experienced third parties who specialize in developing and executing these types of campaigns on a regular basis. Some of these third parties operate on a success-based model, where their compensation is directly correlated to the success of the campaign. This is a particularly important consideration in the run-off sector, where customer acquisition functions are less common and operations support is more likely to be outsourced.
- ***Marketing Investment Risk.*** Some third party firms will bear the risk of the campaign by making the upfront investment in product development and marketing themselves, and then share with you the resulting revenue of the up-sold program from the insured base. In this structure, you benefit from the upside opportunity for increased loyalty and high-margin revenue while eliminating the need to risk your own capital in the initiative.

Summary

The proven customer engagement strategies described here can, if implemented properly, deliver on several desirable areas: improved retention of insureds, increased premium, and higher overall net income. ■

Important Canadian Regulatory Changes Affecting Branches In Run-Off

continued from Page 16

normally require Ministerial approval, this may be counter-balanced by the bringing to an end the need to check and report on a quarterly basis on whether head office had insured risks outside Canada that should have been reflected on the books of the branch;

- normally, OSFI requires a year end to pass after the portfolio transfer before releasing the branch completely - in special circumstances this may be sped up; and
- since the test is now where the insurance activities are carried out, head office can reinsure the business transferred by the branch without adversely affecting the withdrawal of the branch.[3]

2. Branches wishing to complete the transfer in 2009 will need to start on the process without delay.

   Head office can now carry out insurance activities outside of Canada for Canadian risks without reflecting that business on the branch's books. This provides significant added flexibility, but care will have to be taken that there be no insurance activities carried on in Canada that undermines this approach.

All of these changes mean that at least for the foreseeable future, "business as usual" will not necessarily apply to your branch even if it is in run-off.

3. Attention will need to be given as to whether or not the branch, if it is to continue in Canada, needs to be registered for marine insurance.

All of these changes mean that at least for the foreseeable future, "business as usual" will not necessarily apply to your branch even if it is in run-off. ■

Endnotes

1 See OSFI Advisory 2007-01-R1 *Insurance in Canada of Risks revised December 18, 2008*. It can be accessed on the OSFI website or a copy may be obtained by contacting the author.

2 See OSFI Advisory *Implementation Instructions,* December 2008 and *Questions and Answers – Implementation of Amendments to Part XII of the Insurance Companies Act,* December 2008. Again, these can be accessed on the OSFI website or a copy may be obtained by contacting the author. Additionally see Carol Lyons – *Instructions and Guidance on Changes Affecting foreign Insurance Companies* International Law Office Feb. 3, 2009.

3 For a discussion see Frank Palmay *Withdrawing a Branch – A New Option* International Law Office October 23, 2007.

Alert No. 28

KPMG Policyholder Support Update

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

HARRINGTON INTERNATIONAL INSURANCE LIMITED

The above company's Scheme was approved at the Meeting of Creditors on 19 February 2009. Further information is available by e-mailing scheme@harringtonintl.com or jamesbennett@kpmg.bm.

MALAYAN INSURANCE COMPANY (UK) LIMITED

The above company's Scheme was approved at the Meeting of Creditors on 1 October 2008. The Scheme became effective on 9 October 2008 and the bar date was set for 9 April 2009. Further information is available by e-mailing abagshaw@chiltington.co.uk.

GLOBAL GENERAL AND REINSURANCE COMPANY LIMITED; GLOBALE RÜCKVERSICHERUNGS-AG

The above companies' Schemes were approved at Meetings of Creditors on 10 October 2008. The Schemes became effective on 10 December 2008 and the bar date for both Schemes was set for 8 June 2009. Further information is available at www.globalre.com/schemes.

Other Recent Developments

DEUTSCHE RÜCK UK REINSURANCE COMPANY LIMITED ("DRUK")

A Practice Statement Letter ("PSL") was sent to all known brokers and policyholders on 10 September 2008 indicating DRUK's intention to propose a Scheme of Arrangement. The order granting leave to convene a Meeting of Creditors was granted by the High Court on 12 February 2009. A meeting was anticipated to take place on 18 May 2009, at the offices of KPMG LLP, 8 Salisbury Square, London, EC4Y 8BB. Further information will be available at www.deutscherueckuk.com.

CITY GENERAL INSURANCE COMPANY LIMITED

By Order of the High Court of Justice in England and Wales, Meetings of Scheme Creditors for the above company were convened on 3 February 2009. The outcomes of the Meetings are not yet known. Further information is available at www.citygeneral.co.uk.

RIDGWELL FOX UNDERWRITING POOL

Nine companies who participated in the Ridgwell Fox Underwriting Pool are proposing to implement Schemes of Arrangement. A Practice Statement Letter was sent out to brokers and known policyholders on 28 February 2008. A rescheduled date for the hearing to apply for leave to convene Meetings of Creditors is yet to be set. Further information is available at www.rfpinsurance-scheme.co.uk.

THE SCOTTISH LION INSURANCE COMPANY LIMITED

By order of the High Court of Justice in England and Wales, Meetings of Scheme Creditors for the above company are to be convened for the purpose of considering and, if thought fit, approving a Scheme of Arrangement. The Meetings were to be held at the offices of PricewaterhouseCoopers LLP, 1 Embankment Place, London, WC2N 6RH on 2 March 2009 at 11am. Further information is available on www.scottishlionsolventscheme.com.

EW PAYNE EXCESS OF LOSS POOLS

The bar date for the schemes for 82 Companies who participated in the EW Payne Excess of Loss Pools passed on 16 December 2008. Further information is available at www.ewpaynepools.com.

continued on next page

Policy Support Update *continued from Page 33*

Insolvent Estates

WALTON INSURANCE LIMITED

By Order of the Supreme Court of Bermuda dated 13 December 2007, Charles Thresh and Mike Morrison of KPMG Advisory Ltd in Bermuda were appointed Joint Provisional Liquidators of the above company. Subsequently, Mike Morrison and Charles Thresh were appointed as permanent Joint Liquidators on 20 March 2008. The Joint Liquidators have now agreed the valuation of substantially all of the company's insurance liabilities and anticipate making a distribution to creditors during March 2009. Further information on the liquidation is available by e-mailing jamesbennett@kpmg.bm.

PACIFIC & GENERAL INSURANCE COMPANY LIMITED

The bar date for submitting claims for the above company's Scheme passed on 9 January 2009. Further information is available at www.gt-pandg.com. ■

Please do not hesitate to contact Mike S. Walker, Head of KPMG's Restructuring Insurance Solutions practice at mike.s.walker@kpmg.co.uk should you require any further information or guidance in relation to insurance company schemes and insolvencies.

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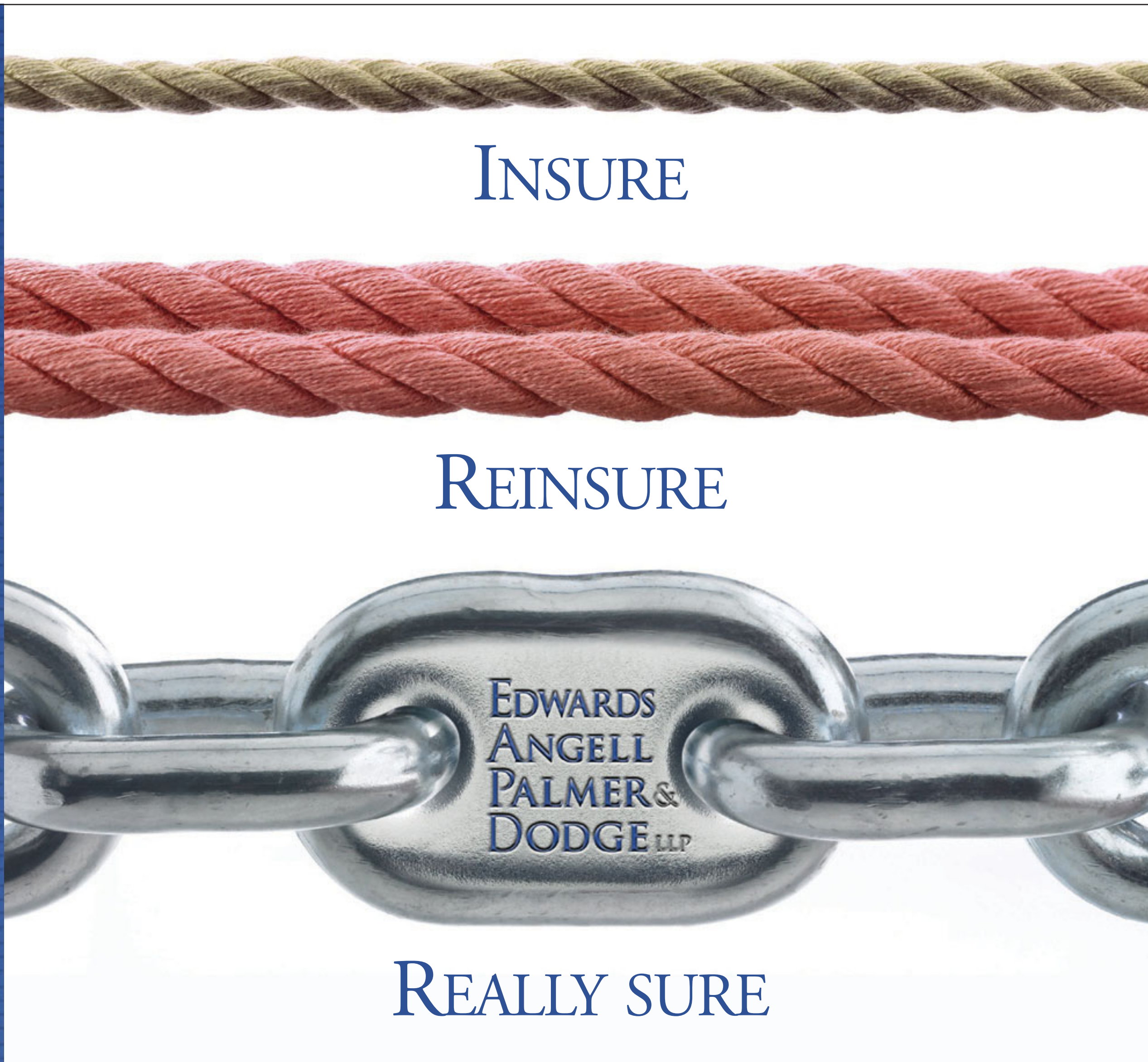
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